

the right to re-enter and avoid the lease on breach of covenant offers no impediment to the enforcement of the covenants specifically: *Dyke v. Taylor* (1861), 3 De G. F. & J. 467, 45 E.R. 959.

Where the contract would be unreasonable unless it gives an option to the person stipulating to pay the sum, this will be a strong circumstance for treating the contract as alternative. So where a lady, administratrix of her husband, covenanted, under a penalty of £70, to renew a sub-lease as often as she obtained a renewal of the head-lease, and it appeared that the fines on the head-lease were raised on renewal, according to the then value of the property, so as to render her covenant unreasonable except upon the construction of its giving her an option, the House of Lords treated the contract as alternative: *Magrane v. Archbold*, 1 Dow, 107.

In the case of *Re Dagenham Dock Co.; Ex parte Hulse* (1873), L.R. 8 Ch. 1022, a company incorporated by Act of Parliament for making a dock, agreed with a land owner to purchase a piece of land for £4,000, of which £2,000 was to be paid at once, and the remaining £2,000 on a future day named in the agreement, with a provision that if the whole of the £2,000 and interest was not paid off by that day, in which respect time was to be of the essence of the contract, the vendors might repossess the land as of their former estate without any obligation to repay any part of the purchase-money.

The court held that this stipulation was in the nature of a penalty from which the company was entitled to be relieved on payment of the balance of the purchase-money, with interest.

In *Dunlop Pneumatic Tyre Co. v. New Garage and Motor Co.*, [1915] A.C. 79, the appellants, who were manufacturers of motor tyres, covers and tubes, supplied these goods to the respondents, who were dealers, under an agreement whereby the respondents, in consideration of certain trade discounts, bound themselves not to tamper with the marks on the goods, not to sell or offer the goods to any private customers or to any co-operative society at less than the appellants' current list prices, not to supply to persons whose supplies the appellants had decided to suspend, not to exhibit or export without the consent of the appellants, and to pay the sum of £5 by way of liquidated damages for every tyre, cover, or tube sold or offered in breach of the agreement.

The respondents sold a tyre cover to a co-operative society below the current list price. In an action for breach of contract, it was proved that substantially the whole of the appellants' business in these articles was done through the trade; that in order to prevent underselling the appellants insisted upon all their trade customers signing agreements of this nature, and that the probable effect of underselling by any particular trade customer was to force their other trade customers to deal elsewhere. The Court of Appeal had held that this £5 agreed to be paid was a penalty: The House of Lords reversed this, holding it to be liquidated damages. The list of cases and authorities are carefully reviewed in this case.

Among the Canadian cases may be noted *Fisken v. Wride*, 7 Grant's Ch. 598.

Upon a contract for sale of an estate subject to a mortgage, it was stipulated that the vendor should execute a bond to save harmless and indemnify