

notice being given in such actions, so that a notice of trial is properly given without such notice having been first served ; s. 106 not applying to actions of libel.

F. C. Cooke, for the motion. *J. E. Jones*, contra.

Meredith, C.J.]

LEISHMAN v. GARLAND.

[Jan. 8.

County Courts—Appeal to Divisional Court—When authorized, R.S.O. c. 55, s. 51, sub-ss. 1, 2, 3, 5.

Where, from a judgment pronounced by a junior judge in a county court case, an appeal to set aside such judgment, and to enter judgment for the defendants ; or in the alternative a new trial, was made to the senior judge ; and on such appeal the judgment was set aside and judgment entered for the defendants dismissing the action, an appeal lies to the Divisional Court by the unsuccessful party to such appeal, and the fact that a new trial in the alternative was asked for is immaterial.

The sub-sections of s. 51 of the County Courts Act, R.S.O. 1897, c. 55, applicable are sub-ss. 1, 2, 5, and not sub-s. 3.

B. R. Davies, for appellant. *Riddell, K.C.*, for respondents.

Trial—McMahon, J.]

[Jan. 13.

WHYTE v. BRITISH AMERICA ASSURANCE CO.

Insurance—Fraud—Trial—Dispensing with jury.

Action on policies of insurance for \$6,500 on stock of grain and mill produce.

H. D. Gamble, for defendants, at the opening of the case, moved to dispense with the jury. He explained that the main defence (although there were others, such as subsequent and prior insurance without notice) was fraudulent, over-estimate of the stock at the time of the fire ; that the defendants proposed to shew that the plaintiff had altered his books so as to make it appear from them that there was more stock on hand at the time of the fire than there actually was ; that in order to establish this the books and accounts would have to be gone into and that the matter could be more conveniently dealt with by the court than by a jury.

Nesbitt, K.C., for the plaintiff opposed the application, urging that the plaintiff was entitled to a jury and should not be deprived of the privilege of having his case tried by a jury. He suggested that his Lordship should at all events commence the trial with a jury, and then, if he subsequently found it necessary, to dispense with a jury.

His Lordship decided that he should try the case without a jury.