The action was tried without a jury at Orangeville.
C. R. McKeown, K.C., and J. R. Layton, for the plaintiff.
W. D. Henry, for the defendant.

MIDDLETON, J., in a written judgment, said that by an agreement in writing of the 28th July, 1919, Ferris agreed to sell to Ellis certain land described as "the lands only described" in a deed of the 7th February, 1905, from Gadke to Pound, for the price of $3,000, payable as follows: $200 on the 1st October, 1919; $200 on the 1st January, 1920; $200 on the 1st March, 1920; and the balance, $2,400, to be secured by a mortgage, upon terms set out; interest to be computed from the 1st September, 1919; the title to be free from dower and all other incumbrances. The purchaser was to be allowed to occupy the property from the 1st August, 1919, until in default in respect of the purchase-money; the purchaser was to search the title at his own expense; and, if the vendor, without any default on his part, was unable to make a good title within 10 days from the date of the agreement, and the purchaser declined to take such title as the vendor was able to make, the vendor might withdraw from the contract, on payment to the purchaser of all his expenses reasonably incurred in investigating the title and upon repayment to the purchaser of any money paid on account of the purchase-money; and time was to be of the essence of the agreement.

The first three instalments of $200 were duly paid; and the parties met on the 1st March, 1920, for the purpose of closing the transaction. Objection was then taken to the vendor's title—hence this action.

The property was a grist-mill, situated at the eastern end of a river expansion. When the property was conveyed to Gadke, it was described as a parcel of land which contained 6 $\frac{96}{100}$ acres, upon which a mill and dam were situated; and the conveyance also gave Gadke certain fishing rights. In 1904, however, Gadke transferred all the fishing privileges to a syndicate formed by one Morgan; and, contemporaneously with this, gave a bond to Morgan, in the penal sum of $10,000, conditioned for the preservation of the dam in a good state of repair. By the words of the bond, Gadke bound himself, his heirs, executors, and administrators—assigns were not mentioned.

The learned Judge said that he had come to the conclusion that the obligation which the bond created was purely personal to the covenantor, not because of the absence of the word "assigns," but because the covenant was not one which would run with the land so as to bind the grantee.

Reference to the notes to Spencer's Case (1583), 1 Sm. L.C. (13th ed.) 55, 62, et seq.; Tulk v. Moxhay (1848), 2 Ph. 774;