

There is another aspect of the case that also presents difficulty. Before the plaintiff can justify his action he must shew not only a contract, but that the defendant is in default. Clearly the defendant was not called upon to do anything until the tender was made.

Also, the tender was insufficient, if based upon the theory that the letter of May 9th, constituted an acceptance. Interest ought to have been paid on the cash, and the mortgage ought to have provided for interest running from that date.

That renders it unnecessary to consider the other defences relied upon.

In dealing with the case, I have considered myself bound by the decisions in *Davis v. Shaw*, 21 O.L.R. 474, and in *Maltezos v. Brouse*, 19 O.W.R. 6, to regard the clause in question as a mere offer or option, quite distinct from the lease, and not founded upon any consideration. Were it not for these cases I would have found myself unable to answer the question put in *Hall v. Center*, 40 Cal. 63, "How is it that the Court would thus compel the lessor to part with an estate for years at the mere option of his tenant, but would at the same time permit him to violate his agreement to part with the fee, if the tenant elect to purchase it?" For I take it to be clearly established by a series of English cases that the Court will decree specific performance of an agreement to grant a renewal of a lease.

Even if this were so, the plaintiff would yet fail in this action, for the reasons I have given. The action must, therefore, be dismissed with costs.

MIDDLETON, J.

NOVEMBER 18TH, 1912.

"MY VALET," LIMITED v. WINTERS.

*Business Name—"My Valet"—Action to Restrain Use of Name, "My New Valet"—Colourable Difference—Misrepresentation—Passing Off.*

Action to obtain an injunction restraining the defendant from carrying on business under the name, "My New Valet," or any other similar name, or any name so closely resembling that of the plaintiffs, as to be likely to deceive, and for damages.

E. F. B. Johnston, K.C., and D. I. Grant, for the plaintiffs.  
J. H. Cooke, for the defendant.