

both in that country and England, cannot be considered to be first published, or even simultaneously published, in England, so as to come within the provisions of the Imperial Act, 5 & 6 Vict., c. 45, requiring first publication in the United Kingdom to entitle the publishers to British copyright.

*C. D. Scott*, for plaintiffs. *Ryckman*, and *C. W. Kerr*, for defendants.

Meredith, C.J.]

[Dec. 30, 1902.

*QUA v. CANADIAN ORDER OF WOODMEN.*

*Pleading—Leave to deliver reply—Time—Jury notice—Discretion—Notice of trial—Close of pleadings.*

Where an order was made by the Master in Chambers allowing the plaintiff to deliver a reply after the regular time for replying had expired, a Judge refused to interfere with the discretion exercised, although the reply was open to the objection that all that it sought to put in issue was already in issue by the statement of defence, the purpose being to enable the plaintiff to file a jury notice, and the case being one in which the plaintiff should be allowed to file a jury notice, and thus leave it to the discretion of the Judge at the trial to say whether it should be tried with or without jury.

The pleadings were not closed until the lapse of four days (excluding the Christmas vacation) after the delivery of the reply, or until the defendants had joined issue, and a notice of trial given before the lapse of that time, and without a joinder of issue having been delivered, was irregular; and the Judge had no power to allow the notice of trial thus irregularly given to stand.

Rules 257, 258, 262, considered.

*Beaumont*, for plaintiff. *J. H. Moss*, for defendants.

Meredith, C.J.]

IN RE HOLDEN.

[Jan. 7.

*Will—Speaking from death—Stock in trade—"New"—Household furniture—Books.*

A testator provided in his will as follows: "I give, devise, bequeath all my real and personal estate of which I may die possessed of or interested in in the manner following: That is to say, first, I give to my sister Eliza Jane Isaac the house and land with all household furniture and all the stock and trade now in house and out of house with all book accounts now due me wherever found for her own use and benefit forever, and out of this she shall pay to my brother Benjamin Farnsworth Holden one hundred dollars, also she shall pay one hundred dollars to my brother William Jones Holden." At his death, and when he made the will, the testator was