

FALCONBRIDGE, C.J.K.B.

DECEMBER 31ST, 1915.

TEASDALL v. DWYER.

Landlord and Tenant — Lease — Proviso for Determination — Notice—Enforcement—Sale of Land—Bona Fides—Parties —Action for Possession Brought by Lessor and Vendee against Administratrix of Lessee — Infant Beneficiary — Costs.

Action to recover possession of land demised.

The action was tried without a jury at London.

W. R. Meredith, for the plaintiffs.

T. G. Meredith, K.C., for the defendant Catherine Dwyer.

F. P. Betts, K.C., for the Official Guardian, representing the defendant Kathleen Dwyer, an infant.

FALCONBRIDGE, C.J.K.B., said that the first question was, whether the agreement and sale of the property by the plaintiff Maria Dwyer to the plaintiff Dr. Teasdall were bona fide. Although the agreement between the plaintiffs (exhibit 2) was not very intelligible as written, and although some of the surrounding circumstances had a suspicious aspect, yet the evidence did not justify a finding that the sale was a bogus one.

Then the chief question to be decided was, whether *Pepper v. Butler* (1875), 37 U.C.R. 253, applied to the case in hand. In the opinion of the learned Chief Justice, it did not. That case was decided entirely on the wording of the particular proviso, which was not at all similar to this one; and there the lessor did not sell, but assigned.

The lease in question in this action provided that "in the event of a sale by the lessor of the whole of the said lot or the part thereof upon which the said building is situated, the lessees will, immediately after the expiration of one month's notice so to do quit and deliver up possession of the premises hereby demised to them respectively to the lessor." Under this, the notice could not be given until a sale had taken place; and, if it could not be given by the lessor, it apparently could not be given at all.

The notice here was given by the solicitors acting for both plaintiffs; and effect could not be given to any defence of this nature.