that the affidavit of the defendant, filed with his appearance, did not comply with Rule 56. The learned Registrar (sitting for the Master in Chambers) said that the affidavit of the defendant did not in terms state that he had "a good defence on the merits," but it stated facts which, if true, shewed that he had in fact such a defence. This was a substantial compliance with Rule 56. Under that Rule, two courses are open to a plaintiff: he may cross-examine the defendant on his affidavit, and obtain, if he can, an admission of the plaintiff's claim on which he may move for judgment; or he may waive a cross-examination and move for judgment as upon a demurrer to the affidavit as not shewing a defence. This plaintiff adopted the latter course; but, in so doing, he virtually admitted all that the defendant had sworn to be true. The 2nd paragraph of his affidavit explicitly denied any indebtedness, and particularly of the amount set forth in the writ of summons. The 3rd paragraph stated that he had paid the plaintiff in full for any services rendered. If these statements were true, they shewed that the defendant had a good defence on the merits; and they were admitted to be true for the purposes of this motion; but the plaintiff claimed to be entitled to judgment because the defendant did not add to these statements the further statement that he had "a good defence on the merits." The Rule was not intended to have any such effect. It might perhaps be said that no sum was "set forth in the writ of summons," but what was obviously meant was the endorsement on the writ of summons. Motion refused—costs to be in the cause to the defendant, and the order to be without prejudice to the further prosecution of the action by the plaintiff. R. Wherry, for the plaintiff. J. M. Forgie, for the defendant.

MERRIAM v. KINDERDENE REALTY CO.—LENNOX, J.—JULY 20.

Appeal—Report—Evidence.]—Appeal by the defendants from the report of an Official Referee. The learned Judge, after hearing argument and taking time to consider the evidence, said that there was no ground for setting aside the report or varying it or referring it back. On the contrary, it appeared to be well supported by the evidence. Appeal dismissed with costs. A. McLean Macdonell, K.C., for the appellants. W. J. McWhinney, K.C., and A. Cohen, for the plaintiffs, respondents.