

RIDDELL, J., agreed in the result, for reasons stated in writing.

SUTHERLAND, J., agreed with CLUTE, J.

MASTEN, J., agreed in the result, for reasons stated in writing.

MAGEE, J.A., read a dissenting judgment.

Appeal allowed (MAGEE, J.A., dissenting.)

HIGH COURT DIVISION.

ORDE, J., IN CHAMBERS.

APRIL 7TH, 1920.

WASH TOM v. WONG SING.

Summary Judgment—Rule 57—Claim for Possession of Goods under Chattel Mortgage—Specially Endorsed Writ of Summons—Defences Set up by Affidavit of Merits—Goods Owned by Partnership Mortgaged by one Partner—Description of Goods—Insufficiency—Leave to Defend—Counterclaim for False Imprisonment—Striking out—Prejudicing Trial of Plaintiff's Action—Rules 115, 124, 137—Jury Trial—Judicature Act, sec. 53—Costs.

Appeal by the defendant and cross-appeal by the plaintiff from an order of the Master in Chambers, upon a motion made by the plaintiff for summary judgment under Rule 57, allowing the plaintiff to enter judgment against the defendant for the possession of certain goods, but directing that proceedings upon the judgment be stayed until after disposition of the defendant's counterclaim. The plaintiff also asked that the counterclaim be struck out as frivolous and vexatious.

J. R. Roaf, for the defendant.

D. P. J. Kelly, for the plaintiff.

ORDE, J., in a written judgment, said that the plaintiff's claim, as specially endorsed upon the writ of summons, was limited to a claim for the recovery of certain goods under and by virtue of a chattel mortgage made by the defendant to the plaintiff and a claim for an injunction. The defendant in his affidavit of merits set up by way of defence that he was not the sole owner of the mortgaged chattels, but only one of three partners, the true owners; also that the chattel mortgage was defective in that it did not contain such a description of goods that it could be learned from the mortgage, which goods, if any, were covered thereby; also that