

HIGH COURT OF JUSTICE.

Street, J.] MILLER v. SARNIA GAS AND ELECTRIC CO. [Oct. 12.]

*Parties—Third party procedure—Relief over—Identity of claims.*

The owner and occupant of a house in a town sued a gas company for damages alleged to have been sustained by reason of an escape of gas from the defendants' pipes upon the highway into the plaintiff's premises. The defendants served a third party notice upon the town corporation, alleging that the break in the pipes was caused by the negligence of the corporation in the course of construction of a sewer in the same highway.

*Held*, that there was no right to indemnity or relief over, within the meaning of Rule 209, as the damages which might be recovered by the plaintiff against the defendants were not the measure of the damages which might be recovered by the defendants against the third parties.

*Gamble*, for plaintiff. *J. H. Moss*, for defendants. *Middleton*, for third parties.

Street, J.] FARMER v. ELLIS. [Nov. 1.]

*Summary judgment—Promissory note—Holder for value—Fraud—Onus.*

Where the maker and one of the endorsers of the promissory note sued on, in answer to a motion by the plaintiff for summary judgment under Rule 603, swore that they were induced to become parties to the note by certain fraudulent misrepresentations made by their co-defendants, whereof they had reason to believe the plaintiff had notice.

*Held*, having regard to s. 30, sub-s. 2, of the Bills of Exchange Act, that they were entitled to unconditional leave to defend, notwithstanding the plaintiff's affidavit that he was a holder for value. *Fuller v. Alexander*, 47 L.T.N.S. 443, followed.

*Middleton*, for plaintiff. *O'Heir*, for defendant Ellis. *J. W. Nesbitt*, K.C., for defendant Smith.

Street, J., Britton, J.] REX v. KEEFER. [Nov. 4.]

*Criminal Law—Trial—County Judge's Criminal Court—Election of prisoner to be tried without jury—Motion for leave to withdraw—Mandamus.*

An appeal by the defendants from an order of ROBERTSON, J., in Chambers, refusing an order in the nature of a mandamus directing the County Judge of Wentworth to hear the application of the defendant, who, on being brought before the County Judge's Criminal Court charged with stealing, elected to be tried summarily by the Judge, to be allowed to withdraw their election.

Sections 762 and 781 of the Criminal Code and 63 & 64 Vict. c. 46, s. 3, amending s. 767; *Regina v. Ballard*, 28 O.R. 489; *Regina v.*