10th Division Court in county of York into High Court, or for prohibition. Action to recover $26, one month's rent, and $70, the value of two broken glass lights, under a memorandum of letting, in which the defendants agreed to keep and leave the premises in repair.

W. W. Vickers, for defendants.

C. A. Moss, for plaintiffs.

MEREDITH, J.—The Division Court had jurisdiction to award damages not exceeding $100 : see Talbot v. Poole, 15 P. R. 99. The right or title to a corporeal or incorporeal hereditament was not involved. The lease was not denied, nor the right to rent questioned: see Re Moberley v. Collingwood, 25 O. R. 625. The nature of the equitable defence, if any, is not disclosed, but there is nothing to shew that the Division Court has not ample power to consider and give sufficient effect to it, and has not done so: see R. S. O. ch. 60, secs. 73 & 75. Therefore there cannot be prohibition, nor a transfer for want of jurisdiction in respect of the claim: there is nothing to indicate any want or excess of jurisdiction. If, having regard to the future effect of the covenant to repair, a reasonable claim for reformation of the lease had been made before trial, a transfer might well have been ordered. Although set-off, defence, or counterclaim, may involve matter beyond the jurisdiction, yet some relief may be granted in a Division Court, and it is only when ample justice cannot be done, that a transfer is made: secs. 76, 136, R. S. O. ch. 51, sec. 186. Motion is dismissed with costs.

OSLER, J.A.

JANUARY 22ND, 1902.

COURT OF APPEAL—CHAMBERS.

HUTTON v. JUSTIN.

Trustee—Abortive Sale of Trust Property in Parcels—Sale by Tender—Leave to Bid—Discretion of Court—Tennant v. Trenchard, 38 L. J. Ch. 661, L. R. 4 Ch. 537, distinguished.

Motion by plaintiff for leave to appeal from order of a Divisional (22 C. L. T. Occ. N. 23), affirming order of MEREDITH, C.J.

G. F. Shepley, K.C., for plaintiff.

A. B. Aylesworth, K.C., for defendant.

OSLER, J.A.—No case has been made out. Whether, when a trust estate has been directed to be sold, the trustee, who is also an incumbrancer, shall be at liberty to bid, is a matter resting in the sound discretion of the Court.