

MEREDITH, C.J. :—The plaintiff sued to recover possession of the land in question, and the appellant counterclaimed setting up that the grantor of the plaintiff, who was her son, was trustee of the land for her, the appellant, and that the plaintiff obtained the conveyance with notice of the trust, and in fraud of her, the appellant, and alleging that the transaction was colourable, but without any allegation that the appellant is a creditor; without bringing, if indeed it could be brought, the counterclaim on behalf of herself and all other creditors of the grantor, she alleges that the transaction is fraudulent as against creditors; and it may be said that the pleading probably indicates that she seeks to have the conveyance set aside as fraudulent.

With regard to the first point, the Statute of Frauds is pleaded, and that is a complete answer to the appellant's claim. The trust, if there was any—we express no opinion upon the facts—was one resting in parol, and, there being nothing to take the case out of the provisions of the Statute of Frauds, the Chancellor rightly held that the first branch of the appellant's case failed.

With regard to the second branch, for reasons which I have indicated already, no case is made upon the pleading for setting aside the transaction as fraudulent against the creditors of the grantor; as I have said, it is not even alleged that the appellant is a creditor, and the counterclaim is not on behalf of all creditors.

Even assuming that the appellant would be entitled to counterclaim in the same way as a plaintiff would sue, the Rules shew that a plaintiff is prevented from setting up two distinct causes of action, unless they arise out of the same transaction. For that, *Stroud v. Lawson*, [1898] 2 Q. B. 44, may be cited; and there are other cases to the same effect.

The appellant asks that leave should be given to amend; but, admittedly, if she amended, it would be for the purpose of electing to abandon the other cause of action and proceeding upon the claim to set aside the transaction as fraudulent as against creditors. We think that leave to amend should not be given in such circumstances, but that the appellant should be left to bring her action, if she so desires to set aside the transaction as fraudulent as against creditors.