

money paid, a complete answer would be furnished by the production of the documents; in other words, this action is one which could not "have been formerly maintained in any Court but the Court of Chancery:" see per Patterson, J.A., in 11 P. R. at p. 75. "The defendant could not successfully have demurred to a bill in the Court of Chancery claiming the relief that the plaintiff seeks in this action:" *Farran v. Hunter*, 12 P. R. 324, at p. 326.

I am of opinion that sec. 103 applies; and that the case should not be tried by a jury.

In any event the jury notice would, I think, be struck out upon application to a Judge in Chambers.

The jury notice will be struck out, and the plaintiff will pay the costs of motion and appeal in any event.

FALCONBRIDGE, C.J.

APRIL 17TH, 1909.

WEEKLY COURT.

RE COMMERCIAL TRAVELLERS MUTUAL BENEFIT
SOCIETY AND TUNE.

Life Insurance—Indorsement of Policy in Favour of Beneficiary for Value—Advances to Insured—Debt Barred by Statute of Limitations—No Answer to Claim on Security—Payment of Debt—Evidence—Onus—Right of Creditor to Insurance Moneys as against Executrix of Insured.

Motion by the Toronto General Trusts Corporation, the executors of Henry James, upon an originating notice, for an order determining the right of the applicants to a fund arising from an insurance upon the life of Thomas Tune, deceased.

E. R. Read, Brantford, for the applicants.

U. A. Buchner, London, for Lillian Tune, executrix of Thomas Tune.

FALCONBRIDGE, C.J.:—Thomas Tune was insured in the above society, under certificate bearing date 8th September, 1882, whereby the society promised and agreed "to pay out of its death funds, and out of any moneys realised from