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No. 13

RIDDELL, J.

JULY 5TH, 1907.

CHAMBERS.

RE BOYD v. SERGEANT.

*Division Courts — Jurisdiction — Division Courts Act, sec. 190—Action Brought in Wrong Court as against Garnishees—Abandonment at Trial of Claim against Garnishees—Objection to Jurisdiction by Primary Debtor—Saw Logs Driving Act, sec. 16—Common Law Cause of Action—Decision of Division Court Judge—Right to Review.*

Motion by defendant for prohibition to the 1st Division Court in the district of Algoma.

J. A. Paterson, K.C., for defendant.

W. E. Middleton, for plaintiff.

RIDDELL, J.:—The action as originally framed added the Maitland and Dixon Co. as garnishees. Admittedly the action was not brought in the right Court as against the garnishees: sec. 190 of the Division Courts Act, R. S. O. 1897 ch. 60. No notice disputing the jurisdiction was filed by the primary debtor, but the garnishees filed such a notice. At the trial counsel for the primary debtor objected to the jurisdiction of the Court, whereupon plaintiff abandoned all claim against the garnishees. Counsel for the primary debtor objected to this, and contended that the section (190) was imperative, and that the Court could not obtain jurisdiction by allowing such amendment. He did not, it appears, ask for an enlargement, or require the re-service of the summons,