

ness, being heavily indebted to a bank, and unable to make payment, a settlement was effected, an agreement being entered into between them and the bank, which was executed by them, and by the local manager of the bank on its behalf, whereby, after reciting the indebtedness, and that the bank held, as part security therefor, a lien, under the Bank Act, on the firm's goods and merchandise; and that it had an assignment of the book debts, as well as of a policy of insurance on the life of one of the partners—the firm paid \$10,000 to the bank, and surrendered to it all its assets, the bank, in consideration thereof, assuming the payment of the firm's liabilities, as set out in a memorandum attached, which, however, did not specifically refer to the lease; and were to forthwith release the firm, as well as the individual partners from all liability. At the same time another agreement was entered into, similarly executed, for, as was stated, the more convenient liquidation of the assets, and disposal of the business as a going concern, whereby M., one of the partners, was to act as manager and continue the business in the firm's name, the bank indemnifying him against all liability therefor. This release agreed on was duly executed by the bank under the corporate seal. Subsequently a power of attorney was executed by the bank, appointing the said local manager its attorney, with the view of carrying out an anticipated sale of the business, but which was not consummated. The mill property was held by the firm under a lease, which contained a covenant against assigning without the lessor's consent. The lessors were apparently unaware of the assignment to the bank, and had never given any consent, but they had, on being applied to by M., signified their willingness to consent to any assignment that might be required.

Held, that the agreement was, under the circumstances, valid and binding on the bank, and the bank became the lawful assignees of the lease, and that the carrying on of the business, in view of the powers conferred by s. 81 and other sections of the Bank Act, R.S.C. 1906, c. 29, was not *ultra vires* under s. 76 (2a) of the said Act; and that the defendants were entitled to claim indemnity from the bank for a claim made by the lessors for rent due under the lease.

Judgment of the Divisional Court reversed, and that of the trial judge affirmed.

Wallace Nesbitt, K.C., for appellants. *James Bicknell*, K.C., for respondents.