The plaintiff smashed the defendants' bridge unlawfully, and should pay for it. It was of no importance that the same thing might have happened had the plaintiff used a lawful instrument—the fact was that he did not.

The appeal should be allowed with costs, the action dismissed with costs, and the defendants should recover on the counterclaim the sum necessary to replace the bridge, to be agreed upon by the parties, or, in the absence of an agreement, on a reference.

The defendants should have their costs throughout on the County Court scale.

Appeal allowed.

SECOND DIVISIONAL COURT. FEBRUARY 7TH, 1919.

*STRAUS LAND CORPORATION LIMITED v. INTERNATIONAL HOTEL WINDSOR LIMITED.

Landlord and Tenant—Action by Landlord for Forfeiture of Lease, for Rent, and for other Relief—Waiver of Forfeiture by Claiming Rent—Breach of Covenant to Repair—Alteration in Premises—Damages—Breach of Covenant not to Assign or Sublet—Nominal Damages—Abandonment on Hearing of Appeal of Claim for Rent—Reinstatement as Indulgence—Costs—Reference.

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., ante 10, dismissing the action with costs.

The appeal was heard by RIDDELL and LATCHFORD, JJ., FERGUSON, J.A., and ROSE, J.

D. L. McCarthy, K.C., for the appellants.

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

RIDDELL, J., read a judgment in which he said that the plaintiffs' claim for forfeiture could be shortly disposed of by the consideration that in this action a claim was made for rent due on the 1st March, 1918, after all the acts upon which forfeiture was posited had been committed. A forfeiture does not act ipso facto, but may be waived; and an unequivocal act which shews a claim by the landlord of the existence of a tenancy after the act complained of operates as such a waiver—at least if such act be done before an unequivocal claim of forfeiture: McMullen v. Vannatto (1894), 24 O.R. 625. Action brought for rent accruing due after