

NOVEMBER 1ST, 1907.

DIVISIONAL COURT.

PETERBOROUGH HYDRAULIC CO. v. McALLISTER.

Landlord and Tenant—Action for Rent—Claim for Indemnity—Agreement between Tenant and Bank—Disposal of Business—Authority of Agent of Bank—Assumption of Liabilities—Implied Obligation to Pay Rent—Transferees of Lease—Power of Bank to Carry on Business—Implied Obligation—Third Parties.

Appeal by the Ontario Bank, third parties, from judgment of BOYD, C., ante 109.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.

J. Bicknell, K.C., and G. B. Strathy, for appellants.

D. O'Connell, Peterborough, and G. N. Gordon, Peterborough, for defendants.

F. D. Kerr, Peterborough, for plaintiffs.

RIDDELL, J.: In drawing up the formal judgment the Ontario Bank, the third parties, were ordered to pay to plaintiffs both the sum of \$765.82 awarded against defendants and the plaintiffs' costs ordered to be paid by defendants, and also to pay the defendants their costs of the action, so far as they relate to the claim for rent, and the costs of the third party proceedings.

The third parties appeal from the judgment upon the merits, and also contend that in any case no judgment should be entered against them in favour of plaintiffs.

The circumstances under which the defendants claim indemnity from the Ontario Bank appear in the reasons for judgment given by the Chancellor. I am, however, unable to agree in the conclusion at which he has arrived.

Whatever may have passed between McGill and the defendants in Toronto, the agreement between the defendants and the bank was reduced to writing—the documents were considered by the solicitor for the defendants—and I do not think any case has been made out for reformation. I agree that the documents are binding upon the bank, but I think