At no stage did the plaintiff intimate that he was prepared to accept $100 or later $120 and his taxable costs. On the other hand, at no time did the defendant offer to pay such costs, though she was plainly in default under the agreement at the time the writ was issued.

The plaintiff took an unreasonable course in insisting upon the payment of $50, a sum much in excess of taxable costs. Had he agreed, as he should, to have accepted taxable costs, further litigation might have been avoided.

Had the defendant offered to pay taxable costs, when she tendered the $100, her position might have been different on the question of costs.

The defendant relied upon Rules 313 and 314.

There was no plea of tender before action, and the plaintiff might have taken the $120 in satisfaction of all causes of action.

There was in fact no depreciation of the land, but an appreciation in value by what the plaintiff had done upon the land, and the claim for damages on this score was a fictitious and disingenuous one.

The defendant was in possession and had made substantial imporvements; and the plaintiff could not hope, after the offer to pay the arrears of $100, and much less after this was increased by the tender of $120 and its payment into Court, to obtain a decree for a rescission of the contract and possession. In these circumstances, Rules 313 and 314 were applicable. The plaintiff should therefore have accepted the $120 after it was paid into Court, and could then have proceeded to tax his costs of the action and on the Supreme Court scale notwithstanding the amount: Babcock v. Standish (1900), 19 P.R. 195; Stephens v. Toronto R.W. Co. (1907), 13 O.L.R. 363.

The plaintiff should now have judgment for the $120, with such costs as he could have taxed up to the time of the service of the statement of defence upon him. The defendant should have her costs from that time onward, as against the plaintiff, which might be set off as against the $120 and costs of the plaintiff mentioned. The action otherwise should be dismissed.