

BRITTON, J.—The plaintiffs on the 24th September, 1903, commenced proceedings by writ of summons issued out of the District Court of Algoma, specially indorsed as follows: "The plaintiffs' claim is to recover possession of all and singular those certain parcels or tracts of land and premises particularly described as follows . . . And for an order that the defendants, their servants, workmen, and agents, do forthwith deliver up possession of the said lands and premises to the plaintiff Benjamin Franklin Fackenthal junior, receiver appointed by the plaintiffs the Central Trust Company of New York, under and in pursuance to the mortgage or deed of trust dated 1st January, 1903, and made between the defendants and the said plaintiffs the Central Trust Company of New York."

Upon the affidavits filed it is difficult to understand why it was deemed necessary for plaintiffs to take the proceedings in the District Court. . . .

But the only questions for my consideration on the present motion are:

1st. Has the District Court of Algoma jurisdiction in such an action for the recovery of possession of land?

2nd. If it has, as the plaintiffs have brought this action in the High Court, where they are asking for practically all that they claim to be entitled to under the mortgage, and where there is unquestioned jurisdiction to give full relief, including possession, shall they be allowed to continue proceeding in the District Court for possession only?

Plaintiffs claim jurisdiction for the District Court under R. S. O. ch. 109; sec. 9, sub-sec. (1) of which provides that the District Courts shall have the same jurisdiction as is possessed by County Courts; and sub-sec. (2), that the District Court of Algoma shall, in addition to the jurisdiction conferred by sub-sec. (1), have jurisdiction "(d) for the recovery of land situate in the district."

Is an action by a mortgagee for the possession of land included in the mortgage an action for the recovery of land within the meaning of the Act above cited?

If it is, the District Court has jurisdiction.

If the writ had been indorsed under Rule 141 with a claim for foreclosure, that claim would at once have ousted the District Court of jurisdiction, or rather would have shewn that the District Court had no jurisdiction to grant the relief asked upon such a mortgage. If the indorsement