

RITCHIE, J. }
In Chambers }

[Feb. 26.]

BROOKFIELD v. SUTCLIFFE.

Setting down for trial—Counter-claim and reply—When cause at issue.

Besides pleading a defence to plaintiff's claim, defendant raised a counter-claim to which in due course plaintiff replied. Before the expiration of 21 days after the delivery of the reply, plaintiff moved under a special rule which provides that certain causes may be set down for trial on motion of either party after the action is at issue.

Held, that as the answer or reply to a counter-claim must be treated as a defence to an action, the defendant in the suit had the same time to reply to it as the plaintiff would have in reply to a defence in an action in which there was no counter-claim.

That the cause not being on that account at issue, the motion to set down for trial was premature.

Application dismissed, but not with costs, as defendant's objection was technical in character, and as he had not shown that his case would have been prejudiced in the event of the cause being set down for trial.

Fulton, for plaintiff.

J. A. Chisholm, for defendant.

TOWNSHEND, J. }
In Chambers. }

Mar. 6.

CURRIE v. HIRSCHFIELD.

Striking out defence—Interlocutory application—Substantial question for trial.

On the dissolution of a partnership between plaintiff and defendant, F. H., the latter, in consideration of a sale to him of plaintiff's share in the business, gave a promissory note in which his father, G. H., also joined as maker. For convenience, as alleged by plaintiff, the note was made payable to plaintiff's mother, who subsequently, before maturity, indorsed the same to plaintiff. To an action on the instrument, defendants, the makers, pleaded: (1) That the contract of defendant G. H. was one of guaranty, and void, because not in writing as required by the statute. (2) That the note being made payable to the mother of plaintiff from whom no consideration moved, was bad in its inception. (3) That the note was made in favor of plaintiff's mother for the purpose of hindering, delaying and defrauding the creditors of plaintiff. On motion to strike out defence as false, frivolous and vexatious,

Held, that the defence raised serious and substantial questions of fact and law which could not be disposed of on an interlocutory application.

Motion dismissed.

Russel, Q.C., for defendants.

King, Q.C., for plaintiff.