

ference. The costs of the trial were not spoken to. The defendants' appeal from the report should be dismissed with costs. The cross-appeal of the plaintiffs should be dismissed without costs. J. W. Bain, K.C., and M. L. Gordon, for the defendants. E. G. Porter, K.C., for the plaintiffs.

BENNETT V. STODGELL—SUTHERLAND, J.—NOV. 8.

Vendor and Purchaser—Agreement for Sale of Land—Option—Validity—Acceptance—Failure of Vendors to Convey—Damages—Costs.]—Action by purchaser against vendors for specific performance of an alleged agreement for the sale and purchase of land. The action was first tried by MIDDLETON, J., who dismissed it without costs (6 O.W.N. 163). A Divisional Court of the Appellate Division ordered a new trial (6 O.W.N. 333). The re-trial of the action was twice postponed. The trial finally took place before SUTHERLAND, J., without a jury, at Sandwich. The learned Judge, reviewing the evidence, was of opinion that the option of purchase given by the defendants and accepted by the plaintiff was valid and subsisting when accepted; but that specific performance could not be decreed. Judgment for the plaintiff for damages, assessed at \$2,500, less any proper deduction for rent up to May, 1913, and for occupation rent since at the like rental excepting so far as rent may have been paid since. The plaintiff to have the costs of the postponements of the second trial and the costs of the second trial; the order of the Divisional Court as to the costs of the original trial and of the appeal to stand. J. H. Rodd, for the plaintiff. E. D. Armour, K.C., for the defendants.

CURRIE V. SPERER—MIDDLETON, J., IN CHAMBERS—NOV. 8.

Mortgage—Judgment on Default of Appearance in Mortgage Action—Reference—Report—Notice of Filing—Necessity for—Rules 35, 429.]—Rule 35 declares that "except where otherwise provided or otherwise ordered a defendant who fails to appear shall not be entitled to notice of any subsequent proceedings in the action." Rule 429 provides that "any party affected by a report may file the same, or a duplicate thereof. He shall forthwith serve notice of filing." In this mortgage action, the defendant did not appear; judgment was obtained by the plaintiff, with a reference to the Master, who made a report. MIDDLETON, J., ruled that it was not necessary to serve the defendant with notice of filing the report. R. H. Greer, for the plaintiff.