

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

W. A. Skeans, for the appellants.

J. H. Moss, K.C., for the plaintiff, respondent.

Counsel agreed that the appeal should be treated as a motion for judgment.

THE COURT (after consideration) did not deem it fit to deal with the appeal as a motion for judgment, and therefore left all the matters involved in the action to be dealt with at the trial in the ordinary way, unprejudiced in any way by anything done upon the interlocutory application.

Treating the appeal as one against the interlocutory order made by Masten, J., merely, the Court dismissed it with costs to be costs in the action to the plaintiff in any event.

SECOND DIVISIONAL COURT.

OCTOBER 3RD, 1919.

*RE LYONS AND McVEITY.

Landlord and Tenant—Lease for 14 Months—Rent Payable Monthly—Tenant Overholding and Paying Rent Monthly—Tenancy from Year to Year.

Appeal by Lyons, landlord, from an order of the Judge of the County Court of the County of Carleton, dismissing the appellant's application for a summary order for possession of premises demised to McVeity as tenant, under the overholding tenants provisions of the Landlord and Tenant Act.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL and LATCHFORD, JJ., and FERGUSON, J.A.

S. Clark, for the appellant.

T. R. Ferguson, for the tenant, respondent.

MEREDITH, C.J., in a written judgment, said that the question involved in this case was, whether the overholding tenant became a tenant from month to month or from year to year.

The origin of the tenancy was a lease, for a term of 14 months, of residential property, the rent payable monthly. During the long overholding the rent had been paid monthly.

The law in the case of overholding seemed to be yet that pronounced by Lord Mansfield in *Right v. Darby* (1786), 1 T.R. 159: "If there be a lease for a year, and by consent of both parties