

. . . Apprehended danger was a sufficient ground for moving for the interim injunction: *Siddons v. Short*, 2 C. P. D. 572; *Western Union, etc., Co. v. Guernsey, etc., Co.*, 46 Mo. App. 120. Costs of action and motion for injunction to plaintiffs.

MacCraken, Henderson, & McDougal, Ottawa, solicitors for plaintiffs.

O'Gara, Wyld, & Osler, Ottawa, solicitors for defendants.

STREET, J.

FEBRUARY 25TH, 1902.

CHAMBERS.

HUME v. HUME.

*Pleading — Counterclaim — Action by Executrix and Devisee for Arrears of Annuity—Counterclaim by Co-Executor for Moneys Received for Estate—Rule 248.*

*Pender v. Taddei*, [1898] 1 Q. B. 708, followed.

Appeal by defendant from order of Master in Chambers, striking out counterclaim. The action was brought by the widow of George Hume for arrears of an annuity under his will. The counterclaim was for moneys which the defendant alleged came to the hands of plaintiff, as one of the executors of the will, and which she had not accounted for. The Master held that this was not a proper subject of counterclaim, it being a claim against the plaintiff in a representative character.

J. Bicknell, for appellant.

N. F. Paterson, K.C., for plaintiff.

STREET, J.—*Held*, that since the counterclaim was for relief, not by defendant alone, but by defendant for himself and others, it does not come within Rule 248. *Pender v. Taddei*, [1898] 1 Q. B. 798, followed. *Held*, also, that the question as to the effect of the release executed by plaintiff of part of the moneys claimed in the action is not a matter to be raised by counterclaim, but as a defence *pro tanto* to plaintiff's claim. Appeal dismissed with costs payable forthwith.

Paterson, Ritchie, & Sweeney, Toronto, solicitors for plaintiff.

J. W. Elliott, Milton, solicitor for defendant.