testator have intended that they should go to him when the estate ceases, as if he was dead? The authorities seem to me to warrant this conclusion even in the absence of any special indications contained in the instrument. I refer more particularly to Mr. Fearne's opinion in *Doe* v. *Heneage*, and to the case of *Stanley* v. *Stanley*, but in **[517]** this will there are, as it seems to me, special indications of intention, which even in the absence of those authorities might be sufficient to decide the point. In this will powers are given to the trustees of the 1000 years' term to enter on the estates, and during the lives of Edmund and Marianne Turton to apply the rents, amongst other purposes, for the maintenance of their second son; and further, during the minority of any tenant for life or in tail, to apply the rents for his or her maintenance; and the like provision contained in the codicil. This testator, therefore, has dealt with the rents as applicable for the benefit of a remainder-man even during the lives of Edmund and Marianne Turton, a provision which seems to bring the case very much within the range of *Bullock* v. *Stones* (2 Ves. sen. 521). Looking to this circumstance, and to the authorities to which I have referred, and to which I may add the cases of *Sidney* v. *Shelley*, referred to in the argument, and *Genery* v. *Fitzgerald* (Jac. 468), which do not seem to me to be without their bearing upon the point, my opinion is, that the beneficial interest in these rents does not, in this case, result to the heir, but follows the limitations of the estate. Then does it follow them throughout, or only as they stood at the time when the estate of the trustees came into possession. Upon this point I feel no doubt. The interest in question is the creature of a Court of Equity, and a Court of Equity will of course mould it according to the limitations of the will. In the result, therefore, I have come to the same conclusion as my learned brother. I think Mrs. Lambarde is entitled to the rents which accrued before the birth of Robert Bell Turton, but that Robert Bell Turton is entitled to the rents which have since accrued, and which shall accrue so long as he holds the estate.

[518] SLIM *v.* CROUCHER. Before the Lord Chancellor Lord Campbell and the Lords Justices. *Feb.* 25, *March* 3, 10, 1860.

[S. C. 2 Giff. 37; 29 L. J. Ch. 273; 2 L. T. 103; 6 Jur. (N. S.), 437; 8 W. R. 347. See *Ramshire* v. *Boulton*, 1869, L. R. 8 Eq. 300; *Hill* v. *Lane*, 1870, L. R. 11 Eq. 221. Distinguished, *Peek* v. *Gurney*, 1873, L. R. 6 H. L. 390. See *Eaglesfield* v. *Marquis of Londonderry*, 1876, 4 Ch. D. 706; *Schroeder* v. *Mendl*, 1877, 37 L. T. 454; *Brownlie* v. *Campbell*, 1880, 5 App. Cas. 935; *Mathias* v. *Yetts*, 1882, 46 L. T. 504. Held inconsistent with, and overruled by, *Derry* v. *Peek*, 1889, 14 App. Cas. 337, *Low* v. *Bouverie* [1891], 3 Ch. 82.]

On the occasion of a loan upon the security of a lease, which the borrower represented himself as entitled to have granted to him for 98 years and a half, the lender required a written intimation from the alleged lessor of his intention to grant the lease. The lessor being apprised of the requisition and of its object, signed the required intimation. The loan was made upon the faith of it, and afterwards the lessor granted a lease which was then mortgaged by the borrower to the lender. It turned out that the lessor had some time before demised the same premises for the same term to the borrower, by whom it had since been assigned for value. Held, that the Court had jurisdiction to direct repayment by the lessor to the lender of the sum which he had advanced with interest, and that it was a proper case for the exercise of such jurisdiction, although the lessor was not shewn to have been guilty of fraud, or of having done more than forgotten the previous lease when he granted the second.

This was an appeal from the decree made by Vice-Chancellor Stuart, directing the Appellant John Thomas Croucher, within one month after service of the decree, to pay to the Plaintiff James Slim, the sum of £300, and interest thereon at the rate of £5 per cent. per annum from the 2d of May 1857 to the day of payment and to pay the Plaintiff his costs of suit when taxed.

In December 1856 a builder named Thomas Hudson, having finished building four houses on a piece of land in Croucher Place, Bromley, in Middlesex, applied to Messrs.

Norton & Co., the Plaintiff's solicitors, and requested to know if any client of theirs would lend Mr. Hudson money on a mortgage of the houses, informing them at the same time that Mr. John Thomas Croucher, to whom the land belonged on which the houses were built, had agreed to grant Mr. Hudson a lease of it for 98 years and a half, from Christmas 1853, at a peppercorn rent.

Messrs. Norton & Co. having read the agreement for a lease which was shewn to them by Mr. Hudson, required an assurance from Mr. Croucher that he would grant a lease according to the agreement.

[519] Under these circumstances Mr. Hudson applied to Mr. Croucher and informed him of the agreement, and Mr. Croucher thereupon wrote and sent by Mr. Hudson the following letter to Mr. Norton :—

"Post Office, Shadwell, December 7, 1856.—Sir,—I am quite agreeable to grant a peppercorn lease of ground on which four houses are erected, and situate at Bromley to Mr. Hudson.—I am, Sir, yours, &c., &c., J. T. CROUCHER.

"—— Norton, Esq."

The Plaintiff then satisfied himself of the value of the proposed security, and Messrs. Norton & Co. proceeded to prepare a lease in the terms agreed upon.

On the 30th of January 1857 Messrs. Norton & Co. wrote to J. T. Croucher and to Hudson, informing them that the draft of the lease was prepared, and requesting them to call and examine it. Croucher and Hudson accordingly called and examined the draft lease at the office of Messrs. Norton & Co., and signed at the foot thereof a memorandum of approval, as follows :—

"We have approved and do approve of this draft lease dated the 14th January 1857.

"J. T. CROUCHER.

"THOMAS HUDSON."

A lease was afterwards engrossed from this draft, and with a counterpart was duly executed by both Croucher and Hudson at the office of Messrs. Norton & Co., who retained the lease on behalf of the Plaintiff as a security, and handed over the counterpart to Mr. Croucher.

Between the 19th of January 1857 and the 2d of May 1857 the Plaintiff advanced to Mr. Hudson **[520]** various sums of money, amounting in the whole to £300, on the faith of the security; and on the 2d of May 1857 Mr. Hudson delivered to the Plaintiff a deed purporting to be a mortgage by way of underlease of the houses comprised in the said lease to secure £300 and interest.

In August 1857 Mr. Hudson, having become embarrassed, went abroad, where he had ever since remained.

Shortly afterwards, the Plaintiff discovered that in August 1856 Mr. Croucher had granted to Hudson a lease for ninety-nine years, or some long term of years, which lease included all the premises comprised in the Plaintiff's security, and was still subsisting. This lease had been duly registered at the Middlesex Registry Office, and afterwards assigned by Mr. Hudson for value to a stranger, so that at the date of the Plaintiff's mortgage Mr. Croucher had no right to grant to Hudson the lease which he had mortgaged to the Plaintiff, and, in fact, the latter lease was wholly worthless.

The bill was filed against Croucher and Hudson, and stated to the above effect and that under the circumstances aforesaid the Plaintiff had been induced to lend the £300 by fraud, misrepresentation and concealment on the part of both the Defendants; and that Croucher, in manner aforesaid, had assisted Hudson in misleading and deceiving the Plaintiff, and in obtaining by means of such deception the Plaintiff's money; and it prayed that Croucher might be ordered to repay to the Plaintiff the £300 with interest, from the respective times of advancing the sums composing the same, and all costs, charges and expenses incurred by the Plaintiff in consequence of the said fraud, misrepresentation and **[521]** concealment, the Plaintiff offering to deliver up the said lease, and to execute a release as the Court should direct, and that Croucher might pay to the Plaintiff his costs of the suit.

The Appellant Croucher denied the truth of the allegations of fraud, misrepresenta-

tion and concealment, and stated by way of defence that at the time of granting the lease comprised in the Plaintiff's security, he had forgotten the grant by him to Hudson of the prior lease of the same premises, and had in consequence inadvertently granted the second lease.

On the 24th of January 1860 the Vice-Chancellor, on a motion for decree, made the order under appeal.

The case is reported in the 2d Volume of Mr. Giffard's Reports (page 37).

Mr. Malins and Mr. G. L. Russell, for the Plaintiff. This case is governed by *Burrowes* v. *Lock* (10 Ves. 470). Equity will order the Defendant Croucher to indemnify the Plaintiff for the loss occasioned to him by having taken the security of an invalid lease, relying upon the representation of the Defendant that he had the power to grant the lease; *Evans* v. *Bicknell* (6 Ves. 174); *Rawlins* v. *Wickham* (3 De G. & J. 304).

Mr. W. D. Lewis and Mr. Surrage, for the Appellant the Defendant Croucher. The Defendant Croucher, in the transaction in question, did not stand in any fiduciary relation towards the Plaintiff, and the representation complained of was made without fraud. The only relief, therefore, the Plaintiff **[522]** could be entitled to in this Court would be a decree for specific performance. But a decree for specific performance is out of the question in the circumstances of the case, and it being impossible to replace the parties in the position in which they stood before the misrepresentation was made, this Court cannot award compensation for the loss sustained by the Defendant in consequence of the non-performance of the contract into which he was induced to enter relying upon the truth of such representation. His remedy is at law only. The rule of the Court is thus stated by Lord Cottenham in *Sainsbury* v. *Jones* (5 Myl. & Cr. 3):—"I certainly recollect the time at which there was a floating idea in the profession, that this Court might award compensation for the injury sustained by the non-performance of a contract, in the event of the primary relief for a specific performance failing; and I have formerly seen bills praying such relief; but that arises from my having known the profession sufficiently long to recollect the time when the decision of Lord Kenyon, in *Denton* v. *Stewart* (1 Cox, 258) had not been formally overruled; but, at that time, very little weight was attached to and very few instances occurred in which Plaintiffs were advised to ask any such relief; and for a short time, Sir W. Grant's decree in *Greenaway* v. *Adams* (12 Ves. 395), added something to the authority of *Denton* v. *Stewart* (1 Cox, 258), although he threw out strong doubts as to the principle of that case. This, however, lasted but a short time, for, *Greenaway* v. *Adams* (12 Ves. 395) occurring in 1806, Lord Eldon in 1810, in *Todd* v. *Gee* (17 Ves. 273), expressly overruled *Denton* v. *Stewart* (1 Cox, 258), and from that time there has not, I believe, been any doubt upon the subject." The Plaintiff's loss, in the present case, has **[523]** been occasioned, in a great measure, by his own negligence, in not searching the register.

They referred to *Pulsford* v. *Richards* (17 Beav. 87); *Clifford* v. *Brooke* (13 Ves. 131); *Arnot* v. *Biscoe* (1 Ves. sen. 95); *Partridge* v. *Usborne* (5 Russ. 195); *Blair* v. *Bromley* (5 Hare, 542), *Rawlins* v. *Wickham* (3 De G. & J. 304); *Edwards* v. *M'Leary* (Coop. 308); *Clare Hall* v. *Harding* (6 Hare, 273); *Dann* v. *Spurrier* (7 Ves. 235); *Pearce* v. *Creswick* (2 Hare, 286).

Mr. Malins was not called on to reply.

THE LORD CHANCELLOR. The defence set up in this suit is, that there was a remedy at law, and that that is the only remedy competent to the Plaintiff. Now that there was a remedy at law I think is quite clear. Here was a misrepresentation made by the Defendant of a fact which ought to have been within his knowledge, it was made with the intention of being acted upon, it was acted upon and thereby a loss accrued to the Plaintiff, and there is no doubt in my mind that an action would lie, and that it would be for a jury to assess the damages. I am of opinion, however, that this belongs to a class of cases over which Courts of law and Courts of Equity have a common jurisdiction, and in which the procedure of both jurisdictions is adapted for doing justice. I do not regret that there is such a class of cases, nor should I be sorry to see it extended. But being of opinion that this is a case in which a Court of Equity has jurisdiction **[524]** as well as a Court of law, I think that it is a much fitter case for a Court of Equity than for a Court of law, because a Court of law could only have left it to a jury to assess the damages; whereas here, by the

superior powers of the Court of Equity, justice can be done between the parties in the most minute detail.

There has been a misrepresentation; and if there had been moral fraud in the case, it could hardly have been disputed that a Court of Equity would have had jurisdiction to inquire into it, and to call upon the Defendant to disclose all that he knew, and give relief from the consequences of the fraud. Now, although there may not be moral fraud here, yet I think that the party who has been injured has a right to relief. Mr. Lewis, in a very able argument, has cited a number of cases in which he says that a contrary doctrine has been laid down in this Court, but he has not cited one single case similar to this, where it is held that equity will not give relief.

I think that his authorities may be divided into two classes, one where there was only a general claim to damages, which a Court of Equity at that time could not have properly assessed, and the other class where there was a breach of a promise, not the misrepresentation of a fact. But here there is the misrepresentation of a fact, and there is no difficulty at all in assessing the amount of the loss and in doing justice between the parties. I cannot distinguish this case from the case of *Burrowes* v. *Lock* (10 Ves. 470). There the Defendant is called a trustee, because he was a trustee, but the word is used merely to designate the person who took a part in the transaction.

There was no fiduciary relation between the Plaintiff **[525]** and the trustee who made the misrepresentation. They were strangers to each other just as much as the Plaintiff and the Defendant are in this case, but the trustee stated, and stated innocently, just as much as the Defendant in this case, what was untrue; and it was held that he was liable to make good the loss that had arisen from his misrepresentation. I believe that every word which Sir William Grant uses in that case is applicable to this. "It is objected," he says, "that this is a demand for damages: also, that this was not a wilful misrepresentation. As to the first point, the demand is properly made in equity; and the Lord Chancellor, in *Evans* v. *Bicknell* (6 Ves. 174), declared that the case of *Pasley* v. *Freeman* (3 T. R. 51), and all others of that class, were more fit for a Court of Equity than a Court of law: but his Lordship was clearly of opinion that at least there is a concurrent jurisdiction; and says, 'It has occurred to me that that case, upon the principles of many decisions in this Court, might have been maintained here; for it is a very old head of equity that if a representation is made to another person, going to deal in the matter of interest upon the faith of that representation, the former shall make that representation good if he knows it to be false.'" That is, you may undo the transaction, and you may replace the person to whom the representation is made as far as possible in the same situation in which he was before the representation was made. Lord Eldon certainly does say, "if he knows it to be false." But the meaning of that qualification of the proposition is, as I understand the words, "if he makes a misrepresentation as to what he ought to have known, and what he did at one time know, although he alleges that at the particular moment that he made the representation he had forgotten it." It so happens that **[526]** in the case of *Burrowes* v. *Lock* (10 Ves. 470), the person who made the representation set up the same defence as is now done by Mr. Croucher. Sir W. Grant goes on to say:—"In this case the Plaintiff was going to deal with Cartwright upon a matter of interest; and applied to the person best qualified to give information, the trustee, to know what Cartwright was entitled to; who told the Plaintiff expressly that Cartwright was entitled to £288, and had an undoubted right to make an assignment to that extent, knowing that he had not a right to make such an assignment, having previously agreed to give another person £10 per cent. out of the fund. There is therefore a concurrence of all circumstances, which the Lord Chancellor thinks requisite to raise the equity. The excuse alleged by the trustee is, that, though he had received information of the fact, he did not at that time recollect it. But what can the Plaintiff do to make out a case of this kind, but shew, first that the fact as represented is false, secondly that the person making the representation had a knowledge of a fact contrary to it."

These are identically the circumstances of the present case, and Mr. Lewis, I think, admitted that but for the single circumstance of the Defendant in the former case having been a trustee, the cases would be precisely the same. But, as I have already observed, the trustee in *Burrowes* v. *Lock* (10 Ves. 470) was just as much a stranger to the person to whom he made the representation as Mr. Croucher was a

stranger to the present Plaintiff. It seems to me that that case is precisely in point, and I do not find that it has ever been questioned. I think it a sound decision, and that on the authority of it this appeal ought to be dismissed.

[527] THE LORD JUSTICE KNIGHT BRUCE. Of the merits of this case, with an exceedingly slight exception which I shall notice, there of course can be no possibility of question. A country whose administration of justice did not afford redress in a case of the present description would not be in a state of civilization. The only point reasonably arguable was, in which of the Courts in this country redress should be sought, and it has been said that the redress should be sought in a Court of law. It is true that (according to modern practice—a useful and beneficial practice I believe) a Court of law would afford redress in the case by means of an action, with the assistance of a jury, but the Courts of law in this country exercise jurisdiction in these cases by means of a gradual extension of their powers—an extension which I believe has been useful to society; and we know that that does not deprive the Courts of Equity of their ancient and undoubted jurisdiction which they exercised before Courts of law had enlarged their limits. The observation is familiar—and some of us have heard it used by Lord Eldon—that the jurisdiction not only belongs to this Court, but belonged to it originally. I do not say that effectual redress, if the case had gone before a jury, would not have been obtained. But there is really, in my judgment, no question, except on two points of little importance: one is, that the rate of interest, given by the decree, is £5 per cent. instead of £4; the other is, that the Plaintiff has not been directed to make an assignment of the leaseholds. His counsel, however, have expressed his willingness to undertake to execute such an assignment at the reasonable costs of the Defendant Mr. Croucher. The Appellant must pay the costs of this appeal, which must be dismissed.

[528] THE LORD JUSTICE TURNER. I am also of opinion that this decree is right, and I think that if we were to grant any relief upon this appeal, we should be very much narrowing an old jurisdiction of this Court, by confining it to cases in which the jurisdiction has been exercised. We should, I think, be taking the cases as the measure of the jurisdiction instead of as the examples of that jurisdiction. Lord Eldon, in *Evans* v. *Bicknell* (6 Ves. 174-182), puts the case plainly and pointedly thus. He says:—"The question then is, supposing the husband's interest insufficient to satisfy the mortgage, whether there is a personal demand against Bicknell, upon the circumstances of his conduct; and whether, if there is, it can be enforced in a Court of Equity;" and he says—"If there is a jurisdiction at law in such cases, there is also a jurisdiction in equity; and then, if there is a concurrent jurisdiction, there can be no reason for dismissing the bill." He speaks of it as an old head of jurisdiction of this Court, not to be displaced by the assumption of the jurisdiction by a Court of law, but which must remain the jurisdiction of the Courts of Equity until it is taken away by statutory enactment. I think, therefore, that the authorities support the decree. I do not mean to say that in all cases the Court will exercise the jurisdiction. It is in the power of the Court to say that it will not do so in particular cases, but I am perfectly satisfied that this is a case in which the jurisdiction ought to be exercised.

My opinion, therefore, is that the appeal must be dismissed, with costs.

[529] ENNOR *v.* BARWELL. Before the Lords Justices. *March* 2, 1860.

[S. C. 7 Jur. (N. S.), 788; 8 W. R. 300. Distinguished, *Lumb* v. *Beaumont*, 1884, 27 Ch. D. 356.]

An order having been made on motion before the hearing giving the Plaintiff liberty to enter the Defendant's ground for the purpose of inspection, and for the same purpose to break up the soil in the manner therein specified: Held, on appeal, that the latter part of the order ought to be discharged, it not being according to the course of the Court that such liberty should be given on an interlocutory application before the hearing.

This was a motion by the Defendants to vary an order of Vice-Chancellor Stuart allowing inspection by the Plaintiff of lands belonging to the Defendants.