

The defendant, upon the motion for prohibition, raised several objections to the jurisdiction of the Division Court.

J. B. Mackenzie, for the defendant.

W. H. McFadden, K.C., for the plaintiff.

LENNOX, J., in a considered judgment, said that the irregularity in summoning the jury was, in the circumstances, no ground for prohibition. There was no such absolute right to a prohibition as would enable a party to trifle with the Court after he found the tribunal of his own selection deciding against him. Mere acquiescence does not give jurisdiction; but an irregularity in procedure may be the subject of waiver or acquiescence so as to preclude the grant of prohibition after judgment. Reference to *Richardson v. Shaw* (1876), 6 P.R. 296; *London Corporation v. Cox* (1867), L.R. 2 H.L. 239, 282; *Broad v. Perkins* (1888), 21 Q.B.D. 533; *Mouflet v. Washburn* (1886), 54 L.T.R. 16.

The other principal objection was that the amount of the claim for damages for conversion, \$63.75, was beyond the jurisdiction of a Division Court. As to this, the learned Judge said that the claim was not really for conversion, but for the value of the straw as upon a contract for the sale of it, and the particulars should have been amended at the trial to shew this, and would, no doubt, have been amended if the objection had been taken at the trial. There was no merit in the application. The defendant had a fair trial, upon indulgent terms of his own making; he expressly waived irregularities; and, in the opinion of the trial Judge, the result was fair to both parties. Reference to the Admiralty Case (1610), 12 Co. Rep. 78.

Motion dismissed without costs.

SUTHERLAND, J.

JUNE 26TH, 1915.

ROBINSON v. CAMPBELL.

Highway—Sand-heap Left in Front of House in Course of Erection—Injury to Vehicle Running into it—Obstruction—Nuisance—Liability of Sub-contractors for Building—Non-liability of Principal Contractor—Other Defendants—Costs.

Action for damages for injury to the plaintiff's taxicab by running into a pile of sand left upon the roadway in front of a.