

whether in town or country, where the case is one that, in the opinion of the Judge before whom the motion to strike out the jury notice comes, would be tried without a jury.

I think the Court is bound to take notice of the fact that keeping juries waiting while sometimes very long cases to be tried without a jury are going on, is a grave injustice to the county, and the Court ought to endeavour, if it can be done without a denial of any substantial right to the litigants, to avoid that expense being incurred.

It is not necessary for the purposes of this case to lay that down as the practice to be followed, because it seems to us that we ought not to interfere with the discretion which the learned Chancellor exercised. It is very doubtful whether the defence which is sought to be set up would be admissible under what was formerly the plea of non est factum, and I am inclined to think that the only remedy the defendants would have, if they are able to make out what they set up, would be obtainable only by rectification of the instrument sued on, in which case a jury notice would not be proper.

It would be highly unsatisfactory in a case of this character, where there is a writing, and one of the parties to the transaction is dead, and the sole defence is that that writing does not express the true agreement, that the defendants never intended to sign such an instrument as was executed by them, that that question should be tried by a jury.

We think that the Chancellor exercised a proper discretion in striking out the jury notice, and the appeal will be dismissed with costs to the plaintiffs in any event of the action.

BOYD, C.

DECEMBER 10TH, 1907.

WEEKLY COURT.

T— v. B—.

*Marriage—Action for Declaration of Nullity for Impotency of Wife—No Jurisdiction in Court to Entertain.*

Pursuant to an order, the question of the jurisdiction of the Court to entertain an action to have a marriage declared null and void, was argued as a preliminary question of law in the nature of a demurrer.

C. W. Thompson, for plaintiff.

H. W. Mickle, for defendant.