improper rejection of part of the evidence Lahey was prepared to give, I agree that there should be a new trial—and on the terms mentioned by my brother Riddell. I entirely agree with the contention of counsel for the landlords that, as the law now is, it is competent for and the duty of the County Court Judge to determine the question of tenancy, and the termination of it, and that the Judge may do this on conflicting evidence. Re Fee and Adams, 1 O.W.N. 812, and Moore v. Gillies, 28 O.R. 358, are in point.

FALCONBRIDGE, C.J.:—I think that Lahey should have had the opportunity to develope his case in evidence.

There must be a new trial. I thought Lahey ought to have his costs of this appeal, but will not dissent from the view of my learned brothers as to costs.

New trial directed.

CHAPMAN v. McWHINNEY—MASTER IN CHAMBERS—SEPT. 16.

Pleading—Statement of Claim—Inconsistency with Endorsement on Writ of Summons—Amendment—Validation of Pleading—Costs.]—The endorsement on the writ of summons was for commission on a sale of one property and exchange of another as part of the consideration of $22,000—giving the following particulars: To commission at 2½% $7,375; to commission on exchange 2½% $550: total $7,925. In the statement of claim the transactions between the parties were set out, and it was said that 2½ per cent. was only half the usual rate, which the plaintiff had agreed to accept in consideration of a promise by the defendant to place the property in question with him for resale. The plaintiff, therefore, asked: (1) payment of $7,925; (2) damages for loss of sale as agreed by the defendant; (3) or, in the alternative, for $15,750, being commission at the usual rate of 5 per cent. The defendant moved to strike out these two latter claims and the corresponding parts of the statement of claim as being inconsistent with the endorsement on the writ. The Master said that the cases under Con. Rule 244 were few; and the inclination of the Court was not to give it a very wide application: Muir v. Guinane, 7 O.W.R. 54, 158; Nicholson v. Mahaffy, 8 O.W.R. 685. The only substantial question here was one of the costs, as, if necessary, the plaintiff would have leave to amend. It was, perhaps, going a little