

It is contended for defendants that they are released from their covenant by reason of the agreement made between them and plaintiffs dated 26th July, 1892, being an arrangement for the construction and maintenance of the Union Station at Toronto, and a surrender executed by the defendants dated 20th July, 1894. The fifth Esplanade agreement, also dated 26th July, 1892, was relied upon for the arguments advanced by defendants' counsel. . . .

The land covered by the sub-lease from plaintiffs to defendants of July, 1886, forms part of the Union Station, and is clearly land which defendants by their agreement with plaintiffs of 26th July, 1892, were bound to acquire for station purposes; the fee was in the city of Toronto; plaintiffs were lessees with renewal rights; and, had defendants at that time taken steps to acquire this land, compensation would have been made to plaintiffs for their rights as such lessees; no steps were taken by defendants to obtain title to the lands in question, and plaintiffs have ever since been paying rent to the city under the lease to them, but defendants have paid no rent under their sub-lease since July, 1894. It may be that the strict right of plaintiffs is to recover upon the basis of defendants' covenant, but I think the more equitable way to dispose of the matter is to treat it as the parties at the time seemed to contemplate, and so far as possible place them in the position they would have been in had the lands been acquired by the defendants pursuant to the terms of the agreement.

I do not think plaintiffs were bound to provide these lands in question for station purposes, nor do I think that anything that has been done by any of the parties has deprived plaintiffs of their right to be compensated for the interest they had in the lands under their lease from the city; and the Statute of Limitations forms no bar. I am unable to say that plaintiffs have estopped themselves from making this claim; the correspondence shews they have been demanding payment of rent as the same fell due; and certain other demands and offers were made by them, which, however, form no part of the case, although appearing in the exhibits, as all immaterial matters were excepted. It does not appear that plaintiffs have been compensated by the city, as counsel for defendants contended, nor do I think that the construction of the York street bridge, and the clauses of the agreement