

Had a motion been made by the defendant for an extension of time to pay the money by the date he had, by his contract, fixed for payment, upon the ground that he was then unable to meet his obligation, I could not have helped him, nor would he have had any equity in his favour. His accidental misunderstanding of the date fixed for payment is another matter.

Order made upon terms relieving the defendant from the consequences of his default.

*McBrayne, K.C., for defendant. Schelter, K.C., for plaintiff.*

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Falconbridge, C.J.K.B., Latchford, J., Riddell, J.] [Jan. 7.

MICKLEBOROUGH v. STRATHY.

*Landlord and tenant—Lease—Surrender by act of parties and operation of law—Intention.*

Appeal by plaintiff from judgment by TEETZEL, J., 21 O.L.R. 259, dismissing the action and allowing defendant's counterclaim. The action was for a declaration that a certain lease had been determined by the acts of the defendant and that the plaintiffs were no longer liable for rent. The counterclaim was for rent.

*Held*, that in order that the lease shall be surrendered by operation of law there must be a resumption of possession by a landlord through himself or his (new) tenant; that there is no difference in the effect of a landlord himself going into possession and of a new tenant obtaining possession; and that, aside from unequivocal acts, there must be on the part of a landlord an intention to take possession and put an end to the lease, i.e., no longer "to hold the tenant to his lease" (*Oustler v. Henderson*, 2 Q.B.D. at p. 578); and that the taking possession for a limited time of two rooms by a landlord is not one of those unequivocal acts, but the effect of such an act depends on the intention (or not) "to hold the tenant to his lease."

*A. C. McMaster, for plaintiff. Geo. Bell, K.C., for defendant.*