

The provisions of a lease requiring notice from the lessee of an election or intention to renew or extend the term are for the benefit of the lessor and, therefore, the notice itself or any other matter going to the sufficiency thereof may be waived: 24 Cyc. 1003.

It may be said that the case is not analogous; but I think the Court here should adopt a similar principle. It is true that a tenant remaining in possession gives an evidence of some intention. Here, considering the conduct of Bond and his Winnipeg office, and especially in view of the contemplated "activity in certain directions," I have no doubt that the defendants were fully aware of the stand the plaintiff would take as to the contract.

I think the defendants made all their preparations well knowing they would surprise the plaintiff. I think they succeeded in springing a surprise. Under the circumstances I fail to see in what better position the defendants are to complain of lack of election than would a lessor in any of the cases cited above. I think here the defendants had no right at all to invade the territory as they did.

I think the plaintiff is entitled to a renewal of his contract upon the terms mentioned in that memorandum. I do not think the defendants may offer for sale the India paper edition in the territory granted.

It was agreed at the trial that if I found the defendants had no right to invade the territory, I might assume damage, and that in such case there would be a reference by consent to an arbitrator to be agreed upon or to be appointed by me under the law in that behalf.

I reserve the matter of the appointment. If the parties cannot agree I will appoint the arbitrator.

There will be an injunction as prayed.

Having regard to the amendments, I allow no costs.

*Judgment for plaintiff; injunction ordered.*

*A. B. Hudson and H. E. Swift, for plaintiffs. C. P. Fullerton, K.C., and C. S. Tupper, for defendants.*