

The rule laid down in *Walsh v. Lonsdale*, *supra*, was not accepted in *Hobbs v. The Ontario Loan & Debenture Co.*, 18 Can. S.C.R. 483. But in 1911, the case of *Rogers v. National Drug & Chemical Co.* (1911), 23 O.L.R. 234, was decided, and adopted the rule in *Walsh v. Lonsdale*, and granted specific performance of an agreement for a renewal of a five year lease contained in an agreement for the first term of five years to a tenant in possession and paying rent under the agreement. Riddell, J., at p. 237, said:—

"The tenant under an agreement for a lease can be compelled to take on himself the legal estate; and he likewise can compel the landlord to vest him with the legal estate—that is done by an instrument under seal: R.S.O. 1897, c. 119, s. 7. The defendants, then, being before a Court with equitable jurisdiction, must, I think, be considered as though the lease had actually been made."

This judgment was confirmed on appeal by the Court of Appeal (1911), 24 O.L.R. 486. At p. 488, Garrow, J.A., sums up the law as follows:—

"If, however, at law, possession had been taken under the parol demise, and rent paid, the tenant was regarded as a tenant, not at will merely, as described in the Statute of Frauds, but as a tenant from year to year, upon the terms contained in the writing so far as appropriate to such a tenancy; while in equity his rights were much larger, for there the Courts would in a proper case decree specific performance, treating the parol demise, if otherwise sufficient, as an agreement for a lease, with the result that the parties were regarded in equity as landlord and tenant from the time possession was taken: see *Walsh v. Lonsdale* (1882), 21 Ch. D. 9. And now, under the provisions of s. 58 of the Judicature Act, the equitable rule prevails."

Section 7 of R.S.O. 1897, c. 119, was repealed in 1911 by 1 Geo. V. c. 25, s. 53, but re-enacted in substantially the same words. Since the decision by *Rogers v. National Drug Co.*, 23 O.L.R. 234, the Statute of Frauds has been repealed by 3-4 Geo. V. Ont., c. 27 and a new Statute of Frauds had been passed. The recital of the purpose of the statute was omitted, and the provision as to the consequence of an attempt to create a lease by parol was not re-enacted. The enactment in its new form is found in 3-4 Geo. V., c. 27, s. 3:—

"Subject to s. 9 of the Conveyancing and Law of Property Act, no lease, estate or interest, . . . or term of years . . . shall . . . be granted . . . unless it be by deed, or note in writing, signed by the party so . . . granting . . . the same, or his agent thereunto lawfully authorized by writing or by act or operation of law."

Section 9 of the Conveyancing and Law of Property Act was a re-enactment of R.S.O. (1897), c. 119, s. 7, to be found in 1 Geo. V. c. 25, but this section was amended by 3-4 Geo. V. c. 18, s. 22, by striking out the words "a lease of land required by law to be in writing," and a new subsection (s. 2(2)) was inserted in the Statute of Frauds enacted in the same year, 3-4 Geo. V. 1913, c. 27: "All leases and terms of years of any messuages, lands, tenements or hereditaments shall be void at law unless made by deed." The Statute of Frauds in the present Revised Statutes, c. 102, ss. 2 (2) and 3, is in the same form as the Act of 1913. The reference in s. 3 to the Conveyancing and Law of Property Act does not, of course, refer to the granting of leases. What effect the amendment has upon the decision in *Rogers v. National Drug Co.*