

would not lie, and also that the plaintiff could not give the Court jurisdiction by picking out one item of an account and suing for it,

*Held*, that the Judge at the trial having found that the evidence given shewed that the case was beyond the jurisdiction of the Court, and ruled that further evidence should not be given, and the plaintiff having submitted to this, and a judgment of nonsuit with cost having been entered, and the plaintiff having moved to set aside the nonsuit and for a new trial, which motion was refused, an application for a mandamus did not lie.

*Kernot v. Bailey*, 4 W.R. 608, *Kershaw v. Chantler*, 26 L.T.N.S. 474, *Fortescue v. Paton*, 3 L.T.N.S. 268 and *Ex p. Milner*, 15 Jur. 1037, followed.

*Regina v. Judge of Southampton County Court*, 65 L.T.N.S. 320, distinguished.

That the plaintiff had no right of appeal in this case under the Division Courts Act might be a defect of legislation, but it did not enlarge the remedy by mandamus.

*Held*, also, following *Williamson v. Bryans*, 12 C.P. 275, that mandamus does not lie where there is nothing pending before the Court below. Appeal dismissed with costs.

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Boyd, C., Robertson, J.] IN RE REX *v.* BURNS.

[April 2.

*Police Magistrate—Summary trial—Perjury—Acquittal of defendant—Further prosecution—Indictment—Mandamus—Criminal Code ss. 595, 791.*

Motion by the private prosecutor under C.S.U.C. c. 126, s. 6, for a rule nisi for a mandamus to the police magistrate for the city of London to compel him to bind the prosecutor over, under s. 595 of the Criminal Code, to prefer an indictment against the defendant for perjury, upon the ground that the magistrate had no jurisdiction to try the defendant summarily and acquit him, (he being a client of the County Crown Attorney, and the Crown not being represented), but should have committed the defendant for trial or have bound over the prosecutor as now desired.

*Held*, that it was now too late, if it was ever competent, to intervene and take such steps as would lead to prosecution by way of indictment under s. 595. It was left to the discretion of the magistrate to determine whether or not the case was one to be dealt with summarily upon the consent of the accused, and this he had to determine before the defence was made: s. 791. Defence was made, the case tried, and the charge dismissed. Sec. 595, which relates to the preliminary inquiry before the magistrate with a view to subsequent trial before another forum, has no pertinence to this concluded investigation. The magistrate had jurisdiction to try a case of perjury; if he had no jurisdiction, the defendant was never in jeopardy,