

The order allowing the service limited the time for entering appearance and delivering defence to 15 days, inclusive of the day of service. The notice of the writ and the statement of claim were served on defendants at their head office in New York on 27th December, 1902—in vacation. Judgment was signed on 19th January, 1903. The judgment recited that defendants had not appeared and had not delivered any statement of defence, and adjudged that plaintiffs recover \$2,033.33 and costs to be taxed. These costs were taxed at \$47.46, which indicated that the costs respecting the statement of claim were allowed. The period from the 27th December to the 6th January was not to be reckoned in the time allowed for delivering a statement of defence, and the order did not provide that it should be so reckoned. *Thompson v. Howson*, 16 P. R. 1, distinguished.

The judgment was therefore signed too soon.

Order made setting aside writ of summons and all subsequent proceedings with costs.

MEREDITH, C.J.

FEBRUARY 27TH, 1903.

TRIAL.

McAVITY v. JAMES MORRISON BRASS MFG. CO.

Patent for Invention—Trade Mark used in Connection with—License—Agreement—Construction—Declaration of Rights—Specific Performance—Injunction—Misconduct Disentitling Party to Equitable Relief.

The plaintiffs, the Hancock Inspirator Company, a manufacturing company having its head office at the city of New York, and T. McAvity & Sons, brass manufacturers carrying on business at the city of St. John, New Brunswick, sued the defendant company, brass manufacturers carrying on business at Toronto, in respect of two specific trade marks owned by plaintiff company, registered on 24th March, 1880, one consisting of the word "Inspirator" and the other of the words "Hancock Inspirator," as applied to the sale of injectors, and in respect of two patents of invention for improvements in injectors, of which the plaintiff company were the assignees. One of these patents (7011) was held to have become void under the provisions of sec. 28 of the Patent Act of 1872: *Mitchell v. Hancock Inspirator Co.*, 2 Ex. C. R. 539. On 16th May, 1901, an agreement was entered into between plaintiff company and plaintiffs T. McAvity &