

claim being in the nature of an independent action the rule was held to apply, and the counterclaim was struck out. Fry, J., delivering judgment, however, says: "The first (object) is the recovery of land which is not in question in the plaintiff's action, and with which there is no attempt to shew a connection." On this ground the counsel for plaintiff contends that there is no connection in the counterclaim of defendant herein with the plaintiff's claim. But counsel for defendant states that the whole transaction of the purchase of the land, the payment of the purchase money by the defendant, and the claim arising out of the business transactions between himself and the plaintiff, as set forth in certain paragraphs of the counterclaim, are so connected with one another as to form one whole transaction. In view of this statement and examining the pleadings herein, I should hesitate to set aside the paragraph of the defendant's counterclaim sought to be struck out on the motion.

Were it not that the plaintiff's counsel urges that the counterclaim cannot be conveniently tried in this action, and ought not to be allowed (Ord. 19 v. 3), I would dismiss this motion on the ground that this is an action "to establish title to lands" and not an action "for the recovery of land," and is not therefore within the rule: *Gledhill v. Hunter*, 14 Ch. D. 492 (Arch. Q. B. Pr. 14th ed., p. 1,207).

As the plaintiff may succeed before the trial Judge in excluding the counterclaim herein, the order refusing this motion will make the costs of this application costs in the cause.

NOVA SCOTIA.

SUPREME COURT.

BEFORE MACGILLIVRAY, Co. C.J.,
(AS MASTER.)

AUGUST 7TH, 1909.

BENOIT v. DELOREY.

Assault—Action for Damages—Counterclaim—Trespass to Lands—Plea of Justification—Payment into Court—Acceptance by Plaintiff—Costs—Practice.

C. E. Gregory, K.C., for plaintiff.

J. A. Wall, for defendant.