

convenient time after the trial dispose of the motion, irrespective of the findings of the jury, in so far only as they had no bearing on the reserved motion.

W. A. Boys, Barrie, for defendants, contra.

MABEE, J.:— . . . The practice adopted by the Judge is a convenient one, and I am unable to see anything in the Division Courts Act or Rules that prevents it being followed.

Then, did the indorsement upon the summons certifying costs to plaintiff dispose of the motion and deprive the trial Judge of jurisdiction over it? It is clear that he intended no such result. He has never adjudicated upon the motion made by defendants' counsel; he states that he expected to have the matter argued afterwards in Chambers. It may be that the motion for a nonsuit should succeed; as to this, of course, I say nothing, as I am in no way to be considered as dealing with the merits. But, assuming that the motion should succeed, plaintiff has got execution for a claim that was not adjudicated in his favour, and defendants have been deprived improperly of the right they had to have the judgment of the trial Judge upon the question as to whether the case should have been submitted to the jury at all.

Many cases were cited by counsel, but I am unable to find anything to prevent the trial Judge from yet disposing of this motion; and the order of 20th March I regard as one quite within his jurisdiction to make—it appearing to be intended to operate only until the motion is argued and disposed of.

It may also be . . . that no judgment should have been entered by the Division Court clerk upon the indorsement. The Judge recorded the verdict of the jury, which was proper for him to do, even had it been present to his mind that he had not disposed of the motion for a nonsuit; he did not direct judgment to be entered in favour of plaintiff, except by implication in giving him the costs of the action. . . .

Motion dismissed without costs.