

Full Court.]

LEONARD v. SWEET.

[March 13.

*Practice and procedure—Paragraphs of reply to grounds of defence struck out at Chambers as tending to prejudice fair trial of action—O. 19, R. 27—Order, on appeal, sustained in part and reversed in part.*

Plaintiffs' statement of claim alleged detention by defendants of an engine the property of plaintiffs. In the alternative, plaintiffs alleged detention by defendants of an engine delivered by plaintiffs to F. Under a special agreement that it was to remain the property of plaintiffs until certain promissory notes, etc., given by F. for the price of the engine were paid, none of which had been paid. In further alternative it was alleged that plaintiffs were entitled to the engine in question under a bill of sale given by F. to plaintiffs. Defendants pleaded among other things, that S. & Co. issued a writ of attachment against F. as an absent or absconding debtor, and that the sheriff attached the engine in question as the property of F. Also that S. & Co. recovered judgment against F. in the action brought by them against him, and issued executions thereon, and that the engine was detained under the last of said executions. Plaintiffs replied (4) that when the writ of attachment was issued F. was not an absent or absconding debtor; (5) that the summons and attachment were never personally served upon F., that F. did not owe S. & Co. the whole amount of their judgment, but a much smaller sum; and that the judgment was obtained by S. & Co. in collusion with F.; (6) that the judgment against F. obtained by S. & Co. was paid before the commencement of plaintiffs' action; (7) that since the recovery of the judgment by S. & Co. against F. large sums had been paid by F. which had not been credited thereon; and that in addition to such payments F. gave S. & Co. certain stock as collateral security for all amounts due by him, which stock should have been sold and the price credited upon said judgment, which, with the amounts paid by F., would have fully paid all amounts due under said judgment to S. & Co. Pars. 4, 5, 6 and 7 of plaintiffs' reply having been struck out by the Chambers judge, under O. 19, R. 27, as irrelevant and tending to prejudice, embarrass and delay the fair trial of the action.

*Held*, that as to pars. 4, 5 and 6 the learned judge was in error, and plaintiffs' appeal from his order should be allowed; but as to paragraph 7 he was right and his order should be sustained.

*F. H. Bell*, for plaintiffs. *A. MacGillivray* and *F. T. Congdon*, for defendants.

Full Court.]

CITY OF HALIFAX v. FARQUHAR.

[March 17.

*Municipal corporation—Action for rates and taxes—Defence of excessive amount—Held question for Assessment Appeal Court—Proof of assessment—Evidence wrongly received—Facts admitted on pleadings.*

Defendant was assessed in the City of Halifax for City, Poor, County, and School rates and taxes for the years 1894 and 1895, the property upon