

brought to recover possession of land. The principal defence was the Statute of Limitations. The action was begun on the 21st February, 1912; a statement of defence was delivered on the 18th May. Two days later, the plaintiffs took out the usual order for production by the defendant and an appointment to examine the defendant for discovery on the 29th May. The examination was not proceeded with. Issue was joined before the 1st July, 1912. On the 13th September, the plaintiffs served a notice of discontinuance. On the 1st October, the defendant gave notice of this motion—to dismiss the action “or for such other order as may seem just.” Upon the motion coming on for hearing, it was objected by the plaintiffs that the motion should have been to set aside the discontinuance. The Master said that the objection was probably well taken; but the notice of motion could be amended, as the simple point for decision was, whether the plaintiffs were within clause (1) of Con. Rule 430, or must proceed under clause (4). Clause (1) provides that “the plaintiff may, at any time before receipt of the statement of defence . . . or after receipt thereof before taking any other proceeding in the action (save an interlocutory application) . . . wholly discontinue his action.” Clause (4) provides that, save as before provided, it shall not be competent for the plaintiff to discontinue without leave. The Master was of opinion that what was done by the plaintiffs to obtain discovery after the delivery of the statement of defence was “taking any other proceeding.” Reference to *Schlund v. Foster*, 10 O.W.R. 1005; *Spincer v. Watts*, 23 Q.B.D. 352, 353; *Vickers v. Coventry*, [1908] W.N. 12. The plaintiffs should have leave to discontinue in the terms approved of in *Schlund v. Foster*, 11 O.W.R. 60, 175, 314; and, if the plaintiffs should take that order, the costs of the motion would be costs in the cause. If the plaintiffs desired to proceed, the notice of discontinuance would be set aside with costs to the defendant in any event. *E. Meek, K.C.*, for the defendant. *W. B. Milliken*, for the plaintiffs.

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YOUNG v. PLOTYMEKI—RIDDELL, J.—OCT. 5. •

*Vendor and Purchaser—Contract for Sale of Land—Default—Rescission—Forfeiture of Sums Paid—Judgment—Costs.*]—Motion by the plaintiffs for judgment on the statement of claim in default of defence in an action for a declaration that the plaintiffs (vendors) were entitled to determine an agreement for the sale of two lots of land in Fort William and to retain any sum or sums paid under the agreement, for rescission of the