

manifestly was that a suit in which a breach of warranty was in question should be tried by a jury.

*Held*, that a counter claim is not an action within the meaning of the Queen's Bench Act, 1895, not being a civil proceeding commenced by statement of claim, so that the defendant was not entitled to a jury by virtue of sec. 49, sub-sec. 1, and that no special ground was shown for an order under sub-sec. 3 for trial by jury. *Case v. Laird*, 8 M. R. 461; *Woollacott v. Winnipeg Electric St. Ry. Co.*, 10 M. R. 482, followed.

Application refused without costs.

*Wade*, for plaintiff.

*Howell*, Q.C., for defendant.

## Province of British Columbia.

### SUPREME COURT.

DRAKE, J.,  
In Chambers. }

Oct. 24.

CARSE v. TALLIARD.

*Practice—Order 12, Rule 19—Order 2, Rule 3—Summons to set aside writ and service.*

This was a summons to set aside the writ and service on defendant on the ground that plaintiff's address given on the indorsement was "Victoria, B.C.," without the name of the street and number of the house of his residence.

A preliminary objection was taken that under Order 12, Rule 19, the application should be made by motion and not by summons.

*Held*, following *Black v. Dawson*, 72 L.T. Rep. 525, that the proper and convenient practice is for the defendant in the first place to apply to the Judge at Chambers to set aside the order and service of the writ, from which order an appeal could be had.

*Held*, that the writ was not irregular as the indorsement followed Appendix A, part 1, No. 2, which (unlike No. 1) does not require after the name and address for service of the plaintiff's solicitor the name of the street and number of the house of the plaintiff's residence.

No order—costs to be costs in the cause.

*Gordon Hunter*, for plaintiff.

*S. Perry Mills*, for defendant.

## North-West Territories.

### SUPREME COURT.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SCOTT, J.]

[Nov. 3.]

REGINA v. MACDONALD.

*Criminal law—Larceny—Jury—N. W. T. Act.*

The accused was charged under section 326 (6) of the Criminal Code, with stealing a post-letter from a post office, created an offence by 38 Vict., ch. 7, sec. 72 (3).