

in controversy may be ascertained is whether or not, in the events that have happened, the right to maintain the wall in question, so far as it encroaches on Pitt street, conferred by the Act mentioned in the judgment below, has come to an end; and the determination of that question depends upon whether the wall in question, as my learned brother has decided, formed an integral part of the respondents' building, as well as of the appellant's, or, as is contended by the appellant, it formed part of her building only.

Except the part of it which encroaches on Pitt street, the whole of the wall stands on the land of the appellant, and it was, by the lease under which Macdonell, the predecessor in title of the appellant, held from the predecessor in title of the respondents, expressly provided that it should stand on the northerly boundary of the land demised to Macdonell, and in the provision of the lease giving to the lessor the right to fit into the wall beams, etc., it is spoken of as the northern wall of Macdonell's building, and again in the provision for conveying away the water from the roof it is referred to as "his (i.e., Macdonell's) building," and the covenant by Macdonell to erect the building is that he shall erect it on the demised premises.

It is, however, provided that the lessor, Samuel Cline, is to be at liberty to make use of the wall "as a partition wall between the said building of the said James Macdonell and any structure said Samuel Cline may thereafter erect adjoining said building on the northern side thereof."

The effect of these provisions, taken in connection with that which follows—which reads thus, "And that the said Samuel Cline for the purposes aforesaid be at liberty to fit the said northern wall of the James Macdonell building, beams, joists, sleepers, and such other timbers and other building materials of any kind as may be necessary for the purposes aforesaid"—is to confer on the lessor the same right to use the wall as if it were a party wall, and when it was so used as it in fact was by building into it the beams and joists of the lessor's building, it became an integral part and a necessary part of that building without which it would not stand.

This right to use the wall as a partition wall and of fitting into it beams, etc., conferred on Cline by the lease to Macdonell, is more than a mere easement, and, according to the ratio decidendi in *Consumers Gas Co. v. City of Toronto*, 27 S. C. R. 453, is an interest in the land itself.

According to the terms of the special Act, it is not incumbent upon the owner or occupant of a dwelling-house, shop, or building which encroaches on Pitt street, to remove it off the street "until