

these facts constituted a surrender by operation of law, and defendant had a verdict. In *Oastler v. Henderson*, 2 Q.B.D. 575 Cockburn, C.J., said in the Court of Appeal: "The plaintiffs by letting the premises to a new tenant, put an end to defendant's term from that date." The two last mentioned cases with many others are cited in *Mickleborough v. Strathy*, 2 O.W.N. 537, in which the question for decision was whether upon the facts the tenant's liability upon the lease had been determined, either by eviction or by operation of law.

A month before the trial of *Fitzgerald v. Mandas*, the plaintiffs, as we have seen, re-let the premises to Neeley, and, according to the authorities mentioned, it would seem that by such re-letting the lease from the plaintiffs to the defendant, and all liability of the defendant for rent thereafter accruing were determined. If this be so, then it may perhaps be open to question whether the plaintiffs at the trial should have recovered more than the rent due at the commencement of the action, which being payable in advance covered the period up to the commencement of the new lease.

But this leads to the more serious question whether the doctrine of anticipatory breach of contract to be found in *Hochster v. De la Tour* and other decisions quoted in the judgment under discussion is properly applied to a case between lessor and lessee. Authority may be found which seems to be unfavourable to the view taken by the learned trial Judge. "It is not necessary to decide the point," said Bowen, L.J., in *Johnstone v. Milling*, 16 Q.B.D., at p. 474, "but I very much doubt whether the doctrine of *Hochster v. De la Tour* is applicable to such a case as this between lessor and lessee."

To the same effect is the positive judgment of our Court of Appeal in *Conolly v. Coon*, 23 A.R. 37. In that case Coon was tenant of Conolly's house under a verbal lease for a year at a rent payable monthly: after occupying and paying rent for five months, Coon moved out and sent the key to Conolly who refused to accept it, and at once sued Coon for breach of contract. The house remained empty until the trial eight months afterwards,