

ary tactics of one who sees an object ahead of him, and is uncertain whether it is a real live man or only a scarecrow. We shall leave the beaten path, and make a short detour around the object, so as to take a look at it from a different angle.

Let us, then, instead of directing our attention to the question of *liabilities*, turn aside for a moment and consider *the rights* of a purchaser who has bought lands subject to an ordinary short form mortgage, and who has agreed with the mortgagor, either expressly or by implication, to assume and pay off the mortgage.

Our assumed case will cover all the usual transactions of the kind, whether the liability be expressed to be one of indemnity or of payment. It will not apply to that rare class of cases of which *Blackley v. Kenney*, 19 O.R. 169, is an example, where the mortgagor agrees to bear the burthen.

In the ordinary mortgage contract each of the parties binds himself to extend certain rights to the "assigns" of the other. What those rights are we shall presently inquire.

The document containing the contract is registered, and open to the public to peruse, and it is quite sure to be perused by any one who decides to become a purchaser.

Is there anything which forbids us to treat such a document as an offer to any one who will come in and accept the position of assign to either party? If not, the mere act of completing a purchase from the mortgagor clinches the matter, and establishes the requisite privity: Pollock on Contracts, Bl. Ser., 12.

The object does not look quite so formidable from this point of view. It seems to have no legs. Let us walk on a little further, and observe it from behind.

(1) Under the proviso for defeasance the right to pay off the mortgage is not confined to the mortgagor, but is expressly extended to his heirs, executors, administrators, or assigns, or any of them. A payment of interest by one thus "concerned to answer the debt" is sufficient to keep the mortgagee's right alive against the mortgagor: *Lewin v. Wilson*, L.R. 11 App. Cas., at p. 644; whereas a payment by a stranger would not have that effect: *Harlock v. Ashbury*, L.R. 19 Ch.D. 539.

(2) If the mortgagee attempt to exercise his power of sale, he can only do so effectually "after giving written notice to the said mortgagor, his heirs or assigns."

(3) Again, if, by reason of non-payment of interest, the prin-