writ of summons which was dated July 26th, 1909, and was returnable two days later was served by a constable who delivered it to a brother of defendant, the defendant himself being absent from home at the time. The affidavit of the constable shewed that the summons was served on the evening of the same day on which it was dated, between the hours of nine and ten o'clock, and that the person to whom it was delivered was of sufficient age, but it was not made to appear that such person was an "inmate" of defendant's last or most usual place of abode, the affidavit merely stating on this point that he stayed there most of the time.

Held, that the service was sufficient in point of time but that in the absence of evidence to shew that the summons was delivered to the defendant personally, or, in his absence, to an inmate of his last or most usual place of abode as required by the Code s. 658, sub-s. (4), the conviction must be set aside.

W. B. A. Ritchie, K.C., in support of application. *Roscoe*, K.C., contra.

Full Court.] HUTCHINS v. MCDONALD. [Dec. 11, 1909.

New trial—Irregular act on part of foreman and member of jury—Costs.

On the trial of an action claiming damages for negligence on the part of defendant in connection with the running of his automobile on a public street whereby plaintiff's husband while proceeding along the street on his bicycle was knocked down and received injuries which caused his death, the foreman and one other member of the jury, without the consent of the parties and without the order of the court or judge, viewed the locus and made experiments with an automobile for the purpose of gathering information to be used by them in connection with the trial. The jury having found a verdict for plaintiff, and the facts having been brought to the notice of the court by affidavit,

Held, that there must be a new trial; and that costs of the appeal should be defendant's costs in the cause.

Mellish, K.C., and *O'Mullin*, in support of appeal. *W. B. A. Ritchie*, K.C., contra.