

ing. The five thousand dollars has been tendered to him and had been refused by him. So far as I can see, Hawken has no right against Ramsay; his only claim is against the Irwin Estate. That estate is not before the Court in this litigation. They assent to payment to Hawken of the \$5,000. If he has a claim for any greater sum, that claim will be recognized, but it must be ascertained in proceedings to which the Irwin Estate are parties. In the meantime, it is said Ramsay is holding a portion of the \$75,000 ample to secure any claim which Hawken may have.

In this litigation, the only matter in issue is Hawken's right to retain possession of the land against Ramsay. He can have no such right unless he has the right to demand a lease of the sub-divided portion of the whole parcel. He has no such right, and judgment must, therefore, go for possession.

Ramsay is entitled to recover mesne profits. The only satisfactory evidence given at the trial indicates that the rental value of the building is \$250 per month with taxes. Mr. Heyd claims that he is taken by surprise in having to deal with this issue at the hearing, and I am disposed to grant him some indulgence upon proper terms. I assess the mesne profits at that rate; but on payment into Court of the sum so ascertained, as a condition precedent, I will allow Mr. Heyd's client to have a reference, at his own expense, for the purpose of ascertaining the mesne profits.

There is no reason why costs should not follow the event.