

pre-emption entries, and thereupon the claim of the defendant Farmer under the said entries became and were forthwith forfeited, and any pretended rights of the defendant Farmer thereunder ceased, and the plaintiff thereunder on or about the 8th May, 1875, and then and there with the assent and by the direction of the Dominion lands agent, who caused the same to be prepared for the plaintiff, signed an application for a homestead right to the lands in question in this suit according to Form "A" mentioned in 35 Vict. cap. 23, sect. 33, and did make and swear to an affidavit according to Form "B" mentioned in sect. 33, sub-sect. 7 of the same Act, and did pay to the same agent the homestead fee of \$10, who accepted and received the same as the homestead fee, and thereupon the plaintiff was informed that he had done all that was necessary or required for him to do under the Statute and the regulations of the Department, and that the Statute said, 'Upon making this affidavit and filing it and on payment of an office fee of ten dollars (for which he shall receive a receipt from the agent) he should be permitted to enter the lands specified in the application,' and thereupon and in pursuance thereof and in good faith the plaintiff did forthwith enter upon said lands and take actual possession thereof, and has ever since remained in actual occupation and occupation thereof, and has erected a house and other buildings thereon, cleared a large portion of said lands and fenced and cultivated the same, and made many other valuable improvements thereon, costing in the aggregate \$1,000."

To this bill of complaint defendant demurred, assigning as cause, "That the plaintiff hath not, in his bill, shown any interest or right to the lands therein mentioned, or any title to attack the patent of the defendant, and therefore hath not, in and by his said bill, made and stated a case as entitles him to any relief against this defendant."

Held, (reversing the judgment of the Court of Queen's Bench, Manitoba), that the plaintiff had no *locus standi* to attack the validity of the patent issued by the Crown to the defendant, as he had not alleged a sufficient interest or right to the lands therein mentioned, within the meaning of sub-sections 7 and 8 of sec. 23 of the Dominion Lands Act, there being no allegation that an entry of a homestead right in the lands

in question had been made, and that plaintiff had been authorized to take possession of the land by the agent, or by some one having authority to do so on behalf of the Crown. Demurrer held good.

Appeal allowed with costs.

J. Bethune, Q.C., for appellant.

McCarthy, Q.C., for respondent.

CHAPMAN V. TUFTS ET AL.

Unstamped bill of exchange—42 Vict. cap. 17, sec. 13—Knowledge—Question for Judge.

Appeal from the decision of the Supreme Court of New Brunswick, refusing a motion to set aside the verdict and enter a non-suit. The action was brought by the respondents against the appellant to recover the amount of a bill of exchange. It appeared that the draft when made, and when received by respondents, had no stamps; that they knew then that bills and promissory notes required to be stamped, but never gave it a thought; and their first knowledge that the bill was not stamped was when they gave it to their attorney for collection on the 26th February, 1880, and that they immediately put on double duty stamps.

The bill was received in evidence, leave being reserved to the defendant to move for a non-suit; the learned judge stating his opinion that though as a fact, the plaintiff knew the bill was not stamped when they received it, and knew that stamps were necessary, they accidentally and not intentionally omitted to affix them till their attention was called to the omission in February, 1880.

Held, that the questions as to whether the holder of a bill or draft has affixed double stamps upon such bill or draft so soon as the unstamped state of the bill was brought to his knowledge within the term of 42 Vict. cap. 12, sec. 13, is a question for the Judge at the trial, and not for the jury.

2. That the "knowledge" referred to in the Act is actual knowledge, and not imputed or presumed knowledge, and that the evidence in this case showed that the plaintiff acquired this knowledge for the first time on the day he affixed stamps for the amount of the double duty, 26th February, 1880.

Davies, Q.C., for the appellant.

Travis, for the respondents.