

THE MASTER:—The 10th May was the last day for service of notice of trial for the non-jury sittings at London commencing on 20th May. The notice in question was served after 4 p.m. on the 10th, though defendant's solicitor had been told earlier in the day that such notice would be given There was no admission of service given. The defendant at once served a jury notice, and moved to set aside the notice of trial for the non-jury sittings.

It is admitted that under Rules 344 and 538 (b) this notice was too late; but the affidavits in support of the motion do not negative the service upon defendant's solicitor of a regular and proper notice, which was said by Spragge, C., in *Scott v. Burnham*, 3 Ch. Ch. at p. 403, to be necessary. The present case is very similar in its facts to *Wright v. Way*, 8 P. R. 328, where *Scott v. Burnham* was followed and approved by Blake, V.-C. Unless these cases can be distinguished or have been overruled, they are binding on me. So far as I can see, they are binding. They are cited in *Holmested & Langton*, 3rd ed., pp. 569, 747, as existing authorities. *Bodine v. Howe*, 1 O. L. R. 208, and *McLaughlin v. Mayhew*, 5 O. L. R. 114, 2 O. W. R. 10, shew how similar cases are dealt with.

Plaintiff's jury notice will probably have the effect of preventing a trial at the non-jury sittings in any case. It would seem, however, that plaintiff can avoid any delay by availing himself of sec. 92 (1) of the Judicature Act, as the County Court sittings with jury will commence on 11th June.

The motion is therefore dismissed without costs. . . .

[Reversed by TEETZEL, J., 17th May, 1907.]