

defendant objects that an appeal does not lie because the sum now in dispute upon the appeal (i.e. \$65, the balance of plaintiff's claim) "does not exceed \$100, exclusive of costs," within s. 148 of the Division Courts Act, R.S.O., c. 51.

Held, that the subject matter of the suit was one cause of action only, the breach of a contract for which plaintiff claims \$100 damages and interest. Plaintiff is still claiming that sum on the appeal and disputes the correctness of the judgment for \$35. Therefore the \$35 is as much in dispute as the balance of the \$100, and the appeal must be heard.

R. McKay and Gideon Grant, for plaintiff.

Aylesworth, Q.C., for defendant.

ARMOUR, C.J., FALCONBRIDGE, J., }
STREET, J., }

[May 13.]

TALBOT v. LONDON GUARANTEE AND ACCIDENT CO.

Contract—Employer's liability policy—Condition—Construction—Conduct of employer.

An appeal by the plaintiffs from the judgment of Rose, J., at the trial at Hamilton, dismissing the action, which was brought by the firm of Talbot, Cockcroft & Harvey, who were carpet manufacturers at Elora, and by their assignee for the benefit of creditors, to recover upon a policy of insurance against accident in their factory. An employee in the factory had his fingers cut off by a machine and brought an action against the plaintiffs for compensation, which action was defended by the present defendants, and recovered \$1,200 and costs, which the plaintiffs in this action sought to recover against the insurers. The defence was mainly based upon a condition of the policy that "the employer shall, at the cost of the company, render them every assistance in his power in carrying on any suit which they shall undertake to defend on his behalf."

Held, that the implication from the condition was that the employers should not assist the opposite side, and the evidence showed that one of the plaintiffs had assisted the other side, and in view of the case of *Wythe v. Manufacturers Ins. Co.*, 26 O.R. 153, the Court should not interfere to assist the plaintiffs.

The appeal was dismissed with costs.

Aylesworth, Q.C., and Tetzels, Q.C., for plaintiffs.

H. Nesbitt, and J. H. Denton, for the defendants.

Mr. Carwright,)
Official Referee]

[May 13.]

BRISTOL v. GERMAN PRINTING AND PUBLISHING CO.

Defamation—Plea of justification—Particulars—Change of venue—R.S.O., c. 57, s. 10.

Motion by plaintiff in an action of libel against a newspaper, where the defendants pleaded justification, to change venue from Berlin to Toronto, and for particulars of amounts which defendants charge plaintiff with having stolen