allowed to proceed, as the whole burden of proof is on Mr. Hall. Although the statement of defence in the first action commences with a denial of the plaintiff's title, yet, as it continues, it admits his title, and states an agreement of plaintiff to sell and delivery of possession by him to defendants. There is no allegation of an agreement in writing, and Berry relies on this as a defence, under the Statute of Frauds, to the second action. It is, therefore, clear that Hall must give such evidence as will entitle him to a judgment requiring plaintiff to complete the sale, and that, if this cannot be adduced, the plaintiff must succeed. The real dispute seems to be as to certain alterations and improvements which Hall alleges Berry was to make, and which Berry repudiates; but Hall must prove his right to retain possession and to have a conveyance if Berry refuses to carry out the sale.

The case of Holmes v. Harvey, 25 W. R. 80, seems to have proceeded on the ground that actions for specific performance were at that time assigned to the Chancery Division, so that the judgment has no application to our practice.

The order will be to stay the first action, and let the whole question be tried in the other, which should be so expedited by both parties that it can be set down at the October sittings. The costs of this motion will be in the cause, and those of the first action will abide the result of the second action.

SEPTEMBER 19TH, 1907.

DIVISIONAL COURT.

KIRTON v. BRITISH AMERICA ASSURANCE CO.

Fire Insurance — Insured Buildings Destroyed by Fire from Railway — Compromise of Owner's Claim against Railway Company — Bona Fide Settlement — Claim against Insurance Company — Subrogation.

Appeal by plaintiff from judgment of MABEE, J., at the trial at St. Thomas, dismissing an action to recover $550 upon an insurance policy against fire. Plaintiff had a farm adjoining the Pere Marquette Railway, and his barns were