

Rules 982, 983 and 987 of the King's Bench Act must be read with s. 19 of the Libel Act, but not Rule 978, so that there would have to be a substantive application to dismiss after non-compliance with the order.

*Blackwood*, for plaintiff. *Ormond*, for defendant.

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Full Court.] *HOTCH v. ROTHWELL.* [Dec. 14, 1909.

*Local option by-law—Liquor License Act, R.S.M. 1902, c. 101, s. 62, as re-enacted by 9 Edw. VII. c. 31, s. 2—Petition to council for submission of by-law—Using petition of previous year not then acted upon—Injunction to prevent submission of by-law.*

Appeal from judgment of METCALFE, J., 45 C.L.J., p. 723, allowed with costs.

There was no sufficient irregularity in making use of the previous year's petitions to have the effect of destroying it, and there were enough names on it, notwithstanding that part of the territory had, in the meantime, been taken to form a separate village.

*Andrews*, K.C., and *F. M. Burbidge*, for applicant. *E. L. Taylor*, K.C., for defendants.

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Full Court.] [Dec. 13, 1909.

*MCCORMICK v. CANADIAN PACIFIC RY. CO.*

*Jury trial—Action for compensation for death by accident—Discretion of judge as to mode of trial.*

The Court of Appeal will not interfere with the discretion of the judge in granting or refusing an application, made under sub-s. (b) of s. 59, of the King's Bench Act, for the trial of an action by a jury, unless that discretion has been exercised upon a wrong principle as in *Jenkins v. Bushby* (1901) 1 Ch. 484. *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127, and *Rustin v. Tobin*, 10 Ch.D., at p. 565, followed.

*Trucman*, for plaintiff. *Curle*, for defendants.