

directed; the trust fund should bear the costs of this application, to be taxed on the basis of solicitor and client; and the net residue should be paid to the residuary legatee.

DIXON V. SCHELL—FALCONBRIDGE, C.J.K.B.—JUNE 30.

*Judgment—Rule 322—Admissions—Practice—Right to Trial.*]—Motion by the defendants the Mackenzie & Mann Company for judgment under Rule 222. The motion was heard in the Weekly Court at Toronto. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the admissions were not so clear and definite as to take away the plaintiffs' right to a trial upon viva voce evidence: Holmsted's Judicature Act, 4th ed., pp. 683 to 686, and cases cited. This opinion, already formed, as to the propriety of the case being allowed to proceed to trial, was confirmed by the receipt of a copy of the order of the Master at Ottawa in Chambers of the 2nd April, 1907. Motion dismissed; costs in the cause to the plaintiffs and the defendants Schell and Kennedy, as against the applicants, in any event.

CYCLONE WOVEN WIRE FENCE CO. V. TOWN OF COBOURG—  
BRITTON, J.—JUNE 30.

*Landlord and Tenant—Distress for Rent—Chattels Seized Bought in by Bailiff—Legal Seizure—Improper Conduct of Bailiff in Buying in—No Resulting Damage—Offer to Return Chattels—Costs of Distress—Costs of Action for Wrongful Distress.*]—Action for damages for breach of contract and wrongful distraint and sale of the plaintiffs' goods; tried without a jury at Cobourg. BRITTON, J., in a written judgment, said that the defendants, the Municipal Corporation of the Town of Cobourg, leased a certain property—land and building—to the plaintiffs, for 5 years, with an option of purchase, and the plaintiffs took possession of the premises and carried on a small manufacturing business thereon. Before the 22nd June, 1916, the plaintiffs set out about removing the chattels which they had in the building; and on that day the defendants issued to their bailiff a warrant to distrain the chattels upon a claim for rent, \$700. The bailiff seized the chattels, sold a part, and bought in the rest. The learned Judge finds that the plaintiffs