

A reputable witness distinctly denying the making of any agreement; the scope of the authority of defendant's agent being controverted; communication of the limitation upon that authority to plaintiff's solicitor being averred; the lapse of time relied upon as evidence of acquiescence being at least partly explained—the case is eminently proper for the full investigation and consideration for which opportunity is afforded only by a trial in due course. In such circumstances it was never intended that Rule 603 should be invoked. The appeal must be dismissed with costs to defendant in any event of the action.

MACMAHON, J.

MAY 9TH, 1905.

CHAMBERS.

RE LUMBERS AND HOWARD.

*Landlord and Tenant—Overholding Tenants Act—Summary Proceeding by Landlord to Obtain Possession—Jurisdiction of County Court Judge—Dispute as to Length of Term—Application for Review.*

Motion by William Howard, the tenant, for an order under sec. 6 of the Overholding Tenants Act, directing the senior Judge of the County Court of York to send the proceedings, evidence, and exhibits in this matter to the High Court under his hand, and for an order staying all proceedings therein.

The application by the landlord, James Lumbers, to the County Court Judge was to recover from the tenant the possession of a shop and dwelling above the shop, situated at the north-west corner of Lee avenue and Queen street in the city of Toronto, of which, it was alleged, the tenant was wrongfully holding possession.

W. H. Blake, K.C., for the tenant.

S. C. Smoke, for the landlord.

MACMAHON, J.:—Under sec. 3, sub-sec. 2, of the Act, R. S. O. 1897 ch. 171, the Judge is to “inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired, . . . and whether the tenant does wrongfully refuse to go out of possession, having no right to continue in possession, or how otherwise.”