in ordinary cases, and by his endorsement he should define generally the grounds of his claiming an interest in the land. The right to register a *lis pendens* arises from the statute R. S. O. cap. 40, sec. 90, as it merely places on record the historical fact that litigation is pending, touching a particular property. While this litigation is pending, I see great difficulty in making any such order as is asked here to vacate the registration of the *lis pendens*, except in that class of cases when it appears from the endorsement or pleading that the claim upon the land is not an appropriate remedy. Thus, if a wife sued for alimony, and alleged that unless her husband was enjoined from selling his land he would dispose of it to her prejudice, and upon this statement registered a *lis pendens*, the judge might and would declare that the certificate had improperly issued, and the registration of that order would operate to clear the registry.

But here there may be a cause of action affecting the land and the motion is not to set aside the writ as a vexatious thing, but merely to vacate the registration. As at present advised, I cannot clearly say that the action is illusory and fictitious, even if a direct attack was made upon the writ, and that being so, I should not now interfere. *Jacobs* v. *Raven*, 30 L. T. N. S. 266, I had occasion to consider the cases in which such an action as the present could be sustained in *Campbell* v. *Campbell* 29 Gr. 252.

But this is a case in which the trial of the action should be expedited. The plaintiff should serve his statement of claim forthwith and go down to trial at the next sittings of the Court at Goderich.

I approve generally of the practice laid down in *Jamieson* v. *Laing*, 7 P. R. 404, where the motion is to take the writ off the files as an abuse of the process of the Court. There should be a clear and almost demonstrative proof that it is so before the plaintiff's right to hear his case tried is interfered with.

But where the motion is to vacate the registration of the *lis pendens* because the remedy against the land is not appropriate to the cause of action which is pending, then I see no reason why the Master may not finally dispose of the matter without referring it to a judge. I reserve the costs of the present application to be dealt with subsequently."

NORDHEIMER V. MCKILLOP.

Commission to take evidence—Credibility of witness—Rule 285.

A commission to examine as a witness a person who has absconded from the Province, will not be refused on the ground that he is alleged not to be a credible witness and that his cross examination in open Court is desired.

This was an action of replevin. One G. was tenant of the defendant; he had purchased, on the hire-receipt principle, from the plaintiff, a piano which was put into his hotel at B. Before the plaintiff would allow the piano to be put into the hotel they required G. to obtain from the landlord a waiver of all distress for rent as against said piano. This waiver he signed himself under and in pursuance of a power of attorney. G. absconded to the States and defendants destrained the piano for rent alleged to be due. Plaintiff replevied upon the strength of the waiver. The plaintiff now applied for a commission to examine G. to prove that he signed the waiver under power of attorney, and also to prove that no rent was due at date of seizure. Defendant resisted the application on the grounds that G. was not a credible witness, that he could not be believed upon his oath, and that they desired him to be present in Court that he might be subjected to a rigid cross-examination and show his demeanour to the jury.

McPhillips, for motion. The credibility of G. cannot be tried on affidavits in Chambers, but was a question for the jury at the trial. A good case for the commission has been made out.

Clement, for defendant, relied upon *Crofton* v. *Crofton*, L. R. 20 Chan. Div. 674, and cases there cited.

On March 4th the Master in Chambers made the order. The defendant appealed.

Clement, for appeal.

McPhillips, contra.

March 10th, GALT, J., affirmed the order of the Master in Chambers, and dismissed the appeal with costs to the plaintiff.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

Ontario.]

ROSENBERGER ET AL. V. GRAND TRUNK RAILWAY COMPANY.

Railways—Failure to sound whistle, etc.—Accident through horse taking fright—Con. Stat. Can. chap. 66, *sec.* 104—*Findings—Evidence.*

Held (affirming the judgment of the Court of Appeal for Ontario and of the Court of Common Pleas), that Con. Stat. Can. chap. 66, sec.