

County Court scale only, the defendant being allowed to set off the difference between costs on the High Court and County Court scale. The defendant appealed to the Court of Appeal, upon the ground that the action should have been dismissed, and the appeal was dismissed with costs. Upon the taxation of these costs the taxing officer held that they must be taxed as in a County Court action.

By Rule 1130 the costs of all proceedings in the branches of the Supreme Court are in the discretion of the Court or Judge before whom they come for hearing or determination.

Held, that the Court of Appeal having ordered the defendant to pay the costs of the appeal generally, without any limitation as to scale or amount, and there being only one tariff of fees payable upon appeals from the High Court, that tariff must govern the allowance of costs under the order of the Court of Appeal.

Rule 1132 applies only to the costs of the action in the High Court, and not to the costs of an appeal from that Court to the Court of Appeal, which are not within the discretion of a Judge of the High Court.

C. A. Moss, for the plaintiff. *G. G. Mills*, for the defendant.

THIRD DIVISION COURT.

COUNTY OF HURON.

Doyle, J.J.]

BEATTIE v. McDONALD.

[Dec. 14, 1897.

Division Court—Claim in excess of jurisdiction.

A judge trying a case in a Division Court on a claim for an amount within the jurisdiction, is not ousted of jurisdiction because, in arriving at his decision thereon, he has incidentally to consider and adjudicate upon a claim, the amount of which exceeds the jurisdiction. The following cases were referred to: *Re Legarie v. Canada Loan Co.*, 11 P. R. 512; *Re Hutson v. Valliers*, 19 A.R. 154; *Re Mead v. Creary*, 32 C P. 1.

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

LINDBERG v. THE CITY OF HALIFAX.

[Jan. 15,

Municipal corporation—Payment of claim enforced by threat to turn off water—Action to recover amount paid—Party entitled to bring—Voluntary payment—Quasi contract—Ratification—Application to add or substitute plaintiff—Conditions—Duress.

Plaintiff was owner of a brewery in the city of Halifax, which he commenced to operate in the year 1891. In that year a two-inch water service pipe was supplied by the city at the request of S., who, in the absence of L.,