

waive. He had not exercised that right, but had elected to allow these articles to remain as part of the building.

Therefore, on a fair construction of the document, the words "buildings and improvements" included articles in good faith brought upon the demised premises for the purpose of the lessee's business, and so affixed as to form part of the building, whether landlord's fixtures, tenant's fixtures, or trade fixtures, but did not include purely chattel property.

This was the meaning and effect given by the arbitrators to the opinion of Middleton, J., and they rightly awarded that the articles in dispute should be taken and paid for by the lessors.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

APRIL 26TH, 1920.

*ROUTLEY v. GORMAN AND CORAN.

Principal and Surety—Promissory Notes Endorsed by Surety—Securities Held by Creditor Entrusted to Principal Debtor for Collection—Loss of Securities—Absence of Negligence on Part of Creditor—Evidence—Findings of Fact of Trial Judge—Appeal—Assent of Surety to Course Taken.

An appeal by the defendant Coran from the judgment of MCKAY, Judge of the District Court of the District of Thunder Bay, in favour of the plaintiff for the recovery against both defendants of \$1,004.31 and costs, in an action in the District Court upon two promissory notes made by the defendant Gorman in favour of the plaintiff and endorsed by Gorman and Coran. There was also endorsed on each note a memorandum signed by both defendants, "We hereby waive presentment and notice of protest and guarantee payment of the within note."

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

W. A. Dowler, K.C., for the appellant.

W. Lawr, for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, said, after stating the facts, that the defendant Coran appealed on the ground that he should have been credited with all the moneys found to have been collected by the defendant Gorman, contending that as surety he was entitled to the benefit of all securities held by the creditor, and that he was relieved from liability to the