The action was tried without a jury at Stratford.

R. S. Robertson, for the plaintiff.

J. M. McEvoy, for the defendants.

MULOCK, C.J. Ex., in a written judgment, said that it was provided in the lease that all the repairs, alterations, and installations were to be made to the plaintiff's satisfaction and within such time as should be determined by him. Flax is a spring crop, maturing early in August, and is then hauled to the mill to be threshed and afterwards scutched. The plaintiff, in ample time, notified the defendants of the required alterations, reparations, and installations in the mill, in order to enable him to take care of the flax-crop of 1916; but the defendants delayed in complying with some of the requirements and made default in complying with others. In consequence, the plaintiff, at his own expense, made various alterations and reparations to the building and installed some of the equipment supplied by the defendants. The plaintiff, also at his own expense, furnished other machinery and equipment which he contended that the defendants were bound to have supplied; and this action was brought to recover damages in respect of the cost and expense to which he was put by the defendants' default.

After the action had been commenced, a serious fire occurred in the building, whereby the machinery and equipment installed by the plaintiff were destroyed; and the plaintiff, having received from an insurance company a sum representing his loss, now limited his claim to damages in respect of alterations and reparation which, as he alleged, the defendants, under their covenant, were bound to have made, but did not make.

The lease provided that, if the defendants considered any requirement of the plaintiff unreasonable, the question might be referred to one Forrester. This meant that the reference was to precede the duty of complying with such requirement; but, as the mill was to be in working condition early in August, as the defendants knew, it was their duty, if they objected to any requirement, promptly to demand a reference. This they did not do, and it was now too late for them to avail themselves of that provision of the lease. Further, the lease did not make Forrester final arbitrator to the exclusion of the jurisdiction of the Court.

The learned Chief Justice found, upon the evidence, that the plaintiff was entitled to recover; but he said that the plaintiff's claim appeared to be excessive.

The defendants were not the owners of the premises, but lessees only, and their lease expired at about the same time as the sublease to the plaintiff.