

A defendant, by simply taking issue upon the statement of claim, closes the pleadings, and may then serve notice of trial.

*Hare v. Cawthrope*, 11 P.R. 353, followed.

*W. H. Blake* for the plaintiff.

*Aylesworth*, Q.C., for the defendant.

MEREDITH, J.]

[Nov. 28.

IRWIN T. TURNER.

*Pleading—Counterclaim—Joinder of issue—Defence—Reply—Close of pleadings—Notice of trial—Rules 379-383—"Plaintiff."*

A pleading delivered by the defendants to a counterclaim, in answer thereto, whether by the original plaintiff or by added defendants, which denies the allegations in the counterclaim, puts the plaintiff to the proof thereof, and submits that the counterclaim should be dismissed, is not a joinder of issue, but a statement of defence to the counterclaim; the plaintiff by counterclaim has, by the Rules, three weeks to reply thereto; and the pleading, at least *quoad* the counterclaim, are not closed until after the lapse of three weeks, or until the plaintiff, by counterclaim, has joined issue.

Notice of trial set aside where given by the original plaintiffs after the lapse of four days from the delivery of such a pleading, no subsequent pleading having been delivered.

Construction of Rules 379-383.

*Hare v. Cawthrope*, 11 P.R. 353, distinguished.

*Irwin v. Brown*, 12 P.R. 639, overruled.

*Quere*, whether "plaintiff" in Rule 381, does not include a plaintiff by counterclaim.

*B. Morton Jones* for the plaintiffs.

*W. H. Blake* for the defendants.

STREET, J.]

[Nov. 28.

IN RE VILLAGE OF PRESTON AND KLOTZ.

*Costs—Scale of—Arbitration—Direction of arbitrators—Municipal Act, 1892, s. 309—Reference back.*

Where, upon an arbitration under s. 385, *et seq.*, of the Municipal Act, 1892, the arbitrators made their award and directed that the costs should be paid by the landowners, but did not fix the amount nor direct on what scale they should be taxed, as required by s. 399:

*Held*, that there was no authority for their taxation either up the High Court or County Court scale.

But, *sensu*, that, upon a proper application, the award would be referred back to the arbitrators to complete it in the matter of costs.

*J. H. Moss* for the landowners.

*DuVernet* for the corporation.