

are given of what was said on the occasion, but I find that the parties did not intend to settle for any more than the rent and the shed, and, as there is nothing in the writing releasing defendant from the consequences of his breaches of contract, he is still liable for them.

Although the point was not raised on the argument, I have been in some doubt as to whether the acceptance of rent by plaintiff was not, as a matter of law, a waiver by him of the breaches of covenant on the part of defendant. See *Nellis v. McNee*, 7 O. W. R. 158, and *Walron v. Hawkins*, L. R. 10 C. P. 343. I have, however, come to the conclusion that it was not. The waiver in such cases is due to the lessor's accepting during the term, without protest, rent accruing after the commission of the breaches of covenant. The present is an entirely different case. The breaches of covenant were contemporaneous with the close of the term. The rent due had all accrued prior to the commission of them, and, when defendant came to pay it, he had already gone out of possession. Both the rent and the damages had become ordinary debts, and defendant by accepting the former did not preclude himself from recovering the latter also.

Plaintiff is therefore entitled to recover from the defendant the sum of \$398.10.

Defendant appealed from the Master's decision, without questioning the conclusions of fact, on the ground that as a matter of law the Master was wrong in not holding that plaintiff by accepting the rent had waived his claims for breach of covenant.

A. E. Fripp, Ottawa, for defendant.

George McLaurin, Ottawa, for plaintiff.

CLUTE, J., upheld the Master's decision.

APRIL 2ND, 1906.

DIVISIONAL COURT.

ROWE v. HEWITT.

Club—Expulsion or Suspension of Member—Injunction—Jurisdiction of Court—Property Rights.

Appeal by the defendants, members of the executive committee of the Ontario Hockey Association, from judgment of FALCONBRIDGE, C.J., upon motion for an interim injunction