

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

G. H. Sedgewick, for the appellants.

T. N. Phelan, for the plaintiffs, respondents.

THE COURT allowed the appeal and set aside the injunction order; costs of the motion and appeal to be costs to the defendants in the cause.

HIGH COURT DIVISION.

LENNOX, J.

APRIL 26TH, 1920.

*ROTMAN v. PENNETT.

Damages—Breach of Agreement for Lease of Premises—Infirmity of Title of Lessor—Bona Fides—Measure of Damages—Proper and Necessary Legal Expenses—Costs.

Action for \$5,000 damages for breach of the defendant's agreement to grant the plaintiffs a lease for 5 years from the 1st September, 1919, of a store and premises in the town of Smith's Falls.

The action was tried without a jury at Brockville.

H. A. Stewart, K.C., for the plaintiffs.

H. A. O'Donnell, for the defendant.

LENNOX, J., in a written judgment, said that the defendant admitted at the trial that the written agreement, though very informal, was sufficient to satisfy the Statute of Frauds.

The defendant submitted that she was unable to carry out her agreement with the plaintiffs, by reason of a subsisting lease to one Johnston, who refused to give up possession, and that she was, if liable in damages at all, liable only for any expenses the plaintiffs had incurred for solicitor's charges and disbursements in preparing to carry out the agreement.

The learned Judge was of opinion that the defendant's contention was well-founded.

The plaintiffs gave evidence to shew that, relying upon the agreement, they had purchased greater quantities of goods than they otherwise would have done, and were compelled to handle them in adjoining store premises, which they also held under a lease, at a disadvantage and without sufficient room for convenient