

*v. Rees* (1838), 4 Bing. N.C. 384; *Keith v. National Telephone Co.*, [1894] 2 Ch. 147; *Roe v. Southard* (1861), 10 U.C.C.P. 488, although the landlord protests that such acceptance is without prejudice to his right to insist on the forfeiture: *Davenport v. The Queen* (1877), 3 App. Cas. 115; *Croft v. Lumley* (1858), 8 H.L.C. 72. So, where the landlord makes an unqualified demand on the tenant for rent due after the forfeiture: *Doe v. Birch* (1836), 1 M. & W. 402, 46 R.R. 326, or sues him for such rent: *Dendy v. Nicholl* (1858), 4 C.B.N.S. 376, it amounts to a waiver. In like manner, a distress for rent after the forfeiture is incurred, whether such rent became due before or after the forfeiture, operates as a waiver: *Cotesworth v. Spokes* (1861), 10 C.B.N.S. 103. But acceptance after forfeiture of rent which became due before the forfeiture, is not sufficient to constitute a waiver: *Price v. Worwood* (1859), 4 H. & N. 512; *Dobson v. Sootheran* (1888), 15 Ont. R. 15.

Where the landlord credits moneys received on a note given by the tenant for previous arrears of rent, it was held to be no waiver of a forfeiture arising in respect of rent accruing after the note was given: *McDonald v. Peck* (1859), 17 U.C.R. 270.

In an action to recover possession on the ground of forfeiture for breach of covenants, and to recover arrears of rent, acceptance by the landlord of the sum paid into Court by the defendant in satisfaction of the rent, is not a waiver of a breach of covenant which took place after the rent became due: *Toogood v. Mills* (1896), 23 V.L.R. 106. A reference to arbitration after default operates in the meanwhile as a suspension of the right of re-entry: *Black v. Allen* (1867), 17 U.C.C.P. 240.

A lease to a joint stock company provided that in case the lessee should assign for the benefit of creditors, six months' rent should immediately become due and the lease should be forfeited and void. The two lessors were principal shareholders in the company, and while the lease was in force one of them, at a meeting of the directors, moved, and the other seconded, that a by-law be passed authorizing the company to make an assignment which was afterwards done, the lessors executing the assignment as creditors assenting thereto. It was held that the lessors and the company were distinct legal persons and the individual interests of the lessors were not affected by their action as shareholders or directors of the company, and the lessors were not estopped from taking advantage of the forfeiture clause: *Soper v. Littlejohn* (1901), 31 Can. S.C.R. 572, following *Salomon v. Salomon*, [1897] App. Cas. 22.

Where, however, the act or omission which constitutes the breach of a covenant and occasions the forfeiture, is of a continuing nature, these acts of the landlord operate as a waiver only to a limited extent. Thus, acceptance of rent in the case of a continuing breach is a waiver down to the time such rent is received, but not afterwards: *Doe v. Gladwin* (1845), 6

B. 953. So, a distress is a waiver of a continuing breach down to the time the distress is made: *Thomas v. Lulham*, [1895] 2 Q.B. 400.

It has been held that covenants to repair, to insure, to cultivate or use the premises in a particular manner, are continuing covenants, and the