

allowance off," thus further reducing their claim to \$100, so as to bring it within the jurisdiction of a Division Court.

The motion for prohibition was based on want of jurisdiction in the Division Court, and one of the grounds stated by the appellant in an affidavit was, "that the particulars of claim in said suit set forth the amount of claim as \$244.45, and I am advised by counsel there is no sufficient abandonment by the plaintiffs to bring this action within the jurisdiction of the said Division Court."

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

J. H. Fraser, for the appellant.

H. H. Davis, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs, being of opinion that none of the grounds urged were sustainable.

Upon the question of abandonment, it was argued for the appellant that a plaintiff could not give a Division Court jurisdiction by abandoning the excess over \$100 except in cases coming under sec. 62 (1) (d) (iii.) of the Division Courts Act, R.S.O. 1914 ch. 63.

The claim in this case came under sec. 62 (1) (c), which declares that a Division Court shall have jurisdiction in "an action on a claim or demand of debt, account or breach of contract, or covenant, or money demand . . . where the amount or balance claimed does not exceed \$100; provided that in the case of an unsettled account the whole account does not exceed \$600."

Clause (d) of sec. 62 (1) gives jurisdiction up to \$200 in respect of certain claims where the amount is ascertained by the signature of the defendant, one being—" (iii.) The balance of an amount so ascertained which did not exceed \$400 and the plaintiff abandons the excess over \$200."

The Court held, that the plaintiffs' claim for \$100 was within the jurisdiction of the Division Court: there was no reason why they should not abandon the excess, although there was no express provision in clause (c) such as that in clause (d).