

In order to entitle the plaintiffs to succeed, it was incumbent upon them to establish facts which would in law constitute an eviction by the defendant. It seems to me that the facts fall entirely short of such a result. To constitute an eviction, the lessee must establish that the lessor, without his consent and against his will, entered upon the demised premises and evicted him and kept him so evicted; and the act done by the landlord must be of a permanent character, and not a mere trespass or some act done for a temporary purpose, unless with the intention of depriving the tenant of the enjoyment of the premises. See Foa on Landlord and Tenant, 4th ed., p. 166. . . .

[Reference also to Upton v. Townsend, 17 C. B. at p. 65; Newby v. Sharpe, 8 Ch. D. at p. 49; Ferguson v. Troop, 17 S. C. R. 527, 579.]

Upon all the evidence and circumstances in this case, it is impossible to find that what was done by the defendant amounted to an eviction of the plaintiffs, especially because it is quite plain that the defendant never intended to terminate the lease or to evict the plaintiffs, or to do anything more than to permit a temporary occupation by Ritter in such a way as he believed it was in the interests of the plaintiffs that he should do.

Ritter paid \$3 for his occupancy, which was credited to the plaintiffs.

The action must be dismissed with costs, and the counterclaim allowed with costs. . . .

MULOCK, C.J.Ex.D.

MAY 28TH, 1910.

***LOBB v. LOBB.**

Will—Construction—Bequest to "Children"—Previous Mention by Name of Illegitimate Children—Exclusion of Legitimate Children—Inference from Wording of Will and Circumstances Existing at Time of Making.

The plaintiffs claimed, as sons of Charles Lobb, a share in his estate under his will.

The defendant, Charles Garfield Lobb, an illegitimate son of Charles Lobb, denied that the plaintiffs were children of Charles Lobb, and set up that, even if they were, they were not entitled to take under his will.

* This case will be reported in the Ontario Law Reports.