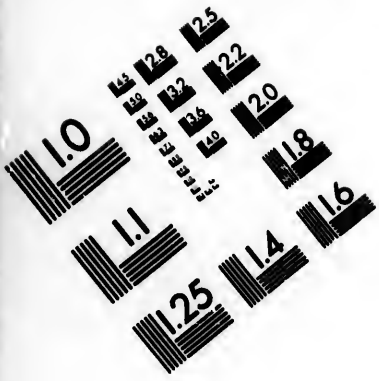

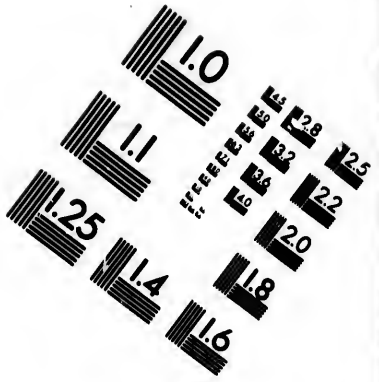

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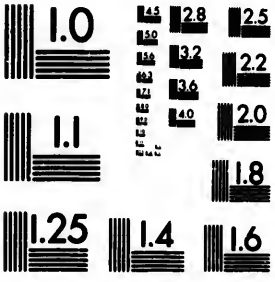

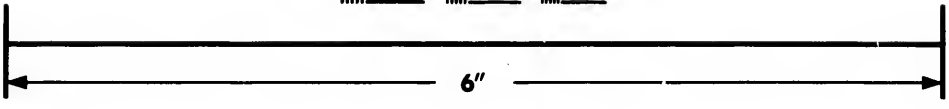

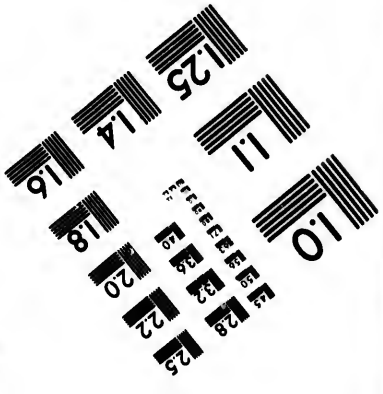

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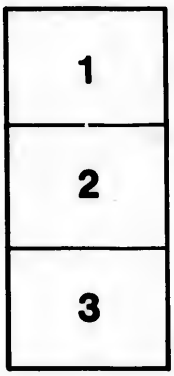

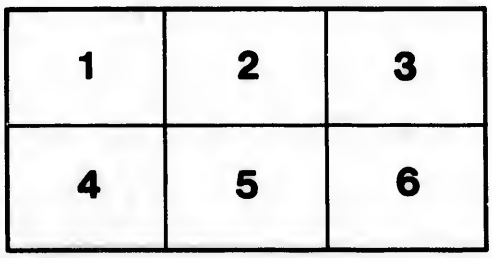

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OIL MEN

AND

DEALERS IN LAND,

BEING SUGGESTIONS AS TO THE RIGHTS AND LIABILITIES OF PERSONS DEALING IN LANDS IN UPPER CANADA.

BY

J. D. EDGAR,

OF OSGOODE HALL,

BARRISTER AT LAW.

WITH A NEW & CORRECT MAP OF THE OIL DISTRICTS,

BY J. ELLIS, JUNR.

TORONTO:

ROLLO & ADAM, LAW PUBLISHERS

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1866.

Map of the
Canada Oil Lands,
drawn & compiled by
John Ellis Jr.
Toronto
Map of the
Township of London.
Sarnia
Port Huron
Indian
Reserve
S A R N I A
Great
Wyoming
Plank Road
Sarnia
Ossian P.O.
E N N I S K I L L
Oil Springs
P.O.
Oil Wells
Petrolia
Oil
Wells
Town Hall
D A W N
Rutherford P.O.
Dresden
Sidalsville
Bowood
Lobo P.O.
Komoka
Kilworth
Byron
Delaware
L O N D O N
Proof Line Road
Sarnia Road
London
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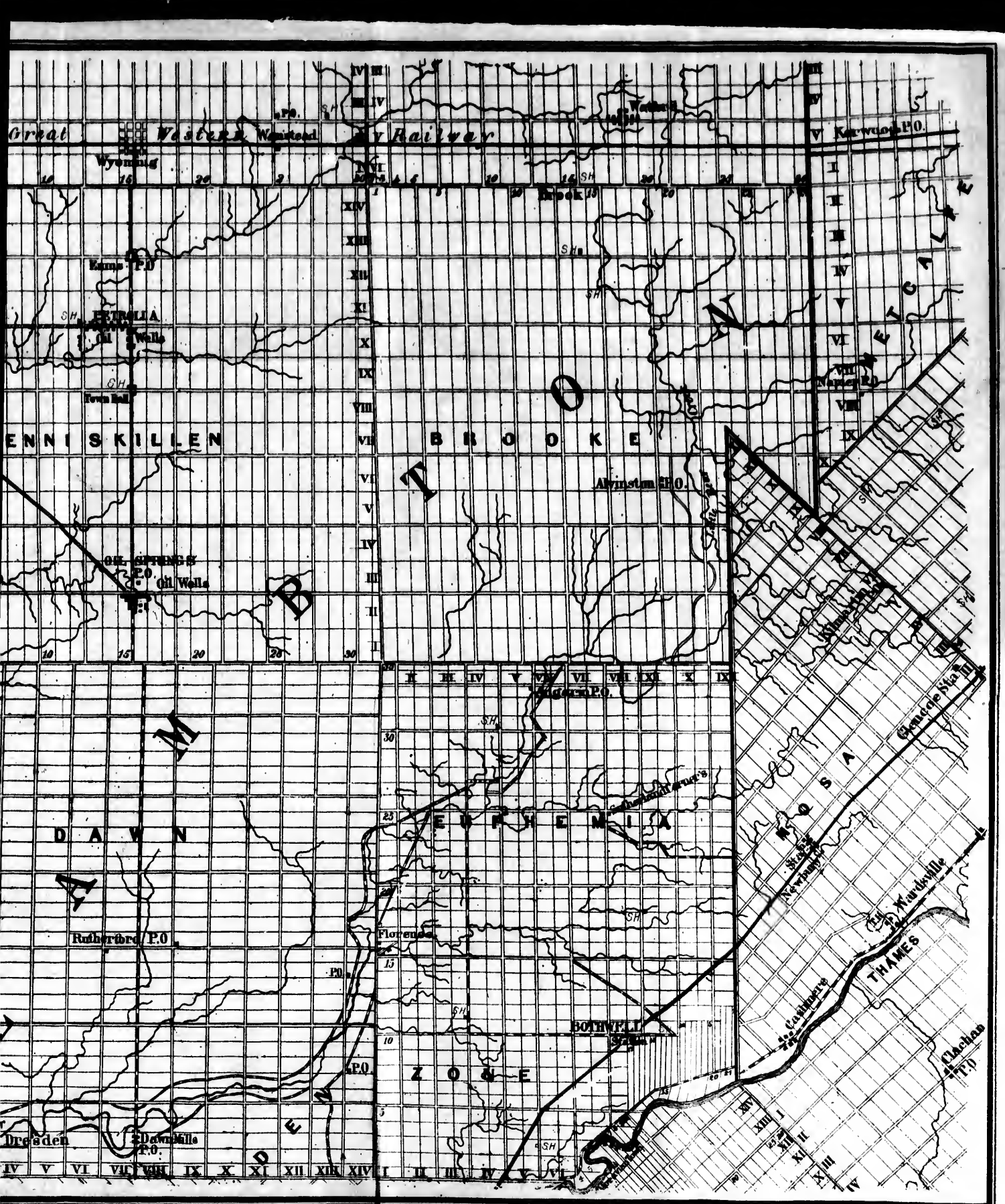
Great Western Railway
Wyoming
Errol P.O.
PETROLIA
Oil Wells
Town Hall
ENNISKILLEN
OIL SPRINGS P.O.
Oil Wells
BROOKE
Alvinston P.O.
Wilkesport
Kerwood P.O.
Napier P.O.
Glendale Station
MOSA
Newbigging
Wardsville
THAMES
Cashmere
Florence
EUPHEMIA
ZONE
SOUTHWELL
Station
Rutherford P.O.
Dresden
Dawn Mills P.O.
DAWN
DEAN

PREFACE.

EVERY man is presumed to know the law; yet it may be safely asserted that no man living knows all the law. To assist in diffusing this knowledge is surely allowable. It is the aim of the few chapters that follow to explain, very briefly, and in language as free as may be from professional terms, some of the simpler features of the law affecting dealings with landed property in Upper Canada.

The author is well aware that any attempt to popularize the rules of law, is deprecated by some professional men. It might once have been necessary to apologize to them for this humble endeavour to inform those most interested of their rights and liabilities. But even the fossil prejudices of such men must now give way before the illustrious example of the great

St. Leonards, who has not thought it beneath his well-earned reputation, in the autumn of his life, to write "somewhat for those unlearned in the law."

The unprecedented activity in land speculation, that has lately sprung up in the oil regions of Western Canada, suggested to the author the urgent necessity, at the present time, of a Manual which would give to oil men some light upon the transactions of every day. A man cannot always have his solicitor at his elbow, and even when he has, he naturally desires to know for himself something about the nature of the security in which he is investing his money.

It is hoped that these pages, with the exception, perhaps, of the chapter on oil and mineral lands, will convey information that may be of use to all who own or deal in real estate.

CONTENTS.

CHAPTER I.

REQUISITES OF AGREEMENTS TO SELL.

CONTRACTS respecting land must be in writing—material points must appear—what they are—may be in several documents—agreements through letters—great caution necessary—example—offer and acceptance—variance between them—example—time when contract completed—offer by an agent—acceptance must be in reasonable time—offer may be withdrawn before acceptance—when once refused cannot be revived—proposal must be signed by the party to be charged—acceptance may be verbal—property must be clearly described—example—price must be defined—examples of definite and indefinite price—agreements for sale or purchase of land may be made through an agent—ratification of agent's authority—agents of corporations—revocation of agent's authority—example—agent contracting in his own name—power to sell differs from power to receive purchase money—part performance of verbal agreements sometimes renders them binding.

Agreements for the sale of an interest in land are considered to be of such superior importance, that they must generally be committed to writing. The party to be bound must sign a written statement, containing all the points of importance in the agreement. These material points are—the names of the parties, the land which is the subject of the contract, the price, and any special terms. No evidence of a verbal agreement, to supply these essential

terms, will be admitted. It is not necessary that all these terms should appear in one document. Letters, for instance, passing between parties, often amount to a valid agreement, when they contain the necessary particulars. For this reason, it is most advisable to exercise the greatest caution, when writing a letter about the sale or purchase of a piece of property. Unless great care is used in inserting an offer in a letter, the writer may be suddenly entrapped into a binding agreement by an immediate acceptance, when he did not really mean to commit himself.

If a person, who has a lot of land for sale, writes to another, who has been making enquiries about it, saying that if he sold it, it would be for a certain sum, or upon certain terms, and the latter then writes back, saying he will take it upon those terms, there will be a binding agreement to sell. In order, however, that an acceptance of an offer may be operative, it is essential that it should be clear and unequivocal. The offer must be accepted as made. There cannot be any variance between the terms

of the proposal and the acceptance. If there is, it is no binding contract, unless there be another writing agreeing to the alteration. In the following case it was decided that, on account of the variance in the acceptance, no binding contract arose: A. B. offered to purchase a house on certain terms, possession to be given on or before the 25th July; and C. D. agreed to the terms, and said he would give possession on the 1st August.

The time at which a contract is completed, when made through a correspondence, is often of much importance. A contract is perfected by the posting of a letter to the proper address, declaring the acceptance of an offer; and for the reasons that this is all the acceptor can be expected to do, and that he is not answerable for delays in the post-office; the contract accordingly dates from the posting of the letter, and not from the time of its receipt. Care should be taken that the name of the person, to whom the letter is addressed, is made to appear in the letter itself, and not only on the envelope. If the offer is made through an agent, the communication of the ac-

ceptance to the agent completes the contract, although he may not make it known to his principal. A proposal to sell, or to purchase, must be accepted, if at all, within a reasonable time. Or, in other words, it will not stand open for ever.

An offer to sell or purchase may be recalled, varied, or modified, at any time before it is accepted. But if an offer is made by post, it cannot be retracted, if the person, to whom it is addressed, has accepted, before receiving any intimation of the change of intention. Even if an offer is left open for acceptance for a certain time, —a month, for example,—yet it may be retracted at any time before the month has expired, so long as it has not been accepted. When the person, to whom the proposal is made, once refuses it, he cannot revive it by any subsequent tender of acceptance.

In a correspondence between parties negotiating for the sale of land, there may be a number of letters before they can finally agree upon the terms. Fresh stipulations may be continually added to the proposed contract, until the terms proposed by one side have been definitely accepted by the other.

When a proposal is clear and definite, and signed by the *party to be charged*, and where only a simple assent is required, and the acceptance is not to supply any term, the proposer will be bound by a verbal acceptance. In like manner, the acceptance may be by the acts and conduct of the person to whom the proposal is made.

In all agreements respecting land, the particular property must be clearly described; it need not be so described as to admit of no possible doubt what it is. The identity of the property may be proved by outside evidence; provided that it can be clearly shown what was intended. In an agreement where the property was spoken of as "Mr. Ogilvie's house," extrinsic evidence was admitted, to show what house was referred to. It is essential that the description should be so definite that it may be known with certainty what the purchaser imagined himself to be contracting for. The courts have gone so far as to hold a description sufficient, which merely referred to property included in deeds in the possession of a party named, on the ground that the property could

easily be ascertained. It is, however, very unwise to omit a clear and accurate description of land, in any agreement for its sale.

In contracts for sale, the price is an essential ingredient, and must either be clearly defined, or rendered ascertainable. For example, if John Smith agreed to sell a lot to Henry Jones, for $1000 less than any other purchaser would give, the contract would be void; because, unless the lot were sold to some other purchaser than Henry Jones, it would be impossible to ascertain what such other purchaser would give for it. An agreement to sell at a price to be fixed by arbitrators, the mode of whose appointment is certain, would be good; so would a contract to sell at a "fair price," because it is possible to ascertain either.

It is a general rule that a man can do, through an agent, any act which he may lawfully do himself. Therefore, a man can enter into an agreement for the purchase or sale of land through an agent. It has been said that such agreements must be in writing; and that is equally true whether signed by a principal, or an agent. But,

it is not necessary that the agent should be acting under a written authority. His authority may be verbal, or may be implied from the conduct of the principal in ratifying his acts. This ratification need not be by any express act; it is enough if the principal take the benefit of the contract, or even if, with a full knowledge of it, he passively acquiesce in it for a length of time. The agents of corporations can only be appointed under the corporate seal, and a mere verbal appointment by the governing body is insufficient. The authority of an agent may be revoked at any time before he has executed it, and the revocation may be verbal. The author has known of a case in which one of the deeds in a chain of title was executed under a Power of Attorney, after the death of the person who gave the power; and as death, until very recently, operated as a complete revocation of the authority, the persons claiming through that deed lost their land.

When an agent contracts in his own name, without disclosing the person for whom he is acting, the principal upon being discovered, is bound to perform the contract;

but in case of his failure to do so, the agent may be sued personally for damages.

The authority to an agent to sell does not include a power to receive the purchase money, which, therefore, should never be paid to an agent without express authority from the seller. If a purchaser is directed to pay the purchase money to an agent, on the completion of the purchase, he cannot safely pay any part of it to him before the completion.

The part performance of a verbal agreement relating to land, by one of the parties to it, may, in some cases, be of such a nature as to render it a fraud in the other to refuse to perform his part. The exception, created by this part performance, to the rule, that all contracts relating to land must be in writing, is one involving many subtle points, and fine distinctions, and cannot be explained in the limited space of these pages. It is sufficient to inform the reader that such an exception exists, and, at the same time, to advise him never to rely upon it, if he can secure a proper written agreement.

CHAPTER II.

MODE OF ENFORCING AGREEMENTS.

REMEDY exists of giving damages in case of non-performance—not always satisfactory remedy—for many reasons—bill in Chancery will compel performance of agreement itself—may be enforced against representative of deceased contractor—assignee of agreement may enforce performance of it—or may even mortgage it—how right to assign prevented—purchaser with notice of former agreement may be compelled to perform it—reason for this rule—importance of notice—may be by registration—other modes of giving notice—*lis pendens*—effect—contract cannot be enforced in equity after damages at law.

AFTER a binding agreement has been entered into, the next question is,—how can it be enforced in case of a refusal of one of the parties to perform it? The only remedy that can be obtained by an action at law for the non-performance of a contract, is the recovery of damages; that is to say, the payment of a sum of money by the party who has broken the contract, to the party injured thereby. This would no doubt be a very fair compensation, if the exact loss, sustained by a failure to perform an agreement for the sale of land, could be calculated in dollars and cents. This cannot always be done, and money is not

always an equivalent to the loss. Moreover, a verdict might be recovered against a man for a sufficiently large sum, but there might be great difficulty in collecting the amount, and the property, which was the subject of the contract, might in the meantime have passed into other hands. It is thus evident that in many instances there must be a failure of justice in suits at law. The Court of Chancery steps in and provides a remedy for such cases. Instead of bringing an action at law to recover damages for a failure to carry out a binding contract respecting land, the party injured may file his bill in the Court of Chancery, and there compel the defendant to fulfil his agreement, or, as it is termed, "specifically to perform" it.

If the person who agrees to sell land die before completion, the purchaser may enforce the contract against his representatives. If in such case, on the other hand, the intending purchaser refuse to complete the contract, and the executors of the seller will not take measures to compel performance, it may even be enforced against him by the creditors of the de-

ceased, as they are interested in obtaining the purchase money.

Where the purchaser dies before completion, the contract may be enforced either by, or against his heirs, or devisees—that is, those who take his land under a will.

It is a general rule that the right to the benefit of an agreement respecting land may be assigned, and the assignee or person taking the assignment, can enforce specific performance of it. A person who agrees to sell a certain property to a purchaser, may even mortgage his interest under this agreement, and this mortgage may be assigned, and the assignee can maintain a bill against the purchaser for the performance of the original agreement. This privilege of assigning agreements may, of course, be prevented by any express stipulation to the contrary contained in the agreement itself.

Where a contract has been entered into for the sale of property, and that property is afterwards assigned or sold, and the assignee has notice of the original contract, he may be compelled in equity to perform it. The reason of this rule is, that when a pur-

chaser has notice of a prior sale or agreement for sale to another, it is a fraud on his part to attempt to cut out the other, and to refuse to carry out the contract, which he well knew to be in existence. A purchaser with notice of this kind can stand in no better position than the person from whom he bought.

It will be evident from what has just been said, that it is most important to give notice to all persons, who would be likely to buy land that is under an agreement for sale. When there is time and opportunity to draw up an agreement that may be registered, and to have a memorial of it executed, it is wise to place it on record in the registry office for the county where the land lies. But very few agreements can be registered, as they are often not witnessed, and are sometimes only contained in a letter. In cases of that nature, where it is of importance that the agreement should be carried out, and there is any reason to suspect the party who signs the contract of an intention to act unfairly and sell to another, it is prudent to file a bill for specific performance of the agreement,

and register a certificate, (called a *lis pendens*,) against the lot. Complete notice is thus given to any one dealing with the land, after the registration of the *lis pendens*, and it can only be sold subject to the rights of the plaintiff in the suit.

When a man has once proceeded in an action at law, and recovered damages for a breach of an agreement, he cannot afterwards sue in equity for its specific performance.

CHAPTER III.

GROUNDS OF REFUSAL TO FULFIL AGREEMENTS.

Some men always seeking to escape from liability—any agreement may be resisted that is uncertain—fraud in a contract always a defence—fairness not to be judged by subsequent events—but all surrounding circumstances to be looked at—intoxication good defence—whether voluntary or not—person under 21 cannot be bound by contract—but may take benefit of it—or may ratify it—illegal contract cannot be enforced—example—misrepresentation good defence—it is necessary that reliance must be placed upon it—it must be made at time of bargain—Lord Brougham's view of misrepresentation—untrue statements may not be material—in case of mines or oil wells—what falsehoods are allowable (?)—puffing—examples—purchaser's duty upon discovering misrepresentation—example—misrepresentation may not affect assignee—suppression of a material fact sufficient—seller bound to make known all material facts lessening value—purchaser not bound to communicate facts increasing value—mistake is another ground of defence—must be a mistake of fact—not law—bad title cannot be forced on a purchaser—unreasonable lapse of time a defence—time often not essential in equity—in mining and oil transactions it is—notice may be given limiting time—example.

If every man in the world were strictly honest, and all memories were perfect, there would be no necessity of committing to writing what is agreed upon, and no courts of justice would be required to enforce the fulfilment of contracts. There are always men who are willing to enter into agreements and speculations by which

others can be bound, and who endeavour to escape from liability themselves, if the result of the enterprise happen to be unprofitable. It is now proposed to expose some of the points of which advantage may be taken, for the purpose of shirking liability upon agreements for the sale of land.

It will be quite possible to oppose the enforcement of any agreement that is *uncertain* in its nature. It is perhaps impossible to lay down any general rule as to what is sufficient certainty in a contract; but it must be a reasonable certainty having regard to the subject of the contract, the circumstances under which, and the purposes for which it was entered into.

Fraud in a contract may always be set up as a defence against it. But, where there is no gross fraud, there may be an absence of fairness sufficient to be a defence. The fairness of a contract must be judged of at the time it was entered into, and not by subsequent events. People often enter into agreements with their eyes open, and fully aware of risks in connection

with the result; and although events may afterwards transpire contrary to the expectation of one of the parties, and working a hardship upon that party, they can afford no reasonable excuse for non-performance of a contract originally fair. In deciding upon the fairness of a contract, all the surrounding circumstances will be looked at, such as the weakness of intellect in a party, his age, distressed condition or want of advice, or gross inadequacy in the price.

When a man is intoxicated he cannot enter into a binding agreement, for he has not an agreeing mind; and, it makes no difference whether he became so of his own will, or by the stratagem of others; although it was formerly supposed that if a man made himself drunk, he could not set it up as a ground for refusal to perform a contract entered into during that state. The drunkenness must be so complete that the person does not know what he is doing.

An infant—that is, a person, male or female, under the age of twenty-one,—can make no binding contract whatever, although he may take advantage of it, if it is for his own benefit. The contract, how-

ever, may be ratified, and rendered binding by the adoption of it by the infant after he has attained his majority.

No contract for an illegal consideration, or purpose can be enforced. For example, an agreement made with a lawyer to share with him a lot of land, instead of paying him his costs, in case he can recover possession of it, is void, as being against the law.

A material misrepresentation as to the subject of a contract, made by one of the parties to the other of them, is a ground of defence to a suit upon an agreement, or may be sufficient reason for setting the agreement aside altogether. The misrepresentation may consist of an untrue statement, or the conduct of one party may be so shaped as to have the same effect. If a man make a representation with reference to the subject of an agreement which is, in fact, false, although he did not know at the time whether it were true or false, and reliance be placed by the other party upon that statement, it would amount to such a misrepresentation as would be a defence to a suit to enforce the performance of the agreement. It is considered that a man

ought to make himself aware of the truth of any matter which he represents to be true, in order to induce another to make a bargain. It is necessary that this kind of misrepresentation should relate to the contract in question, and be made with a view to induce the other party to enter into it; and it must, except under very special circumstances, be made at the time of, or during the treaty leading to the bargain.

Another essential ingredient in misrepresentation to render it a defence is, that it was in reliance upon the statements in question that the party to whom they were made entered into the contract. The law regarding this point is so concisely laid down in the words of Lord Brougham in a well known case, that it is deemed advisable to quote them. He said:—"Now, my lords, what inference do I draw from these cases? It is this, that general fraudulent conduct signifies nothing; that general dishonesty of purpose signifies nothing; that attempts to overreach go for nothing, unless all this dishonesty of purpose, all this fraud, all this intention and design can be connected with the particular transaction, and not only

connected with the particular transaction, but must be made to be the very ground upon which this transaction took place, and must have given rise to this contract."

From this, it follows that although a person selling property makes all sorts of untrue statements regarding it, yet, if the purchaser buys with a full knowledge of its actual state, he can get no relief.

It has been decided in the case of a sale of a mine (and no doubt the same decision would apply to the sale of an oil well), that a general description of its prospects, and chances, and arguments in favour of its success, do not amount to this misrepresentation; although a wilfully false representation as to past yield might be sufficient.

There are falsehoods which, though contrary to good morals, may be asserted with impunity by a person selling property. He may falsely praise, or as it is called, puff it. It has been decided that no relief can be had against a seller for having falsely affirmed that a person had offered a particular sum for his estate, although the buyer was thereby induced to purchase it, and was deceived in the value.

It is also allowable for a man to affirm that his land is of any value he may choose to name, for it is mere folly on the part of a purchaser to believe an assertion of that kind. If a purchaser chooses to judge for himself, and does not avail himself of all the knowledge and means of knowledge open to him, he will not afterwards be allowed to say that he was deceived by the representations of the seller.

It is the duty of a purchaser, as soon as he becomes aware of a misrepresentation of which he desires to take advantage, to cease dealing with the property as if he still intended to hold it under the contract. For example, where a man leased a mine, and after knowledge of misrepresentations with regard to it, continned to work it, he was held to have abandoned the right to take advantage of that objection. The same views would, no doubt, be held in regard to a lease of an oil well.

It will not prevent the effect of a positive misrepresentation, if the party making it recommends the other to consult his friends and professional advisers on the subject.

As misrepresentation is only operative as a defence where it has been relied on, it follows that when an original agreement, in which it existed between the parties, has been assigned to another, upon whom no fraud has been practised, and who is not affected by the original misrepresentation, the contract might be enforced against the latter, for he never had an opportunity of placing, and did not place, any reliance upon the original false misrepresentation.

As a contract may be avoided on the ground of misrepresentation, or *suggestion* of what is false regarding a material part of it, so also it may be avoided on the ground of the *suppression* of a material fact, which it is the legal duty of one party to communicate to the other. The seller of land is bound to make known to a purchaser any material circumstances that are not apparent, which lessens the value of the property, but the purchaser is not under a corresponding obligation to communicate any circumstances which may enhance its value. For instance, a person who is well aware of the existence of a mine on a lot, or of its being oil territory, may make his agreement with

the owner for the purchase of it, without communicating his knowledge of its value.

Another ground for opposing the enforcement of an agreement is where there has been a *mistake* of any material fact. A mere mistake of law, or the legal effect of certain acts, is no ground; for it is a well known maxim that ignorance of the law is never an excuse, and that all are presumed to know the law.

No seller can compel a purchaser to take a bad title, or one that is not free from reasonable doubt. If there be any reasonable chance that some third person may raise a question against the owner of the property after the completion of the purchase, the contract will not be enforced.

The expiration of time after a contract has been entered into, before application is made to enforce its performance, may be a ground of defence to that application. Where a certain time is specified in a contract, within which acts are to be done, in courts of law it is held that it is essential these acts should be performed within the time limited. The Court of Chancery regards the question of time differently, and considers that unless the contrary ap-

pears, a limited time is not binding, but that agreements may in general be enforced even after the time for their performance has been suffered to pass. There are several exceptions to this. When it is expressly stated that time is of the essence of the agreement, even a court of equity will hold the parties to that. Where from the very nature of the subject of an agreement time is of importance, it will be so held in equity.

It has been said that the nature of all mining transactions is such as to render time essential, for no science, foresight, or examination can afford a sure guarantee against sudden losses, disappointments and reverses; and a person claiming an interest in such an undertaking ought therefore to show himself in good time willing to partake in the possible loss as well as profit. As I have before indicated, there is a very close analogy between the nature of mines and the nature and uncertainty of oil wells; so that it will not be wise or safe to fail in fulfilling any conditions of an agreement, relating to the working or sale of oil wells, within the limited time. In any description of agree-

ment, no unnecessary and unreasonable delay in seeking to take advantage of it will be permitted.

Although the time, within which acts are to be performed, be not limited in the original agreement, one party may give notice to the other to complete it within a reasonable time, and this will be binding when the nature of the contract renders expedition important. Thus, Smith agreed to grant Jones a mining lease, and for that purpose undertook to buy a piece of land and to procure an assignment of a lease, and do other acts requiring time. Nine weeks elapsed from the date of the contract without any communication from Smith to Jones, to show when the contract was likely to be completed, and Jones then gave Smith notice to complete within one calendar month, or else he would put an end to the contract. It was in this case decided, that from the nature of the subject of the contract, expedition was necessary, and that a month's notice was reasonable. A similar length of notice would, no doubt, be sufficient to cancel an agreement for the lease of an oil well, unless it were carried out within the month.

CHAPTER IV.

OF TITLE TO LAND IN UPPER CANADA.

PURCHASER may require good title to be shown—land in this differs from goods or chattels—evidence of title generally documentary—mostly deeds and wills—search in registry office necessary—Crown deeds—search in Sheriff's office, in County Treasurer's office, and in Queen's Bench office—titles should be marketable—requisites of marketable title—personal covenants for title—usual covenants—statute deeds—full covenant deeds—seldom given—purchaser entitled to all deeds—or covenant for production—mortgagee has right to title deeds—purchaser giving mortgage back not entitled to deeds—Dower—two ways of barring it—heir-at-law has a good title—how real estate descends—illegitimate children cannot inherit—title by length of possession—time within which land can be recovered—exception in favour of infants, &c—foreclosure of mortgages—often defective—act for quieting titles to land—its object—effect of certificate for title—particular facts may be inquired into, as marriage, heirships, &c—titles can only be understood by legal men.

No purchaser can be compelled to take a landed property to which a good title cannot be shown. Land in this respect differs very much from all descriptions of chattels, which generally may be legally transferred by mere delivery, and whicht he purchaser can be compelled to take without any proof that they belong to the seller. The purchaser of land has the right to require proof that he has every prospect of

retaining it without interruption. The seller must either show by clear evidence that he, or the persons through whom the land came into his hands, had it in possession or ownership for sixty years back. This evidence is generally documentary, from the fact that all agreements respecting land, must be in writing. It consists principally of deeds and wills, under which former owners claimed and held. As all instruments by which land, in Upper Canada may be disposed of or affected, are to be put on record in the registry office of the county where the lands lie, it is always necessary to make a careful search in these offices. In this country many persons take their title directly from the Crown, in whom all the land was originally vested. This is the safest and most desirable description of title; and, of course, it is not necessary to investigate further back than the Crown deed, although that may have been issued within sixty years. Searches have also to be made in the office of the Sheriff of the county, for executions against the lands of the seller, or the person through whom his title is derived; in the County

Treasurer's office, to ascertain whether any taxes are in arrear; and in the Queen's Bench office in Toronto, for debts due by the seller on bonds to the Crown, which bind all lands owned by him. In cases where the Crown deed has not been issued, it will be found much safer to employ an agent for the purpose of obtaining it from the Crown Lands' Department, than to trust to have it done by a correspondence.

In most titles there are some complications, or doubtful points, that can only be discovered and cleared up by a professional man, who has experience, skill and patience. There are many titles that may be perfectly *safe*, and might never be disturbed by an adverse claimant; yet there may be missing links in the chain that will prevent the title from being marketable. In making a purchase a man must not only consider—is this a title likely to be disturbed in my hands? but he must ask himself, especially if it be oil land, is this a title that would be accepted as free from doubt by the solicitor acting for a purchaser from me, or for a person to whom I might apply for a loan

upon mortgage? A man cannot be too particular in having a good title. It does not do to be satisfied with covenants from the seller that the title is indefeasible. He may be perfectly solvent and well able to pay in damages any defect in the title, but he may not always continue so, and it may be very difficult to satisfy those desirous of buying, that any man's mere covenants for title are sufficient. Moreover, the amount of damages recoverable upon a covenant for title is limited to the purchase money paid and interest; although the value of the land may have risen, or improvements may have been made upon it.

The covenants usually given as to title are five in number, viz:—that the seller is seized in fee simple; that he has good right to convey; that the lands shall be quietly enjoyed; that they are free from incumbrances; and that the seller will execute any additional conveyances to the purchaser that may be necessary and reasonable. Those who buy and sell land will often hear of statute deeds, and full covenant deeds. As a rule the

former contain only covenants that apply to defects or incumbrances caused by the act of the seller; whereas full covenants are absolute, and relate to acts of any prior owner, and cover all existing defects in the title.

A seller will seldom give full covenants; and, indeed, no purchaser should be satisfied with a title in which he has to place reliance upon the personal covenants of any individual. When a man buys and pays for a lot of land, he is entitled to have from the seller all the title deeds relating exclusively to the land sold; and in case any of the deeds relate to other lands, then the purchaser is entitled to have a covenant for their production, and should always have copies of them. When money is lent on mortgage, the mortgagee, or person to whom the mortgage is made, has a right to hold all the title deeds, until the mortgage is paid off. It thus often happens that a man buys a piece of land, pays a portion of the purchase money down, gives a mortgage for the balance, and is very much surprised when he is told that he

cannot even get his own deed, much less any of the other title deeds, until the mortgage is satisfied.

As soon as a deed is made to a man, his wife, if he have one, becomes entitled to dower in the land. Dower is the right of a wife, if she survive her husband, to have one-third part of all the lands he owned in his lifetime, and to enjoy this third for the term of her life. It must be seen how important it is that this incumbrance upon land should be removed before purchasing. There are two ways in which this may be done. A married woman may bar her dower; 1st, by joining with her husband in a deed, in which a release of dower is contained; 2nd, by executing a release of dower without her husband being a party to the instrument containing it. In the latter case something more than the signature of the married woman is required. She must be examined by a Judge, or two magistrates, as to her consent to be barred of her dower; and a certificate that she has been so examined, and given her consent voluntarily, and without fear of coercion on the

part of her husband, must be endorsed upon the deed.

It is quite possible that a seller of land may hold it neither under a deed to himself, nor under a will, but as heir-at-law to the last owner. Of course a man has a perfect right to dispose of all his land by his will; but if he dies without having made any will, or any valid will, the law points out the person or persons who will succeed to his landed property. In case of any person dying since the 1st January, 1852, without will, his real estate will descend, briefly, in the following order:—

1st. To his lineal descendants; all his children, male and female, taking equal shares.

2nd. To his father.

3rd. To his mother.

4th. To brothers and sisters in equal shares.

This merely shows the general course of descent, for the details of the law cannot be explained in a short manual like this. Before the 1st January, 1852, the eldest son took in exclusion of the other children, as males were preferred to females, and

among males the eldest only inherited. Illegitimate children cannot inherit from their parents; neither can they have any heir except their own offspring; therefore, when a bastard dies unmarried, and without having made a will, his whole property reverts to the Crown for want of an heir.

There is another case in which a seller may have a good title, although he does not hold under a deed, or will, nor as heir-at-law. He may have acquired a title by length of possession. No person can bring an action to recover lands unless within twenty years next after the time at which the right to bring such action first accrued to him, or to some person through whom he claims. But a written acknowledgment of the title of the person entitled, signed by the person in possession, will extend the time of claim to twenty years from such acknowledgment. When the person entitled is an infant, he has ten years after his coming of age, to bring an action; but the whole period must not exceed forty years. A title acquired by length of possession may be perfectly safe, but there are so many circumstances which

may render it bad, and which it is almost impossible to ascertain, that I could never recommend the acceptance of one, unless the possession had been undisturbed for over sixty years.

A mortgagee very often desires to obtain the title to the land comprised in his mortgage when there is money due upon it, and he sometimes forecloses the mortgage in Chancery, and obtains a certificate of the foreclosure, which he may register. This, if it be regularly obtained, is of much the same effect as a deed from the mortgagor. It is hardly safe to depend upon a certificate of foreclosure without having the proceedings in the Court of Chancery in Toronto examined by a skilful solicitor, for the purpose of ascertaining if all the proceedings are regular. There are numbers of cases in which some irregularity may be discovered, which will have the effect of throwing the mortgage open again, and giving the mortgagor an opportunity of redeeming his land upon payment, within a limited time, of the original amount due upon the mortgage, with interest and costs.

There are lands in all parts of Upper

Canada held under titles which cannot be regarded as marketable, and may yet be safe. In order to give certainty to titles of this kind, and to facilitate the proof requisite to establish them, the Act for the quieting of titles to real estate was passed. Under this Act, any owner of an estate in fee simple shall be entitled to have his title judicially investigated, and its validity ascertained and declared. It is the expressed object of the Act to facilitate, as much as possible, the obtaining of indefeasible titles by the owner of estates in land, through the simplest machinery, at the smallest expense, and in the shortest time consistent with reasonable prudence.

The method adopted, is to have a statement of the title laid before a Judge of the Court of Chancery, and to have the statement supported by an affidavit of the owner, and a certificate from his solicitor, to the effect that he has investigated the title and believes his client to be the owner thereof. Then evidence of various kinds is adduced showing the exact state of the title, notices are sometimes given in the papers to all claimants, and when the Judge is

satisfied, he will grant a certificate of title. This certificate may be registered in the County where the land lies, and constitutes conclusive evidence of the title. This opportunity of having all titles investigated, and finally stamped with the approval of the Court of Chancery, if good, is a great boon to the country, and there can be no doubt that very many will always avail themselves of its provisions.

It may often happen that a person only desires to have certain facts in connection with his title established. For instance, he may be quite satisfied with the state of the title to a lot of land up to a certain time, but his own heirship to the last owner may be questioned. Such a case as this is also provided for, and the validity of marriages, the legitimacy of children, and the heirship of individuals, may be judicially investigated and declared. When a man has tried to sell his land, and finds that he cannot make a title that will pass the investigation of a purchaser's solicitor, his only course, unless he desires to occupy the land himself, is to have his title *quieted* through the Court of Chancery.

While the hints given in the last few pages may serve to show the unprofessional reader the absolute necessity of having a good title, and may point out the general nature of the enquiries that must be made for that purpose, they must not delude him into the idea that he has from them learnt enough to take upon himself the investigation of even the simplest title. The law relating to real property can scarcely be mastered in a lifetime, and cannot even be tolerably understood by any but members of the legal profession.

CHAPTER V.

LEASES.

MUCH land held under lease—after mortgage given, lease invalid—tenant may be ejected by owner of mortgage—leases for more than three years must be in writing, and under seal—what leases must be registered—agreements for lease must be in writing—what they must contain—must be signed—easily mistaken for lease—lease for periods in alternative—tenant's interest is only chattel in its nature—does not descend like real estate—tenancy from year to year—six months' notice necessary to determine—example—assignment of lease must be in writing—tenant may grant underlease—landlord's right to distrain— may distrain for six years' arrears.

A very large portion of the land in this country, both in towns and rural districts, is held under lease. It is equally true that a still larger portion is held under mortgage; and when it is the fact that no mortgagor, or person who has given a mortgage, has it in his power to make a valid lease, it must be apparent how uncertain are the rights of very many tenants to the possession of the subject matter of their lease. The mortgagee, if not repaid his money at the appointed time, may at once bring an action of ejectment, and turn the mortgagor and his tenants out of possession.

The Court of Chancery can interfere, it is true, and restore the land to the original owner upon his paying all due upon the mortgage, with interest and costs within a limited time; but the landlord may not be able to pay this, and the tenant is then at the mercy of the mortgagee.

It is a rule that all leases, like other agreements respecting land, must be in writing, with the exception of leases for terms not exceeding three years, in which the rent to be paid is *bona fide*, and amounts to two-thirds the real value of the land. All leases that must be in writing are now required to be under seal as well.

Any lease, made since the first day of January, 1866, for a term exceeding seven years, must be registered, like a deed or mortgage, in the County where the land lies, although the land is in the actual possession of the tenant.

All agreements for leases must be in writing; and that is the rule even if the lease agreed for be for less than three years, and do not require to be in writing. The agreement should contain the names of the parties, the rent to be

paid, the property to be leased, and the number of years for which the lease is to continue. The parties must sign the agreement, either by themselves or their agents, in order to make it mutually binding, and what has been said in former chapters about the effect of agreements to sell or purchase will apply to agreements for a lease. Great care is necessary in drawing an agreement for a lease, to prevent its being capable of being construed into a lease; and when a party has no time to consult his solicitor, he should take care to insert an express declaration that it is intended to be an agreement, and not a lease.

If a person grants, or agrees to grant, a lease for seven, *or* fourteen years in the alternative, it rests entirely with the tenant to determine whether the end of the lease shall be after seven, or after fourteen years.

The interest that a tenant has in land, no matter how long the term may be, is considered a chattel interest, and will at his death be treated as personal estate; and is not subject to the rules of descent given in the last chapter.

When a man becomes a tenant at a yearly rent, without any particular time being mentioned for the tenancy to continue, he is considered to be a tenant from year to year, and cannot leave without giving six months' notice before the end of his year. For example, if A. B. enters upon a premises at a yearly rent on the first January, 1865, and in July of the same year determines to leave, and gives notice of such intention, he is too late to give his six months' notice for the year 1865, and is bound to pay rent till the end of 1866, unless his landlord consents to release him. It is the general impression that six months' notice at any time is sufficient to determine a tenancy from year to year, but the above example shows how wrong such a notion really is.

Every assignment of a lease must be in writing.

Any tenant for a term of years may, unless prevented by some express covenant, make an underlease for any part of his term; and the person to whom he sub-lets becomes his, and not the original landlord's tenant.

A landlord has safe and prompt remedy for the recovery of his rent in the power of distraining upon his tenant's goods, or, indeed, with a few exceptions, upon any goods found upon the leased property. He may distrain for six years' arrears of rent, and may sell the chattels and reimburse himself out of the proceeds of the sale.

The reader is referred for many interesting points connected with the leasing of oil wells and territory, to remarks of the author in Chapter VII.

CHAPTER VI.

MORTGAGES.

MEANING of terms mortgagor and mortgagee—mortgages for part of purchase money—mortgagee's right to title deeds—legal effect of mortgage—indulgent rules of equity—right of mortgagor to redeem—object and result of foreclosure—six months given to redeem—in loans solvency of borrower to be considered—power of sale in mortgages—how to be exercised—leasehold property may be mortgaged—effect of—any rate of interest may be charged—agreement to increase rate in case of default void—same result in another way legal—second mortgage may be given—land may be sold subject to mortgage—mortgagee in possession accountable for rents and profits—second mortgage not desirable security.

When loans are effected upon mortgage, the borrower is called the *mortgagor*, and the lender the *mortgagee*.

In the chapter on Title, I had occasion to remark upon the custom of giving a mortgage back to the seller of land for the balance of the purchase money. I mentioned that the seller has a right to hold the deeds of the land until the amount due upon the mortgage is paid.

A mortgage is in form an absolute deed of the land to the mortgagee, with a proviso or condition, that it shall be void on

payment of the amount lent, with the stipulated interest, on the days when it falls due.

From the time that the mortgage is made the property in the land belongs at law to the mortgagee, subject to be divested upon payment by the mortgagor; and as we have seen in the last chapter, the mortgagor cannot even make an effectual lease of the property. If the strict rules of law were followed out, the land would belong absolutely to the mortgagee the moment the borrower fell behind in his payments. The rules of the Court of Chancery, however, are much more indulgent. Under them the borrower has a right to redeem his land, even after the day fixed in the mortgage for payment, by paying to the lender all principal, interest, and costs that are due. This right is what is called the mortgagor's Equity of Redemption; and it is out of his power by any stipulations in the mortgage, to deprive himself of this right to redeem, on payment within are asonable time.

An enquiry as to what is a reasonable time, and as to the method of ascertaining

it in all cases, is very likely to suggest itself to the reader at this point. In order that the mortgagee may obtain safe possession of his security, he must take proceedings to bar, or *foreclose* the mortgagor's equity of redemption, or right to redeem. This is done by filing in the Court of Chancery a bill of foreclosure against the mortgagor, in which he prays that he may be paid the principal, interest and costs, and that, in default of payment, the equity of redemption may be foreclosed. Whether the mortgagor puts in an answer to the bill or not, the Court will give him six months more to pay what is due, and will order foreclosure only in case of default in payment, at the end of that period.

In regular loans the personal solvency of the borrower should be a primary consideration; and the value of the security offered, while it ought to be ample, should not alone be depended upon. It is true, many speculators lend money upon land, and calculate that the difficulties of the borrowers will render payments irregular, and finally throw the land into their rapacious hands.

There is usually inserted a power of sale in mortgages, under which the mortgagee may, after default, absolutely sell the property, and pay himself his principal, interest and costs out of the proceeds. If the property should realize more than what the mortgagee is entitled to, he is bound to pay the excess over to the mortgagor.

Leasehold estates, as described in the last chapter, may be mortgaged; but the mortgagee of the tenant is liable to the landlord, during the continuance of the lease, for the payment of the rent.

Any amount of interest may be legally received upon a mortgage, when it is clearly stipulated for by a covenant on the part of the mortgagor. Yet, if there is an agreement that a given rate of interest shall be paid, and that, in case of default, it is to be increased, the Court of Chancery will hold it void as a hardship upon the borrower. The same result, in effect, may be obtained by an agreement that the higher rate shall be paid, but on punctual payment the lower rate of interest will be accepted.

After one mortgage has been given, the mortgagor may give another, or any num-

ber, upon the same piece of land, but only subject to the first. In other words, a man who has given a mortgage on his land, and has only the equity of redemption in it, may either sell or mortgage this interest, but he still remains liable to be sued upon his covenants to pay the amount of the mortgage.

When the mortgagee has possession, he is acountable for all the rents and profits of the land, which he is bound to give credit for, and to apply in reducing the mortgage debt.

A person, who advances money upon a second mortgage, is always at the mercy of the holder of the first mortgage, and must always be prepared to pay it off, in order to save his own security. For this reason, it is never advisable to take a second mortgage, when there is any choice.

CHAPTER VII.

POINTS RELATING TO OIL AND MINERAL LANDS.

RIGHT of way to mine or well essential—and implied—writing necessary for agreement respecting wells, except leases for less than three years—machinery for pumping, &c., distinct from land—trade fixtures—when tenant must remove them—power to abandon should be in lease of oil well—covenant to work well as far as it ought to be worked—payment of rent by share of oil—tenant cannot be usually compelled to work well at a loss—exception—example of twenty-one years' lease—trees may be cut by tenant that interfere with well—example of agreement to pay proportion of money produced by sale of oil—title of landlord should always be ascertained, especially when tenant will expend money on land—tenant liable to be ejected by mortgagee of landlord—dishonest for landlord to conceal defect in his title—partnerships for oil working—formation of joint stock companies—special act often necessary.

It is essential to the owner of any mine or oil well, that he should have a right of way to his property, for the purpose of working it. The proprietor of a farm, or whole lot, may happen to sell a small portion, consisting of sufficient land to sink and work an oil well upon, without giving a right of way over the rest of his property in the deed. This right will, however, be implied against the seller, and the purchaser of the mine, or oil well, will be

entitled to as large a right of way over the remainder of the seller's property, as the necessities of the operations require.

There is no doubt that, like mines and minerals, oil wells, and oil in the wells, partake of the nature of land, and are such an interest in land as can only be sold or assigned by a written agreement. Leases of this description of property may be made by words for any period not exceeding three years; and the same general remarks that were made as to agreements for the purchase or sale of land in former chapters, will apply to sales of oil wells alone.

The moveable property, implements and tools, employed for pumping a well, will not be transferred by the simple transfer of the property in the wells, or the right to work them. These form a distinct personal property, and require some special agreement to be made in regard to them. When any of the machinery is fastened or bound to the ground, in such a manner that a portion of the soil must be displaced in removing it, then it will be considered to be a fixture, and will pass with the land on any sale or lease. For the encouragement of leasing

property to tenants who will improve it, and enter upon some manufacturing enterprise, there is an exception to this rule, and it is held that machinery erected for the purpose of trade or manufacture by a tenant, may be removed by him before his lease expires. If the tenant does not remove these "trade fixtures," as they are called, before his term of leasing has expired, and if possession is given to the landlord, it will be considered that the tenant has relinquished his claim to them.

In any lease of an oil well the tenant should, for his own protection, have a clause inserted, giving him power to abandon the well and put an end to the lease, upon giving a certain notice.

A covenant by a tenant to work mines as far as they ought to be worked, has been decided to have been complied with by the tenant's having made sufficient trials to show that there were no mines at all which ought to be worked. It would be the same in the case of a lease of an oil well.

The person who gives a lease of an oil well is very often paid by a share of the oil pro-

duced from it, and it is of course his interest that it should be thoroughly worked; but he cannot compel his tenant to work the well at a loss to himself. However, if a tenant agreed to work the well, unless prevented by unavoidable accident, it will be no excuse or ground for his refusal to go on with the work, because the expense would be greater than the value of the oil produced.

A man took a lease of a coal mine for twenty-one years at a certain rent, and paying an additional sum in proportion to the coal produced. He had a clause in the lease that he might abandon the mine, if it became completely exhausted. After he had worked it for some time, he found that it would not pay, but he was not allowed to abandon and refuse to pay his rent, as the mine was not completely exhausted.

If a lease be made of certain land and oil wells, and there is a covenant by the tenant that he will not commit waste by cutting trees, he will still be justified in cutting down trees, which interfere with the proper working of his wells.

A man takes a lease of an oil well, and agrees to pay, as rent, one-third of the money that shall be made, received, or produced from the sale of oil, and to keep true account of all the oil produced. He sells $3,000 worth of oil, but does not receive more than $1,500 of the amount, and then offers to pay $500 as the landlord's share. He would be wrong, and could be compelled to pay $1,000, because he should have received the money for all the oil actually sold.

Care should always be exercised before a property is taken under a lease, to ascertain that the person, who undertakes to give the lease, has a good title to the land. When in every ordinary case this precaution should be observed, it is evident that where the object for which the land is leased is one which requires the expenditure of a large amount of money upon the property, extreme care is necessary. It may happen, that the tenant who has leased an acre or two, and has spent thousands of dollars in boring for oil upon it, may be deprived of the result of his toil, anxiety and expenditure, just when his fortune

seems to be made, by a defect in the title of his landlord. It very often happens, as I said in a former chapter, that a tenant enters upon a farm under a lease from a landlord, who has given a mortgage upon the land. If the landlord pays up all the instalments upon the mortgage as they become due, the tenant is safe enough. Default may, however, be made in these payments, and the holder of the mortgage is perfectly at liberty to disregard the lease, and turn the tenant out of possession, if he choose to do so. In the case of a lease for the purpose of boring for oil, it must be clearly seen how important it is that the tenant should be properly satisfied of his landlord's title.

While it is imprudent, and inexcusable for a tenant not to investigate the title of his landlord, it is always unfair, and often downright dishonest, for the latter to conceal from the former any serious defects in the title.

Extensive operations in boring for oil are very generally carried on by several persons in partnership. It is more frequently the case that a company is formed for the

purpose, with shares, and a large number of members. The difficulty of forming such companies has been very much lessened by the Act of the last session of 1865, which extends the operation of the general act for the incorporation of joint stock manufacturing, &c., companies, to companies for the boring and working of petroleum wells.

When it is desired to form a company for the purpose of speculating in lands or working wells, there are a great many powers and provisions that are necessary for the success of such an undertaking, which can only be obtained by a special, and carefully drawn act of incorporation.

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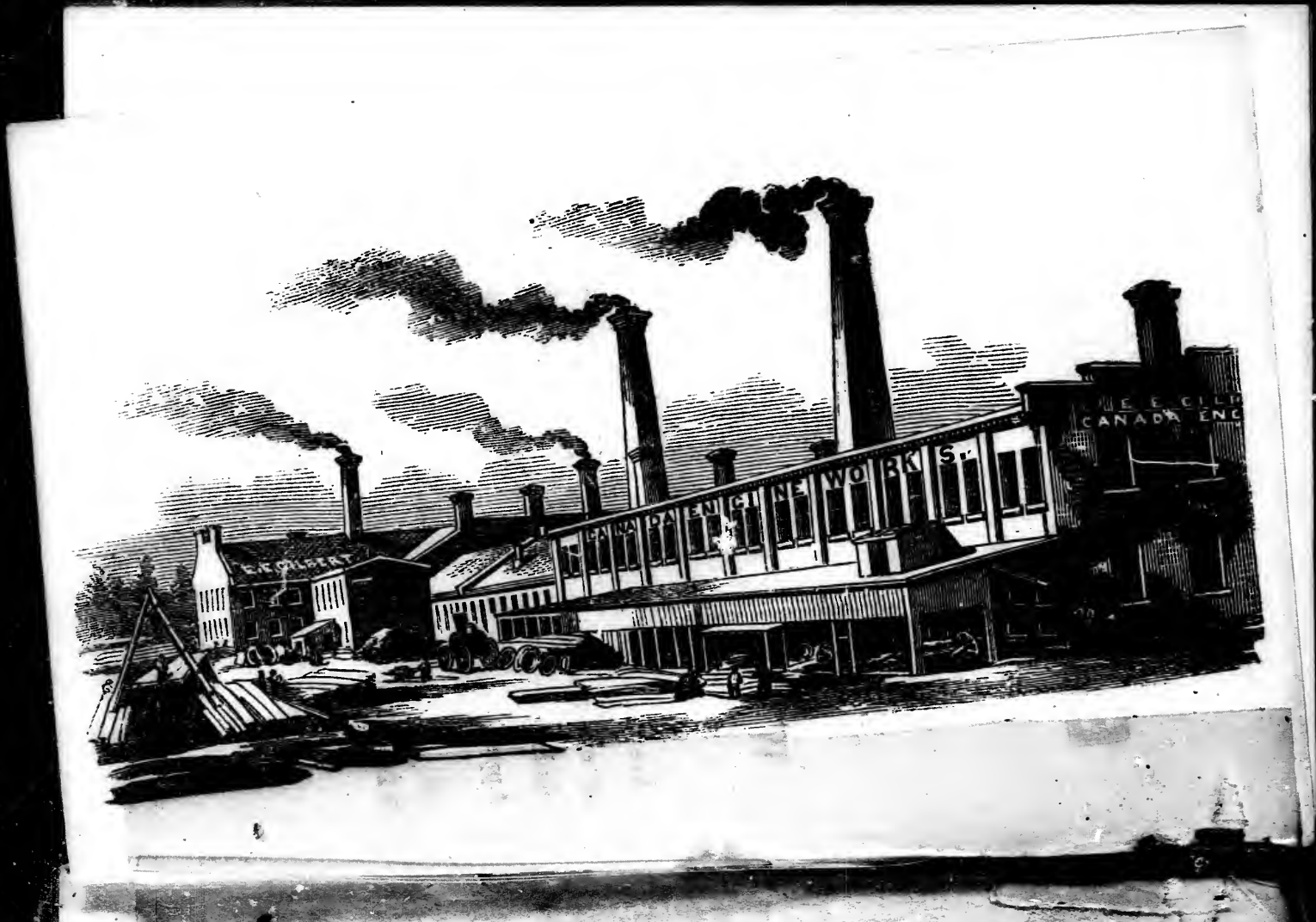
TORONTO,

South Side, near Yonge Street.


CANADA ENGINE WORKS

E. E. G[illegible]

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Portable and Stationary Engines & Boilers.

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Tools, and every description of Oil Sinkers' supplies.

CONSTANTLY ON HAND.

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E[illegible]OS., Ag[illegible]

J. HIGGINS,

[illegible]ELL.

[illegible] SPRI[illegible]