

the 26th December. On the 27th December, the defendant Merton not being represented, the Local Judge made an order permitting the plaintiff to commence an action to enforce the mortgage by foreclosure and for payment by the defendant Merton pursuant to his covenant and for possession. The order further provided that service of notice of motion upon the defendant Merton be dispensed with.

Merton was not served with the notice, and his solicitor was not authorised to accept nor did he accept service of it.

By the Mortgagees and Purchasers Relief Act, 5 Geo. V. ch. 22, sec. 2 (2) (a), an application for leave to bring an action may be made to a Local Judge in Chambers or to a Judge of the Supreme Court in Chambers.

It was not disputed that an order was necessary.

Section 5 (2) provides that a Judge may give directions as to the service of notice upon any person whom he deems a proper party to the proceedings, or he may dispense with service upon "any party who appears to have abandoned his interest in the property."

Here there was no question of abandonment, and the defendant Merton was entitled to notice.

By sec. 2 (2), the application is to be upon originating notice in accordance with the practice of the Supreme Court.

Rule 505 (1) gives an appeal from an order of a Local Judge to a Judge in Chambers. That Rule applied to the present case; it was a question of practice; the defendant Merton had not been served; the order was made *ex parte*.

Rule 217 provides for a motion to rescind in a case of this kind.

Re George and Lang (1916), 36 O.L.R. 382, 30 D.L.R. 504, distinguished.

The Local Judge was not authorised to dispense with the service of the notice upon the defendant Merton, who was to be sued upon his covenant.

The order should be rescinded and the writ of summons issued pursuant to the order should be set aside. The plaintiff should pay the defendant Merton's costs of this motion.

ALLEN V. MACFARLANE—SUTHERLAND, J.—JAN. 7.

Contract—Sale of Business and Chattels—Bill of Sale—Action for Balance of Purchase-price—Alleged Option to Transfer Land instead of Paying in Money—Covenant of Vendors not to Engage in Similar Business—Failure to Prove Breach—Counterclaim—Reformation of Contract.—Action to recover \$1,100, the amount or balance due upon a sale of the goods and chattels of a business