

[Sept. 28.]

GALT, C.J.]

CARTER *v.* CLARKSON.

*Parties—Misjoinder—Demurrer—Mortgage action—Heirs-at-law of deceased mortgagor.*

Since the Judicature Act the proceeding by demurrer for misjoinder of parties is no longer available.

*Werderman v. Société Générale D'Electricité*, 19 Ch. Div. 246, followed.

In an action upon a mortgage of foreclosure, immediate payment, and immediate possession, the plaintiff joined as defendants the heirs-at-law of the deceased mortgagor (who died after the Devolution of Estates Act), with the administrator of the real and personal estate. One of the heirs-at-law demurred to the statement of the claim on the grounds that the administrator represented the estate in all regards, that the heirs-at-law were not bound by any covenants of the deceased, and that no relief was claimed or could be granted against them.

*Held*, that the demurrer was, in effect, one for misjoinder of parties, and that the proper remedy was a motion under Rule 324 (a) to strike out the name of the demurring defendant.

*W. R. Riddell* for the demurrer.

*W. D. Gwynne*, *contra*.

[Oct. 6.]

ROSE, J.]

CHRISTIE *v.* CITY OF TORONTO.

*Third party—Directions as to pleading and trial—Costs—Rules 328-332.*

Where a third party was called upon by the defendants for indemnity, and appeared; and, upon a motion by the defendants under Rule 332, an order was made against the plaintiff's objection, directing that the third party might deliver a defence to the plaintiff's claim against the defendants, and a defence to the defendants' claim for indemnity, and that the question of indemnity between the defendants should be tried after the trial of the plaintiff's action, as the trial Judge might direct, all costs being reserved;

*Held*, that the order was within the powers conferred by Rules 328-332, and was a proper order to make under the circumstances of the case.

*Kilmer* for the plaintiff.

*W. C. Chisholm* for the defendants.

*W. R. Smyth* for the third party.

[Oct. 9.]

BOYD, C.]

EXLEY *v.* DEV.

*Receiver—Injunction—Equitable execution—Promissory note—Attachment of debts.*

After the discharge of the attaching order in this case, *ante* p. 542, the plaintiff, two days before the maturity of the promissory note in question, obtained a new order attaching the same debt, making the holder of the note and the makers garnishees.

Upon a motion for payment over by the garnishees, or for alternative relief, an order was made appointing the plaintiff receiver of all moneys due or