

what is to be decided by the Court under sec. 6 of the Overholding Tenants Act, R. S. O. ch. 171. There is nothing in that evidence to shew that the tenant had violated the provision of the lease for breach of which the landlord claimed the right to re-enter. The chattel mortgage, the making of which the landlord relied on as having been a breach of that provision, was not made by Davis, but by his mother, who was a stranger to the lease, and the goods embraced in it were her goods, and not his. There was, therefore, but one gale of rent due, that which was payable according to the terms of the lease on the 1st November, 1901, and that having been satisfied by the distress which was made, the landlord had no right to put an end to the lease and to re-enter. Order set aside with costs here and below to be paid by the landlord, and, if necessary, sheriff to be ordered to restore the tenants to their possession.

J. E. Varley, St. Catharines, solicitor for tenant.

M. J. McCarron, St. Catharines, solicitor for landlord.

BRITTON, J.

MAY 19TH, 1902.

TRIAL.

McRAE v. S. J. WILSON CO.

Contract—Breach—Damages—Time—Essence of—Waiver.

Action for an account and for damages for breach of contract for purchase by defendants of lumber, tried without a jury at Pembroke.

R. C. McNab, Renfrew, and W. Barclay Craig, Renfrew, for plaintiff.

W. R. Riddell, K.C., and W. H. Irving, for defendants.

BRITTON, J., held that plaintiff was not entitled to recover from defendants the loss by the sale to Cameron & Co. Time was not of the essence. There was a waiver of any time originally agreed on; the contract was treated as subsisting on 18th December, 1899, and after that plaintiff sold without notice to defendants. He also held, that upon the account plaintiff should recover \$434, that is, \$84 over and above the amount paid into Court by defendants. Judgment for plaintiff for \$84 and order for payment out of money in Court, with the general costs of the action. The plaintiff to get no costs as to his claim for damages, and to pay defendants' costs, if any, specially incurred on that branch of the case.