

The judgment of the Court (FALCONBRIDGE, C. J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The judgment of the learned Judge below cannot be sustained. It is abundantly clear that the want of repair of the eavetrough is not the cause of the trouble. The real question is whether the defendant, whose roof and eavetrough are in precisely the same shape and condition as when the original conveyance was made by Turner to predecessor in title of defendant, is bound to prevent snow and water discharged from the clouds upon his roof from falling upon the piece of plaintiff's land in question. He is not so bound: *Wheeldon v. Burrows*, 12 Ch. D. 31, per Thesiger, L. J. At the time of the grant from Turner to the plaintiff's predecessor in title on 27th February, 1888, the two houses in question, had been built, and the easement of shedding snow and water, as has been done ever since, was necessary to the reasonable enjoyment of the property granted. Any doubt upon this point is set at rest by the express terms of the grant, which expressly gives the right "to use the roof as at present constructed" over the portion of land which was retained by the grantor. It is quite plain that the grantor could not, after such a grant, insist upon the grantee altering the construction of the roof so as to prevent the snow and water from coming down; and the plaintiff stands in no higher position than the original grantor, Turner. The special grant of the right to maintain the projection of the roof over the plaintiff's land carried with it the necessary consequence that water and snow falling upon the roof must, to a large extent, descend upon the land below. Appeal allowed with costs and action dismissed with costs.

W. W. Vickers & Co., Toronto, solicitors for plaintiff.

Watson, Smoke, & Masten, Toronto, solicitors for defendant.

MARCH 11TH, 1902.

DIVISIONAL COURT.

THOMPSON v. COULTER.

*Sale of Land—Purchase Money—Payment—Evidence—Corroboration
—Onus of Proof.*

Appeal by plaintiffs from the judgment of the Chancellor, delivered at the trial which took place at Sandwich on the 7th October, 1901, dismissing the action with costs.