

RIVERDALE LAND AND IMPROVEMENT CO. v. CHAPPUS—
SUTHERLAND, J.—JULY 11.

Trial—Amendment Made at Sittings for Trial—Question of Law Raised—Postponement of Trial.—This case being on the list for trial at the Sandwich non-jury sittings, a motion was made at the sittings, before SUTHERLAND, J., on behalf of the plaintiffs, to postpone the trial. An application was also made, on behalf of the defendant, to amend his defence by adding at the end of para. 3 the words, "not having obtained a license in mortmain to hold lands in Ontario." The application to amend was granted. The action arose out of an agreement in writing for the sale of land made by the defendant to Edward J. Condon, and assigned by him to the plaintiffs, a company incorporated in the State of Michigan. On the defence being amended as mentioned, counsel for the defendant argued that the plaintiffs plainly had no status to commence or continue the action. It was agreed that authorities should be put in, and if the learned Judge came to the conclusion that this contention was so clearly right as to enable him to dispose of the case, he should do so. The learned Judge, in a written judgment, said that he had come to the conclusion that, the amount involved being considerable, and the point not free from doubt, he should not, in the circumstances, express an opinion upon it, but let the case go to trial in the ordinary way. This was the fair course to be taken in so far as the plaintiffs were concerned, the amendment having been made at the trial. The case would, therefore, stand for trial until the next non-jury sittings at Sandwich, and the costs of the application to postpone and to amend would be disposed of by the trial Judge. F. C. Kerby, for the plaintiffs. F. D. Davis, for the defendant.