an order of the Master in Chambers. The action was brought to set aside a chattel mortgage made by the defendant Grossman to the defendant Caplan, or, in the alternative, to recover the proceeds of the sale of the goods covered by the mortgage. In para. 3 of the statement of claim the plaintiff alleged that the sole proprietor of the Crown Ladies Tailoring Company was the defendant Grossman; that the latter became indebted to the plaintiff, who recovered a judgment against the company. By para. 3 of his statement of defence the defendant Caplan alleged that the plaintiff was not a creditor of the defendant Grossman, had no interest in the subject-matter of this action, was a bare trustee for M. Pullan & Sons, and could not maintain this action without joining his cestuis que trust as plaintiffs. By para. 4, the defendant Caplan denied that the defendant Grossman was now or at any time indebted to the plaintiff, and set out alleged facts to support his denial. By para. 13 the defendant Caplan stated that he would object at the trial that, the goods having been sold before action, the plaintiff could not maintain an action to set aside the mortgage. By para. 14, the defendant Caplan stated that he would object at the trial that the alternative claim to the proceeds of sale was a departure from the endorsement on the writ of summons. The plaintiff moved to strike out these 4 paragraphs; the Master in Chambers made an order striking out paras. 3 and 4; and both parties appealed. SUTHERLAND, J., was of opinion, for reasons stated in writing, that the Master had no power to determine that the matters pleaded in paras. 3 and 4 were res judicata (Rules 124, 136, 137, 205, 208); that paras. 3 and 4 should be restored, and the question of res judicata left to be determined by the trial Judge. SUTHERLAND, J., said also that the defendant might have the right to plead the matters set out in paras. 3 and 4, even if they were res judicata so far as the defendant Grossman was concerned: Allan v. McTavish (1881-3), 28 Gr. 539, 545, 546, 8 A.R. 440, 442; Zimmerman v. Kemp (1899), 30 O.R. 465, 470, 471; Smith v. McDearmott (1903), 5 O.L.R. 515, 517, 518. The Master was right in coming to the conclusion that the allegations contained in paras. 13 and 14 were properly pleaded. Appeal by the defendant Caplan allowed with costs. Appeal by the plaintiff dismissed with costs. Joseph Singer, for the defendant Caplan. George T. Walsh, for the plaintiff.