

that the original panel was insufficient to obtain twelve jurymen.

The motion to allow the additional panel had been granted by Mr. Justice Lafontaine, and in face of his judgment, which, in any event, was within the competency of the learned judge and was perfectly justified, Mr. Justice Guerin refused to quash the panel.

Further, the objection to the panel, in the first case, should have been made in writing, and not orally as was done. This was fatal to the defendants' motion.

The Court of Appeal reversed the judgment on the question of procedure before the jury and ordered a new trial.

*Carroll, J.* — A reversal of the judgment is sought on two grounds: 1. The panel of the jury was irregularly summoned; 2. The verdict is not justified by the evidence.

The prothonotary chooses 80 names from the list of jurors, and upon his own initiation strikes off the names of those who are dead or absent. If 52 names remain, each party strikes off 12, and the first 28 remaining names form the panel. If there are not 52 names left, the prothonotary may add new names until that number is obtained.

"The principle underlying the selection of a jury is that both parties should be on an equal footing. Nothing can be done without both parties being notified or consenting.

"Coming now to the judgment upon the motion made by defendant objecting to the forming of the jury, it was rejected for two reasons: 1. It was not made in writing; 2. Because an abnormal situation would be created for a litigant if new jurymen could not be summoned by the judge.

"The first reason is insufficient—the defence could not make an objection in writing because it only became known at the moment when the jurors were being sworn in that new jurors had been summoned.