

MONTREAL TRAMWAYS CO. and another, defendants-appellants v. DOUGAN, plaintiff-respondent.

Jury trial—Venire facias—Default—Non suit—C. proc. art. 463.

Article 463 of Code of Civil procedure applies only after the return of the *Venire facias*, on the day fixed for the trial. If on that day the plaintiff makes default to appear, the trial judge is authorized to enter a non-suit.

The judgment of the Superior Court, rendered by Mr. Justice Duclos, on June 12, 1918, was reversed by the Court of Review, on December 23, 1918. This last judgment is affirmed.

The respondent sued the appellants for \$15,000 damages for false arrest, and made option for a jury trial.

The appellant pleaded, in substance, a general denial.

The 29th of May, 1918 fixed to strike the panel and the 13th of June for the trial.

The respondent moves for a postponement of the trial for certain reasons and for a *commission rogatoire*, but

Lamothe, Chief Justice, Lavergne, Carroll, Pelletier and Martin, JJ.—Court of King's Bench.—No 3915-311.—Montreal, 26th June 1919.—Perron, Taschereau, Rinfret, Vallée and Genest, attorneys for appellants.—J.M. Ferguson, K. C., attorney for respondent.

(1) V. same parties, B. R., [1917], 27 B. R., 279.