weeks in each year, but discontinues it and ceases so to operate it, he is to pay back a due proportion of the consideration paid.

Whatever would be the effect of the words "demise" and "lease," in the absence of any covenants on the subject of enjoyment, by way of qualification or limitation, it is clear that the express covenants in this lease, in regard to enjoyment, forbid any implication as to a covenant for quiet enjoyment growing out of the use of the words "demise" and "lease." It is covenanted that if the theater is substantially destroyed by fire or other unavoidable casualty, the rights created shall terminate on both sides, and the lessor, and his executors, administrators, heirs, and assigns, be released from all liabilities under the lease. It is also covenanted that if the lessor, or his heirs or assigns, shall at any time elect to discontinue the use of the building as a theater and to devote it to other purposes, he or they shall have the right so to do on paying or tendering to the lessee such proportion of the sum of $1,000 as the time then to elapse before June 10, 1892, shall bear to the full term of 18 years, and all rights created by the lease shall thereupon cease, and the lessor, and his executors, administrators, heirs, and assigns, be released as aforesaid. The destruction of the theater by fire or other unavoidable casualty is to terminate the lease, and in that event the lessee loses all of his $1,000, though this event may happen the day after the lease is made. No provision is made for paying anything back in that case. Then comes a provision for paying something back in a particular event. The theater is built on leased land, which fact the lessee knows, and the leases to Cheney run for a time longer than the lease to the plaintiff. Cheney may choose to devote the theater building to some other use before June 10, 1892, and make it a source of profit in that way. In such case, he is to pay back to the lessee such proportion of the $1,000 as the unexpired time before that date bears to 18 years. Now, with a covenant for the termination of the lease, and the payment of nothing to the lessee, in case of a total destruction of the building, though it should happen the next day, and with a covenant for the payment back of a fixed proportion of the $1,000 in case of a use of the building for other purposes by the lessor, it is not, in the absence of an express covenant for quiet enjoyment during the term of the lease, to be inferred that the lessor agreed, under an implied covenant for quiet enjoyment, to pay back the whole or any part of the $1,000, or to pay any sum as damages, in case of any discontinuance except one of the character specified. Especially is this so in the absence of any covenant to keep the theater open for public performances or entertainments during 40 weeks in each year. The mentioning of the 40 winter weeks is to give to the lessee the right to use the seat only when the theater shall be open during the 40 winter weeks, and to make it clear, in connection with a subsequent clause in the lease, that at all times except when, during the said theatrical winter seasons, the lessee shall be entitled to use the seat,

the lessor shall have the free use of it; as, during a summer theatrical season. In view of all this, the ceasing to give theatrical representations after May 11, 1878, because of the failing health of Cheney, and of his prior loss of money by the theater, was a risk which the lessee and not the lessor assumed.

Both parties knowing that the theater was on ground leased to Cheney, a discontinuance of the use of the building as a theater by Cheney, without a devotion of it to other purposes, would naturally involve non-payment of rent by Cheney, and eviction of Cheney and the plaintiff. Hence, while there is a provision that, in case Cheney should "elect to discontinue the use of the said building as a theater, and to devote it to other purposes," he should refund the proportional part of the $1,000, the election being intentional and voluntary, and involving a use of the building for other purposes, as well as a discontinuance of the use of it as a theater, no provision is made as to a mere discontinuance of the use of the building as a theater, unaccompanied by a devotion of it to other purposes. That might be caused by death, or ill health, or insolvency, and was a risk taken by the lessee. This view of the lease shows, also, that the consideration did not fail in whole or in part. The plaintiff obtained, and has enjoyed, all the rights which the lease conferred.

There is no proof that Cheney or the defendant devoted the building to other purposes after Cheney discontinued its use as a theater. The fact agreed to by the defendant is only that Cheney, being in failing health, and having already lost a considerable sum of money by the theater, ceased to give theatrical representations in it, and they were never resumed by him before his death, nor since then by his executrix. The causes of action set up thus failing, there is no occasion to construe the statute of Connecticut (Rev. 1875, p. 388, §§ 4, 5, 6) in regard to the time within which rights of action must be exhibited to an executor, or to determine when any supposed right of action in this case accrued.

Let a finding for the defendant, and a judgment accordingly, with costs, be entered.

UNITED STATES *v.* CLARK.[1]

(*Circuit Court, E. D. New York.* June 12, 1884.)

SUPERVISORS OF ELECTION — DUTIES UNDER REV. ST. §§ 2018, 2019 — RIGHT TO SCRUTINIZE BALLOTS.

Under section 2018 of the Revised Statutes, which provides that the supervisors of election must "personally scrutinize, count, and canvass each ballot," a supervisor has the right to have each ballot in his hands for such reasonable time as may be necessary for him to scrutinize it with care.

Conviction under Rev. St. § 5522. Motion for new trial.

[1] Reported by R. D. & Wyllys Benedict, of the New York bar.