

SECOND DIVISIONAL COURT.

JUNE 22ND, 1917.

\*RE HARMSTON v. WOODS.

*Appeal — Motion to Extend Time for Appealing from Order of Judge in Chambers Refusing Mandamus to Division Court to Try Action—Unnecessary Appeal—Forum.*

Motion by the plaintiff to extend the time for appealing from the order of MIDDLETON, J., ante 23, 39 O.L.R. 105, dismissing an application for a mandamus to compel a County Court Judge to try the action in a Division Court.

The motion was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

J. E. Lawson, for the plaintiff.

A. E. Knox, for the defendant.

The judgment of the Court was read by MEREDITH, C.J.C.P., who said that the plaintiff sued the defendant in a Division Court for unlawfully entering the plaintiff's house and assaulting him. When the case came on for trial, the defendant objected to the jurisdiction of the Court, in so far as the action was for trespass to land, and the Judge, giving effect to the objection, nonsuited—the plaintiff declining to proceed with his action denuded of the claim for trespass to land.

The plaintiff thereupon applied in the High Court Division of the Supreme Court, in Chambers, for a mandamus requiring the Division Court Judge to try the action as brought; but the Judge in Chambers (Middleton, J.), being of opinion that Division Courts have no jurisdiction in actions for trespass to land, whether or not the title to land is involved, dismissed the application on the 10th March, 1917; ante 23, 39 O.L.R. 105.

The decision of the Judge was overruled in McConnell v. McGee (1917), ante 176; but not until after the time for appealing in this case had expired; and the present application to extend the time was accordingly made.

No great length of time had elapsed, and nothing else had happened which would make it unjust to the defendant to be obliged to go to trial now; according to the judgment in the McConnell case, an injustice was done to the plaintiff in preventing him from having his case tried in the Division Court; and the time might

\* This case and all others so marked to be reported in the Ontario Law Reports.