

and approved of by the court of appeals in *Jones vs. Plater, 2 Gill, 125*, must be regarded as establishing the law here to be "that the words more or less, or other equivalent words, used in contracts and conveyances should be construed, to qualify the representation of quantity in such a manner, that if made, in good faith, neither party should be entitled to any relief, on account of a deficiency or surplus."

In this case there is not only the absence of any fraudulent representation of quantity, which, (the sale being for a gross sum, and the language of the contract showing that the statement of the quantity was but descriptive, and not of its essence,) would be necessary to entitle the vendee to relief, but, in point of fact, no representation of quantity, except the statement in the contract, is shown at all.

The petitioner's counsel, in his argument, does not say, or offer himself prepared to prove, that any actual representation of quantity was made, but that the answer which the vendor admits he gave, when interrogated as to the number of acres, amounts to a representation, and would make it improper to enforce the agreement. Such, however, is very far from being my understanding of the answer. He says he was asked if he knew the quantity of land. He replied that he did not—he had never seen it surveyed, but that he had heard his brother say, that the old plat called for one hundred and seventy-three acres. If there is any misrepresentation here, it is in misstating what he had heard his brother say. He distinctly says, that he did not himself know the number of acres, but that he heard his brother say, that an old plat called for so many. Now it is not pretended that he never did hear his brother make this statement, and no proof has been, and perhaps from the very nature of the statement, could be offered to contradict him. Here, then, is a case in which a gross sum was stipulated to be paid, and in which, looking to the introduction of the words "more or less," the representation in the contract of quantity is qualified, so that the number of acres is to be considered as merely descriptive, and not of its essence, and in which there was not only no fraudulent misrepresentation of quantity outside of the