

was therefore uncertainty as to price, preventing specific performance.

But, in addition to these circumstances, the case is one in which the plaintiff might well be left to his common law remedy for breach of contract. The lots, apparently about 20 in number, were to be sold for \$100 altogether, an average of \$5 each. They were bought to sell again for the purpose of speculation only. They were tax title lots in Toronto Junction. No one can doubt the feasibility of going into the market, and being able to buy abundantly of such lots. . . . It is not a case in which damages will not "afford a complete remedy:" *Adderley v. Dixon*, 1 S. & S. 608. Here damages will completely compensate.

The plaintiffs' claim should, in my judgment, have been made in the Division Court for damages, and the question of the alteration have been there tried by a jury. No question of title to land is raised, and the Division Court has jurisdiction to award such damages up to \$60, three-fifths of the whole price of the lots together. As to a solicitor's duty and risk in bringing an action in a superior Court which might have been brought in an inferior Court, see *Scanlan v. McDonough*, 10 C. P. 104.

Appeal dismissed with costs.

W. Cook, Toronto, solicitor for plaintiffs.

C. C. Going, Toronto Junction, solicitor for defendant.

MARCH 12TH, 1902.

DIVISIONAL COURT.

HUME v. HUME.

Pleading—Counterclaim—Annuity—Executor.

Appeal by defendant from order of STREET, J., *ante* p. 156.

The same counsel appeared.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.) was delivered by

MEREDITH, C.J.—Mr. Bicknell has argued this very fully, and, I am sure, has said everything that possibly could be said in support of the appeal, but we think it is not necessary to take time to consider his argument.

What, practically, the defendant is seeking to do is to obtain a judgment for the administration of an estate, of which the plaintiff and two others are executors, and in which she and several others are interested, as next of kin, on a counterclaim in an action in which one of the executors, suing in her own right, is plaintiff.