The damages may be excessive, but that does not appear, and the case must be an outrageous one in that respect before any interference could be justified on such a ground.

It was argued that the Company could not consistently with their charter and the law of the land expend their funds in paying the damages awarded. If that be so it may follow that they cannot be compelled to obey the award, but this is no application to the Corporation for that purpose, but an application by the Company to set aside an award for a reason which, if it be a reason, must have existed at the time of the submission as well as now; and after a compromise had been made, and the application to the legislature withdrawn on the faith of the arbitration which was agreed to, it does not lie in the mouth of the Company to object to the award on the ground that no such compensation could be legally awarded. They cannot at least make it the ground of an active interposition at their instance.

The rule should be discharged with costs.

McLEAN, C. J., having been absent during the argument, gave no judgment.

Rule discharged with costs.

RYERSE v. LYONS.

Lease—Rent payable quarterly in advance—Construction.

The plaintiff sued in covenant for three quarters rent, alleged to be payable by the lease quarterly in advance. Defendant pleaded as to the rent for the last quarter, commencing on the 1st of March, 1861: 1. That before the expiration of the first month of the quarter the plaintiff wrongfully evicted him. 2. That by a provision in the lease in case of the mill demised being accidentally burned the rent was thenceforth to cease, and that it was so burned on the 5th of March, 1861. 3. On equitable grounds, as to the rent subsequent to the 6th of March, 1861, the same provision in the lease, alleging the destruction of the mill by fire before the 6th March.

Held, on demurrer, pleas bad for the rent, being payable in advance, was due on the 1st of March, and nothing which occurred afterwards could divest the plaintiff's right.

DECLARATION, that the plaintiff by deed let to the defendant certain premises specified, for five years from the 1st of September, 1860, at $900 a year payable quarterly in advance, which defendant covenanted to pay, but of which a balance of three quarters was due and unpaid.

Fifth plea, to so much as relates to the plaintiff's claim for rent in respect of one of the three quarters' rent in the declaration mentioned, being the quarter commencing on the 1st of March, 1861, the defendant saith that the said three quarters in the first count mentioned commenced respectively on the first days of September and December 1860, and the 1st of March 1861, and that during the quarter commencing on the day last aforesaid, and before the expiration of the first month of the said quarter, the plaintiff, without the consent and against the will of the defendant, wrongfully entered into and upon the mills and premises in the declaration mentioned, and evicted the defendant from the use and occupation thereof, and kept him so expelled thence hitherto.

Sixth plea, to so much of the declaration as relates to the plaintiff's claim for rent in respect of one of the three quarters in the said first count mentioned, being the quarter commencing on the 1st of March, 1861, the defendant saith that the said three quarters in the said first count mentioned commenced respectively on the first days of September and December, 1860, and the first day of March, 1861, and that it was and is provided and agreed, in and by the said alleged deed, that should the said mills therein and in the said declaration mentioned be destroyed accidentally by fire, and not by neglect or carelessness, then in that case the said rent should thenceforth cease. And the defendant saith that the said mills were on the 5th day of March, 1861, and within six days after the commencement of the said quarter commencing on the first day of March aforesaid, in the year last aforesaid, accidentally destroyed by fire, and not by neglect or carelessness.

Seventh plea, on equitable grounds, as to so much of the declaration as relates to the plaintiff's claim for rent for or in respect of all or any part of the said term in the said first count mentioned subsequent to the 6th of March, 1861, the defendant saith that the said three quarters in the said first count mentioned commenced respectively on the first days of September and December, 1860, and the 1st of March, 1861, and that the plaintiff's claim in said first count includes a claim for rent for and in respect of a period of time subsequent to the said 6th day of March, in the year last aforesaid. And the defendant saith that it was and is provided and agreed in and by said alleged deed, that should the said mills therein and in said declaration mentioned be destroyed accidentally by fire, and not by neglect or carelessness, then and in that case the said rent should thenceforth cease. And the defendant further saith that subsequently to the first day of March, 1861, and before the said 6th day of March, in the year last aforesaid, the said mills were destroyed accidentally by fire, and not by neglect or carelessness.

The plaintiff demurred to each of these pleas.

Robert A. Harrison, for the demurrer, cited *Hopkins* v. *Helmore*, 8 A. & E. 464; *Poole* v. *Tumbridge*, 2 M. & W. 226; *Hume* v. *Peploe*, 8 East 178; *Chanter* v. *Leese*, 4 M. & W. 295, 311; *Clarke* v. *Holford*, 2 C. & K. 540; *Clarke* v. *The Glasgow Assurance Co.*, 1 MacQ Scotch App. Cas. 668; Vin. Abr. Vol. III., "Apportionment;" *Holtzapffel* v. *Baker*, 18 Ves. 115; Bullen & Leake Prec. 373; Chy. Junr. Prec. 351, 352.

Richards, Q. C., contra, cited *Newsome* v. *Graham*, 10 B. & C. 234; *Bennet* v. *Ireland*, E. B. & E. 326.

McLEAN, C. J., delivered the judgment of the court.

It appears to us that all these pleas are bad. The plaintiff is asking for rent *due* to him according to the lease *before* the burning of the *mill*. He was entitled to receive it and could have distrained for it on the first day of March, or he could have sued for it on that day. A right of action was vested in him when default was made in the payment, and being vested nothing which subsequently occurred would divest it except payment. All rent becoming due subsequent to the burning ceased to be payable under the lease, but if such provision had not been inserted the plaintiff could have insisted on his rent being paid quarterly, notwithstanding the destruction of the mill by fire, and the defendant could not protect himself against the payment by pleading that it had been burnt down or injured. He was not to be relieved from payment of rent by any other injury to the mill except burning not from carelessness or neglect. If it had been swept away or rendered useless by a flood, the rent would still be payable, or if the plaintiff were able to prove that the burning was wholly owing to neglect or carelessness—if, for instance, he could shew that the burning was owing to the defendant keeping the ashes from a stove in a box or barrel in the mill—the rent agreed upon could be enforced during the full period of the term.

The pleas do not set out any defence to the suit of the plaintiff, and judgment must be for the demurrer.

Judgment for plaintiff on demurrer.

LEE ET AL v. WOODSIDE.

Assignment—Money had and received.

F had a demand against one T on notes and acceptances of about $20,000. The plaintiffs agreed to transfer to him certain bank stock worth $2,550, as a loan, to secure which he agreed to assign, and afterwards delivered to them, $14,200 of these notes, all of which were negotiable but some only were endorsed by F. T. failed in Lower Canada, and F. obtained these notes from the plaintiffs to collect there for them. F. subsequently executed an assignment to the defendant for the benefit of creditors, including these notes in the schedule attached to it, but stating in the deed that they were held by the plaintiffs as security for their loan. All the money recovered from T. on F.'s whole claim against him (about $300 excepted) came in to the defendant's hands.

Held, that the plaintiffs might recover from the defendant as money had and received to their use, the amount of their loan out of the money received on the notes delivered to them as security; and if the amount paid by T. was paid generally on F.'s whole claim against him, then a sum founded on the proportion of such notes to the whole of T.'s debt.

ACTION for money had and received to the plaintiffs' use.

Plea—Never indebted.

The case was tried at the last Spring Assizes held at Toronto, before *Burns*, J., and the facts appeared to be these:—

On the 1st of June, 1860, D. K. Feehan entered into an agreement with the plaintiffs under seal, the material parts of which to this action were in these words:

"Whereas the parties of the second part" (the plaintiffs) "have agreed to transfer to the party of the first part" (Feehan) "sixty shares of the stock of the Bank of Upper Canada, amounting to the sum of three thousand dollars, as a loan to the said party of the first part. Now these presents witness, that in consideration