

and of the non-payment of "rent," the plaintiff is entitled to have the lease forfeited.

The defendants contend that they were not obliged unconditionally to commence operations on or before 1st November, 1902, but that it was optional with them either to do so or to pay . . . \$6 a month until the commencement of operations.

The facts are not in dispute. The defendants did not commence operations on or before 1st November, 1902, but, in lieu thereof, paid to the plaintiff, who accepted the same, the monthly sums agreed upon, computed from the date of the lease down to 1st November, 1902; they also paid further sums accruing due after 1st November, 1902, the last of such payments, so far as appeared at the trial, being an item of \$36 paid on 27th January, 1905. Evidently some arrears had accumulated, for defendants bring into Court \$216, which they say satisfies all moneys owing up to the commencement of this action, but the plaintiff refuses to accept the same, contending that he is entitled to have the lease declared at an end. This contention he rests on the following grounds: (a) breach of covenant to commence operations on or before 1st November, 1902; (b) non-payment of rent; (c) the defendants ceasing for 6 months to operate.

As to the first ground . . . I do not construe the covenant as an unconditional one to make such commencement, but an alternative covenant to do one of two things, namely, either to make such commencement or to pay \$6 a month from the date of the lease until 1st November, 1902.

When a person, as here, is bound to perform one of two things, he may elect which he will perform: *Layton v. Douglas*, 1 Dougl. 16. The defendants have elected not to commence operations, but to pay the monthly sums. To give effect to the plaintiff's contention would involve disregarding the words "or will pay to the lessor or his assigns the sum of \$6 a month from the date hereof until operations are commenced on the said premises." These words are part of the covenant, they represent part of the contract between the parties, and proper effect must be given to them. The plaintiff has not the right to elect which thing the defendants should perform. Such is not the contract. The lessee covenanted to do one of two things—not the one which the