

Hugh E. Rose, K.C., for the prosecutor.

E. E. A. DuVernet, K.C., for the accused.

HON. MR. JUSTICE MIDDLETON:—I am by no means satisfied with the conclusion at which my learned brother has arrived; but this alone is not sufficient to justify granting leave to appeal. The matter involved is trivial: the payment of a small fine. The difficulty arises from the carelessness of the magistrate and the prosecutor in failing to see that the agreement as to the admission of evidence taken in the other prosecution (if in fact made) was properly recorded. If such an agreement was made—and I am inclined to think that the defendant's and other evidence, notwithstanding denial by the accused, shew that it was—then the miscarriage, if miscarriage there was, is the result of the carelessness of those charged with the conduct of the prosecution and the trial; and if the result is to impress the necessity of care in having understandings of the kind in question reduced to writing, much will be gained.

I therefore refuse the application, but give no costs.

Having taken this view of the merits of the application, I have not considered the question raised by Mr. DuVernet as to whether there is now any right to appeal even by leave.

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HON. MR. JUSTICE MIDDLETON.

JANUARY 6TH, 1914.

LEONARD v. CUSHING.

5 O. W. N. 692.

*Appeal—Leave to Appeal—Service out of Jurisdiction—Conflicting Authorities—Application Granted.*

MIDDLETON, J., granted leave to appeal from the order herein of LENNOX, J., 25 O. W. R. 471.

Motion for leave to appeal from the order of HON MR. JUSTICE LENNOX dated 10th December, 1913, 25 O. W. R. 471, refusing to set aside an order permitting service out of the jurisdiction. Argued 2nd January, 1914.

G. Osler, for defendants.

Featherston Aylesworth, for plaintiff.