

issues joined tried by a special jury upon suing out the necessary jury process for that purpose, and procuring such jury to be struck, etc.

Section 116 enacts that every sheriff upon the receipt of the writ shall, by a memorandum in writing upon the writ, appoint some convenient day and hour for striking such special jury, the day and hour so fixed being sufficiently distant to enable the party suing out the said venire to give the necessary notice to the opposite party.

And sec. 117 enacts that the party, his solicitor or agent, suing out the ven. fac. shall give notice in writing to the opposite party, his solicitor or agent, that he has sued out a ven. fac. and of the day and hour appointed by the sheriff for striking the same, and the notice shall be served on the opposite party, his solicitor or agent, four full days before the day so appointed, etc.

Rule 343 provides that where a period of less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, holidays as defined by Interpretation Act shall not be reckoned in the computation of such period.

The notice referred to in sec. 117 was served upon the defendants' solicitors on the 23rd December inst., and notified them that the sheriff had appointed the following Saturday, the 28th inst., for the striking of the said jury.

The plaintiff urges that Christmas Day, a legal holiday, intervening between the 23rd and 28th inst., did not count, and there remained only three full days instead of four as required by the statute, and I do not think there can be any doubt as to the correctness of his argument.

The plaintiff's solicitors notified the sheriff and the defendants' solicitors that they would not attend upon the appointment, as the notice was insufficient; the sheriff proceeded, however, and in the presence of the defendants' solicitor drew a list of forty special jurors in accordance (as he alleges) with said Act.

In view of the foregoing facts, I find that the notice served upon the plaintiff's solicitors on the 23rd December inst., and all proceedings taken thereunder, should be set aside, and that the costs incidental to this application be costs to the plaintiff in any event.

The defendants by special leave appealed, and the appeal was argued before FALCONBRIDGE, C.J., at Hamilton.

P. D. Crerar, Hamilton, for defendants. Rule 343 only applies to days fixed by the Rules, and does not extend to a period of time fixed by an Act of the Legislature.

D'Arcy Tate, Hamilton, for plaintiff. Section 127 of the Judicature Act constitutes a council of the Judges to consider