

Limited and Joseph Singer & Co., their solicitors, of \$3,000 paid by Grossman to Singer & Co. as part of the purchase-price. The second action was by Morris and Crooks, the lessors of the theatre, against Modern Theatres Limited, for a declaration that the lease had become forfeited. In the third action Modern Theatres Limited claimed against Morris and Crooks a declaration that the consent of the lessors to the assignment of the lease had been unreasonably withheld, and that the plaintiffs were at liberty to assign the lease without such consent, and, against Grossman, specific performance.

The consolidated action was tried without a jury at a Toronto sittings.

T. R. Ferguson, for Grossman.

D. L. McCarthy, K.C., for Modern Theatres Limited and Singer & Co.

H. J. Scott, K.C., and A. W. Roebuck, for Morris and Crooks.

Rose, J., in a written judgment, said that the lease was made to one Janks by an indenture expressed to be under the Short Forms of Leases Act. By it the theatre was demised for 5 years from the 1st July, 1918, at a yearly rental of \$1,800, payable monthly in advance. There was in the lease a covenant on the part of the lessee that he would not assign or sublet without leave, and there was a proviso that the leave would not be unreasonably withheld. By deed, dated the 5th June, 1918, duly assented to by the lessors, the lease was assigned to Modern Theatres Limited. In November, 1918, an agreement was entered into between Grossman and Modern Theatres Limited by which Grossman agreed to buy and Modern Theatres Limited to sell the lease and the vendor's equipment in the theatre for \$5,500. Morris and Crooks, the owners of the theatre, refused their consent to an assignment of the lease to Grossman.

The landlords' action for a declaration that the lease was forfeited failed: the landlords had waived the forfeiture—had recognised the lease as subsisting—by accepting rent from Modern Theatres Limited.

As to the question whether the consent to the assignment was unduly withheld, the burden was on the lessees to prove their case—it was not for the lessors to prove that they were justified in withholding their consent; and they should not be considered to have withheld their consent unreasonably if, in the action they took, they acted as reasonable persons might have acted in the circumstances. A mere dislike of the proposed assignee is not a reasonable ground: *Sheppard v. Hong Kong etc. Banking Corporation* (1872), 20 W.R. 459. On the other hand, it could scarcely