

Action by an execution creditor of defendant Edgar S. Reade to have it declared that his co-defendant, who is his wife, holds certain property as trustee for him, and that the same is exigible under the execution, and for the sale of such lands, etc. The defendant did not deny the plaintiff's judgment, but alleged that the property in question was purchased by the wife in her own name and on her own behalf, and that she did not hold it as trustee for her husband. The husband counterclaimed against plaintiff for \$250, and submitted to have it set off against the plaintiff's judgment. This amount was claimed under an agreement between plaintiff and the Canada Company, which was the subject of a County Court action by that company against plaintiff some time ago. That action was discontinued. The claim was assigned to the counterclaiming defendant. It was not clear whether the assignment was in trust for the company or not. The consideration was nominal.

J. J. Maclellan, for plaintiff, contended that it would be necessary to add the Canada Company as a party in order to dispose of the counterclaim.

J. R. Roaf, for defendants, contra.

THE MASTER:—Even if the counterclaim were admitted, it would not render the trial of the action unnecessary, as the amount due by the husband under the judgment was much greater than the amount of the counterclaim. The trial Judge, if the plaintiff succeeded, would, no doubt, direct a reference as to the husband's creditors and for the sale of the property, and he would have time to have his counterclaim disposed of in a separate County Court action, in which all the necessary parties could be added without any difficulty. I made an order striking out counterclaim, with leave to the defendant Edgar S. Reade to bring a separate action for the same cause. Costs of motion to plaintiff in the cause.

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WINCHESTER, MASTER.

OCTOBER 9TH, 1902.

CHAMBERS.

HOWLAND v. PATTERSON.

*Security for Costs — Plaintiff out of Jurisdiction — Property within Jurisdiction—Shares in Mining Company—Evidence of Value.*

Motion by plaintiff to set aside an order for security for costs obtained on præcipe by defendant company, on the ground that plaintiff, though out of the jurisdiction, was