

amount payable at the same sum as that recommended by Mr. K. and approved by the witnesses called. In cases such as this the opinion of other solicitors is a proper guide.

There should be a judgment declaring that the petitioners are entitled to be paid the amount mentioned in the order in council and interest from its date, at the rate of 5 per cent. per annum, with costs.

ORDE, J., IN CHAMBERS.

JANUARY 19TH, 1921.

*ATTORNEY-GENERAL FOR ONTARIO v. RUSSELL.

Pleading—Action by Attorney-General for Cancellation of Crown Patents for Lands and for Damages for Cutting Timber on Lands—Pleading Filed by Defendant in Answer—Defence—Set-off—Counterclaim against Crown for Tortious Acts—Embarrassment—Motion to Strike out Portions of Pleading—Status of Attorney-General—Necessity for Formal Statement that Action Brought “on Behalf of His Majesty”—Rule 5 (2)—Application of Rule 5 (1)—Right to Maintain Counterclaim against Crown—Declaratory Relief—Remedy by Petition of Right—Necessity for Fiat of Attorney-General.

An appeal by the plaintiff from an order of the Master in Chambers dismissing a motion made by the plaintiff for an order striking out or for particulars of paras. 14, 15, 16, 18, 19, and 20 of the defendants' pleading, called “Statement of Defence, Set-off, and Counterclaim,” and also para. (b) of the prayer of the pleading, upon the ground that they tend to prejudice, embarrass, and delay the fair trial of the action, and that the alleged claim of the defendants against the plaintiff is the subject of a counterclaim and cannot be pleaded as a set-off, and that the defendants have not obtained a fiat enabling them to set up any counterclaim.

The action was brought for the cancellation of certain patents for Crown lands alleged to have been issued upon false and fraudulent representations made or caused to be made by the defendants, and for damages for the unlawful cutting and removal of pulpwood and logs from the lands covered by the patents and from other lands of the Crown, and for an account, an injunction, and a declaration.

The paragraphs of the pleading attacked set out that the plaintiff had been making use of the claim against the defendants for ulterior purposes and had been hampering and impeding the