

in which the proceedings are to be taken, that is to say, in order to ascertain what is meant by the High Court in the section. If this application is one of the matters assigned by the Judicature Act, sec. 67, or by any Rule of Court to be heard by a Divisional Court, it is properly before this Court. It could only be so under sec. 65 (a), which assigns "proceedings directed by any statute to be taken before the Court, in which the decision of the Court is final," that is, not appealable. Now, though no appeal is given by sec. 6, the order is in fact in the nature of the former writ of prerogative mandamus, and of the present order of mandamus granted upon motion under the Judicature Act and Rules, which is clearly a matter in which an appeal lies. There is, therefore, no apparent reason why an order made under the section in question should not take its place alongside orders of a similar character and fall under sub-sec. 1 of sec. 75 of the Judicature Act. The fact that the order may be made under sec. 6 by a County Court Judge is not of consequence, because, by R. S. O. ch. 55, sec. 52, an appeal from his order is given. Therefore, orders under sec. 6 are not final, but appealable, and should be made before a single Judge sitting as the High Court. The matter, however, has been fully argued, and by consent of parties a further argument may be unnecessary. If consent is forthcoming within one week, judgment upon the merits will be delivered by a single member of this Court; otherwise the rule *nisi* will be discharged without costs, and without prejudice to a further application to a single Judge in Court.

McLean & Cameron, St. Thomas, solicitors for Meehan.

McEvoy & Perrin, London, solicitors for complainant.

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FEBRUARY 19TH, 1902.

DIVISIONAL COURT.

SUMMERS v. COUNTY OF YORK.

*Municipal Corporation—Highway—Guard at Approach to Bridge—Negligence of Electric Street Railway Company—No excuse for Corporation.*

Foley v. East Flamborough, 26 O. R. 43, approved.

Hill v. New River Co., 9 B. & S. 303, referred to.

Atkinson v. Chatham, 31 S. C. R. 61, distinguished.

Appeal by defendants from judgment of County Court of York in action for damages for injuries. The plaintiff was driving a team of horses, attached to a waggon. As he was crossing the bridge on Yonge street at York Mills an electric car approached, and plaintiff jumped out and held the head of the horse nearest the car, and alleges that he