BRITTON, J.:—The plaintiffs claim, inter alia, that an agreement between the defendant Lovell and the Dominion Brewery Co., dated 13th February, 1907, for the sale and transfer of the brewery property therein described, should be set aside as fraudulent and void as against plaintiffs, and that plaintiffs be declared to be entitled to a one-eighth share each in said property, etc., etc.

Looking at the pleadings, and reading the judgment of Riddell, J. (ante 203), upon a motion to compel answers by some of the defendants upon examination for discovery, and considering all that was urged by counsel upon the argument, I am unhesitatingly of the opinion that the issues herein should be tried without a jury. In any view of the case, I cannot think that a Judge in dealing with any of the alternative claims of the plaintiffs would be assisted by attempting to get the findings of a jury upon the issues of fact.

It is plainly a case in which a Judge at the trial, unless for some special reason to the contrary, not now appearing, would strike out the jury notice. That being so, and as the venue is laid in Toronto, I must follow Montgomery v. Ryan, 13 O. L. R. 297, 8 O. W. R. 855. This case is expressly in point.

Order to go striking out jury notice. Costs in the cause.

RIDDELL, J. OCTOBER 18TH, 1907.

TRIAL.

HUNTON v. COLEMAN CO.

Contract—Work and Labour—Construction—Rate of Payment—"Clear" — Wages — Waiver — Counterclaim—Damages—Reference—Costs.

Action to recover a balance of the contract price for work done by plaintiff for defendants. Counterclaim for damages.

S. A. Jones, for plaintiff.

A. G. Slaght, for defendants.

RIDDELL, J.:—I find as fact that the plaintiff had agreed with the manager of the defendant company to sink two shafts straight down 5 ft. x 7 ft. clear and 50 ft. deep, for $25 per foot: that, upon being shewn the locus of the two