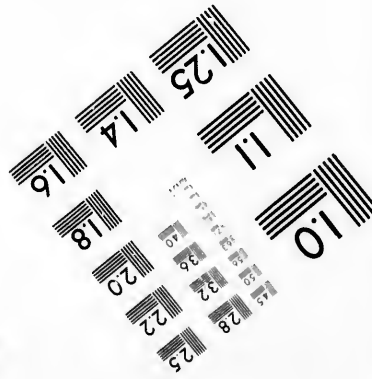
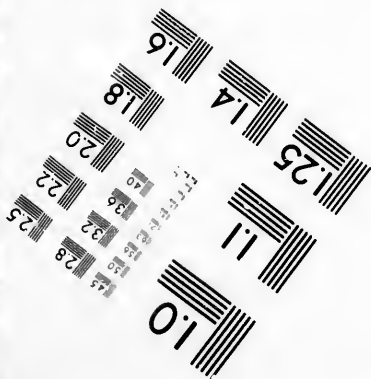
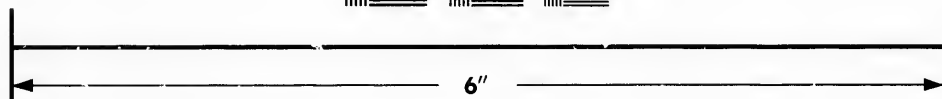
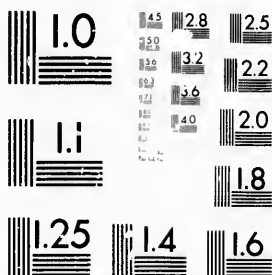


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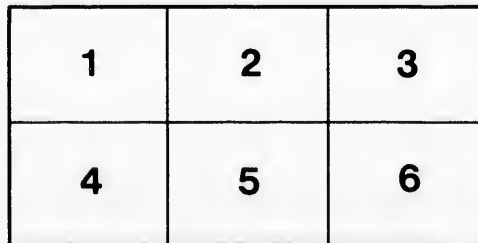
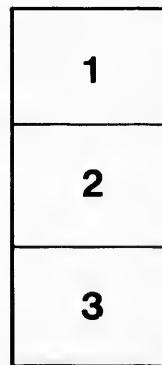
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DIGEST
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ROWN LANDS CASES.
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ALPHABETICAL DIGEST
OF
CASES RELATING TO CROWN LANDS
AND COGNATE MATTERS.

BY
GEORGE KENNEDY, M. A., LL. D.,
LAW CLERK TO THE DEPARTMENT OF CROWN LANDS FOR ONTARIO.

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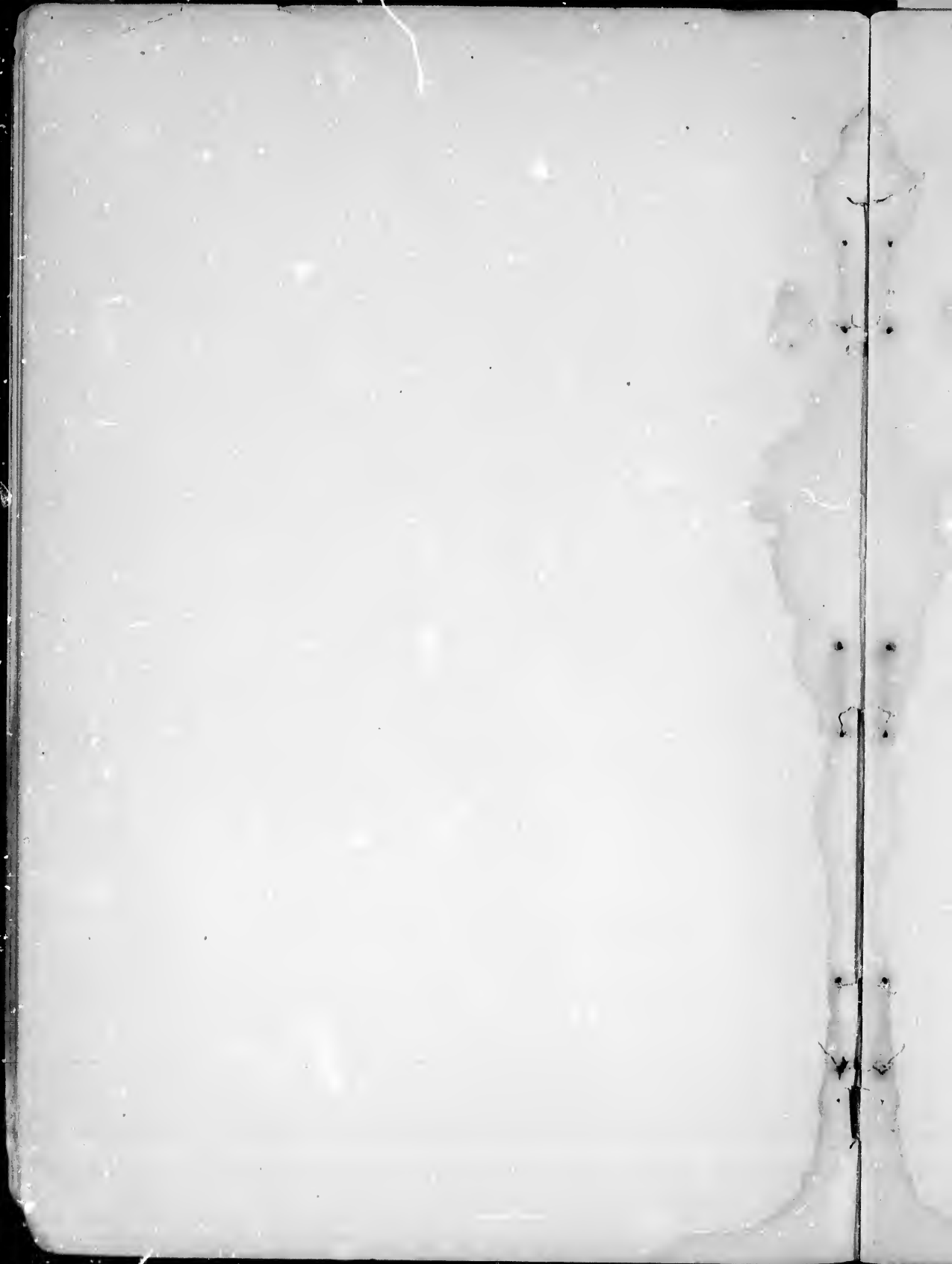




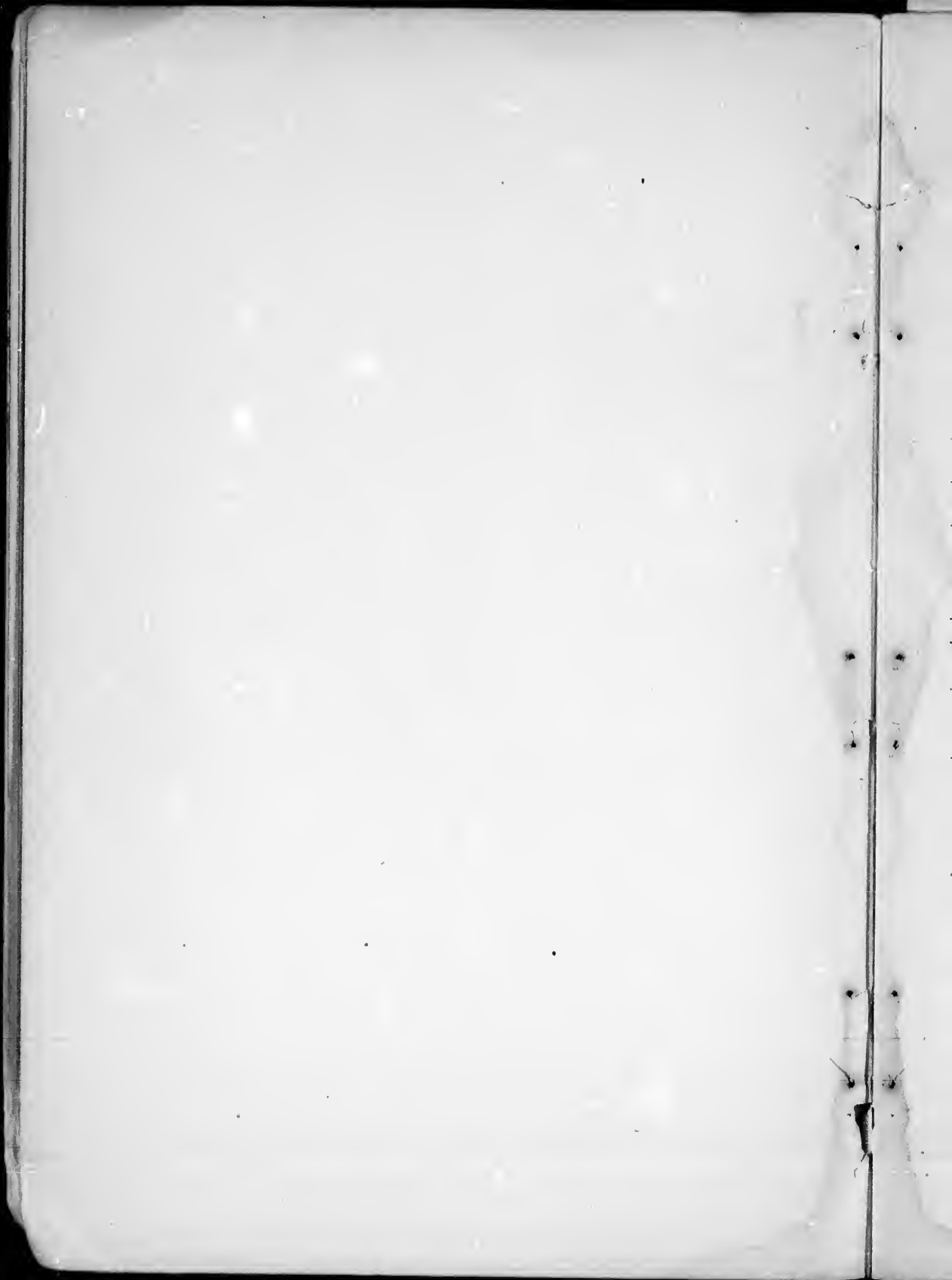


The following Digest was not made with any view to publication, but on the completion of the manuscript it appeared to the Commissioner of Crown Lands that if printed it might be of some service to persons having dealings with the Department, and perhaps to the legal profession generally. It is therefore submitted, not as noting absolutely every case in which a point relating in some way to the Crown Lands Department has been decided, but as a tolerably fair, and, it is hoped, correct summary of the resultant of all the cases decided in our Courts bearing upon the administration of the Crown Lands. A few matters noted in the course of reading have been introduced, though not directly connected with the general subject of the Digest.

DEPARTMENT OF CROWN LANDS,
TORONTO, May, 1891.







ALPHABETICAL DIGEST

OF

CASES RELATING TO CROWN LANDS

AND COGNATE MATTERS.

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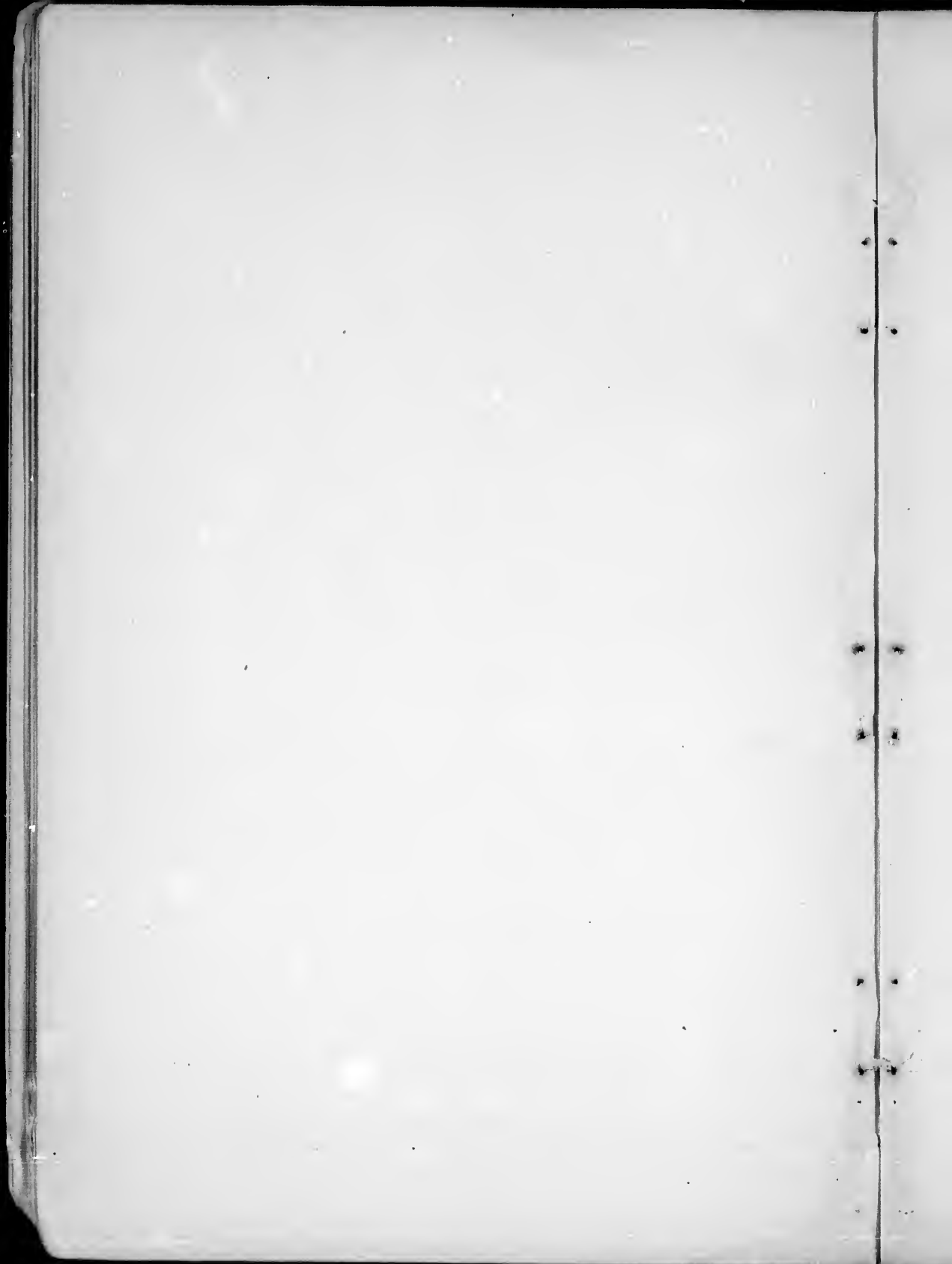
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Canadian Pacific Railway Company Lands. 37 Vict. ch. 14, sec. 8, sub-sec. 4; 44 Vict. ch. 1, sched. secs. 9, 11; O.C. 24 Oct. 1879, in Statutes 1880, p. LXXII.; *Canada Gazette*, 1879, pages 107, 547.

Charter, *Canada Gazette*, Feb. 16, 1881.

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Case for injury by flooding maintainable by locatee before patent. *Miller v. Purdy*, H.T. 6 Vict.

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Court will not take evidence or find facts to aid Crown officers in settling claims. *Brouse v. Cram*, 14 Chy. 677.

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Creek, not a navigable river or stream. *Boale v. Dickson*, 13 C.P. 337; *Whelan v. McLachlan*, 16 C.P. 102.

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Crown Land Agent, Crown timber agent has no right to dispose of timber on lands sold by. *Alexander v. Bird*, 8 C.P. 539.

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Dedication before patent does not bind the Crown. *Beveridge v. Creelman*, 42 Q.B. 29; *Rae v. Trim*, 27 Chy. 374.

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Description according to a special plan, governed by plan and not by original survey

O'Donnell v. Tiernan, 35 Q.B. 181.

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"from" one lot "to" another excludes both. *Haggart v. Kernahan*, 17 Q.B. 341
 general different from specific giving more land, specific governs. *Murray v. Smith*, 5 Q.B. 225.

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 in deed ascertained by reference to metes and bounds in patent. *McCracken v. Warnock*, 43 Q.B. 214.

in deed of lot as patented, afterwards reduced by plan, conveys lot as patented
Mahony v. Campbell, 15 Q.B. 396.

in grant before survey will hold against a different designation after survey.
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in grant of land in one concession with metes and bounds overrunning into another concession restricted to land in the concession named. *Wigle v. Stewart*, 28 Q.B. 427.

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in patent "all except" certain acreage includes surplus not known to exist at time.
Cain v. Junkin, 6 O.R. 532 ; 13 A.R. 525.

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of a parcel (including a certain lot) being a certain other lot, no metes and bounds given, conveys both lots. *Keating v. Wyant*, 6 O.S. 314.

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of land granted in a township giving metes and bounds overlapping a town passes no land in the town. *Campbell v. Crooks*, 9 Q.B. 639.

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Description, specific, good against general, in subsequent patent. *Dixon v. McLaughlin*, 1 E. & A. 370.

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Devise in the words "my wife shall be allowed to live on the property during her life," confers a life estate. *Fulton v. Cummings*, 34 Q.B. 331.

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Dower barred if proceedings not taken within 10 years of husband's death. *McDonald v. McRue*, 13 A. R. 121.

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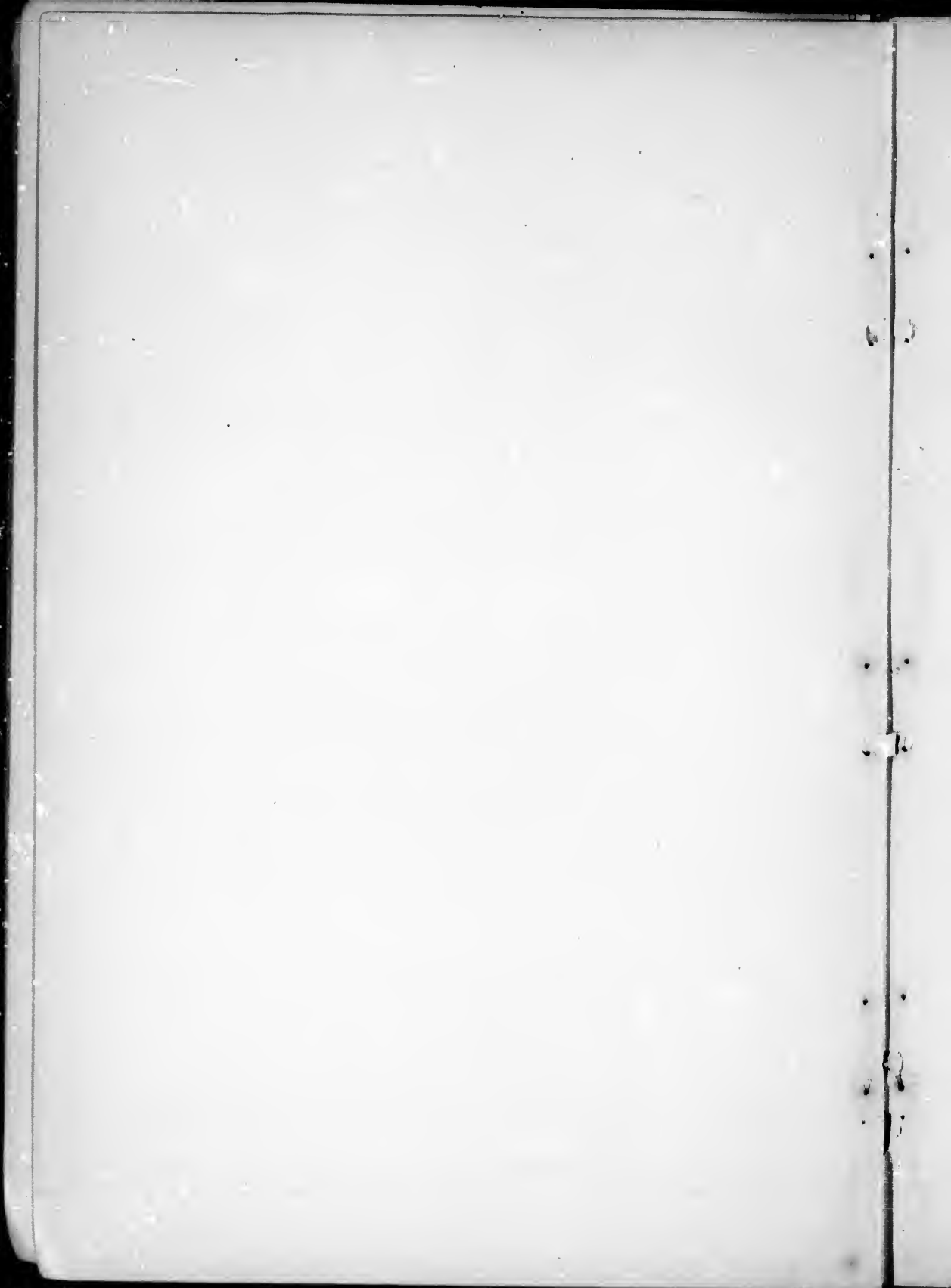
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Entry not necessary to constitute seisin in grantee of Crown. *Weaver v. Burgess*, 22 C.P. 104; *Greenlaw v. Fraser*, 24 C.P. 230.

Error, patents issued in, cancelled. *Martyn v. Kennedy*, 4 Chy. 61; *Attorney-General v. Garbutt*, 5 Chy. 383; *Attorney-General v. Hill*, 8 Chy. 532; *Fricht v. Scheck*, 10 Chy. 254; *Stevens v. Cook*, 10 Chy. 410; *Attorney-General v. Contois*, 25 Chy. 346.

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Evidence, Court will not take, or find facts to aid Crown officers in settling claims. *Brouse v. Cram*, 14 Chy. 677.

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Lawrence v. Pomeroy, 9 Chy. 474.

Free Grant Act of 1868, locatee under, has no power to sell or dispose of pine timber.

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locatee, by virtue of Order in Council of 4th October, 1871, may sell the pine timber, and purchaser may take same after patent issues. *Hutchinson v. Beatty*, 40 Q.B. 135; *Brown v. Cockburn*, 37 Q.B. 592.

locatee, before Act of 1880, entitled to patent free from conditions of that Act.

Dunkin v. Cockburn, 13 O.R. 254; 15 A.R. 493.

locatee cannot reserve to himself pine trees standing in his clearing. *Parker v. Maxwell*, 14 O.R. 239.

locatee not bound to make his clearing in one place, and may sell trees cut in actual clearing. *Cockburn v. Muskoka*, 13 O.R. 343.

locatee, sale of timber by, when not in actual occupation, does not affect the right of a subsequent locatee. *Langmaid v. Mickle*, 16 O.R. 111.

locatee, where a valid alienation by, after patent, and mortgage taken for purchase money, the mortgagee's interest is not exempt from execution. *Canu v. Knott*, 19 O.R. 422; 20 O.R. 294.

settler, grant to, not stated to be under Free Grants Act, is unconditional. *Canada Permanent v. Taylor*, 31 C.P. 41.

Governor in Council has power to adjudge claims to lands, whether improved or not, and to revoke an appropriation for a religious purpose. *Simpson v. Grant*, 5 Chy. 267.

Grant from Crown must be of record and under great seal. *Jackson v. Wilkes*, 4 O.S. 142; *Sheldon v. Ramsay*, 9 Q.B. 105.

invalid, not made valid by exemplification. *Jackson v. Wilkes*, 4 O.S. 142.

must be to parties capable of holding. *Sheldon v. Ramsay*, 9 Q.B. 105.

of toll-bridge, toll-road, toll-gates and tolls passes the soil and freehold. *Reg. v. Mills*, 17 C.P. 654.

to one in fee in trust for himself and his children passes the fee to grantee. *Goldre v. Taylor*, 13 Q.B. 603.

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Grant to parties in possession of a road laid off by survey invalid even if possession before survey. *Mountjoy v. Queen*, 1 E. & A. 429; *Reg. v. Bishop of Huron*, 8 C. P. 253.

to within one chain of a river means the water's edge, not the top of the bank. *Stanton v. Windeat*, 1 Q.B. 30.

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Grantee ignorant of adverse possession, not disseised. *Pettit v. Renard*, 6 Q.B. 501; *McGillis v. McGillivray*, 9 Q.B. 9; *Pettit v. Ryerson*, 9 Q.B. 276.

not disseised by length of time, there being no adverse possession. *McKay v. Purdy*, 6 O.S. 144.

not disseised by possession without title, though continued after patent. *West v. Howard*, 5 O.S. 462; *Charles v. Cotton*, 8 Q.B. 313.

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Harbor, land covered with the waters of a, not subject to assessment. *Buffalo v. Goderich*, 21 Q.B. 97.

Harbors, rights of public in. *Clendinning v. Turner*, 9 O.R. 34; *Wood v. Esson*, 9 S.C.R. 239; *Holman v. Green*, 6 S.C.R. 707; *Warin v. London*, 7 O.R. 706; 12 A.R. 327.

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Hay cut and stacked on timber limits belongs to licensee. *McDonald v. Bonfield*, 20 C.P. 73.

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Heir and Devisee Commission, action will not lie for prosecuting a false claim before. *Shields v. DeBlaquiere*, 12 Q.B. 386.

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Heir of patentee who died before issue of patent cannot maintain bill to set aside conveyance under alleged forged power of attorney from patentee. *Brouse v. Cram*, 14 Chy. 677.

High water mark, the limit of the highest ordinary state of the river. *Plumb v. McGannon*, 32 Q.B. 8. *Grahame v. Brown*, 12 C.P. 418. *Parker v. Elliott*, 1.C.P. 470.

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Indian agent not a crown land agent. *Young v. Scobie*, 10 Q.B. 372.

Indian Lands Acts. 13 & 14 Vict., chs. 42 and 74.; 14 & 15 Vict., chs. 59 and 106 ;
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the seizure. *Jones v. Bain*, 12 Q.B. 550.

not purchasable from Indians without prior consent of government. *Reg. v. Baby*,
12 Q.B. 346. *Reg. v. Hagar*, 7 C.P. 380.

unless where title is not in the Crown but in the individual Indian. *Totten v.*
Watson, 15 Q.B. 392.

roads through, have same character as in other parts of their course. *Byrnes v.*
Bown, 8 Q.B. 181.

timber Act applied to. *Atty. Gen. v. Fowlds*, 18 Chy. 433.

timber cut on, by Indians or whites with their consent not to be seized or sold.
Vanvleck v. Stewart, 19 Q.B. 489.

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Totten v. Truax, 16 O.R. 490.

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Indian right, bill to rescind contract to purchase, dismissed, whole estate being in the
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Indians, grant by, to individual, invalid as against the Crown. *Rex v. Phelps*,
Tay. 47.

lands not reserved for, are public lands. *Reg. v. St. Catharines*, 10 O.R. 196 ; 13
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Injunction to restrain further cutting of timber, refused on indefinite evidence of
cutting two years before. *Hughson v. Cook*, 20 Chy. 238.

Inlet from 5 to 13 feet deep, navigable water. *Gage v. Bates*, 7 C.P. 116.

Interest before patent must be shewn to enable party to impeach patent. *Mutchmore*
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Intrusion, in information for, by Attorney General of Canada, title in Dominion not
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Judgment, action on, may be brought within 20 years. *Caspar v. Keachie*, 41 Q.B.
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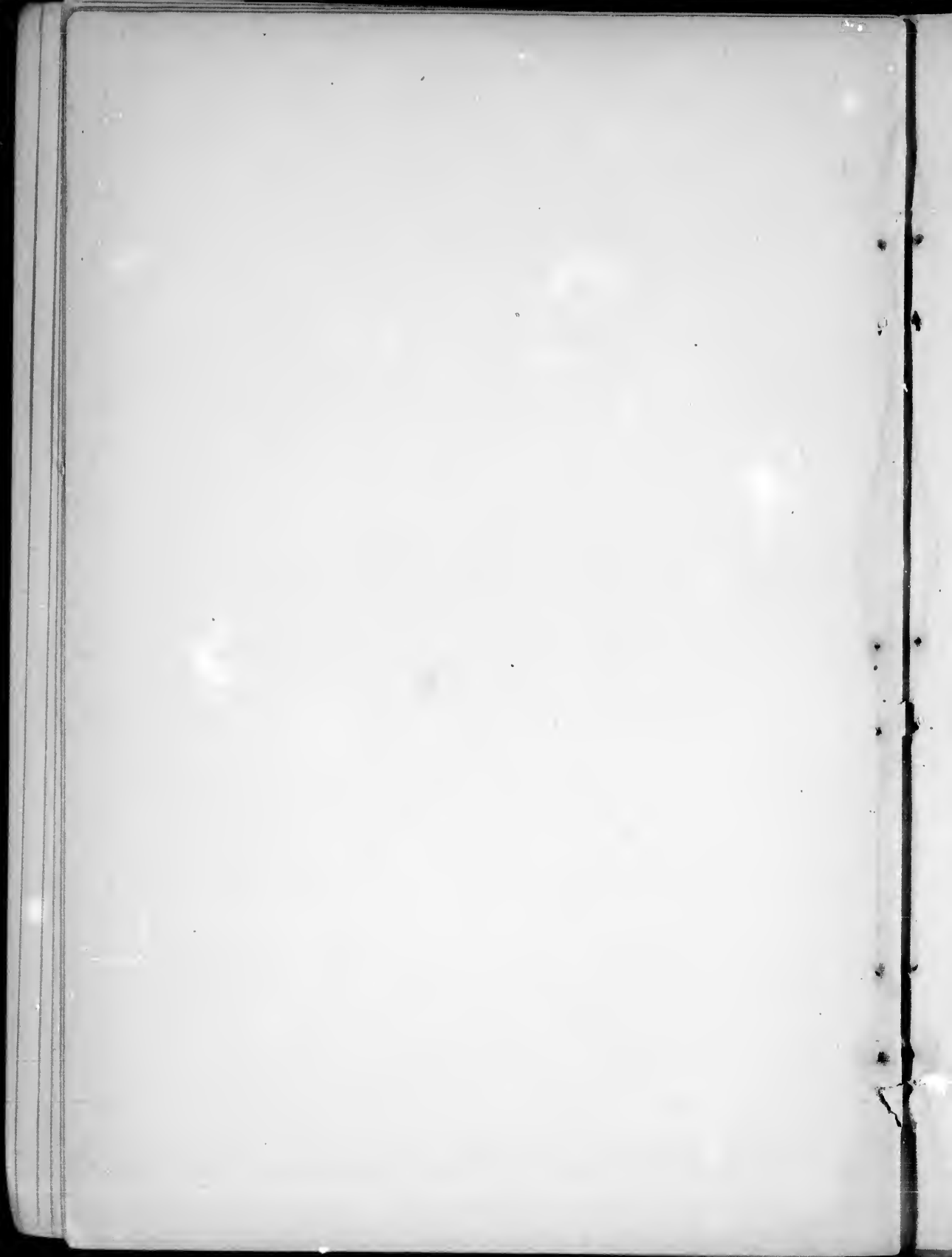
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Jurisdiction, Court has, to relieve against fraudulent assignment. *Bull v. Frank*, 12 Chy. 80.

to relieve against fraud in contract affecting lands of which title is in Crown.
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McDiarmid v. McDiarmid, 9 Chy. 144.

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Justice of the Peace empowered to take affidavits only where he can act as Justice.
Reg. v. Atkinson, 17 C.P. 295.

Knowledge in patentee of adverse possession necessary to bar claim. *Johnson v. McKenna*, 10 Q.B. 520; *Re Linet*, 3 Chy. Cham. 230; *Turley v. Williamson*, 15 C.P. 538. See *Stewart v. Murphy*, 16 Q.B. 224; *Mulholland v. Conklin*, 22 C.P. 381; *Hill v. McKinnon*, 16 Q.B. 216; *Armstrong v. Stewart*, 25 C.P. 198; *Young v. Elliott*, 23 Q.B. 420.

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Lease of Crown reserve having expired, writ of restitution refused after conviction of forcible entry and detainer. *Rex v. Jackson*, Dra. 50.

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Limitation, Statute of, against patentee. *Harris v. Prentiss*, 30 C.P. 484; *Beigle v. Dake*, 42 Q.B. 250.

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Locatee may maintain case for injury by flooding before patent. *Miller v. Purdy*, H.T. 6 Vict.

Locatee's interest available for creditors. *Yale v. Tollerion*, 13 Chy. 302; *Ferguson v. Ferguson*, 16 Chy. 309. See R.S.O. 1887, ch. 64, sec. 25.

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Magnetic, astronomical boundaries prevail over. *Thibaudeau v. Skead*, 39 Q.B. 387.

Married Woman, conveyance by, good without husband joining. *Boustead v. Whitmore*, 22 Chy. 222; *Contra, Oyden v. McArthur*, 36 Q.B. 246.

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Metes and Bounds in description from Crown Lands Department admissible to explain patent of lot by number and concession. *Hagarty v. Britton*, 30 Q.B. 321.

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Misjoinder, for several persons claiming separate parcels to file a bill to set aside a patent for all the lands. *Westbrooke v. Atty.-Gen.*, 11 Chy. 264.

Misrepresentation by Crown Lands Agent makes him responsible for money paid by a purchaser to a third party in consequence thereof. *McMaster v. Geddes*, 19 Q.B. 216.

Mistake, patents issued in, cancelled. *Martyn v. Kennedy*, 4 Chy. 61; *Atty.-Gen. v. Garbutt*, 5 Chy. 380; *Atty.-Gen. v. Hill*, 8 Chy. 532; *Fricht v. Scheck*, 10 Chy. 254; *Stevens v. Cook*, 10 Chy. 410; *Atty.-Gen. v. Contois*, 25 Chy. 346.

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"More or less," omission of, in one part of description, cured by insertion in another. *Cartwright v. Dellar*, 19 Q.B. 210.

Mortgage, registration of, before patent, is notice whether under Heir and Devisee Commission or not. *Vance v. Cummings*, 13 Chy. 25; *Watson v. Lindsay*, 27 Chy. 253.

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Municipal Survey illegal, one-half landholders affected not having applied. *Cooper v. Wellbanks*, 14 C.P. 364.

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Notice, express, of unregistered assignment before patent has same effect as of unregistered deed after patent. *Goff v. Lister*, 13 Chy. 406; 14 Chy. 451.

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Order in Council that no patents issue for certain lands without a special reservation, extends the reservation to the lands before patent. *Miller v. Purdy*, H.T. 6: Vict.

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Party without title cutting hay has no right of action against another party without title taking possession. *Graham v. Heenan*, 20 C.P. 340.

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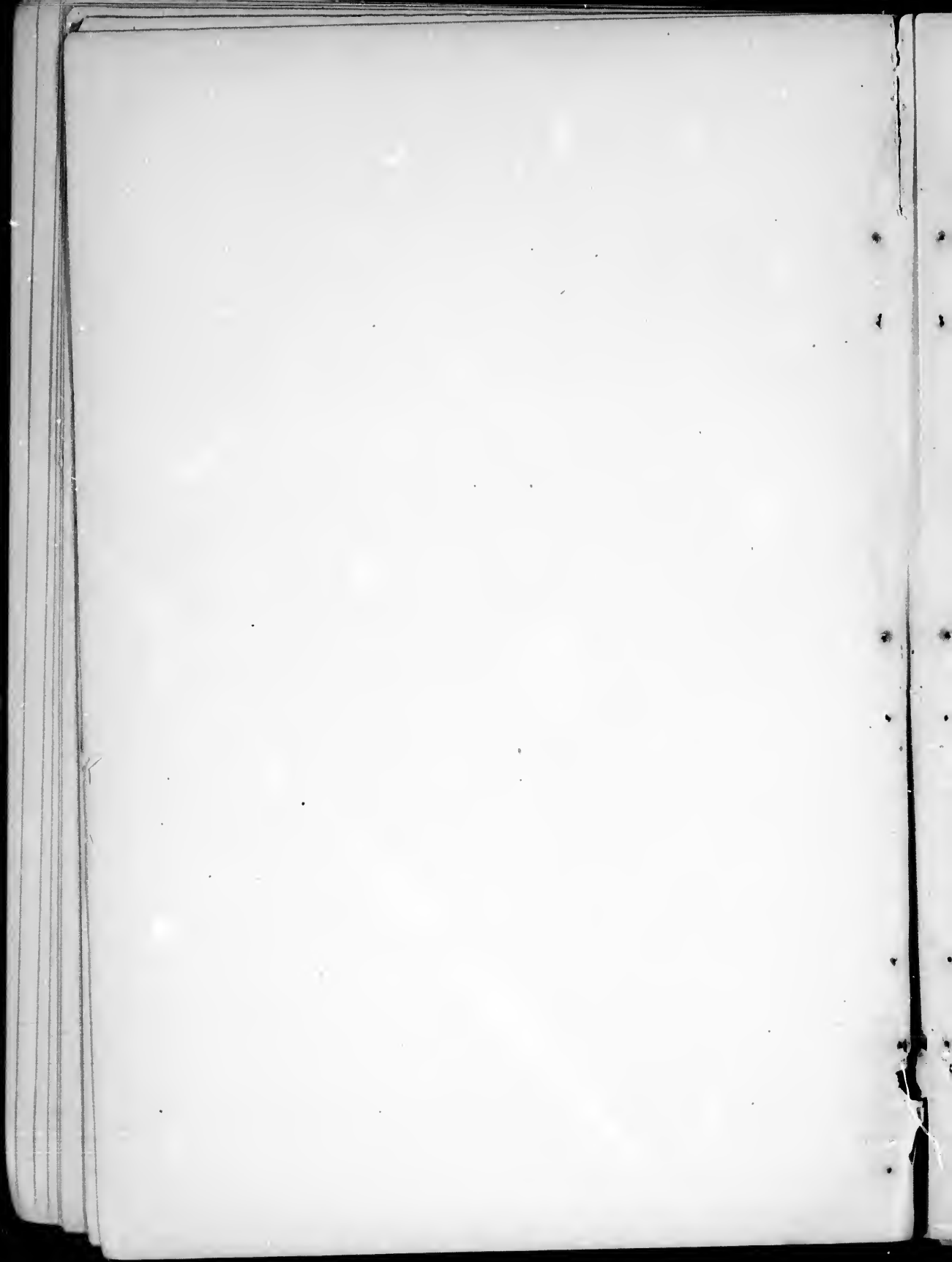
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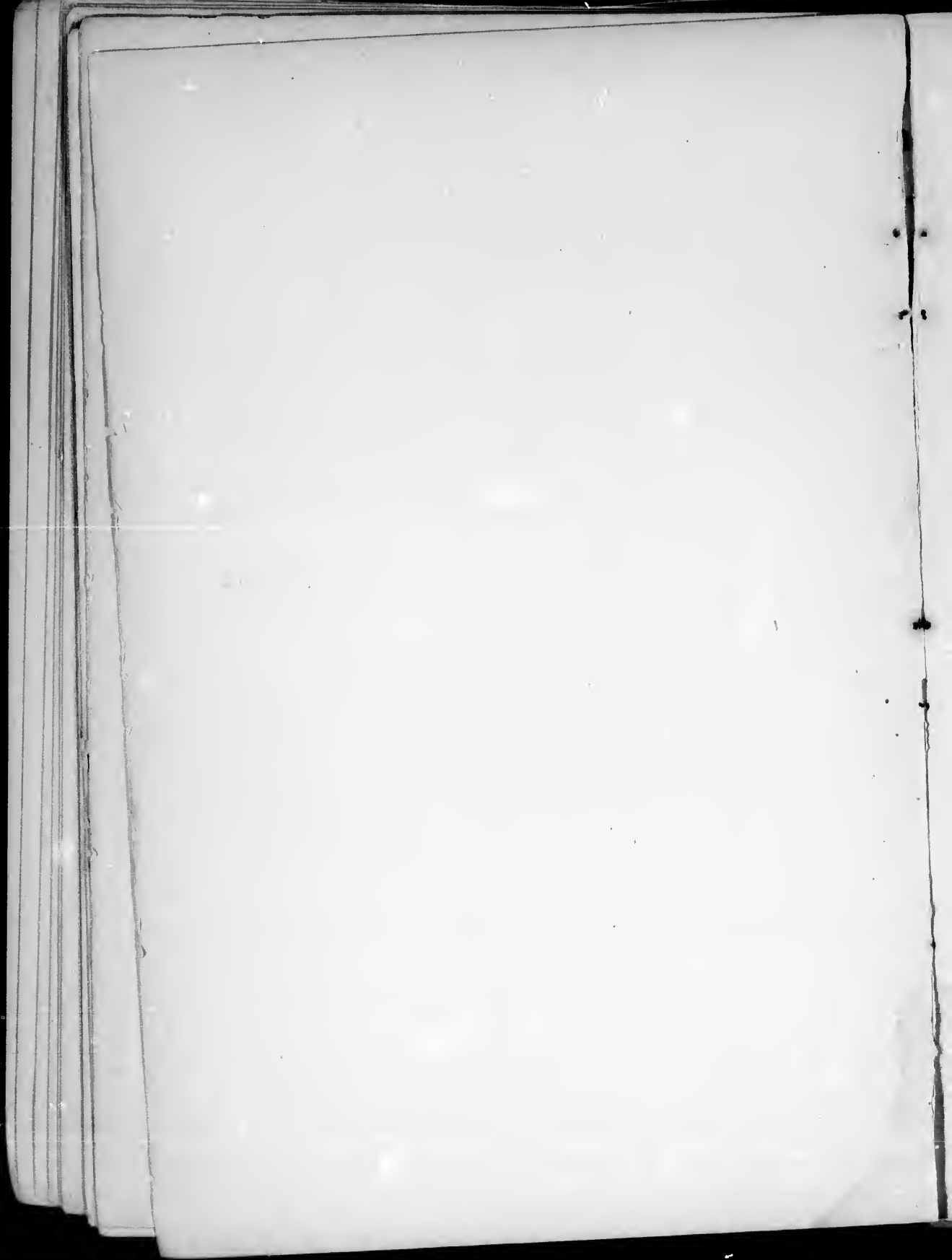
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Railway Company, deed to, by mother, bars children's interests. *Dunlop v. C.C.R. Co.*, 45 Q.B. 74.

statutory right given to, to cut timber on each side of line, prevails over license.

Booth v. McIntyre, 31 C.P. 183; *Foran v. McIntyre*, 45 Q.B. 288. See *McArthur v. Northern and Pacific*, 15 O.R. 783; 17 A.R. 86.

Receipt for purchase money not good against subsequent patent. *Armstrong v. Campbell*, 4 C.P. 15.

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Recital of notice in warrant, not evidence of notice. *Little v. Keating*, 6. O.S. 265.

Record. See ASSIGNMENT; DESCRIPTION; GRANT; SQUATTER.

Registration before patent applies only to mortgages, liens, or incumbrances. *Holland v. Moore*, 12 Chy. 296.

of mortgage before patent is notice whether under Heir and Devisee Commission or not. *Vance v. Cummings*, 13 Chy. 25.

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Relator's costs allowed in action by one trespasser against another. *Atty.-Gen. v. Price*. 18 Chy. 7.

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Replevin maintainable by party in possession entitled to renewal of license against a wrongdoer before license actually renewed. *Gilmour v. Buck*, 24 C.P. 187.

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Reservation in patent by Order in Council extends to the lands before patent. *Miller v. Purdy*, H.T. 6 Vict.

in patent of right to resume part of land granted, good. *Cooper v. Stewart*, 14 App. Cas. 286; 25 L.J. 493.

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of trees notwithstanding, grantee or party claiming under him may maintain trover. *Casselman v. Hersey*, 32 Q.B. 333.

of waters of a river means as raised by a dam existing at time of patent at their natural height at any time during the ordinary changes of the seasons. *Brady v. Sadler*, 13 O.R. 692; 16 O.R. 49; 17 A.R. 365.

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Reserve marked as such on plan cannot be granted to private parties. *Saugeen v. Church Society*, 6 Chy. 538.

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Restitution, writ of, refused after conviction of forcible entry and detainer, lease of Crown reserve having expired. *Rex v. Jackson*, Dra. 50.

Revoke appropriation for religious purpose, Governor in Council has power to. *Simpson v. Grant*, 5 Chy. 267.

Right of action, party without title cutting hay has no, against another party without title taking possession. *Graham v. Heenan*, 20 C.P. 340.

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Riparian Proprietor, Crown has no power to interfere with rights of. *Atty.-Gen. v. McLaughlin*, 1 Chy. 34.

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River, what is a, a question of fact for jury. *McHardy v. Ellice*, 37 Q.B. 580; 1 A.R. 628.

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Road allowance, conviction for overflowing by water from mill-dam sustained through only partially used as road. *Reg. v. Lees*, 29 Q.B. 221.

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in patent different from those in survey, patent will prevail. *Field v. Kemp*, 3 O.S. 374.

in possession of private individual can only be opened by municipality. *Curry v. McLeod*, 12 Q.B. 545.

laid out on original plan, subsequently granted by Crown and occupied for thirty years and never used as a highway, indictment for stopping up not sustainable. *Rex v. Allan*, 2 O.S. 90.

marked on original plan retains character though not used for forty years. *Badgeley v. Bender*, 3 O.S. 221.

may be made from compilation of surveys when not inconsistent with work on the ground, necessary reductions being made from previous grants. *Hagarty v. Britton*, 30 Q.B. 321.

not laid out on original survey, afterwards treated by surveyor of adjoining land as in original survey, not sustained. *Stock v. Ward*, 7 C.P. 127.

on original plan is a highway unless work on the ground clearly inconsistent. *Carrick v. Johnston*, 26 Q.B. 69.

original, continues to be a highway, notwithstanding deviations. *Spalding v. Rogers*, 1 Q.B. 269.

physical obstacles, municipality has discretion not to open on account of. *Hislop v. McGillivray*, 12 O.R. 749; 15 A.R. 687; *McCormick v. Pelée*, 20 A.R. 288.

power to declare true boundaries of, municipality has not. *McMullen v. Caradoc*, 22 C.P. 356.

sixty years possession gives title, when another road given in lieu of. *Burritt v. Marlborough*, 29 Q.B. 119; *Webster v. West Flamboorough*, 35 Q.B. 590.

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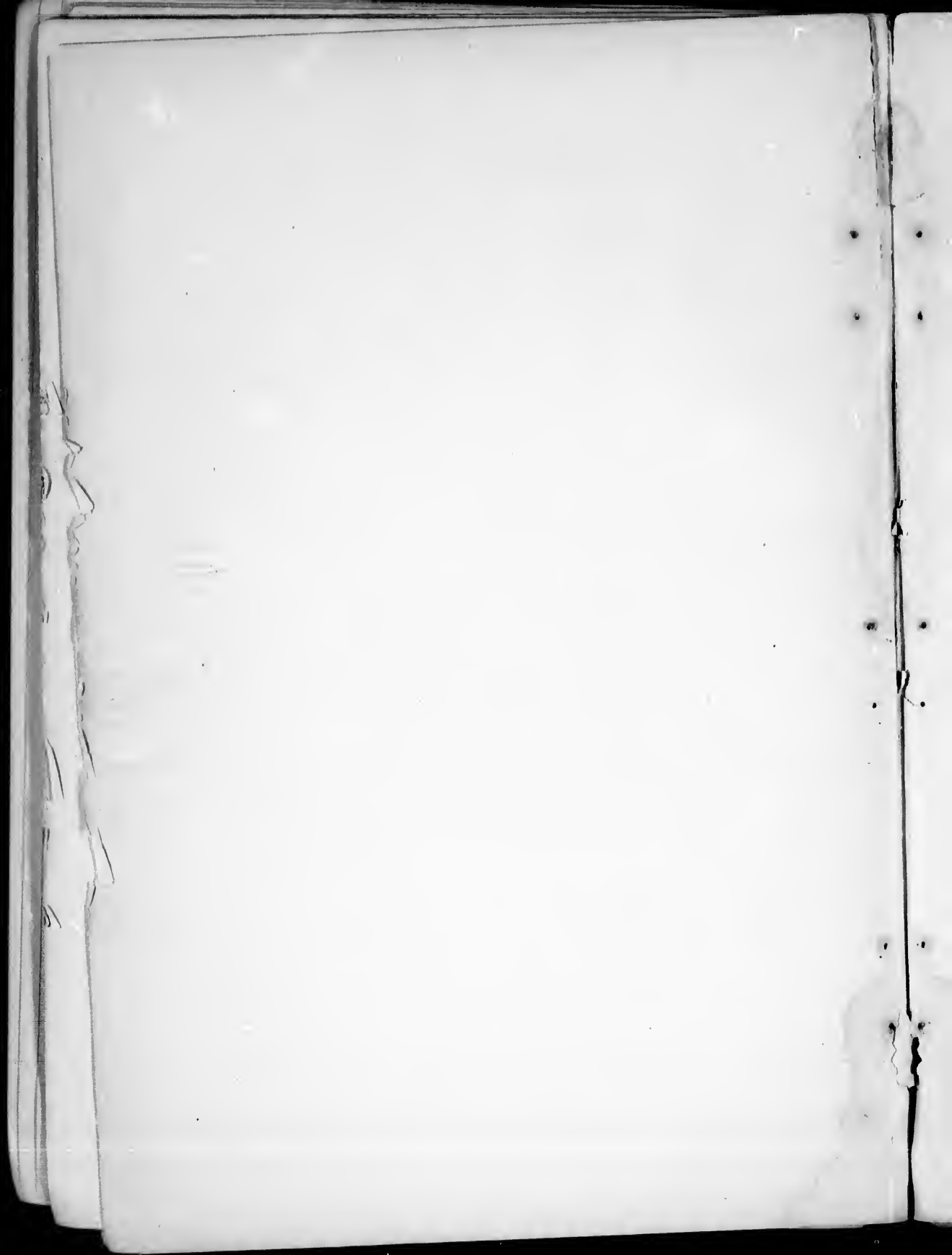
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- Road allowance**, timber on, may be cut by licensees, when no by-law passed. *Burleigh v. Campbell*, 18 C.P. 457.
 not when by-law passed. *Barrie v. Gillies*, 20 C.P. 369 ; 21 C.P. 213.
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- Road** cannot be stopped up, or land taken for new, by resolution of municipality, it must be by by-law. *Kronsblen v. Gage*, 10 Chy. 572 ; *Taylor v. Verulam*, 21 C.P. 154.
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- Roads**, jurisdiction in municipality, soil in Crown. *Wellington v. Wilson*, 16 C.P. 124.
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- Sale**, deposit receipts, evidence of. *Young v. Scobie*, 10 Q.B. 372.
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- Seal**, want of, to patent, not an objection, if seal was once on. *Todd v. Cain*, 16 Q.B. 516.
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- Seisin** constituted by patent *suo vigore*. *Weaver v. Burgess*, 22 C.P. 104 ; *Greenlaw v. Fraser*, 24 C.P. 230.
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- Services** in procuring patent, value of, and of lands sold, recoverable in assumpsit. *Kilborn v. Forester*, Dra. 332.
- Settler**. See FREE GRANT ; LICENSE.
- Shore**. See ACCESS.

Specific performance of Order in Council, Court cannot enforce. *Simpson v. Grant*, 5 Chy. 267.

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Squatter filing bill to impeach patent must allege custom in squatter's favor. *Cosgrove v. Corbett*, 14 Chy. 617.

has no property or possession to maintain trespass against another squatter. *Killichan v. Robertson*, 6 O.S. 468.

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Squatter's right, assignment of, not an original record. *McGuire v. Sneath*, 2 L.J. 184.

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on original plan of town are public highways, though never opened or used. *Reg. v. G. W. Ry. Co.*, 21 Q.B. 555.

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Surrender, enrolment of, not necessary to perfect the Crown's title. *Reg. v. Guthrie*, 41 Q.B. 148.

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Survey adopted and acted on will hold good until changed by competent authority.

White v. Dunlop, 27 Q.B. 237; *Murphy v. Healy*, 30 Q.B. 192.

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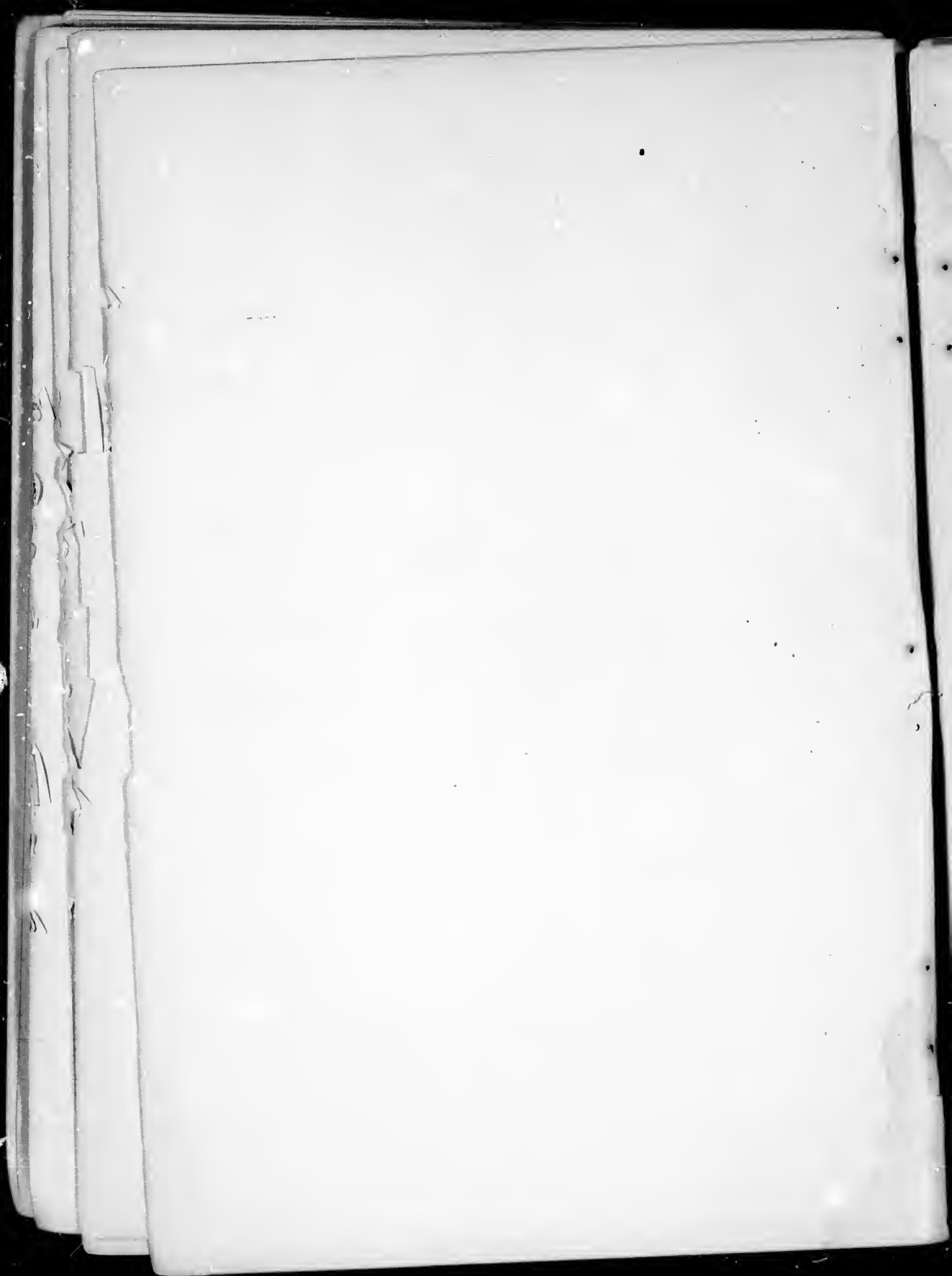
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Survey, municipal, of concession can be made only where line was not run in original survey or has been obliterated. *Fairbairn v. Sandwich*, 32 Q.B. 573; *Tanner v. Bissell*, 21 Q.B. 553; *Boley v. McLean*, 41 Q.B. 260.

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Surveyor's diary with piece of map and trace of blaze with instructions received as evidence of performance of survey. *Smith v. Chumas*, 20 C.P. 213.

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Taxes, lands covered with the waters of a harbor, not subject to. *Buffalo v. Goderich*, 21 Q.B. 97.

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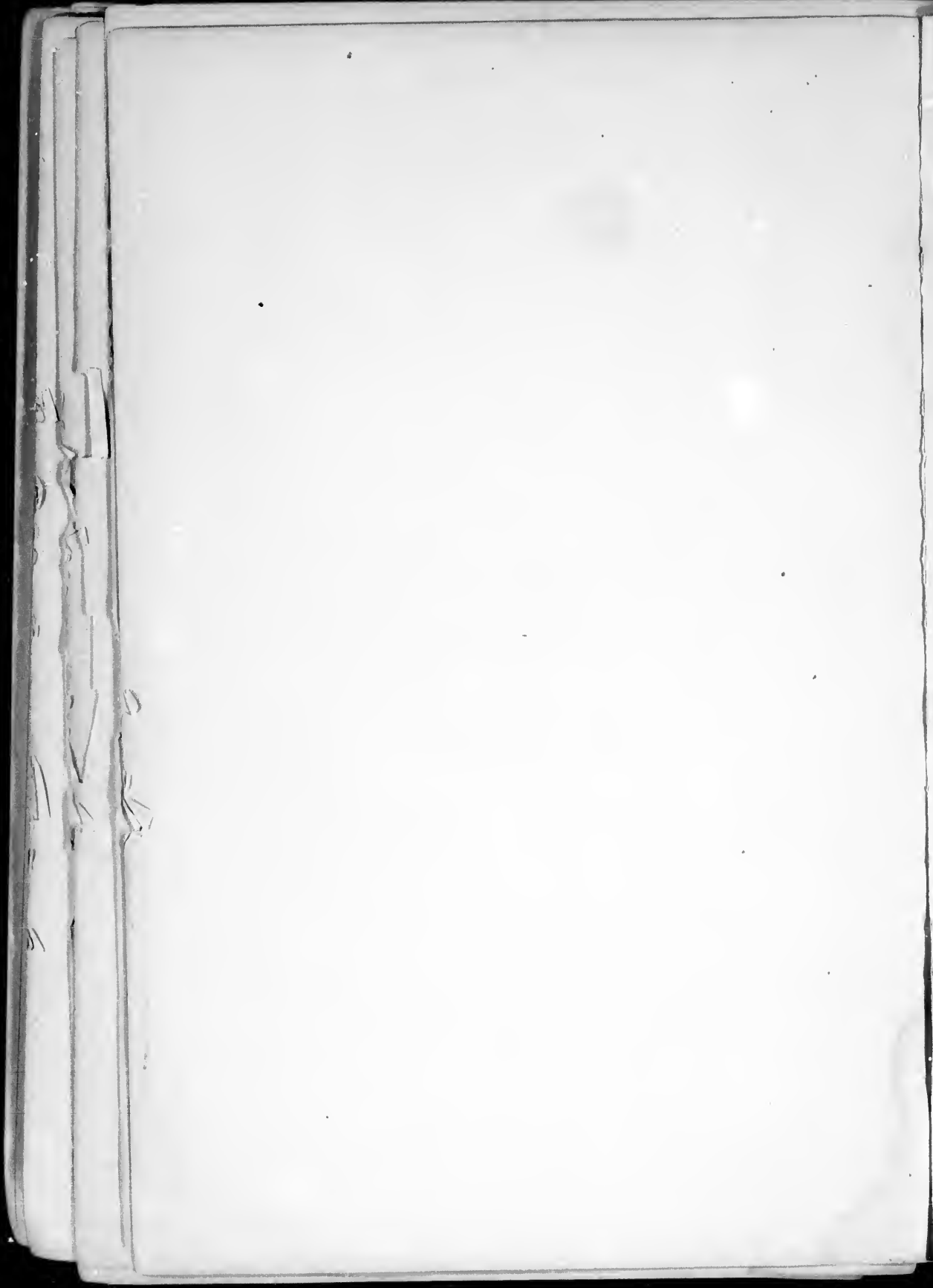
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- Timber**, right to float, considered. *Boale v. Dickson*, 13 C.P. 337. *McLaren v. Buck*, 26 C.P. 539; *McLaren v. Caldwell*, 5 A.R. 363; 6 A.R. 456; 8 S.C.R. 435; 9 App. Cas. 392; *Mackay v. Sherman*, 8 O.R. 28.
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- Township**. See DESCRIPTION; METES AND BOUNDS; ROAD; SURVEY; TIMBER.
- Trees**, notwithstanding reservation of, grantee or party claiming under him, may maintain trover. *Casselman v. Hersey*, 32 Q.B. 333.
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- Trespass**, exclusive possession necessary to maintain. *McLaren v. Rice*, 5 Q.B. 151.
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- not maintainable by one squatter against another. *Killichan v. Robertson*, 6 O.S. 46S.
- or trover will lie here for timber cut in Quebec. *McLaren v. Ryan*, 36 Q.B. 307; See *Stuart v. Baldwin*, 41 Q.B. 446.
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- Trover** maintainable notwithstanding reservation of trees. *Casselman v. Hersey*, 32 Q.B. 333
- See TRESPASS.
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- Unsurveyed block** granted by the Crown, private survey of, is an original survey. *Van Every v. Drake*, 9 C.P. 478.
- User** for 70 years sufficient evidence of dedication of way. *Frank v. Harwich*, 18 O.R. 344.
- Uses**, statute of, patent under, use executed. *Snyder v. Masters*, 8 Q.B. 55; *Long v. Anderson*, 30 C.P. 516.

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Venue in information for intrusion may be laid anywhere. *Attorney-General v. Dockstader*, 5 O.S. 341.

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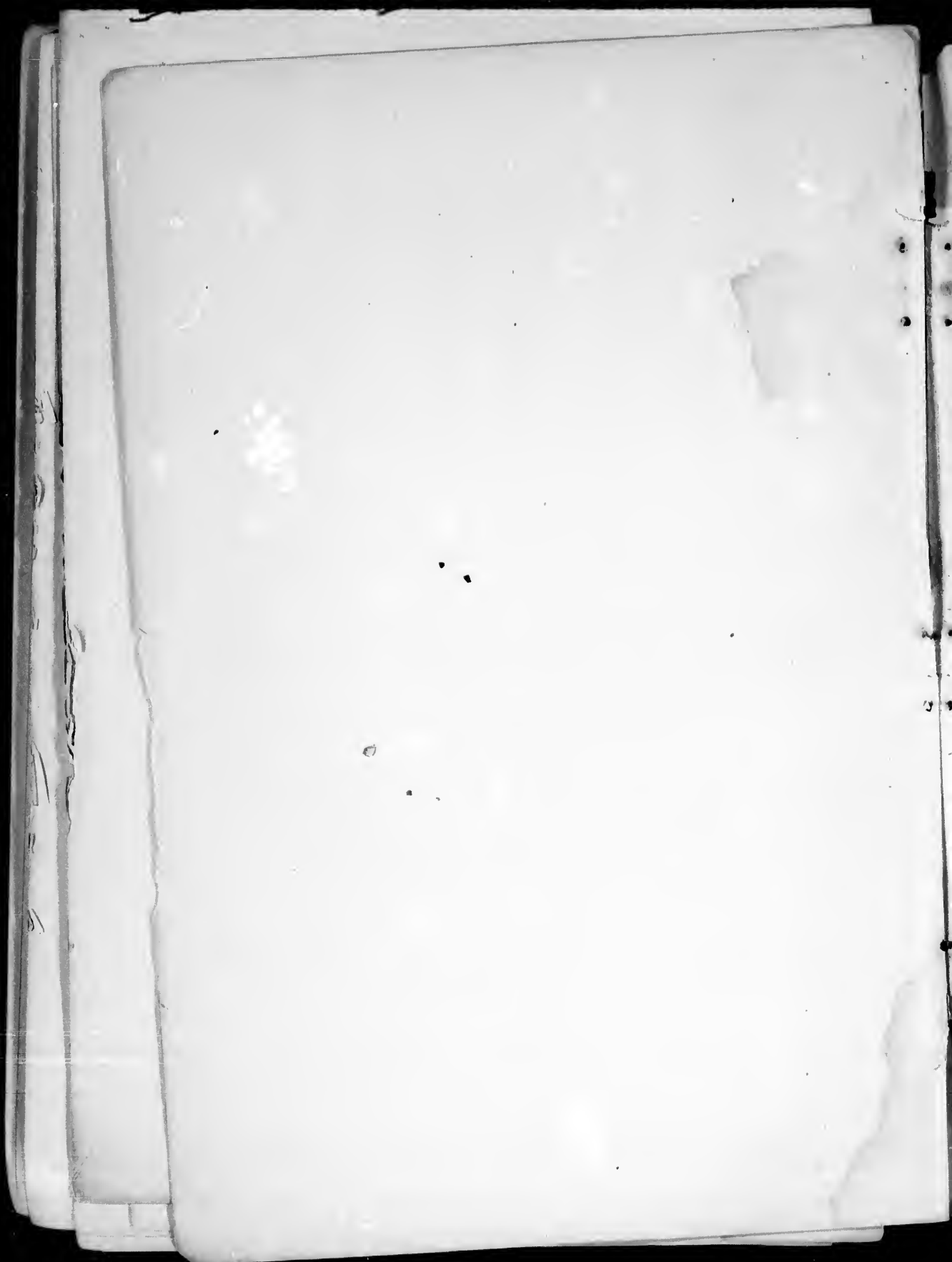
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- Will**, absolute restraint on alienation in, invalid. *Watson v. Woods*, 14 O. R. 48.
- after-acquired property did not pass by, because testator had specified the subject of devise. *Crombie v. Cooper*, 22 Chy. 267; 24 Chy. 470; *Vansickle v. Vansickle*, 1 O.R. 107.
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- bequest by, out of realty for a college, void. *Ferguson v. Gibson*, 22 Chy. 36.
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- devise in fee with condition in, not to sell, but may grant to any of children, a valid restraint. *Smith v. Faught*, 45 Q.B. 484.
- devise in, subject to annuities and payment of debts, devisee under, can make a good title. *McMillan v. McMillan*, 21 Chy. 594.
- devise in, to son for ever, wife to have during life or widowhood, and if son die and she marry, to come to brothers and sisters; son died, widow having previously married; held, widow heir to son. *Snell v. Davis*, 23 Chy. 132.
- mortgage on land devised in, payable thereout. *Mason v. Mason*, 13 O.R. 725.
- of land not owned by testator, evidence of intention not admissible. *Summers v. Summers*, 5 O.R. 110.
- probate proof of due execution of. *Stewart v. Lees*, 24 Chy. 433.
- right to redeem in, equivalent to right to purchase. *Stevenson v. Stevenson*, 28 Chy. 232.
- See MARRIED WOMAN; PATENT.
- Work** on ground determines boundaries, not as projected or shown on plan. *Owens v. Davidson*, 10 C. P. 302; *Carrick v. Johnston*, 26 Q.B. 69; *McGregor v. Calcutt*, 18 C.P. 39.
- Writ** of restitution refused after conviction of forcible entry and detainer, lease of Crown reserve having expired. *Ree v. Jackson*, Dfa. 50.

