

scheme contemplated is the elimination of all idle and useless proceedings. Where the defendant files an affidavit disclosing a defence, the plaintiff cannot successfully move for summary judgment unless he can, on the cross-examination of the defendant, displace the statements sworn to. When the cross-examination has taken place, the plaintiff may, if he sees fit, move for judgment, but he is not obliged to move for judgment before he has by cross-examination ascertained whether he can displace the statements sworn to by the defendant.

No doubt, there is some weight to be attached to the statement made by Mr. Smith that a plaintiff cross-examining upon the affidavit may also examine for discovery; but this is in no way answered by the suggestion that the plaintiff should, as a condition of the cross-examination, in the first place launch the motion for judgment. If the examination is unnecessary and vexatious, or if an examination is afterwards had for discovery, when the cross-examination on the affidavit should have sufficed, the trial Judge has ample jurisdiction to deal with the matter, and the costs of the examination for discovery would probably not be allowed by the taxing officer upon any application made to him. This, however, is quite beside the question. The Rule as it stands gives the right to cross-examination upon an affidavit, quite apart from the making of any motion for judgment.

The appeal fails, and should be dismissed with costs to the plaintiff in any event in the cause.

ANTISEPTIC BEDDING CO. v. LOUIS GUROFSKI—MIDDLETON, J.—
SEPT. 22.

Principal and Agent—Insurance Broker—Fire Insurance Obtained for Principal—Payment of Amount of Premiums to Agent—Premiums Paid by Broker by System of Credits—Set-off Assented to by Payee Equivalent to Actual Payment—Validity of Policies.—The action was brought to recover from the defendant the amount of the loss sustained by the plaintiffs by reason of the destruction of their property by fire on the 22nd June, 1912. The plaintiffs alleged that the defendant was employed by them as an insurance agent or broker to place insurance upon their property, and that, by reason of the breach of his duty, the insurance contracts obtained from several companies were not valid or binding upon the insurance