

D., but on the third payment coming due, stated his desire not to make it, as it might prejudice a claim he had against G., his partner, with whom he had a dispute about the partnership affairs, whereupon plaintiffs saw G., and on his stating that it was D's business to pay their accounts, the plaintiffs sued D., and moved for judgment under Rule 80, stating in their affidavit in support of the motion that "the claim was under an agreement made between the parties, etc.," and that "the defendant," etc., "was and still is justly and truly indebted to the plaintiffs in respect of the matters above set forth." D. put in an affidavit in answer, in consequence of which G. was made a party defendant, and the case proceeded to trial.

Held, that on the evidence the credit under the contract was given to D. alone; but even treating D. as agent for an undisclosed principal, namely for G. as one of the firm, and therefore that G. might be jointly liable with D., the plaintiffs were bound to elect whether they looked to D. or the firm, and that there was a binding election not to treat the firm as liable, but to rely on the individual liability of D.

J. B. Clarke, for plaintiffs.

H. J. Scott, Q.C., and Macpherson, for defendants.

STREET, J.]

PRITCHARD v. PRITCHARD.

Action to recover land—Right to counter-claim without leave—Joining in counter-claim other cause of action with claim for land—Right to O.F.A. Rule 341.

To an action to recover possession of land it is a good cause of counter-claim that defendant was induced by his solicitor's fraud to make two notes for \$1,000 each, which were then overdue and in plaintiff's hands, who took them with knowledge of fraud, and praying that plaintiff might be restrained from negotiating or parting with them and that they should be delivered up to be cancelled; for the fact of the notes being overdue in plaintiff's hands had not the effect of destroying the right to have them delivered up.

Held, also, that in an action for the recovery of land, the defendant can counter-

claim without leave; but that he cannot in his counter-claim without leave under Rule 341, join another cause of action with a claim for the recovery of land.

C. J. Holman, for plaintiff.

Howard, contra.

Divisional Court.]

HARKINS v. DONEY.

Libel—Article in newspaper—Evidence of authorship—Refusal to answer as to authorship—Claiming privilege against criminal proceedings—Effect of.

In this action the libel consisted of a letter published in a Boston, U.S., newspaper, claimed to have been written by defendant. The letter stated that it was written in answer to an anonymous letter dated September 15th, published in the same newspaper, which the writer stated he had seen the manuscript of, and in which was a clumsy attempt to make the writer believe it was written further off than Ottawa, and he had also seen the manuscript of a letter written by an Ottawa shoe dealer to a Boston firm, and that the handwriting of both was the same. The anonymous letter referred to a trip made by defendant to New Brunswick, which was also referred to in the letter in question. The letter in question also spoke of the writer of the anonymous letter as a person who had come to Ottawa and opened up a boot and shoe business, and stayed at the same hotel as the writer of the letter in question. The letter also spoke of a certain machine called the crescent heel plate machine as our machine. The letter had the defendant's name subscribed to it. The defendant at the trial refused to answer whether or not he was the writer of the letter in question, claiming privilege on the ground that it might criminate him, and the publisher, for the examination of whom a commission issued, refused to be examined for the like reason. The defendant, on his examination, stated that both he and plaintiff were boot and shoe dealers in Ottawa, that he was a subscriber and correspondent to this newspaper, that he had been on a trip to New Brunswick, and on his return saw an anonymous letter of 15th September in this newspaper, as also the manu-