

Province of New Brunswick.

SUPREME COURT.

Barker, J.]

CARMAN v. SMITH.

[Sept. 20, 1904.

Deed—Mistake—Rectification.

The plaintiff intending to sell the whole of a piece of land sold it under a verbal contract describing it as the D. lot. The deed to the purchaser followed the description in the vendor's deed. After the vendee's death, and about ten years after the contract of sale was made, the vendor sought to have the deed rectified on the ground that it contained more land than that known as the D. lot. The evidence did not shew that the D. lot did not embrace the whole of the land conveyed.

Held, that the bill should be dismissed.

Stockton, K.C., for plaintiff. *McLean*, K.C., for defendant.

BOYNE v. ROBINSON.

[Oct. 7, 1904.

Practice — Payment into court — Surplus of mortgage sale — Claimants to fund—Costs.

A mortgage sale under power yielded a surplus of \$320.29, out of which the mortgagee applied to pay into Court \$246.89, being amount of a judgment against the mortgagor, which the judgment creditor sought by suit to have paid out of the surplus as against the owner of the equity of redemption in the mortgage.

Held, that on the mortgagee paying into Court the whole surplus, less the costs of his appearance and application, his name should be struck out of the suit.

Teed, K.C., for the motion. *Skinner*, K.C., for plaintiff. *A. A. Wilson*, K.C., and *Kaye*, for defendants.

BUCHANAN v. HARVIE (No. 2). [Oct. 18, 1904.

Mortgage—Redemption.

The proviso for redemption in a mortgage dated Aug. 30, 1902, to secure an advance of £3,500 was the payment on Nov. 11 of £6,000 and a transfer of £5,000 in shares in a company to