

was to depend upon the number of tons of coal raised. In order to derive any benefit from the mine, it was the object of the landlord, by introducing this clause, to compel the tenant to work it. The clause was introduced solely for the benefit of the landlord to enable him in case of a cesser to work, to take possession of the mines and either work them himself, or let them to some other tenant." The same is equally true in these cases; these houses were for the employees of the company; clause 5 was inserted for the benefit of the landlord (the Company), in order to enable him to re-enter when the tenant ceased working for him, and give the house to one who would work. Best, J., in the above cited case, also said: "I take it as a universal principle of law and justice that no man can take advantage of his own wrong. Now it would be most inconsistent with that principle to permit the tenant to protect himself against the consequences of this action by afterwards setting up his own wrongful action at a former period. It appears to me that this was a continued forfeiture, and that the landlord had a right to take advantage of it whenever he thought proper to do so."

Bailey, J., in the same case said: "The effect of receipt of rent on September 29th, 1817, cannot amount to more than an acknowledgment on the part of the lessor of the plaintiff that no forfeiture was then complete. He does not thereby admit that a forfeiture may not have been inchoate, but merely that it was not complete, so as to entitle him to bring ejectment. I think the landlord has it in his election to make this lease void or not; that he is not bound to exercise that election in the first instance; and though he may waive it from time to time, he is at liberty afterwards to insist on the forfeiture in respect to subsequent misconduct." This fully meets these cases. If the tenants are right the landlord could insist on the forfeiture on the 6th of July; he did not do so and if the tenants went back to work at any time before he made his election he would have probably waived his right to forfeit. They have done so, and the ceasing and abandoning or discontinuing to work for the Company is as true of the 24th of July as it was the 6th. The breach of the proviso is a continuing one, and I do not think there can be any question, on principle or authority, but that he was within his rights in declaring the forfeiture on the 24th of July and giving notice to quit, and that he must succeed in this action.