

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., RIDDELL and ROSE, JJ.

Gideon Grant, for the appellant.

Irving S. Fairty, for the defendants, respondents.

THE COURT dismissed the appeal with costs.

---

### HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

MAY 8TH, 1917.

#### JOHNSTON v. STEPHENS.

*Contract—Lease of Shop—Defect in Title of Lessors—Refusal to Give Lessee Possession—Damages—Actual Expense—Nominal Sum Awarded—Costs.*

Action for specific performance of a lease or in the alternative for damages.

The action was tried without a jury at Chatham.

G. A. Sayer, for the plaintiff.

O. L. Lewis, K.C., and W. G. Richards, for the defendant Stephens.

T. Scullard, for the defendant Douglas.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the plaintiff was a pool-room keeper and barber. The defendant Stephens was the administrator of the estate of George Stephens, deceased (who was the owner of an undivided interest in the premises in question), and one of the heirs at law of the deceased. The defendant Douglas was the owner of an undivided one-third part or share of the premises.

By indenture of lease bearing date the 21st February, 1917, the defendants purported to demise and lease unto the plaintiff the premises, being a shop on the south side of King street, in the city of Chatham, for the term of two years, at a rent of \$60 a month in advance, and the plaintiff on the same day paid the first month's rent, \$60, in advance. Both defendants signed and executed the lease in good faith and in the honest belief that the defendant Stephens had the right as administrator to lease the premises, under the terms aforesaid; but, before possession was delivered to the plaintiff, a very strong protest was made by some of the heirs at law against the carrying out of the lease, and the attention