

the plaintiff, and in default a foreclosure of the plaintiff's right to the machine in question.

The action was brought for the cancellation of certain notes given by plaintiff to defendants upon the purchase by him of a 14 horse-power re-built Champion engine, for which plaintiff gave in addition to the notes an old 12 horse-power engine, or in the alternative for damages for breach of warranty as to the power of the engine, and for the price of the old engine. The defendants counterclaimed for the unpaid purchase money represented by the notes, alleging a conditional sale of the engine, and that the property had not passed, and therefore the action for breach of warranty would not lie. The learned Judge (STREET, J.) held that the plaintiff having kept the engine for two seasons must be deemed to have accepted it, and that the counterclaim removed any difficulty as to the claim for breach of warranty, for in answer to such a counterclaim the plaintiff was entitled to plead a breach of warranty.

J. H. Moss, for defendants.

W. E. Middleton, for plaintiff, relied on McIntyre v. Crossley, [1895] A. C. 463, as shewing that the title to the machine had become vested in him.

STREET, J.—Held, that the judgment as settled by the registrar was the only judgment which should be entered in the present action, and the expression of opinion as to the ownership contained in the written reasons for judgment should not be embodied in it, as the question of ownership was not properly before the Judge.

Motion dismissed with costs.

Blewett & Bray, Listowel, solicitors for plaintiff.

Wilkes & Henderson, Brantford, solicitors for defendants.

WINCHESTER,
Master.

FEBRUARY 18TH, 1902.

CHAMBERS.

CUMMINGS & CO. v. RYAN.

Parties—Action by Person Using his own Name with the Addition of the Words “& Co.”—Should Sue in his own Name only—Rules 143, 144, and 222.

An application by the defendants for an order staying proceedings herein upon the ground that the plaintiffs have failed to comply with the demand made by the defendants for a declaration in writing of the names and places of residence of all persons constituting the plaintiff firm.