

the defendants, the lessees from the plaintiffs of the premises on the north-west corner of Queen and Yonge streets, in the city of Toronto, from taking down the wall between the building on the land demised to them by the plaintiffs and a building adjoining it, upon land also demised to the defendants, and for damages; and (2) to recover possession of the land demised by reason of breaches of covenants in the lease, and for damages. The actions were consolidated.

W. N. Tilley, for the plaintiffs.

E. D. Armour, K.C., for the defendants.

SUTHERLAND, J. (after stating the facts and referring to the pleadings and the evidence):—The question as to whether the plaintiff did or did not, knowing that an opening in the basement had already been made, give permission to the defendants, at the interview on the 5th April, 1909, to go on with the main portion of the work to be done, pending an agreement to be made between the parties, is a matter of importance in determining this action. I have come to the conclusion that the testimony of the plaintiff Thomson is to be preferred to that of the defendants. . . . The fact appears to be that the defendants were very anxious to proceed with the work, and assumed, without leave or license, to go on with it and take the chances.

I, therefore, find as a fact that no leave was given to the defendants to proceed with the work, as they allege.

I think that, under the terms of the lease, the defendants had no right to make openings of the kind they did in the wall in question, and that their so doing was a breach of the covenant to repair and keep in repair contained in the lease. . . .

The plaintiffs ask that a forfeiture of the lease be declared, and that they be given possession of the premises. As to this branch of the case several contentions are put forward on behalf of the defendants. In the first place, they say that the notice referred to in paragraph 7 of the statement of claim, and dated the 6th July, 1909, is not a notice given under sec. 13 of the Landlord and Tenant Act, R.S.O. 1897 ch. 170, but is a notice given under the clause as to repair in the Act respecting Short Forms of Leases, R.S.O. 1897 ch. 125; and an examination of it would appear to confirm this view. . . . It would appear, therefore, that no notice as to the forfeiture of the lease, in the terms required by the Landlord and Tenant Act, sec. 13, was given; and, consequently, that the landlords (the plaintiffs) were not in a position, when the action for possession was be-