

letter and with the original memorandum, I think I may safely say that, except wherein that original memorandum handed to Mr. Robinson is varied, its contents become and are a part of the contract.

Let us assume for the moment that the defendants are right in their contention that the term was varied by the "overleaf." Even so, the renewal clause remains a part of the contract.

But if the defendants are right in their contention that the contract expired in five years, whether they completed their publication or not, then it may be urged that the defendants not having elected to renew within the term, may have lost that right. I have been referred to no authority on this point. I think I may refer to the law regarding leases:—

A lease which creates a tenancy for a term of years may confer on the lessee an option to take a lease for a further time . . . and its exercise is not necessarily restricted to the duration of the original term: Halsbury, Vol. 18, 845.

Where a lessee for a term of years has the option to renew his lease, it seems to be the better doctrine that he must notify his lessor before the term expires whether he elects to renew, as the lessor should know at the moment when the lease expires whether he has or has not a tenant. . . . A court of equity will not relieve the lessee against a failure to give the required notice if such failure was caused by wilful ignorance or accident not unavoidable. If, however, the failure to give the notice was caused by unavoidable accident, fraud of the lessor, surprise or ignorance not wilful, a court of equity should grant relief and compel renewal. . . . The lessor may also be bound by a waiver. . . . : 18 Am. & Eng. Encyc., 2nd ed., 692.

Courts of equity will relieve a lessee if he has lost his right to renew by fraud on the part of the lessor or by unavoidable accident on his own part. They will not assist him where his failure to renew is on account of his own gross laches or negligence. On the other hand, it is held that on the question of the right to relief against a forfeiture for failure to renew time is not essential where there is mere neglect, but that in the case of gross or wilful negligence relief will not be granted: 24 Cyc. 1006.

A provision in a lease giving to the lessee the privilege of extending the term is to be distinguished from a provision giving to the lessee the option to renew. In the former case no notice of the lessee's election to extend the term is required, in the absence of a stipulation therefor in the lease, his mere remaining in possession being sufficient notice: 18 Am. & Eng. Encyc., 2nd ed., 693.