

even a joint and several claim. See Holmsted's Judicature Act, 4th ed., p. 878. Appeal dismissed with costs in the cause to the plaintiffs in any event. J. A. McEvoy, for the defendants. W. Lawr, for the plaintiffs.

NEELY'S LIMITED v. DREDGE — DREDGE v. NEELY'S LIMITED —
BRITTON, J., IN CHAMBERS—DEC. 2.

Jury Notice—Motion to Strike out — Powers of Judge in Chambers—Discretion—Rule 398.]—Motion by Neely's Limited in each case to strike out the jury notice served by Dredge. The learned Judge said that the application was made to him as a Judge in Chambers to strike out the jury notice. Rule 398 puts upon such a Judge the responsibility of saying how, in his opinion, the case should be tried; and, in the opinion of the learned Judge, these cases should be tried without a jury. While the Rule compels the Judge in Chambers to take the responsibility and decide, his decision in no way prevents the trial Judge from disregarding the order of the Judge in Chambers. The trial Judge may direct a trial by jury, although the notice has been struck out, or he may strike out the notice, although the Judge in Chambers has refused to do so. The applicants relied upon Rule 258, as well as upon Rule 398; but the learned Judge acted under Rule 398. He referred to *Gerbracht v. Bingham* (1912), 4 O.W.N. 117, as expressly in point, and binding upon him. Order made striking out the jury notice in each case; costs to be costs in the cause. J. W. Pickup, for the applicants. G. T. Walsh, for Dredge.