

ROSE, J.

MARCH 30TH, 1920.

CYCLONE WOVEN WIRE FENCE CO. LIMITED v. CANADA WIRE AND CABLE CO. LIMITED.

*Landlord and Tenant—Lease—Special Proviso as to Rent in Case of Destruction of "Building" on Premises—Construction—Group of Buildings—Premises Becoming Unfit for Occupancy—Purposes of Lease—Uses to which Premises Put—Determination of Lease—Conditions Precedent—Liability for Rent up to Day of Surrender—Apportionment Act, R.S.O. 1914 ch. 156, sec. 4—Action to Recover Rent for Longer Period or for Damages for Breaches of Covenants—Costs.*

Action, by lessors against lessees of premises upon which the lessees carried on their business of manufacturing various kinds of wire, to recover rent or damages for the breach of the defendants' covenants contained in the lease.

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

J. T. Loftus, for the plaintiffs.

I. F. Hellmuth, K.C., and H. E. McKittrick, for the defendants.

ROSE, J., in a written judgment, said that the lease was for two years from the 1st November, 1918, expressed to be made pursuant to the Short Forms of Leases Act; but, instead of the usual short form proviso for the cessation of rent in case of damage to or destruction of the premises, it contained a special proviso "that if during the said term the said building is destroyed by fire or by the elements so as to render the premises demised wholly unfit for occupancy, and if they shall be so badly injured that they cannot be repaired with reasonable diligence within 60 days of the happening of such injury, then this lease shall, at the option of the lessee, cease and determine from the date of such damage or destruction, and in such event the lessee shall immediately surrender the premises to the lessor and the lessee shall pay rent only until the time of such surrender; should the lessee not elect to terminate this lease, the lessor shall with all reasonable speed rebuild the said building on said premises, and if the premises shall be repairable as aforesaid within 60 days from the happening of such injury, then the rent shall not run or accrue after the said injury or while the process of repair is going on, and the lessor shall repair the same with all reasonable speed, and the rent shall recommence immediately after the premises are restored so as to be fit for occupation; but if the premises