

3rd. An injunction to restrain the defendant from selling said lands and premises.

4th. An order to compel the defendant to execute a deed of said lands, etc.

5th. Such other and further relief as the nature of the case may require.

The defendant denies the plaintiff's allegations and counterclaims for a balance of \$2,421.33 due him for moneys paid and advanced for the use of the plaintiff, and for commissions on purchases arising out of a business transaction or venture entered upon by the plaintiff and defendant.

The plaintiff moves to set aside paragraphs of the defendant's counterclaim dealing with such moneys and commissions on the ground that this action being an action for the recovery of land such claim is contrary to the provisions of order 18 of the rules of the Judicature Act.

Rule 2 of said order provides that, "No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof is held, or for any wrong or injury to the premises claimed."

The plaintiff's solicitor contends that the counterclaim is against the spirit of this rule; that to an action for the recovery of land the defendant cannot plead a counterclaim except a counterclaim that is *sui generis*. I think that this view tends to push the rule so as to contravene the provisions of rule 3 of order 19.

"A counterclaim is the assertion of a separate and independent demand which does not answer or destroy the original claim of the plaintiff": Per Cockburn, C.J., in *Stook v. Taylor*, 5 Q. B. D. 569, 577. The modern counterclaim is the creation of the Judicature Act. The defendant now may set-off by way of counterclaim against the claims of the plaintiff any right or claim whether it sounds in damages or not. Such counterclaim will have the same effect as if it were a cross-action. (Vide notes to Or. 21, r. 21, Eng. Jud. Act, Annual Pr. 1909, at p. 301). Counsel for plaintiff cites *Compton v. Preston*, 51 L. J. Chy. 680, in support of his contention. In this case the counterclaim sought to set up two causes of action—the one to recover land, the other a right to recover damages. The counter-