D. 74; Prentice v. Elliott, 5 M. & W. 616, per Parke, B. And, even were this the case of an eviction, such eviction would not affect the liability for rent accrued due before the eviction: Boodle v. Campbell, 7 M. & G. 386; Selby v. Browne, 7 Q. B. 62. Neither is this the case of the landlord taking advantage of the proviso for non-payment of rent, which appears in this lease in the statutory form. Nor are we, in my judgment, embarrassed by considerations arising from the feudal relation of landlord and tenant. It is the case of two contracting parties of whom one expressly repudiates to the other the contract between them and notifies him that he will not be bound by it, and that in unequivocal terms. In such a case the law is well settled that the other party may thereupon treat the contract as at an end except for the purpose of claiming damages for breach of the same: Planché v. Colburn, 8 Bing. 14; Hochster v. Latour, 2 E. & B. 678; Withers v. Reynolds, 2 B. & Ald. 883; Mersey Steel Co. v. Naylor, 9 App. Cas. 434; Rhymy v. Brecon, [1900] W. N. 169. And since the withdrawal by Lord Bramwell, at p. 446 of the report in 9 App. Cas., of what was attributed to him in Houck v. Miller, 7 Q. B. D. 92 (Hoare v. Rennie, 5 H. & N. 19), the rule has not been changed or affected by the fact that the contract has been in part performed.

Of course, the repudiation of the contract must be plain and unequivocal: such cases as Johnstone v. Milling, 16 Q. B. D. 460, and these cited in 9 App. Cas. and [1900] W. N., shew the strictness of the rule.

The action then becomes a plain common law action for damages, the plaintiffs having elected to consider the contract at an end (except for the purpose of damages), instead of, as they might have done, insisted upon its continuance.

The measure of damages is the amount by which the plaintiffs are less well off than if the contract had been performed. The plaintiffs having done all in their power to minimise damages, there can be no question as to part of the claim. . . .

[The learned Judge then computed the damages under the heads of rent, taxes, and improvements, and allowed in all $10,982.87. In regard to taxes, he referred to R. S. O. 1897 ch. 224, sec. 26; Dove v. Dove, 18 C. P. 424. And he explained the method of computing damages for the plaintiffs' loss.]

Judgment for the plaintiffs as of the 6th June, 1910, for $10,982.87 and costs.