

damages for assault, if this would be accepted as entitling the plaintiff to retain the jury notice; but this was not accepted by the defendant; and the motion was disposed of upon the original pleadings. The learned Judge said that in a clear case the question whether an action should be tried with or without a jury should be determined at as early a stage as possible. An action for malpractice is usually to be tried without a jury: *Town v. Archer* (1902), 4 O.L.R. 383; *Hodgins v. Banting* (1906), 12 O.L.R. 117; *Gerbracht v. Bingham* (1912), 4 O.W.N. 117. Questions involving scientific investigation are not usually tried with a jury: *Swyny v. North-Eastern R.W. Co.* (1896), 100 L.T. Jour. 389, 390. But this action was not for malpractice alone; and it was a case in which the discretion as to the mode of trial should be exercised by the trial Judge. Application enlarged before the Judge at the trial. A. W. Langmuir, for the defendant. R. U. McPherson, for the plaintiff.

---

MILLS v. TIBBETTS—LENNOX, J., IN CHAMBERS—OCT. 28.

*Parties—Mortgage Action—Addition of New Defendants—Proposed Parties not Notified.*]—Motion by the defendants for an order adding one Beatty and two other persons as defendants to the action, which was brought upon a mortgage made by the defendants, described as trustees, to the plaintiff. The defendants contended that the provisions of the mortgage, including the covenants entered into by the defendants, should be enforced against the proposed new parties as well as against the original defendants. None of the proposed parties had been served with notice of the motion; but the motion was opposed by counsel for Beatty, who happened to be in Chambers when the application was made. No objection was offered by counsel for the plaintiff. The learned Judge said that he saw no justification for such an order. Motion dismissed, with costs, if demanded. H. A. Tibbetts, for the defendants. A. D. George, for the plaintiff, A. G. Murray, for Beatty.

---

EVERY & SON v. PARKS—CLUTE, J.—OCT. 29.

*Damages—Chattel Mortgage—Seizure and Sale of Goods—Part Payment by Assignment of Securities—Acceptance—Find-*