

Meredith, C.J.]

[Dec. 14, 1901.

NEWSOME v. MUTUAL RESERVE LIFE INSURANCE CO.

*Practice—Notice of trial—Service of—Letter wrongly addressed—Ratification.*

On the day prior to the last day for serving notice of trial, the plaintiff's solicitor, who lived in a county town, drew up a notice of trial, and copies of same, in three cases, which he directed to be forwarded to his Toronto agents, with instructions to serve and return with admissions of service; but, by a mistake in the office, the envelope was addressed to the defendant's solicitors in Toronto, and reached their office on the following morning, but did not come to the notice of the member of the firm who had charge of the defences therein until after four o'clock, when, on discovering that the letter was not addressed to his firm, he returned it with the notices to his St. Thomas agents, with instructions to return it to the plaintiff's solicitors, which was done.

*Held*, by MEREDITH, C. J., reversing the judgment of the Master in Chambers, that what was done did not constitute valid service of the notices on the defendants' solicitors, nor did the defendants' solicitors do anything to ratify such service.

*S. Alfred Jones*, for plaintiff. *Denison*, for defendant.

LOUNT, J.]

UNION BANK v. RIDEAU LUMBER CO. [Dec. 18, 1901.

*Trespass—Wrongful and wilful—Damages—Mode of assessment.*

Where, in an action of trespass, the judgment is that the trespass was wrongful and wilful, the assessment of damages must be on the basis of such finding, and not as if the trespass was done innocently or bona fide.

*J. T. Lewis*, for plaintiff. *G. Henderson*, for defendant.

Meredith, C.J.]

MCKAY v. TALBOT.

[Dec. 18, 1901.

*Division Courts—Motion for immediate judgment—Service with summons—Regularity of—Computation of time—Sundays and holidays—Enlargement—Waiver.*

A special writ of summons issued out of a Division Court was served on Friday, the 8th of November, returnable on the following Tuesday, the 12th, and with it was served a notice of motion for immediate judgment, also returnable on the 12th.

*Held*, that the notice was properly served, for there is nothing in s. 116 of Division Courts Act, R.S.O. 1897, c. 60, which requires that before such notice is given the time for the filing of a dispute notice should have first expired.

*Held*, also, that there were two clear days' notice of the motion for the King's birthday, and Sunday, which intervened, would not be excluded.