

In *Macrae v. News Printing Co.* (1895), 16 P.R. 364, where a jury notice was served in due time, but through inadvertence was not filed until the specified time had elapsed, it was held that there was power to make an order allowing it to stand as a good notice, and that such order should be made if the case was one proper to be tried by jury.

The provision relating to the giving of a jury notice had been changed since that decision (see the Judicature Act, R.S.O. 1914 ch. 56, sec. 56); but there was power to make such an order in a proper case; if there was that power, the litigant should not, where the action is prima facie one to be tried by a jury, be deprived at this stage of the proceedings of that right merely because of an inadvertent omission by his solicitor, where the opposing party is not prejudiced by the delay in giving the notice.

Giving the jury notice after the prescribed time was an irregularity; and the notice of motion to set it aside should be specific in setting out or referring to the irregularity complained of; failure to indicate the irregularity is a sufficient ground for a refusal of the order asked. A party moving against an irregularity must himself be regular, and is not entitled to indulgence.

As the matter had been presented, the Master's disposal of the motion was not merely one of discretion; had it been such, the Judge would hesitate to interfere. The proper order on the two motions was to allow the jury notice already filed and served to stand. The appeal should be allowed accordingly. When all was considered it was not a case for costs, either here or below.

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KELLY, J.

JULY 16TH, 1919.

CORRELL v. CORRELL.

*Husband and Wife — Alimony — Evidence — Adultery — Cruelty — Parties Assaulting each other — Quarrel Provoked by Wife.*

Action for alimony, tried without a jury at Sault Ste. Marie.

U. McFadden and E. V. McMillan, for the plaintiff.

J. L. O'Flynn, for the defendant.

KELLY, J., in a written judgment, discussed the evidence as to the alleged adultery and cruelty of the husband, the defendant. He found that the charges of adultery were not proved. There had been differences between the parties for almost the whole period of their married life—about 9 years. They had several