

him. In the fall of the year, after the purchase was made and before the lessee had harvested his crop, the purchaser, under protest from the lessee, entered on the land and ploughed it up, thereby causing injury to the lessee.

Held, that the purchaser was a tenant within the meaning of the covenant as to an incoming tenant, but that he had no right to enter on the property before the plaintiff had harvested his crop, and was therefore a trespasser and liable for damages caused thereby, but that no liability was imposed on the lessor under the covenant for quiet enjoyment, it not applying to a case of this kind.

S. F. Washington, for plaintiffs. *A. E. Elliott*, for lessor. *J. W. Elliott*, for purchaser.

Divisional Court.] CANADA PERMANENT v. BALL.

[April 8.

Principal and surety—Variation of contract—Giving time—Novation—Discharge of surety.

A mortgage of leasehold lands, to secure \$5,000 made by three executors, under a will recited such executorship and that the moneys were required for the purpose of the estate, the mortgage being under the short form Act and containing the usual covenant for payment by the mortgagors. In 1888, under a provision therefor in the will, a new executor was appointed, the defendant, one of the three executors, being released, and all his interest vested in his successor and the other two executors. In 1882, while \$3,000 still remained due, the land being then greatly diminished in value and worth no more than the amount then due on it, the plaintiffs, with a full knowledge of all the facts, entered into an agreement under seal with the then executors for an extension of the time for payment of the principal, and, though providing for a reduction of the rate of interest, also provided for its being compounded, and that it was to apply as well before as after maturity. The agreement contained a covenant by the then executors to pay the mortgage money, and also a proviso that the extension was consented to in as far as the company might do so without infringing on or in any way affecting the interests of the other parties, in the said mortgage premises all rights and remedies against any security or securities the company might have against any third person or persons upon the original security being reserved.

Held, that as between the executors as last constituted and the one who had retired there was constituted the relationship of principal and surety, and by virtue of the agreement of 1882 the latter was discharged; and, further, that it constituted a novation, which also constituted a discharge.

S. H. Blake, Q.C., and *Beaumont*, for plaintiffs. *James Reeve, Q.C.*, for defendant.