

that a mortgagee is not permitted to proceed against the mortgagor under the Overholding Tenants' Act. Ontario cases were cited by counsel on these points. But in *Moore v. Gillis*, 28 Ont. R. 358, it was decided that since the amendment of this Act, striking out the words "without colour of right," the Judge of the County Court tries the right and finds whether the tenant wrongfully holds. The Ontario Act and our Act are identically the same as to this provision. I have already given my view that even as mortgagee the landlord should succeed in this application.

As I have already decided, the tenant wrongfully holds the lands described in the notice to quit herein; and an order will pass that a writ issue to place the landlord in possession of the premises in question.

The landlord will have the costs of this application, which costs shall be paid by the tenant.

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**NOVA SCOTIA.**

SUPREME COURT.

BEFORE MACGILLIVRAY, Co. C.J.,                      AUGUST 7TH, 1909.  
(AS MASTER.)

FRASER v. McCOLL.

*Deed of Lands—Declaration of Trust—Injunction—Counterclaim—Striking out—Costs—Practice.*

C. E. Gregory, K.C., for plaintiff.

R. H. Graham, for defendant.

The plaintiff in this action claims that the defendant, having taken the deed of certain lands described in the statement of claim herein, in his own name, is trustee of such lands for the plaintiff, having, as he alleges, paid the purchase money with funds furnished for the purpose by the plaintiff. He asks for a declaration,

1st. That the lands and premises described in said statement of claim are the plaintiff's, and that the title of the same is held by the defendant only in trust for the plaintiff.

2nd. A declaration that the plaintiff is the owner of said lands and premises.