

ary than as a necessary act, and the mistake of the surveyor-general in not giving notice of the surrender could not make the land liable to be sold for taxes as against the Crown—the tax-sale was invalid, and nothing passed under it; and that the defendant, claiming under the subsequent patent, was entitled to the land.

Per ROSE, J.—If any title vested in W. the surrender was ineffectual as a conveyance to divest it; but that in such case the action of W. in applying for and obtaining another grant of land created an equity in the Crown, entitling it to the possession and disposal thereof, and, as against W., at all events, the possession was in the Crown immediately on the surrender.

Quere, whether, as the Crown had been in possession since 1820, the plaintiff would not be barred by the Statute of Limitations.

Quere, also, whether the plaintiff had any claim against the Crown for the moneys paid at the tax sale; at all events after the tax sale the parties dealt with the land with notice of the difficulties that existed. *Moffatt v. Scratch*, 147.

Agreement for joint purchase—Illegality.—See ASSESSMENT AND TAXES, 1.

TRUSTEES.

1. *Power of one to bind other by lease—Easement—Acquiescence.*—The trustees of M., deceased, who held the legal estate in land in trust for sale for the purpose of a reservoir, sold to one Z. in 1854, a portion of lot ten, Niagara Falls Survey, for the purpose of a reservoir, the intention being

to run a line of pipes over the residue of said lot, to Niagara Falls, where a pump-house was to be constructed for the purpose of forcing the water to the reservoir, and thence it was to be distributed by pipes over the town of Niagara Falls. T. B., as well as E. B. M., the acting trustee, agreed to extend this lease for ever at a rental to be fixed every twenty-one years. The trustees subsequently sold the land in question to S. B., son of T. B., whose place, it was understood, S. B. was to take, T. B. having the right of purchase under his lease, and having expended large sums in improving the property. S. B. subsequently mortgaged to a certain company, who sold under foreclosure proceedings to the plaintiff. The land through which such pipes were to run had been devised by one M. to E. B. M., his wife and three others as trustees. In 1854 E. B. M. alone leased it to T. B. for fourteen years. In 1854 T. B. leased a strip 8 feet wide by 650 feet long to Z., for the purpose of laying his pipes therein, for ten years, at a nominal rent, and both T. B. and E. B. M., in that year, by separate instruments, covenanted with S. B. that she or T. B., if he should purchase the land under a provision in his lease for that purpose, would continue the lease to Z. for twenty-one years, perpetually renewable, at a rent, a rent to be fixed by arbitration. Z. constructed the reservoir, &c., and laid down the pipes in 1854, and the town had been supplied by them ever since. In 1864 E. B. M. gave a further lease to T. B. for seven years, and in 1868 she conveyed to S. B., the appointee of T. B., his father. S. B. mortgaged to a loan company, who sold under a decree for sale to the