ELLIOTT, Co.C.J., said that both parties consented to his disposing of the motion in Chambers, on the admitted facts. After referring to Nevills v. Ballard (1897), 28 O.R. 588; Clarke v. Rutherford (1901), 2 O.L.R. 206; Hardigan v. Graham (1897), 1 Can. Crim. Cas. 437; Larin v. Boyd (1904), 11 Can. Crim. Cas. 74; and Miller v. Lea (1898), 25 A.R. 428; he said that, in his view, secs. 732, 733, and 734 of the Code did not apply; that the magistrates had no jurisdiction to try the defendant summarily upon the information as laid; that the procedure indicated by sec. 785 should have been followed; that, although the consent of the defendant was obtained to a summary disposition of the charge, it was irregular, because not obtained at the beginning of the trial; that the magistrates had no authority to make a conviction for common assault; that, with the consent of all parties, the information might have been amended so as to charge the lesser offence, but this was not done; that secs. 791 and 792 applied to this case, and the effect was that the defendant was released from further criminal proceedings for the same cause, but not from civil proceedings, as would have been the case if secs. 732, 733, and 734 had been applicable.

Order made striking out the paragraphs complained of; costs to be costs in the cause to the plaintiff.

CORRECTION.

In TORONTO GENERAL TRUSTS CORPORATION v. GORDON MACKAY & CO. LIMITED, ante 409, the appeal was from the judgment of MIDDLETON, J.