

there were on the farm about 80 acres under cultivation, all summer-fallowed and ready for wheat, and defendant in signing the agreement of purchase relied on that representation and did not measure the area of the cultivated land, but he soon afterwards discovered that such area only contained about 58 acres. He complained to plaintiff of the shortage and asked to have the sale cancelled but plaintiff refused to cancel or make any allowance. Defendant then spoke to Tomlin about the matter and the latter told him that he had consulted a lawyer and had been advised that defendant's only remedy was to stay on the land and crop it and claim compensation afterwards. Relying on this advice, and believing that he had no right to cancel the agreement and get back his deposit, defendant cropped the cultivated land in 1901, but refused to deliver any part of the crop to plaintiff who then brought this action for the cancellation of the agreement for non performance of the defendant's covenants and to have the deposit declared forfeited in accordance with a proviso therein.

Held, without deciding whether defendant was entitled to rescind on account of the misrepresentations as to the area of the cultivated land or not, that he was so entitled on discovery of the collusions between the plaintiff and Tomlin and the secret payment of the \$50 to the latter, and that he was also entitled on that ground to recover the deposit. *Panama, etc., Co. v India Rubber, etc., Co.*, L.R. 10 Chy. 515, followed. It was contended by plaintiff, on the authority of *Campbell v. Fleming*, 1 A. & E. 40, that defendant, having elected not to repudiate his bargain on learning the truth as to the area of cultivation by remaining in occupation for over a year and raising crops on the lands, had precluded himself from seeking to rescind on the subsequent discovery of the secret payment to Tomlin, but that case was distinguished on the ground that here the collusive payment to Tomlin was a matter of a kind altogether different from the misrepresentation as to area. Judgment refusing the cancellation on plaintiff's application, but allowing it on defendant's request, and ordering repayment to defendant of the \$250 deposit and delivery of possession of the premises within one week after the payment of the \$250 and costs. All amendments necessary to be allowed. Plaintiff to pay defendant's costs of the action on the King's Bench scale.

Bradshaw and Wilkes, for plaintiff. *Munson*, K.C., and *Hudson*, for defendant.

Bain, J.]

BLACKWOOD & PERCIVAL.

[May 12.

Principal and surety—Release of surety by giving time to principal debtor
King's Bench Act, s. 30, sub-s. 14.

The defendant and C. were joint makers of a promissory note for \$3,500 in favour of B. who indorsed the note to the plaintiffs and received the proceeds of the discount of same by the latter at a bank. As between themselves the defendant and B. and C. had argued that each should pay