

BOYD, C.

OCTOBER 5TH, 1914.

## \*CROZIER v. TREVARTON.

*Landlord and Tenant—Action for Damages for Non-payment of Rent—Surrender—Acceptance by Reletting—Eviction—Forfeiture of Rent Accrued—Apportionment of Rent—Apportionment Act, R.S.O. 1914 ch. 156, sec. 4—Payment for Occupation—Deductions—Costs.*

Action to recover \$848.29 damages for breach of a covenant contained in a lease of a farm made by the plaintiff to the defendant.

F. Arnoldi, K.C., for the plaintiff.

H. S. White, for the defendant.

BOYD, C.:—The defendant, being a mason by trade, undertook to lease the farm in question from the plaintiff, who is a lawyer, through the medium of the plaintiff's brother, who is also a lawyer. The farm was sadly out of repair, and the house was uninhabitable, and an agreement was drawn by the plaintiff's brother, acting also for the defendant, by which provision was made for doing various repairs and betterments on the land. This agreement was kept by the plaintiff—no copy furnished the defendant, though he says he repeatedly applied for a copy—and it is now lost. The only evidence is, that the lease is in conformity to that agreement, as stated by the plaintiff and his brother, as against the statement of the defendant that it is not so drawn. My strong impression is, that the defendant was to do or to have done much more work than is admitted by the plaintiff, in many parts of which he (the defendant) was to render service as a mason, and for which he expected and understood he was to be paid or to have it allowed on the rent. This is confirmed by the fact that he gave a detailed account of his services and outlay to his solicitor from time to time as furnished and made. By the terms of the lease he was to get full possession on the 1st November, 1906; but the farm was then in possession of another tenant, Conlin, who paid rent to the plaintiff down to the 1st March, 1907. Not till that date did the defendant get full possession, and thereafter he went on to make the house habitable. He is corroborated in this by the

\*To be reported in the Ontario Law Reports.