

The Ontario Weekly Notes

VOL. XVI.

TORONTO, JULY 25, 1919.

No. 19

HIGH COURT DIVISION.

KELLY, J., IN CHAMBERS.

JULY 15TH, 1919.

WILSON v. TORONTO R.W. CO.

Jury Notice—Filing and Serving after Time for so Doing Expired—Judicature Act, sec. 56—Solicitor's Error or Omission—Motion to Strike out Jury Notice as Irregular—Failure to Specify Grounds in Notice of Motion—Order Validating Jury Notice—Costs.

Appeal by the plaintiff from an order of the Master in Ordinary, sitting in vacation for the Master in Chambers, striking out the plaintiff's jury notice.

Alexander MacGregor, for the plaintiff.
G. W. Adams, for the defendants.

KELLY, J., in a written judgment, said that prima facie the action was one to be tried by a jury. The plaintiff did not file and serve a jury notice within the time prescribed by the Rules, the omission being due purely to an oversight of his solicitor and not to intent. Later the plaintiff filed and served a jury notice. It was stated on the argument that the action had been set down for trial at the next jury sittings in Toronto.

The defendants moved to strike out this jury notice; and on the return of the motion the plaintiff moved on notice for an order that the jury notice be validated. The defendants' application was granted and the plaintiff's was dismissed; the plaintiff now appealed.

The defendants' notice of motion did not state, either expressly or by reference thereto in any affidavit or other instrument, the grounds upon which the motion was made, and the only documents proposed by the notice to be used on the application were the pleadings.