

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

PRACTICE.

Mr. Dalton, Q.C.]
Rose, J.][March 30.
[April 13.]

COOK ET AL. V. LEMIEUX.

*Action for recovery of land—Judgment—Rule
322 O. J. A.*

In an action for the recovery of land the plaintiffs moved, under Rule 322 O. J. A., for final judgment upon the pleadings, the depositions of the defendant, taken in his examination for discovery and upon an affidavit, verifying a lease of the land in question to the father and brother of the defendant.

The defendant in his examination admitted that his father told him there was a lease from the plaintiffs, but he did not admit any of the terms of it.

The lease put in and verified by affidavit was one from year to year, terminable at the end of any year on six months' notice, the lessees to pay all taxes and keep the fences in repair. It was not alleged that any notice to quit had been given, or that anything undertaken by the lessees had not been performed.

The defendant on his examination further admitted that he was in possession simply as his father's agent; that the title set up by his father was by possession, and that the only ground on which he expected to continue to hold was length of possession.

The plaintiffs sought to shew that the interest of the lessees under the lease was at an end, by proving from the defendant's examination that his father had disclaimed the title under the plaintiffs, and by the defendant's statement of defence in which he denied the plaintiffs' title.

Held, that much care must be taken in such cases not to take away the right of trial on *viva voce* evidence; that the plaintiffs' case was not conclusively made out, and the motion therefore failed.

Quære, whether the lease in question was a document that, under Rule 322 O. J. A., could be proved on this motion by an adverse affidavit without cross-examination?

A. H. Marsh, for the motion.
Watson, contra.

Rose, J.]

[April 13.]

NORTH V. FISHER.

Security for costs—Amount—Rule 431 O. J. A.

The defendant having obtained on *praecipe* an order for security for costs, a local judge allowed the plaintiff to pay into Court \$200 in satisfaction of it. This amount was afterwards increased to \$250, but the local judge refused to make an order for further security.

An appeal from the order of the local judge refusing to direct further security was dismissed, as the \$250 appeared to be sufficient.

But *quære* whether there is any power to make an order enabling a plaintiff to pay into Court a less sum than \$400 where the plaintiff has taken out a *praecipe* order under Rule 431 O. J. A?

F. Fitzgerald, for the appeal.
Holman, contra.

Rose, J.]

[April 14.]

THE UNION LOAN AND SAVINGS CO. V.
BOOMER.*Reference under sec. 47 O. J. A.—Jurisdiction of
Master in Chambers—Rule 323 O. J. A.*

The Master in Chambers made an order under sec. 47 O. J. A., referring to an official referee to enquire and report the amount in which the defendant was indebted to the plaintiffs under the mortgage in question.

On appeal the order of the Master was set aside on the ground that he had no jurisdiction, following *White v. Beemer*, 21 C. L. J. 122, but an order was made under Rule 323 O. J. A. for a reference as upon a substantive motion. No costs of either motion were given to either party.

Clement, for the appeal.
Shepley, contra.

Mr. Dalton, Q.C.]

[April 18.]

ROSENHEIM V. SILLIMAN.

*Examination of witnesses before trial—Rule 285
O. J. A.*

A order was made under Rule 285 O. J. A. on the application of the plaintiff for the examination before the trial of the manager of the defendant's branch business at Toronto.