

same as removal of ashes from an ashpit, and the presumption would follow that the plaintiff did not intend or agree to perform this work during the term of the lease.

(4) S. 104, c. 205, R.S.O., on which defendant relies, does not define under what circumstances an owner shall be liable, but only provides for a case where he is liable, whereas s. 62 provides that costs incurred in abating a nuisance shall be deemed to be money paid for the use of the person by whose act the nuisance was caused.

(5) I think s. 62 would make the defendant liable for costs of abating the nuisance, and I fail to see by what authority he can claim to be reimbursed by plaintiff.

(6) If the English law governs in this case it would not help the defendant, as that provides that "a rate for ordinary annual repairs falls on the tenant." See Woodfall's "Landlord and Tenant" under "Sewers Rates."

From this I would hold that while the landlord should provide and keep in repair a sewer, or as in this case a cesspool, as a receptacle for outflowings from a house, the tenant should see that the connections and means of escape should be kept clean as an ordinary annual repair for his own use and benefit. I have consulted with my brother judges in this matter, and they agree with me that under the circumstances the defendant is not entitled to set off his claim against the rent.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[Dec. 19, 1894.]

DOLEN v. METROPOLITAN LIFE INSURANCE CO.

Life insurance—Policy—Interest and rights of insured and of beneficiaries—Assignment of policy to secure debt—Judgment for debt, effect of—Loss of assignment—Secondary evidence—Affidavits—Rule 585—Costs.

Where an insurance was effected upon the life of a person for the benefit of her father, brothers, and sisters, the plaintiffs,

Held, that the beneficial interest in the policy, as soon as it was issued, vested in the plaintiffs, and the contract of the insurers being to pay them the moneys payable under the policy the insured could not by any act of hers deprive them of the interest so vested in them, or of their right to call upon the insurers for payment; and an assignment made by her to a stranger to secure a debt had no effect upon such interest or right of the plaintiffs; but an assignment made by the father to such stranger was effectual to transfer his individual beneficial interest and right; and the assignee, under the circumstances in evidence, became the mortgagee of such interest and right; and the