

the Overholding Tenants Act against O'Brien and Kohler, in which the plaintiff alleged an agreement by the tenants to give up possession at any time. The trial took place on 4th June, 1907. The application was dismissed, but upon what ground does not appear and the right to possession at that time and existence or non-existence of a tenancy then or previously cannot be considered *res adjudicata*.

O'Brien and Eberle carried on business for one season and then O'Brien sold out to one Ward, who continued with Eberle in 1908 and 1909. In 1909 Ward sold out to the defendant Frank Rose—and later Eberle sold to the defendant Neil Rose. This action against Eberle and Frank Rose and Neil Rose was commenced on 17th November, 1909. On 24th October, 1910, Eberle and Frank Rose obtained a conveyance from Barker of the northerly $\frac{7}{8}$ acre, and by deed of 28th December, 1910, reciting that that parcel was used in connection with the fishing Eberle conveyed his interest therein to Neil Rose.

During the currency of the overholding tenant proceedings in 1907, the plaintiff went to Mr. Matthew Wilson to see about getting a deed from the Wm. Wilson estate, and although it was pointed out to him by Mr. Matthew Wilson that under William Wilson's will the property would not vest in his children, but in the trustees who were all dead he instructed Mr. Wilson to prepare a quit claim deed to him from the six children. This was done, the expressed consideration being \$1, and the plaintiff took it to London where four of the sons executed it, the other son not being resident there and the only daughter being absent. It bears date 18th May, 1907. While it strongly corroborates the plaintiff's ownership of the land it cannot be said to convey to him the legal estate.

The possession of the land having been originally obtained by Lee and transmitted successively through Kohler and O'Brien and Ward to the defendants, and that possession being found to have been obtained by Lee and subsequently by O'Brien from Poulin as his tenants the defendants so long as they refuse to restore possession to the plaintiff are estopped from denying that in 1901 or 1904 he had title. This action being begun in 1909, even if no rent had ever been paid under those rentals the plaintiff must succeed as against these defendants. The verbal lease from Mr. Matthew Wilson in 1907, could not give them any right of possession as