

ing \$800 per annum as salary, asserting that it was his due under R.S.O. c. 72, the Town Council at first paid him this salary. In 1894, having first in vain tried to get the plaintiff to resign, the Town Council resolved to pay him only \$400 a year, which the plaintiff agreed to accept. In 1895 the Town Council resolved to discontinue the plaintiff's salary altogether.

*Held*, that the plaintiff not having been appointed as a salaried official, had no right to a salary as one of the incidents of his office, and R.S.O. c. 72, s. 28, did not apply; and the Town Council were entitled to act as they had done.

*Raney*, for the plaintiff.

*Going*, for the defendants.

MACLENNAN, J.A.]

[Oct. 24.]

BOURNE v. O'DONOHUE.

*Appeal—Court of Appeal—Order of Divisional Court affirming Chambers orders—Leave to appeal—Special circumstances—Terms.*

An appeal lies to the Court of Appeal from an order of a Divisional Court dismissing an appeal from an order of a Judge in Chambers, dismissing an appeal from an order of the Master in Chambers, dismissing a motion to set aside judgment by default of defence in an action for the recovery of land; but only upon leave to appeal being obtained.

Construction of secs. 72 and 73 (as amended) of the Judicature Act, 1895.

And leave to appeal was granted, where the omission to file the defence was a mere slip of the solicitor; the application for relief was made promptly; and it appeared that in a previous action the Court had stayed proceedings under the power of sale contained in the mortgage upon which this action was brought, and had required an action of ejectment to be brought.

Terms of payment of costs and security for costs imposed.

*Masten*, for the plaintiffs.

*Meek*, for the defendant.

BOYD, C.]

[Oct. 24.]

CRERAR v. HOLBERT.

*Parties—Causes of action—Joinder.*

The statement of claim alleged that two of the defendants, by fraudulent representations, induced the plaintiffs to enter into an agreement for the purchase of a horse; that one of these defendants, in the name of his partner, a third defendant, having agreed to become a co-partner with the plaintiffs in the purchase, made a fraudulent profit by way of commission out of the transaction; that these three defendants transferred promissory notes made by the plaintiffs with the intention of carrying out the transaction, to the fourth and fifth defendants, who had notice of the fraud; and claimed to have the agreement declared fraudulent and void and ordered to be cancelled; to have the notes declared void and ordered to be cancelled; or to have the first three defendants ordered to indemnify the plaintiffs against the notes; damages for the false representations; or that the defendants alleged to have received a commission should be ordered to account to the plaintiffs therefor.