

MIDDLETON, J., in a written judgment, said that since this motion was heard the action had been tried, and it was not necessary to deal with the questions discussed.

Rule 350 was intended to simplify the procuring of evidence and to avoid the taking of a witness who is the custodian of documents, to a trial, and was not intended to be a means of obtaining discovery from strangers to an action.

Incidentally information may be obtained before a trial, e.g., when a banker is compelled at an earlier stage than usual to disclose his customer's accounts—but this is not the main but a subsidiary purpose of the Rule, and care must be exercised in all applications under it to avoid abuse.

The order here should be vacated, and there should be no costs here or below.

MIDDLETON, J., IN CHAMBERS.

DECEMBER 7TH, 1918.

*RE GLASS v. GLASS.

Division Courts—Jurisdiction—Claim for \$96 for Conversion of Goods—Division Courts Act, sec. 62 (1)—Prohibition.

Motion by the defendant for prohibition to a Division Court.

D. C. Ross, for the defendant.

J. H. Naughton, for the plaintiff.

MIDDLETON, J., in a written judgment, said that the sole question was whether this action was founded on contract or on tort. (By sec. 62 (1) of the Division Courts Act, R.S.O. 1914 ch. 63, a Division Court has jurisdiction in an action founded on tort only up to \$60.)

The claim was "for the sum of \$96, being the price of 8 tons of hay at \$12 per ton taken by the defendant."

The plaintiff and defendant were brothers, and along with others were tenants in common of a farm. There was a partition and an adjustment of claims. Some hay upon the farm, it was said, was allotted to the plaintiff; but the defendant, it was said, took it and converted it to his own use.

The action was tried by a jury, and the jury found for the plaintiff.

The defendant's main contention was that the question as to this hay was covered by the disputes included in the adjustment of accounts in the partition proceedings. The plaintiff contended