

of the present. The judgment entered on the findings of the jury having been reversed in term, the Court held that an appeal lay. In the present application the County Court in term confirmed the decision of the jury.

The present case having been heard by a jury, and the judgment entered at the trial upon the findings of the jury having been confirmed in term by the County Court, I think there is no appeal in such a case to the Divisional Court, and the present appeal should be quashed.

Moss, C.J.O.

DECEMBER 17TH, 1906.

C.A.-CHAMBERS.

BURKE v. TOWNSHIP OF TILBURY NORTH.

*Appeal to Court of Appeal—Leave to Appeal from Order of Divisional Court—Trifling Amount Involved—Unimportant Questions—Jurisdiction of Drainage Referee.*

Motion by plaintiff for leave to appeal from order of a Divisional Court (ante 457), reversing judgment of CLUTE, J., at the trial.

J. Bicknell, K.C., for plaintiff.

Featherston Aylesworth, for defendants.

Moss, C.J.O.:—The action is for trespass to plaintiff's land, and the trial Judge awarded her \$10 damages and full costs of action.

A drain was being constructed under the provisions of the Drainage Act along the highway in front of plaintiff's farm, and the trespass complained of consisted in spreading earth excavated from the drain upon a small portion of plaintiff's property.

The trial Judge found that plaintiff's land at the place in question was worth about \$10 an acre, and that no more than half an acre was injured, so that, as he said, the whole value of the land itself would only be about \$5.

The action is, therefore, one which should not have been brought in the High Court in the first instance. But, through