

Held, that the owner, but not the tenant, was liable over to the city for the damages sustained by the plaintiff.

Irwin for the plaintiff.

Biggar, Q.C., for the city of Toronto.

J. D. Montgomery for the defendant O'Grady.

D. O. Cameron for the defendant O'Donohoe.

MACMAHON, J.]

[Nov. 17, 1893.

SELDON v. BUCHANAN.

Landlord and tenant—Surrender at law—Whether of whole or part of lands demised.

A lease to the defendant, dated 1st April, 1885, for ten years, at an annual rental of \$120, payable quarterly on the 1st January, July, October, and April in each year, contained a provision enabling the lessee to determine the lease by giving three months' notice in writing before the 1st January in any year. The defendant, for his own business, only occupied part of the premises, and subletted the remainder. In November, 1891, the part subletted by the defendant being unoccupied, defendant verbally notified the lessor that unless the premises were repaired he would have to surrender. The lessor treated this as a valid notice under the lease, and, after negotiations with the defendant, it was agreed that the defendant should have the portion of the premises occupied by him at \$24 a year, to take effect on the 1st of April following, but with a right to the lessor, should he sell, to cancel same.

Held, that what took place in November, 1891, was a surrender in law of the whole of the premises, and not merely of the part not occupied by the defendant.

Osler, Q.C., and *Jackson* for the plaintiffs.

T. Wells (of Ingersoll) for the defendant.

ROBERTSON, J.]

[Dec. 15, 1893.

BURNHAM v. BOSWELL.

Will—Residuary devisee—Power of disposal—Disposal by deed—Sufficiency of.

The residuary clause of a will was: "I give and bequeath to my sister M. all the rest and residue of my personal estate," etc., "and what shall remain undisposed of I give and bequeath to my brother H., to and for the use of himself and his children." M. executed a deed of trust whereby she conveyed the residuary personal estate, with other moneys, to E.B., upon certain trusts. Afterwards by her will she disposed of the said estate, etc., somewhat differently from that declared by the deed of trust.

Held, that by the deed of trust there was a sufficient disposal of the said personal estate under the terms of the devise to M., and therefore M.'s subsequent will was inoperative to effect same.

Farewell, Q.C., and *Yarnold* for the plaintiff.

Hampden Burnham for the defendant.