

the case was one between landlord and tenant to render the law upon which I am acting inapplicable: *De Lassalle v. Guildford*, [1901] 2 K.B. 215.

Nor would the Statute of Frauds, if pleaded, afford any answer: where there are two distinct agreements, one of which is and the other is not within the statute, the promise which is not required to be in writing to be within the statute may be enforced, even though it is not evidenced by a writing: *Halsbury's Laws of England*, vol. 7, p. 383.

Damages assessed at \$750, and judgment for the plaintiff for that sum, with costs.

MIDDLETON, J., IN CHAMBERS.

JUNE 22ND, 1915.

*RE WINDATT AND GEORGIAN BAY AND SEABORD
R.W. CO.

Railway—Expropriation of Land—Award of Compensation Set aside—Railway Company in Possession—Compensation-money Paid into Court—Refusal of Land-owner to Take out—No Further Proceedings Taken—Application by Company for Appointment to Tax Costs—Railway Act, secs. 199, 204.

Motion by the railway company, upon notice to the land-owner, for an appointment for the taxation of the company's costs of an arbitration under the Dominion Railway Act, R.S.C. 1906 ch. 37, to fix compensation for land taken for the railway.

The company offered \$1,100 for the land. An award was made on the 20th June, 1912, fixing the compensation at \$1,300. The award was set aside on the 25th November, 1912: *Re Windatt and Georgian Bay and Seabord R.W. Co.*, 4 O.W.N. 395. It was then held that the Court had no jurisdiction to deal with the costs of the arbitration. The railway company had taken possession of the lands and paid the amount offered into Court. Nothing had since been done.

J. D. Spence, for the railway company.

No one appeared for the land-owner.

MIDDLETON, J., said that neither sec. 199 nor sec. 204 of the Railway Act applied; and he must decline to give the appointment sought.

There did not appear to be any remedy, so long as the owner refused to take the money out of Court or to co-operate in any way with the company.