

was no suggestion that the plaintiffs or the third parties were in any way aware of the precise relations between the Jeffrey company and their agents. Nor was there any defence set up which the third parties would be interested in supporting. All the Jeffrey company could say was, that Archer and Gerow had no authority to pledge their credit to the plaintiffs, as appeared from the statement of claim. The Master said that there was here, admittedly, no case either of contribution or indemnity, and it did not appear to be one of other relief over. There was no question raised as between the Jeffrey company and the third parties which could be decided in the action as originally instituted. The Jeffrey company admitted by the affidavit of their solicitor that the plaintiffs had not been paid, though the price of the goods was paid to Archer and Gerow by the third parties. The question, therefore, as between the Jeffrey company and the third parties was simply whether this payment to Archer and Gerow discharged the third parties. This had nothing at all to do with the main action. It was the common case—who is to bear the loss occasioned by a defaulting agent? All that the Jeffrey company could usefully do would be to notify the third parties of the facts, and state that they did not recognise the payment to Archer and Gerow, so that the third parties might, if so advised, aid them in settling with the plaintiffs without the Jeffrey company being obliged to take action against the third parties. This did not require the formality of a third party notice. Order made setting aside the order and notice, with costs to the plaintiffs in any event and to the third parties forthwith after taxation, unless the defendants consent to their being fixed at \$25. The Master referred to what he said in *Wade v. Pakenham*, 2 O.W.R. 1183, that the test is: “Are there any common questions or question between all the parties, which, if decided in favour of the plaintiff, would give the defendant a right to indemnity (or other relief) against the third party?” There was nothing in the present case to meet that condition. Grayson Smith, for the third parties. H. McKenna, for the defendants. E. C. Cattanaach, for the plaintiffs.

TRADERS BANK OF CANADA v. BINGHAM—DIVISIONAL COURT—
FEB. 24.

Contract—Construction—Sale of Goods—Agent for Sale or Purchaser—“Time of Sale.”—Appeal by the defendant from the judgment of the Senior Judge of the County Court of the