Hon. Mr. Justice Britton.   April 6th, 1914.

GNAM v. McNEIL.

6 O. W. N. 223.

*Contract—Settlement of Former Action — Dispute as to Terms—
Action by Parish Priest—Evidence—Onus—Statute of Frauds.*

> BRITTON, J., dismissed an action for damages for breach of an
> alleged agreement made by defendant, Roman Catholic Archbishop
> of Toronto, with plaintiff, a former parish priest to pay the costs
> of a certain former action brought by plaintiff against the Bishop
> of London, the damages sustained by him by reason of the alleged
> wrongful acts of the latter, and to restore him to his parish, holding
> that plaintiff had failed to establish the agreement alleged.

Action for damages for breach of an alleged agreement,
tried at Sarnia without a jury.

R. I. Towers, for plaintiff.

D. L. McCarthy, K.C., and Monahan, for defendant.

Hon. Mr. Justice Britton:—The plaintiff was and is
a parish priest residing in Wyoming in the county of Lamb-
ton. Wyoming is in the diocese of London. The plaintiff
and the Bishop of London had some differences which re-
sulted in an action instituted by the plaintiff against the
Bishop. That action was ripe for trial in March, 1913,
when the defendant, who is the Archbishop of Toronto,
intervened. He, by letter of 24th March, asked the plain-
tiff if he, the plaintiff, could conveniently go to Toronto
and talk the matter over. The plaintiff went as requested
and negotiations for a settlement were entered upon, but
no concluded agreement was made. The plaintiff desired to
consult his solicitor and lay the matter before him and
if anything should be done the plaintiff wished that it should
be done by the solicitor.

On the 4th April, 1913, Mr. McMillan, as plaintiff's
solicitor, went to Toronto and had an interview with the
defendant.

The agreement sued upon is one alleged to have been
made between the plaintiff, by his attorney, D. S. McMillan,
and the defendant. The contract was not in writing, but
oral. The proof relied upon is that of Mr. McMillan who
refreshed his memory by looking at a letter written by him