

The last of the series is a general release of all demands—a mutual release down to the date of it, which is 19th September, 1905, and is made between the McAllisters and the bank, and contains this recital: “Whereas the McAllisters are indebted to the bank in the sum of \$62,900, and, being unable to pay in full, have by instrument of even date herewith surrendered to the bank all their firm assets, and have also paid the sum of \$10,000 in consideration that the bank would release the firm and the individuals from all liabilities. This is signed by the McAllisters, and also by the general manager of the bank, and the corporate seal is duly attached.

This concluding document, incorporating the provisions of both the others, duly executed by the bank, displaces the argument addressed to me that the agreement relied on was not binding upon the bank. Apart from this, I think the whole course of the proceedings prior and subsequent to the signing of the papers shews that the agent who signed was acting not without authority, and his action was, besides, adopted and ratified by the bank.

I think it may also be properly concluded that the subsequent liability which might arise as to accruing rent was not provided for expressly in any of the papers. It was not intended to be included in the schedule of current or existing claims which were to be paid forthwith by the cheque of the company, and it is not contemplated in the liabilities incurred in the course of the prosecution of the business, after the bank had become transferees of the property, and against which the bank indemnifies. The claim for subsequent rent, which may arise though no subsequent business is prosecuted, appears to me to lie outside of these expressed provisions.

There is evidence, not contradicted, that McAllister mentioned the matter of future rent during the negotiations as a thing he was not to pay, and there is also the emphatic testimony of the solicitor for the bank that McAllister was to be indemnified against all liabilities connected with the business. This evidence goes to establish that there is no obstacle interfering with any implied obligation which may arise out of the nature of the transaction.

The only other facts which need be referred to are that the business was carried on by McAllister under the supervision and for the benefit of the bank for 6 months—that he was succeeded by another appointee of the bank, who