

lation by notice he is bound to do so in the manner provided and must conform strictly to the mode prescribed.

The proof of the mailing of the notice was conflicting and far from satisfactory. The plaintiff swore positively that he had never received any such notice, and there was no evidence to show that he had. The proof of the contents of the notice was by an impressed tissue paper copy and the name of the addressee was thereon written as Paul *Cynack*, whilst the plaintiff's name, as clearly written in the agreement, was *Czuack*, so that, assuming that the name on the envelope was spelled in the same way, the post master might easily have handed the letter to some other person.

*Held*, that notice of cancellation was not sufficiently proved, and that the agreement had not been effectively cancelled by the proceedings taken. Assuming that the plaintiff really understood the full meaning of the two clauses, he had a right to expect that the second mode would be adopted in case he made default and had reason to feel perfectly safe until he would receive a notice to pay or otherwise that the agreement would be cancelled.

Robinson, however, afterwards conveyed the property to the defendant Parker, who denied all knowledge of the plaintiff's position and rights with respect to it, and claimed to be a purchaser in good faith without notice. His conduct was, in the opinion of the judge, open to unfavourable inference or surmise, but there was no proof that he had actual notice of the plaintiff's rights or of his possession of the land or that he had any knowledge of the fraudulent schemes of Robinson. Fraud is not to be presumed on mere suspicion, but must be positively proved.

*Held*, that the plaintiff could not have specific performance against Parker, as the land was under the Real Property Act, and Parker was not bound to inquire as to the rights of any person in actual possession: Real Property Act, R.S.M. 1902, ss. 70, 74, 76.

The plaintiff was allowed to remove the house which he had erected on the land; but, if he elected to do so, he was required to pay Parker \$700 as damages for cutting wood on it, for which Parker had counter-claimed. If plaintiff did not take away the house Parker to accept it in full of the damages.

Action dismissed as against Hough and Parker. Defendant Robinson ordered to pay plaintiff's costs, also those of his co-defendants, as he was found guilty of fraud.

In his statement of claim the plaintiff had asked only for specific performance of the agreement, but under the power conferred on the Court by section 38 (K) of the King's Bench Act and Rules 344 and 346 as to amendment of the pleadings if found necessary. The judge granted the plaintiff further relief against Robinson by ordering the latter to pay the plaintiff, by way of damages, what he had paid to Hough on account of the purchase money of the property with interest.

*Haggart*, K.C., and *Whittle*, for the plaintiff. *Aikins*, K.C., for Parker. *Robson*, for Robinson. *A. C. Ferguson*, for Hough.