

without competent and independent advice, and did not understand the meaning and effect of it, etc.).

Paragraph 5, as to the defendant's alleged understanding of the instrument, was not only not supported by evidence, but it was shewn to be utterly false, by the testimony of an independent solicitor and his stenographer, who proved that it was read to the defendant, and that he perfectly understood the same.

Then as to the facts in dispute—which are principally as to conversations with the defendant by different persons trying to get him to execute a consent—I have no hesitation in giving credence to the plaintiffs and their witnesses as against the defendant. This I do having regard to the demeanour of the deponents and by the application of the other standards adopted by jurists in determining the relative value of conflicting statements.

The pretension that there could be any personal element in the choice of a tenant, or that the tenant should live on the property, is, having regard to the nature and condition of the land and the dilapidated building thereon, utterly untenable and absurd.

I find, therefore, that the defendant did wilfully and arbitrarily withhold his consent to both assignments. His true reason for so doing was, of course, a dislike of seeing any one else make any money out of the transaction.

The law is quite clear. “The proviso is not construed as implying a covenant on the part of the lessor not to refuse his consent arbitrarily or unreasonably, but if in fact it is so refused, the result is that the lessee is at liberty to assign without the lessor's consent; and he can obtain a declaration by the Court of his right to do so.” Halsbury's Laws of England, vol. 18, p. 579, secs. 1111 et seq.; Woodfall's Landlord and Tenant, 19th ed., pp. 776 et seq.; Foa's Landlord and Tenant, 4th ed., pp. 270 et seq.; and cases cited in all these, and several Canadian cases which I have consulted.

Owing to the delay caused by the defendant's recalcitrance (I use the word advisedly because he had been advised by Mr. J. E. Jones, barrister and solicitor, that he, Jones, did not see any reason why he did not give his consent) the realty company assumed to cancel and rescind their agreement with Cornish; so that company is entitled to damages on that head.

At the trial an amendment was made to the statement of claim adding a claim for possession of the premises and damages or mesne profits. I find that the defendant did enter and