

I must come to the following conclusions; That nearly all the leases are for indefinite terms, therefore are continuing leases. That the proviso or condition under which re-entry is claimed is a continuing condition. That the breach complained of is a continuing breach, that under the rules of employment the landlord was justified in declaring a forfeiture and giving notice to quit on the 20th of July or any day after. That there was no waiver by payment and acceptance of rent on the 17th for a breach continuing. That waiver is a defence, and must be proved. That there was no evidence to shew that rent received on the 17th was for rent accruing over after the 6th; that any rent received on the 17th, if after the breach, was received without the landlord having knowledge of the breach, and therefore not a waiver even if the contention of defence is correct that the breach was on the 6th.

An order for possession will be granted in this case.

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### NEW BRUNSWICK..

FULL COURT.

APRIL 23RD, 1909.

EX PARTE PECK, IN RE RHODES.

*Assault — Proceedings Before Magistrate — Summons—Prohibition—Jurisdiction.*

Order nisi for a writ of prohibition argued on April 14th, 1909, before LANDRY, McLEOD and WHITE, JJ.

A. A. Wilson, K.C., in support of the order nisi.

W. B. Chandler, K.C., contra.

The judgment of the Court was delivered by

LANDRY, J.:—This is an order nisi for a writ of prohibition to prohibit John H. Rhodes, a justice of the peace for the county of Albert, from further proceeding on an information laid before him by Miles B. Dixon against Edson E. Peck, charging him with having on the 5th day of October, A.D. 1908, unlawfully assaulted the said Miles B. Dixon.