

The appeal should be allowed, with costs here and below; and, unless there was to be a further appeal, the action should, as against the appellant, be dismissed with costs.

The plaintiff should have the right to rank against the assets of the defendant company in liquidation for the amount found due to him by the report, subject to the right of the liquidator to claim against him with respect to any other matters which he might be advised to set up in the course of the liquidation. As between the plaintiff and the liquidator there should be no costs.

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LENNOX, J., IN CHAMBERS.

JUNE 26TH, 1915.

RE CORDINGLEY v. WILLIAMSON.

*Division Courts—Jurisdiction—Jury Trial—Irregularity—Waiver—Claim for Damages for Conversion of Goods—Amount in Excess of Jurisdiction in Actions for Tort—Claim actually Based on Contract—Amendment—Prohibition.*

Motion by the defendant for an order of prohibition to the First and Second Division Courts in the County of Peel to prevent the plaintiff and the Judge and the clerk of the Second Division Court from further proceeding in the action, in which judgment was given for the plaintiff.

The plaintiff's claim was to recover \$68.75 made up of \$5 in small items—matters of account—and \$63.75 for 8½ tons of straw said to have been converted by the defendant to his own use.

The defendant filed a dispute-note in the Second Division Court, wherein the action was commenced, and counterclaimed for \$150, and demanded a jury; but did not deposit the fee for a jury. The case came on for trial in the Second Division Court, at Cooksville. The defendant asked for an adjournment, and to have the trial at Brampton before a jury. As an indulgence to the defendant, the Judge adjourned the hearing to Brampton, at Chambers—the defendant undertaking to pay the costs of the day and waive all irregularities. The case came on for trial at Brampton, and a jury was convened—in an irregular manner—but the defendant again waived all objections; and both parties stated that there were no objections when the jurymen were sworn. The case was not transferred to the First Division Court. The trial proceeded, and there was a verdict for the plaintiff.