

OCTOBER 22ND, 1913.

RE WOODHOUSE.

Land Titles Act—Application for Registration—Objection—Discontinuance of Action—Order Allowing—Old Con. Rule 430(3), (4)—Bar to any Future “Action”—Proceeding under Land Titles Act—Res Judicata.

Appeal by John Woodhouse from the order of LATCHFORD, J., 4 O.W.N. 1265.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

Edward Meek, K.C., for the appellant.

W. B. Milliken, for the respondents, Christie Brown & Co. Limited.

The judgment of the Court was delivered by HODGINS, J.A.:—The authority for the order of the Master in Chambers made on the 5th October, 1912, is found in old Con. Rule 430, clause 4. The order, paragraph 3, provides that “this order shall be a bar to the continuance of this action and to any future action which may be brought by the plaintiff for the same cause of action.”

Obviously, I think, the word “action” in the order must be construed as it is defined by the Rules under which alone the order could be made; and, if so, it is equally clear that it does not include a proceeding under the Land Titles Act.

It is to this point that the judgment of my brother Latchford is directed, and it appears to be the only one argued before him.

The effect to be given in the proceedings before the Master of Titles to the order in question is, of course, a matter for him to decide, and I agree with his decision so far as it deals with the meaning of the order. It is provided in Rule 430, clause 3, that a discontinuance under clause 1, i.e., before receipt of the statement of defence or after the receipt thereof and before any other proceeding in the action is taken by the plaintiff, shall not be a defence to any subsequent action. This means that by that sort of discontinuance there is not established any foundation for a plea of *res judicata*. But, where the plaintiff has to apply for leave, the Court or a Judge has power to direct that