

## GATTO v. WILLIS—LENNOX, J.—DEC. 11.

*Damages—Assessment of, upon Judgment by Default—Breach of Contract to Purchase Land—Possession Taken by Purchaser—Rental Value—Plaintiffs Confined to Claim Made in Pleading—Costs of Obtaining Possession—Costs of Action.*—Action by Antonio Gatto and Agostino Concillo against Annie Willis to recover damages for the defendant's breach of an agreement to purchase land in the city of Toronto. The defendant did not defend, and judgment was entered against her for default. The action came before LENNOX, J., for assessment of damages, at a Toronto sittings. LENNOX, J., in a written judgment, said that the plaintiff Concillo gave evidence and made a claim for the value of the premises during the time the plaintiffs were out of possession, 6 months, at \$200 a month, \$1,200, and costs of ejecting the defendant's tenant, \$47.50. The defendant was not represented, and the learned Judge said that he must be alert to confine the plaintiffs to their strict legal rights. Recovering by default, the plaintiffs could get nothing outside of what was clearly set out in their statement of claim. Nothing was alleged about recovery of possession or costs, and there could be no judgment in respect of the \$47.50 claimed at the trial for costs. It was alleged in the statement of claim that at the time the agreement was entered into the defendant was tenant of the premises at a rental of \$60 a month; that John Christoff occupied the premises under her; and that the defendant had not paid rent subsequent to the 15th July, 1919. The agreement was entered into on the 24th July. The rental agreed upon would be a safer guide in determining the plaintiff's damages than what was sworn to as an estimate. The plaintiff Concillo did not swear that neither the defendant nor Christoff had paid anything by way of rent or in respect of occupation for the 6 months spoken of. An affidavit of one of the plaintiffs, clearing up this point, must be filed before judgment is entered. Subject to deduction of such sums, if any, as had been received, judgment should be entered for the plaintiffs for \$360 with costs on the County Court scale and without set-off of costs. E. M. Dillon, for the plaintiffs.