to J. H. S. "with the additional proviso that when the said lands were reconveyed, the defendant . . . was to be released from his liability upon the . . . accommodation endorsements . . ." T. McConnell went on collecting the rents for a time when the defendant notified the tenants not to pay him any more and "from that time forward the . . . defendant . . . has asserted all the rights of a mortgagee (sic) in possession." T. McConnell asked the defendant to convey the property to a purchaser and he "refused so to convey and alleged that his father must first discharge the said liability of the defendant in respect of the said notes;" but he several times agreed to convey upon payment of the amount charged upon the lands in favour of himself and S. C. S., amounting to less than $9,000. The plaintiff further alleges that the conveyance was procured by duress and misrepresentation. The defendant sold a part of the land to W. W. P. W. for $12,500; but he holds the rest of the property still. T. McConnell died leaving a widow and issue, the plaintiff, the defendant and three others—the plaintiff took out letters of administration. She sues on behalf of herself and all other the heirs-at-law of T. McConnell, and claims: (1) "a declaration that the defendant . . . holds the said lands as equitable mortgagee thereof from his father the said T. McConnell;" (2) an accounting as such mortgagee in possession; (3) sale and division amongst parties entitled; (4) or partition; (5) declaration as to the rights of all parties; (6) costs, and (7) general relief.

The defendant denies everything, claims estoppel against T. McConnell, etc., by reason of illegality of his alleged scheme and claims that the conveyance to him was intended to be an absolute conveyance.

A motion is made by the defendant to strike out the jury notice. The defendant has a conveyance of the property in form absolute, it is obvious that to obtain any kind of relief the plaintiff must have a declaration that the defendant is trustee or mortgagee. That kind of declaration never could be had from a common law Court and it was necessary to apply to the Court of Chancery—the case accordingly comes within sec. 103 of the O. J. A.; and the jury notice must be set aside, costs to the defendant only in the cause.

The same result would have followed had it been necessary only to apply the new rule 1322.

Bissett v. *K. O. T. M.* (1912), 22 O. W. R. 89.