

HON. MR. JUSTICE RIDDELL.

OCTOBER 17TH, 1912.

CHAMBERS.

ROSCOE v. McCONNELL.

4 O. W. N. 126.

Trial — Jury Notice — Action for Declaration of Trust in Respect of Land — Exclusive Jurisdiction of Chancery — Ontario Judicature Act, s. 103 — Striking out Notice.

RIDDELL, J., struck out a jury notice in an action for a declaration that a conveyance to defendant absolute in form was made to him only as trustee or mortgagee, on the ground that the relief sought was equitable only and as such covered by sec. 103 of the Judicature Act.

Costs to defendant in cause.

Motion by the defendant to strike out the jury notice filed and served by the plaintiff.

J. Grayson Smith, for motion.

J. P. MacGregor, contra.

HON. MR. JUSTICE RIDDELL:—The statement of claim sets out that T. McConnell, the father of the parties, was in his lifetime the owner of certain lands in Toronto; that suffering heavy losses he was forced to have "the lands he bought and sold in his . . . real estate business, held in the names of various nominees, as trustees for him, pending their resale; that he bought the lands in question and put them in the name of one J. H. S. an employee of his as trustee for him—a mortgage was made by J. H. S. to S. C. S., and the proceeds applied in improving the property, building on it, etc. The mortgage was collateral to certain notes made by T. McConnell upon which his son the defendant was also liable; and the defendant persuaded his father T. McConnell to have J. H. S. convey to him, the defendant, the said lands as security against his liability on the notes. This was done, S. C. S., who is a solicitor preparing the conveyance—it is claimed (somewhat loosely) that this was "for the purpose of making the eldest son (the defendant) holding trustee for him (T. McC.) instead of the said J. H. S., until the said houses could be sold and the said advances repaid when the father expected to be able from the profits to clear off all his old obligations and hold the remainder of the lands himself." The plaintiff claims that this conveyance though absolute in form was to have the same effect as that