demand that the principal shall undo what he himself has done, or require him to answer for the unauthorized act of his agent.*

On the other hand, it is urged that if he adopts the act of the agent in part, he must adopt it *in toto*, and by electing to retain the proceeds he ratifies every means by which those proceeds were secured; that he has enabled his agent to perpetrate a fraud upon an innocent person, and he must, therefore, place the latter in *statu quo*, or become accountable to him for the methods, by which he was relieved of his money. We see more reasoning in the former arguments than in the latter, while an impulsive conclusion would recognize the greater justice of the latter position.† —*Central Law Journal.*

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

COUNTY COURT OF SIMCOE.

MOSES V. SIMPSON.

Right to trial by jury.

In Common Law cases, the parties to the suit are entitled to have a jury, and they should not be deprived of this right under the powers given by R. S. O., cap. 50, sec. 255, except strong grounds are shewn.

[Barrie.

The plaintiff's claim was on a note, and the defendant resisted payment on the ground that he gave the note to the plaintiff with the understanding that his wife was to join in it, otherwise the money would not be advanced to him and the note would be returned; that his wife refused to sign the note, and consequently he could not obtain the money on it, yet the plaintiff retained the note and insisted on payment.

The defendant gave notice for a jury, and the plaintiff now moved to strike out the notice on the following grounds:—

1st.—The plaintiff is a foreigner not well acquainted with the English language, and he fears from this cause his conduct in the box as a witness, on his own behalf, will appear to the jury as unwillingness on his part to tell the truth.

2nd.—That the plaintiff is a Jew, and he fears the jury will be prejudiced againt him on this account.

3rd.—That the note bears fifteen per cent. interest, and the jury may consider the rate extortionate and be prejudiced against him on this ground also.

Strathy, for plaintiff.

Pepler, for defendant.

BOYS, J. J.—The action may be called a purely Common Law one, and consequently following the decisions in *re Martin*, L. R. 20 Chy. D. 365; *Wedderburn* v. *Pickering*, L. R. 13 Chy. D. 771, and *Bank of British North America* v. *Eddy*, 9 P. R., 468, either party is entitled to have a jury; as Jessel, M. R. calls it, it is a Common Law right and ought not to be taken away without good cause, the *onus* being on the party asking to have the jury notice struck out. If there are special grounds rendering it desirable to try the action before a judge without a jury, then, and then only, should an application such as this be granted. Are there such special grounds shewn in this case? It seems to me there are not. I do not think there is any prejudice in this country against foreigners, nor can I believe that if the plaintiff hesitates in the witness box owing to his imperfect knowledge of the English language, that this will set the jury against him. Happily, in this country, his being a Jew will not be against him, and I fear the rate of fifteen per cent. interest on an unsecured note is too common an occurrence to attract much attention. All these grounds are too slight to call for the exercise of that discretion which judges have, under cap. 50, sec. 255, R. S. O., in this connection.

When actions are brought against corporations this discretion has been often exercised, owing to the well-known inclinations of juries to give such bodies scant justice: See *McGunninghal* v. *G. T. R. Co.*, 6 Pr. R. 209; *Nelles* v. *G. T. R. Co.*, 13 L. J. N. S. 199; *Morris* v. *City of Ottawa*, 13 L. J. N. S. 200; but in the face of the English cases cited and the decision of Boyd, C., in *Bank of British North America* v. *Eddy*, following them, I do not feel that, in the present case, I should exercise my discretion in the manner asked for. If after a fair trial there is reason to believe the plaintiff's fears have been realized, a new trial will probably be granted and without a jury.

The summons must be dismissed with costs in the cause to the defendant in any event.

* Croom *v.* Swan, 1 Fla. 211; Graul *v.* Strutzel, 53 Iowa, 712; See Cooley *v.* Perrine, 41 N. J. Law, 322, 331; Coombs *v.* Scott, 12 Allen, 493; Smith *v.* Tracy, 36 N. Y. 79; Gulick *v.* Gover, 33 N. J. L. 463.

† Lane *v.* Dudley, 2 Murphey, 119; Coleman *v.* Riches, 29 Eng. L. & Eq. 326; See Helyear *v.* Hawke, 5 Esp. 72; Eadie *v.* Ashborough, 44 Iowa. 519.