

S. F. Washington,, K.C., and W. A. H. Duff, K.C., for the plaintiffs.

C. J. Holman, K.C., and J. M. Telford, for the defendant.

TEETZEL, J. :—The position of the plaintiffs is, that they are entitled to have the lease perpetually renewed, while the defendant contends that only one renewal is called for by the covenant.

The proper construction to be placed upon this form of covenant has long been settled, both in England and in Canada, to be, that the lessee is not entitled to a renewal in perpetuity, but only to one renewal, unless the language used in the covenant, expressly or by clear implication, shews that the parties intended a renewal in perpetuity. In order to establish such a construction, the intention must be unequivocally expressed; and a proviso in general terms that the renewal lease shall contain the same covenants and agreements as the lease containing the covenant for renewal has been repeatedly held not to extend to the covenant for renewal. See Woodfall, 18th ed., pp. 424, 425, and 426, and Halsbury's Laws of England, vol. 18, p. 463, where the leading cases are cited. See also *The King v. St. Catharines Hydraulic Co.*, 43 S.C.R. 595.

Taking the language of the covenant sued on, which must be the sole guide in determining the intention of the parties, there is nothing whatever to indicate that either party intended that the defendant should be under any irrevocable obligation to renew the lease, either perpetually or as long beyond one renewal term as the plaintiffs, without any obligation on their part to accept further renewals, might choose to require it to be done.

One circumstance urged for the plaintiffs as indicating that such intention could be gathered from the covenant was the fact that in a prior lease of part of the same premises made by the defendant's husband to the plaintiffs' testator, the precaution had been taken of inserting in a similar covenant for renewal the words "except renewal." It is quite clear that this circumstance or any other act of the parties cannot be invoked to affect the interpretation of the plain and unambiguous language of the covenant: *Baynham v. Guy's Hospital*, 3 Ves. 294; *Iggulden v. May*, 9 Ves. 325; *Foa on Landlord & Tenant*, 3rd ed., p. 272.

The defendant before action was and she still is willing to perform the covenant according to its proper interpretation, and only refused to execute the renewal lease tendered because of the insertion of the covenant for renewal.

The action must, therefore, be dismissed with costs.