

1931 A. B. COLEMAN (DEFENDANT).....APPELLANT;
 *March 9, 10 AND
 *May 26. Q.R.S. CANADIAN CORPORATION, }
 LTD. (PLAINTIFF) } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ONTARIO

*Landlord and tenant—Lease—Interpretation—Conduct of premises by
lessee—Closing of part of hotel premises in winter—Whether breach
of agreement by lessee.*

APPEAL by the defendant from the judgment of the
Appellate Division of the Supreme Court of Ontario (1).

The plaintiff claimed from the defendant the sum of
\$2,500 and interest, which sum of \$2,500 had been deposited
by the plaintiff with the defendant as a guarantee for the
full and proper performance by the plaintiff of all the con-
ditions of a certain lease made by the defendant to the
plaintiff of certain hotel premises. The defendant alleged

in defence that the plaintiff did not carry out the terms of the lease, and counterclaimed for damages, in an amount much exceeding the plaintiff's claim, for alleged violation by plaintiff of provisions of the lease.

1931
COLEMAN
v.
Q.R.S. CAN-
ADIAN
CORPORATION
LTD.

McEvoy J., the trial judge, found against the defendant's counterclaim, except for certain items aggregating \$102.50, and gave judgment for the plaintiff for \$2,500 and interest, less said sum of \$102.50. The defendant's appeal to the Appellate Division was dismissed (Fisher J.A. dissenting) (1), and the defendant appealed to this Court.

The question before this Court was, whether or not the closing by the plaintiff, for much of the winter period, of what was called the "Main Inn," was, under the circumstances, a violation of the clause in the lease that the plaintiff

will continually conduct and carry on the business of a high-class Inn, to reasonably meet the requirements of its patronage and will use every reasonable means to secure all business possible for the success of the business.

After hearing the arguments of counsel, the Court reserved judgment, and on a subsequent day delivered judgment dismissing the appeal with costs. Written reasons were delivered by Lamont J., with whom Newcombe, Rinfret and Cannon JJ. concurred (Duff J. held that the appeal should be dismissed with costs, but gave no written reasons), holding that, considering the question of the intention of the agreement in the light of the conduct of the parties, and on the facts and circumstances in evidence, the closing in question did not constitute a breach of the provisions of the lease.

Appeal dismissed with costs.

Norman Somerville K.C. for the appellant.

W. R. Wadsworth K.C. for the respondent.

(1) (1930) 65 Ont. L.R. 462.