

Cartwright, Master.]

REID v. GOOLD.

[Nov. 23, 1906.]

Parties—Action against guarantors of a promissory note—Dispute between makers and payee as to amount due—Adding makers as defendants.

In an action against the guarantors of a promissory note for \$1,935.46 payable in a year, given by a company for machinery bought from the plaintiffs when it appeared that the company before the maturity of the note was claiming from the plaintiffs \$953.68 for breaches of the contract of sale, and it was alleged that when the note was given it was agreed that the exact amount should be adjusted during the currency of the note in which the defendants paid into Court \$1,195.01 as the amount justly due. A motion was made to add the company as defendants.

Held, that the interests of justice as defined by sub-s. 12 of s. 57 of the Judicature Act, require that wherever it can possibly be done without injustice or inconvenience one action should be sufficient and so multiplicity of legal proceedings avoided and as the guarantors (defendants) should not be required to pay more than what the plaintiff was entitled to recover the company was added as a party defendant.

W. T. Henderson (Brantford), for the motion. Biggs, K.C., contra.

Meredith, C.J.C.P., MacMahon, J., Anglin, J.] [Nov. 26, 1906.]

IN RE WILSON AND TORONTO GENERAL TRUSTS CORPORATION.

Surrogate Court—Taking accounts—Jurisdiction to rescind order on account of mistake.

Held, that the Surrogate judge acting as the Surrogate Court has inherent jurisdiction to set aside an order which he has been induced to make by the fraud of a party who has obtained it, and also to set aside or vary an order which he has made by mistake, though not to correct errors which he has made in the judicial determination of any question upon which he has actually passed; thus in this case he had jurisdiction on these grounds to set aside and vacate an order made by him upon the taking of executors' accounts and to re-open the accounts and further investigate them without reference to the order made.

Held, also, that the acts of the Surrogate judge in passing