J. K. Kerr obtained a summons calling on the plaintiff, his attorney or agent, to shew cause why the notice to plead, served in this case, should not be set aside for irregularity, on the ground that the declaration and the notice to plead were served upon the Toronto agent of the defendant's attorney, and the defendant was therefore entitled to ten days to plead, instead of eight days, the time within which the notice served required the defendant to plead; and also to shew cause why the venue in this case should not be changed from the County of Wellington to the County of Halton.

Osler shewed cause. The summons as far as it relates to the notice to plead is grounded on 34 Vict. cap. 12, section 12 (Ont.) which reads as follows:—"In all cases where pleadings, or notices of trial, or countermand of notice of trial, in either of the Superior Courts of Common Law, or in the County Court, are served upon the agent of the attorney in the cause in Toronto, two clear additional days to the time now allowed by law for such service shall be allowed." Under this section it is not necessary in the notice to call upon defendants to plead within ten days. The statute does not apply to the form of the notice but merely to the time within which to plead. It is not enacted that ten days' notice is to be given, but that two days' time shall be added.

J. K. Kerr, contra. The section evidently means that two days are to be added to the time within which any pleading, &c., may be served, so as to avoid judgment by default. If the plaintiff were to give notice to plead in four days, it would clearly be irregular, and so as ten days are allowed, a notice only giving eight days is also irregular. The parties are entitled to a ten days notice, and this being only for eight days is irregular.

Mr. Dalton.—The language of sec. 12 of 34 Vict. cap. 12, is singularly inappropriate for the purpose intended. Every one is aware that the intention of the clause, as to pleadings, was to give the opposing party two clear days further time for his answer to any pleading, where it is served on the agent of the attorney in the cause at Toronto, beyond the time to which he would be entitled, had it been served directly upon the attorney himself. It needs such knowledge indeed, however derived, to find in the language used that such is the enactment. The words are: "Two clear additional days to the time now allowed by law for such service shall be added." Allowed to whom? and for what? It cannot be to the party pleading. A year is allowed by law for a party to declare, and for the pleadings after the declaration there is no limit whatever. It would be absurd then to think that two additional days are given to that party; and there is no use or purpose which can be supposed for the two additional days, unless they be added to the time which the opponent has to answer. To him they must be understood to be *allowed* as added to the time within which the party pleading can compel an answer to that pleading. The association of pleadings with notice of trial and notice of countermand argues this. But pleadings only are mentioned in the clause, which do not necessarily include notices to plead, reply, rejoin, &c. That has arisen doubtless from the common practice of serving the notice to answer with the pleading itself, which, however, is not necessarily nor always so. Then assuming that the *pleading* must be *served* ten days before you can compel an answer, it does not follow that the notice will be always subject to the same rule, but it must be where the pleading and notice are served together, for if the above construction be right, an answer cannot be compelled till ten days after the service of the pleading.

I at first thought that a notice served on the agent might be in the usual form of eight days, though ten days must be allowed to elapse after the service, before judgment could be signed; but I cannot, on consideration, escape from the conclusion, that at least the whole time allowed by law must be mentioned in the notice. For why is any time mentioned at all, unless it be the true time; the only purpose is to give information; it may be more than the time allowed by law, the effect of which would be to give such further time, but it cannot regularly be less. The service on the agent is good service, and the time mentioned in the notice must be reckoned from the time of such service. No other commencement can be supposed, and therefore to require the opponent to answer in eight days is to take from him the time which the statute gives.

I think then that the word "allowed" in the clause is used in the sense that the two days are to be added to the time which the opposite party has to answer, and that where the notice to answer is served, as here, with the pleading on the Toronto agent, the notice must be to answer in ten days.

Summons absolute.