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TRIAL.

SLONEMSKY v. FAULKNER.

Landlord and Tenant—Attornment—Damage to Tenant by Act of Third Party—Negligence.

Action tried without a jury at Ottawa. Mary A. Casey died intestate, leaving real estate which was heavily incumbered. Letters of administration were obtained by the Ottawa Trust and Deposit Co., who, pending a sale of the premises, leased them to one Donovan. The latter sublet the stores on the ground floor to different persons, one of whom was the present plaintiff, but Mrs. Casey's husband and children continued to reside upstairs, without paying rent or acknowledging any tenancy. The property was sold to the defendant on 30th October, 1902, and he at once notified all the tenants that he was to collect the rent in future. The plaintiff attorned and paid the November rent to the defendant, but the Casey family did nothing to recognize defendant as landlord. Defendant refused to accept the title from the trust company, because of a possible claim by the husband as tenant by the curtesy. The trust company then obtained an assignment of a judgment that had been recovered by the mortgagee of the property some time before, but it was not until January, 1903, that a vesting order was issued to the defendant.

On 13th December, 1902, Mr. Casey died, and on the following day the children moved out, but they did not remove their furniture or give up the key until 10th January, 1903. They did not notify defendant, but he learned that they had gone out, and he obtained access to the premises immediately afterwards to repair a waste-pipe which had frozen in a vacant store downstairs. On the night of 29th December, 1902, the waste-pipe upstairs leading from the street main, burst,