

## NEW BRUNSWICK.

SUPREME COURT, EN BANC.

NOVEMBER 18TH, 1910.

CYR v. DEROSIER.

*Appeal from County Court—Non-jury Case—Evidence Supporting Judge's Finding—Admissibility of Evidence — Lease — Secondary Evidence where Notice to Produce Given.*

Appeal from the Madawaska County Court. Argued September sittings, 1910.

T. J. Carter, for defendant, appellant.

J. D. Phinney, K C., for plaintiff, respondent.

The judgment of the Court (BARKER, C.J., McLEOD, WHITE and McKEOWN, JJ.,—LANDRY and BARRY, JJ., took no part, not being present at argument) was delivered by

BARKER, C.J.:—This is an appeal from the County Court of Madawaska. The case was tried without a jury, and judgment was entered for the plaintiff DeRosier, (the respondent herein) for the full amount of his claim. So far as the facts in the case are concerned, the Judge found them in the plaintiff's favour. As the evidence given on the part of the plaintiff warranted the Judge's conclusion, and as he gave credit to it in preference to that given for the defendant, there is no reason for disturbing the judgment on that ground. The only other point in the case arises over the admission of some evidence, as to which I think the Judge's ruling was quite correct. The action is in form one for use and occupation. The premises were rented by the plaintiff to the defendant under a written agreement executed in duplicate, each party having a copy. It was admitted by counsel on the trial that the plaintiff's copy of the lease had been destroyed in the fire when the Court-house was burned, and that due notice to produce the defendant's copy had been given. This copy was on the trial called for under the notice, and in reply the defendant's counsel replied, "We are not producing it." The plaintiff then went on and gave secondary evidence of the contents