

DIVISIONAL COURT.

SEPTEMBER 30TH, 1912.

## \*ATKINSON v. FARRELL.

*Landlord and Tenant—Lease of Farm by Tenant for Life—Rights of Lessee and Remainderman at Death of Life-tenant—Crops in the Ground—Manure and Straw—Covenant to Expend upon Farm.*

An appeal by the defendant from the judgment of the County Court of the County of Simcoe in favour of the plaintiffs, the executors of Patrick Farrell, deceased, for the recovery of \$125, in an action for damages for the removal and conversion of wheat, manure, straw, etc., from a farm leased by the deceased, who had a life estate only in the land, to one Hanley. The defendant, the remainderman, sold the wheat, etc., to one Maher.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

J. E. Jones and E. W. Clement, for the defendant.

A. E. Creswicke, K.C., and J. Fraser, for the plaintiffs.

The judgment of the Court was delivered by BOYD, C.:—The appellant's contention that the lease for five years from March, 1909, was operative for that period, despite the death of the tenant for life, who made it in February, 1911, is answered, apart from its legal aspect, by his admission in the defence that the tenancy ended at the death of the lessor: paragraph 2. He admits that, "upon the death of Patrick Farrell, the estates of the said Farrell and his tenant (Hanley) became determined and at an end." This being so, the wheat then sown and in the ground became emblements belonging to the tenant, Hanley. These emblements were purchased by the executors of the lessor, Patrick Farrell, and an assignment thereof obtained under seal on the 9th March, 1911. The reversioner, the defendant, assumed to deal with as his property and make sale and conveyance of the land and these crops in July, 1911, to one Maher, whereby he became liable for their conversion under the circumstances and evidence set forth below.

The action is well-founded in this regard, and the judgment as to them in favour of the executors is right.

The other branch of the appeal is as to straw and manure on the farm at the determination of the lease. By the terms of

\*To be reported in the Ontario Law Reports.