

so unsatisfactory that the judgment for the plaintiff could not be maintained; the Court did not deal with the question raised by the defendants that they were entitled to judgment; but, instead, directed a new trial. The defendants say that what they desire is a decision upon the question of their right to have the action dismissed, and they do not desire a new trial.

In this view of the case, the defendants have not obtained a pronouncement upon the question they raised. And, as that is all they seek, it seems proper to give them an opportunity of obtaining a decision one way or the other upon the point.

But, inasmuch as they repudiate any desire for a new trial, it is only reasonable that, as preliminary to accepting leave to appeal, they should undertake and agree to abandon the new trial, and agree that in the event of the Court deciding that they are not entitled to judgment in their favour, the judgment entered in favour of the plaintiff at the trial shall stand, and that they will pay the costs of the appeal to the Divisional Court. It would not be just to the plaintiff to permit the defendants to try the experiment of a further appeal while adhering to their new trial in case of non-success upon the appeal.

If the defendants accept these terms, an order for leave to appeal will issue; the costs of this motion to be in the appeal.

If not accepted within two weeks, the motion will stand dismissed with costs.

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### HIGH COURT OF JUSTICE.

MIDDLETON, J., IN CHAMBERS.

MAY 3RD, 1912.

\*KUULA v. MOOSE MOUNTAIN LIMITED.

*Practice—Consolidation of Actions—Common Defendant—  
Distinct Claims of Different Plaintiffs for Damages Arising  
from Fire Set out by Defendant—Direction as to Trial.*

Appeal by the defendants in the above-named action and three others brought against them by different plaintiffs, from an order of the Master in Chambers, ante 1085, refusing to consolidate the four actions or to stay proceedings in the other three pending the trial of the above-named action.

\*To be reported in the Ontario Law Reports.