[Reference to Chamberlain v. Chamberlin, 11 P. R. 501; Girardot v. Welton, 19 P. R. 162; Holmested & Langton, p. 445; Arnold v. Bainbrigge, 1 Ex. 153; Owen v. Wilkinson, 5 C. B. N. S. 526.]

There is, however, another consideration. The plaintiff and the Drakes are charged with taking the money of the company and putting it into land. A mere judgment for the money used might be of little avail, and a lien might have to be declared upon the land. This could, of course, be done on the counterclaim under the prayer for general relief: Watson v. Hawkins, 24 W. R. 884; Newell v. National Bank, 1 C. P. D. 501; Duryea v. Kaufman, ante 773; but not in a defence simply of set-off in the original action, to which the Drakes are not parties. . . . Girardot v. Welton, 19 P. R. 162, at p. 165.

The relief sought must, then, be by way of counterclaim. . . . The company's counsel alleging that he has other evidence, it would be obviously unfair to decide against them on the evidence now available to the Court.

In my opinion, the order striking out the counterclaim was improper, unless it can be said that the cause of action on the counterclaim is not "relating to or connected with the original subject of the cause." . . . It can hardly be contended that the taking of the very moneys for which the notes were given is not connected with the note transactions. It would be for the trial Judge to decide how far an inquiry might go in respect of such other matters and moneys; but at this stage the counterclaim as a whole could not go by the board.

It may be considered that the order was made in reality because it was not convenient to try the issues at the same time. I do not agree that it was not convenient . . . . Even if the order could be supported, it would still be proper to stay the execution of the judgment against the company until the dealings of the plaintiff with the property of the company were investigated: Auerbach v. Hamilton, 19 O. L. R. 570. And that relief should be given the company now.

Then as to the main appeal, the first contention is that the notes are not signed in the name of the company. This, with some other objections, was raised in Farmers Bank v. Big Cities Realty and Agency Co., ante 397, and there overruled. As that was a County Court case, we are not bound by it; I have accordingly considered these objections anew, and see no reason to change the opinion previously expressed.

The notes . . . are signed by a rubber stamp "The Big Cities Realty & Agency Co. Ltd.," and immediately below appear