

continued the manufacture. This action is brought to recover the amount of the rent of this land, the cost of the building, the loss of profit during the time the business operations were suspended, the excess wages paid for carrying the raw material to this new building and returning it to the other building, and the costs of the former action. The sums claimed I think may be fairly taken to represent the actual loss sustained by the plaintiffs by reason of the failure of their original plan.

While I sympathise much with the very unfortunate position in which the plaintiffs find themselves, I think there are insuperable difficulties in the way of maintaining this action. As brought, the action is based upon a breach of the covenant for quiet enjoyment and of the covenant permitting the erection of the fireproof room.

In the first place, and at the threshold of the plaintiffs' case, is the difficulty that the defendant here sued is not a party to the lease or the covenants. It can only be made liable by shewing that these covenants were covenants running with the land and that this defendant had been guilty of a breach. Assuming that the covenants do in one sense run with the land, I do not think that any breach on the part of the defendant has been shewn. The covenant for quiet enjoyment, when read in the light of the Short Forms Act, is a covenant against any "disturbance from the lessor or other person or persons lawfully claiming by or under him." The disturbance here was by the head landlord. The lease contains no covenant on the part of the lessor as to their right to make the lease. If it did, the original lessor and not the assignee would be liable for any damages under it.

Then, the other covenant sued on is a covenant permitting the erection of a fireproof room. There is no breach of this. The lessees erected just such a room as they saw might do.

The action fails, and must be dismissed, with costs if fit. The complaint was that the room erected was not an adequate protection against fire. In no way were they prevented from doing that which the lease stipulated they asked. I hope the defendant may be generous enough not to press the claim for costs.