all or any class or classes of shops within the municipality shall be closed, and remain closed on each or any day of the week at and during any time or hours between seven o'clock in the afternoon of any day and five o'clock in the forenoon of the next following day.

Held, that the by-law in question was void for uncertainty by reasons of the exceptions it contained, and for delegation of the power of the Council to the Industrial Exhibition Association, which might hold an exhibition at any time it pleased, and thus indirectly determine the days when the shops might remain open.

Elwood v. *Bullock*, 6 Q.B. 382; *Re Kiely*, 13 O.R. 451, and *Regina* v. *Webster*, 16 O.R. 187, followed.

Appeal allowed, and conviction quashed without costs.

Munson, Q.C., for appellant.

Campbell, Q.C., for City of Winnipeg.

Culver, Q.C., for Retailer's Association.

Full Court.] [June 29.

ROBERTSON *v.* BRANDES.

Practice—Queen's Bench Act, 1895—Pending business—Jury trial.

This action was commenced before the Queen's Bench Act, 1895, came into force, and neither party had, according to the practice then in force, expressed an intention or made an application to have the case tried by a jury. The cause of action was not, before that Act came into force, but is now, one of those which by sec. 49 it is provided shall be tried by a jury. The plaintiff entered the record for trial at the Spring Assizes as a jury case, paid the jury fee of $25, and the case was accordingly tried by a jury who gave the plaintiff a verdict.

Counsel for defendant at the trial objected to the case being tried by a jury on the ground that Rule 983 (a) provided that the action should be continued up to the trial or hearing, according to the previous practice of the Court, and that, therefore, it should have been tried by a judge without a jury.

Held, on motion by defendant to set aside the verdict, that the proper construction of the words "up to" in Rule 983 (a) is that they are exclusive and not inclusive of the trial or hearing, and that the procedure adopted was therefore correct.

Application dismissed with costs.

Martin, and *Mathers*, for plaintiff.

Ewart, Q.C., for defendant.

Full Court.] [July 10.

HECTOR *v.* CANADIAN BANK OF COMMERCE.

Practice—Production of documents.

This was a rehearing of the order made by TAYLOR, C.J., an appeal from the Referee (noted ante, page 461.)

With reference to the paragraph in the affidavit of the bank manager on production referring to certain documents as follows: "The books of the said