

Appeal by defendants against that part of the judgment which declared their mortgages void dismissed with costs.

Ewart, Q.C., for plaintiffs. Mulock, Q.C., for defendants.

Full Court.]

QUINTAL v. CHAIRMERS.

[July 9.

Practice—Right to reply—New trial.

This was an action before a judge and jury in which the plaintiff claimed damages on a sale of a number of car-loads of oats by sample on the ground that the goods delivered were not equal to sample. The plaintiff appealed from the verdict, which was in favor of defendants, and asked for a new trial on several grounds. The judgment of the Court, which was delivered by KILLAM, J., dwells mainly on a discussion of the evidence, but the case should be noticed here as to the effect on the trial of the judge's refusal to allow the plaintiff's counsel to reply, the defendants having adduced evidence, although only by way of putting in certain documents on the cross examination of one of the plaintiff's witnesses.

Held, (1) following Best on the Right to Begin, s. 132, and *Rymer v. Cook*, M. & M. 86n., that plaintiff's counsel has the right to reply if defendant adduces any kind of evidence, whether verbal or written, or ever so trifling or insignificant. (2) The error of the judge in refusing to allow the reply should only entitle the party to a new trial if it appeared that the course of justice had been thereby interfered with and some substantial injury done to the party complaining: *Doe d. Bather v. Brayne*, 5 C.B. 655; *Geach v. Ingall*, 14 M. & W. 95. (3) In the present case the plaintiff could suffer nothing from the order in which the jury were addressed, as his evidence was weak and the defendants were entitled to the verdict, and that a new trial should not be granted. Application dismissed with costs.

Howell, Q.C., for plaintiff. Ewart, Q.C., for defendant.

Province of British Columbia.

SUPREME COURT.

Irving, J.]

RE TEMPLETON.

[Aug. 17.

Life policies—Succession duties—Beneficiary domiciled in B. C.

The proceedings herein were commenced by originating summons for an order that probate of the will of William Templeton, deceased, be issued to his executrix, and for the determination of the question as to whether or not the Succession Duty Act applies to insurance moneys where the same are specifically disposed of under the policies, and also where policies were made payable out of the Province, payment of the duty having been demanded by the registrar.

Under R. S. B. C., c. 175, it is provided (subject to certain exceptions which need not here be referred to) that all property situate within this Province passing by will or intestacy . . . shall be subject to a suc-