Proudfoot, J.]

THE LONDON INSURANCE CO. v. LONDON.

Assessment — Income — Mutual Insurance Co.— Appeal to county judge—Finding.

The defendants assessed the plaintiffs for $590.52 on an alleged income of $26,000, being the balance of money received by the plaintiffs, a Mutual Insurance Company, for premiums, etc., after payment of the current year's losses and expenses. The plaintiffs contended that there was no income, for that the said balance, under the statutes relating to the plaintiffs, was to be applied in reduction of the assessments on the premium notes for the ensuing year, and they appealed to the Court of Revision, which confirmed the assessment. The plaintiffs then appealed to the county judge, who dismissed the appeal. The plaintiffs then paid the amount under protest, and brought this action to recover it back.

Held, that the decision of the county judge was final, and this action was therefore not maintainable.

E. R. Cameron, for the plaintiffs.

W. R. Meredith, Q.C., and *T. G. Meredith*, for the defendants.

CRAWFORD v. BUGG.

Landlord and tenant—Covenants not to assign or sublet, and for quiet enjoyment, and to repair, and to repair according to notice — Assigns named—Reasonable wear and tear, etc.—Covenant to use premises in tenantable manner—Action of waste—R. S. O., cap. 107, sec. 9.

On 19th May, 1870, E. made a lease of certain household premises to P. for twenty-one years. On 30th June, 1871, P., with E.'s assent, assigned to J. B. On 10th April, 1877, E., who was merely a bare trustee for plaintiff, assigned the reversion to her. On 29th December, 1882, J. B. without plaintiff's knowledge or assent, assigned to C. B., who thereafter was in possession of the property, receiving the rent from sub-tenants and paying the rent under the principal lease to plaintiff. The plaintiff had also received the rents prior to E.'s assignment to her. The lease was made under seal, and was in the ordinary printed form, and purported to be under the Short Form Act. The statutory covenants were prefaced by the words "and the said lessee for himself, his heirs, executors, administrators and assigns, covenants with the said lessor, his heirs, executors, administrators and assigns, in manner and form following, that is to say." Then followed the ordinary statutory covenants, except that after the covenant "to repair" were the words, "reasonable wear and tear and damage by fire and tempest excepted;" and after the covenant "not to assign or sub-let without leave," the additional covenant, "and not to carry on any business that shall be deemed a nuisance." The covenant not to assign was (except as to the additional words) in the language used in covenant seven, column two, of the Short Form of Leases Act.

Held, that the covenant not to assign or sublet, etc., did not include assigns, as they could not be held to be named; and the prefatory words to the covenant would have no contrary effect, and therefore J. B.'s assignment to C. B. was no breach thereof; and this was equally so as to sub-letting by using the premises as a tenement house; and also from the fact of the user having been open and notorious, both by P. and J. B., for some thirteen years, a license to do so must be presumed.

Quære, whether such covenant ran with the land. the authorities on the point being conflicting; but the county judge, to whom the case had been referred, having found that it did so run, a judge sitting in single court refused to interfere.

Held, also, that the covenant to repair ran with the land; that J. B.'s liability as assignee of the term ceased on his assignment to C. B., and he would only be liable for the breaches, if any, which occurred prior thereto; and the covenant must be read as subject to the words, "reasonable wear and tear," etc.

Held, also, that there could be no liability on the part of the defendants or executors of J. B., for breach of an implied covenant by themselves and J. B. to use the premises in a tenant-like manner, for there being a lease under seal, with express covenants, no such implied covenant would arise.

Held, also, that an action of waste would lie notwithstanding the express covenants to repair, but there must be what would constitute