

good defence to the action on the merits, and further stating the Division Court wherein (sic) the cause of the action arose, or partly arose, and the defendant resides."

The notice and affidavit were filed.

J. Bicknell, K.C., for defendant.

C. A. Moss, for plaintiffs.

FALCONBRIDGE, C.J.:—I have come to the conclusion, after consideration of the principles laid down in *Wright v. Hale*, 6 H. & N. 227, *Turnbull v. Forman*, 15 Q. B. D. 234, and numerous other cases here and in England, that sec. 22 of 6 Edw. VII. ch. 19 governs procedure only, and is therefore retrospective in its operation.

And of this opinion appears to have been my brother Britton in *Bell v. Goodison Thresher Co.*, ante 618. I would, of course, have followed his judgment without independent consideration, but it was contended that his expression of opinion on that point was not necessary for the determination of the point which he was dealing with.

There is no evidence that the Judge in the Division Court entered on any question of jurisdiction. He probably had not the notice or affidavit before him.

Prohibition must go—under all the circumstances without costs.

MACMAHON, J.

DECEMBER 31ST, 1906.

TRIAL.

PORT HOPE BREWING AND MALTING CO. v.
CAVANAGH.

*Company—Shares—Subscription—Increase of Capital Stock
—Agreement to take Shares before Issue of Supplementary
Letters Patent—No Necessity for Allotment — Company
having no Shares to Sell.*

Action by the company and John Crane as plaintiffs to recover the price of 5 shares of the capital stock of plaintiff company subscribed for by defendant.