

DECEMBER 9TH, 1907.

DIVISIONAL COURT.

BRYANS v. MOFFATT.

*Jury Notice—Motion to Strike out—Discretion of Judge—
Exercise before Trial—Place of Trial outside of Toronto
—Equitable Defence—Pleadings.*

Appeal by defendants from order of BOYD C., in Chambers, striking out defendants' jury notice.

The action was brought by the executors of the will of Robert Stewart, deceased, against Andrew Moffatt and Elizabeth Moffatt, his wife, to recover \$1,000 principal and \$50 interest upon a covenant by the defendants for payment to the testator of the moneys secured by an indenture of mortgage dated 5th October, 1905.

The defendant Andrew Moffatt, by his statement of defence, admitted that the mortgage moneys, amounting to \$1,000 and interest, had not been paid; and said (2) that on and prior to the 25th September, 1905, the deceased Robert Stewart was the owner of 200 acres, and prior to that date, being anxious to dispose of the same, proposed to the defendant Andrew Moffatt that he should agree to purchase the lands at the nominal price of \$4,500, and that he (Stewart) would convey the same to him (Moffatt) at that figure, and that he (Moffatt) should raise by way of mortgage on the security of the lands \$3,500 and pay the same to Stewart, and that he (Moffatt) should give to Stewart security that he would pay to Stewart an annuity of \$50 per annum, that amount being fixed as interest at the rate of 5 per cent. per annum on \$1,000, but that on the death of Stewart there should be no obligation resting on Moffatt to pay the \$1,000, or any part thereof, and Moffatt accepted the proposal; (3) that Moffatt was ignorant in matters of conveyancing, and had had little or no experience in matters of business, and trusted entirely to Stewart to carry out the proposal and acceptance according to the terms and conditions thereof, and had no independent or other advice; that Moffatt was instructed to present himself and his wife to an unlicensed conveyancer, who was not a solicitor, selected by Stewart to carry out the contract, and