

FALCONBRIDGE, C.J.K.B., and LATCHFORD, J., concurred.

KELLY, J.:—While entertaining some doubt in this matter, my doubt is not such as to induce me to disagree with the opinion of the other members of the Court.

Appeal allowed; KELLY, J., dubitante.

APRIL 24TH, 1915.

MacDONELL v. DAVIES.

Arbitration and Award—Ground Rent of Premises Fixed by Award—Action for Value of Use and Occupation—Fair Rental Value of Premises—Evidence.

Appeal by the plaintiff from the judgment of LENNOX, J., ante 48.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

G. H. Watson, K.C., and S. J. Birnbaum, for the appellant.
M. H. Ludwig, K.C., for the defendant, respondent.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.K.B.:—The Court of Appeal (*MacDonell v. Davies* (1913), 4 O.W.N. 620) has authoritatively decided that the defendant had a right to renewal of his lease, unless the landlord should buy his buildings at an amount to be fixed by arbitrators. The amount was paid, and consequently the buildings became the plaintiff's, but there is no ground, on principle or authority, for the proposition that his payment had a retroactive effect. The result is that until the payment the buildings were the defendant's.

During the time for which "use and occupation" is claimed here, the defendant occupied his own buildings and the plaintiff's land. For the occupation of the plaintiff's land the plaintiff is entitled to be paid.

It is claimed for the defendant that the amount to be paid was to be fixed by arbitration—if so, the amount has been fixed and paid.