

THE CHANCELLOR :

The main point in controversy in this case depends upon the true construction of the bond of conveyance, executed by Hatton to the complainant, on the 26th of March, 1825, for it must be conceded that parol proof cannot be allowed upon the pleadings to contradict or vary the terms of the agreement embodied in that instrument. The complainant is entitled to the land, and no more than the land which the proper location of the bond will give him.

He contracted to pay for it the round sum of fifteen hundred dollars, and though it is described as containing one hundred acres, the words "be the same more or less," must so far qualify the representation of quantity as to preclude either party from any just claim to relief on account of a deficiency or surplus. This case is stronger against the complainant's title to relief than that of *Jones vs. Plater*, 2 *Gill*, 125, because in the latter the land was to be paid for by the acre, and yet the representation of quantity being qualified by the words "more or less," the number of acres was not regarded as of the essence of the contract, and a deficiency, unless of such a character as to induce belief of fraud or mistake, furnished no ground for relief.

In this case to be sure the deficiency is much larger, but the land was not sold by the acre but for a sum *in solido*, and the circumstances are not such as to excite a suspicion of fraud. The proof shows that as early as the year 1826, the complainant had been warned not to cut wood upon or cultivate the land lying between Piney Branch and the straight line from B. to A., as located upon the plat, and that for many years it was in the possession and use of a third person, claiming under Hatton, and no complaint appears to have been made by the complainant, or any attempt to vindicate his title to that strip of land, until the year 1837, when he filed his bill in this case to stay execution on a judgment rendered against him for a portion of the purchase money at August term, 1836, of Charles County Court.

The plaintiff then having acquiesced for upwards of ten years in the defendant's construction of this contract, cannot now be