

FALCONBRIDGE, C.J.K.B.

AUGUST 13TH, 1918.

STRAUS LAND CORPORATION LIMITED v. INTERNATIONAL HOTEL WINDSOR LIMITED.

Landlord and Tenant—Action by Landlord for Forfeiture of Lease—Breach of Covenant to Repair—Alteration in Premises—Necessary Repairs—Absence of Complaint—Breach of Covenant not to Assign or Sublet—Hotel Company—Power to Carry on Business as Dealers in Rubber Goods—Letting into Possession—Necessity for Shewing Valid Assignment—Consent to Subletting.

Action for forfeiture of a lease and for possession of an hotel property.

The action was tried without a jury at Sandwich.

O. E. Fleming, K.C., and A. H. Foster, for the plaintiffs.

E. S. Wigle, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that in their statement of claim the plaintiffs asked for forfeiture of the lease and possession of the hotel property: (1) for non-payment of rent; (2) for breach of covenant to repair; (3) for breach of covenant not to assign or sublet without leave; and (4) they asked for damages.

At the trial claim No. 1 was abandoned.

2. Plans and specifications had been agreed upon for certain repairs to the front of the building. The defendants undertook to make an immaterial variation in the design, altering the front so as to make two entrances, and breaking up the interior into two shops. Upon the evidence, the value of the property as a revenue-producer was increased instead of being decreased by the alteration. It might be that under the covenant the plaintiffs would have the right to have the building restored at the end of the term to the same style and condition in which it was at the time of the demise or to the design contemplated in the plans and specifications agreed upon: *Sullivan v. Doré* (1913), 5 O.W.N. 70, at p. 72. Repairs of some kind were necessary, as shewn by the evidence of the sanitary inspector.

No complaint or objection was offered by the plaintiffs while the work was in progress, and no claim for forfeiture was made until the work was completed. The real trouble was that difficulty had arisen between G. H. Wilkinson (president and principal