In Re Hastings Saw Mill

Mill Site — The Deed Stevens to The Hastings Mill Company dated 13th October 1887 purports to convey

"All that piece or parcel of land situated in the city of Vancouver &c
"Containing 8 3/4 (eight and three fourths) acres little more or less
"which is designated by the color green on the plan hereto (thereto)
"annexed and forming part of &c Together with all Buildings" &c,

As I understand the recitals in the Deed the above parcel of land and other lands (excluding as I assume the mill and wharf though they are not within the outlines of the part colored green) were all embraced in one purchase at the price of $87,000 for the whole

I understand also that ~~the~~ the Northern limits of the Railway Co's Track of 200 feet is ascertained or marked out on the ground or capable of being so and that the Southern boundary of the land designated by the color green is therefore fixed and certain

Since the conveyance was made it has been discovered that the part colored green on the plan contains only 5 1/3 acres instead of 8 3/4 and the question is whether the Company have any and if so what recourse against the grantor on account of the deficiency

My opinion is as follows

1 The deficiency in quantity is 2 5/12 acres being a shortage of more than 25 per cent on the quantity of 8 3/4 acres stated in the Deed - assuming that the land is of substantial value I think this deficiency is too great to admit of its coming within the protection of the qualifying word "little more or less" used in the deed or "more or less" which appear to have been generally used in the negotiations or contract preceding the conveyance

[See Dart on Vendors (5th Edn ad 1875) page 652

2. If there had been an intentional misstatement of the acreage amounting to a fraudulent misrepresentation on the part of the vendor an action for deceit might lie [Dart on vendors 804] but I dont understand that any claim of this kind is advanced

3 I am unable to say without full knowledge of the terms of the contract or agreement to purchase, and of the facts connected with the negotiations for the contract, whether the purchasers would or would not have been entitled to compensation for the deficiency in case they had claimed it before the conveyance was made

4. As a general Rule all objections in respect of defects in title or quantity or quality of the estate require to be taken before the Conveyance has been executed — After the conveyance has been accepted the purchaser (save in some few exceptional cases) has no remedy in respect of such defects other than what is given under the ~~covenants~~ vendors covenants ~~in the~~ contained in the conveyance

Dart on vendors 742
Clare vs Lamb L R 10. C.P. 331
and see the more recent cases of
Manson vs Thacker 7 Chy Div 620
Allan vs Richardson 13 Chy Div 324
Brett vs Clowser 5 C P. Division 376
Goliffe vs Baker 11 Q B Div 255
Cottingham vs Cottingham 11 Ontario appeal Repts 624

5 If however in the contract of purchase or sale it was expressly stipulated or agreed that the purchaser was to be compensated for deficiency in quantity, his right to compensation would not be barred by his having accepted the conveyance — he could maintain an action for it subsequently on discovering the deficiency

Bos vs Helsham L R. 2 Exch 72
Re Turner and Skelton 13 Chy Div 130
Palmer vs Johnson 12 Q B. Div ~~351~~ 32
affirmed in appeal 13 " " 351

6 The Company's rights under the Deed or Conveyance itself are as follows - The land conveyed is the "piece or parcel of land ~~which~~ "which is designated by the Color green on the plan" - The boundaries of the land are sufficiently defined by the plan and can be ascertained with certainty on the ground - Whatever quantity is included within the boundaries would pass whether it ~~would~~ was 6-8 or 10 acres - The incorrect statement of the acreage is "false demonstratio" and does not affect the ~~land~~ grant, the land being otherwise sufficiently & correctly ~~described~~ described

Dart on Vendas 532

Llewellyn vs Earl of Jersey 11 M & W

The Covenants for title and further assurance in the Deed apply only to the land conveyed, that is the land "designated by the Color green" - they do not extend to the statement of quantity

The words 'Containing 8 3/4 (eight and three fourths) acres little "more or less" are words of description and not of Covenant or warranty

See - Smith vs Evans 6 Binney 152 - 6 American Decisions 436
- Powell vs Clark 5 Mass 355 - 4 " " 67
~~Large vs Penn 6 S.R.~~
and the note at end of Llewellyn vs Jersey 11 M & W. 190 American reprints - citing above 2 cases & the following which I have not been able to find viz
- Large vs Penn 6. S. & R. 488
- Mann vs Pearson 2 Johns 37
- Bowen vs McCormack 1. S & R. 166
- ~~Re~~ Lusk vs Dunn 4 Rand.

In my Opinion the Grantor is in no way liable under the Conveyance for the deficiency in acreage ~~in~~ and unless there was some intentional misstatement amounting to a fraudulent misrepresentation or unless the contract of purchase (preceding the Conveyance) expressly guaranteed or warranted the quantity ~~of~~ or provided for payment of compensation in case of deficiency so as to bring the case within the authorities cited above under the 5th head

heading No. 5 the company have I think no claim or remedy.

I assume of course that the land conveyed is the identical land ~~contracted for~~ or parcel of land contracted for and that the only error was an over estimate of its contents

Victoria 15th May 1888

S Richards

$50.

1888

Opinion
S. Richards
re Mill Site