

Moore v. Gillies, 28 O. R. 358, decided that since the amendment to the then Overholding Tenants Act (which amendment is now embodied in sec. 5 of R. S. O. 1897 ch. 171), the County Court Judge now tries the right and finds whether the tenant wrongfully holds. In that case the dispute was in reference to the tenancy, the landlord alleging it to be a monthly holding, and the tenant a yearly tenancy. That case was followed in Ryan v. Turner, 14 Man. L. R. 624, the Act in that Province, as amended by 3 & 4 Edw. VII. ch. 21, sec. 2, now being in effect the same as sec. 5 of our Act.

No question of law is involved in the present case. The right of the landlord to recover possession depends altogether upon the question of fact, as to whether the lease to the tenant (which is under seal) was a demise of the premises for 3 years, as contended by the landlord, or for 5 years, as alleged by the tenant.

The tenant in his evidence said that his negotiations with the landlord were for a lease for 3 years; and the landlord instructed his solicitors to prepare a lease for that term, which was prepared in duplicate and sent to their client.

The dispute being as to whether the tenancy was for 3 years or 5 years, the learned County Court Judge was, on the authority of Moore v. Gillies, 28 O. R. 358, justified in holding that he had jurisdiction to try the right.

Having regard to the evidence and the judgment of the learned County Court Judge, I think this is not a case in which a certiorari should issue, and the motion will therefore be dismissed with costs.

ANGLIN, J.

MAY 9TH, 1905

TRIAL.

### BROWN v. BEAMISH.

*Fraudulent Mortgage—Action to Set aside—Judgment Creditor—Intent to Defraud—Pre-existing Agreement—Consideration—Insolvency of Grantor—Knowledge of Grantee—Preference—Action Begun within 60 Days after Mortgage—Presumption—Costs—Remedy by Summary Proceeding.*

Plaintiff on 9th January, 1905, obtained a verdict for \$1,100 for the seduction of his daughter, against defendant John Beamish, whose only property consisted of an undivided one-third interest in the equity of redemption in a farm,