

Costs of all parties to be deducted in equal portions from the respective sums ascertained to represent capital and deferred income.

BOYD, C.

JUNE 3RD, 1907.

TRIAL.

PETERBOROUGH HYDRAULIC CO. v. McALLISTER.

Landlord and Tenant—Action for Rent—Claim for Indemnity—Agreement between Tenant and Bank—Disposal of Business—Authority of Agent of Bank—Assumption of Liabilities—Implied Obligation to Pay Rent—Transferees of Lease—Power of Bank to Carry on Business—Covenant of Tenant not to Assign without Leave—Tacit Leave.

Action for rent, and claim over by defendants against the Ontario Bank, third parties, for indemnity against the payment of the rent.

BOYD, C.:—The McAllisters, partners under the name of the McAllister Milling Co., are lessees from plaintiffs for 10 years from January, 1903, of a milling property, at the rent of \$3,000 yearly, payable quarterly. . . . The action is to recover three months' rent, \$750, which is payable in advance on 1st January, 1907. The McAllisters are liable on this by reason of their covenant to pay, but they claim to be indemnified against such payment by the Ontario Bank, brought in as third parties. The lease provides that the McAllisters will not assign without leave except to a limited liability company in which the lessees shall be interested—an exception not now material.

The McAllisters became heavily indebted to the bank, and, not being able to pay, an arrangement was made by which, in brief, upon payment of \$10,000 cash and the transfer of all the partnership assets to the bank, the partners should be discharged from all liabilities. In detail the matter was carried out by a series of documents prepared by the solicitor for the bank, pursuant to the agreement arrived at between the general manager of the bank at Toronto (McGill) and Mr. McAllister.