

C. L. Cham.]

SMALL V. HANEY—CARSLY V. FISKEN.

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in the box he is so for all purposes—or to connect him with the telegram by other evidence; as the recognition of its contents by answers and replies, or by acts done in pursuance of, or in connection with, it. Manifestly, a telegram could not be proved merely by its production; but then it may and ought to be proposed for admission by the other party, refusing which, he would be charged with the costs of proof.

If the telegram instruction paper cannot be found, its loss should be proved by the clerk at the office who had the custody of it, and has made search for it, and then secondary evidence of it may be given by the telegraph clerk by whom the message was transmitted, who must prove that the message delivered was that sent.

As telegrams come more into use, this question of their admissibility in evidence, and the manner of proving them, becomes more important; therefore we have invited attention to it in the hope that some ingenious reader may suggest some means by which evidence of so much value may be better preserved and proved that it can be by the present arrangements.—*Law Times*.

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-law,
Reporter to the Court.)

SMALL V. HANEY.

31 Vic. (Ontario), cap. 24, sec. 2, s.s. 2—Motion for full costs.

The above statute does not require that the consideration of granting or refusing a certificate for full costs should be postponed by the Judge to any specified future time.

(Chambers, June 29, 1868.)

This was an action on a covenant for the payment of rent, and was sent down for trial before the Judge of the County Court of the County of York. The verdict was for the plaintiff for \$190.

Immediately after the verdict an application for full costs was made to the County Court Judge, which he refused, but noted the fact of the motion having been made, but he did not postpone the consideration of the matter to any particular time.

An *ex parte* application was subsequently made to the County Court Judge for a certificate for full costs, which he granted. The defendant afterwards asked him for a summons to rescind his certificate, which he refused.

Ferguson then obtained from Mr. Justice Morrison a summons to shew cause why all proceedings should not be stayed until Term, on the ground that as the consideration of the granting or refusing the certificate was not postponed to any particular time, there was no jurisdiction in a judge afterwards to grant a certificate. He referred to 31 Vic. (Ontario), cap. 24, sec. 2, sub sec. 2.

Blevins shewed cause.

ADAM WILSON, J., discharged the summons, as he thought that the statute did not require a postponement to any specified point of time.

Summons discharged.

CARSLY V. FISKEN ET AL.

Division Courts—Jurisdiction—Prohibition.

The defendants at Toronto agreed to sell to plaintiff at Kingston certain barrels of oil. Upon the oil being delivered at Kingston, it was found to run short, and an action was brought for the shortage in the Division Court at Kingston. It was objected by defendants that the action could not be brought in Kingston, but the Judge overruled the objection, whereupon a prohibition was asked for, and it was

Held, that the action should have been brought where the defendants resided.

[Chambers, July 21, 1868.]

This was an application for a writ of prohibition to prevent the County Judge of Frontenac from further proceeding in an action in the first Division Court of that County, between the above parties, on the ground that said Judge had no jurisdiction to hear the case.

The facts of the case were that the defendants, who resided and carried on business at Toronto, offered by letter written at Toronto, to sell to the plaintiff, who resided and carried on business at Kingston, a quantity of coal oil at a certain price. The plaintiff at Kingston accepted the offer of the defendants by telegraph to them at Toronto, and they thereupon shipped the oil to him at Kingston. Upon its arrival, however, the plaintiff found, as he alleged, that the quantity of oil stated to have been contained in the barrels ran short, owing, as was supposed, to leakage, which it was sworn must have taken place before it reached Kingston. The plaintiff then sued defendants in the Division Court at Kingston for the shortage.

It was objected at the trial that the action could not be brought at Kingston, on the ground that the cause of action did not arise there within the meaning of the statute, and that it could therefore only properly be brought where the defendants resided, under the further provision of the statute.

The learned judge overruled the objection, and gave judgment for the plaintiff for the full amount of the claim.

The defendants then applied for a prohibition.

McKenzie, Q. C., shewed cause

The following cases were cited: *Watt v. VanEvery*, 23 U. C. Q. B. 196; *Kemp v. Owen*, 14 U. C. C. P. 432, 10 U. C. L. J. 269; *Arts v. Orchard*, 6 H. & N. 159.

MORRISON, J.—In the case of the Judge of the County Court of Brant, in *Watt v. VanEvery*, the Chief Justice of Upper Canada, in giving judgment, held that the cause of action within the 71st section of the Division Court Act, is not the contract only, but the contract and breach for which the plaintiff claims damages. The sale of the oil in the present case took place where the defendants reside, at Toronto, to be delivered to the plaintiff at Kingston, and the breach is, that the full quantity of oil was not delivered to the plaintiff at Kingston, the barrels being short of measure. On the authority of the cases cited, the cause of action arose partly at Toronto and partly at Kingston, and the plaintiff must therefore sue the defendants in