

them. RIDDELL, J. (after setting out the facts) :—"I think the appeal must be dismissed—the circumstances are simply these. The defendants being sued in the court at Toronto for a claim to which they had on defence, instead of paying the claim and bringing in the proper court an action on a claim they had against the plaintiffs, chose to bring that action also in the Toronto court in the form of a counterclaim. They cannot complain if they are compelled to have the case tried in the court of their choice. That consideration would not, or might not be conclusive, were there not difficulties in the way of working out the rights of the parties in an action, partly tried and in judgment, in one court, and partly to be tried and judgment given in another. It is not like the case of two actions both in the same court. I cannot remove the plaintiffs' judgment into the Belleville court, or the defendants' judgment, if they get one, into the Toronto court. The best I can do is to reserve to the defendants leave, if so advised, to move in the Toronto court to withdraw their counterclaim. Upon such a motion it may be that the County Court Judge will find a way to preserve the interests of all parties—but I cannot dictate to him. The appeal will be dismissed with costs payable by the defendants as costs of the judgment already had. If the counterclaim be not proceeded with to judgment in the Toronto Court, the costs before the Master will be paid in the same way—but if it be proceeded with to judgment in the Toronto Court, to the Berthold Company in any event in the counterclaim." F. Aylesworth, for the defendants. R. W. Hart, for the plaintiffs.

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