

CARTWRIGHT, MASTER.

MARCH 6TH, 1906.

CHAMBERS.

ATTORNEY-GENERAL v. HARGRAVE.

Pleading—Defence and Counterclaim—Irrelevancy—Embarrassment—Action by Attorney-General for Cancellation of Mining Leases—Registration of Cautions—Petition of Right—Premature Counterclaim.

Motion by plaintiff to strike out paragraphs 12 and 13 of the statement of defence, as well as the whole of the counterclaim for \$25,000.

A. W. Ballantyne, for plaintiff.

J. Shilton, for defendants.

THE MASTER:—The action is brought by the Attorney-General for the province to have certain mining leases of lands in the Cobalt district cancelled, and to recover possession of the lands comprised therein, on the ground that the leases were obtained on affidavits of the necessary discoveries which were untrue to the knowledge of defendants.

The statement of defence sets out in some detail certain matters which occurred before the issue of the leases; it denies that the affidavits of discovery were untrue or that if so the defendants had any knowledge of this; and further it sets up the defence of a purchase in good faith for value without notice. The statement of defence then states the fact of cautions having been filed by the Attorney-General, and proceeds as follows:—

12. The said cautions were lodged illegally, improvidently, and without reasonable cause, and were so lodged by and at the instigation and on the clamour and false reports of certain interested individuals—amongst others, R. J. Tough and J. C. McMillan—who were desirous of wrongfully depriving the defendants of the said lands and acquiring title thereto in themselves, and who, immediately after they procured the said cautions to be lodged and as a direct result thereof, entered and trespassed upon the said lands, and on or about 28th June, 1905, made application to the said department for a title thereto, and by reason of the said cautions