

GALBRAITH v. CONNELL ANTHRACITE MINING CO.—FALCON-
BRIDGE, C.J.K.B.—JAN. 17.

Landlord and Tenant—Lease not in Writing—Dispute as to Length of Tenancy—Statute of Frauds—Evidence—Onus.—Action to recover possession of the premises No. 237½ Yonge street, in the city of Toronto. The plaintiff alleged that by an arrangement not evidenced in writing he leased the premises to the defendants for one year from the 1st May, 1905; and that subsequent dealings took place between the parties, the result of which was that the defendants were tenants from year to year. On the 30th October, 1909, the plaintiff gave the defendants a notice to quit for the 1st May, 1910. The defendants refused to deliver up possession, alleging that their tenancy is of a much more extended character—namely, a lease for the life of four beneficiaries under a will. The Statute of Frauds was not pleaded; the plaintiff asked leave to amend by setting it up; but the Chief Justice did not find it necessary for the decision of the case to allow the amendment to be made. He held that the onus lay upon the defendants to prove their agreement, and this they had failed to do, even without regard to the burden of proof. Judgment for the plaintiff, with costs, for immediate possession and for occupation rent since the 1st May, 1910, at the rate of \$50 a month. G. H. Watson, K.C., for the plaintiff. W. N. Ferguson, K.C., for the defendants.