

ground that plaintiff's claim was really one in trespass or for trover, and that the amount claimed and for which judgment went was beyond the Division Court jurisdiction.

J. C. Judd, London, for defendant.

W. McDiarmid, Lucan, for plaintiff.

MEREDITH, J., held that there was nothing to prevent the plaintiff treating the taking of the horse by defendants as a valid delivery under the contract, and that he did, electing to sue upon the contract, and not for trespass or trover. He had the choice of suing upon the contract or of treating the taking of the horse as wrongful, and suing for the wrong. See Roscoe's N. P., 16th ed., pp. 528, 588, 589.

Application dismissed with costs, fixed at \$10.
