

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.

notice, and therefore the registry title did not defeat P.'s right to redeem the property.

Appeal dismissed with costs.

Moss, Q.C., and Scane for appellants.

Atkinson for respondent.

Ontario.]

PECK V. POWELL AND POWELL V. PECK.

Sale of patent—Specific performance—Renewal.

By an agreement dated 1st June, 1877, Powell undertook to assign his interest in his pump patents to Peck *et al.*, for the counties of York, Peel, Halton, Simcoe, and Ontario; and by deed of same date he granted, sold, and set over to P. *et al.* "all the right, title, and interest which I have in the said invention, as secured by me by said Letters Patent for, to, and in the said limits of the County of York," etc. The deed has an *habendum* to the full term for which the said Letters Patent are granted.

The deed was not completely executed till the 23rd June, 1877, and the patent expired on the 19th July, 1877. Powell renewed the patent in his own name for a further term. On a bill filed by Powell asking for a decree for payment of purchase money secured by a mortgage, or in default for a sale of the lands mortgaged, and on another bill filed by Peck *et al.*, praying that Powell might be ordered to transfer to them the patent for the residue of the renewed term of the patent, and that Powell be restrained from attempting to levy the purchase money until he should have done so.

Held (varying the judgments of the Court below), that Powell had parted with all interest, so far as the five counties were concerned, and that at the time of the expiration of the patent P. *et al.* were the legal holders under the statute of the patent for the said counties, and that P. *et al.* are now the legal holders, and as such entitled to a decree affirming their right to the patent in the said five counties to the full end of the further term granted to Powell; and that as regards Powell, he was entitled to recover on his mortgage.

Appeal in case of *Peck v. Powell* allowed with costs, and in the case of *Powell v. Peck* dismissed with costs.

Hector Cameron, Q.C., and Fitzgerald for appellants.

McCarthy, Q.C., and Moss, Q.C., for respondent.

Ontario.]

MOFFATT V. MERCHANTS' BANK OF CANADA.

Deed—Construction of—Misrepresentation.

G. M., a man of education, well acquainted with commercial business, executed a certain agreement and bond to pay certain sums of money in certain events to the defendants. The agreement recited *inter alia* that in consideration of this security the bank had agreed to make further advances to the firm of M. Bros. and Co., joint obligors and parties to the agreement, and that the agreement was executed to secure the bank in case there should be any deficiency in the assets of the firm, or in the value of the property comprised in a mortgage, and to secure the bank from ultimate loss. The agreement contained also a proviso that if the firm should well and truly pay their indebtedness, then the bond and agreement should become wholly void. In a suit brought upon the said agreement against G. M., alleging a deficiency in the assets of the firm and indebtedness to the bank, G. M. pleaded that the agreement had been executed by him on representations made to him by one of his co-obligors that it was to secure the bank against any loss which might arise by reason of the refraining from the registration of the mortgage, or by reason of any over-valuation of the property embraced in the mortgage and not otherwise.

Held (affirming the judgment of the court below, GWYNNE, J. dissenting), that G. M. was bound by the execution of the documents, and was liable upon them, according to their term and effect, viz., that the security was given to cover any possible *ultimate* loss there might be on the account of the firm.

Appeal dismissed with costs.

McCarthy, Q.C., and Ferguson, for appellant.

C. Robinson, Q.C., and J. F. Smith, for respondents.

Ontario.]

WHITE ET AL. V. NELLES.

Possession fraudulently obtained—Estoppel—Tax sale—33 Vict. ch. 23, Ont.

N. was assignee in insolvency of H., who bought from the purchaser at sheriff's sale the north part of a lot, called lot 1, in one survey,