

him in any way, for it is one foot two inches south of the boundary, and the eaves project south of the boundary one foot two inches at the east end and one foot one inch at the west end. The eaves and footings project 13 inches north of the wall of the building, so that they fall exactly within the line. (Mr. Tyrrell's plan of the 5th January, 1914, which was put in, though not marked, shews the situation).

When Dr. O'Reilly, who then owned both parcels, sold the northern portion to the plaintiff's predecessor in title, a fence was erected upon the southern boundary. This fence was not upon the true boundary according to any survey. I suggested at the hearing, to the plaintiff, that this might be regarded as a conventional boundary; but the plaintiff's counsel strongly opposed this view, and insisted that the true boundary according to actual survey, following the description of the deed, must govern.

If the fence should be accepted as the true boundary, its location is well shewn upon plan exhibit 11. The fence was not run parallel with Main street. The footings encroach over the old fence line, and the north-west corner of the building is 6 inches over the fence boundary. At the request of the parties, I viewed the premises; and the indications upon the ground shew that this plan accurately described the situation.

If the plaintiff should be found to be entitled to recover, I think the case is one in which the defendants should be allowed to retain the land, making compensation. It would not be a seemly thing to direct the destruction of the building.

The plaintiff complains that it is an unfair thing to him and would seriously interfere with the selling value of his land to deprive him of 2 feet of the frontage of his property. There is some force in this, and the allowance to be made, if he is entitled to anything, should be correspondingly liberal. Yet I cannot think that the matter is nearly as serious as the plaintiff anticipates. No doubt, the projection of the eaves and the projection of the footings renders the 13 inches beyond the wall useless for building purposes. But the cutting down of the frontage from 47 feet to 45 feet is a matter of dollars and cents only. Immediately north of the plaintiff's property is an alleyway. North of that again, and fronting on King street, is a substantial building. Ultimately the old residence will be superseded by an office building or warehouse, as the location has long ceased to be suited for residential purposes.

If it should be held that there is the encroachment claimed