

S. C. R. 323. There was a very much stronger case against defendants in *McQuillan v. Town of St. Mary's*, 31 O. R. 401. If the finding were for the plaintiff, the damages would not be sufficient to carry costs on the High Court scale. Action dismissed without costs.

JULY 7TH, 1902.

DIVISIONAL COURT.

WILDER v. WOLF.

Attachment of Debts—Division Court—Cheque—Payment Stopped—Garnishee—Payment into Court.

Appeal by primary creditor from judgment in 10th Division Court in the County of York dismissing his claim against the garnishee and ordering payment to the claimant of the money in Court. The action was brought by Wilder against Wolf to recover \$150 advanced by three cheques of \$50 each. The evidence shewed that the amount had been advanced in part payment of a car load of junk to be delivered by Wolf to Wilder, and that Wolf, having received the money, instead of delivering the car load to Wilder, sold it to Mehr (garnishee). Mehr bought in good faith, and gave his cheque for \$205 in payment to Wolf, the cheque being drawn on the Bank of Ottawa in Toronto. Wolf took it to the Canadian Bank of Commerce at Orangeville, and had it cashed there, upon Taylor (claimant) guaranteeing payment by his indorsement. Before the cheque was presented at the Bank of Ottawa in Toronto, the present action had been brought, and Mehr had been served with garnishee proceedings; he at once stopped payment of the cheque, and it was refused by the Bank of Ottawa, and was duly protested for non-payment. Mehr paid the amount of it into Court. The bank at Orangeville called upon Taylor, and he paid the amount to the bank, and now claimed the money in Court to recoup himself. Wolf denied that he owed Wilder the amount claimed, and swore that the three cheques for \$150 were to be applied upon a running account between him and Wilder. The Judge in the Division Court (MORSON, Jun. J.) gave judgment for Wilder against Wolf for the \$150 and costs, and dismissed Wilder's claim against Mehr, and ordered payment of the money in Court to Taylor.

E. E. A. DuVernet, for Wilder.

L. V. McBrady, K.C., for Mehr.

A. A. Hughson, Orangeville, for Taylor.