for occupancy, within the meaning of the proviso, when they became wholly unfit for occupancy taking into consideration the purposes of the lease and the uses to which the premises were put by the defendants.

Upon the question whether the requisite repairs—i. e., repairs to the old or main building and the rebuilding of the others—could have been made, with reasonable diligence, within 60 days, the evidence was conflicting. The learned Judge found that the work would have occupied more than 60 days.

The two conditions precedent to the defendants' right to determine the lease existed, and they were justified in notifying the plaintiffs on the 29th April that they terminated the lease, and in their surrender of the premises by letter of the 28th May.

The defendants ought to pay rent up to the time of the receipt by the plaintiffs of the letter of the 28th May—$953.42: see the Apportionment Act, R.S.O. 1914 ch. 156, sec. 4.

The plaintiffs had no claim if the case was one to which the part of the proviso relative to the case of such a fire as did not give to the tenant the right to determine the lease, applied; and the plaintiffs were in worse plight than if the case was governed (as the learned Judge had held) by the part of the proviso relative to the case of such a fire as would give the defendants the option which they purported to exercise; for, if the last mentioned part of the proviso applied, the defendants must pay rent until the surrender of the premises; while, under the other, the plaintiffs had no right to rent until the premises were restored so as to be fit for occupation, and they were never so restored; and the plaintiffs had not proved that they suffered any loss.

There should be judgment in favour of the plaintiffs for $953.42; but, as there did not seem to have been any demand or refusal of this sum, and as the claim actually put forward by the plaintiffs failed, there should be no order as to costs.