

MEREDITH, J.

APRIL 3RD, 1905.

TRIAL.

FLEMING v. CANADIAN PACIFIC R. W. CO.

Trial—Jury—Failure to Set down in Time—Power to Give Leave to Set down—Jurors Act, sec. 97—Amending Act, 2 Edw. VII. ch. 14, sec. 3.

By 2 Edw. VII. ch. 14, sec. 3 (O.), sec. 97 of the Jurors Act, R. S. O. 1897 ch. 61, is amended by adding thereto certain sub-sections:—“(2) In case it appears that there is no business requiring the attendance of a jury at any sittings of the High Court, or of any County Court, for the trial of actions with a jury, the . . . clerk . . . at least 5 clear days before the day appointed for the sitting shall give notice in writing . . . to the sheriff that there is no such business. . . . (3) Notwithstanding anything contained in any statute or rule of Court, actions to be tried by a jury, whether in the High Court or County Court, shall be entered for trial not later than 6 clear days before the first day of the sittings.”

By sec. 4, the amending Act is not to apply to any county in which is situate a city. But by sec. 19 of 4 Edw. VII. ch. 10 (O.), the words “having a population of 20,000 or over” were added to the above sec. 4, thus making the statute of 2 Edw. VII. applicable to a county containing a city the population of which is less than 20,000, such as Wellington and Guelph.

In this case notice of trial was given by plaintiff for the Wellington jury sittings of the High Court at Guelph beginning 3rd April, 1905, but the case was not set down, owing to the illness of plaintiff and some negotiations between the solicitors for an adjournment.

At the opening of the sittings, J. E. Day, for plaintiff, moved for leave to set the case down, it not being the only jury case, and jurors being in attendance.

Angus MacMurchy, for defendants, supported the motion.

MEREDITH, J., held that, notwithstanding the language of sub-sec. (3) added by the amendment, he had power to grant the application on consent, and perhaps even without consent in a proper case. The object of the Act was to save the expense of summoning a jury where no cases are set down for trial by jury.