

the grantees readily parting with, conveying, or disposing of the property, it is provided that if they do so either they or their heirs or assigns must pay this same sum. The position of the sum if they should sell does not seem to me at all different from that of the same sum if they fence, and the fact that this sum is in either case called a "further consideration" does not advance matters one whit.

It seems to me that the sum of \$500 is a rough computation of the amount of damages the plaintiff would expect that he would or might suffer if the prohibited fencing were proceeded with (and this is helped out by the covenant in that regard), or by his friends losing control over the line of rail. It is a penalty or liquidated damages, but I think no part of the purchase money, and no vendor's lien attaches.

Province of Nova Scotia.

SUPREME COURT.

Graham, E.J.]

[Oct. 9.

COULSTRING v. NOVA SCOTIA TELEPHONE CO. ET AL.

Nuisance—Joinder of two parties defendant—Motion to compel plaintiff to elect dismissed.

Where in an action for a nuisance, namely, obstructing the access to plaintiff's house by the erection of a board fence in front of an adjoining building in course of construction, etc., brought against the defendant company and the contractor employed by them, plaintiff, in his statement of claim charged that the defendant company was erecting the building and committed the acts of obstruction complained of, and alleged in the same terms that the defendant H. was erecting the building and committed the act, application was made on behalf of one of the defendants to compel plaintiff to elect which of the defendants he would proceed against and on behalf of the other to strike out his name.

Held, dismissing the application with costs, that the transaction complained of being one and the same there was no objection to plaintiff stating his claim first against the one defendant and then, in the alternative, against the other.