

HIGH COURT OF JUSTICE.

LATCHFORD, J.

FEBRUARY 22ND, 1912.

ALEXANDER v. HERMAN.

Landlord and Tenant—Lease—Action to Set aside—Fraud and Misrepresentation—Right of Renewal—Term of Renewal—Indefiniteness—Agreement for Sale—Purchaser Affected with Notice of Lease—Estoppel—Res Judicata—Acceptance of Rent—Recognition of Tenancy—Act respecting Short Forms of Leases—Contract for Renewal not Binding on Assigns—Renewal in Perpetuity.

An action by two plaintiffs, Alexander and Johnston, for possession of a portion of a building now occupied by the defendant, or to have a certain lease made to the defendant reformed or set aside as having been obtained by misrepresentation, and on the ground that it is too indefinite, in that the term is not specified.

J. W. Hanna, K.C., for the plaintiffs.

S. C. Smoke, K.C., for the defendant.

LATCHFORD, J.:—At the trial I found that the lease in question in this action was not obtained by fraud or misrepresentation, as the plaintiffs allege.

Alexander, like Herman, resided in Detroit, and there carried on, in partnership with his son, a combined dry-goods and grocery business. He was the owner of a property in Windsor known as "The Old City Hall." Herman, under the name of "The Diamond Power Specialty Company," was a manufacturer of labour-saving and fuel-saving devices; and, desiring to establish a branch in Ontario, he applied to Alexander for a lease of the latter's property in Windsor. Herman desired to obtain a lease for three years. This Alexander refused. The negotiations ended, according to Alexander, in an agreement that a lease was to be made for one year certain, with right of renewal for another year, "if the property was not sold."

The defendant's brother, who conducted most of the negotiations with Alexander, says the arrangement was, "we were to have the privilege of renewing as long as we desired," and his evidence is corroborated by the defendant himself. The preparation of the lease was wholly in the hands of the defendant and his brother.