

JONES v. HUDSON—FALCONBRIDGE, C.J.K.B.—OCT. 19.

Land — Recovery of Possession — Counterclaim — Status of Defendants Counterclaiming—Devolution of Estates Act, sec. 13—Evidence—Demand of Possession or Notice to Quit—Necessity for—Denial of Relationship of Landlord and Tenant.—An action to recover possession of land in the city of London. The action was tried without a jury at London. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the defendants (who asserted a counterclaim) would find *Empey v. Fick* (1907), 15 O.L.R. 19, a serious obstacle in their path. Clara Hudson died on the 21st February, 1915. The 3 years had not expired, and there had been no administration of her estate: Devolution of Estates Act, R.S.O. 1914 ch 119, sec. 13. But, if the defendants had any status, they had not made out a case. The evidence of Olivia Vosburgh was absolutely negligible, and that of Clara's mother and daughter and sister fell far short of proving the defendants' case either as to alleged payments of money by Clara or as to her mental condition, even without the testimony in answer of the plaintiff, the solicitor who drew the deeds, and the medical superintendent of the asylum. Then as to the alleged defects in the demand of possession, the defendants had, by conduct and pleading, entirely repudiated any relation of landlord and tenant and made assertion of right to hold the tenements against the plaintiff; and so the plaintiff was entitled to eject without proving a valid notice to quit: *Vivian v. Moat* (1881), 16 Ch. D. 730; *In re Sutherland and Portigal* (1899), 12 Man. R. 543. The plaintiff ought to do something for his late companion's daughter. Judgment for the plaintiff with costs (if exacted) for possession and \$1 mesne profits. R. G. Fisher and D. H. Tennent, for the plaintiff. W. R. Meredith, for the defendants.