

order the appellant brings into the Master's office evidence that she has put herself in a position to restore the estate so far as she is bound to do so under the terms of the mortgage, she be admitted to prove her claim. The question of quantum will of course then come to be considered, and the mortgagee will be charged with such a sum as would have entitled her to release the 40 feet, i.e., with \$2,840. Against this she will be entitled to charge any disbursements properly made by Clare or herself in preserving the mortgaged property and allowable in such cases.

FALCONBRIDGE, C.J.—I concur. *Perry v. Barker*, supra, furnishes abundant authority for the declaration.

McPherson, Clark, Campbell & Jarvis, Toronto, solicitors for appellant.

Montgomery, Fleury & Montgomery, Toronto, solicitors for executors.

THE MASTER AT HAMILTON.

30TH DECEMBER, 1901.

FALCONBRIDGE, C.J.

7TH JANUARY, 1902.

HOLMAN v. TIMES PRINTING CO.

Special Jury—Notice of Striking—Time—Holiday.

Notice of striking a special jury under R. S. O. ch. 61, sec. 117, served on the 23rd December for the 28th December, is bad; Christmas Day is not to be reckoned in the four full days required: Rule 343.

Application on the part of the plaintiff for an order setting aside service of a certain notice served by defendants' solicitors upon plaintiff's solicitor on 23rd December, 1901, purporting to be in compliance with the provisions of R. S. O. ch. 61, sec. 117, and all proceedings taken thereunder subsequent to said notice, on the ground that the service of the said notice is insufficient and not a compliance with the requirements of the said section.

The facts appear in the judgment of the Master at Hamilton:—It appears from the affidavits and papers filed that the defendants on the 23rd day of December instant served a notice upon the plaintiff's solicitors, that they had sued out a ven. fac. jurs. in this action for the purpose of having a special jury struck herein, and that the sheriff of the county of Wentworth had appointed Saturday the 28th day of December instant, at half-past twelve p.m., for striking the said special jury.

Section 114 of ch. 61, R. S. O., enacts that any plaintiff or defendant in any case, excepting indictment for treason or felony, may in any such case triable by a jury have the