

have proceedings by default or *ex parte*, but not an action in which issue is really joined.

"It is true that paragraph 5 of article 214 C. P. might have been better drawn, but the last part of this paragraph indicates what one ought to understand by the word "foreclosure," "or to file a reply to an answer." This part of the phrase implies that it is necessary that a defence should have already been filed. Besides, even if the first part of the phrase did not indicate the intention of the Legislature, we cannot suppose that the latter would have meant to pass an absurd law. There cannot be a contestation if the action was not contested.

"The majority of the Court expresses no opinion on the other point submitted—that is to say, whether the consent to the filing of a plea containing an option for a jury trial, where the right to a jury trial is lost, can revive this right. However, I wish to say that my personal opinion is that consent to file a plea after the delays cannot revive the right to a trial by jury for the party who has lost it.

"The appeal is dismissed, and the judgment of the Court below is affirmed, with costs in both Courts against appellant."

Lavergne, J., was of the opinion that consent to the filing of the plea was consent to the option for a trial by jury contained in the plea.

Perron, Taschereau, Rinfret and Genest, attorneys for appellants.

Brown, Montgomery and McMichael, attorneys for respondents.

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NOTES.—*Doherty, J.*, 1903, *Matthews vs Town of Westmount*, 6 R. P., 52 A case is ready for trial on the day when issue is joined, either by the filing of a pleading or the foreclosure from filing the same.