

CARTWRIGHT, MASTER.

OCTOBER 1ST, 1903.

CHAMBERS.

ONTARIO BANK v. STEWART.

Jury Notice—Motion to Strike Out—Equitable Issues Raised by Defendant.

Motion by plaintiffs to strike out a jury notice. The action was brought to recover \$1,450, the amount of two promissory notes. The defendant counterclaimed to have the notes sued on delivered up and to restrain the plaintiffs from making any use of them. The defendant served the jury notice which plaintiffs moved to strike out for irregularity because the issues to be tried were equitable.

C. A. Moss, for plaintiffs.

Grayson Smith, for defendant.

THE MASTER held that the statement of claim clearly and beyond question raised none but legal issues, and a defendant who raises equitable issues does not thereby debar himself and the plaintiff from giving a jury notice. *Sawyer v. Robertson*, 19 P. R. 172, *Bingham v. Warner*, 10 P. R. 621, *Toogood v. Hindmarsh*, 17 P. R. 451, *McMahon v. Lavery*, 12 P. R. 62, *Temperance Colonization Society v. Evans*, 12 P. R. 48, and *Connec v. Canadian Pacific R. W. Co.*, 12 A. R. 744, referred to. Motion to strike out jury notice dismissed. Costs in the cause.

FALCONBRIDGE, C.J.

OCTOBER 1ST, 1903.

WEEKLY COURT.

ONTARIO POWER CO. v. WHATTLER.

Partition—Reference—Right to Sale of Whole Property — Partition of Part and Sale of Part.

Appeal by defendants Whattler and Hewson from the report of a local Master. The order of reference authorized a partition of part and sale of the remainder of the lands in question.

C. A. Masten, for appellants.

W. Cassels, K.C., for plaintiffs.

FALCONBRIDGE, C.J.—Defendants may have a sale or partition of the 6 1-2 acres to be vested in them, if they choose. In the absence of evidence to the contrary, the aliquot share of the plaintiffs set apart by the report is manifestly the least