

action were as follows: The trustees of a will conveyed a piece of land to a solicitor named Toward, who forthwith mortgaged it to the Bishop Auckland Building Society. Toward then went to the trustees and induced them to execute another conveyance to him of the same land, he representing that it was a conveyance of another piece not previously conveyed. This latter recited that the testator was seized in fee at his death, and recited his will, by which he devised his real estate to the grantors, giving them a power of sale; it also recited his death, and that the grantors in exercise of the power of sale had contracted to convey the same to Toward. This deed contained covenants by the grantors that they had done no act to incumber. Toward then, on the strength of holding this deed, mortgaged the land to the plaintiffs, who had no notice of the prior conveyance to, and mortgage by, Toward. The plaintiffs sought to make the trustees liable on their covenant for title. Kekewich, J., held that they were liable; but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) reversed his decision on the ground that, although the second deed inferentially stated that the grantors were seized in fee, it did not state so in terms, and therefore it did not estop them from denying that they were so seized; and that as the plaintiffs had in fact no legal estate by estoppel or otherwise, but only an equity of redemption, the covenants did not run with the land so as to entitle the plaintiffs to sue thereon. And even if they did, it was doubtful whether the covenants would bind the grantors, having been obtained by the fraud of the plaintiffs' assignor; and it was also held that the defendants were not liable on the ground of misrepresentation, because the representation was honestly made. We may note that each judge of the Court of Appeal expressed his thanks to Mr. Scott Fox, the learned counsel for the defendants, for his "very able argument."

CANAL—SUBJACENT MINES—RIGHT TO SUPPORT.

In *London and North-Western Ry. v. Evans*, (1893) 1 Ch. 16, the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) reversed the decision of Kekewich, J., (1892) 2 Ch. 432 (noted *ante* vol. 28, p. 520), being of opinion that the statutory powers given to the canal company impliedly gave them a right to the support of the canal, which could not be interfered with by the owners of the subjacent mines; and that the plaintiffs were therefore entitled