

still kept possession; and that *Munro* returning to this province in May or June, 1842, took proceedings in ejectment and evicted *Watson*.

1857.

Watson
v.
Munro.

This would not be a very strange arrangement if *Watson* were in the actual occupation of the premises, but that he should be allowed to receive the rents for such a period, is a circumstance of considerable weight, because it would be natural and usual in the case of an assignment by way of security, but not so in the case of a purchase.

This circumstance has created the only real difficulty in our minds in disposing of this case, and certainly it is not satisfactorily explained. For myself I do not think it is incapable of explanation or inconsistent with the assignment being absolute. I judge from the evidence of *Smith*, the tenant, that he did not see *Munro* at the premises, or indeed at all, until about two years after the assignment, and it is not impossible or even very improbable that *Munro*, a wholesale merchant, may not have been aware, up to that time, that the premises were occupied by a tenant of *Watson*, not by *Watson* himself, and the form of the action of ejectment against *Watson* himself as the tenant in possession favours this supposition. This circumstance may admit of this or some other explanation, which in the course of fifteen or sixteen years may be not only incapable of proof, but have been forgotten. The plaintiff accounts for his long delay by the state of his circumstances, which he proves to have been poor, but when that delay leaves circumstances in obscurity which a timely assertion of claim might have enabled the defendant to clear up, the excuse of delay in the plaintiff ought not to be allowed to operate to the prejudice of the defendant; his acts should not receive an unfavourable construction, but as I think as favourable a construction as they are reasonably capable of, and I cannot but think that this single circumstance,

Judgment.