Held, that in the absence of proof that these costs had not been paid by the defendant to the persons who acted as his solicitors, the objection could not prevail; nor could it even if that proof had been given. *Reeder* v. *Bloom*, 3 Bing. 9; —— v. *Sexton*, 1 Dowl. 180, followed.

D. W. Saunders, for the plaintiff.

Delamere, for the defendant.

Mr. Dalton.] [Oct. 26.

MACARA *v.* SNOW.

Counter-claim—Close of pleadings—Notice of trial.

A counter-claim must be a defence in the action in which it is pleaded, and it is as much a part of the defence as any of the other pleas. And, therefore, where the plaintiff took issue on the defence, not mentioning the counter-claim,

Held, that the pleadings were closed, and a notice of trial served thereafter was regular.

Douglas Armour, for the plaintiff.

Masten, for the defendant.

Mr. Dalton.] [Oct. 31.

TENNANT *v.* MANHARD.

Partnership—Judgment against firm—Execution against alleged partner—Con. Rules 756, 876.

The plaintiffs recovered judgment against the defendants, a partnership firm, by default of appearance after service of the writ of summons upon M., a member of the firm, and then moved under Con. Rule 876 for leave to issue execution upon such judgment against D., as a member of the firm. D. disputed his liability, but upon his cross-examination upon an affidavit filed on the motion, such fact appeared as convinced the Master in Chambers that he was a general partner, and he made the order asked for. The Master

Held, that the admissions of D. in his cross-examination justified the order under Con. Rule 756, and avoided the necessity of sending an issue to be tried under Con. Rule 876.

Held, also, that Con. Rule 756 was applicable at this stage of the cause, *i.e.*, after judgment obtained without pleadings.

Shepley, for the plaintiffs.

E. T. English, for one Doddridge.

Mr. Dalton] [Nov. 1.
Galt, C. J.] [Nov. 10.

TORONTO AND HAMILTON NAVIGATION CO. *v.* SILCOX.

Jury notice—Action to rescind contract—R. S. O. c. 44 s. 77—Parties—Joint contractors.

The action was brought to rescind a contract for the sale of a vessel by the plaintiffs to the defendant, on the ground that the defendant had failed to perform his part of the contract, and for damages for breach of the contract, and for injuries to the vessel, which had been delivered to the defendant, and to restrain the defendant from dealing with it, and for delivery up thereof.

Held, that this was an action over the subject of which, before the Administration of Justice Act, 1873, the Court of Chancery had exclusive jurisdiction, and a jury notice was therefore improper, under s. 77 of the Judicature Act, R. S. O. c. 44.

The defendant applied to add as a co-defendant one W., on whose behalf, as well as his own, he had made the contract in question, and who with knowledge of it had ratified and adopted it, but who was not formally a party to it.

Held, following *Kendal* v. *Hamilton*, 4 App. Cas. at p 513 *et seq.*, that the defendant had no right to force W. upon the plaintiff as a defendant, in the character of a joint contractor.

Quære, whether W. would have a right to be brought in as a defendant on his own motion.

Shepley, for the plaintiffs.

Hoyles, for the defendant.

Armour, C.J.] [Nov. 2.

WORMAN *v.* BRADY.

Costs—Jurisdiction of County Court—Title to land—Pleading.

The statement of claim alleged that the defendant was a monthly tenant of the plaintiff's land, and that the plaintiff on a certain day terminated the tenancy by notice, and claimed damages for injuries to the demised premises. The statement of defence denied the allegation that the plaintiff terminated the tenancy, etc.