Held, that this formed no defence for the defendant against the claim on the notes.

The agreement also provided that upon the holders (the bank) being satisfied, all securities were to be assigned to one of the principal debtors.

Held, that this arrangement not being absolute, but limited to those who were parties to it as between themselves, did not affect the claim of the defendant, as surety, to the possession of the securities, if he paid the plaintiffs.

COMMON PLEAS DIVISION.

C. P. Div. Ct.] [June 25.

THE CENTRAL BANK OF CANADA v. OSBORNE ET AL.

Counter-claim—Slander — Action on promissory note.

To an action on a promissory note the defendant L., the indorser, pleaded that by an arrangement made with the plaintiffs, who had discounted the note, it was to be renewed from time to time, and paid out of the proceeds of a certain agency business, in which the defendant O., the maker of the note, and the defendant L., were engaged as partners; that the defendant O. had absconded, and that afterwards the plaintiffs had, by libel and slander of the defendant L., prevented him from securing the continuance of the agency business for himself, whereby he was unable to carry out the arrangement; and he also pleaded a counter-claim against the plaintiffs for the alleged libel and slander.

The Court (ROSE, J., dissenting) struck out the counter-claim upon an application under Rule 127 (*b.*), O. J. A.

Per CAMERON, C.J.—There is a wide range of discretion under Rules 127 (*b.*), 168, and 178. In actions where malice is an essential element, and the damages are sentimental, without a legal rule to guide in their measurement, there is much more injury likely to arise to the cause of justice by allowing such a counter-claim, than can possibly spring from the defendants being forced to bring an independent action.

Per ROSE, J.—The charge of libel arises out of the circumstances giving rise to the claim and defence. If the facts set up by L. do not constitute a valid answer in law to the claim, the plaintiffs may recover judgment against him, when, peradventure, he is in law and justice entitled to damages against them exceeding the amount of such claim; but if the facts constitute a defence to the claim they must be allowed to be shown in evidence, and no good will be achieved by not allowing the counter-claim to stand.

Lefroy, for the plaintiffs.

Ritchie, Q.C., for the defendant L.

QUEEN'S BENCH DIVISION.

Q. B. Div. Ct.] [June 28.

IN RE MACFIE V. HUTCHINSON.

Prohibition—Division Court—Attachment of debts - R. S. O. c. 47, s. 125.

Held, reversing the decision of ROSE, J., *ante*, p. 159, that a medical health officer of a municipality is not an employee within the meaning of R. S. O. c. 47, s. 125, WILSON, C.J., dissenting.

Finlay, for the plaintiff.

G. W. Marsh, for the defendant.

PRACTICE.

Robertson, J.] [April 13.
Chy. Div. Ct.] [June 17.

FRAM V. FRAM.

Partition or sale—Dowress as applicant—R. S. O. chs. 55, 101.

Although some expressions in the Partition Act, R. S. O. c. 101, authorize a person entitled to dower not assigned, to apply for partition or sale of the lands in which she is interested, yet the Court may, in its discretion, refuse the application, and leave the dowress to proceed otherwise to have her dower assigned. The provisions of the Partition Act, and of the Dower Procedure Act, R. S. O. c. 55, must be harmonized.

The application of a dowress for partition or sale of two parcels of land, each held in severalty by a different person, subject to her right of dower, was refused where the defendants opposed the application, and the proposed proceedings were for the benefit of the applicant only.