

R. 1126, and directing judgment to be entered for plaintiff for \$1,000 and costs.

J. W. Nesbitt, K.C., for defendants.

G. Lynch-Staunton, K.C., for plaintiff.

Moss, C.J.O.—Upon consideration I think this is not a case in which it would be proper to exercise the discretion given by sub-section (g) of sec. 76 of the Judicature Act, as enacted by 4 Edw. VII. ch. 11, sec. 2.

Any questions there might have been as to whether the injury to the plaintiff in respect of which the action was brought was or was not due to the negligence of the defendants and as to the amount of damages to which the plaintiff was entitled, if entitled to anything, were set at rest by the verdict of the jury.

There remained the question whether the agreement signed by the plaintiff at the time of entering the defendants' employment, and his acceptance of benefits under it, formed a bar to the maintenance of the action. Upon this there was a difference of opinion between the trial Judge and the Divisional Court. It has been held more than once that a difference of opinion between the tribunals is not of itself a sufficient ground for allowing a further appeal, and obviously the legislature must have so intended. It never could have been intended that that alone should be considered as furnishing sufficient special reasons for treating the case as exceptional. The sole question here was whether the agreement was such as, on its terms alone or coupled with the act of the plaintiff in accepting certain payments in accordance with them, excepted it from the operation of sec. 10 of the Workmen's Compensation Act. The learned trial Judge was of the opinion that it was. The Divisional Court was unanimous in holding the contrary.

The question was largely one of the construction of the instrument.

The learned trial Judge did not overlook the fact that the onus was on the defendants to shew that there was other consideration to the plaintiff than that of his being taken into the defendants' employment, that the other consideration was ample and adequate, and that the agreement, in view of such other consideration, was not on the plaintiff's part improvident, but was just and reasonable. But he construed the agreement as giving an option to the plain-