

indebted to him in damages for breach of the covenants of the lease and obtained *ex parte* an interim injunction restraining proceedings under the distress.

On its being shewn that in the statements made on which the injunction was granted, there was, if not misrepresentation, at least a concealment of an important fact as regards the alleged breach of one of the covenants, the injunction was dissolved with costs.

Semble, the injunction should not have been granted, as the plaintiff had a complete remedy in damages.

Semble, also, that the damages claimed by the plaintiff were not a "debt" within s. 3, of 50 Vict., c. 23 (O.), so as to constitute a set-off against the rent; and, although under the Ontario Judicature Act, they might possibly be the subject of counter-claim, they would not justify an injunction as against a distress levied as here.

The direction that the injunction was dissolved with costs, meant costs payable at the time.

Gordon Hunter for plaintiff.
E. D. Armour for defendant.

Chancery Division.

FERGUSON J.] [Feb. 11.
THE LINCOLN PAPER MILLS v. ST. CATHARINES
& N. C. R. CO.

Railways and Railway Companies—Default in payment of compensation moneys—Rights of land-owners—Injunction—Order for possession.

Held, that where a Railway Co. had failed to pay the compensation awarded to land owners, in accordance with a judgment obtained for the same, although the Railway Co. had, pursuant to order of the court, entered into possession of the lands, and were operating their railway over them; the land owners were entitled to an order declaring them to have a vendor's lien on the land for the amount, with such provisions as were necessary to realize by means of a sale, but they were not entitled to an injunction restraining the Railway Co. from operating their railway on the lands, nor to an order for the delivery of possession.

McClive for plaintiffs.
Aylesworth for defendants.

Practice.

FALCONBRIDGE J.] [Feb. 28.

ROBB v. MURRAY.

Parties—Joint Contractors—Rule 324 (a).

Under an incomplete agreement with the plaintiff, the defendant and one R. went into possession of the plaintiff's shop, intending to carry on business as partners.

The agreement was never completed, the defendant and R. were put out of the shop, and the plaintiff brought this action to recover the amount received by the defendant from sales of goods while in possession of the shop.

The defendant asserted that the contract was a joint one on the part of himself and R., but the plaintiff and R. denied this.

Held, that an order under Rule 324 (a) compelling the plaintiff to add R. as a party defendant, in the character of a joint contractor, was under the circumstances a proper order.

Hoyles, Q.C., for plaintiff.

Shepley, for defendant.

MR. DALTON.] [Feb. 29.

PAYNE v. NEWBERRY.

Motion—Renewal of, where refused—Judgment under Rule 739.

Where the plaintiff's motion for judgment, under Rule 739, was dismissed because he had not observed the practice under the Rule 1251, of partly complying with an order upon him for security for costs by paying \$50 into Court, and he subsequently paid the money in and renewed the application upon the same material:

Held, that the dismissal of his first application was no bar to the second one.

Semble, it would have been otherwise had the plaintiff failed in his first application by reason of defects in his material, and made a second one upon new material supplying the defects.

E. Taylour English for plaintiff.

Douglas Armour for defendant.

FIRST DIVISION COURT OF THE COUNTY OF CARLETON.

MOSGROVE, JJ.]

CHARLEBOIS v. WHITNEY.

Statute of Limitations—Effect of payment as a bar.

In an action in which the benefit of the