

HON. MR. JUSTICE MIDDLETON.

JANUARY 27TH, 1914.

RE WALKER, v. WILSON.

5 O. W. N. 802.

*Division Courts—Motion for Prohibition—Lack of Jurisdiction—Motion Premature—No Motion for Transfer Made—Question not Dealt with in Division Court—Mere Irregularity—Dismissal of Motion.*

MIDDLETON, J., *held*, that a motion to prohibit a Division Court upon the ground of absence of jurisdiction should not be made until a motion in the Division Court for a transfer has been made and refused or until the question of jurisdiction has been dealt with at the trial.

*Watson v. Wolverton*, 22 O. R. 586, and *Hill v. Hicks*, 28 O. R. 390, followed.

That prohibition will not lie for a mere irregularity in the proceedings in a Division Court.

Motion for prohibition to the Fourth Division Court of the County of Haldimand. Argued 20th January, 1914. The cause of action did not arise in this division. Neither defendant resides there, so the Court had no jurisdiction.

J. B. Mackenzie, for the defendant, Wilson.

J. H. Spence, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—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 discussed and dealt with at the trial, a motion for prohibition cannot be made.

This is the effect of the judgment in *Watson v. Wolverton*, 22 O. R. 586 (note) and *Hill v. Hicks*, 28 O. R. 390.

It is manifestly most inconvenient that a motion of this type, where the expense is entirely disproportionate to the amount involved, should be launched where the Division