Court. In High Court cases, the motion may be made either to a Judge of the High Court or to a County Court Judge who has made an order for arrest under the special jurisdiction conferred upon him under 9 Edw. VII. ch. 50, sec. 3 (2). Any order upon a motion for discharge made by a County Court Judge is subject to appeal—to a Divisional Court—but no right of appeal is given from the original order for arrest.

This motion, therefore, fails for lack of jurisdiction, and must be dismissed. No costs.

———

DIVISIONAL COURT.   OCTOBER 24TH, 1911.

FISHER v. MURPHY.

Motor Vehicles Act—Injury Caused to Person Driving by Overtaking Motor Vehicle—Negligence—Onus—Evidence.

Appeal by the plaintiff from the judgment of the County Court of the County of Lincoln dismissing the action, which was brought to recover damages for personal injuries caused to the plaintiff by a collision of the buggy in which she was driving with a motor vehicle driven by the defendant.

The appeal was heard by BOYD, C., BRITTON and MIDDLETON, JJ.

A. W. Marquis, for the plaintiff.

M. J. McCarron, for the defendant.

The judgment of the Court was delivered by MIDDLETON, J.:—In this case a perusal of the evidence convinces me that the defendant has failed to satisfy the onus placed upon him by the statute. In fact, the whole evidence, apart from this onus, satisfies me that he was to blame. The accident occurred "by reason of a motor vehicle upon a highway;" and by sec. 18 of the Motor Vehicles Act, 6 Edw. VII. ch. 46, the onus is upon the defendant to shew that the accident did not happen by his negligence or improper conduct.

By sec. 6 the speed is limited to ten miles; and by sec. 10, upon overtaking a vehicle drawn by a horse, the motor vehicle shall not approach within 100 yards at a greater speed than seven miles per hour, and the person in charge shall signal his desire to pass, so that the driver may turn out and be passed with safety.

In this case the whole evidence goes to shew that the Act was not complied with, and that such non-compliance caused the accident.