The action in the Division Court was begun on the 19th July, 1894. The trial took place on the 26th September, 1894. At the close of the case the Judge reserved his decision, and made this formal note in writing: "Decision adjourned by consent till after judgment is delivered in Brown v. Gordon now pending in the Court of Appeal, which sits for argument on 13th November, 1894, provided case is argued at that sitting, but if not argued at such sitting of Court of Appeal, then upon notice by me to the parties for argument of this case, case will be disposed of at such time as I may appoint after I hear argument."

The case stood until 25th March, 1896, when the Judge gave judgment for plaintiff against defendant for $89.47.

The defendant now alleged that the judgment was given without any notice to defendant as to hearing argument, and without any further argument.

On 5th May, 1903, an order of revivor was made, for the purpose of issuing an execution on and collecting the judgment.

W. H. Barry, Ottawa, for defendant.

G. McLaurin, Ottawa, for plaintiff.

BRITTON, J.—It appears by the affidavits filed that the case of Brown v.Gordon was not argued at the November, 1894, sittings of the Court of Appeal.

The plaintiff swears that he believes that there was an argument in due course before judgment was given. His attorney does not remember, but swears to a charge for attending on the argument.

The Judge would not be likely to go in the teeth of his own order. The defendant must have known of this judgment very shortly after, as on the 15th May, 1896, an order was made allowing the examination of defendant as a judgment debtor. On or about 16th July, 1896, a judgment summons was issued upon the judgment and was served upon defendant. This summons was adjourned and negotiations were had with defendant for the settlement of the judgment. The affidavit of Mrs. McLaurin is clear as to the knowledge of defendant of the judgment, shortly after it was given.

It was quite competent for defendant to waive the argument. It was within the power and right of the Judge to change his order if circumstances arose which would permit of this being done without prejudice to defendant, and it would be presumed in this case, after so long a time, that all was done regularly.

There was no absence of jurisdiction, and so Re Brazill v. Johns, 24 O. R. 209, does not apply.