

MACMAHON, J.

OCTOBER 26TH, 1904.

CHAMBERS.

RE BROOKS v. HUBBARD.

*Division Courts—Removal of Plaintiff into High Court—
Question Involved—Paternity of Illegitimate Child.*

Motion by defendant for an order of certiorari to remove a plaintiff from the 1st Division Court in the county of Dufferin into the High Court.

Plaintiff's claim was to recover \$62 for the maintenance and support of an illegitimate child of which defendant was alleged to be the father.

Plaintiff was the mother of the child. Defendant denied his paternity.

Section 82 of the Division Courts Act provides that in case the debt or damages claimed in an action brought in a Division Court amounts to \$40 and upwards, and in case it appears to any of the Judges of the High Court that the case is a fit one to be tried in the High Court, and in case a Judge thereof grants leave for that purpose, the action may by order of certiorari be removed from the Division Court into the High Court.

The main ground upon which defendant sought the removal of the action was, that the liability with which plaintiff sought to charge him existed as a continuing liability which in time would involve him in a sum far beyond the jurisdiction of a Division Court.

J. E. Jones, for defendant.

D. L. McCarthy, for plaintiff.

MACMAHON, J.—The only question in the case is one of fact, namely: Is the defendant the father of the child? No question of law can arise on the trial, and it is only where difficult questions of law are likely to arise that certiorari will lie to remove an action: see *Rees v. Williams*, 7 Ex. 51; *Longbottom v. Longbottom*, 8 Ex. 203; and other cases referred to in *Bicknell & Seager's Division Courts Act*, 2nd ed., p. 128.

The motion must be dismissed with costs.