

The defendants then appealed to the Court of Queen's Bench under 54 Vic., c. 2, s. 21, (M. 1891), as substituted for section 243 of the County Courts Act, 1887.

Held, that there is no appeal in an action of replevin because the question in issue is not a money demand, but one of title to goods. The defendants then applied to the County Court Judge for leave to appeal to the Court of Queen's Bench under section 244 of the County Courts Act, 1887, and leave was refused.

They then applied to a Judge of the Court of Queen's Bench for leave to appeal.

Held, that the Judge of the County Court exceeded his powers in entering a verdict for the plaintiff instead of granting a new trial; but that, under the circumstances, the defendants having little means and no apparent defence, it was in the interests of justice not to allow the litigation to be prolonged, and the leave was refused. *Haddock v. Russell* 25

2. *Appeal—Interlocutory order—Setting aside order—Ex parte order—Affidavit of merits.*—Under 54 Vic. c. 2, s. 21, substituted for section 243 of the County Courts Act, 1887, there is an appeal to a Judge of the Court of Queen's Bench from any order made by a County Court Judge, final or interlocutory, and whether upon the merits in an action, or upon a mere point of practice.

A judgment by default, regularly signed, cannot be set aside *ex parte*, but only upon notice to the plaintiff and an affidavit of merits, and this rule applies to the County Courts as well as the Court of

Queen's Bench. *McKay v. Ruble* 86

3. *Jurisdiction—Waiver of objection—Unsettled account.*]—A question of jurisdiction in a County Court was first raised by the dispute note, but when the case came on to be tried the defendant allowed the trial to go on without any mention of the matter, and it was only after the case had been fully tried that objection to the jurisdiction was taken.

Held, that by so doing defendant waived any objection to the jurisdiction.

The objection should have been taken at the opening of the case. *Friesen v. Smith* 131

4. *Appeal from—Questions of fact—Notes of evidence transmitted.*]—The Court of Queen's Bench is a Court of Appeal from the County Courts upon facts as well as law, and it is impossible to infer that there was evidence to support a particular finding of the Court below, unless such appears upon the material transmitted to this Court. *Curran v. The Rural Municipality of North Norfolk*, 256.

5. *Costs—Taxation of—Witness fees—Counsel fees—County Courts Act—Transcript of judgment—Effect of—After transcript filed in Q. B. or another County Court, the judgment still remains a judgment of the original County Court.*

See COSTS AND SECURITY FOR COSTS, 2.

6. *Prohibition—Notice to plaintiff of objection to jurisdiction—Dispute note—Costs—Meritorious defence.*

See PROHIBITION, 1.