

BANK OF OTTAWA v. SMITH—LENNOX, J.—JUNE 23.

Guaranty—Bank Overdraft—Amount of—Action against Guarantors—Defences—Execution of Guaranty on Understanding as to Execution by Others—Dealings with Co-sureties—Release—State of Accounts between and among Sureties—Pleading—Third Party Procedure—Rule 170.—Action to recover \$894.05, the amount of an overdraft upon the account of the Great Western Coal Company of Canada, guaranteed by the defendants other than the liquidator of the company, to the extent of an ultimate balance not exceeding \$4,000. The action was tried without a jury at Kenora. LENNOX, J., dealt with the facts in a written opinion. He found that the amount claimed was the true balance of the account against the company. The defendant Draper set up two grounds of defence: (1) that the guaranty was not executed according to his understanding as to the persons who would execute it, at the time it was executed by him—liability never attached; (2) if he became liable, he was released by the subsequent action of the bank manager in dealing with his co-sureties. The learned Judge found against the defendant Draper on both these objections. Judgment for the plaintiffs against all the defendants. for \$894.05 and interest from the 11th August, 1915, with costs. —The learned Judge thought that he had no power to direct a reference to ascertain the state of accounts between and among the defendants. There was no counterclaim, and a counterclaim is not admissible between defendants unless the plaintiff is also interested in it. A defendant must seek relief against his co-defendant by third party procedure under Rule 170: *Cope v. Crichton* (1899), 18 P.R. 462; *Gregson v. Henderson Roller Bearing Co.* (1910), 20 O.L.R. 584. As to this, further argument will be heard, if the defendants desire it, before the judgment is entered; and for that purpose proceedings are stayed for one week. J. F. McGillivray, K.C., for the plaintiffs. J. S. Allan, for the defendants Smith, Kelly, and Mather. J. A. Kinney, for the defendant Kennedy. W. H. Curle, for the defendant Draper.

 NEW YORK AND PENNSYLVANIA CO. v. HOLGEVAC—SUTHERLAND, J.—JUNE 24.

Contract—Sale of Pulpwood—Breach—Recovery of Moneys Advanced—Damages—Counterclaim—Costs.—Action for an injunction restraining the defendants from selling, shipping, moving,