

It is stated by the trustee, that he caused the lands to be laid off into several distinct parcels, described by metes and bounds and number of acres; and that he sold them in that manner; each parcel as a separate body of land for an amount ascertained by the number of acres said to be contained within the specified metes and bounds; and not by the acre alone, or in lots Nos. 1, 2, 3, &c. of an indefinite size, without reference to boundary, or other more particular description, at so much by the acre, so as to render a measurement indispensably necessary to ascertain the amount of the purchase money. In England, a commission may be issued to ascertain the quantity where the contract is to pay by the acre, and the quantity is uncertain; (*f*) but here it has always been the practice of this court, where its trustee has made a sale at so much per acre, as a matter of course, to order a survey to ascertain the quantity of land and thereby the amount of the purchase money. (*g*)

But that these several parcels of land were sold by the tract, and were distinctly understood to be sold in that manner by all the bidders present at the sale, is clearly shewn by the explanations in relation to lot No. 6, which was sold by the acre as a residuum of the tract called *Convenience*; but all the other lots, from No. 1 to No. 11, were sold by the tract; all of them lying within certain specified metes and bounds made known to the bidders at the time of the sale. After thus describing one of those lots, the number of acres is specified with the usual reservation, 'more or less;' and lot No. 11, after being so described, is said to have been 'laid out for one hundred and forty-three acres.' And in each case the purchase money is summed up, and the purchaser is reported as having agreed to give a designated sum total. What is meant in general by the phrase, 'more or less,' or 'laid out for so much,' in conveyances of land in reference to quantity seems to remain as yet unsettled. The *proprietary's* instructions fixed it as a rule for the land office, as to grants from the state, that they should be allowed to cover no more than ten *per cent*; but there has been no rule established as to other grants or conveyances. (*h*)

There is, however, no direct and satisfactory proof of any deficiency in lot No. 11, as described and sold. It is not shewn

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(*f*) *Shevel v. Bogan*, 2 Equ. Ca. Abr. 688.—(*g*) *Carter v. Campbell*, Gilmer's Rep. 159.—(*h*) *Townshend v. Stangroom*, 6 Ves. 340; *Winch v. Winchester*, 1 Ves. & Bea. 375; *Portman v. Mill*, 3 Cond. Cha. Rep. 238; *Hoffman v. Johnson*, 1 Bland, 109; *Land Hol. Ass.* 253; *Andrews v. Scotton*, post.