

for delivering one had expired; and motion by defendants to set aside as irregular a notice of trial served by defendants within four days after the delivery of the reply, no joinder of issue having been delivered.

The action was upon a policy of life insurance. The defendants set up that the policy was avoided by untrue representations made by the insured in his application for the insurance. The reply was that the statements alleged to be untrue were made innocently and were not material.

J. H. Moss, for defendants.

R. B. Beaumont, for plaintiff.

MEREDITH, C.J.—I do not think I should interfere with the discretion exercised by the Master in Chambers. It may be that the reply is somewhat open to the objection that all that it seeks to put in issue was already in issue by the statement of defence; still the purpose of it was to enable the plaintiff to file a jury notice, and I think it is a case in which plaintiff should have that right. . . . Some Judges may think it a case which should be tried by a jury. . . . What I am doing will leave it quite open to the Judge at the trial to exercise his discretion and try the case without a jury, if he thinks it ought to be so tried.

With regard to the other matter, I think Rules 257 and 258 make it reasonably clear that Mr. Moss's contention is right. The reply could have been delivered without leave within the time prescribed by the Rules. As I understand Rule 257, read in connection with Rule 262, which provides that the pleadings are to be deemed to be closed as soon as either party has joined issue simply, it is clear, I think, that the defendants had four days within which, if they chose, to file a joinder of issue, or, if they found it necessary to do so, to apply for leave to deliver a further pleading; they had, however, in any case, the right to file a joinder of issue within the four days.

The pleadings were not, I think, therefore, closed until the lapse of the four days, or until they had joined issue, and notice of trial having been given before the lapse of that time, and without a joinder of issue having been delivered, was irregularly given.

I have no power to allow the notice of trial to stand; that would be, in effect, to disregard the cases which hold that there is no power to abridge the time allowed defendant unless he is in such a position that terms may be imposed upon him.

Appeal dismissed, and notice of trial set aside. Costs in the cause.