

lessor should choose, but the one which he himself should choose. If he does either, he performs his covenant. He has done one, namely, paid the rent. I therefore think the defendants were guilty of no breach of contract because of not having commenced operations on or before 1st November, 1902. The plaintiffs evidently at one time took this view of the contract, for he accepted payment for the period up to 1st November, 1902. The covenant does not entitle the plaintiff to such payment and at the same time to re-enter because of default in commencement of operations. The acceptance by the plaintiff of the "rent" in payment for what he contends is the defendants' default (but in which contention I am unable to agree with him) in itself estops him from advancing a claim for forfeiture.

I am, therefore, of opinion that the plaintiff has no cause of action because of operations not having been commenced on or before 1st November, 1902. Thereafter the contract is silent as to any obligation to make commencement, but merely provides that the lessee shall pay the monthly sum of \$6 until there be a commencement. From time to time payments of this kind were made. Both parties have treated these moneys as "rent," the plaintiff's receipts so describe them, and by his statement of claim he charges that the "rent" is in arrear, and that in consequence he is entitled to re-enter. But whether or not these sums are "rent" is immaterial. The plaintiff claims the right to re-enter because of the non-payment of money. This right to re-enter is a penalty for non-payment, and nothing has been done which would make it inequitable to relieve the defendants from forfeiture of the lease because of non-payment, provided all arrears with interest are now properly paid. The plaintiff gave no evidence as to the amount in arrears, nor challenged the sufficiency of the amount paid into Court, and such payment, I think, should be held to relieve the defendants from forfeiture of the lease.

Plaintiff's counsel contended that the real object of the lease was to secure to the plaintiff the operation of the lands for mining purposes, and that, therefore, no equitable relief could be given to the defendants, because of their default in payment of the rent, and he relied upon the words quoted above from the lease: "This lease is made for the purpose of enabling the lessee, his heirs and assigns, and he