that even if the Court should be of opinion that this matter could be proceeded with on an originating summons, the defendant ought to be given an opportunity to file a written statement herein. I was of opinion that this was a fit and proper case to be proceeded with on an originating summons. But inasmuch as the defendant wanted to file a written statement, I saw no objection to such a course and accordingly granted an adjournment. The defendant has now filed his written statement. In his written statement, the defendant states that the plaintiff has no cause of action as against him and that even if he had any, these proceedings by way of originating summons are wholly misconceived.

I think the procedure which has been adopted by the plantiff in the present instance is entirely correct. Under the rules of this Court (see Chapter XIII) any person claiming to be interested under a deed or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested. The corresponding rule in England is R. S. C. Order L IV*a*, rule 1. Among matters dealt with from time to time under the last-mentioned rule, have been questions as to whether an effective notice to determine a lease had been given [*Re Viola's Lease* (1)], whether a license to assign had been unreasonably withheld [*Young* v. *Ashley Gardens Properties Ltd.* (2), *Re Spark's Lease* (3), *Evans* v. *Levy* (4)], whether upon the true construction of a covenant in a lease, the costs of new drainage works were payable by the tenant [*Farlow* v. *Stevenson* (5)]

(1) [1909] 1 Ch. 244.
(2) [1903] 2 Ch. 112.
(3) [1905] 1 Ch. 456.
(4) [1910] 1 Ch. 452.
(5) [1900] 1 Ch. 128

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and whether letters which had passed between parties amounted to an agreement for the renewal of a lease [*Bossert* v. *Jones* (1)] and the like. Of course, it is not the proper mode of procedure when the litigation involves anything beyond questions of construction or where the question of construction will not necessarily put an end to the litigation [see *Lewis* v. *Green* (2)]. The procedure adopted in this case was also, it may be noticed, adopted in the recent case of *Mills* v. *Cannon Brewery Company Ld.* (3).

I do not doubt, therefore, as I have said already the correctness of the procedure in this case.

The only question that now arises is whether, in the circumstances of the present case, the defendant was justified in withholding his consent to the assignment of the residue of the term under the said Indenture of Lease to the Bijou, Ltd. The onus of proof is on the plaintiff. I understand that the defendant's objection was that he did not like that the residue of the term should be assigned to a Limited Company. In my opinion, the objection is not sustainable. It has been held that the word "person" in a covenant against assignment includes a corporation, and a limited Company is capable of being "a respectable and responsible person" within the meaning of such a covenant [see *Willmott* v. *London Road Car Co.* (4)]. As to what is an "arbitrary" or "unreasonable" refusal, the cases of *Treloar* v. *Bigge* (5), *Briswell Hospital* v. *Fawkner* (6), *Barrow* v. *Isacs* (7), and *Quinion* v. *Horne* (8) indicate that the expressions when used in a clause such as the

(1) (1904) 48 Sol. Jour. 636.
(2) [1905] 2 Ch. 340.
(3) (1920) 36 T.L.R. 513.
(4) [1910] 2 Ch 525.
(5) (1874) L R. 9 Ex. 151.
(6) (1892) 8 T. L. R. 637.
(7) [1891] 1 Q. B. 417
(8) [1906]. 1 Ch 596.

one now under consideration mean "without fair, solid and substantial cause".

On the evidence before me, I am of opinion that the defendant's refusal in the present case was unreasonable and capricious. I do not propose to again go through the correspondence; it is only necessary to point out that there was an express clause in the lease by which the liability of the plaintiff would remain undiminished in the event of an assignment. The only question now is the question of costs. In the view of the matter which I have taken, there is no escape from the conclusion that the defendant must pay the costs of this application. Therefore, the order is that on a proper construction of the Indenture of Lease mentioned in the plaint, and in the circumstances mentioned therein, the plaintiff is entitled to assign the remainder of the term of the said lease to the Bijou, Ltd. without the consent of the defendant and that the defendant should pay the costs of and incidental to this application. Certified for counsel.

Solicitors for the plaintiff: *Watkins & Co.*
Solicitors for the defendant: *Leslie & Hinds.*

A. P. B.