

interfered with unless upon good grounds. Plaintiff, having given a covenant for the payment of the money, and not seeking to avoid the transaction, would be driven to a counterclaim if he were sued upon the covenant.

I have not been referred to any authority that the mere existence of a counterclaim for damages is a ground for an injunction. Even if granted, it would only be upon terms of paying the amount of the chattel mortgage into Court, and so would not be of any present relief to plaintiff, who is said upon both sides to be in not the best financial circumstances (perhaps the worse in consequence of this very transaction), and to whom the raising of the money may be a hardship. But I do not, upon the authorities, see my way to tying up the money from defendants for the several months which would elapse before the trial. It is not alleged that they are not in good circumstances. I have reluctantly come to the conclusion that the motion should be dismissed; but, as defendants make no attempt to deny the alleged misrepresentations or breach of warranty, the costs will be costs in the cause, unless the trial Judge otherwise orders.

See *Re Kennedy*, 26 Gr. 33; *Hamilton v. Banting*, 13 Gr. 484; *Heap v. Crawford*, 10 Gr. 442; *Henderson v. Brown*, 18 Gr. 79; *Egleson v. Howe*, 3 A. R. 366; *Mondel v. Steele*, 8 M. & W. 856; *Georgian Bay Lumber Co. v. Thompson*, 35 U. C. R. 64; *Christie v. Taunton*, [1893] 2 Ch. 178, 184; *Ex p. Brayly*, 15 Ch. D. 223, 227; *Warner v. Jacob*, 20 Ch. D. 220, 222, 223; *Rawle on Covenants*, 5th ed., secs. 324-6; *Harrison v. Bray*, 92 N. Car. 488.

CARTWRIGHT, MASTER.

MARCH 24TH, 1905.

CHAMBERS.

TORONTO INDUSTRIAL EXHIBITION ASSOCIATION v. HOUSTON.

*Evidence—Foreign Commission—Proposed Interrogatories—
Motion to Strike out—Jurisdiction.*

Motion by defendant to strike out interrogatories served by plaintiffs upon defendant as proposed to be used upon a commission to take evidence in Scotland, as ordered by STREET, J., ante 349.

Grayson Smith, for defendant.