

THE MASTER:—These actions were begun in September last, and were at issue before the end of the year. At defendants' request the trial was postponed in November last (see 6 O. W. R. 579), and must not be further delayed.

The third party notices were served only on 23rd February, and the present motions only on 10th May. The notices are not sufficiently explicit to require the third party to plead thereto. If defendants were now required to deliver a proper statement of their claim against the third party, it would be almost impossible to have this issue ready for trial on 11th June. The motion might, therefore, be disposed of on that ground.

In any case it seems clear that this is not a case for the application of the third party procedure.

The statement of defence alleges that the loading was being done under the supervision of Carney, the third party, who is called "the boss grain trimmer" or foreman of the train moving gang at Fort William, "for whose acts the said defendants are in no way responsible. The said defendants had a contract with the said Carney to load the said vessel, and the said defendants had no control over the said plaintiff in any way."

If this is so, then defendants are not liable, and there would not seem to be any room for bringing in Carney as a third party: see *McCann v. City of Toronto*, 28 O. R. 650; and also *Miller v. Sarnia Gas Co.*, 2 O. L. R. 546, and cases there cited and discussed, especially *The "Englishman"* and the "*Australia*," [1895] P. 212.

The statement of defence is inconsistent with any right to claim relief against Carney; and it may be fairly assumed that if plaintiffs had joined Carney and defendants as joint tort-feasors, defendants would at once have required them to elect against which of them they would proceed, alleging that they were not properly made defendants in one action.

If defendants have any right against Carney for want of skill or negligence, that must be pursued in a separate action, and would not depend on the result of the pending actions.

Here defendants have said in their statement of defence that plaintiff should have sued Carney, which a defendant can never say where a third party notice is properly allowed.