

The verdict should have been entered for the plaintiffs, but as the damages were not assessed there must be a new trial.

Verdict set aside, and new trial granted.

NOVA SCOTIA.

COUNTY COURT FOR DISTRICT No. 7. AUGUST 17TH, 1909.

DOMINION COAL COMPANY v. TAYLOR.

Landlord and Tenant—Overholding Lease—Breach of Condition—Notice—Waiver.

L. A. Lovett, for landlord.

G. S. Harrington, for tenant.

FINLAYSON, Co.C.J.:—This is an action under the Overholding Tenants' Act; all the objections taken in the McLeod case (see post, p. 201) against the papers and notices, and the same were taken in this case and overruled for the same reason.

The same defence of waiver of forfeiture by acceptance of rent was pleaded. The tenant holds under a lease dated the 27th day of April, 1909, for one month certain, and thence from month to month. His term was for two months at least ending the 26th of June: Woodfall L. & T. 17th ed., 250, 164. His case differs somewhat from the others inasmuch as the breach took place in the term in which the notice to quit was given, I mean taking it from the time contended for by the defence, the 6th of July; and had this tenant given the notice required by rule 81 of the regulations (14 days' notice to quit work or discontinue work) and the landlord had accepted rent from him on the 17th of July, I would certainly hold there was a waiver of forfeiture. But there is no evidence to shew that he has done so. The landlord says that he had no notice at the time of the payment of rent that in this case, as in all the cases, there was a breach of the proviso, and for that reason he cannot be held to have waived forfeiture, and lost his right to enter for a breach of condition. In this case the landlord waited for 14 days at least