

that no liability under the documents and facts of the case attaches upon the Ontario Bank. . . .

On 19th September, 1905, an agreement is executed reciting that the McAllister Co. are indebted to the bank in the sum of \$69,200 as part security for which sum the bank hold a lien under sec. 74 of the Bank Act, and also an assignment of all the company's book debts and other claims, etc., and the company are unable to pay the bank in full. A further recital is that it has been agreed that upon payment to the bank of \$10,000 and the absolute surrender of all the company's assets, the bank assuming payment of certain liabilities set out in a memorandum attached, the bank shall release the company and the individuals thereof from all further liability in respect of said indebtedness. Then comes the operative part of the instrument: "The company hereby surrender to the bank all their" assets, etc. 2. The company shall forthwith pay to the bank \$10,000, "the bank assuming the payment of certain of the company's liabilities, as particularly set out in the memorandum hereto attached," etc. 3. Further assignments and assurances. 5. In consideration whereof the bank, etc.

The agreement of even date referred to in paragraph 5 provided that C. B. McAllister should carry on the business in the name of the company for the bank under the supervision of the local manager of the bank; and by paragraph 4 the bank agreed to indemnify the company and the members thereof against any liabilities incurred while the business should be continued in the company's name.

The bank admittedly did pay the recited indebtedness and all the rent and all other liabilities the company became liable for during the time the business was so carried on—and thus carried out the express provisions of the two agreements.

And I do not think that any indemnity can be implied. It is, I think, apparent that the agreement to assign the lease was introduced for the advantage of the bank, and might by the bank be waived—and that the company could not have compelled the bank to accept an actual assignment of the lease, even if the consent of the landlord had been obtained, which it was not. And this is especially the case when it is more than doubtful that such transaction could be lawfully carried on by the bank. See R. S. C. 1906 ch. 29, secs. 76, 79, 80, 81, 82.

Moreover, the expressed indemnity should in this case,