

Dubuc, J.]

DOIDGE v. MINIMS.

[July 5.

Prohibition to County Court—Judgment not delivered within period prescribed by R. S. M., c. 33, s. 130 as amended by s. 1 of c. 6 of 56 Vic. (M.)

Application for a writ of prohibition against a judgment of the County Court of Selkirk entered 11th January, 1899, in the decision then rendered in an action tried in August, 1898. Defendant resides in Ontario and notice of the judgment was at once given to her solicitor here. On 25th April an action was brought in an Ontario Division Court on the judgment in question and judgment thereon was recovered there on 17th May. Notice of the application for prohibition was not served until 20th May.

Held, that the provision requiring the judge to announce his decision within 60 days is a mere matter of procedure and the delivery of judgment afterwards is to be considered only an irregularity; that the proper remedy was to appeal against the judgment under the provisions of the County Courts Act; and that in the exercise of the discretion of the Court, under all the circumstances of this case, the writ of prohibition should be refused, more especially as defendant was not prejudiced by the delay in rendering judgment, and it was shewn that plaintiff did not intend to take any steps to enforce the judgment in this province.

Application dismissed with costs.

Heap, for plaintiff. *Hull*, for defendant.

British Columbia.

SUPREME COURT.

Full Court.]

[June 27.

HOWAY v. DOMINION PERMANENT LOAN CO.

Practice—Stay of proceedings—Agreement to bring action in the Courts of Ontario—Arbitration Act, sec. 5—County Court Act, sec. 34—Waiver.

Action by shareholders in defendant Company for \$584.72, alleged overpayment on a mortgage of shares.

Held, MARTIN, J., dissenting, that where a defendant under s. 34 of the County Court Act objects to an action being tried in the County Court and an order is made directing that the plaintiff stand as a writ and that an appearance be entered thereto in five days, he waives his right to object to the jurisdiction of the Court to try the action on the ground that the parties