

GUELPH CARPET MILLS CO. v. TRUSTS AND GUARANTEE CO.—
MASTER IN CHAMBERS—APRIL 29.

Third Party—Action by Company against Executors of Deceased Director for Breach of Trust—Third Party Claim against Co-director—Contribution or Indemnity—Companies Act, sec. 108—Trial of Issues between Defendants and Third Party.—This action was brought by the plaintiffs against the executors of the late Christian Kloefer to recover \$18,894.32, of which \$12,674.52 was claimed on the ground that the deceased was a director of the plaintiff company and as such responsible for advances, to the amount last-mentioned, made by the plaintiffs to the Dominion Linen Manufacturing Company Limited. A third party notice was issued by the defendants against R. Dodds, a director of the plaintiff company, claiming contribution or indemnity. The defendants moved for directions as to trial; and, on the return of the motion, counsel for the third party and for the plaintiffs moved to set aside the third party notice, on the ground that the defendants were not entitled to avail themselves of the third party procedure, because there is no contribution between joint tort-feasors. The Master expressed the opinion that the third party notice could not be upheld under sec. 108 of the Companies Act, referring to the English Directors' Liability Act, 1890, sec. 5, and *Shepherd v. Bray*, [1906] 2 Ch. 235. The Master held, however, that a director who has, in pursuance of a judgment, paid to the company an amount found due upon breach of trust, is entitled to contribution from the other directors or persons who were parties thereto, citing *Ramskill v. Edwards*, 31 Ch.D. 100; *In re Sharpe*, [1892] 1 Ch. 154; *Ashurst v. Mason*, L.R. 20 Eq. 225. He was, therefore, of opinion that the third party notice should stand, and the usual order be granted directing the trial of issues between the defendants and the third party. Costs of the application to be costs to the plaintiffs in any event of the cause; and costs between the defendants and the third party to be costs in the third party proceedings. W. J. Boland, for the defendants. H. S. White, for the third party. Featherston Aylesworth, for the plaintiffs.