

of the questions raised by a third party notice claiming indemnity against the Standard Chemical Co.

E. D. Armour, K.C., for defendants.

J. Bicknell, K.C., for third parties.

J. H. Moss, for plaintiffs.

THE MASTER.—The third parties dispute their liability, but ask leave to defend either solely or jointly with defendants. This course was strongly resisted by defendants. Their counsel pointed out that serious embarrassment might result to them if the third parties were allowed to be at the trial on an equal footing, as they might be advised to set up a line of defence inconsistent with that taken by defendants.

Failing this, counsel for the third parties asked that the issue between them and defendants should in some way be tried in the other action between the Rathbun Co. as plaintiffs and these third parties as defendants, which is standing for trial at the coming Napanee non-jury sittings. I do not think I have any power to so direct. Even if I had, an examination of the pleadings in that action shews that there are several issues therein raised between the parties. On the other hand, in this action it is only a simple issue between plaintiffs and defendants, viz., whether there has been a breach of the agreement to supply charcoal to plaintiffs. And then the question between defendants and third parties is equally simple, whether or not the third parties are bound to indemnify defendants if they are found liable to plaintiffs. It seems to me that this last question would naturally be best heard after the trial of the issue raised between plaintiffs and defendants. If, for example, plaintiffs should fail then there will be no necessity to follow the question as to the possible liability of the third parties. If, on the other hand, defendants are held liable, then the liability of the third parties properly arises for determination and should be decided as soon as practicable so as to enable either party to consider the question of appeal. In an ordinary case it might perhaps be assumed that a third party disclaiming any liability should be left to assert that position when actively attacked by defendants, but the circumstances of this case are somewhat special. The third parties here may have discovery or have the benefit of the discovery made on the demand of defendants. Otherwise, I think the order made in *Coles v. Civil Service*, 26 Ch. D. 529, will exactly fit the present case. The Judge at the trial will be in a better position to determine what part (if any) the Standard Chemical Co. should be allowed to take in the contest between plaintiffs and defendants.