Here the circumstances are somewhat different. The defendant alleges, not that there was merely an agreement for a sale, but an actual sale by the plaintiff to him, and that he went into possession thereunder, and made improvements, etc., and no conveyance having been made by the plaintiff as was agreed, the plaintiff entered into possession, whereby the defendant sustained damages, and counter-claimed accordingly.

From the wording of the counter-claim it might be inferred that the defendant has chosen to abandon all claim to any right or title in the land, leaving such undisputed in the plaintiff, and contents himself with a mere claim for damages. But the defendants' right to damages for breach of a contract of sale must necessarily depend upon a valid contract having been made. In that case the ownership or title (equitable, at least) would pass to, or vest in, the defendant. If not, then no such ownership passed, and the defendant would not, of course, be entitled to damages.

In either case, I would seem to be determining a question of title to or right in the land. The defendant having chosen to abandon all claim to right or title therein (if he has done so), would not relieve me of the necessity of determining such, in order to ascertain whether he were entitled to damages. In fact I would have to dispose of the same question that would be presented for decision by a superior Court, were the defendant asking for a decree for specific performance. This case, therefore, is apparently not governed by *Re Crawford* v. *Seney*, presenting some features not possessed by that case; and I find myself, though reluctantly, forced to the conclusion that this Court has no jurisdiction to try the matter of the counter-claim herein.

As to the plaintiff's claim, that being disputed by the defendant, and he contending that whatever sum he did owe, was as interest on the purchase money, and not as rent, it would appear that in order to determine this, I would first have to say whether the defendant held as tenant or owner, and thus the right or title to the land would, apparently, be brought in question.

It would seem desirable that Division Courts should have jurisdiction in all cases, even where the title to land should come directly in question, where the amount or sum claimed, or the value of the land, should not exceed a certain limit. It may be noticed that these courts already have jurisdiction in at least two cases in which the title to land may come in question. (1) In interpleader proceedings under certain circumstances. See *Munsie* v. *McKinley*, 15 C.P. 50. (2) Where damages are claimed, (not exceeding $20) for overflowing land for the purpose of driving logs or timber, etc., under powers conferred by The Timber Slide Companies' Act, "the action . . . may be brought in the Division Court, which shall have jurisdiction to hear, try, and dispose of the case, notwithstanding the question of any title to lands may be raised." (But the court shall not determine the matter of title, etc.) See 52 Vict., c. 16, sec. 13.

By sec. 158 of R.S.O., c. 44, where the defence or counter-claim involves matter beyond the jurisdiction of the court, provision is made for the transfer of the proceedings to the High Court. But that is only upon the application of a party to the proceedings. I cannot, ex mero motu, order such transfer.