

served notice of motion for leave to amend his pleadings, for better particulars This was opposed; but the Master in Chambers, on the 25th September, made an order for amending pleadings and for the examination of the plaintiff's husband—enlarging the motion in respect of the other matters.

On the 4th December, 1911, the defendants obtained an *ex parte* order to serve a third party notice on the auctioneers. Some correspondence took place between the solicitors for the defendants and the auctioneers; and at length the auctioneers moved to discharge the order last-mentioned. On the 19th January, 1912, the Master in Chambers set aside the third party order; and the defendants now appeal.

The order for a commission has been taken out, and the conduct thereof assumed by the plaintiff—and the commission has not been executed.

The plaintiff has not objected and does not object to the third party proceeding.

In support of the order appealed from, it was urged that the contract of the defendants was that of insurers, and consequently entirely different from any contract, express or implied, between the defendants and the auctioneers. Supposing that such a difference would prevent the proper service of a third party notice (which I do not at all think), it is plain, from all the material and from what took place before me, that the claim of the plaintiff is not against the railway company as common carriers, and consequently insurers, but as warehousemen. The plaintiff says, in effect, to the defendants: "You had my goods, you had the right to sell them; but it was your duty to keep the goods safe, to open the boxes, etc., with care, to advertise properly, to sell prudently, to keep and render an accurate account of your sales, and to pay to me the balance of the proceeds over and above your claim. You did not do that. Your servants took some of the goods; you unpacked the goods; you made no proper inventory so that a proper sale could be had; you did not keep and render a proper account of the sale." The defendants say: "We think we did all we were called upon to do;" and now they desire to say further: "But, if we are in default, it is because the persons whom we trusted to act for us, the auctioneers, have not done as they should: they owed us the same duty which we owed to you—it was they who opened the goods, they who sold, they who kept account; and, if we are liable to you, it was entirely their fault, and they are liable to us for precisely that sum."