

for renewal repeated totidem verbis in the first renewal, on the expiration of the renewed lease they would be equally entitled to have it repeated in the second renewal, and so on ad infinitum. Therefore, there may be right of perpetual renewal, although no words of perpetuity such as "for ever" are used. In the present case the result is confirmed by the words in the first recital and in other parts of the lease.

There should be a declaration that the renewed lease ought to contain a covenant for renewal in the same words as that contained in the lease, including the covenant for the insertion of the covenant for renewal.

Perhaps, in strictness, the lessees should have their costs of this application; but, in view of the provision in the lease that the costs of all renewal leases and arbitrations shall be equally borne by the lessor and lessees, this application should be treated as ancillary thereto, and no order as to costs should be made.

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FALCONBRIDGE, C.J.K.B., IN CHAMBERS.

APRIL 5TH, 1917.

IMPERIAL TRUSTS CO. OF CANADA v. JACKSON.

*Discovery—Examination of Defendant—Refusal to Answer Questions—Validity of Agreement Set up by Agent and Trustee—Refusal of Application for Trial of Preliminary Issue and Postponement of Discovery.*

Appeal by the plaintiffs from an order of the Master in Chambers refusing to strike out the defence or enforce the answering by the defendant of questions which he refused to answer upon his examination for discovery.

Motion by the defendant for an order directing the trial of a preliminary issue as to the validity of an alleged agreement.

G. H. Kilmer, K.C., for the plaintiffs.

I. F. Hellmuth, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the case of *Graham v. Temperance and General Life Assurance Co. of North America* (1895), 16 P.R. 536, was a very exceptional case, and, in view of the most unfortunate result of the order there made, one which a Judge should hesitate to follow. But here