

The deceased plaintiff left a will, but no application had been made for letters probate thereof. The notice of the present application was directed to the solicitor for the original plaintiff and to the person named as executor in the unproved will of the deceased plaintiff. The learned Judge said that there had been great delay, for which both sides were partly responsible. Order that the executor of the plaintiff have 15 days in which to take out an order reviving the action in his name and to bring on the undisposed of motions for determination. If this is done, costs of the present motion will be costs in the reference. If the executors fails to do this within the time limited, further proceedings in the action will be stayed. J. T. Small, K.C., for the applicant. W. N. Ferguson, K.C., for the executor of the deceased plaintiff.

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PURVIS v. SHEPHERD—SUTHERLAND, J.—JULY 9.

*Landlord and Tenant—Lease—Assertion of Right of Way through Demised Premises—Eviction—Termination of Lease—Trespass—Destruction of Barrier to Use of Way—Action for Rent—Defence—Counterclaim.*—Action for three months' rent of premises leased to the defendant by the plaintiffs' testator. The defendant answered that the plaintiffs had interfered with his possession under the lease by taking down or authorising the taking down of a barrier which he had put up to prevent Kirk Brothers, tenants under the plaintiffs of adjoining premises, from passing through his premises in the assertion of a right of way. The defendant had quitted possession of part of the premises leased to him, and set up that he had been evicted therefrom or that the lease had been terminated by the plaintiffs; and he counterclaimed for a refund of a year's rent paid by him. The action and counterclaim were tried without a jury at North Bay. SUTHERLAND, J., said that he was unable to find from the evidence that there was any actual eviction by the plaintiffs of the defendant from any part of the demised premises. The acts done by Kirk Brothers were in the nature of acts of trespass of a temporary kind, and the defendant might have an action against Kirk Brothers for trespass, and they might have recourse over against their landlords, the plaintiffs. The plaintiffs should have judgment for the instalments of rent claimed, with costs of action on the scale of the Supreme Court, into which the action had been removed from an inferior Court. The