

The building came up to the street line in front, and extended back to a depth of 50 feet, leaving an open space behind it of about 26 feet in depth.

Gordon was at the same time negotiating for the sale of the remainder of the lot to one Perrault, but Perrault was not willing to buy unless he could obtain the right to build an addition to the hotel covering the strip in question as well as the land of Gordon. This strip Gordon endeavoured to get plaintiff to give up; plaintiff refused to do that, but agreed to give up a limited right to it.

Perrault then bought from Gordon, and erected the contemplated addition to the building.

The instrument of 15th January, 1883, was made in pursuance of the Act respecting short forms of conveyances; by it Gordon purported to grant to plaintiff the northerly 25 feet of the lot together with the northern store, etc. The instrument contained a clause by which plaintiff authorized and empowered Gordon to appropriate and use a longitudinal strip of land along the northerly side of the 25 feet, of about 4 feet in width, extending from the rear of the brick block to the river Trent, for the purpose of erecting a suitable building in rear of and in connection with Gordon's remaining interest in the strip, free from all claims for ground rent and of ownership in respect of the proposed erection—"this grant to remain in force only so long as the said building so to be erected shall remain standing on the said 4 foot strip, and no longer."

In 1899 a fire occurred, the effect of which was somewhat seriously to damage the addition to the hotel, including the part built on the strip.

Plaintiff contended that, as the result of this fire and damage, the building no longer "remained standing" on the 4 foot strip, and that the right of defendant, who owned whatever interest in the strip was conveyed to Gordon, to appropriate and use it, was at an end.

At the trial there was a conflict of testimony as to the extent of the injury done to the building, and the County Court Judge found in favour of plaintiff's contention.

E. D. Armour, K.C., for defendant.

T. A. O'Rourke, Trenton, for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) was delivered by

MEREDITH, C.J. (after setting out the facts):—"The proper conclusion upon the evidence is, in my opinion, that there was nothing like a complete or total destruction of the