

of 5 years from 16th December, 1903. The rights of the parties depend upon the construction of an annulling clause . . . "This lease to be null and void and no longer binding on either party if a well is not commenced on the premises within 6 months from this date, unless the lessee shall thereafter pay yearly to lessor \$50 per year for delay."

The first 6 months expired on 16th June, 1904,* and no well had been begun. Plaintiff wrote defendant on 13th June regretting delay and stating that he would hold the lease valid by making the yearly payment. This first payment of \$50 was made by cheque dated 8th July, which was received and cashed by defendant on 10th August, 1904, and a receipt therefor given on the back of the lease in these words: "Received from McIntosh \$50 on account of delay in beginning operations under within lease."

Early in August, 1905, plaintiff tendered the second yearly payment of \$50, which was refused by defendant. In his evidence defendant says that he thought the second payment should have been made before 16th June, 1905, and if it had been offered before that time he would have accepted it. Taking this view, that the lease had ceased to be binding on him, the defendant in chief made another lease for oil purposes to his co-defendants on 28th July, 1905.

Plaintiff's lease was registered in May, 1904, and, unless it has been avoided by what has occurred . . . it is evident that in the face of the Registry Act the defendants cannot claim to have the exclusive or indeed any right to the oil products during the term of plaintiff's lease.

The case was argued almost exclusively on American decisions; I have turned to those cited and others, but I do not think that many of those relied on for the defence are applicable to our system of jurisprudence. While papers such as the present are treated as dealing with profits à prendre and incorporeal hereditaments, yet the concluded agreement is regarded as subject to the flexible doctrine applied in cases of specific performance. And when circumstances of apparent hardship or of an unequal dealing are presented, the Court has held its hand and refused to enforce what appears to be the plain agreement of the parties.

There is no evidence of any unfair dealing or overreaching by the lessee; both parties understood what was being