

MCKERNAN V. KERBY—SUTHERLAND, J.—JULY 16.

Partnership—Failure to Establish—Lease of Building—Claim for Injury to Fixtures—Stated Account—Counterclaim—Costs.—The plaintiff alleged that a partnership between him and the defendant was created by a document dated the 26th September, 1917; that on the 3rd December, 1918, a dissolution of the partnership was effected, and the defendant took over all the assets of the business and agreed to pay the liabilities; that since the dissolution the plaintiff had been called upon to pay liabilities of the business carried on by the alleged partnership, amounting to \$1,482.37; and that the defendant had been called upon but had refused to pay these liabilities. The plaintiff claimed judgment against the defendant for the amount of the liabilities, a return of all assets taken over by the defendant and the amount of rent received from a sub-tenant of part of the building in which the business was carried on. The defendant denied the existence of any partnership and that there ever was any undertaking on his part to pay any of the obligations of the business or to save the plaintiff harmless in relation to any obligation in connection therewith. The document relied on by the plaintiff as creating a partnership was in form a lease of a building by the defendant to the plaintiff, but it contained certain covenants upon which the plaintiff founded his allegations. The defendant alleged that the plaintiff, by carelessness and negligence in the operation of the heating system of the building leased to him by the defendant, caused the destruction and loss of a boiler and injury to the goods elevator and power plant in the building, and he asserted a counterclaim for \$1,500. The action and counterclaim were tried without a jury at Sandwich. SUTHERLAND, J., in a written judgment, after setting out the facts, said that the plaintiff had not made out a case for holding the defendant liable for the sums claimed; and that the documents dated the 3rd December, 1918, were a stating of the accounts between the parties arising out of the lease, and that the defendant was bound thereby, and could not now properly claim from the plaintiff the sums mentioned in the counterclaim. There should be judgment dismissing both action and counterclaim with costs. E. S. Wigle, K.C., for the plaintiff. R. L. Brackin, for the defendant.