

I refer to the decision, and particularly to the judgment of Burton, J.A., in *Nichol v. Douglas*, 37 U. C. R. 51.

The appeal is allowed, and assessment reduced to \$43,000.

St. John & Ross, Toronto, solicitors for the appellants.

T. Caswell, Toronto, solicitor for the respondents.

MEREDITH, J.

APRIL 3RD, 1902.

TRIAL.

GRANT v. McPHERSON.

*Landlord and Tenant—Agreement for Lease—Incomplete Contract—  
Nature of Tenancy—Possession.*

An action to recover possession of a house in the city of Toronto and for mesne profits, the defendant having become tenant to the plaintiff under a supposed agreement for a lease.

W. M. Douglas, K.C., and J. E. Jones, for plaintiff.

E. D. Armour, K.C., for defendant.

MEREDITH, J.—Upon the whole evidence it cannot be found that there was any agreement for a lease. The parties were agreed upon most of the terms of the lease, but, as to some essential terms, there was a misunderstanding, and no agreement. . . . The defendant, among other defences, sets up the agreement as he understood it, and seeks specific performance of it. There cannot of course be specific performance, the parties never having been at one upon some of the essential terms of it. But the relationship of landlord and tenant, in some form or other, obviously existed between the parties: the one question is, what was the nature and extent of it? And that is purely a question of fact. At the end of the second year the plaintiff became entitled to possession, and he has done nothing to waive that right. . . . I have found no case in point; those decided under the Statute of Frauds are different at the beginning in this, that the statute expressly provides that the lease shall operate as a tenancy at will, though after payment of rent in such cases there seems to be no substantial difference between those cases and this. *Lennox v. Westney*, 17 O. R. 472, differs from this case in the essential feature that in that case no rent had been paid; there was no recognition of any relationship of landlord and tenant after the incomplete negotiations for a lease. The cases under the statute are collected in the note to *Doe d. Regge v. Bell*, 2 Sm. L. C. 1342, and *Clayton v. Blakey*, *ib.* 1347. See *Sourwine v. Truscott*, 17 Hun 432; *Fullerton v. Dalton*, 58 Barb. 236; *Mayor of Thetford v. Tyler*, 8 Q. B. 95; *Smith v. Widlake*, 3 C. P. D. 10.