

claimed by the statement of claim by which the action was begun, and not upon the amount claimed in the lien registered, there having been a payment of \$800 after lien registered, and before statement of claim.

J. A. Worrell, K.C., for plaintiffs.

A. E. H. Creswické, Barrie, for defendants.

THE COURT (MEREDITH, C.J., and FALCONBRIDGE, C.J.), dismissed the appeal with costs, upon a consideration of the evidence, but varied the judgment by limiting defendants' costs to 25 per cent. of the amount claimed by the statement of claim.

JANUARY 23RD, 1903.

DIVISIONAL COURT.

RE HOOKER AND MALCOLM.

*Landlord and Tenant—Overholding Tenants Act—Right of Landlord to Re-enter for Non-payment of Rent—Set-off—"Clearly."*

Motion by the tenants to set aside a summary order of the Judge of the County Court of Brant, under the Overholding Tenants Act, awarding possession of demised premises to the landlord, on the ground that the lease under which the tenants were in possession had not expired or been determined at the time the proceedings were taken under the Act. The tenants were in originally under a lease for six months, and continued in possession after its expiry, paying rent. The landlord gave notice to quit, but served a demand of possession, claiming the right to re-enter for non-payment of rent.

L. F. Heyd, K.C., for the tenants contended that no rent was due because they had a set-off, and that it was not necessary that the set-off should be undisputed; it was sufficient to oust the jurisdiction under the Overholding Tenants Act, that there should be a bona fide assertion of the right to a set-off.

W. S. Brewster, K.C., for the landlord, contra.

THE COURT (MEREDITH, C.J., and FALCONBRIDGE, C.J.) held that the case was "clearly one coming under the true intent and meaning" of sec. 3 of the Act, as it clearly appeared that there was rent due at the time when the landlord claimed to enter. Motion dismissed with costs.