

But the plaintiff having, shortly after his dismissal, obtained other employment, and having received in respect thereof remuneration to a larger amount than the damages calculated as aforesaid, it was held that his action failed, and it was dismissed with costs.

Watson, K.C., and S. C. Smoke, for plaintiff. Wallace Nesbitt, K.C., and H. S. Osler, for defendants.

Falconbridge, C.J.K.B., Street, J.]

[Sept. 8.

PEOPLES' BUILDING AND LOAN ASSOCIATION v. STANLEY.

Execution—Motion for leave to appeal—Costs of—High Court—Authority to issue execution.

This was an appeal by the defendant from the judgment of MEREDITH, J., reported ante p. 550: 4 O.L.R., 247. The appeal was heard before a Divisional Court, composed of Falconbridge, C.J.K.B., and Street, J., on Sept. 8, 1902.

Bartram, for appeal. Dyce Saunders, contra.

At the conclusion of the argument on behalf of the defendant, the Court held that the learned judge had power to make the order and dismissed the appeal with costs.

Boyd, C.]

IN RE MURRAY.

[Sept. 12.

Specific performance—Lease—Undertaking to build—Non-performance in lifetime of lessor—Devise to lessee—Damages.

By an instrument dated 29th January, 1901, a father leased a farm to his son for five years from the 1st March, 1901, at a yearly rental of \$200, payable in October of each year, and undertook to build on the farm, during the first year of the term, a house of certain expressed dimensions. There was a provision in the instrument for the determination of the lease at the end of any year by notice to that effect given in October previous. The father died on the 19th June, 1902, after the expiry of the first year of the term, but had not built nor done anything towards building the house. By his will, dated the 7th February, 1901, he devised the farm to his son, but made no reference to the lease.

Held, that (the father having died after breach of the undertaking) the son was not entitled to have the house built at the expense of the father's personal estate, but at most was entitled to damages for non-performance of the agreement to build.

Cooter v. Jarman, L.R. 3 Eq. 98, and *In re Day* (1898) 2 Ch. 510, distinguished.

Peter McDonald, for the executor. J. W. Mahon, J. P. Mabey, K.C., and A. S. Ball, K.C., for the other parties.