

WINCHESTER, Master.  
ROBERTSON, J.

MARCH 6TH, 1902.  
MARCH 19TH, 1902.

CHAMBERS.

REX EX REL. ROBERTS v. PONSFORD.

*Quo Warranto—Notice of Motion for Tuesday 24th February, by Mistake for Tuesday 25th February, Valid—Amendment.*

This was an application for an order to unseat the respondents, who had been elected aldermen of the city of St. Thomas.

On the 6th February, 1902, the relator, upon filing his affidavit and the affidavits of two others, etc., obtained a fiat to serve the notice of motion—upon his filing a sufficient recognizance as provided by the Municipal Act, R. S. O. 1897 ch. 223, sec. 220—for an order setting aside and declaring invalid and void the election or pretended election held on the 6th February, 1902, at the city of St. Thomas, under which election the respondents—eleven in all—had unjustly usurped the office of alderman in and for the city of St. Thomas.

Before serving the notice of motion, the relator's solicitor filled in the date upon which it was returnable as "Tuesday the 24th day of February, A.D. 1902." This notice of motion was served upon the respondents on the 15th February, 1902, and shortly thereafter it was discovered that a mistake had been made in describing the date as "Tuesday the 24th day of February," instead of "Tuesday the 25th day of February;" and on the 18th February a notice entitled in this matter and reading as follows:—"Take notice, that by a clerical error in the notice of motion served on you herein, it is stated that a motion will be made before the said Master in Chambers at Osgoode Hall in the city of Toronto, at eleven o'clock in the forenoon, on Tuesday the 24th day of February, 1902, instead of Tuesday the 25th day of February, 1902; and you are hereby notified that the day on which the said motion will be made is Tuesday the 25th day of February, A.D. 1902:"—was served upon a number of the respondents by the relator; and the remainder were served with same on the 20th, 21st, and 22nd days of February. This notice was signed by the relator John West Roberts, by his solicitor.

J. H. Moss, for the relator.

E. E. A. DuVernet, for the respondents.

THE MASTER IN CHAMBERS, after referring to *Batten v. Harrison*, 3 Bos. & Pull. 1. and *Eldon v. Haig*, 1 Chit. 11, held the notice valid for 25th February, and continued as follows:—

It was further argued by counsel for the respondents that there was no provision in the statute giving any