

In the Till action the plaintiffs have joined as defendants both the municipality and the telephone company, relying upon the provisions of Rule 67, saying that they are "in doubt as to the person from whom they are entitled to redress" and are therefore justified in joining as defendants all persons against whom they claim any right to relief, whether jointly, severally or in the alternative.

This is precisely the kind of case which this rule was intended to meet. It relieves a plaintiff from a difficulty which he ought not to be called upon to face, and it imposes no unfair burden upon the defendants. Apart from this rule, if the plaintiff has any doubt as to which of two persons actually inflicted the wrong complained of, there is nothing to prevent two suits being brought, one against each defendant. If these cases are tried separately, then discordant findings may follow. It is true a recovery in the action first tried would prevent a recovery in the second action; but a failure to recover in one would not necessarily mean success in the second, even if it should be plain that one or other of the defendants was at fault.

To avoid this travesty of justice and to enable the whole matter to be litigated at once and the responsibility, if any, to be laid upon the proper shoulders at the trial, is the express object of this enactment. The whole scheme of the legislation would be defeated if the plaintiff could be compelled to elect upon a Chamber motion.

In the other case the plaintiff is content to seek relief against the town. The town claims that it has a right of relief over against the telephone company. I think it has as much right to have this claim tried by this procedure as it would have to bring an independent action claiming indemnity and to have it tried. The third party summons is practically the institution of a new action by the defendant against the third party. For convenience this summons is issued in the old action and culminates in a trial either at the same time as the trial of the plaintiff's claim or at some other time as may be directed; but the fundamental object is to have the issues in relation to the plaintiff's claim determined in a way that will be binding upon the third party as well as the defendant. It is not intended that questions of law or fact should be determined upon a Chamber motion. The Court has no doubt power to set aside third party proceedings when the case is one clearly beyond