

improvement expenses which they alleged to be due from the plaintiff as owner of premises abutting on the street improved. The plaintiff paid the money pending an adjournment of the summons, but subsequently discovered that he was not really liable to the demand, because his premises did not, in fact, abut on the street in question, and he then applied to the defendants to refund, which they declined to do, but said they would withdraw the summons, which they did, the plaintiff not objecting. Counsel for the plaintiff contended that it was only where money was paid under a judgment that it was irrecoverable, but the Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.) were of opinion that the cases were clear that any payment made under compulsion of legal process, even though before judgment, stood on the same footing, and could not thereafter be recovered.

PRACTICE—THIRD PARTY PROCEDURE—DEFENDANT CLAIMING INDEMNITY AGAINST CO-DEFENDANT—SETTING ASIDE NOTICE—ORD. XVI., RR. 52, 53—(ONT. RULE 332).

*Baxter v. France*, (1895) 1 Q.B. 455; 14 R. Mar. 294, was a motion by a defendant, on whom a co-defendant had served a notice claiming indemnity, to set aside the notice on the ground that the claim of the defendant serving the notice was not a claim for indemnity within the meaning of the Rule. Day, J., refused to set aside the notice, and, on appeal, the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) held that the proper time to raise the question was on the application for directions (see Ont. Rule 332). We learn from the *Law Times* of February 16th, 1895, that an application was subsequently made in this case for directions, and that Day, J., refused to make any order, which, on a further appeal being had, the Court of Appeal held to be equivalent to a dismissal of the defendant as a third party, leaving him simply, as before, a defendant in the action. The court is also reported to have held that in every case in which all questions in dispute as regards the transaction in question cannot be finally decided in the action between all the parties, but a subsequent action will be necessary, the judge will rightly exercise his discretion if he refuses to make any order for directions. In a recent case before the Chancery Divisional Court of *Heintzman v. Doyle* a different course was fol-