

1899

*Mar. 14.

GEORGE A. EASTMAN (PLAINTIFF)....APPELLANT;

AND

RICHARD & CO. (DEFENDANTS).....RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF THE NORTH-
WEST TERRITORIES.*Landlord and tenant—Lease for 11 months—Monthly or yearly tenancy—
Overholding.*

R. & Co. made the following offer in writing to the owner of the premises mentioned therein :—" We are prepared to rent that store where the "Herald" offices used to be and will give \$400 a year for the whole of the ground floor as well as the cellar. We will rent for 11 months from the 1st of August next at the rate of \$400 per year." * * * This offer having been accepted R. & Co. occupied the premises for a year and seven months, no new agreement being made after the 11 months expired, paying their rent monthly during said period. They then gave a month's notice and quitted the premises. The landlord, claiming that the tenancy was from year to year brought an action for rent for the two months after the tenancy ceased according to the notice.

Held, affirming the judgment of the Supreme Court of the Northwest Territories, that the tenancy was one from month to month after the original term ended and the month's notice to quit was sufficient.

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

APPEAL from the decision of the Supreme Court of the North-west Territories affirming the judgment at the trial by which plaintiff's action was dismissed with costs.

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The action was for two month's rent of premises occupied by defendants under the following agreement :

" CALGARY, July 16th, 1894.

" P. MCCARTHY, Esq., Banff.

We are prepared to rent that store where the 'Herald' offices used to be and will give \$400 a year for the whole of the ground floor as well as the cellar. We will rent for 11 months from the 1st of August next at the rate of \$400 per year. The fixings can remain or be taken out its no advantage to us one way or the other. If this is satisfactory we want an answer by wire to-morrow and you will oblige.

Yours truly,

RICHARD & CO."

The defendants occupied the premises up to the end of April, 1896, without any fresh agreement after the term of 11 months expired. In March, 1896, they sent to Messrs. McCarthy & Bangs, agents of the plaintiff, the following notice :

" We hereby give you notice that we will on the 30th day of April, 1896, vacate the premises at present occupied by us, as monthly tenants on the south side of Stephen Avenue, Calgary, and owned as we understand by Messrs. Lucas & Eastman, or by Mr. Eastman, for whom you are acting as agents. Kindly acknowledge receipt of this notice and oblige."

On the date named defendants quitted the premises but the lessor refused to accept possession and subsequently brought action for rent for the two months following April, 1896, claiming that the tenancy was from year to year, and the notice was not sufficient.

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His action was dismissed at the trial and the judgment affirmed by the full court. He then appealed to this court.

On the appeal being called Lougheed for the respondent took an objection to the jurisdiction, namely, that the case was one in which there was no appeal to the court below *en banc* from the judgment at the trial without special leave which had not been obtained. The court, however, refused to entertain the objection holding that as the court appealed from had assumed jurisdiction they would not question it.

Latchford for the appellant.

Lougheed Q.C. for the respondents.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (*Oral.*)—We are all of opinion that the judgment appealed from was right ; that the tenancy was one from month to month and the month's notice to quit was sufficient. The action, therefore, cannot be maintained.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant : *McCarthy & Bangs.*

Solicitors for the respondents : *Lougheed & Bennett.*
