

allowed on the sole ground that the information and complaint was insufficient. It was not shewn (as indeed it could not be) that the objection had been taken before the Magistrate—nor was it shewn or contended that Amiro had been deceived or misled.

A motion is now made for an order setting aside the order of the Division Court and “for an order of mandamus requiring the Judge . . . to reopen the appeal from the conviction . . . and to hear the evidence of the . . . witnesses . . . and to adjudicate upon the same or for such other order as . . . the justice of the case may require . . .”

Amiro through his counsel consents; and a consent is also filed by the learned Judge.

Contrary to the opinion which some seem to entertain, an order is not made by His Majesty's Courts of Justice simply because all persons directly interested consent to such order or even ask for it. The Court must see whether the order is a proper one to make; and is not to be made a convenience for achieving some desired end.

Assuming all the facts to be as stated, I do not think mandamus can issue.

No doubt, the High Court of Justice, exercising the powers of the traditional Court of King's Bench, may by mandamus command an inferior Court to hear a case within the jurisdiction of that Court. But where such Court has decided a matter within its jurisdiction, however wrong that decision may be, mandamus does not lie to compel a reconsideration. . . .

[Reference to *In re Long Point Co. v. Anderson* (1891), 18 A.R. 401, at p. 408; *Township of Ameliasburg v. Pitcher* (1906), 13 O.L.R. 417.]

It is, no doubt, contended in the present case that, if the Court below decides on a preliminary point without going into the merits, there is no real decision on the case, and mandamus will lie. No doubt—but we must be sure that the point upon which the decision rested was preliminary in reality and not on the merits.

It is in the view that what the learned Judge decided was preliminary, that both the applicant and his solicitor swear that “there was no argument before the said Judge of the legal merits of the case—the only question being argued was the question of the insufficiency of the information and complaint.” And it is pointed out that the Criminal Code, sec. 753, expressly provides that no judgment shall be given in favour of the appellant upon an objection to the information and complaint