

ORDE, J., IN CHAMBERS.

MARCH 17TH, 1920.

## \*PARRY v. PARRY.

*Costs—Scale of Costs—Action Brought in the Supreme Court of Ontario—Trespass to Land—Declaration as to User of Right of Way—Judgment for Plaintiff with Nominal Damages and Costs—Adjudication of Taxing Officer as to Scale of Costs under Rule 649—Appeal—Pleading—Issue Raised as to Title—Proof of Value of Land Involved—Onus—Jurisdiction of County Court—County Courts Act, sec. 22 (1) (c).*

Appeal by the defendants from the ruling of the Local Taxing Officer at Belleville that the plaintiff was entitled to costs of this action on the Supreme Court scale.

J. M. Forgie, for the defendants.

C. A. Payne, for the plaintiff.

ORDE, J., in a written judgment, said that the plaintiff was the owner of land in the township of Sidney, over which the defendant Parry, as the owner, and the defendant Jeffrey, as tenant, of adjoining land, were entitled to a right of way. The plaintiff, as well as his predecessor in title, had maintained certain bars across the way to prevent his cattle from straying from his barn-yard and his neighbours' cattle from straying upon his land. When using the way, the defendants had to remove these bars and replace them. Shortly before the commencement of this action, the plaintiff, for his own purposes, substituted for the old bars certain new ones, which, the defendants asserted, were larger and more cumbersome than the old ones; and the defendants, for that reason, objected to being obliged to remove and replace them, considering that the new bars interfered with their enjoyment of the right of way as theretofore exercised. After removing the bars, the defendants refused to replace them, thereby leaving the roadway open.

The plaintiff brought this action in the Supreme Court of Ontario for a declaration that he was entitled to maintain and keep the bars on the right of way of the defendants and that it was the duty of the defendants to replace the bars after using the right of way; the plaintiff also claimed \$50 damages, incidental relief, and costs.

The trial Judge pronounced the declaratory judgment asked for, and awarded the plaintiff \$5 damages and costs.

The trial judgment being silent as to the scale of costs, it fell to the officer to determine the scale: Rule 649.