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No. 17

TEETZEL, J.

DECEMBER 9TH, 1904.

CHAMBERS.

WHITESELL v. REECE.

Costs—Scale of—Jurisdiction of County Court—Trespass to Land—Amount Involved—Title to Land.

Appeal by defendants from taxation of plaintiffs' costs by local officer at St. Thomas.

Plaintiffs were owners of the remainder in a farm valued at \$1,500, and defendant Reece was life tenant thereof, and defendant Payne a purchaser from her of timber on the farm. The action was for an injunction and damages for cutting and removing the timber. The trial Judge found for plaintiffs, and assessed the damages at \$400, to be paid into Court and paid out to plaintiffs on death of defendant Reece, who was to have the interest in the meantime. This judgment was varied by a Divisional Court (5 O. L. R. 356, 2 O. W. R. 160), by directing that defendants should at once pay to plaintiffs \$180.

Plaintiffs' costs were taxed on the High Court scale.

W. J. Tremear, for defendants, contended that Rule 1132 applied, and that on the judgment as entered plaintiffs were entitled to County Court costs only with set-off by defendants of High Court costs.

C. A. Moss, for plaintiffs, contra.

TEETZEL, J.—I think, notwithstanding that the judgment as drawn up awards plaintiffs only \$180, that it is quite clear, in the light of the judgment delivered by the Court, that the subject matter involved was the whole \$400, and therefore that the action would not have been maintainable