

HON. MR. JUSTICE MIDDLETON.

JUNE 23RD, 1913.

CORNISH v. BOLES.

4 O. W. N. 1551.

*Jury Notice—Appeal from Order Striking Out—Con. Rule 1322—
Effect of — Exercise of Discretion by Judge in Chambers—No
Appeal from.*

MIDDLETON, J., *held*, that the exercise of the discretion of a Judge in Chambers under Con. Rule 1322, as to striking out a jury notice, was not properly reviewable by an Appellate Court.

Motion for leave to appeal from order of HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., striking out jury notice.

M. L. Gordon, for defendant.

R. R. Waddell, for plaintiff.

HON. MR. JUSTICE MIDDLETON :—Mr. Gordon is no doubt right when he says that this action is one which could well be tried by a jury; but this is not the question. The action can equally well be tried by a Judge; and under the Judicature Act the trial Judge or a Judge in Chambers may in his discretion direct the action to be tried without the intervention of a jury.

The Rule recently passed (Con. Rule 1322), requires the Judge in Chambers, upon an application being made to him, to exercise the same discretion as he would if presiding at the hearing. *Brown v. Wood*, 12 P. R. 198, determines that at the trial the Judge has absolute control over the mode in which the case shall be tried, and that his discretion will not be interfered with upon an appeal to the Divisional Court. The same principle is applicable to the exercise of discretion by the Judge in Chambers, and I do not consider that the matter is one which is properly the subject of appeal.

Clearly, the case is not brought within the provisions of the Rules regulating appeals from Chamber orders. The application is therefore dismissed, with costs to the plaintiff in any event.