to that line, as part of lot 6. In that view, it was unnecessary to consider whether in any case the defendants' mining rights could extend so far as that line.

As the parties could probably agree upon that division-line, no direction need be given unless the parties required a direction for the ascertainment of the line; nor, unless asked for, need any injunction be granted.

The appeal should be allowed to the extent indicated. As the defendants did not admit the plaintiffs' title to any of the land, and the plaintiffs had succeeded for a substantial part of it, they should get their costs of the action and appeal from the defendants.

Appeal allowed in part.

FIRST DIVISIONAL COURT. JUNE 23RD, 1919.

*HESS v. GREENWAY.

Negligence—Lease of Part of Building—Injury to Goods of Lessee—Bursting of Steam-pipes—Cause of—Duty of Landlord—Duty of Tenant Undertaking Heating of Building—Provisions of Lease—Duty to Repair.

APPEAL by the plaintiff from the judgment of LATCHFORD, J., 15 O.W.N. 109.

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

T. N. Phelan, for the appellant.

G. H. Gilday, for the defendant Greenway, respondent.

William Proudfoot, K.C., for the defendant Elliott, respondent.

H. J. Scott, K.C., for the defendant the Sinclair & Valentine Company, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said, after stating the facts, that the questions to be determined were: (1) whether there was any duty resting upon the respondent Elliott, in the operation of the heating system, to take care that the piping in the part of the building occupied by the appellant was in a proper state of repair and condition; (2) whether that duty, if it existed, was an absolute one or only a duty to take reasonable care; (3) whether, if the duty was only to take reasonable care, the respondent Elliott had failed to discharge that duty.

* This case and all others so marked to be reported in the Ontario Law Reports.