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A RECENT DECISION UPON THE LAW OF LANDLORD AND TENANT.

Fitzgerald v. Mandas is reported in 21 O.L.R. 312. As the case will not go any further, the defendant not having appealed from the verdict in favour of the plaintiffs, it is proposed to say a few words upon some points of law involved in the decision.

The facts are very simple. The plaintiffs by indenture leased property to the defendant for ten years from the 5th March, 1910, at a rental of \$3,000 per annum payable monthly in advance; the defendant covenanted to pay rent, taxes, etc. The defendant was offered, but refused to take possession, and, after some negotiation as to the value of shelving, etc., repudiated the lease and refused to act under it.

The action was brought on the 7th April, 1910, immediately after the defendant's repudiation of the lease, claiming \$500 for two gales of rent and damages for breach of contract. On 22nd April, 1910, the plaintiffs leased the premises to one Neeley, for a term commencing on 30th April at a rental of \$175 per month. At the trial on 30th May, 1910, counsel for the defendant stated that he appeared only on the question of damages, admitting that his client was liable for same amount.

In a written judgment on 4th June, 1910, the learned trial Judge, after pointing out that there could be no question as to two gales of rent due when action was brought, said, that the act of the landlord in leasing to Neeley could scarcely be called an eviction, as "to constitute an eviction at law the lessee must establish that the lessor, without his consent and against his will, wrongly entered upon the demised premises, and evicted him and kept him so evicted," citing from *Foa*, 4th ed., at p. 166. The learned Judge went on to say: "Neither is this the case of the landlord taking advantage of the proviso for non-payment of