

DECEMBER 17TH, 1906.

DIVISIONAL COURT.

BOOTH v. CANADIAN PACIFIC R. W. CO.

Appeal to Divisional Court—County Court Appeal—Right of Appeal—Appeal from Order of County Court in Term Dismissing Motion for New Trial in Action Tried by a Jury—County Courts Act, sec. 51.

Motion by plaintiff for an order quashing an appeal by defendants from an order of the County Court of Carleton, in term, dismissing defendants' motion for a new trial, upon the ground that no appeal lies from such an order.

W. E. Middleton, for plaintiff.

D'Arcy Scott, Ottawa, for defendants.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

CLUTE, J.:—The County Courts Act, R. S. O. 1897 ch. 55, sec. 51, governs appeals to a Divisional Court. Sub-section (4) provides that where there has been a trial with a jury, a motion for a new trial shall be made to the County Court.

This case was tried by a jury.

If plaintiff is entitled to succeed in this motion, the effect is that in a case of this kind no appeal can be had to a Divisional Court, and the question is, whether the intention of the legislature was to limit an appeal, in a case of this kind, to the County Court. Sub-section (1) provides that any party to a cause or matter in the County Court may appeal to a Divisional Court from the judgment directed by a Judge of the County Court to be entered at or after trial in a case tried without a jury, and also in any case tried with a jury to which sub-sec (4) does not apply. This clause would seem to contemplate a certain class of cases, to be tried with a jury, in which there is an appeal to a Divisional Court.

In Donaldson v. Wherry, 29 O. R. 552, the jury found in favour of defendant, and judgment was entered in his