

DECEMBER 10TH, 1903.

DIVISIONAL COURT.

SLONEMSKY v. FAULKNER.

*Landlord and Tenant—Attornment—Damage to Tenant by
Act of Third Party—Negligence—Liability.*

Appeal by defendant Mirault from judgment of BRITTON, J., (ante 551), in favour of plaintiff in an action tried without a jury at Ottawa, brought to recover damages for injury caused to plaintiff's stock of goods in a store on the corner of Clarence and Dalhousie streets in the city of Ottawa by reason of the flooding of the premises owing to the bursting of the waste pipe upstairs. BRITTON, J., held that for the purposes of the action the defendant Mirault was the person in possession of and in control of the property at the time of the injury; that he knew that the family who had been living upstairs had moved away; and that it was negligence on his part to leave the upper part of the house unprotected, so that the pipe froze and afterwards burst, causing the injury complained of.

The plaintiff cross-appealed seeking to increase the damages from \$300 to \$750.

G. F. Henderson, Ottawa, for defendant Mirault.

M. J. Gorman, K.C., for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) was delivered by

MEREDITH, C.J. (after setting out the facts):—It may be assumed that the plaintiff was in possession of her shop as tenant to the defendant on the 29th December, 1902, when the escape of water occurred, and it is clear that the pipes which are referred to in the statement of claim were part of a system in operation when the plaintiff became tenant, for supplying water from the city waterworks for domestic use throughout the whole building, and it is not questioned that the pipes were sufficient and in good repair, but the liability of the defendant is rested upon the ground that in the circumstances it was his duty to guard against the freezing of the water and the bursting of the pipes, and that he was negligent in the discharge of that duty.

As I understand the law, the owner of a building who lets the separate storeys of it to different tenants is not answerable for an injury caused to one of them by the negligence of another of the tenants in using the appliances for supplying water to the building which are common to all the tenements,