was no evidence of the signature of defendant to the I.O.U.'s and acceptance sued on and produced by plaintiff at the trial of the action other than the affidavit of defendant filed on an application for speedy judgment, and that the affidavit, if evidence at all, shewed that the I. O. U.'s were given for spirituous and malt liquors drunk in a tavern, over which cause of action a Division Court has no jurisdiction, and that the acceptance was paid.

W. H. Bartram, London, for defendant.

H. B. Elliot, London, for plaintiff.

MEREDITH, J.—There is no good reason why the affidavit should not have been put in by plaintiff in support of her case, and if there were, it would not form a ground for prohibition in any case within the jurisdiction of the Court. If there had been no other evidence at the trial, the Division Court ought not to have exercised jurisdiction as to the I. O. U.'s: Division Courts Act, sec. 71, sub-sec. 21. But a witness was examined who gave material indirect evidence in support of the claim, and upon the whole evidence the Judge discredited the allegation as to the consideration for the I. O. U.'s contained in defendant's affidavit, the defendant not being called as a witness in his own behalf. The Judge exercised his judgment, upon the whole evidence, in a case in which, whichever way decided, there would be a good deal that could be said in support of the judgment. There is nothing having a semblance of a perverse finding in order to retain jurisdiction, and whether he was right or wrong in his conclusions, there was no good ground for prohibition. The defendant's course, if desiring to carry the case further, was to have applied for a new trial, so that he might give evidence in his own behalf; his failing to give his evidence at the trial may have weighed much in the Judge's mind in discrediting, in part, his affidavit.

There is no ground for the motion as to the other part of the claim. It was unquestionably within that Division Court's jurisdiction, and whether rightly or wrongly decided is not a question for consideration upon this motion: see In re Long Point Co. v. Anderson, 18 A. R. 401.

Motion dismissed with costs.