

Co. C. Cases.]

SUTTON v. BANCROFT—DECOW v. MCCALLUM ET AL.

[Co. C. Cases.]

In the affidavit there is no allegation that the accused is apprehensive that a fair trial cannot be had in the county of Frontenac, as was the case in *The King v. Holdew*, 5 B. & Ad. 347, and *The Queen v. Palmer*, 5 El. & Bl. 36. In the former case the application was refused, but it was granted in the latter on the consent of the Attorney-General.

It appears to me that the contention of Mr. Leith in this case is the correct view of the intention of the Legislature, namely, to substitute proceedings like the present for the old practice of removing the case by certorari into the Queen's Bench, and then moving to change the venue, and that an order such as prayed for, should be made, only in cases when under the former practice, a change of venue would have been granted; in other words, "when it is expedient for the ends of justice that the trial should be held in some other place than that in which the offence is supposed to have been committed." It is quite clear that no such change would have been made in this case, and therefore the present summons should be discharged. There is no saying to what inconvenience the granting of applications like the present might not lead.

Summons discharged.

COUNTY COURT CASES.

IN THE MATTER OF SUTTON, LANDLORD, v. BANCROFT, TENANT.

Overholding Tenants Act—Assignee of reversion.

Under the Overholding Tenants Act, 31 Vic. cap. 26, the word "landlord" includes the assignee of the reversion. The late Act affords a more extensive as well as a more expeditious remedy than any former statute.

[HUGHES, Co. J., St. Thomas.]

The facts of the case were, that one Burtch demised the premises to this tenant for a term which had expired, but before the end of the term conveyed the reversion to Sutton, who claimed the possession as landlord.

Ellis, as attorney for the tenant, denied the relation of landlord and tenant within the meaning of the Act, upon which alone the County Judge had jurisdiction. Proof of title and of the lease having been made from Burtch to Bancroft, and no attornment shewn from Bancroft to Sutton, Mr. Ellis claimed to have the proceedings quashed and the application discharged for want of privity between the parties, and that the fact of his being in possession did not constitute Bancroft Sutton's tenant: nor did the assignment of the reversion constitute Sutton Bancroft's landlord. The notice to quit and demand of possession were admitted.

McDougall, counsel for the landlord, cited the 13th section of the Act as to the meanings of the words "tenant" and "landlord," whereby they have assigned to them interpretations which their ordinary signification do not import, and referred to *Nash v. Sharp*, 5 C. L. J., N. S., 78, as good authority under the former statute, but not under the Ontario Act, for by the interpretation of the 13th section no room whatever is left for doubt.

HUGHES, Co. J.—In the Act, 4 Wm. IV. Cap. 1, I find an interpretation clause (sec. 59), but no such meanings attached to the words "landlord" and "tenant" as are assigned them by the 13th section of the Ontario Act, nor do I find them in the Con. Stat. of U. C. Cap. 27. The Act 27 & 28 Vic. cap. 30, affords a more expeditious remedy for cases coming within the meaning of the previously existing statute, but I find no extension as to the kind of cases which might be reached by that remedy, so that up to the passing of the Ontario Statute, 31 Vic. Cap. 26, any decision of the Superior Courts as to the extent of the remedy and the class of cases coming within the purview of the then existing statutes would apply and be authoritative. Not so, however, since the passing of the statute now in question, because the word "tenant" is thereby declared to mean and include an occupant, a sub-tenant, under-tenant (if there be any difference between "sub" and "under") and his and their assigns and legal representatives: and the word "landlord" is declared to mean and include the lessor, owner, the party giving or permitting the occupation of the premises in question, and the person entitled to the possession thereof, and his and their heirs and assigns and legal representatives. I think that *Bonserv v. Boice*, 9 U. C. L. J. 213, does not apply as an authority in this case, for the statute in question affords not only a more expeditious but a more extensive remedy than was ever devised or contemplated by any previously existing statute, and no room is left for a well founded doubt that the word landlord includes the assignee of the reversion.

I therefore decide, 1st. That this is a case clearly coming within the meaning of the second section of the Act. 2nd. That the tenant, Bancroft, holds without color of right, and was tenant, &c., for a term which has expired, and wrongfully refuses to go out of possession thereof, &c.

*Writ of possession ordered.**

In the County Court of the County of Elgin.

DECOW v. MCCALLUM ET AL.

Trial by proviso.

Trial by proviso, held not to be in force in this country.

[HUGHES, Co. J., St. Thomas.]

This was an application by the plaintiff to set aside a nonsuit had upon a trial by proviso, the defendant having carried down the cause, and the plaintiff not appearing,—on the following grounds.

1st. That the defendant did not give the plaintiff notice to proceed as required by the 227th sec. of the C. L. P. Act.

2nd. That trial by proviso is abolished in the Courts of Record in Ontario and a new practice substituted for it by the C. L. P. Act, and

3rd. Because no issue book or copy of issue was served or delivered by the defendants before proceeding to trial.

* By an error of the press in the last number an editorial note to this case, which should have appeared in another place, was inserted as part of the judgment; therefore insert the case again. See *ante*, page 33.