This is not a common law action, like Stavert v. McNaught, but is clearly governed by Bryans v. Moffatt, being a case which, in my opinion, ought to be tried without a jury. I do not know that it can be said with absolute certainty that "no Judge would try the issues with a jury;" but the judgment in Clisdell v. Lovell (1907), 15 O.L.R. 379, was pronounced before the promulgation of Rule 1322. I agree in the decision of Mr. Justice Riddell in Bissett v. Knights of the Maccabees, 3 O.W.N. 1280, as to the meaning and effect of the Rule. Whilst it enlarges the powers of a Judge in Chambers, it prevents embarrassment, by vesting the ultimate decision in the trial Judge. I direct that the action be tried without a jury.

Costs will be costs in the cause.

LENNOX, J. JUNE 9TH, 1913.

DAHL v. ST. PIERRE.

Vendor and Purchaser—Contract for Sale of Land—Default of Purchaser — Time of Essence — Waiver—Recognition of Contract as Subsisting—Necessity for Notice before Terminating Contract—Default of Vendor—Specific Performance —Ascertainment of Amount Due.

Action for specific performance of a contract for the sale of land by the defendant to the plaintiff.

M. K. Cowan, K.C., for the plaintiff.
F. D. Davis, for the defendant.

LENNOX, J.:—The plaintiff is entitled to specific performance of the agreement sued on. Time is, in terms, made of the essence of the contract, but this is not open to the defendant as a defence. After the default now complained of, the defendant continued to negotiate with the plaintiff, and recognised the continued existence and validity of the contract. Having once done this, he cannot afterwards hold the plaintiff to the original stipulation as to time: Webb v. Hughes, L.R. 10 Eq. 281. Once the time is allowed to pass, the rights of the parties are governed by the general principles of the Court: Upperton v. Nicholson, L.R. 6 Ch. 436. And the defendant could not, in