

JANUARY 30TH, 1902.

## DIVISIONAL COURT.

## MINNS v. VILLAGE OF OMEMEE.

*Divisional Court—Two Judges—Adjournment of Appeal to be Heard before a Court composed of Three Judges, on Request of a Party.*

Appeal by plaintiffs from judgment of BOYD, C., (21 C. L. T. Occ. N. 561) dismissing the action.

George H. Watson, K.C., and T. Stewart, Lindsay, for plaintiffs.

F. D. Moore, Lindsay, for defendants.

The plaintiffs relied upon the judgment of a Divisional Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.), in *Homewood v. City of Hamilton*, 1 O. L. R. 266, which BOYD, C., distinguished. The Court, as at present constituted (MEREDITH, C.J., LOUNT, J.), now expressed the opinion that the case should not proceed before two Judges, and the defendants' counsel expressing a desire to have three Judges sitting instead of two, the case was ordered to stand over.

FEBRUARY 5TH, 1902.

## DIVISIONAL COURT.

## WEBB v. OTTAWA CAR CO.

*Contract — Novation — Consideration — Collateral Promise — Oral Evidence to Alter Writing—Costs.*

Goss v. Lord Nugent, 5 B. & Ad. 58, applied.

Action to recover the price of some brickwork done by plaintiff in setting two tubular boilers at the defendants' works in Ottawa. The defendants alleged that the work had been done for one Campbell, whom they brought in as a third party. At the trial LOUNT, J., gave judgment for plaintiff against defendants for \$574.78, and also dismissed defendants' claim over against Campbell. The defendants appealed.

W. H. Blake, for defendants.

J. E. Burritt, Ottawa, for plaintiff.

J. Bishop, Ottawa, for third party.

The judgment of the Divisional Court (FALCONBRIDGE, C.J., STREET, J.), was delivered by STREET, J.:— . . . Campbell had supplied boilers to defendants under circumstances which made him practically guarantee that