

action of plaintiff be dismissed: a declaration that the judgments have no validity; that they be set aside for fraud and want of jurisdiction of the Court; that the agreement of 8th June, 1905 (F), be set aside; that Donald Crawford (2), Murdoch McLeod (4), the administratrix of John McLeod (5), and John McMartin (7), be restrained; that Donald Crawford (2), Murdoch McLeod (4), and John McMartin (7), may pay all loss, costs, and damages occasioned by the actions and the costs of this action; general relief is also prayed.

A motion was made before the Master in Chambers by defendants Donald Crawford (2), Murdoch McLeod (4), and John McMartin (7), for an order setting aside the counterclaim, upon the grounds: (a) that it is irregular; (b) that it can be more conveniently tried in a separate action; and (c) upon other grounds. The Master set the pleading aside. . . .

It seems clear that the position of plaintiff is that Donald Crawford (2) is entitled to a one-third interest in X, and that plaintiff owns one-half of that one-third; it is also clear that whatever interest Donald Crawford (2) has in X, plaintiff claims one-half of that interest. Asking a declaration against Thomas Crawford (3) as to his (plaintiff's) interest in X, it is clear that the question must be tried out between these two as to what the actual interest of Donald Crawford (2) is. Thomas Crawford (3) alleges that Donald Crawford (2) has no interest because he abandoned any interest he might otherwise have had; that must be tried. He alleges that the judgments under which Donald Crawford (2) claims are invalid, having been obtained by fraud and perjury; that must be tried. It is true that plaintiff says that these judgments are bad so far as they give John McLeod (5) a one-fourth interest, but he does not disclaim any advantage he himself (1) may gain by the judgment in favour of his trustee (2). Thomas Crawford (3) alleges that an agreement (F) was obtained by Donald Crawford (2) and another, by fraud, and that Donald Crawford (2) should have no interest in the land through that instrument; that question must be tried.

To put the matter in a few words, plaintiff (1) claims, or may in his pleading claim, a declaration that he is entitled to one-half of one-third or of such smaller share of