statute it is expressly declared that no motion for a new trial or non-suit in the County Court shall be entertained after the rising of the Court on the second day of the term, and a party obtaining a verdict may enter his judgment on the third day of the next ensuing term. No consent on the part of attorneys, or understanding with the Judge. could well be set up against this express provision of law, to justify setting aside a judgment entered according to the express terms of the Act of Parliament. But even in that case the learned Judge, now the Chief Justice of Upper Canada, who delivered the judgment of the Court, said: "The Court would not, unless perhaps under some extreme circumstances, listen to a party applying against proceedings taken in a cause by his own express consent, as, when a particular step was agreed on, or a particular objection was waived. But this is not a case of that description. The consent spoken of does not appear to be as to a particular step in a cause, or even to be limited to a particular cause, but is made with all legal practitioners with regard to the transaction of all their business."

In *Andrews* v. *Elliott* (5 E. & B. 502, same case in the Exchequer Chamber, 6 E. & B. 338) the facts were, that an issue stood for trial at the Summer Assizes for Surrey. It was proposed at *Nisi Prius*, before Wightman, J, that the cause should be tried without a jury before Mr., now Baron, Bramwell, whose name as a Q. C. was in the commission of *Nisi Prius*. The learned Judge approved of this, and the case was tried before Mr. Bramwell, the attorneys for both parties attending, and the plaintiff himself being examined as a witness. The verdict passed for the defendant. There was no summons, nor any written consent for the trial.

The authority to try the issue was under the Common Law Procedure Act of 1854, sec. 1, which enacts that, "The parties to any cause may, by consent in writing, signed by them, or by their attorneys, as the case may be, leave the decision of any issue in fact to the Court, provided that the Court, on a rule to shew cause, or a Judge, on summons, shall in their or his discretion think fit to allow such trial."

In argument for the plaintiff the case of *Lismore* v. *Beadle* (1 Dowl. P. S. N. S. 565) was referred to. There the plaintiff obtained a writ of trial to try before the Sheriff, and the verdict was for the plaintiff. The defendant obtained a rule to set aside the writ of trial and all subsequent proceedings, and it was made absolute, the Judge holding it made no difference that the plaintiff had obtained the writ of trial, and *Lawrence* v. *Wilcock* (11 A. & E. 941) decided that consent gave no jurisdiction. These cases are clearly such as the Sheriff had no right to try. In giving judgment in the case Lord Campbell said: "Mr. Bramwell was one of the Commissioners of *Nisi Prius*, and when sitting at *Nisi Prius* had the same general jurisdiction to try the cause that a Judge of the Superior Courts had. The Legislature requires that certain preliminaries shall be complied with before the Judge, having general jurisdiction to try causes, shall try a cause without a jury. Therein the case differs from those of writs of trial before the Sheriff; for the Sheriff has no jurisdiction except that derived from the writ of trial. Here, there was general jurisdiction, and the parties, who have consented to the exercise of that general jurisdiction in an instance in which they knew that the Statutable preliminaries had not been complied with, cannot be allowed to question the jurisdiction on that ground."

Coleridge, J., said: "One of the Commissioners of *Nisi Prius* tried this cause, having the same general jurisdiction for the purpose as any other Judge. I do not wish to lay down that the trial is good for every purpose; for example I express no opinion whether a witness might be indicted for perjury on the trial; but I decide on the ground that there was sufficient general jurisdiction to try the cause, and that the plaintiff is precluded, by his conduct, from taking this objection."

In the Exchequer Chamber it was urged, on behalf of the plaintiff, that although by consent the parties might have made Mr. Bramwell an arbitrator, then his decision would have taken effect as an award, and would not authorize a postea and judgment in the form of that brought before the Court. There would be no authority to order a verdict to be entered, unless that was expressly contained in the submission. The judgment of the Court of Queen's Bench was affirmed. Willes, J., said: "Nothing appears on the record shewing ground for invalidating this judgment: the case comes under the rule that *consensus tollit errorem*."

Echoing the language of Coleridge, J., and applying it to the case before us, I say there was sufficient general jurisdiction to try the cause, and that this applicant is precluded by his conduct from taking this objection.

This brings me to the time of the Judge announcing his intention to deliver a written judgment on the following Tuesday, the 7th of April, at his Chambers, according to Mr. Diamond's statement.

The 106th section, which we were referred to, directs the Judge shall openly in Court, as soon as may be after the hearing, pronounce his decision; but, if not prepared to pronounce a decision instanter, he may postpone the judgment, and name a subsequent day and hour for the delivery thereof in writing at the Clerk's office. The Clerk is to read the decision to the parties or their agents.

Suppose, at the usual sittings of the Court, without any adjournment, the Judge had said, I will deliver a written judgment in this case on a certain day, and had omitted to say at the Clerk's office, or the hour, and the parties, or their agents, on the day went to the office and the Clerk read the judgment; or suppose they read it themselves, would the fact that the Judge had omitted to name the hour or to say that he would deliver the writing at the Clerk's office invalidate the judgment? I should think not. Then, wil the saying he would deliver the written judgment at his Chambers, instead of the Clerk's office, make the judgment void, when by the statute the Clerk's office was the proper place for the delivery of the judgment, and it was so delivered, as the affidavits show, and the defendant's agent we there on that day and took a copy of it, and never apparently raised any objection until after judgment was entered and execution issued, the Judge's Chambers and the Clerk's office both being in the same town, and the defendant's agent, as he shews, having been informed by