

Mort. 547, *n. R.* If, on the other hand, their title to the lands described in that deed was not sold by the trustee to Freeborn Brown, then he has nothing to complain of; and the whole affair is entirely foreign to the matter now under consideration. This objection is therefore utterly groundless.

Another point upon which this purchaser rests is, that he bought by the acre, and that the trustee represented the tract which he, Brown, bought, called Gover's Rupulta, as containing one hundred and forty-three acres, when in truth it did not contain quite one hundred and twenty-seven acres; and therefore, that he ought to have a deduction to the amount of this deficiency.

It is not alleged, that the deficiency is in that part of the lot which was the inducement to the purchase; or that it is of such a nature as materially to vary the contract, it is merely a claim for an allowance on account of short measure; as if by the terms of the contract a measurement was absolutely necessary to reduce it to certainty and to ascertain the amount of the purchase money to be paid.

The position here taken rests upon an assumption of the fact, that the land was sold only by the acre; or in lots of an indefinite size at \$23 per acre. But according to the trustee's report, such was not the fact; and there is no satisfactory proof that it was sold in any other manner than as there stated. In the absence of clear proof of mistake, misrepresentation or fraud, the ratified report of the trustee is the only evidence of the contract by which the Court can allow itself to be governed; and unless it be so impeached, it must be considered as conclusive upon the subject. *Townshend v. Stangroom*, 6 *Ves.* 328; *Higginson v. Clowes*, 15 *Ves.*

516; *Clowes v. Higginson*, 1 *Ves. & Bea.* 524. *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 indispensable 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; *Shovel v. Bogan*, 2 *Equ. Ca. Abr.* 688; but here it has always been the practice of this Court, where its trustees 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. *Carter v. Campbell*, *Gilmer's Rep.* 159.