

as to costs, security for costs and debt or damages, as the Judge may deem just.

Section 30 is very express and emphatic in providing for the trial of actions for claims under clauses (c) and (d) of sec. 22. The plaintiff's claim is under clause (c) of sec. 22.

The claim does not suggest any difficult question of law or fact; but the matter of bringing foreign water so that it flows over the plaintiff's land has been before the Judge of the County Court of the County of Peel, before whom this action will be tried, unless otherwise ordered. There was an award made by the township engineer under the Ditches and Watercourses Act, and this award, upon appeal to the County Court Judge, was set aside by him. For this reason and the further reason that a third party notice has been served, the case seems to me one fit to be tried—that is, one that ought to be tried—in the Supreme Court of Ontario.

There will be an order transferring the case, upon the following terms as to costs. If the plaintiff succeeds, he will be entitled to full costs on the High Court scale against the defendants, unless otherwise ordered by the trial Judge; and if the defendants succeed, and become entitled to costs of defence, the costs for the plaintiff to pay will be only upon the County Court scale. The defendants consent to this part of the order.

Costs of this application and order will be costs in the cause.

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LATCHFORD, J.

FEBRUARY 3RD, 1915.

### CONSTABLE v. RUSSELL.

*Stated Case—Preliminary Question of Law—Contract—Statute of Frauds—Refusal to Entertain Case—Determination of Case not Decisive of Action—Rule 126—Judicature Act, sec. 32 (2).*

Stated case heard in the Weekly Court.

W. Proudfoot, K.C., for the plaintiff.

M. H. Ludwig, K.C., for the defendant.

LATCHFORD, J.:—Stated case under Rule 126 submitted for the opinion of the Court as to whether certain documents,