

HIS MAJESTY THE KING..... PLAINTIFF;

AND

CONSOLIDATED DISTILLERIES LIM- } DEFENDANTS;
ITED ET AL }

AND

CONSOLIDATED EXPORTERS COR- } THIRD PARTY.
PORATION LIMITED }

1929
Feb. 12.
March 4.

Practice—Jurisdiction—Third Party Notice—Subject and subject

The Crown brought action on certain bonds executed by the defendants in its favour. The defendants, allege that by reason of an agreement between them and the third party, the third party agreed to indemnify them, and they now seek to bring the third party before this Court to have the issue between them determined here.

Held, that the matter in issue between the defendants and the third party is one over which the Exchequer Court of Canada has no jurisdiction, and that the third party notice filed and served herein should be set aside.

- 2. That rule 262 of the General Rules and Orders of this Court respecting third parties, was framed to meet the case where the Crown being defendant might be interested in having other parties than itself as defendant before the Court.
- 3. That the Court also has jurisdiction to entertain an issue between a defendant and a third party in cases where it is given jurisdiction as between subject and subject.

MOTION by the third party to have the third party notice herein set aside and the third party dismissed from the record.

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The case was heard before the Honourable Mr. Justice Audette, at Ottawa.

R. S. Robertson, K.C., for third party.

E. F. Newcombe, K.C., *contra*.

The facts are stated in the reasons for judgment.

AUDETTE J. now (March 4, 1929) delivered judgment.

This is an application by the Third Party to set aside the Third Party notice served upon him on the ground of want of jurisdiction of this Court to entertain and try the issues raised by such Third Party notice.

The action is brought on bonds executed by the defendants in favour of the plaintiff and the defendants aver, by their statement in defence, that they are entitled in any event to indemnity from the third party, by reason of an agreement to that effect entered into by the said defendants and the third party.

This, however, is an issue over which the Exchequer Court has no jurisdiction; it is a separate and distinct controversy from the one raised between the plaintiff and the defendant; it is resting upon a separate cause of action which must be tried and determined in the Provincial Court having jurisdiction over such matters. *The Queen v. Finlayson et al* (1); *The King v. The Globe Indemnity Co.* (2); Audette's Exchequer Court Practice, 2nd ed., p. 504.

The rule of court respecting third parties has its *raison d'être* and was framed to meet a case where it might be in the interest of the Crown to have other parties than itself defendant in an action before the Court. A rule of court, like a statute, must not be presumed to alter the existing state of the law beyond what is necessary for its valid and effective operation. Hence, the rule ought not to be held to apply when the matter involves an issue of indemnity between subject and subject, and one in which the Crown has no concern.

There is no doubt that the court would also have jurisdiction to entertain an issue between a defendant and a third party in a case where the court is given jurisdiction

(1) (1897) 5 Ex. C.R. 387.

(2) (1921) 21 Ex. C.R. 34 at 45.

as between subject and subject, that is in such matters as are provided by sec. 22 of the Exchequer Court Act (R.S.C., 1927).

The application to dismiss the third party notice is granted; the third party is dismissed from this action, which of course, will not deprive the defendant company of such right of indemnity as may exist. The whole with costs in favour of the third party against the defendants.

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Judgment accordingly.