

DIVISIONAL COURT.

DECEMBER 13TH, 1912.

FROST & WOOD CO. LTD. v. LESLIE.

4 O. W. N. 472.

*Judgment—Con. Rule 425—Acceptance of Amount Paid into Court—
Must be in Full Discharge of all Causes of Action—Alternative
Claims—Costs—Taxation of—Res Adjudicata.*

Appeal by defendant from judgment of Judge of County Court of Bruce, dismissing an appeal from the clerk of the Court who had allowed plaintiffs County Court costs under Con. Rule 425, on moneys taken out of Court in satisfaction of a claim. Plaintiffs had sued upon an open account for \$504.29, but alleged that defendant claimed that the account had been settled by the acceptance by plaintiffs of three certain promissory notes, the acceptance of which they, the plaintiffs, denied, but, nevertheless, claimed in the alternative for \$180.29, the amount of two of the notes due at the commencement of the action. Defendant, in his defence, pleaded the settlement above referred to and paid into Court \$184.39, being the amount of the notes with interest. Plaintiffs thereupon accepted the amount paid in "in satisfaction of their alternative claim," proceeded to tax their costs, which were allowed by the clerk on the County Court scale, and issued another writ for the third note which had, in the meantime, fallen due. The Local Judge dismissed defendants' appeal from the clerk's taxation.

DIVISIONAL COURT, *held*, that in order to bring themselves within Con. Rule 425, plaintiffs must have accepted the amount paid in in full settlement of all causes of action mentioned in the statement of claim.

That plaintiffs must elect either to retain the moneys paid in and their costs as taxed in full settlement and have their later action dismissed with costs, or to repay the money into Court, with interest and the costs of taxation. In either event defendant to have costs of both appeals.

Scope of Con. Rule 425 discussed, and review of authorities.

Appeal by defendant from judgment of the County Judge of the county of Bruce dismissing an appeal from a taxation of costs by the County Court clerk.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE RIDDELL and HON. MR. JUSTICE LENNOX.

T. H. Peine, for the defendant.

G. H. Kilmer, K.C., for the plaintiffs.

HON. MR. JUSTICE RIDDELL:—This action was brought in the County Court of the county of Bruce. The statement of claim sets out that the defendant was the agent of the plaintiffs at Hanover on commission, but he was to