

CARTWRIGHT, MASTER.

FEBRUARY 10TH, 1909.

CHAMBERS.

GAGE v. NASH.

*Pleading—Statement of Claim—Action Transferred from Division Courts—Plaintiff not Confined to Claims within Jurisdiction of Division Court.*

Motion by defendant to strike out part of the statement of claim, in the circumstances stated in the judgment.

R. C. H. Cassels, for defendant.

John Harrison, Hamilton, for plaintiff.

THE MASTER:—This case was transferred from a Division Court to the High Court, pursuant to sec. 81 of the Division Courts Act. By the order then made, the parties were ordered to file and deliver the usual pleadings in an action in the High Court. The action was for trespass in taking stone from plaintiff's land, and the damages in the Division Court were necessarily limited to \$60. In the statement of claim the damages were put at \$500. The defendant now moves to have the paragraphs alleging trespass quare clausum fregit and putting the damages at \$500 struck out, because the plaintiff can make no greater claim in this Court than could have been made in the Division Court from this action has been transferred.

The motion must be dismissed. There is nothing embarrassing in the statement of claim. Once the action is transferred to the High Court of Justice, the parties have all the rights and remedies of that jurisdiction. It was unnecessary to name any sum for damages, as the real question is as to the title to the land, and the second paragraph, which alleges trespass, is correct.

Costs to the plaintiff in any event.

TEETZEL, J.

FEBRUARY 10TH, 1909.

CHAMBERS.

DYMENT v. DYMENT.

*Jury Notice—Motion to Strike out—Discretion—Reference to Trial Judge.*

Motion by defendant to strike out the jury notice filed by plaintiff.