

as against the members of the firm of Monat & Co. and as against Brown, which they had given up in good faith.

Quære, whether, in any case, a novation, such as here occurred, can be successfully attacked under the Assignments Act.

Haggart, K.C., and *Haskin*, for plaintiff. *C. P. Wilson*, for Silly. *Aikins*, K.C., for Gaults.

Perdue, J.]

RYAN v. TURNER.

[May 4.

Overholding tenant—Summary proceedings—Forfeiture for breach of covenant.

This was an application by way of summary proceedings under ss. 11-17 of the Landlords and Tenants Act, R.S.M. 1902, c. 93, as amended by 3 & 4 Edw. 7, c. 29, ss. 1-2, to recover possession of a hall let to defendants for five years from 1st November, 1901, at a rental of \$15 per month. The lease as in writing under seal and the lessees by it covenanted that they would not permit the hall to be used for the purpose of dancing except to lodges renting the hall, and that any breach of that covenant should at once at the option of the lessor operate as a forfeiture of the lease.

The lessees having rented the hall to five young men not connected with any lodge for the holding of a dance, the lessor gave them a notice declaring the lease to be forfeited and demanded possession.

Held, following *Moore v. Gillies*, 28 O.R. 358, that under the statute as amended, the judge can now try the right of the tenant to hold over, and that defendants had forfeited the lease and that a writ of possession should be issued in the landlord's favour.

Taylor, for plaintiff. *Andrews*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.]

MILTON v. SURREY.

[Nov. 20, 1903.

Evidence—Finding based on positive evidence.

Appeal from judgment of MARTIN, J., awarding the plaintiff damages for injury caused to his land by water cast thereon through a culvert built by the corporation. At the trial the contention between the parties was as to whether or not the construction of the ditch had increased the flow of water