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No. 4

APPELLATE DIVISION.

OCTOBER 7TH, 1913.

*BURKE v. SHAVER.

Costs—Scale of—Action Brought in County Court—Award of Division Court Costs—Action within Competency of Division Court—Solicitor—Breach of Contract.

Appeal by the plaintiff and cross-appeal by the defendant from the judgment of the Senior Judge of the County Court of the County of Wentworth.

The action was brought in the County Court against a solicitor, and judgment given for the plaintiff for \$92.84, but with Division Court costs only.

The plaintiff appealed on the ground that County Court costs should have been allowed; and the defendant, from the judgment against him. The defendant's cross-appeal was abandoned at the hearing.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

J. G. O'Donoghue and M. Malone, for the plaintiff.

W. S. McBrayne, for the defendant.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The plaintiff appeals upon the ground that the learned Judge of the County Court erred in holding that the action was one within the proper competency of the Division Court.

It was contended by counsel for the appellant that the action was one of tort and not founded on contract, and therefore not within the competency of the Division Court. In sup-

*To be reported in the Ontario Law Reports.