

THE
ONTARIO WEEKLY REPORTER

(TO AND INCLUDING MAY 5TH, 1906.)

VOL. VII.

TORONTO, MAY 10, 1906.

No. 17

SEPTEMBER 6TH, 1901.

DIVISIONAL COURT.

DIAMOND HARROW CO. v. STONE.

*Appeal—County Court—Final Order—Dismissal of Action
for Want of Prosecution—Rule 435—Application, where
Action Brought down to Trial and New Trial Ordered.*

Appeal by plaintiffs from order of junior Judge of County Court of Essex directing plaintiffs to proceed to trial with a jury at the jury sittings of the County Court to be held on 11th June, 1901, and in default that the action should stand dismissed with costs.

W. M. Douglas, K.C., for plaintiffs.

J. H. Moss, for defendant, objected that an appeal did not lie from such an order, and opposed the appeal on the merits.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.), was delivered by

MEREDITH, C.J.:—This is an appeal from an order of the junior Judge of the County Court of Essex, by which plaintiffs were required to set the action down for trial for the then ensuing sittings of the County Court of that county, in default of which his action was to be dismissed.

Upon the appeal being opened, Mr. Moss, for the respondent, objected that no appeal lies. That question was argued and the appeal was heard on the merits subject to it.