

Court will, without expense, set the matter right. The proceedings in the Division Court are not entirely without jurisdiction, as the Judge has power to transfer the case to the proper Court.

Objection is also taken to the form of the summons. It is possibly not entirely accurate, but the defendant has waived this by entering his dispute. Besides, prohibition will not lie for a mere irregularity in the proceedings in the Division Court, and nothing more than an irregularity exists here. The motion is dismissed with costs.

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HON. MR. JUSTICE MIDDLETON.

JANUARY 27TH, 1914.

REX v. FRIZELL.

5 O. W. N. 801.

*Criminal Law—Procedure—Conviction for Receiving Stolen Goods—Summary Conviction—Criminal Code, ss. 771, 781, 1035—Confusion with Sections Relative to Summary Trial of Indictable Offences—Quashing of Conviction in Part—Costs.*

MIDDLETON, J., held, that s. 781 of the Criminal Code does not apply to summary convictions but only to the summary trial of indictable offences.

Motion by the defendant to quash a magistrate's conviction.

H. E. Rose, K.C., for Frizell.

J. R. Cartwright, K.C., for the Crown.

HON. MR. JUSTICE MIDDLETON:—The magistrate has, I think, fallen into serious but not unnatural error in the construction of the Criminal Code. The accused was charged with receiving stolen goods, under sec. 401 of the Code, and became liable on summary conviction to the same penalty as a thief. Part 15 of the Criminal Code deals with summary conviction. It is confined to secs. 705 to 770. The magistrate has apparently thought that he was justified in acting under sec. 781, which is not applicable to summary conviction but relates only to the summary trial of indictable offences. That is plain by reference to the section itself. The words "summarily tried" and the reference to sec. 771 so indicate. None of the sections in part 16 have application to proceedings before Justices under part 15.