

shareholder in the defendant company) and the plaintiffs about another matter, and that the plaintiffs were determined to get him and the defendants out of possession upon any pretext whatever.

3. Most of the repaired portion of the building was occupied by the defendant company. The plaintiffs contended that the hotel company had not the power to carry on business as dealers in rubber goods. That claim was answered by the decision of the Privy Council in Bonanza Creek Gold Mining Co. Limited v. The King, [1916] 1 A.C. 566, followed in our Courts in Edwards v. Blackmore (1918), 13 O.W.N. 423, 42 O.L.R. 105. There must be a valid assignment to work a forfeiture: Cornish v. Boles (1914), 31 O.L.R. 505, at p. 519.

The mere letting into possession is not a breach of covenant not to assign or sublet: McCallum Hill & Co. v. Imperial Bank (1914), 30 W.L.R. 343.

The plaintiffs had given their consent to a subletting, although, they contended, not to this one.

The Court always leans against a forfeiture: McLaren v. Kerr (1876), 39 U.C.R. 507; Hyman v. Rose, [1912] A.C. 623.

There was nothing in the authorities cited by the plaintiffs to affect this view of the case: Curry v. Pennock (1913), 4 O.W.N. 712 and 1065; Fitzgerald v. Barbour (1908) 17 O.L.R. 254; affirmed in S.C., sub nom. Loveless v. Fitzgerald (1909), 42 S.C.R. 254; Holman v. Knox (1912), 25 O.L.R. 588. Some of the views expressed by the Court in this latter case must be modified by the judgment in Hyman v. Rose, *supra*.

Action dismissed with costs.

FALCONBRIDGE, C.J.K.B.

AUGUST 23RD, 1918.

TOWN OF OSHAWA v. ONTARIO ASPHALT BLOCK
PAVING CO.

Contract—Construction of Pavements—Guarantee-bond—Defective Work and Materials—Action on Bond—Recovery of Amount of Bond less Sum Expended in Repairs—Findings of Fact of Trial Judge.

Action upon a bond guaranteeing the proper construction of pavements upon the streets of the Town of Oshawa.