

plain acceptance and waiver of inspection: *Wilson v. Shaver*, supra; *Leggo v. Welland Vale Co.*, 4 O. L. R. 45.

Judgment for plaintiffs for \$700 with costs.

Counterclaim disallowed. Thirty days' stay.

Thomas Dixon, Walkerton, solicitor for plaintiffs.

Fleming, Wigle, & Rodd, Windsor, solicitors for defendant.

LOUNT, J.

AUGUST 13TH, 1902.

TRIAL.

SMITH v. WADE.

Landlord and Tenant—Ejectionment—Assignee for Benefit of Creditors—Contract by Telegram—Mistake.

On July 9, 1900, the plaintiff demised to Marion Watkins, wife of Frederick Watkins, certain premises in Hamilton, the lease containing a forfeiture clause in the event of assignment for the benefit of creditors. On December 26, 1901, Marion Watkins made an assignment for benefit of creditors to the defendant Wade. At a meeting of creditors, while an offer of the T. H. Pratt Company, Limited, was being considered, Frederick Watkins telegraphed the plaintiff, "If creditors accept my offer for stock, can I promise that lease will be as if no assignment had been made, and that you will not exact penalty clause?"

"My offer" referred to the offer of the Pratt Company, but the plaintiff was not specifically informed of this, and he accepted the offer. Pratt & Company took over the business and the lease. Plaintiff, then, brought action against Wade, the assignee for benefit of creditors, and Pratt & Company for ejectionment.

G. F. Shepley, K.C., and C. W. Bell, Hamilton, for plaintiff.

A. B. Aylesworth, K.C., for defendants Pratt & Company.
D'Arcy Tate, Hamilton, for defendant Wade.

LOUNT, J., held that lessees (Pratt & Co.) could stand in no better position than the assignor. The plaintiff has a right as landlord to enforce the forfeiture of the lease, and defendants have made out no case to justify the intervention of the Court to grant relief against the forfeiture: *Barrow v. Isaacs*, 1 Q. B. D. 417; *Eastern Telegraph Co. v. Dent*, 1 Q. B. D. 835.

Judgment, accordingly, for the plaintiffs with costs. Reference as to mesne profits and damages.

Bell & Pringle, Hamilton, solicitors for the plaintiff.

Carscallen & Cahill, Hamilton, solicitors for the defendant Wade.