

missible to vary it." So also Grove, J. The case is of authority only on the point of the admissibility of parol evidence to vary a written document—as in our own case of *McNeeley v. McWilliams*, 13 A. R. 324.

I can find nothing in any of the cases to modify the statement of Martin, B., in *Davis v. Marshall*, 4 L. T. N. S. at p. 217: "A contract for a year, with monthly payments, is still a yearly contract, unless the yearly hiring be rebutted by evidence to the contrary (*Chitty on Contracts*, pp. 502-3, and cases of *Beeston v. Collier*, 4 Bing. 309; *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171)."

The action should be dismissed without costs as against the defendants Gunn Limited, and judgment entered for the plaintiff against the defendants Gunn Langlois & Co. Limited for \$278.57 and costs.

The action having been begun before the coming into force of the County Courts Act, 10 Edw. VII. ch. 30, the costs will be taxable as though that Act had not been passed.

DIVISIONAL COURT.

JUNE 9TH, 1910.

### McDONALD v. TRUSTS AND GUARANTEE CO.

*Trusts and Trustees—Moneys Advanced on Chattel Mortgage Taken in Name of Trustees for Lenders—Default in Payment—Failure of Trustees to Renew Mortgage—Delay in Selling—Failure to Realise Debt—Duty of Trustees—Evidence—Findings of Trial Judge—Reversal by Appellate Court—Trustees Acting Honestly and Reasonably—62 Vict. (2) ch. 15—Charges made by Trustees against Property—Reference—Costs.*

Appeal by the defendants from the judgment of LATCHFORD, J.

The two plaintiffs and two others advanced money to a newspaper publishing company, and arranged that a chattel mortgage upon the plant, etc., should be made to the defendants, a trust company, as trustees for the plaintiffs, to secure the advances. The mortgage was made by the newspaper company to the defendants, in March, 1906, for \$2,000 and interest at 7 per cent. It was regularly filed on the 20th March, 1906, in the proper office. The mortgagors failed to pay the interest. By a series