

bers striking out a jury notice filed by defendant in an action of covenant upon two building society mortgages. Defence that the defendant was induced to execute the mortgages without reading them, or understanding their true effect, by false and fraudulent representations.

W. H. Bartram, London, for defendant.

D. W. Saunders, for plaintiffs.

MACLENNAN, J.A.—The ground of the present application expressed in the notice of motion, and argued by Mr. Bartram, is that the decision involves questions of law and practice upon the construction of sec. 110 of the Judicature Act, in which there have been conflicting decisions or opinions by the High Court of Justice and by the Judges thereof. This ground is the only one upon which, under sec. 77 of the Judicature Act, it was open to him to rest his motion, for the case clearly does not fall within any of the sub-sections of sec. 4, unless it falls within (c).

Mr. Bartram cited the following cases: Bristol, &c., Co. v. Taylor, 15 P. R. 310; Hawke v. O'Neill, 18 P. R. 164; Bank of Toronto v. Keystone Fire Ins. Co., 18 P. R. 113; and Sawyer v. Robertson, 19 P. R. 172.

I have examined these cases and also those cited by Mr. Saunders: *Lauder v. Didmon*, 16 P. R. 74; *Regina v. Grant*, 17 P. R. 165; *Toogood v. Hindmarsh*, 17 P. R. 446; *Skæ v. Moss*, 18 P. R. 119.

The only conflict of decisions which I find in these cases is between *Bank of Toronto v. Keystone Fire Ins. Co.*, decided by a Divisional Court on 4th May, 1898, and the earlier case of *Skæ v. Moss*, decided by a Divisional Court in February, 1896, the latter case not having then been reported, and not having been cited in the subsequent case. The point decided in those cases, however, has no bearing upon the present, that point having been whether a Judge at the trial has power to strike out a jury notice, and to transfer the action for trial at the non-jury sittings.

The power of a Judge in Chambers under sec. 110 to strike out the jury notice has never been doubted in any case, although Street, J., in one case expressed the opinion that in general it ought not to be done. But that opinion does not appear to me to be a conflict of decisions or opinions within sub-sec. (c) of sec. 77 (4) of the Act.

The motion will be refused with costs.

W. H. Bartram, London, solicitor for defendant.

Hellmuth & Ivey, London, solicitors for plaintiffs.