

pass upon this in the present proceeding—the matter, as I think, being in the jurisdiction of the Court below.

The law as it was before the amending Acts is found discussed in 33 C. L. J. 185; in that article are set out the cases theretofore. After these cases, however, came *Moore v. Gillies*, 28 O. R. 358, in which all the previous cases (amongst them *Magann v. Bonner*, 28 O. R. 37) were reviewed, and a Divisional Court held that a County Court Judge has now the power to decide whether the tenant wrongfully holds. By that decision I am bound, and I follow it.

Nor is the objection better founded that the matter in dispute is involved in the High Court action, begun before the overholding tenant proceedings were begun. There is nothing to prevent any landlord from applying for any remedy given him by statute or common law.

I cannot remove the proceedings, as no writ of possession has issued: R. S. O. 1897 ch. 171, sec. 6.

The motion must be dismissed, without prejudice to an application under sec. 6 at the proper time.

I cannot make an order giving time to the tenant, *quia timet*, as he calls it, to get another place.

There will be no costs, no one appearing to oppose the application.

RIDDELL, J., IN CHAMBERS.

OCTOBER 20TH, 1910.

*RE CLEMENT.

Will—Devise of Land not Owned by Testator — Misdescription—Parol Evidence—Intention — Absence of General Words—Ineffective Devise—Intestacy.

Daniel Clement, deceased, by his will: (1) appointed executors; (2) directed his debts to be paid; (3) directed that his wife, M.C., should have the south-west quarter of lot 3 in the 4th concession of the township of North Dorchester, to have and to hold for and during the term of her natural life; (4) directed that after the death of his wife the said south-west quarter should be equally divided among his children, except his son John, and suggested that John should be given "first chance to buy the said land and

* This case will be reported in the Ontario Law Reports.