Held, following *Corbett* v. *Warner*, L. R. 2 Q. B. 108, that the relief sought was practically the same as in the former action, and that the appeal should be dismissed with costs.

Whitla, for plaintiff.

Perdue, for defendant.

TAYLOR, C.J.] [July 23.

ELLIOT *v.* MAY.

Prohibition—County Court—Jurisdiction.

This action was commenced in the County Court of Brandon on a promissory note dated and payable at Winnipeg. In the summons which was issued the defendant, the maker of the note, was described as "of Carberry," where he resided. A dispute note was filed stating that defendant was not indebted to the plaintiff as alleged.

At a sitting of the Court on the 4th February last the case came on for trial, but the defendant was not present or represented by any one. A verdict was then entered for the plaintiff, but as, from circumstances connected with the service of the summons, it seemed possible that the defendant might have been misled as to the date of trial, the Judge stayed proceedings until the next Court to permit him to apply to re-open the case.

On the 5th of May, the next Court day, defendant applied to have the case re-opened, and to amend the dispute note, having given the plaintiff's solicitor notice of his intention to do so, and at the same time he raised, although not by the dispute note, the question of jurisdiction, claiming that the want of it was apparent on the face of the proceedings. The Judge of the County Court re-opened the case, and directed it to be tried at the next sitting of the Court, allowing an amendment of the dispute note as so to raise some proposed defences, but refused to entertain the question of jurisdiction, holding that defence to have been waived. Defendant then moved for a writ of prohibition.

Held, that the want of jurisdiction was not apparent on the face of the proceedings, as there might be a place called "Carberry" within the Judicial Division of Brandon, so far as the Court knew; and, following *Maxwell* v. *Clark*, 10 M.R. 406, that prohibition should be refused.

It might have been otherwise if it had been a case of a total want of jurisdiction in any County Court, instead of a question as to which particular Court could entertain the case.

Thompson, for plaintiff.

Andrews, for defendant.