

*M. G. Teed*, K.C., for plaintiff. *H. A. Powell*, K.C., for defendants.

Barker, J.]

RANDOLPH v. RANDOLPH.

[Oct. 18.]

*Landlord and tenant—Covenant to leave premises in repair—Lien upon lessee's machinery—Insurance by lessee—Fire—Re-instatement of premises—Application of insurance money—Insolvency—Unliquidated damages—Admission of to proof—Advances upon security of logs—Bank Act—Sale of lumber to be manufactured—Advances by purchaser—Lien on logs.*

A lessee covenanted for himself and assigns that buildings of the lessor on the premises at the date of the lease would be left on the premises in as good repair as they then were, also, that machinery of the lessee would not be removed from the premises during the term without the lessor's consent, but the same should be held by the lessor as a lien for the performance of the lessee's covenants and for any damage from their breach. Under a deed of assignment for the benefit of the lessee's creditors, the lease became vested in the trustees. A fire subsequently occurring which destroyed the buildings and machinery, insurance on the latter was paid to the trustees. The lessor demanded of the trustees that the insurance be applied in re-instating the buildings or the machinery. By 14 Geo. III. c. 78, s. 83, insurance companies are authorized and required upon request of a person interested in or entitled unto a house or other building which may be burnt down or damaged by fire to cause the insurance money to be laid out and expended towards rebuilding, re-instating, or repairing such house or buildings.

*Held*, 1. Without deciding whether the Act was in force in this province, that the lessor was not entitled to the benefit of it, the Act not applying to machinery which belonged to the lessee, and the lessor not having made a request upon the insurance company as provided by the Act.

2. Even had the insurance been upon the buildings, the lessor would have had no equity to it, there being no covenant by the lessee to insure for the former's benefit.

3. The lessor was not entitled to prove for damages against the estate, no breach of the lessee's covenants being possible