

L.R. 1 Ex. 342. No objection to the purchase was raised until early in June; and then proceedings were launched against the defendant as an overholding tenant.

The plaintiffs were not entitled to possession of the land; and they had not established their claim for compensation for non-delivery of lime. The defendant was entitled to have the contract for purchase of the quarry and plant specifically performed. He had expressed his willingness to abandon his claim for damages in the event of his being found entitled to specific performance.

There should be judgment for the plaintiffs for \$474.95 on their claim added by amendment at the hearing; the action should be dismissed in respect of their other claims. The defendant should have judgment on his counterclaim for specific performance.

The plaintiffs should pay the defendant's costs of the action and counterclaim and also his costs of the application to the County Court Judge and of the appeal to the Appellate Division.

ORDE, J.

JANUARY 11TH, 1921.

*JAMES RICHARDSON & SONS LIMITED v. J. McCARTHY
& SONS CO. LIMITED.

Company—Mortgage Made by Trading Company—Irregularities Unknown to Mortgagees—Agency of Company's Secretary for Mortgagees not Proved—Powers of Company—Ontario Companies Act, 1907, 7 Edw. VII. ch. 34, secs. 73, 74, 78—Mortgage Given to Cover Liabilities of Company to Mortgagees—Powers of Directors without Special Authority from Shareholders—"Indoor Management" of Company—Presumption of Regularity—Failure to File Mortgage in Office of Provincial Secretary (sec. 78)—Effect of.

An appeal by the defendants from a certificate of the Local Master at Ottawa, upon a reference, of his finding that the plaintiffs' claim upon a second mortgage should be allowed.

The appeal was heard in the Weekly Court, Ottawa.

W. C. McCarthy, for the defendants.

G. F. Henderson, K.C., for the plaintiffs.

ORDE, J., in a written judgment, said that the action was for foreclosure, brought by the plaintiffs as assignees of a first mortgage made by the defendant company. The plaintiffs also held a