

s. 2, sub-s. 2(b), and notwithstanding the decision in *Macdonald v. Worthington*, 7 A.R. 531, as to the effect of accepting a non-suit in an action tried without a jury.

Judgment of BRITTON, J., reversed; IDINGTON, J., dissenting. *Arnoldi*, K.C., and *P. McDonald*, for plaintiff. *Watson*, K.C., for defendants.

Anglin, J.]

[Oct. 11, 1904

PERRINS LIMITED v. ALGOMA TUBE WORKS.

*Evidence—Discovery—Company—Foreign company—Officer residing out of jurisdiction.*

No order will be made for the examination for discovery of the officer residing in a foreign country of a foreign corporation, which has attorned to the jurisdiction of the Courts of this Province.

*C. A. Moss*, for plaintiffs. *Middleton*, for defendants.

Anglin, J.]

FRASER v. MUTCHMOR.

[Nov. 1, 1904.

*Registry laws—Registered plan—Sale of lots according to—Building—Projection on adjoining lot—Possession—Title—Mortgage—Construction—Short Forms Act—General words.*

After building a house on certain land, the owner thereof had a plan prepared and registered in June, 1872, covering amongst other lands, those subsequently known as lots 3 and 4. The boundary line between these two lots was so run that, while the main part of the house stood upon lot 3, a small portion extended over part of lot 4. According to this plan the subsequent sales were made. In 1872 lot 3 was conveyed to one person and lot 4 to another person—all parties acting upon the assumption that the house was wholly upon lot 3, the deeds describing the lands as lots 3 and 4 according to the registered plan, and these descriptions being carried down through all subsequent conveyances and mortgages of the respective properties. The ownership and possession of the two properties remained distinct until 1883, and from that time until 1896 both were owned and possessed by one person, subject to mortgages. This person in 1892 mortgaged lot 3 to the defendant, who in 1896 foreclosed and obtained possession. In 1893 the same person mortgaged lot 4 to one M., and through foreclosure proceedings and a subsequent mortgage to himself the plaintiff claimed title. The legal estates in both properties had throughout been in different mortgagees.

The action was to enforce by foreclosure the plaintiff's mortgage upon lot 4, and the defence was in respect of the part covered by the defendant's house.