

Cameron, J.]

[Sept. 12.]

HENDERSON V. HALL.

Alien defendant outside jurisdiction—Service—Amendment.

In an action against a defendant residing out of Ontario and not a British subject, a copy of the writ of summons itself instead of the notice of the writ required by section 50 of the C. L. P. Act had been served on the defendant.

Held, that no powers of amendment were given such as would enable service in one method to be substituted for service in another method, especially where the express language of the statute directed that the writ should not be served, but that a notice thereof should be. The copy and service of the writ were therefore set aside with costs.

Holman for plaintiff.

Aylesworth for defendant.

WATSON V. McDONALD.

Osler, J.]

[Sept. 13.]

Commission—Viva voce examination.

Where a commission was issued to England to take evidence in a case involving many intricate questions of fact, the evidence was ordered to be taken on *viva voce* questions, instead of upon interrogatories.

Aylesworth, for plaintiff.

Ogden, for defendant.

HAY V. MCARTHUR.

Mr. Dalton, Q.C.]

[Sept. 20.]

Mortgagor and mortgagee—Ejectment—Chancery, concurrent suit in—Costs.

A mortgagee proceeded in ejectment against a mortgagor, and at the same time filed a bill in Chancery against him for a sale.

Held, that as the mortgagee could, since the Administration of Justice Act, R. S. O. c. 49, obtain in the Chancery suit all the remedies he could obtain in the ejectment suit, the latter should be stayed forever.

H. J. Scott, for defendant.

Aylesworth, for plaintiff.

EMMENS V. MIDDLEMISS.

Mr. Dalton, Q. C.]

[Sept. 23.]

Inspection of documents—Mortgage.

An action was brought upon the covenant contained in a chattel mortgage which covered goods in the United States and which was not registered in Ontario. An application for an inspection of the deed was made, and the plaintiff contended that a mortgagee could not be compelled to allow the inspection of his mortgage by the mortgagor while it remained unpaid, and that the clauses in the C. L. P. Act authorized inspection only in cases where a bill would lie in equity for a discovery prior to the passing of the Act.

Held, that there is jurisdiction, irrespective of the Act, to order inspection of any document sued upon.

J. B. Clarke, for plaintiff.

Aylesworth, for defendant.

CHANCERY CHAMBERS.

The Referee.]

Blake, V.C.]

WRIGHT V. WAY.

Supplemental answer—Time—Matter introduced by.

The bill alleged that defendants had given plaintiff certain promissory notes in part payment of the purchase money of a vessel, and had given a mortgage containing a covenant to pay the amount covered by the notes on the vessel as collateral security. The answer of the defendant Honey, filed in November, 1879, admitted, while that of the defendant Way denied this state of facts. On the 9th March, 1880, defendant Honey applied for leave to file a supplemental answer setting up that the notes were given for the plaintiff's accommodation; that there was an agreement that no liability in respect of them should ever be enforced by the plaintiff against the defendants, and denying that the mortgage was given as collateral security. The defendant Honey, by affidavit filed, explained that when he swore to his former answer he had forgotten the true