

Province of Ontario.

HIGH COURT OF JUSTICE.

Boyd, C., Ferguson, J., Meredith, J.]

[Feb. 17, 1896

SKAE v. MOSS.

*Trial—Jury notice—Striking out—Duty of judge presiding at jury sittings—Transfer to non-jury list—Discussion—Appeal.*

An appeal by the plaintiffs from an order of MEREDITH, C. J., made by him of his own motion, when presiding at a sittings at Toronto for the trial of actions with a jury, striking out the plaintiffs' jury notice and transferring the action to the non-jury sittings.

C. Millar, for the plaintiffs, contended that the Chief Justice was not the trial Judge when he made the order, as the case had not then been called to trial, and he had no power to call up a case out of its turn and strike out the jury notice without the request of either party. The case was one proper for trial by jury, being an action against solicitors for improperly investing money.

McCarthy, Q. C., for the defendants.

The Court held that the Judge presiding at the Assizes had power to make such an order under the circumstances mentioned, and, following *Brown v. Wood* (1887), 12 P. R. 198, that the exercise of his discretion should not be interfered with.

Appeal dismissed with costs to the defendants in any event. Leave to appeal refused.

[This decision is opposed to that of another Divisional Court in *Bank of Toronto v. Keystone Fire Ins. Co.*, 34 C.L.J. 356, 18 P. R. 113, rendered on the 4th May, 1898.]

Falconbridge, J.]

IN RE ASKWITH.

[Aug. 24.

*Evidence—Refusal to give self-criminating testimony, right of witness as to, not affected by Liquor License Act, s. 115.*

This was an application for the discharge from custody of a witness for refusing at the hearing of a charge against a hotel-keeper for infringing the Liquor License Act, to answer a certain question, for the reason that it tended to criminate him. It was contended that this rule had been abolished by sec. 115 of that Act which provides as follows: "In any prosecution under this Act the . . . magistrate trying the case may summon any person represented to him . . . as a material witness . . . and if he refuses . . . to answer any question touching the case, he may be committed to the common gaol of the county, there to remain until he