

C. P. Div.]

NOTES OF CANADIAN CASES.

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without the words more or less, these words having been erased from the printed form on which the patent was written. Subsequently B. reconveyed to R., through whom the plaintiff claimed by mesne conveyances, the plaintiff claiming as one of the heirs of his father, and as having acquired the title of the other heirs. J., after obtaining his patent, conveyed the northerly and southerly portions respectively of the 100 acres to his two sons, James and William, respectively. About the time J. took out his patent, by instruction from the plaintiff's father, a surveyor ran a line dividing the seventy-five acres from the one hundred acres; and in 1874 produced another line over that run under instructions to lay off the seventy-five acres, which he did, and plaintiff's father and the defendant jointly erected a fence on such line. The actual acreage it appeared exceeded 175 acres by some eleven acres, the surplus coming within the portion patented to B. The actual occupation under B.'s patent was confined to the seventy-five acres.

*Held*, that under the circumstances it could not be held that the patent to B. was issued in error, so as to enable the defendants to claim the surplus of eleven acres.

*Held*, also, that defendants failed to show any possessory title to such surplus except as to a small portion thereof.

*Pousette*, for the plaintiff.

*Hudspeth*, Q.C., and G. H. Watson, for the defendants.

#### WHEELER ET AL. V. WILSON.

*Company—Stock, cancellation of—Fraud—Laches.*

The defendant was an original shareholder in a joint stock company, and as holder thereof was elected a director. Before being elected, a statement, prepared by the company's secretary was published by them, setting forth that the company was in a flourishing condition and earning a ten per cent. dividend. On the faith of such statement defendant subscribed for new shares in the company. Soon afterwards the defendant suspected that the statement was incorrect and threatened legal proceedings to compel the company to cancel the stock, whereupon a resolution was passed directing the books to be examined, and on such examination the statement was found to be false

and misleading, and the company practically insolvent. A meeting of the shareholders was then called and a by-law passed cancelling the stock. After the defendant's subscription for the new stock, and before the cancellation, as also before the defendant became aware of the falsity of the statement, the plaintiff became a creditor of the company. The plaintiff obtained a judgment against the company, and sued defendant for the amount of the new stock unpaid by him.

*Held*, that the plaintiff could not recover; that there was power to cancel the stock; that the cancellation was duly made; and that the defendant was not guilty of any laches.

*Allan Cassels*, for the plaintiff.

*J. K. Kerr*, Q.C., for the defendant.

Burton, J.A.]

#### MOFFAT V. SCRATCH.

*Crown grant—Surrender—Evidence of.*

Certain land was granted by the Crown to one W., but subsequently in consequence of an alleged surrender of the land to the Crown, a new grant was made to the defendant's vendor, after the form of W.'s patent, and before the alleged surrender the land was sold for taxes. The only evidence of the alleged surrender was an endorsement on the back of the new patent, which stated that the land was surrendered by one M., the attorney mentioned the annexed power, but no power of attorney was produced, and the surrender was signed by M. as principal, and not as attorney for any named principal.

*Held*, in ejectment, that under the circumstances, the plaintiff claiming under the tax title was entitled to recover the land as against the defendant claiming under the new patent.

*J. H. Ferguson*, for plaintiff.

*T. M. Morton*, for defendant.

Osler, J.A.]

#### CAMERON V. CANADA FIRE AND MARINE INSURANCE COMPANY.

*Insurance—Proofs of loss—Delivery as soon as possible after fire—Actual cash order of property—Property outside of Ontario—R. S. O. ch. 162.*

The Fire Insurance Policy Act, R. S. O. ch. 162, does not apply to property outside of Ontario.

Action on a policy of insurance against fire and