rent, which appears in the lease in the statutory form. Nor are we, in my judgment, embarrassed by considerations arising from the general relations of landlord and tenant. It is the case of two contracting parties, of whom the one expressly repudiates to the other the contract between them, and notifies him that he will not be bound by it. 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 the breach of the same. *Hochster* v. *De la Tour,* 2 E. & B. 678, etc. . . The action then becomes a plain common law action for damages, the plaintiffs having elected to treat the contract as at an end except for the purposes of damages."

The learned Judge then proceeded to assess the damages on the basis of the difference in present value to the plaintiffs between the lease to the defendant and the lease to Neeley, and gave the plaintiffs a verdict for $10,982.87, including in that sum the rent due when the writ was issued.

One point in this judgment which seems to invite comment is the statement that the re-letting of the demised premises by the landlord could scarcely be called an eviction or a re-entry for breach of condition under the proviso in the lease. In the United States (except in New York) it appears to be well settled that if a tenant repudiates the lease, and abandons the demised premises, and the landlord re-enters and re-lets the property, crediting the tenant with the proceeds, such re-letting does not release the tenant from the covenants in his lease. Many cases in support of this doctrine may be found in "Cyc," vol. 24, p. 1165, to which may be added the recent case of *Higgins* v. *Street,* 92 Pac. Rep. 153, in which the rule is laid down, supported by a long list of authorities, that the lessee could not, by failure to perform the conditions of his lease, abrogate the contract, and thus secure the advantage of his own default and that the landlord had the right to take possession, and lease to another tenant, and that such action would not create a surrender by operation of law. That some such opinion was at one time entertained in England is shewn in the case of *Walls* v. *Atcheson,* 3 Bing. 462