

factory either to themselves or to the public ; but the ideal has a way in these days of sometimes becoming the actual sooner than expected.

SET-OFF AND COUNTER-CLAIM.

This subject is fully and ably treated in the following pages by a gentleman occupying a prominent position in the New Brunswick bar and Equity reporter of the Court there. He approaches the question from the point of view of sections 112 and 113 of the New Brunswick Supreme Court Act of 1897. His observations will be read, however, with profit and interest in the other English-speaking parts of the Dominion.

In this province the subject is covered by our Judicature Act, section 57, sub-section 7, and by Rule 251, which must, of course, be before the Ontario reader in his examination of Mr. Trueman's article, which is as follows :

The distinction between set-off and counter-claim, as used in the Judicature Act rules, has been the subject of frequent and closely-reasoned examination by the English Courts. In such instances, the cases exhibit a tolerable unanimity in their acceptance of the precise meaning to be assigned to each term, and there would now seem little need for confusion in their use. Unfortunately, cases abound in which the words not being the subject of critical construction their distinction has not been observed, and a looseness of language has been allowed in which they have been run together as convertible terms. Again, cases are not wanting where judges expressly declined to agree that there was any difference between the words. (See per Bramwell, L.J., in *Gathercole v. Smith*, 7 Q.B.D. 626.) So much divergence of views is fruitful in difficulties to one approaching the consideration of the words for the first time, and may account in some degree for the conflict of opinion in the profession in New Brunswick as to their meaning in a context not identical with the English rules.

By the New Brunswick Supreme Court Act, 60 Vict., c. 24, it is enacted under the title of "Set-off and Counter-claim" as follows :

"112. A defendant in any action may set off against the claim of the plaintiff any right or claim, whether such set off sound in damages or not."