

up in sealed bundles marked A and B, but the documents must be identified by a mark or number and so described in the affidavit.

*Pugsley, K.C., and Barnhill, for the defendant. A. H. Harrington, K.C., for the plaintiffs.*

Barker, J.]

[June 18.

CUSHING SULPHITE FIBRE CO. v. CUSHING (No. 3).

*Practice—Discovery—Non-materiality—Production.*

Where discovery, as distinguished from production for the purpose of inspection, of documents is sought, an affidavit of such document must be given, though their production when applied for could be successfully opposed on the ground of immateriality.

*A. H. Harrington, K.C., for the application. Pugsley, K.C., (L. A. Currey, K.C., and Barnhill, with him) contra.*

Barker, J.]

[June 18.

CUSHING SULPHITE FIBRE CO. v. CUSHING (No. 4).

*Practice—Production of documents abroad—Inspection.*

Documents within the jurisdiction of the court will not be ordered to be produced before a commissioner for taking evidence abroad, except in very special circumstances.

Where inspection of documents had been given by consent an application to the court for further inspection was granted, and the court declined to give effect as too technical to an objection that a demand in writing for inspection had not been made prior to the application to the court.

*Pugsley, K.C., (L. A. Currey, K.C., and A. P. Barnhill with him) for application. A. H. Harrington, K.C., contra.*

Barker, J.]

FAIRWEATHER v. ROBERTSON.

*Easement—Right of way—Agreement—Evidence—User.*

Plaintiff claimed a right of way over a private road of several hundred feet in length, in part on land of defendant adjoining plaintiff's land, and leading from a public highway to lots comprised in part by defendant's land, sold by defendant's predecessor in title B. under a conveyance reserving to the grantees the use in common of the road. The evidence of plaintiff's predecessor in title K. was that shortly after the sale of these lots, he moved back on his land his farm house and fence to widen the entrance of the private road at its junction with the highway under an agreement with B., consumed in, as he believed, by the owner of the lot that he, K.,