

says that, dependent on Brett's consent, plaintiff was willing to take 50 acres for one or two years from 1st October, 1906. Plaintiff says he desired a lease for two years certain from June, 1906, and was not prepared to accept a one year lease. On 20th May, Hoover, Brett, and plaintiff discussed the subject, when defendant Hoover reached the conclusion that Brett had assented to a one year term only, whilst plaintiff supposed he consented to a two year term, Brett at the trial swore that he consented to the one year term only. Plaintiff and defendant Hoover, however, omitted to interchange views as to their respective conclusions regarding the extent of Brett's consent, but assumed that they had reached an arrangement for a definite term. Hoover, thus thinking that plaintiff was accepting a term expiring on 1st October, 1907 (so far as rent was concerned to be considered a term for one year), authorized plaintiff (subject to Hoover's interest in the growing crops) to take possession and prepare the land for fall wheat, agreeing to allow him to haul a quantity of manure off Hoover's near-by farm, where he resided, to the 50 acres in question. Thereupon, about the middle of June, 1905, plaintiff took possession of the 50 acres in the belief that he was doing so under a concluded arrangement for a lease for two years, and he began to summer fallow field A and to cultivate other parts of the property, hauling upon it from Hoover's farm between 200 and 300 loads of manure. Throughout the summer, prior to the lease hereinafter mentioned to defendants Krick and Maines, plaintiff, with Hoover's knowledge and consent, ploughed, manured, and otherwise prepared field A, and in September sowed it in fall wheat. From the time of his taking possession in June, 1906, plaintiff remained continuously in undisturbed possession of field A, until about 5th October, when his landlord, Hoover, with defendants Krick and Maines, broke into field A, then in fall wheat, and proceeded to drill for gas.

At the trial plaintiff failed to prove a consent from Brett to a two year term. Under these circumstances the negotiations did not result in a mutual arrangement for a lease for two years. What then is the position of plaintiff? Defendant Hoover says he was to be entitled to hold until 1st October, 1907. About the middle of June, 1906, by mutual agreement, he took possession as tenant, it being then understood that plaintiff would at once proceed to