

ing the Attorney-General's fiat or his consent in any other form, in respect of the patent for land granted by the Crown to the plaintiffs, and, that being so, the counterclaim was maintainable in this action, without the necessity of adding the Attorney-General as a party or of obtaining his fiat or consent.

Held, however, upon the evidence, that the plaintiff E., who acquired the interests of the original plaintiffs in the land in question pendente lite, did so for value and without notice of the action or counterclaim, and therefore, having regard to the provisions of the Land Titles Act, under which the plaintiffs' title was registered, he was in the position of a registered purchaser for valuable consideration without notice, and the relief sought by the counterclaim could not be enforced as against him, the right to an injunction followed upon his ownership of the land, but neither he nor his co-plaintiffs were entitled to damages.

Judgment of TEETZEL, J., varied.

W. M. Douglas, K.C., and E. J. Hearn, K.C., Wallace Nesbitt, K.C., A. M. Stewart, R. McKay and C. H. Ritchie, K.C., for the various parties.

Moss, C.J.O., Osler, Garrow, Maclaren, JJ.A.]

[From Riddell, J.]

MORITZ v. CANADA WOOD SPECIALTY CO.

Foreign judgment—Action on—Judgment recovered in England against defendants in Ontario—Jurisdiction—Breach of contract—Place of performance—Service out of the jurisdiction—English Order XI., Rule 1 (e)—Alternative claim on original cause of action—Merger—Election—Appeal—Parties.

Under Order XI., Rule 1 (e), of the English Rules of the Supreme Court, 1883, which corresponds substantially with Rule 162(e) of the Ontario Consolidated Rules of 1897, providing that service out of the jurisdiction of a writ of summons may be ordered whenever the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction, it is not necessary in order to confer jurisdiction to shew that the whole of the contract is to be performed within the jurisdiction; it is sufficient if there is a breach of that part of it, if any, which is to be performed