

want of jurisdiction. Section 205 of the same Act provided that prohibition would not be granted when notice disputing the jurisdiction had not been given. That section (205) is in part contained in sec. 78. of ch. 32 of 1910, but the affidavit is not required to support the objection to the jurisdiction—and the words in regard to prohibition are omitted. It is not *lex scripta* that a defendant must apply to the Judge of a Division Court for transfer before applying for prohibition.

Then the question is, has the defendant been guilty of such laches that, as a matter of discretion, I should not make the order?

The cases *Mayor, etc., of London v. Cox*, L.R. 2 H.L. 238, 283, and *Broad v. Perkins*, 21 Q.B.D. 533, cited by my brother Middleton in *Re Canadian Oil Companies and McConnell*, 4 O.W.N. 542, shew when discretion should be exercised against an applicant.

Has the defendant shewn what amounts to a sufficient excuse for his delay in satisfying the Judge that the action was not one within his jurisdiction?

Assuming that it was the defendant's duty, it was not so explained to the defendant. He thought he had nothing more to do unless further notified, and he received no notice. He had disputed the jurisdiction, and he had disputed the plaintiffs' claim; and, because he did not think it necessary, he did not attend Court. On the other hand, one of the plaintiffs did attend Court. He knew all about the transaction, but gave no information to the Judge as to how the sale of the heifer was made. He simply spoke of it as if the sale was upon his own premises.

The Judge was not bound to cross-examine the plaintiff; and the facts as stated in the defendant's affidavit, and not denied by the plaintiffs, did not come out. The judgment was recovered on the 14th May. No notice of it, was given to the defendant, and he did not in fact know of it until the 16th November, 1912, when the execution was issued in the county of Bruce.

As to the merits, the plaintiffs, as I have said, do not contradict the defendant upon anything material. Some of the statements, not of fact but of opinion, in the affidavit sworn by Edwin Mitchell, one of the plaintiffs, are grossly improper. He probably did not appreciate or understand the true meaning of part of this affidavit. The blame for it should fall upon the plaintiffs' solicitor. I feel quite sure that, upon the attention of the solicitor being called to the 12th paragraph of that affidavit, he will express his regret for its insertion.