SECOND DIVISIONAL COURT. MARCH 26TH, 1920.

*HARRIS v. HARRIS.

Contract—Oral Promise of Father to Convey Land to Son—Consideration—Services of Son—Evidence—Corroboration—Possession Given to Son—Part Performance—Statute of Frauds—Subsequent Acceptance of Lease by Son—Estoppel—Specific Performance of Agreement—Claim for Improvements Made by Son—Claim for Wages—Amendment—Reference—Costs.

Appeal by the defendant from the judgment of FALCONBRIDGE, C.J.K.B., 16 O.W.N. 216.

The appeal was heard by MAGEE, J.A., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

Shirley Denison, K.C., for the appellant.

M. H. Ludwig, K.C., for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said, after stating the facts, that it seemed fairly clear that the defendant intended to give the plaintiff (his son) the farm now in question at some time, but that was not enough. The rules to be followed in such cases as this were laid down most carefully and conclusively in the leading case of Orr v. Orr (1874), 21 Gr. 397, and it could not be necessary to restate them at length.

Even if it could be assumed that the Statute of Frauds was met by the possession—and the plaintiff would have great difficulty in that regard, as it was admitted that the possession was taken at the father's instance because the plaintiff's house was burned down, and there could be no pretence that the possession was given or taken in pursuance of any contract—the plaintiff would not be advanced. An assertion that he had given the farm, however frequently repeated, did not amount to a contract: the Orr case, at p. 410; and the plaintiff failed to come up to the stringent requirements of the rules laid down in that case. See, per Street, J., in Smith v. Smith (1898), 29 O.R. 309, affirmed in appeal (1899), 26 A.R. 397; Jibb v. Jibb (1877), 24 Gr. 487; Campbell v. McKerricher (1883), 6 O.R. 85.

As at present advised, the learned Judge did not think that the plaintiff was estopped by reason of his alleged tenancy: Hillock v. Sutton (1883), 2 O.R. 548. At the worst, he might have a declaration of his rights if the facts justified such a course.

But he failed in limine; and, notwithstanding Biehn v. Biehn (1871), 18 Gr. 497, this Court was concluded by Smith v. Smith, supra, from giving him a lien for his alleged improvements.