

death, it was the duty of the estate to carry out to completion at the cost of the personalty. Here the marked distinction exists that there was no existing contract in course of performance when the testator died. On the contrary, the contract had been broken; the time for performance had elapsed, and nothing had been done in the way of building. A new liability had arisen against the testator for damages because of his non-performance. The contract to build is very vague and is not per se capable of specific enforcement. Had the father lived, the son, as lessee, could have had no relief for the breach other than damages. His death has not enlarged or changed that remedy; and to that the son as lessee or devisee is confined. If the parties can agree to assess the amount of damages, it will save money, time, and perhaps temper.

Peter McDonald, Woodstock, solicitor for the executor.

J. Hoskin, Toronto, official guardian.

Mabee & Makins, Stratford, solicitors for Andrew W. Murray.

Smith & Mahon, Woodstock, solicitors for John R. Murray.

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MACMAHON, J.

SEPTEMBER 12TH, 1902.

CHAMBERS.

RE CLARK AND KELLETT.

*Landlord and Tenant—Overholding Tenants Act—Right to Terminate Lease—Notice to Quit—Difficult Questions of Law—Refusal of Certiorari.*

Motion by W. B. Kellett, the tenant, for an order under sec. 6 of the Overholding Tenants Act, R. S. O. ch. 171, requiring the junior Judge of the County Court of Lambton to send up the proceedings and evidence in this case to the Court, and staying proceedings.

The lessor, Angeline M. Clark, demised a store and premises in Sarnia to Kellett for 5 years from 21st December, 1901, at \$540 a year, payable in monthly payments of \$45 a month, the lease containing a proviso that "the parties hereto may terminate this lease at any time upon giving three months' notice in writing of his or her intention so to do." On the 16th April, 1902, the lessor gave the lessee notice in writing "to quit and deliver up the store and premises which you now hold of me situate . . . on the 21st July next, provided that your tenancy originally commenced on that day of