

the plaintiff is to be compelled to make a claim against the added party is not explained, nor is it explained how any relief can be properly given against such added party without any claim being made against him by the plaintiff in the action.

The cases we refer to are (1) *York Sand & Gravel Co. v. Cowlin Co.*, 14 O.W.N. 189, in which the Appellate Division granted a new trial with leave to the defendants to add a company as defendants whom they claimed were the parties who really were liable to the plaintiffs for the goods sued for; how the plaintiffs are to be compelled to sue, or make a claim against the added defendants, and assume a liability to them for costs if they fail to establish it, if made, is not explained; nor is any suggestion offered as to how this can be properly ordered under the Judicature Act, or any Rule of Court. (2) The other case is *Norbury v. Griffiths*, Jour., [1918] 2 K.B. 369, where the English Court of Appeal made a somewhat similar order. In this case the defendant admitted that the sum claimed was due to the plaintiff, but he claimed that one V. was a joint contractor, and the defendant and V. counterclaimed for a larger sum due to them jointly from the plaintiff. The Master struck out the defence and counterclaim as embarrassing as V. was not a defendant and, of course, not in a position to make a counterclaim. The defendant then applied to compel the plaintiff to add V. as a defendant so that he might join in the counterclaim, but the plaintiff refusing to add V. the Master refused to make any order except that the defendant might deliver an amended defence. The Court of Appeal (Pickford, Warrington, and Scrutton, L.J.J.) however, reversed this order and held that the Court had jurisdiction to make the order asked by the defendant without the consent of the plaintiff: but in this case the order was made without prejudice to the question to be decided at the trial whether the contract was joint or not, and V. was to be added as a co-defendant without prejudice to the plaintiff's costs if it should prove that V. was not a joint contractor: but, of course, the Court could not in the absence of V. protect the plaintiff from liability to V. for costs, if he added him as a defendant: and if V. should claim to be dismissed from the action on the ground that he was added as a defendant and no relief was claimed against him, would