

land for one year from 1st October, 1903, and to pay, in lieu of fixed rent, one-third of the crop to be grown on the land. There was a clause in Winkler's lease allowing an incoming tenant to enter and plough in the autumn, and Nichol commenced ploughing in September. After 1st October he continued the ploughing until he had ploughed about 40 acres.

The other defendants remained on the land and refused to give up possession.

Plaintiff then brought ejectment on 23rd October, 1903. The only defence was that the plaintiff had lost his right of action by leasing the land to Nichol and that Nichol was the only person who could sue.

Nichol had taken no steps to secure possession and relied on the plaintiff to secure quiet possession for him.

*Held*, that plaintiff had a right to bring the action.

The agreement between Nichol and the plaintiff was a very indefinite one, as there was nothing said as to how many acres he was to cultivate, or as to where the one-third of the crop was to be delivered, or whether it was to be before or after threshing, and such agreement could hardly be said to be more than an agreement for a lease. He who lets agrees to give possession, and not merely a right to bring a lawsuit: *Coe v. Clay*, 5 Bing. 440; *Jenks v. Edwards*, 11 Ex. 774, and therefore he must have a right to secure that possession to give. Although a lessee, even before entry, can maintain ejectment against any one wrongfully in possession, it does not follow that, in every instance, he has the right to the exclusion of the lessor.

*Campbell*, K.C., A.G., for plaintiff. *Wilson*, for defendant.

Perdue, J.]

[June 15.

CLEMENT v. THE FAIRCHILD CO.

*Contract—Cancellation by new verbal agreement—Statute of Frauds.*

Plaintiff entered into a written contract with defendants for the purchase of an engine to be delivered at a named date or as soon thereafter as possible. Before breach of this written agreement the plaintiff entered into negotiations with the defendants for the substitution of a more powerful engine than the one first ordered and, in addition, a wind stacker and a set of trucks, the price to be \$500 more than that in the first order, and a verbal agreement was arrived at for the supplying of the new machinery in place of the old. Defendants then took over an old engine from the plaintiff and agreed to credit \$1,000 for it on the price of the new machinery. They sold the old engine