no renewal of the mortgage appeared to have been filed; and also, by way of counterclaim, a claim against the plaintiff for $3,000 damages for alleged false imprisonment.

The order of the Master could not be supported.

If the defendant's contention that the goods are partnership property should be substantiated, the chattel mortgage, if operative at all, could affect only the interest of the mortgagor, the defendant, as a partner. In that case, whatever might be the remedy of the mortgagee as to the mortgagor's interest in the goods, it would not be to recover possession of the goods, for no such possession could be granted as against the other partners. The defence thus raised had not been shewn by any material before the Court to be so untenable as to deprive the defendant of the right to go down to trial.

It was not necessary to deal with the defence as to the description of the goods; but the learned Judge questioned whether the principle of McCall v. Wolff (1885), 13 Can. S.C.R 130, and Hovey v. Whiting (1887), 14 Can. S.C.R. 515, had any application to a case where really no goods at all were described in the mortgage, and it was only by inference from other clauses that it could be suggested that the mortgage was intended to cover all the goods in a certain place.

The counterclaim could not be considered either frivolous or vexatious under Rule 124; but it tended to prejudice and embarrass the fair trial of the plaintiff's action: Rule 137.

By Rule 115, a defendant may set up by way of counterclaim any right or claim whether the same sounds in damages or not. But the counterclaim here had no such connection with the subject-matter of the plaintiff's action as to affect the plaintiff's rights under the mortgage. Sufficient was not shewn to justify the embarrassment to the plaintiff involved in allowing a counterclaim of this nature to be tried in what was in effect a mortgage action. See Dunlop Pneumatic Tyre Co. v. Ryckman (1902), 5 O.L.R. 249.

Apart from all other grounds, the fact that an action for false imprisonment must be tried by a jury, unless the parties waive the right (sec. 53 of the Judicature Act), would be a sufficient ground for refusing to allow the counterclaim to be tried in the plaintiff's action.

The order of the Master should be set aside, and the plaintiff's motion for judgment dismissed. The counterclaim should be struck out, but without prejudice to the defendant's right to bring an independent action. The costs of the motion for judgment before the Master and of the appeals from his order should be costs in the cause. The costs of the plaintiff's motion to strike out the counterclaim should be costs in the cause to the plaintiff in any event.