

based upon the old tariff for all the work done up to the 1st of September; contending that notwithstanding the footnote to the tariff it does not apply to that work. I do not think it necessary to determine this question, as I think the appellant is estopped by his conduct. I have little regret in arriving at this conclusion, as, having run over the bill, it appears to me that fully as much has been allowed as will be taxable if what is sought is permitted.

The other matter argued was a conflict between the rules and the statute with reference to witness fees taxed. The Rules provide for payment of professional fees of surveyors at \$4 per day; the statute entitles the surveyor to charge \$5. The surveyors were paid the statutory fee, but the allowance between party and party has been in accordance with the tariff. If there is any conflict, the Rules, having statutory effect, must govern, and the taxation must stand.

The appeal will be dismissed, but, under the circumstances, without costs.

HON. MR. JUSTICE MIDDLETON. . . . DECEMBER 22ND, 1913.

RE *AMERICAN STANDARD JEWELLERY CO. v.*
GORTH.

5 O. W. N. 600.

Division Court—Jurisdiction — Division Courts Act, 10 Edw. VII. c. 32, s. 77—Action on Drafts—Interest Added by Way of Damages and not Debt—Amount of Claim—Place of Payment—Place of Acceptance—Prohibition—Costs.

MIDDLETON, J., *held*, that sec. 7 of the Division Courts Act, 10 Edw. VII. c. 32, does not confer jurisdiction upon the Court of the place of payment where the principal amount does not exceed \$100, merely because interest may be allowed by way of damages upon the overdue payment.

Brazill v. Johns, 24 O. R. 209, followed.

Re McCallum v. Gracey, 10 P. R. 514, distinguished.

Motion for prohibition to the 7th Division Court in the county of Essex. Argued on the 19th December, in Chambers.

H. S. White, for the defendant.

R. W. Hart, for the plaintiff.