

kept for both periods, and if there was any difference between the years 1880-83 and the subsequent years.

The jury found the issues in favour of the defendant who obtained a verdict on his set-off. This was affirmed by the full court, subject, however, to the defendant consenting to his verdict being reduced by deduction of an amount as to which the trial judge had certified there was not satisfactory evidence, and unless defendant consented to such reduction a new trial would be ordered. On appeal from this decision to the Supreme Court of Canada:

*Held*, Strong and Gwynne, JJ., dissenting, that there was no misdirection in the trial judge charging the jury as he did; that the jury having, on the evidence, found the facts in favour of defendant, and their finding having been confirmed by the full court, it should not be disturbed; and that substantial justice was done by the reduction of defendant's damages.

*Held*, per Gwynne, J., that there should be a new trial; that the evidence from defendant's books which was objected to should not have been received; and that the course pursued at the trial, and by the learned judge in his charge, seemed based on the assumption that because the plaintiffs had at one time been partners in special transactions, they should be deemed to be partners subsequently in an entirely different business, which assumption was utterly without warrant.

*Held* also, per Gwynne, J., that the court had no right to compel the defendant to consent to a reduction of damages, as such a course has never been pursued except in an action for unliquidated damages where the sum awarded was considered excessive.

Appeal dismissed with costs.

G. F. Gregory for the appellants.

Gilbert, Q.C., for the respondent.

OTTAWA, March 10, 1890.

New Brunswick.]

SEARS V. CITY OF ST. JOHN.

*Lessor and lessee—Covenant for renewal—Option of lessor—Second term—Possession by lessee after expiration of term—Effect of—Specific performance.*

A lease for a term of years provided that when the term expired any buildings or improvements erected by the lessees should be valued, and it should be optional with the lessors, either to pay for the same or continue the lease for a further term of like duration. After the term expired the lessees remained in possession for some years, when a new indenture was executed which recited the provisions of the original lease, and after a declaration that the lessors had agreed to continue and extend the same for a further term of fourteen years from the end of the term granted thereby at the same rent and under the like covenants, conditions and agreements as were expressed and contained in the said recited indenture of lease, and that the lessees had agreed to accept the same, it proceeded to grant the further term. This last mentioned indenture contained no independent covenant for renewal. After the second term expired the lessees continued in possession and paid rent for one year, when they notified the lessors of their intention to abandon the premises. The lessors refused to accept the surrender and after demand of further rent, and tender for execution of an indenture granting a further term, they brought suit for specific performance of the agreement implied in the original lease for renewal of the second term at their option.

*Held*, affirming the judgment of the court below, Ritchie, C. J., and Taschereau, J., dissenting, that the lessees were not entitled to a decree for specific performance.

*Held*, per Gwynne, J., that the provision in the second indenture, granting a renewal under the like covenants, conditions and agreements as were contained in the original lease, did not operate to incorporate in said indenture the clause for renewal in said lease which should have been expressed in an independent covenant.

*Per* Gwynne, J., Patterson, J., *hesitante*, that assuming the renewal clause was incorporated in the second indenture, the lessees could not be compelled to accept a renewal at the option of the lessors, there being no mutual agreement therefor; if they could, the clause would operate to make