

be said that behaviour on the part of the assignee which indicated that he was a person with whom it would be difficult to get along amicably would not justify a landlord in refusing his consent. And that was the case here: Grossman's conduct (undertaking to discharge the landlord's janitor, etc.) was such as to make it impossible to hold that Modern Theatres Limited had met the onus of proving that it was unreasonable for the landlords to persist in their refusal to have him as a tenant.

As Modern Theatres Limited were unable to procure the landlords' assent to the assignment, their claim against Grossman for specific performance failed; and the claim made against them for the return of the \$3,000 paid by Grossman must succeed: *Winter v. Demerque* (1866), 14 W.R. 281, 699. Grossman's conduct, which led the landlords to believe that he would be an undesirable tenant, did not afford to Modern Theatres Limited any defence to Grossman's claim for the return of money paid upon a consideration which had failed.

There should be judgment in favour of Grossman against Modern Theatres Limited declaring that the agreement was rescinded, and against Modern Theatres Limited and Joseph Singer & Co. for payment of \$3,000. The claims put forward by the respective plaintiffs in the second and third actions should be dismissed. The costs of the first action down to the making of the order for consolidation should be paid by the defendants to the plaintiff. In each of the other actions the costs down to the consolidation should be paid by the plaintiffs to the defendants. Modern Theatres Limited and Joseph Singer & Co. should pay Grossman's costs of the proceedings, including the trial, subsequent to the making of the order for consolidation. There should be no further order as to costs subsequent to the consolidation.

KELLY, J.

MAY 21ST, 1919.

CURRIE v. CURRIE.

Husband and Wife—Action for Alimony—Failure to Prove Marriage to Defendant—Former Husband Living when Form of Marriage Gone through—Alternative Claim to Payment for Services as Housekeeper—Money Lent—Money Paid for Insurance Premiums in Respect of Policies on Life of Defendant—Money to be Returned if Benefit Diverted from Plaintiff—Interim Alimony—Existing Order for—Right of Plaintiff to Arrears—Costs.

An action for alimony and for other money demands, tried without a jury at Ottawa.