

*Per* MACMAHON, J. : If the defendant had ratified her husbands acts, parol evidence would have been admissible under the circumstances to identify the stock, but not the lands to be given in exchange.

*Hilton* for the plaintiff.

*E. D. Armour*, Q.C., for the defendant.

Div'l Court.]

[June 24.

REGINA v. HOGARTH.

*Justice of the peace—Summary Trials Act—Trial of defendant for felony without consent—Conviction—Quashing.*

The defendant, on being charged before a stipendiary magistrate with felonious assault, pleaded guilty to a common assault, but denied the more serious offence. The magistrate, without having complied with the requirements of section 8 of the Summary Trials Act, R.S.C., c. 176, by asking the defendant whether he consented to be tried before him or desired a jury, proceeded to try and convicted the defendant on the charge of the felonious assault.

*Held*, that the defendant was entitled to be informed of his right to trial by a jury, and that the conviction must be quashed.

Where a statute requires something to be done in order to give a magistrate jurisdiction, it is advisable to show on the face of the proceedings a strict compliance with such direction.

*Douglas Armour* for the applicant.

*A. H. Marsh*, Q.C., for the magistrate.

*Middleton* for the private prosecutor.

*Practice.*

Chy. Div'l Court.]

[Sept. 9.

IN RE BRAZILL AND JOHNS.

*Division Court—Prohibition—Time for application—Application for new trial.*

Appeal from the decision of MEREDITH, J., dismissing an application for prohibition to a Division Court judge.

The defendant in the Division Court action had filed a notice disputing the jurisdiction. Judgment had, however, been given to the action against him in his absence, and he had applied for and obtained a new trial.

*Held*, that the want of jurisdiction being clear, prohibition should be granted.

The right to prohibition existing, it is optional with the defendant to apply at the outset of the Division Court proceedings, or he may wait till the latest stage of appeal, so long as there is anything to prohibit.

*Kilmer* for the defendant appellant.

*McBrady* for the plaintiff.