

The petition cannot be entertained, but the dismissal should be without prejudice to the caveator's right to apply to file another caveat.

C. P. Wilson for caveator.

J. H. Munson for caveatee.

BAIN, J.]

[Jan. 29.

DOUGALL v. LEGGO.

Prohibition—Unsettled account—Right to abandon excess beyond amount within jurisdiction of County Court.

Application for writ of prohibition to County Judge.

By the County Court Act, 1887, s. 41, s.s. 2, the County Court has jurisdiction in "all personal actions for claims and demands of debt, account, etc., when the amount or balance payable does not exceed \$250." By section 45, "no greater sum than \$250 shall be recovered in any action for the balance of an unsettled account, nor shall any action for such balance be sustained when the unsettled account forming the subject matter to be investigated in the whole exceeds \$400."

Plaintiff issued a writ of attachment against defendant, claiming \$573 for rent of hack and repairs to same. At the trial plaintiff abandoned the excess over \$250, and judgment was entered for that amount; an objection that the amount of the claim was beyond the jurisdiction of the court was overruled.

On an application for a writ of prohibition,

Held, that the account sued for was an unsettled one. Such an action, if commenced by an ordinary writ, could not be maintained. But where the action was commenced, as in this case, by writ of attachment under section 164, it would be maintainable. By section 174, it is provided that "no plaintiff shall divide any cause of action . . . but any plaintiff having a cause of action above the value of \$250, for which an attachment might be issued if the same were not above the value of \$250, may abandon the excess, and upon proving his case may recover to an amount not exceeding \$250." This section is not affected by the restriction in section 45.

Rule nisi discharged with costs.

F. H. Phippen for plaintiff.

Ghent Davis and R. L. Ashbaugh for defendant.

Law Society of Upper Canada.

THE LAW SCHOOL.

1891.

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