

to a Divisional Court, or to the County Court, except that in jury cases if a new trial is moved for, either alone or combined with or as an alternative for any other relief, the motion must be made to the County Court, and no further appeal is given to either party. A motion for a new trial, on the ground of discovery of new evidence or the like, must be made, both in jury and non-jury cases, to the County Court, and no further appeal is given to either party.

Where a party having the right to appeal, either to a Divisional Court, or to the County Court, elects to appeal to the latter Court, he has no further right of appeal, but the opposite party has the right to appeal to the High Court. Sub-secs. 1, 2, and 5 govern the present case, and not sub-sec. 3. *Brown v. Carpenter*, 27 O. R. 412, *Irvine v. Sparks*, 31 O. R. 603, do not assist the respondent. The objection therefore fails. On the merits . . . the order below is reversed and the judgment restored with costs here and below to plaintiff.

Davis, Cook, & Smith, Toronto, solicitors for plaintiff.

R. C. LeVesconte, Toronto, solicitor for defendants.

MEREDITH, C.J.
LOUNT, J.

JANUARY 8TH, 1902.

DIVISIONAL COURT.

MCGUINNESS v. MCGUINNESS.

Creditors' Relief Act—Different Creditors' Executions—Sale of Land under Second Execution within One Year—Costs—Advertisement is Seizure, and Second Creditor Entitled to his Costs.

Appeal by E. G. Porter, first execution creditor of plaintiff, from order of Judge of County Court of Hastings, setting aside the sheriff's scheme for distribution of proceeds of sale of land under execution, and directing that the costs of the defendant in this action, the second execution creditor, should, under R. S. O. ch. 78, sec. 26, be paid first out of the proceeds, because the lands were sold under the second writ. Both writs being in the sheriff's hands, the second execution creditor, before the expiry of a year, directed the sheriff to sell, and he accordingly proceeded to advertise the lands for sale, and sold after the year.

W. H. Wallbridge, for appellant.

H. L. Drayton, for respondent.

Judgment of the Court was delivered by MEREDITH, C.J.—The advertisement was in law the seizure of the lands under the second writ, and the sale was also under it, and there was no seizure nor sale under the first writ. The case