

Province of Ontario.

COURT OF APPEAL.

From Rose, J.]

[Jan. 24.

GOLD MEDAL FURNITURE COMPANY v. LUMBERS.

*Landlord and tenant—Notice to quit—"Disposing" of premises—Covenant for quiet enjoyment.*

A lease provided that in the event of the lessor "disposing" of the building the lessees should give up possession on certain notice; and soon after the lease was made notice was given by the lessor in assumed compliance with this proviso, and possession was given up by the lessees by consent but under protest before the expiration of the time limited by the notice. The alleged "disposal" of the building consisted of the making of an agreement by the lessor with a person who was to have the superintendence of the building, to obtain tenants for the lessor, and to collect rents, with the right to take a sublease himself in certain events with an option to purchase:—

*Held*, per BURTON, C.J.O., and MOSS, J.A., That this was not a disposal of the building within the meaning of the proviso, and that the lessor was liable in damages, he having misled the lessee to the latter's prejudice in reference to a fact within his own knowledge and in reference to which there was a legal obligation upon him to state the truth.

Per OSLER, J.A., That (on the evidence) the plaintiffs were not deceived or misled by the notice and were not entitled to damages.

Per MACLENNAN, J.A., That there was a disposal of the building within the meaning of the proviso, but that even if there was not there was no right of action in the nature of an action of deceit, the notice having been given in good faith; and no right of action for breach of the covenant for quiet enjoyment, the notice, if bad, not affecting the lessee's rights.

In the result the judgment of ROSE, J., 34 C.L.J. 90; 29 O.R. 75, was affirmed.

*Watson*, Q.C., and *Smoke* for the appellant. *S. H. Blake*, Q.C., and *F. C. Cooke* for the respondents.

From Divisional Court.]

[Jan. 24.

CASTON v. CONSOLIDATED PLATE GLASS COMPANY.

*Master and servant—Hired waggon—Negligence of driver—New trial—Adding parties.*

When a man is the general servant of one person and at the same time the servant of another person in relation to a particular matter, the question