

G. Cooper, for the defendants, appellants.

T. J. W. O'Connor, for the plaintiff, respondent.

HON. SIR WM. MEREDITH, C.J.O.:—The respondent is the assignee of a lease dated 23rd February, 1909, from the owners of the land in question and other land to Maurice Wolff, by which these lands were demised to Wolff for the term of 10 years, from 1st May, 1909, and the action is brought to recover possession of the land in question.

Wolff on the 24th of May, 1909, and before the assignment of his lease to the respondent, executed an agreement under seal by which he granted to the appellants, who are described as licensees, "a license to maintain and carry on a restaurant in the roughcast house in Wolff's Park (except a room on the second floor . . .) for ten years from the 1st of May, A.D. 1909, less the last ten days thereof upon and subject to the terms and conditions hereinafter expressed."

Wolff's Park is the land demised to him by the lessee, and the roughcast house comprises the premises, possession of which is claimed by the respondent.

Among the terms and conditions expressed in the agreement are the following:—

"The licensees . . . shall have no right or power to sell, mortgage, pledge, sublet or assign this agreement or license or any interest therein, nor shall he (sic) permit any person to have any interest in or use any part of the premises, building, erection or space covered by this license for any purpose whatever without the consent in writing of the owner."

The agreement also contains the following provisions:—

"The right to occupy the building and space covered by this license and to maintain and operate a restaurant or other concession, feature or privilege shall continue only so long as the licensee shall strictly observe, comply with and perform the undertakings, provisions, agreements and stipulations agreed and entered into by them in this agreement.

If the licensees shall make default in the strict observance and performance of the undertakings, provisions, agreements and stipulations agreed and entered into by them, the owner may immediately or at any time after such default close up and take possession of the space covered by this license, and this license shall thereby be and become