under patents containing words of description appearing to carry the lands to the boundary between Hawkesbury and Lancaster, or to the easterly boundary line of Lancaster, or words of similar import, is before the Court, and, so far as this litigation is concerned, such owners are left in possession of whatever rights (if any) such words may give them.

ARMOUR, C.J.O., and MACLENNAN, J.A., gave lengthy reasons in writing for arriving at the same result.

OSLER, J.A., dissented, also giving his reasons in writing.

OCTOBER 9TH, 1902.

C. A.

MUTCHMOR v. WATERLOO MUTUAL FIRE INS. CO.

Fire Insurance—Conditions—Prior Insurance—Subsequent Insurance—Substituted Insurance—Assent—Estoppel—Findings of Jury.

Appeal by defendants from judgment of FERGUSON, J., in favour of plaintiff, upon the findings of the jury, in an action upon a policy of fire insurance.

A. B. Aylesworth, K.C., for appellants.

W. Nesbitt, K.C., and T. A. Beament, Orillia, for plaintiff.

The judgment of the Court (ARMOUR, C.J.O., OSLER, MOSS, JJ.A.) was delivered by

OSLER, J.A.:—The company defend the action on two grounds:—

1. That at the time of the application for the policy sued on, and at the time of issuing it, there was prior insurance upon the insured premises in another company, the Hand-in-Hand, to the extent of $4,000, which was not assented to by defendants, and that no assent thereto by them is indorsed thereon, nor does it appear therein; and, therefore, under statutory condition 8 the defendants are not liable on their policy.

This defence fails. In the application for insurance in defendant company it is stated that there is prior insurance in two companies, specifying the Hand-in-Hand and the Sun Fire, apparently $4,000 in each, with which the insurance applied for is intended to be concurrent. In defendants' policy they refer to the property insured by them as "represented in the application as otherwise insured for $4,000, warranted concurrent," but do not specify the company in