

307

Syllabus.

breach of the lease may not be proved. We hold otherwise.

By the terms of the contract the filing of the petition in bankruptcy was, of itself, and irrespective of the election of lessor or lessee, a breach of the lease. The claim of the landlord, consequent upon the breach, arose and matured at the moment of the filing of the petition. The claim is not for rent reserved or upon the lease as such, but is founded upon an independent express contract, and hence within the very words of § 63 (a) 4.

The Circuit Court construed the stipulation as an agreement on the part of the tenant to pay as liquidated damages, in the event of the specified breach, an amount equal to the difference between the present fair value of the remaining rent due under the lease and the present fair rental value of the premises for the balance of the term. The covenant is fairly susceptible of this construction. So read, the court held the clause provided a reasonable formula for ascertaining the damages of the landlord, did not smack of a penalty, and was therefore enforceable. See *Wm. Filene's Sons Co. v. Weed*, 245 U. S. 597. We concur in the view that the contract, as its terms were interpreted and applied, supports a provable claim for the stipulated damages.

The judgment of the Circuit Court of Appeals is

*Affirmed.*

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IRVING TRUST CO., TRUSTEE IN BANKRUPTCY,  
v. BOWDITCH ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 173. Argued November 6, 1934.—Decided December 3, 1934.

Decided upon the authority of *Irving Trust Co. v. A. W. Perry, Inc.*,  
*ante*, p. 307.

Affirmed.

CERTIORARI \* to review a judgment affirming a judgment of the District Court which allowed a claim in bankruptcy based upon a covenant in a lease.

*Mr. Lester D. Melzer*, with whom *Mr. Irving L. Ernst* was on the brief, for petitioner.

*Mr. Burton E. Eames* for respondents.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

This case is ruled by No. 22, *Irving Trust Co. v. A. W. Perry, Inc.*, decided this day, *ante*, p. 307. The stipulation in the lease is in all pertinent respects similar to that involved in No. 22. The judgment of the Circuit Court of Appeals, affirming an order of the District Court admitting proof of claim, was therefore right, and is

*Affirmed.*

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HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, *v.* TWIN BELL OIL SYNDICATE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT.

No. 170. Argued November 15, 16, 1934.—Decided December 3, 1934.

1. The legislative history of § 204 (c)(2) of the Revenue Act of 1926 shows that this section does not grant a deduction for depletion but merely provides methods for computing the amount of the deduction granted by § 234 (a)(8) of the Act. Pp. 315, 319.
2. The deduction for depletion in the case of a lease of oil and gas wells must be apportioned between the lessor and lessee as provided by § 234 (a)(8), irrespective of which of the methods prescribed by § 204 for computing the amount of the deduction is chosen.

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\* See Table of Cases Reported in this volume.