

the lands, viz., those effected since a certain conveyance of the year 1866, and he only allowed him interest on the enhanced value by reason of the improvements for which he made allowance; nevertheless he fixed an occupation rent proportionate to the full annual value of the premises as they were at the time of taking the account.

Held, since the Master only found M. entitled to a portion of the actual improvements, and only allowed him interest on the enhanced value by reason of this portion of the said improvements, he should not have charged him with an occupation rent for the increased value by reason of the improvements that were not allowed him.

Carroll v. Robertson, 15 Gr. at p. 177, and *Re Brazill, Barry v. Brazill*, at p. 257, approved of and followed. *Fawcett v. Burrell*, 27 Gr. 445, commented on.

C. Moss, Q.C., and *G. Lount* for the appellant. *W. Cassels* for the respondent.

PRACTICE CASES.

Osler, J.]

[Jan. 29.]

CROZIER V. ALKENBACH.

Mortgage—Rule 322 O. J. A.

The defendant on the 21st June, 1881, executed a mortgage to one Northrop, for \$1,300, payable five years after date, with interest half-yearly. The mortgage contained the usual proviso that the principal was to become due on default of payment of interest.

On the 7th September, 1881, the defendant sold and conveyed the premises to one Morton for \$4,500, on the following terms: Morton assumed the payment of the existing mortgage for \$1,300, and gave a mortgage for \$1,700 to Northrop, and executed a bond to the defendant for \$1,500 to secure the balance of the purchase money. On 14th September, 1881, Northrop assigned the \$1,700 mortgage to the plaintiff. The plaintiff's solicitor, it appeared, had acted as the solicitor for the parties in the above sale, and advised as to the particular manner in which the transaction was completed, and it was claimed by the defendant that the plaintiff, through his solicitor, had knowledge of the facts.

On the 19th May, 1882, Northrop assigned the \$1,300 mortgage to one Vair, who re-assigned

it to him on 27th October, 1882, and on the 30th October, 1882, Northrop assigned to the plaintiff.

This was a motion for judgment under Rule 322 O. J. A. in an action on the \$1,300 mortgage.

The defendant submitted that the land should be sold, and proceeds applied in payment of the mortgage, and that he was only liable for the amount, if any, due after deducting proceeds of such sale; or, if he was held liable to pay the full amount, that he was entitled to an assignment of the mortgage from the plaintiff.

Held, [overruling the decision of the Master in Chambers], that the application was properly made under Rule 322 O. J. A.; that the defendant as a mortgagor merely, was not entitled to an assignment of the mortgage and mortgage debt.

Aylesworth, for the motion.

Watson, contra.

Osler, J.]

[Feb. 2.]

ALLEN V. MATHERS.

Trial—Postponement—Costs.

The plaintiff gave notice of trial for 2nd October. On 23rd September a summons taken out by defendant to postpone the trial was made absolute on condition that the defendant paid the costs of the postponement.

On 27th September the defendant's solicitor gave notice to plaintiff's solicitor that defendant would not pay the costs, and that trial must be proceeded with; and on the same day the plaintiff moved for an order to "postpone the trial until the Spring Assizes, with costs to the plaintiff, including the plaintiff's costs of the day for putting off the said trial, the plaintiff's costs of opposing the defendant's application, and the costs of and incidental to the said summons, the hearing thereof, and of this order."

This order was granted on the 28th December following.

On appeal, OSLER, J., varied the order of the 28th December, by directing the defendant's application to postpone the trial to be discharged with costs, and by limiting the costs ordered to be paid to the costs of that application, and allowed the defendant the costs of appeal.

Holman, for the plaintiff.

Shepley, for defendant.