

6TH DIVISION COURT, COUNTY OF PRINCE EDWARD.

Merrill, Co. J.]

SPENCER v. WRIGHT.

*Division Court Act, ss. 84, 92—Action by bailiff—Debt or damages.*

The plaintiff was the bailiff of the 1st Division Court of the county. The defendant resided and the cause of action arose within the limits of the same division (1st Division). The action was for damages, and was brought in the adjoining (6th) Division Court to that in which the plaintiff was bailiff. The question was: had this Division Court jurisdiction to try the action?

*Held*, that the words "debt due," in s. 92, could not be construed as including damages in tort, and that the 6th Division Court had no jurisdiction. Reference was made to Dwaris on Statutes, 193; Stroud's Jud. Dict., p. 184; *In re Hill v. Hicks*, 28 Ont. R. 393; *Webster v. McDougall*, 26 C. L. J. 85.

Widdifield, for plaintiff. Walmsley, for defendant.

Province of New Brunswick.

SUPREME COURT.

In Equity, Barker, J.]

[Jan. 4.

TOBIQUE VALLEY R.W. CO. v. CANADIAN PACIFIC R.W. CO.

*Railway—Lease of line—Passenger train service—Contract with government—Breach by lessee—Waiver by lessor—Mandatory injunction—Suit by lessor.*

By an agreement the plaintiffs were to lease their line of railway to the defendants upon the condition, inter alia, that the defendants would run a passenger train each way each day between stations A. and B. The lease was not executed, but the defendants went into possession of and operated the line. The plaintiffs alleged in their bill that at the time of the agreement, as was known to the defendants, they were under contract with the government of New Brunswick to run a passenger train each way each day between A. and B., but the contract was not set out in full. In 1897, a lease was executed by the plaintiffs and defendants by which it was provided that the defendants would run a passenger train one way each day between A. and B., "and if and whenever it may be necessary to do so in order to exonerate the [plaintiffs] from its liability to the government of New Brunswick, then the [defendants] will run at least one train carrying passengers each way each day." On July 31st, 1899, the Attorney-General of New Brunswick gave notice to the plaintiffs that their contract with