

circumstances, the motion should not be granted. Leave to appeal to the Appellate Division was asked. As the matter was of considerable importance, the learned Judge was not disposed to refuse such leave in so far as he had power to give it. Motion to set aside the order dismissed with costs. J. W. Bain, K.C., for Whiting and Kendall. T. R. Ferguson, for the executrix of Hay.

REID v. MILLER—LENNOX, J.—MARCH 30.

Damages—Action to Recover Possession or Value of Chattels—Ascertainment of Value—Judgment for Small Sum—Costs—Counterclaim—Malicious Prosecution—Assessment of Damages—Set-off—Costs.—The plaintiffs sued for possession of certain oil-well machinery and equipment, which they valued at \$1,307, and alternatively for \$1,307. The defendant Philoméne Miller counterclaimed damages for the injury to her property by the failure of the plaintiffs to clear it of the equipment; and the defendant Dornton counterclaimed damages for malicious prosecution. The action and counterclaims were (by agreement and consent of the parties) tried without a jury at Sandwich. LENNOX, J., in a written judgment, said that if the plaintiffs had made any honest effort to carry out the terms of the judgment in a previous action, there would have been no excuse for the present litigation. The equipment in question was best described as “scrap” or “junk.” There should be judgment for the plaintiffs for \$450 in full of all claims and demands, including the equipment still upon the property of the defendant Philoméne Miller, with costs upon the County Court scale. If the plaintiffs prefer it, they may have, at their own risk as to costs, a reference to the Local Master at Sandwich to ascertain their damages; and in that case costs of the action and reference and further directions will be reserved. There can be no damages or compensation in respect of anything done prior to the 11th May, 1916, when the former action was tried. The defendant Philoméne Miller should have judgment on her counterclaim for \$75 with costs upon the Supreme Court scale. Upon the counterclaim of the defendant Dornton, he must prove the absence of reasonable or probable cause for setting the criminal law in motion. The criminal proceedings instituted by the plaintiffs against Dornton (for larceny) were not instituted or carried on in good faith. The information was sworn to by the plaintiff Estlen, but it was on behalf of both plaintiffs, and both were responsible. It was not established that advice was taken and full and honest disclosure made. The information was laid