

an inadvertence it was said, defendants in their statement of defence denied all the allegations of the statement of claim, which involved a denial of plaintiff's title, and for this reason the trial Judge awarded costs on the High Court scale, observing that but for that fact he would have felt great hesitation in making any order as to costs.

It appears that in the statement of claim it was alleged that the trespass was upon the south-west part of plaintiff's lot, whereas in point of fact it was upon the north-west part, and it is not improbable that in endeavouring to meet this statement defendants stumbled into a denial of plaintiff's title.

Defendants, among other answers to plaintiff's claim, objected that the case was one which fell exclusively within the cognizance of the Drainage Referee, under sec. 93 of the Drainage Act, as amended by 1 Edw. VII. ch. 30, sec. 4. The trial Judge thought otherwise, but the Divisional Court agreed with defendants' contention, and dismissed the action.

Plaintiff now seeks to carry the case to appeal for the purpose, as it is said, of having the question settled. So that in a case of little more than a technical trespass to land worth \$5, and in an action which only an inadvertence in the pleadings rendered proper to be maintained in the High Court, one more decision is sought upon the question whether, on the facts, plaintiff should or should not have resorted to the Drainage Referee for her \$5 compensation.

Whether the point involved is or is not yet in doubt, notwithstanding the unanimous decision of the Divisional Court—as to which it is not necessary to express an opinion at present—I think encouragement should not be lent to the prolongation of this litigation. The amount at stake is so trifling, and the matter of so little consequence except to the parties immediately concerned, that the discretion given by the Judicature Act should not be exercised in favour of a further appeal.

There are other grounds of defence open to defendants upon an appeal which are not without weight, and in respect of which the Judge who delivered the judgment of the Divisional Court indicated a view favourable to defendants, and it is possible that success on the question of forum would not mean ultimate success to plaintiff.

Motion refused with costs.