

MARCH 15TH, 1915.

TYRRELL v. VERRAL.

Landlord and Tenant — Lease to two Tenants — Omission of Clause Providing that Tenants should Pay Taxes—Agreement by one Tenant to Pay Taxes—Absence of Knowledge by the Other—Statutory Right to Deduct Taxes from Rent —Payment of Taxes—Construction of Lease—Evidence— Interpretation Act.

Appeal by the defendant Verral from the judgment of the Senior Judge of the County Court of the County of York, in favour of the plaintiff, after the trial of the action in that Court, without a jury.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. G. Thurston, K.C., for the appellant.

L. Duncan, for the plaintiff, respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—By a lease dated April, 1911, the respondent demised to the appellant and Marmaduke E. Matthews premises in Weston for a term of five years, to be computed from the 1st May following, at the rental of \$40 per month payable in advance. The lease was made in pursuance of the Act respecting Short Forms of Leases, and contains a covenant, in the statutory form, to pay the rent, water rates, gas and electric light rates; the reddendum is in the statutory form, with the words "without any deduction defalcation or abatement whatsoever" added; and there is no covenant to pay taxes.

The action is brought on the covenant to pay the rent, for the recovery of the rent for the months of February to September (both inclusive) of the year 1914. The right to the rent for these months is not disputed by the appellant, but he claims the right to deduct from it \$157.66, which, he alleges, he was compelled to pay for taxes of the year 1913, and he has paid into Court \$122.34, which, he says, is sufficient to satisfy the respondent's claim after deducting the amount paid for the taxes.

Counsel for the respondent presented an elaborate argument as to the effect of the words of the reddendum in its expanded form, with the superadded words quoted above, which, he con-