

20th March, 1906, in an action in the 1st Division Court in that county, staying proceedings until judgment should be given upon a pending motion for a nonsuit made at the trial, or until further order.

The action was tried with a jury on 2nd March, when, at the conclusion of plaintiff's case, counsel for defendants moved for a nonsuit, and the Judge certified that he then stated to defendants' counsel that he would allow the case to go to the jury, the witnesses all being present, and that he would hear the motion for a nonsuit in Chambers.

The defence was thereupon proceeded with, the motion not being renewed at the close of the case, and the jury answered certain questions submitted to them in plaintiff's favour, except one the answer to which was not, defendants contended, very clear, and also found a general verdict in favour of plaintiff, the parties agreeing that, if plaintiff was entitled to recover, the damages should be \$60.

At the close of the trial the Judge indorsed upon the summons, "Verdict for plaintiff for \$60, certificate for costs to plaintiff," and signed the memorandum.

Matters so stood until 20th March, when plaintiff caused execution to issue, and upon the same day the order in question was obtained, upon the application of defendants.

In fact, the motion for a nonsuit was never disposed of, and the Judge certified that the indorsement for costs was made inadvertently, and that at the moment he did not think of the undisposed of motion for a nonsuit, and had no intention of determining that motion without hearing the argument of plaintiff's counsel.

Plaintiff's counsel regarded the case as disposed of, and did not understand that there was to be any further argument, and, the Judge having given him the costs of the action, he believed the case was at an end, unless defendants moved for a new trial within the 14 days.

Upon the motion for prohibition, C. W. Plaxton, Barrie, for plaintiff, contended that there was no power, upon a Division Court trial with a jury, for the Judge to reserve a motion for a nonsuit, permitting the jury to pass upon the facts, the Judge still being seised of the case, and at some