

THE
ONTARIO WEEKLY REPORTER

VOL. 24

TORONTO, APRIL 24, 1913.

No. 8

APPELLATE DIVISION.

APRIL 7TH, 1913.

CURRY v. PENNOCK.

4 O. W. N. 1065.

Landlord and Tenant — Forfeiture of Lease—Breach of Covenants against Subletting — Sublease in Substance not in Form — Evidence—No Relief Against—Judgment for Possession.

Action by assignees of lessors for possession of the demised premises on account of an alleged breach of a covenant against assigning or subletting any interest in the demised premises. Defendants had carried on a restaurant business in the premises in question and entered into an agreement with a third party ostensibly for the management of the business for them upon the basis that they should receive \$1,500 and the third party all profits above that sum. The arrangement was to be for one year and the \$1,500 payable on certain fixed days.

MEREDITH, C.J.C.P. (23 O. W. R. 922), gave judgment for plaintiffs, holding that the agreement complained of was in substance an assignment of an interest in the property.

SUP. CT. ONT. (*1st App. Div.*) affirmed the trial Judge's findings of fact and held that the interest of the defendants had not been forfeited, but had come to an end on account of the termination of the condition upon which it depended, viz., that defendants should themselves remain in possession of the premises demised.

Lockwood v. Clarke, 8 East. 185; 9 R. R. 402, followed.
Appeal dismissed with costs.

Appeal by the defendants from a judgment of HON. R. M. MEREDITH, C.J.C.P., 23 O. W. R. 922; 4 O. W. N. 712, on the 28th January, 1913, after the trial before him, sitting without a jury at Toronto on the 24th day of that month, in an action to recover certain premises demised by a lease for breach of the covenants contained in such lease.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.