

way. Upon the defendants' application, the action was removed into the Supreme Court of Ontario. It was tried by MEREDITH, C.J.C.P., without a jury, and judgment was given for the plaintiff for \$300, with costs fixed at \$75.

The plaintiff appealed, seeking to increase both damages and costs. On the 17th June, 1915, his appeal was heard by a Divisional Court, and dismissed as to damages; as to costs, the appeal was not disposed of, an opportunity being thus given to the plaintiff to apply for leave to appeal.

The motion for leave to appeal was heard by MEREDITH, C.J. C.P., in Chambers.

H. E. Grosch, for the plaintiff.

Grant Cooper, for the defendants.

MEREDITH, C.J.C.P., said that there was no reason why leave to appeal should be granted as to costs; justice was done to both parties by the order made at the trial.

The ordinary jurisdiction of the County Courts in actions such as this is limited to claims not exceeding \$500 (County Courts Act, R.S.O. 1914 ch. 59, sec. 22); any jurisdiction beyond that sum is a jurisdiction by consent substantially.

Ordinarily the discretion should be exercised by awarding costs upon the scale of the Court in which the action should have been tried, with a set-off of costs, when tried in a higher Court by reason of a claim being made for more than would come within the ordinary jurisdiction of the Court in which the action should have been tried; and such an exercise of that discretion applies with much force to the circumstances of this case. The sum awarded for costs was equal to 25 per cent. of the damages, and that was enough; an appeal for more would end in the costs doubling the damages, and that would be inexcusable.

The fact that a Divisional Court had allowed the appeal to stand over in order that this application might be made should not influence the disposition of it: the discretion to be exercised is that of the trial Judge only (sec. 24 of the Judicature Act, R.S.O. 1914 ch. 56).

No point was overlooked at the trial, except a reference to *Robinson v. Village of Havelock* (1914), 7 O.W.N. 60, not then reported in the Ontario Law Reports: see now 32 O.L.R. 25.

Application refused without costs.