

SECOND DIVISIONAL COURT.

FEBRUARY 25TH, 1921.

WOOLRICH v. STONE.

Costs—Scale of—Action Brought in District Court—Recovery of Amount within Jurisdiction of Division Court—Division Courts Act, sec. 62 (c) (10 & 11 Geo. V. ch. 34, sec. 1)—Amount of "Claim."

Appeal by the plaintiff from an order of the Judge of the District Court of the District of Algoma made upon appeal from the taxation of the costs of the action.

The appeal was heard by MEREDITH, C.J.C.P., LATCHFORD, MIDDLETON, and LENNOX, JJ.

H. A. Harrison, for the appellant.

Grayson Smith, for the defendant, respondent.

MIDDLETON, J., reading the judgment of the Court, said that the plaintiff sued for more than \$200, but recovered only a little more than \$100. There was no "order to the contrary," so the taxation was governed by the general Rules. The officer who taxed the costs and the Judge took the view that the action might have been brought in a Division Court, and so allowed the plaintiff Division Court costs only and taxed to the defendant his excess of County Court costs over Division Court costs.

Section 62 of the Division Courts Act, as enacted by the amending Act, 10 & 11 Geo. V. ch. 34, sec. 1, provides that a Division Court shall have jurisdiction in (c) an action on a claim or demand of debt, etc., where the amount or balance claimed does not exceed \$200; provided that in the case of an unsettled account the whole account does not exceed \$1,000.

Assuming in favour of the appellant that the claim here could be regarded as an unsettled account, by no possible manipulation of figures could it be shewn that "the whole account" exceeded \$1,000. It has frequently been determined that the amount of the "claim" is the amount awarded and not the amount improperly claimed.

The appeal should be dismissed, with costs fixed at \$30.

Appeal dismissed.