

FALCONBRIDGE, C.J.—In view of the conflicting decisions as to the principle of construction of the word “ascertained” in the Division Courts Act, the amending provision contained in 4 Edw. VII. ch. 12, sec. 1, must be regarded as being in its nature a declaratory enactment, and it must not, therefore, be treated as inapplicable because these proceedings were launched in the Division Court before the Act was passed: Maxwell on Statutes, 3rd ed., pp. 308, 309, 313. Here other and extrinsic evidence beyond the mere production of the document and the proof of the signature to it, would have to be given to establish the claim of plaintiff; and the statute applies to oust the jurisdiction. The conflicting authorities are collected in *Kreutziger v. Brox*, 32 O. R. 418, and in *Bicknell & Seager’s Division Courts Act*, 2nd ed., p. 86 et seq.

Order made for prohibition without costs.

IDINGTON, J.

DECEMBER 23RD, 1904.

TRIAL.

COOKE v. McMILLAN.

*Vendor and Purchaser—Contract for Sale and Purchase of Land—Specific Performance—Objection of Purchaser—Jurisdiction of Court over Foreign Defendant—Title—Will—Conveyance by Executors—Period of Distribution.*

Action for specific performance of a contract.

J. G. Wallace, Woodstock, for plaintiff.

J. H. Rodd, Windsor, for defendant.

IDINGTON, J.—Plaintiff agreed to sell and defendant to buy the lands in question. Defendant resides in Detroit. The bargain was made in the county of Oxford in this Province, and the agreement executed there.

Defendant’s counsel asked leave to amend his statement of defence and plead that this Court had no jurisdiction to direct specific performance against a purchaser residing in and a naturalized citizen of a foreign country, or at all events would as a matter of discretion not direct judgment in such case.

No authority was cited for such a proposition but *Smith v. Hunt*, 2 O. L. R. 134, 4 O. L. R. 653, 1 O. W. R. 598, which does not support it. I refused to amend as asked. If there ever has been any difficulty of the kind in the way of plaintiff’s recovery herein, defendant is rather late, after pleading and coming down to trial, to try to set it up.