

Appeal allowed with costs and County Court verdict for plaintiff restored.
West, for plaintiff.
Bradshaw, for defendant.

KILLAM, J.]

[March 11.]

HOLMWOOD v. GILLESPIE.

Statute of Frauds—Sale of land—Quantum meruit.

This was an action in the County Court for the balance of the purchase money of a piece of land which had been sold by the plaintiff to the defendant, and conveyed to him at the plaintiff's request by a third party, who had originally purchased from the plaintiff, and had verbally agreed to resell to him. There was no agreement in writing signed by the defendant respecting the purchase of the property by him, but he had received a deed, and apparently no question of title was raised.

The Judge of the County Court found that the defendant had promised to pay the balance due, and held that the plaintiff was entitled to recover upon an account stated.

The defendant then appealed to a Judge of the Queen's Bench, and relied upon the decision of TAYLOR, C.J., in *McMillan v. Williams*, 9 M.R. 627, that a common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.

Held, following *Giles v. McEwan*, (noted ante vol. 31, p. 678) that the plaintiff was entitled to recover.

Appeal dismissed with costs.

Aikins, Q.C., for plaintiff.

Clark, for defendant.

(*Note*.—This case differs from *McMillan v. Williams* because there was no evidence of any promise by the defendant to pay the balance claimed, and he had, in fact, disputed the indebtedness.)

The Referee, }
 TAYLOR, C.J. }

[March 12.]

DOLL v. HOWARD.

Practice—Transfer from County Court to Queen's Bench—Statement of claim necessary.

This action, originally brought in the County Court and transferred by order of the County Court Judge, under sec. 86 of the Queen's Bench Act, 1895, the plaintiff as his next step, served a notice of trial, when the defendant moved before the Referee to set it aside.

Held, follow *Davies v. Williams*, 13 Ch. D. 530, and *The Carisbrook*, 38 W.R. 543, that the action must be commenced de novo, and a statement of claim filed in the Queen's Bench before anything further can be done, and that the notice of trial must be set aside.

The Chief Justice, on appeal, affirmed this decision.

Hough, Q.C., for defendant.

Mathers, for plaintiff.