

If it was any advantage to the Patillo Co., they perhaps might enter a conditional appearance. But it was conceded on the argument that nothing would be gained by so doing. If the claim was an alternative one, as in *Langley v. Law Society of Upper Canada*, 3 O. L. R. 245, such an appearance would be a benefit, if a defendant could shew that any agreement was not such as to bring Rule 162 into operation. There would then be only a separate cause of action against one of the defendants, but against which he could recover, plaintiff might be in doubt, as in *Tate v. Natural Gas Co.*, 18 P. R. 82.

As the matter is not clear, the costs of these motions will be in the cause.

BOYD, C.

JANUARY 24TH, 1906.

TRIAL.

DUNDAS v. DINNICK.

Vendor and Purchaser—Contract for Sale of Land—Specific Performance—Relief from Contract—Hardship—Equitable Terms—Payment of Damages and Costs—Evidence of Contract.

Action against the trustees under a trust conveyance from one W. W. Farley for specific performance of a contract, dated 22nd August, 1904, made by defendants as trustees, with plaintiff, as alleged, to sell certain lands and houses for \$1,200.

R. McKay, for plaintiff.

H. E. Rose, for defendants.

BOYD, C.:—The terms of the contract are made out with certainty, and there is no dispute as to what was agreed upon by all parties. The difficulty is, that considerable hardship and probable loss will be brought upon defendants if the contract is to be enforced in specie. In all the circumstances, they should be relieved from this position, on the equitable terms of making good to the purchaser the outlay and costs incurred by him, that is, such damages as would be given for breach of the contract at law. This can be worked out in