

On the 7th November, 1912, a transcript of judgment was sent to the 2nd Division Court in the County of Bruce, and an execution was issued thereon against the defendant. On application by the defendant to the Judge of the County Court of the County of Bruce, this execution and transcript were set aside; and that matter is not before me, other than as part of the history of the proceedings. The order of the Judge of the County Court of the County of Bruce was made on the 2nd December, 1912; and on the 10th December the notice of motion for prohibition was served upon the plaintiffs.

The defendant's only excuse for delay in moving is, that he thought his attendance unnecessary, and that the action had been withdrawn or dismissed. Why he was not informed by his own solicitors that the case should be looked after, does not appear. The defendant states where his residence is and has been, and states with full particularity what the plaintiffs' cause of action is, if any. Upon that statement, if true, there was no jurisdiction to bring this case in the 9th Division Court in the United Counties of Northumberland and Durham. The defendant also states his defence; and, if what he says is true, he has a good defence upon the merits. The plaintiff Edwin Mitchell made an affidavit, used upon this motion, and he does not deny anything stated by the defendant material to be considered. This plaintiff says that he thought he had done everything that possibly could be done. I shall refer to his affidavit later.

The proceedings are governed by 10 Edw. VII. ch. 32 (1910). Upon the facts before me, the plaintiffs had no right, under sec. 72 (subject to what is provided by secs. 78 and 79), to enter the suit or have the case tried in the 9th Division Court in the United Counties of Northumberland and Durham. The defendant gave the notice required by sec. 78, and that notice was transmitted to and received by the plaintiffs. Notwithstanding that, and with the knowledge the plaintiffs had of how the cause of action arose, they gave no information of it to the trial Judge. By sub-sec. 1 of sec. 79, there is power to transfer if it appears to the Judge that the action should have been entered in some other Court of the same or some other county. Apparently it did not so appear, and no order to transfer was made or asked for.

The changes made in the law as it was in ch. 60, R.S.O. 1897, by the new Act of 1910, are very important. Section 91 of ch. 60, R.S.O., required that the party making application for transfer should satisfy the Judge by affidavit of the alleged