

The pretention that there could be any personal element in the choice of a tenant or that the tenant should live on the property is, having regard to the nature and condition of the land and the dilapidated building thereon, utterly untenable and absurd.

I find, therefore, that defendant did wilfully and arbitrarily withhold his consent to both assignments. His true reason for so doing was of course a dislike of seeing anyone else make any money out of the transaction.

The law is quite clear: "The proviso is not construed as implying a covenant on the part of the lessor not to refuse his consent arbitrarily or unreasonably, but if in fact it is so refused, the result is that the lessee is at liberty to assign without the lessor's consent; and he can obtain a declaration by the Court of his right to do so."

Halsbury, vol. XVIII., p. 579, sec. 1111 *et seq.*; Woodfall, L. & T. 19th ed., 776 *et seq.*; Foa, L. & T. 4th ed., 270 *et seq.*, and cases cited in all these, and several Canadian cases which I have consulted.

Owing to the delay caused by defendant's recalcitrance (I use the word advisedly, because he had been advised by Mr. J. E. Jones, barrister and solicitor, that he (Jones) did not see any reason why he did not give his consent) the realty company assumed to cancel and rescind their agreement with Cornish, so that company is entitled to damages on that head.

At the trial an amendment was added to the statement of claim claiming possession of the premises and damages, or *mesne* profits. I find that the defendant did enter and take possession without colour of right. Rent had been tendered, and he had no other right of forfeiture.

There will be a declaration that plaintiff McNeil was entitled to assign the lease and option to plaintiff Cornish, and that plaintiff Cornish is entitled to assign same to the Allen Edwards Spiers Realty Co. Limited, without the consent, written or otherwise, of the defendant.

2. Damages for defendant's refusal and neglect to give such consent.

3. Damages or *mesne* profits under the added count. Reference to Master as to last two items.

4. Costs of action and counterclaim, which is dismissed, to plaintiff.