

Section 1035 clearly has no application, as this is confined to the summary trial of indictable offences under Part XVI. and the trial of indictable offences in the ordinary way.

The case is one in which the conviction should be amended by striking out the provisions relating to the fine of \$100. There should be no costs. The apparent hardship of this is lessened when it is borne in mind that, if the magistrate had known the true limitation of his powers, he would probably have imposed a much more severe imprisonment.

MIDDLETON, J., IN CHAMBERS.

JANUARY 27TH, 1914.

RE WALKER v. WILSON.

*Division Court—Territorial Jurisdiction—Motion for Prohibition—Power of Judge in Inferior Court to Transfer Case to Proper Court—Summons—Form of—Dispute-note—Waiver—Irregularity.*

Motion by the defendant Wilson for prohibition to the Fourth Division Court in the County of Haldimand.

The motion was heard in Chambers on the 20th January, 1914.

J. B. Mackenzie, for the applicant.

J. H. Spence, for the plaintiff.

MIDDLETON, J.:—The cause of action did not arise in the territory of the Fourth Division Court; and neither defendant resides there; so the Court has no jurisdiction.

The defendant duly filed a notice disputing the claim and disputing the jurisdiction. The summons was for a Court sitting on the 7th January, 1914. Without making any application to transfer, a motion for prohibition was launched by the solicitor for the defendant Wilson. On the return of the motion, the absence of jurisdiction is admitted—the plaintiff expressing his intention to move before a Division Court Judge for transfer to a Court which has jurisdiction; but objection is taken to this motion as premature—the plaintiff contending that until the motion in the Division Court for a transfer has been made and refused or until the question of jurisdiction has been dis-