

THE
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING MARCH 29TH, 1902.)

VOL. I.

TORONTO, APRIL 3, 1902

No. 12.

MEREDITH, J.

MARCH 21ST, 1902.

CHAMBERS.

RE GREENWOOD v. BUSTER.

County Court—Jurisdiction—Consent does not Give—Prohibition.

Motion for prohibition to the Judge and clerk of the County Court of Frontenac and the defendant in action in that Court, to prohibit them from enforcing a pretended judgment pronounced in 1893 by Richard T. Walkem, one of Her late Majesty's counsel, sitting as County Court Judge, at the request of the Judge, who was ill, but without the authority of a commission as deputy-judge or otherwise, dismissing the action with costs upon a regular trial, after the plaintiff had consented to a trial by Mr. Walkem. The plaintiff moved before the Judge of the Court to set aside the nonsuit, and the motion was dismissed with costs. The defendant taxed the costs under the judgment, and had execution in the sheriff's hands ever since. Recently an alias writ had been placed in the sheriff's hands, and a seizure of the plaintiff's goods was threatened.

D. L. McCarthy, for plaintiff.

T. D. Delamere, K.C., for defendant. The plaintiff is estopped from taking advantage of the irregularity: *Mayor of London v. Cox*, L. R. 2 H. L. 239; *Archibald v. Bushey*, 7 P. R. 304; *Robertson v. Cornwell*, *ib.* 297; *Shortt on Mandamus and Prohibition*, p. 445.

MEREDITH, J.—There was a total want of jurisdiction, and consent could not confer jurisdiction. Delay could make no difference. *Rose, J.* (29th Nov., 1895), in a similar case of *Re Innes v. Gates*, tried before Mr. Walkem, granted prohibition; see also *Deadman v. Agriculture and Arts Association*, 6 P. R. 176.

The order will go, but without costs.