ADOLPHE BARTHEL (DEFENDANT)..... APPELLANT; 1895

AND *Mar. 23, 25.
*May 6.

DANIEL SCOTTEN (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Construction of deed—Conveyance of land—Uncertain description—Evidence of intention—Verba fortius accipiuntur contra proferentem—Application of—Patent ambiguity.

A grant of land bounded by the bank of a navigable river, or an international waterway, does not extend *ad medium filae* as in the case of a non-navigable river.

If in a conveyance of land the description is not certain enough to identify the locus it is to be construed according to the language of the instrument, though it may result in the grantor assuming to convey more than his title warranted.

The intention of the parties to a deed is paramount and must govern regardless of consequences. *Res magis valeat quam pereat* is only a rule to aid in arriving at the intention and does not authorize the court to override it.

A general description of land as being part of a specified lot must give way to a particular description by boundaries and, if necessary, the general description will be rejected as *falsa demonstratio.*

Where there is an ambiguity on the face of a deed incapable of being explained by extrinsic evidence the maxim *verba fortius accipiuntur contra proferentem* cannot be applied in favour of either party.

Where a description is such that the point of commencement cannot be ascertained it cannot be determined at the election of the grantee.

APPEAL from a decision of the Court of Appeal for Ontario (1), reversing the judgment of the Divisional Court in favour of the plaintiff.

The action in this case is for possession of land the title to which depended upon the construction of a convey-

PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

(1) 21 Ont. App. R. 569.

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ance in which the description was mentioned and the point of commencement difficult to ascertain. The Queen's Bench Divisional Court construed it in favour of the defendant, and the Court of Appeal in favour of the plaintiff. The conveyance and all material facts are set out in the judgments published herewith.

Armour Q.C. for the appellant. The ambiguity in the description being patent no evidence was admissible to explain it. *Baird* v. *Fortune* (1); *Meres* v. *Ancell* (2); *Colpoys* v. *Colpoys* (3).

Evidence of surrounding circumstances may be given but only to enable the court to construe the instrument in a manner consistent with its words. *Attorney General* v. *Drummond* (4).

Evidence of title to what was purported to be conveyed cannot be received in order to affect the interpretation. *Hickey* v. *Stover* (5); *Summers* v. *Summers* (6).

A part of the description cannot be rejected as *falsa demonstratio* unless what is left makes the description adequate and sufficient. *Morrell* v. *Fisher* (7); *Goodtitle* v. *Southern* (8); *Day* v. *Trigg* (9).

McCarthy Q.C. and *Nesbitt* for the respondent. Every shift will be resorted to sooner than to hold the gift void for uncertainty. *Doe d. Winter* v. *Perratt* (10).

As to the rule of construction see Elphinstone on Interpretation of Deeds (11); Wigram on Extrinsic Evidence (12).

THE CHIEF JUSTICE.—It is not necessary to state at length the evidence or the several deeds constituting

(1) 4 Macq. H. L. Cas. 149.
(2) 3 Wils. 275.
(3) Jac. 455.
(4) 1 Dr. & War. 367; 2 H. L. Cas. 837.
(5) 11 O. R. 106.
(6) 5 O. R. 110.
(7) 4 Ex. 591.
(8) 1 M. & S. 299.
(9) 1 P. Wm. 286.
(10) 6 M. & G. 362.
(11) Pp. 157-9.
(12) Prop. 5.

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the titles of the parties respectively; they all sufficiently appear in the judgments delivered in the Queen's Bench and the Court of Appeal.

The title of the respondent, who was the plaintiff in the action, depends altogether on the construction to be placed on the deed of the 13th of January, 1883, whereby Laurent Bondy purported to convey to Charles W. Gauthier, the respondent's predecessor in title, a piece of land described as follows:—

All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of Sandwich West, in the County of Essex, in the Province of Ontario, being composed of a part of lot forty-three (43) in the first concession of the said Township of Sandwich West, described as follows:—

Commencing in the southerly limit of said lot forty-three, at a distance of twenty feet from the water's edge of the Detroit River, thence northerly parallel to the water's edge two hundred and eight feet, thence westerly parallel to the said southerly limit six hundred feet more or less to the channel bank of the Detroit River, thence southerly following the channel bank two hundred and eight feet, thence easterly six hundred feet more or less to the place of beginning, together with the fishery privileges appurtenant to the premises hereby conveyed.

The patent from the Crown granting lot 43, Petite Cote, to Joseph Puget in fee, dated the 26th of October, 1798, was put in evidence and by it lot 43 is described as a piece of land containing about 118 acres the side lines of which run back from the Detroit River in a course south 73 degrees east.

The respondent's contention was that the point of commencement was twenty feet east (or landwards) from the water's edge; that this was necessarily so, inasmuch as the water's edge was itself, according to the description in the patent, the western boundary of lot 43; that consequently by the deed of the 13th of January, 1883, a piece of land twenty feet in width from east to west and two hundred and eight feet from south to north passed.

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On the other hand the appellant insists that the point of commencement cannot be ascertained; that it is uncertain whether it is at twenty feet to the east or at twenty feet to the west of the water's edge; and that therefore there is no sufficient description and nothing passed under this conveyance of the 13th of January, 1883.

The Queen's Bench Division adopted the latter view. The Court of Appeal in a unanimous judgment reached the contrary conclusion.

There can be no doubt that situate as this lot 43 is, on a large navigable river, an international waterway, the water's edge forms the western boundary. A grant of land bounded by the banks or edges of such streams does not extend to the middle thread as is the case where lands described as so limited lying on the banks of non-navigable rivers are granted (1). Therefore lot 43 is in truth and legally a piece of land bounded on the south and north by the side lines mentioned in the patent, on the west by the bank of the river, and on the east by the second concession. From this the Court of Appeal concluded that a point in the southerly limit of lot 43 at twenty feet from the water's edge must necessarily be to the east of the river.

I quite accede to the principle so strongly stated in *Doe d. Winter* v. *Perrat* (2), cited in the respondent's factum, "that every shift will be resorted to sooner than hold the gift void for uncertainty." This however does not authorize a mode of construction which would be directly opposite to the intention of the parties as apparent from intrinsic evidence contained in the instrument itself. Further it matters nothing in a case of this kind whether the grantor had or had not title to all he assumed to convey; we are to construe

(1.) *Dickson* v. *Snetsinger* 23 U. C. C. P. 235. *Kairns* v. *Turville* 22 U. C. C. P. 17.
(2) 6 M. & G. 362.

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the description according to the language of the instrument abstracted from all considerations as to title. I am not disposed to accede to all the propositions of the learned counsel for the appellant as to the admission of extrinsic evidence on a question of construction. I think some of these propositions as to the admissibility of evidence of surrounding circumstances were too broad. I do agree, however, that it is quite competent for the appellant to show if he can from the terms of the deed itself that it did not comprise the land the respondent claims. The maxim *res magis valeat quam pereat* is only a rule authorizing a certain presumption to be made in arriving at what must govern in all cases of construction, namely, the intention of the parties, and if that intention is clear it is not to be arbitrarily overborne by any presumption. Taking therefore this description in the deed of 1883, the description in the patent and the evidence as to the local situation and surroundings of the property in dispute, I ask myself: Can I on this say that the point of commencement is established? If we are to consider the reference to lot 43 in this deed as meaning absolutely the piece of land so described in the patent to the exclusion of any other meaning then the reasoning of the learned judges of the Court of Appeal is unanswerable. But must we necessarily attribute to the parties such an intention? Is it not open to them to show that by the description of lot 43 they meant a lot of land, including land covered with water, of much greater extent than the lot 43 of the patent? Provided they can do this by sufficient evidence, and if such a meaning and intention appears from intrinsic evidence, that is from the deed itself without going out of its four corners, must not the meaning, which it thus appears the parties have themselves attached to the language in which they have expressed themselves, prevail?

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An interpretation clause is no doubt very unusual in the practice of conveyancing, though in some very modern deeds of great intricacy such provisions are sometimes to be found, but for the sake of illustration let us suppose that there had been in this deed of the 13th of January, 1883, a clause expressly declaring that by lot 43 was meant not merely a parcel of land limited according to the description of the patent, but a lot the area of which was comprised in the northern and southern boundaries of the patented lot produced to a westerly boundary formed by the middle thread or by the channel bank of the river. Surely this might have been done, and if so, could it be said in that case where the point of commencement in this description was to be found? And if it would have been competent to the parties to have done this expressly in the formal way I have mentioned, can they not do the same thing in less formal terms, provided they do it clearly and without ambiguity? Then, does it not appear from the description before us that this has been done? I think that it does clearly so appear. Let us follow the description: It commences on the southerly limit of lot 43 at a distance of twenty feet from the water's edge, thence it runs parallel to the water's edge two hundred and eight feet. So far there is nothing to show that the land referred to as lot 43 was not that described in the patent, but then the next course and distance is "westerly parallel to the said southerly limit six hundred feet more or less to the channel bank of the Detroit River."

What is this but saying, almost in so many words, that the southerly and as a consequence the northerly limit of the parcel of land which the parties to the deed were dealing with and describing as lot 43, extended six hundred feet more or less to the bank of the deep water channel of the river? The words "southerly

limit" refer of course to the southerly limit previously mentioned in the beginning of the description as "the southerly limit of said lot 43." Therefore this is equivalent to a declaration on the face of the deed that lot 43 extended westerly at least to the channel bank. The intention of the parties was that it should be so considered for the purposes of the deed, the description in which must consequently be governed by the intention thus expressed. In the face of this to force upon the parties a description of lot 43 according to a strict legal definition of its boundaries is, it seems to me, and I say it with all possible respect, to vary the terms of the instrument which they have deliberately entered into. I cannot see that there is anything in this way of putting the case obnoxious to the rule *res magis valeat quam pereat*, which is only a rule to aid in arriving at the intention and does not in any case authorize the court to overrule the intention which is paramount and must govern whatever may be the consequence.

It is probable that the parties were under a mistaken impression as to the law and supposed that the same rule which applied to grants of land in non-navigable waters were applicable to this land, That, however, is a matter of no moment. I have not referred to the parol evidence of extrinsic facts, as a good deal of it, however conclusive in an action for rectification, seems to me to be strictly inadmissible in aid of the construction of the deed. If there had been an ascertained point of commencement by designating it as at twenty feet to the west of the water's edge, I think there can be no doubt that the whole land as described would have passed although lot 43 did not in fact extend westerly beyond the water's edge. If the description had thus commenced west of the water's edge the words "in the southerly limit of lot 43" would have been construed to mean the southerly limit of lot 43

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produced westward. In that case the general description as part of lot 43 would have had to give way to the particular description by boundaries. This is shown by the opinion of Willes J. in the case of *Rorke* v. *Errington* (1). The only difference between that case and the case I have just hypothetically put would be that in the latter the description would be on the face of the deed, whilst in the case quoted it was described by reference to a plan. The words to be rejected as *falsa demonstratio* would then be "part of lot 43." It follows from this that we cannot allow the general and uncertain words of description "part of lot 43" to control the rest of the description in the deed actually before us, and reject the specific description by boundaries as immaterial.

In what part, therefore, of this southern boundary described by the parties in their deed as extending westerly of the water's edge, at least to the navigable channel of the river, a distance of some 600 feet, are we to place the point of commencement? It is impossible to tell.

This, therefore, is the case of a patent ambiguity, that is, an ambiguity apparent on the face of the deed itself, and therefore one which is incapable of being explained by extrinsic evidence even if any such evidence had been given or tendered. Then there being an ambiguity patent on the face of the deed I do not see that we can apply the maxim *verba fortius accipiuntur contra proferentem* in favour of the respondent. In the first place if it could be applied here it might be applied in every case and there would be no such thing as a patent ambiguity, but we know this is not so. However that rule of interpretation may be applied to determine the meaning of particular words or expressions I can find no instance of its being

(1) 7 H. L. Cas. 617.

used to determine the meaning of the parties where the words in which they have expressed themselves have left that meaning *in equilibrio* as to the subject matter of a conveyance. In short the deed must be construed according to the intention of the parties, and judging from the language they have used they have left the point in dispute undetermined, and the court cannot on any arbitrary principle determine it one way rather than another (1).

In *Taylor* v. *The Corporation of St. Helens* (2), Jessel M. R. says of this rule:—

> I do not see how, according to the established rules of construction as settled by the House of Lords in the well known case of *Grey* v. *Pearson* (3), followed by *Roddy* v. *Fitzgerald* (4), and *Abbott* v. *Middleton* (5), that maxim can be considered as having any force at the present day. The rule is to find out the meaning of the instrument according to the ordinary and proper rules of construction. If we can thus find out its meaning we do not want the maxim. If, on the other hand, we cannot find out its meaning, then the instrument is void for uncertainty, and in that case it may be said that the instrument is construed in favour of the grantor, for the grant is annulled.

Then can it be said that this is the case of an uncertainty of description to be determined by the election of the grantee?

This principle is applied to determine the ambiguity where a description applies equally to different subjects, as where there is a grant of 10 acres of land part of lot A, or a grant of one of the grantor's four horses. In such a case the grantor is presumed to leave the selection to the choice of the grantee. But this is not the case here; the question is, whether a larger or a smaller piece of land was intended to be conveyed. The grantor meant either the one or the other, which, he has, it is true, left uncertain, and it would be to do violence to his intention if we were to hold that the

(1) 6 ch. D. 270.
(2) 6 Ch. D. 270.
(3) 6 H. L. Cas. 61
(4) 6 H. L. Cas. 823.
(5) 7 H. L. Cas. 78.

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grantee should have a right of election. The doctrine has no application to a case like that now before us, where it is manifest that the grantor intended, not that there should be one or the other of two alternative points of commencement either of which the grantee might adopt, but one point only, though that has not been properly ascertained. Further, if such a right to elect did exist it must be considered as having been determined by Gauthier, under whom the respondent claims, when he allowed Barthel to build a house on the twenty feet strip now in question and otherwise to treat it as his own property.

The appeal must be allowed with costs and the judgment of the Queen's Bench Division restored.

TASCHEREAU and SEDGEWICK JJ. concurred in the judgment of the Chief Justice.

GWYNNE J.—This action was brought to recover possession of a piece of land which is the front part of three acres of land of which the defendant has been in actual undisputed possession from May, 1884, to January, 1893, under parol leases from year to year made to him by one Laurent Bondy at a yearly rent and from the 3rd January, 1893, under a deed of bargain and sale whereby the said Laurent Bondy, in consideration of the sum of $2,600 paid to him by the defendant, conveyed the said three acres to the defendant, his heirs and assigns, and thereby covenanted for good title as against his own acts. A piece of this land the plaintiff now claims, under the description, in his statement of claim, of a certain parcel or tract of land being composed of a part of lot numbered forty-three in the first concession of the township of Sandwich West—

commencing on the southerly limit of said lot forty-three at the distance of twenty feet easterly from the water's edge of the Detroit

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River; thence running northerly parallel to the water's edge up stream and twenty feet distant easterly therefrom two hundred and eight feet; thence westerly parallel to said southerly limit of lot forty-three twenty feet to the water's edge aforesaid; thence southerly following the water's edge of the said river down stream to the said southerly limit of lot forty-three two hundred and eight feet; thence easterly along the said southerly limit of lot forty-three to the place of beginning.

It is admitted that the piece of land so claimed by the plaintiff is within the limits of the three acres as described in the deed executed by Laurent Bondy in favour of the defendant in January, 1893, but the plaintiff claims title under a prior deed of bargain and sale bearing date the thirteenth day of January, 1883, executed by the same Laurent Bondy, whereby he, in consideration of the sum of three hundred dollars, conveyed to one Charles W. Gauthier, his heirs and assigns, the land therein described, the description of which, as the plaintiff contends, includes the piece of land for which this action is brought. That the plaintiff is seized of whatever title Gauthier acquired in the land covered by the description contained in that deed is not disputed, and as the plaintiff and defendant both claim title under the same grantor, the sole question in issue between the parties to this action is, whether or not the description in the prior deed from Bondy to Gauthier does include within its limits that portion of the three acres of which the defendant still is and has been so as aforesaid in possession by title under Bondy, for which this action is brought.

The whole onus of this issue is cast upon the plaintiff, and the solution of it depends solely upon the construction of the words used in the deed, read of course in the light of the surrounding circumstances, and if the words used leave the matter in doubt the plaintiff must fail. Now the description in the deed from Bondy to Gauthier of the land thereby intended to be conveyed is as follows:—

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That certain parcel or tract of land being composed of a part of lot forty-three in the first concession of the township of Sandwich West described as follows:—Commencing in the southerly limit of the said lot forty-three from the water's edge of the Detroit River, thence northerly parallel to the water's edge two hundred and eight feet, thence westerly parallel to the said southerly limit six hundred feet more or less to the channel bank of the Detroit River, thence southerly following the channel bank two hundred and eight feet, thence easterly six hundred feet more or less to the place of beginning, together with the fishery privileges appurtenant to the premises hereby conveyed.

It is here to be observed, that this description varies, in that which is the crucial point of this case, from the description of the piece of land for which this action is brought as described in the plaintiff's statement of claim, in this, namely, that the point of commencement in the latter is stated to be in the southerly limit of lot forty-three at the distance of twenty feet "easterly" from the water's edge, whereas in the deed to Gauthier the word "easterly" does not appear; and the sole question in the case is reduced to this: Does it sufficiently appear upon the face of the deed itself, construed in the light of the surrounding circumstances, that the deed to Gauthier (the word "easterly" not being used therein) must be construed precisely as if it had been? And this having been the sole issue in the case, I must say that I think a vast deal of matter was inquired into at the trial which was not at all relevant to that issue, or admissible as evidence in the case.

Now at the time of the purchase by Gauthier of the land described in the deed from Bondy to him he was engaged in the pursuit of his calling as a fisherman upon a very extensive tract of land covered with the waters of the Detroit River, which, as I think sufficiently appears, was commonly understood in the neighbourhood to be composed of part of lot 42, the northerly part of lot 43, lots 44 and 45 in the first concession of the township of Sandwich West. These lands covered

with the waters of the river upon which Gauthier was pursuing his calling as a fisherman extended out to what was called the channel bank of the River Detroit, the side of which nearest to the Canada shore was deemed to be at the distance of 600 feet or thereabouts from the water's edge of the river on the Canada shore. The parcels were separated from each other by the strip of 208 feet in width of the land covered with the waters of the river which is described in the deed from Bondy to Gauthier. The piece of the lot 42, or commonly known as such, Gauthier held under title from one Joly, and by an indenture dated the 18th February, 1889, he conveyed it, together with the piece of land as described in the deed from Bondy to him, for the consideration of three hundred dollars, to one Reeves (who was a man who pursued, like himself, the calling of a fisherman) by the following description:

All and singular that certain parcel or tract of land and premises situate in the township of Sandwich West, composed of all that portion of lot number forty-two in the first concession of the said township which lies between the beach and the channel bank of the Detroit River, with the privilege of using the beach for the purpose of fishing and also of erecting thereon a fishing shanty reel and windlass sufficient for the purpose of catching fish, and also the right to land at all times upon the said beach for the purposes aforesaid.

These were the rights and privileges enjoyed by Gauthier upon the said described piece of land covered with water on the said lot 42 at the time of his purchasing the piece described in the deed from Bondy to him. Upon the land covered with water as above described he had at the same time a portion enclosed and used by him as a fish-pond for keeping therein fish caught by him in the river. The boundary line of this pond extended in places over the northern limit of the said piece called part of lot 42, which constituted the southern boundary line of the adjoining lot commonly known as 43. He had also upon the beach of the said

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lot 42 a windlass for drawing his fishing seines, and upon the beach of the lots 44 and 45 he had windlasses used for the like purpose. Now these are surrounding circumstances proper to be taken into consideration for the purpose of construing the description of the piece of land intended to be conveyed by deed from Bondy to Gauthier, and they appear to indicate very plainly that Gauthier's object in purchasing that piece and the fishing privileges thereby purported to be granted was to acquire as fishing ground the land covered with the waters of the river of which Bondy claimed to be and was believed to be seized, which lay between those portions of the land covered with the waters of the river upon which Gauthier was pursuing his calling as a fisherman which lay to the north, and that which lay to the south of the piece described in the deed from Bondy. That such was Gauthier's object, and that he required no part of the beach adjoining the piece of land covered with the waters of the river purchased from Bondy for his fishing purposes or for any purpose, and that his sole object was to acquire land covered with the waters of the river, is confirmed by the fact that while he pursued his calling as a fisherman upon the said piece covered with water until 1889, when he sold to Reeves as aforesaid, he never used or asserted any right whatever to use the piece which the plaintiff now claims to have in fact been the only piece which at all passed by the deed. In fact neither Gauthier or Reeves or any one ever made any claim to this piece until the plaintiff, who is not a fisherman as Gauthier was, but who describes himself as being a real estate owner and manufacturer residing in the city of Detroit, purchased from Reeves, not by the description used in the deed from Bondy to Gauthier, but with the word "easterly" added as above shown, his object not being to use the land for the purpose for

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which Gauthier bought it, but to insist that no land covered with water passed by the deed and that what did pass was the piece for which this action was brought, and which the plaintiff desires to use for a drive to unite lands which he owns above and below the piece in dispute. The plaintiff's title, however, must depend upon the construction of the description in the deed from Bondy to Gauthier, read in the light of the circumstances surrounding Gauthier's purchase, and these circumstances, as already pointed out, show, I think, very clearly, that Gauthier's object and intent was simply to purchase land covered with the waters of the river and the fishing privileges thereto, or supposed to be thereto attached, and that he had no occasion for, and did not contemplate purchasing, the piece of land for which this action is brought. By the line which is spoken of in the deed as the southern limit of lot 43 is plainly, I think, meant a line in the river extending from the shore to the channel bank of the river, which both parties believed to be the northern limit of the land covered with the waters of the river in which Gauthier's fish-pond was situate, and which was deemed part of lot 42, and the southern limit of the land covered with the waters of the river which Gauthier was purchasing from Bondy and which both parties understood to be part of lot 43. Now the surrounding circumstances important to be considered as regards Bondy are, that while the piece of land which is the subject of this action was never used or claimed by Gauthier or by Reeves under him it was always, ever since the execution of the deed to Gauthier, claimed and used by Bondy and the defendant, or his tenant, until the sale in fee simple by Bondy to the defendant in January, 1893, and indeed that piece was invaluable to Bondy as constituting his water frontage by which he had access to the river; without it, to say the least,

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his remaining land there would have been very much depreciated in value. Then again the reservation from his grant to Gauthier of ten feet out into the river from the water's edge, upon which Gauthier should have no right so as to prejudice Bondy's approach to the land by water, was a matter no doubt of such great value to Bondy as to make it difficult, if not impossible, to conceive that he could have intended to include the piece of land for which this action is brought in the description of the land sold to Gauthier for $300. Bondy's dealing with the piece as his own in presence of Gauthier ever since the execution of the deed to Gauthier, coupled with the fact that Gauthier never used or claimed any right to use that piece as part of his purchase, indicates I think very clearly, that neither did Bondy intend to sell or Gauthier to purchase the piece for which this action is brought; and there is nothing in the deed so clearly expressed as to override their intentions,—indeed nothing so expressed as to be inconsistent with these intentions. In view then of the surrounding circumstances the true construction to be put upon the deed, I think, is that the point of commencement mentioned in the deed is in the waters of the river and not to the east of the water's edge; not being to the east of the water's edge the only alternative is that it must either be to the west, or so undetermined that the plaintiff must fail.

For these reasons I am of opinion that the very able argument addressed to us by the learned counsel for the appellant must prevail and that the appeal must be allowed with costs and the judgment of the learned trial judge and the Divisional Court of Queen's Bench restored.

KING J.—I agree with the learned judges of the Court of Appeal and with their reasons. The point of

commencement is a point in the southerly limit of lot 43 in the first concession of the township of Sandwich upon the Detroit River, and extending back from it in an easterly direction. There is no other evidence of any other lot that would fill the terms of this designation. A point in its southerly limits at a distance of twenty feet from the water's edge of the Detroit River is an ascertainable point. From this as a starting point the different courses mentioned in the deed may be followed, first by going northerly parallel to the water's edge two hundred and eight feet; then by going westerly parallel to the said southerly limit six hundred feet more or less to the channel bank of the Detroit River; then by going southerly following the channel bank two hundred and eight feet; and thence easterly six hundred feet more or less to the place of beginning. It is true that the second course, viz., the western course, is described as being parallel to the southerly limit of lot 43 in which the point of beginning is found, and it is true that the southerly limit so referred to does not extend as far west as does the second course so described, but lines may be parallel to each other although they may not be opposite to each other on a right angle. Here, for probably twenty feet at least, they might be directly opposite to each other, but whether so or not the two lines may very well be parallel. This, then, gives us a consistent piece of ground which can readily be plotted from the deed. The only thing appearing to make against it is, that in the first part of the description the parcel conveyed is described as being "composed of a part of lot 43 in the first concession" etc., whereas in the respondent's view, the lot conveyed is composed in part of a part of lot 43. This variance is not a very serious one, but, if material, I think that these words of reference may be rejected. First, as being general and opposed to the particular

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description, and in the next place because, if not rejected as misdescription, the whole deed fails by reason of uncertainty; for if these words are to be retained and are to be allowed to impose a non-natural meaning upon the words that follow, we have a patent ambiguity by reason of the manifest uncertainty as to whether the twenty feet from the water's edge of the Detroit River are to be measured landward or otherwise. This consequence ought, if possible, to be avoided. *Res magis valeat quam pereat.* The maxim, of course, may not be used to force a conclusion contrary to the clear meaning of language, but that is not this case. It further seems to me that the only known or ascertainable southerly limit of a lot 43 is the southerly limit of the lot 43 which we know as duly patented.

For these reasons I think the appeal should be dismissed.

Appeal allowed with costs.

Solicitors for the appellant: *Clarke, Bartlet & Bartlet.*

Solicitors for the respondent: *Fleming, Wigle & Rodd.*