

motion was made to strike them out under Rule 318 of the Queen's Bench Act, 1895.

This Rule provides that a Court or a judge may at any stage of the proceedings order to be struck out or amended any matter in the pleading which may be scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action.

*Held*, that, as no provision is made in the Act for a plaintiff demurring to the statement of defence, any pleadings which would have been held bad on demurrer under the former practice should now be struck out on application, or in a proper case amended on terms.

The 5th and 6th paragraphs of the defence alleged payment, but omitted the words "before action," and leave was given to amend these paragraphs, but the other paragraphs objected to were all held to be bad in law and struck out with costs to be costs in the cause to the plaintiffs in any event.

*Culver*, Q.C., for plaintiffs.

*Dawson*, for defendant McKinnon.

TAYLOR, C.J.]

[May 19.

GRANT *v.* MCKEE

*Practice—Consent order—Application to enlarge time—Forfeiture.*

In this case the defendant was a tenant of the plaintiff under a lease containing a proviso for re-entry on non-payment of rent. Rent being in arrear the plaintiff recovered judgment by default for the amount of the rent, and for delivery of possession, and a writ of possession was executed by the sheriff. Afterwards an order was made by consent, providing that upon the defendant paying on the 29th of April the amount of rent and costs, he should be relieved from the forfeiture. On the day named the defendant's solicitor tendered to the plaintiff's solicitor the amount due, and offered to pay it over on condition of receiving an assignment of the plaintiff's judgment to a third person who had advanced part of the money. The plaintiff's solicitor declined to agree to this assignment, being given without first seeing his client, who lived at some distance, and the money was not paid over. Three days afterwards, however, the money was tendered unconditionally, but the plaintiff's solicitor refused to receive it on the ground that it was too late.

The defendant then moved to have the time for making the payment extended.

*Held*, that an order made on consent cannot be varied or set aside, without showing some ground of surprise, mistake or fraud, or other ground which would invalidate an agreement between the parties.

*Holt v. Jesse*, 3 Ch. D. 177; *Harvey v. Croydon*, 26 Ch. D. 249; *In re West Devon, etc., Mine*, 38 Ch. D. 51.

Application dismissed without costs on account of the harsh conduct of the plaintiff in enforcing his rights.

*Hull*, for plaintiff.

*Mathers*, for defendant.