

(1826), in which the Court of Common Pleas is reported, very briefly, to have held that the plaintiff, having precluded the defendant from occupying his apartments by letting them to another, must be taken to have rescinded the agreement, and to have dispensed with the necessity for a surrender: that she ought to have given the defendant notice, if her intention was to let the apartments solely on his behalf.

But the writer has not been able to find any trace of this doctrine in any later English decisions.

In Foa, 4th ed., following the passage cited by the learned trial Judge from page 166 (*supra*) the author goes on to say: "But actual physical expulsion is not necessary: any act of a permanent nature done by the landlord with the intention of depriving the tenant of the enjoyment of the premises will be sufficient cause to constitute an eviction at law. Thus letting the demised premises, on their becoming empty during the term, to another person, unless the tenant has consented thereto, is a case in point." If the lease contains a proviso for re-entry upon the tenant's breach of covenant, then the landlord's action in re-letting after a breach has occurred would seem to be a re-entry under the proviso. And apart from any proviso for re-entry, the re-letting of abandoned premises by the landlord creates a surrender by operation of law.

But whether it be regarded as an eviction, a re-entry for breach of covenant, or a surrender by operation of law, it is submitted that, in England and in this Province, the re-letting of the demised premises, if vacant, by the landlord to a new tenant, determines the contract between the landlord and the first tenant and releases the latter from payment of subsequently accruing rent.

In *Nickells v. Atherstone*, 10 Q.B. 944 (1847), the facts were that defendant held premises as tenant to plaintiff under an agreement for three years; he left the premises in the first year, and being asked for payment of rent, authorized plaintiff to let the premises to anyone plaintiff thought fit to let them to another tenant and gave him possession; the second tenant became bankrupt. Held, in an action of debt on the original agreement that