

Once it is clear that His Majesty is to all intents and purposes the plaintiff, it follows that no counterclaim, either for a money demand or for damages for breach of contract or for damages for tort, can be set up. A counterclaim is merely a cross-action, and cannot be pleaded against the Crown as of right: *Attorney-General of Ontario v. Hargrave*, supra.

That the Attorney-General may be made a party defendant in certain actions of an equitable or declaratory nature is well established by many cases, of which *Dyson v. Attorney-General*, supra, is one of the latest. But no case has gone the length of establishing that in every instance in which relief is sought against the Crown the ordinary procedure by way of petition of right and fiat can be avoided by commencing a declaratory action; and in no case has it been held that, by suing the Attorney-General, a direct judgment against the Crown can be obtained.

The only course for the defendants to pursue is to seek relief by way of petition of right. In effect, by their pleading they seek, by way of counterclaim, to have it declared that they are entitled to damages against the Crown, the alleged causes of action being of a tortious nature.

It is clear that no declaration can properly be made against the Attorney-General upon the allegations contained in the paragraphs objected to by the plaintiff; and, following the decision in *Attorney-General of Ontario v. Hargrave*, supra, they should be struck out.

The appeal from the order of the Master should therefore be allowed with costs, and the plaintiff's motion should be granted with costs.

---

MIDDLETON, J.

JANUARY 22ND, 1921.

PETERSON v. DOMINION TOBACCO CO.

STEVENSON v. FOSTER TOBACCO CO.

VAMPARYS v. DOMINION TOBACCO CO.

*Contract—Purchase of Tobacco from Growers—Purchasing Agent—Breach of Duty—Evidence—Authority of Agent—Holding out—Liability of Principal for Price of Tobacco Purchased—Limitation as to Quantity not Disclosed—Apparent Scope of Agency—Relief over against Person Procuring Agent to Buy beyond Quantity Required—Indemnity—Refusal to Accept Delivery—Damages—Measure of—Interest—Expenses of Resale—Evidence—Findings of Trial Judge.*