

BOYD, C.

MARCH 23RD, 1906.

CHAMBERS.

IMPERIAL PAPER MILLS OF CANADA v. McDONALD.

Parties—Motion to Add Defendant—Replevin—Counter-claim—Third Party Procedure—Rules of Court.

Appeal by John Gray from order of Master in Chambers (ante 412) refusing a motion to add the appellant as a defendant, and appeal by defendants from the Master's order allowing plaintiffs to replevy the horses the conversion of which by defendants was alleged by plaintiffs in the action.

J. B. Clarke, K. C., for John Gray.

J. W. McCullough, for defendants.

Frank Ford, for plaintiffs.

BOYD, C.:—The question of pleading and parties falls more nearly within the rule laid down in *Norris v. Beazley*, 2 C. P. D. 80, than the ruling relied on in *Montgomery v. Foy*, [1895] 2 Q. B. 321. The former case decides that when a plaintiff, acting within his right, brings an action against one defendant for a distinct cause of action, it is not for the defendant to bring in another defendant against the opposition of plaintiff—one against whom plaintiff makes no claim, but who is sought to be added for the convenience of the original defendant. There must be a very clear and a very strong case made, to induce the Court to introduce a new defendant against whom the plaintiff does not wish to proceed, and whose presence is not necessary to determine the matters involved in the action as constituted between the original parties: see per Coleridge, L. C. J., 2 C. P. D. at p. 84. . . .

[Reference to *McCheane v. Gyles*, [1902] 1 Ch. 911, and discussion of *Montgomery v. Foy*.]

Here the action is tort against the immediate wrongdoers; they may or may not have redress against the man Gray who gave them the horses, but that is a matter between them, for which the Master has provided by the order in appeal. The whole issue is whether the horses belong to plaintiffs, or