

## DIVISIONAL COURT.

SEPTEMBER 21ST, 1912.

RE ST. DAVID'S MOUNTAIN SPRING WATER CO.  
(LANDLORD) & LAHEY (TENANT).

4 O. W. N. 32.

*Landlord and Tenant—Summary Proceeding to Eject Overholding Tenant — Dispute as to Tenancy—Evidence—Inference from Silence—New Trial—Costs.*

The company, claiming to be the owners of certain property in the possession of Lahey, whom they alleged to be their tenant, served him with a notice to deliver up possession. Upon his refusal so to do, they took proceedings under the Overholding Tenants Act, before the Judge of the County Court of the county of Welland. The Judge made an order for possession; and Lahey appealed therefrom, upon the grounds that the Judge's decision was wrong in law and in fact and that evidence was wrongly excluded.

DIVISIONAL COURT remitted to County Court Judge for new trial the question of tenancy on the ground of improper rejection of evidence. Costs of appeal to be in discretion of Judge on new trial.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

O. H. King, for Lahey.

W. M. Douglas, K.C., for the company.

HON. MR. JUSTICE RIDDELL:—The company claiming to be owners of certain property in the possession of Lahey, whom they claimed to be their tenant, served him with a notice to deliver up possession; upon his refusal so to do, they took proceedings under the Overholding Tenants' Act, before the Judge of the County Court of the county of Welland. The learned County Court Judge made an order for possession, and Lahey now appeals upon the grounds that the judgment is wrong in law and in fact, and that evidence was wrongly excluded.

The evidence so far as admitted, shews that Lahey being in possession of the property, at a meeting of the company the secretary called attention to the unsatisfactory condition of affairs owing to there being no definite agreement with Lahey, whereupon a resolution was passed in the following terms: "Resolved to give the house and farm to Mr. Lahey rent free, in consideration of his keeping the front trees cultivated and looked after; such arrangement, however, to be terminated at any time at the will of the directors."