

MIDDLETON, J.

OCTOBER 5TH, 1918.

## NATIONAL TRUST CO. v. HANNAN.

*Landlord and Tenant—Lease of Shop—Liquor License—Loss of, by Passing of Ontario Temperance Act, 1916—Notice of Cancellation of Lease Given by Tenant under sec. 145 of Act—Approval of Board of License Commissioners—Voluntary Reduction of Rent and Abatement of Amount Due on Chattel Mortgage—Independent Transactions—Agreement Precluding Application to Board not Shewn and not to be Implied—Function and Jurisdiction of Board.*

Action by the executors of Frank Giles, deceased, on a covenant in a lease, to recover rent. Defence, that the lease was cancelled by notice served with the approval of the Board of License Commissioners, under sec. 145 of the Ontario Temperance Act, 6 Geo. V. ch. 50.

The action was tried without a jury at a Toronto sittings.

M. H. Ludwig, K.C., for the plaintiffs.

H. J. Scott, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiffs set up in reply that, after the passing of the Ontario Temperance Act, there was a voluntary reduction of the rent at the request of the defendant and an abatement of \$1,000, part of the money due by the defendant to the landlord upon a chattel mortgage, upon an undertaking by the defendant that he would not apply to the Board to be allowed to terminate the lease.

On the evidence, the reduction of the rent and the rebate of \$1,000 on the mortgage were independent transactions. There was no bargain that the new arrangement would preclude an application to the Board; and an agreement not to apply was not to be implied.

Had there been a new and substituted lease, the defendant would have had no right, as the statute would not have applied. The old lease, it was stipulated, should still remain, and this had engrafted upon it the legislative right to terminate.

There was some confusion as to the exact amount to be paid for rent, and some default; but this was put right, and the balance due was accepted. This did not defeat the right to terminate.

The Board considered the effect of the agreement made, and the conclusion arrived at was the same as the learned Judge's.