

The plaintiff on 7th instant gave notice of trial for the non-jury sittings to be held next week, and on 9th instant defendant served a jury notice, which prevents the case being set down. Plaintiff now moves to set the jury notice aside as irregular.

The cause was at issue in the Surrogate Court on 20th November, and, if the words of the order are to be construed in their natural sense, the jury notice was too late. Seeing what was stated in the affidavit of defendant's solicitor, it is unfortunate that the point was not made clear in the order. But, looking at the Surrogate Courts Act, R. S. O. 1897 ch. 59, sec. 35, it would seem to be open at any time for either party in such a case as the present to move for a jury. But until that has been done the language of the order seems to make the jury notice irregular, and it must be set aside and the plaintiff be at liberty to set the case down for the sittings on 19th instant. This will be, of course, without prejudice to any application by the defendant to the trial Judge or otherwise as she may be advised. Costs in the cause.

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MULOCK, C.J.

DECEMBER 13TH, 1907.

TRIAL.

DOCKER v. LONDON-ELGIN OIL CO.

*Landlord and Tenant—Lease—Right to Drill for Oil—Construction of Lease—Covenants—Breach—Commencement of Operations—Alternative Payment of Rent—Forfeiture—Relief—Ceasing to Operate—Payment into Court—Costs.*

Action for a declaration that a certain lease of land made by the plaintiff to one Steele, and by the latter assigned to the defendants, was void.

C. St. Clair Leitch, Dutton, and J. C. Payne, Dutton, for plaintiff.

J. B. McKillop, London, for defendants.