

the constitution and laws, not being signed by the deceased, and no explanation having been given as to why it was not signed. I refer also to the circumstance that, although a change had been made in the constitution and laws on 2nd September, 1898, and before the date of the certificate, the form of application for membership and the form of certificate used were those appropriate to the constitution and laws before the amendment was made.

In my opinion, the judgment pronounced at the last trial should be vacated and a new trial had of the whole case, and the costs of the appeal and of the last trial should be costs in the cause to the party who is ultimately successful.

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MARCH 13TH, 1905.

DIVISIONAL COURT.

DELAMATTER v. BROWN BROTHERS CO.

*Landlord and Tenant — Lease — Surrender — Evidence of Destruction of Building by Fire—Obligation of Tenants to Rebuild—Covenants to Repair—Breaches—Short Forms Act — Assignment of Lease — Assignment of Reversion—Parties—Amendment.*

Appeal by defendants from judgment of BOYD, C., in favour of plaintiffs.

The action was brought by Ira Delamatter and his wife, Emma C. Delamatter, against Brown Brothers Company and Brown Brothers Company Nurserymen Limited.

The male plaintiff, being the owner of a farm in the township of Pelham, by indenture of lease, dated 29th June, 1891, and expressed to be made in pursuance of the Act respecting short forms of leases, R. S. O. 1897 ch. 106, devised it to defendants the Brown Brothers Co. for the term of 12 years, to be computed from 1st April, 1892. The lessees covenanted "to repair," "and that the said lessor may enter and view state of repair and that the said lessee will repair according to notice," "and that they will leave the premises in good repair, ordinary wear and tear only excepted."

After the making of the lease, plaintiff Ira Delamatter conveyed the lands demised to plaintiff Emma C. Delamatter, and defendants the Brown Brothers Co. conveyed all their interest under the lease to their co-defendants, who accepted the lease and became liable to all the covenants.