

We have come to the conclusion that an appeal does lie. The provisions of the County Courts Act, R. S. O. 1897 ch. 55, which are applicable to appeals, are secs. 61 and 62.

The latter part of sec. 62 is that under which the appellants contend that the order is an appealable one. That gives an appeal to a Divisional Court from any decision or order made in any cause or matter disposing of any right or claim, provided always that the decision or order is in its nature final and not merely interlocutory.

We think that this order did dispose of the claim of the plaintiffs, and that it was final in its nature. It is true that it was not conclusive as to the rights of the parties and did not prevent plaintiffs from bringing another action, but it did dispose of their claim in this action and put an end to it entirely, unless plaintiffs should be advised to bring and should bring another action.

The words that I have read are: "A decision or order made in any cause or matter disposing of any right or claim." It seems to me that this order did dispose of a right claimed in this action and of the claim made in this action, and that it was final for the purpose of this action.

The conclusion, therefore, to which we have come is that the appeal lies.

Then with regard to the merits. There is no pretence for saying that plaintiffs were not bona fide prosecuting this action. They brought the action down to trial and a verdict passed in favour of defendant. An application was made for a new trial to the senior Judge of the County Court, and he came to the conclusion that there had been a mistrial, and directed a new trial. The order was made some time about the middle of May. The next sittings of the County Court were upon the second Tuesday in the following month of June.

Plaintiffs made application to the senior Judge to strike out the jury notice, and that motion was pending when the application which resulted in the order appealed from was made to the junior Judge.

It seems somewhat singular that, in view of the fact that a motion was pending before the senior Judge, the junior Judge should have dealt with this motion. One would have thought that the more reasonable course would have been to have referred the matter to the senior Judge or to have