

above interpretation of the letter of Messrs. Arnoldi & Grierson of 18th January.

It is, therefore, beyond question that the plaintiff is still bound "to take no steps in the action nor make any effort to examine" the defendants until "he has been examined for discovery and the motion to set aside his order to produce has been disposed of."

This being so, it becomes unnecessary to deal at any length with the other ground, inasmuch as the action was in its present condition when the undertaking was given on 9th and 12th December.

Even if no such undertaking had been given, it seems doubtful whether it can be successfully argued that a counterclaiming defendant can be treated as if he were the plaintiff in a separate action, for the purposes of having a distinct procedure. If this is not so, then a plaintiff might omit to give notice of trial in his own action and give it later for the counterclaim. Would not such a notice of trial be promptly set aside for irregularity? Theoretically and technically, in some cases where the counterclaim is really a cross-action, this might be possible, but any separate procedure would not be allowed (if at all) in practice, except perhaps in cases where the counterclaim was directed to be tried separately.

It does not seem conceivable that such proceedings as are in question here can be proper, when the whole counterclaim so-called is really nothing more than a defence, and is based on the theory that the plaintiff's action must fail, and the claim for relief for \$50,000 damages is on the ground of plaintiff having without any justification registered a caution against the lands of the Otisse Mining Co., and thereby injured them as well as Warren, Gzowski, and Loring.

As the question has been raised, I have thought it useful to point out some of the objections, as they appear to me, to the course attempted by the plaintiff. But I do not express any considered opinion, and would desire to reserve the question for further consideration if it should ever come up squarely for decision.

Here at any rate the question in the action and the counterclaim is only one. All discovery that could at this stage be relevant to the counterclaim would necessarily be