

new trial (if we were to that extent dissatisfied with the result) would not prove damnosa hereditas to defendant.

Appeal dismissed with costs.

GARROW, J.A.

OCTOBER 26TH, 1904.

C.A.-CHAMBERS.

RANDALL v. OTTAWA ELECTRIC CO.

Appeal to Court of Appeal—Special Leave—Case Tried with Jury—4 Edw. VII. ch. 11, sec. 76 (a).

Motion by defendants Ahearn and Soper, Limited, for leave to appeal to the Court of Appeal direct from the judgment at the trial before BRITTON, J., and a jury in favour of plaintiffs for \$2,500: ante 240.

W. R. Riddell, K.C., for applicants.

H. M. Mowat, K.C., for plaintiffs.

GARROW, J.A.—The application is based upon sec. 76 (a) of the Judicature Act, as amended by 4 Edw. VII. ch. 11, which reads as follows: "In any case in which an appeal would lie from the Court of Appeal to the Supreme Court of Canada, any party may by consent, or by leave of the Court of Appeal or a Judge thereof, appeal to the Court of Appeal from a judgment, order, or decision of a Judge in Court at the trial or otherwise, or may apply for a new trial of the action."

It is not and could not be seriously contended that the case is not of sufficient importance and difficulty, in addition to the amount of the judgment, to justify an appeal.

But it is said that the section quoted does not apply to the case of a trial with a jury, but only to trials by a Judge without a jury.

Under sec. 67 (1) (d), as amended by the same statute, application for a new trial in the High Court, when the action has been tried with a jury, is to be made to a Divisional Court. And under sec. 76 (1) (b), as amended by the same statute, where the matter in controversy is of the sum or value of \$1,000, exclusive of costs, an appeal lies to the Court of Appeal from the judgment of a Divisional Court.