

the plaintiff for the purpose of litigating the counter-claim is in substance a defendant, and so well within rule 3 (Ont. Rule 127) justifying a counter-claim.

Order affirmed.

[NOTE.—The *Imp.* and *Ont.* sections are identical respectively. *Imp. O. 19 r. 3* and *19* are identical with *Ont. Rules 127, 149* respectively; *Imp. O. 20, r. 1* is not identical with *Ont. Rule 152*.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Ferguson, J.]

[May 3.]

THE CONSOLIDATED BANK V. WALLBRIDGE.

Motion for judgment—Rule 318.

Motion for judgment upon the report of the Master in this cause.

The point in question in this action was whether an alleged partition in the pleadings mentioned was binding upon the parties thereto. On October 17th ult., BOYD, C., made a decree referring it to the Master to enquire as to this. On March 15th ult., the Master reported that the alleged partition was conclusive and binding upon the parties.

Held, rule 318 met the case, and judgment must be accorded to the report and be so entered.

Dickson, Q.C., for the motion.

Watson, contra.

Boyd, C.]

[May 10.]

VANKOUGHNET V. DENISON.

Restrictive covenant—Evidence.

In this case the defendant Denison, in effecting a sale of a portion of his real estate covenanted with the purchaser that he would retain a certain square unbuilt upon, with the exception of one residence, with the necessary out-buildings, including a porter's lodge; the purchaser on his part covenanting that he or his assigns would not allow any business of a public nature, such as a tavern, requiring a license to make it allowable in the eye of the

law, to be carried on upon the portion conveyed to him. The bill was filed by an assignee of the purchaser alleging that the defendant Denison, and the defendant E. W., who resided with him, were, in violation of the covenant, erecting a house upon such square not within the exception in the covenant.

Held, the benefit of the restriction passed to plaintiff as one of the advantages and privileges appurtenant to the land, though the word "assigns" was not there, and although the benefit of it was not formally transferred to him.

Semble, evidence of reputation was admissible to show what was meant by "Bellevue Square" in the restrictive covenant, for the question of the locality and extent of this square was of a *quasi* public nature, in which a class of people in the neighbourhood would be concerned.

Where it is clearly intended to give some tangible benefit to the grantee by a restrictive covenant in the conveyance to him, and the restriction is part of the consideration which induced his purchase, there the Court will go far to give effect to the language, whatever hardship may be occasioned to the party who has entered into the engagement.

It would be unsafe to proceed judicially upon the evidence, however clear and satisfactory, of any one who, having executed an instrument, seeks to lessen its force or effect by his own unsupported parol testimony.

A person holding under an agreement for a lease is not in the same position as an innocent person holding for value under a completed instrument.

MacLennan, Q.C., for the plaintiff.

Blake, Q.C., (with him *Black*), for the defendant.

[This case was previously heard on demurrer as reported 28 Gr. 485.]

Boyd, C.]

[May 10.]

REID V. SMITH.

Specific performance—Partnership property—Parol evidence.

In this case the plaintiff sought specific performance of an agreement for the sale of timber limits to him under the following circumstances. The timber limits were really partnership property, though they stood in the name only of the