

renewal might be had for a third year from the date of the lease is indicated by the fact that in his sublease from Herman he himself obtained a right of renewal which, if exercised—and it was exercised—extended his term twelve days beyond the end of the year covered by the first renewal clause.

In May, 1909, there was correspondence between the defendant and Alexander in regard to a renewal. Alexander did not disclose the fact that he had in April entered into a formal agreement to sell the property to Herman's sub-tenant Johnston. Ultimately, however, Alexander—notwithstanding his agreement with Johnston—agreed by his letters of the 16th and 31st May to renew for one year. This the defendant ratified by his letter of the 2nd June, adding, "This does not thereby affect my privilege at the end of next year or any subsequent year." No formal lease was executed.

In January, 1910, notice of the defendant's desire to renew for a year, under the second renewal clause of the lease, was given to Alexander. No formal assent was given to this; but, after the third year began, Alexander continued to accept rent from the defendant, and thereby recognised, as existing, the relation of landlord and tenant. Johnston continued in occupation of part of the premises, and paid rent therefor to the defendant.

On the 5th October, 1910, Johnston, while still a tenant of the defendant, issued a writ from a County Court against the defendant, claiming, as grantee from Alexander, that the lease should be set aside as too indefinite, and asking for possession—the precise issues in the present case.

The action was tried on the 4th April, 1911, and dismissed with costs. No reason is stated for the decision. The judgment was not appealed from, and it is pleaded in the present case as a bar to Johnston's right to maintain the action. The County Court is a Court of record, and a judgment entered in it determines once for all the issues between the parties to a suit. The County Court action was against the Diamond Power Specialty Company; while in this case that company and Herman are made defendants. Upon the evidence, the company is but Herman's business name, and both actions are against the same defendant. Johnston asserts now no claim that he did not assert then; and his suit herein fails and must be dismissed.

I do not adopt the contention that his co-plaintiff Alexander is in the same position; although upon his examination for discovery an answer was elicited from him that he had no interest in the property. Such an answer should be considered in the