

House, an hotel in the city of Ottawa, and for damages for such breach of contract. The question presented was whether the subsequent occupants of the Russell House were "assigns" of St. Jacques within the meaning of a proviso in the contract.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MEREDITH, J.J.A.

G. F. Henderson, Ottawa, for plaintiffs.

J. F. Orde, Ottawa, for defendants.

OSLER, J.A.:—In my opinion, the action fails. If the word "assigns" in the proviso of the agreement of 10th May, 1902, the lighting contract, between these plaintiffs and St. Jacques, means assigns of the hotel premises then under lease to him by the demise of 10th May, 1902—and this, looking at the whole agreement, I am inclined to think is what it does mean—the Mulligans, claiming under the new lease to be granted to them by the owners, are not claiming under St. Jacques in any way. They are or will be tenants and occupiers of the hotel under a new lease not derived through St. Jacques or his representatives, and not in any sense a renewal of the lease expiring on 1st March, 1907, or granted under any covenant contained in or right conferred by that lease upon St. Jacques or his assigns. If, on the other hand, the word means assigns of the lighting contract, it seems equally clear that, except *sub modo* and down to the date when the lease of 10th May, 1902, expired, they never became the assignees of that contract. Therefore, neither St. Jacques, nor his heirs, executors, administrators, or assigns, being owner, tenant, or occupier of the hotel, either by themselves with another or others, after 1st May, 1907, his administrators, the defendants, were entitled, by the terms of the proviso, to cancel the lighting contract, which I think they have effectually done, and thus put an end to all claims of plaintiffs thereunder.

Appeal dismissed with costs.

MEREDITH, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., and GARROW, J.A., concurred.