

Townshend, J.]

[May 7.

McDONALD v. WARWICK GOLD MINING CO.

*Special endorsement.*

The writs of summons in five actions brought against the defendant company were specially indorsed, in four cases for so many days labour at so much per day, and in the fifth case for goods sold and delivered at a named price. On motion for judgment under the provisions of O. 14.

*Held*, dismissing the motion, costs reserved, that, to bring the claim within the terms of the order, it must be clearly shown in the endorsement that defendant agreed or contracted for the labour or the goods at the prices specified, and that the endorsement, being defective, could not be made good by affidavits showing a good claim for a specially indorsed writ.

*H. B. Stair*, for plaintiff. *E. P. Allisen*, for defendant.

COUNTY COURT, DISTRICT No. 1.

Wallace, Co. J.]

McCOLL v. BOREHAM.

[May 12.

*Overholding Tenants Act, R.S. 1000, c. 174—Statute of Frauds—Oral letting.*

An application was made by the original lessee for a writ of possession against a tenant, the lessee alleging that the tenant continued to occupy under a verbal agreement, sub-letting to him for one year which year had expired. The tenant alleged that the agreement to sub-let covered the whole period of three years granted by the landlord to the original lessee. There being a bona fide dispute as to the duration of the term for which the premises were sub-let, and the parties being equally reputable the judge held that the applicant had failed to establish that the tenant was wrongfully holding possession and a writ of possession was refused: *Re Myers v. Murrans*, 40 C.L.J. 317, and also, in addition to the cases there cited, *Moore v. Gillies*, 28 O.R. 358.

It was also contended on behalf of the applicant that even if the version of the tenant were accepted it appeared from such version that the oral agreement for the sub-letting for three years was made in January, 1902, and was for a term to begin in the following May and cover a period of three years from May, 1902, and was therefore void under the Statute of Frauds.

*Held*, following *Hodson v. Heuland*, 2 Ch. D. (1896) 428, that the continuance in possession after the verbal agreement was a part performance of the contract sufficient to take the case out of the Statute of Frauds.

*H. A. Lovett* and *G. F. Pearson*, for original lessee. *A. A. Mackay* and *W. H. Fulton*, for tenant.