

months and collect the rents; and as the evidence shewed that the receipt by the lessors of the three months' rent was in pursuance of a compromise with the assignee in respect to the acceleration; and as the month's rent from the sub-tenants was only compensation by the latter for being permitted to use and occupy the premises and for their accommodation; the lessors could not be said to have waived their right to claim a forfeiture of the lease.

Mortgagees of the premises having notified the sub-tenants to pay rent to them, the assignee paid them a sum in satisfaction of their claim with the assent of the lessors, against whose demand it was charged.

*Held*, that this also was no waiver of the lessors' right to claim a forfeiture.

*Quere.* Was a covenant by the company to supply steam and power to its sub-tenants anything more than a personal covenant by the company, or would it, on surrender of the original lease, have bound the lessor and a purchaser from him of the fee? Appeal allowed with costs.

*Ritchie*, K.C., and *Ryckman*, for appellants. *Thomson*, K.C., and *Tilley*, for respondents.

Que.]

[Nov. 16, 1901.

PARENT 7. QUEBEC NORTH SHOPE TURNPIKE.

*Title to land—Trespass—Overhanging roof—Right of view—Evidence—Boundary line—Waiver.*

In 1844 the defendants constructed a toll-house close to or on the boundary of their land with windows overlooking the adjoining lot and a roof projecting over it by about three feet. This was done with the knowledge and consent of persons who were then proprietors, and was not objected to by them or any subsequent owner till after the purchase of the adjoining lot by the plaintiff in 1895, when he complained that the overhanging roof interfered with the gable of a house he was building upon it. He cut the roof to permit of the construction of the gable to his house, and defendants paid the cost of the necessary alteration. In 1900 the plaintiff instituted the present action against defendants to have the remainder of the projection of the roof demolished and the windows closed up. There was no evidence that there had ever been a division line established between the properties, and the actual width of the land purchased and taken possession of by the plaintiff in 1895 was left in uncertainty.

*Held*, *STRONG*, C.J., dissenting, that the plaintiff had not satisfied the onus that was upon him of proving title to the strip of land in dispute and, consequently, that his action could not be maintained.

*Held*, further, per *GIROUARD*, J., following *Delorme v. Cusson*, 28 S.C.R. 66, that, as the plaintiff and his auteurs had waived objection to the manner in which the toll-house had been constructed, and permitted the roof and windows to remain there, the demolition could not be