tions; and on appeal his decision was affirmed by Denman J., whose decision was affirmed by the Q. B. D.

From this decision the defendants now appealed.

F. O. Crump, for defendants, suggested that the Court might direct that the question between the plaintiff and the defendants and that between the defendants and P. should be tried by different juries. He cited *Benecke* v. *Frost*, L. R. 1 Q. B. D. 419; *Swansea Shipping Co.* v. *Duncan*, L. R. 1 Q. B. D. 644.

THE LORD CHANCELLOR:—The last suggestion of Mr. Crump seems to me really to dispose of this case. He suggests that the true way of doing justice in this matter would be that the Court should direct two trials by two distinct juries. That would be altogether contrary, in my opinion, to the intentions of these rules. The real truth is that these two contracts are not so connected with one another as to make it appear that a question in the action should be determined as between the plaintiff, the defendant and another person. I do not say that under the rules a third person might not be brought in even though the two contracts were not more connected than they are in the present case. But, assuming that the rules do empower the Court to order, in a case like the present, that a third person shall be a party to the action, that is only to be allowed where it appears that justice will best be done by having a common question tried at one time between all the parties. In the present case a letter has been written by the defendants, which would be evidence against them, but not against the third party P. He would be prejudiced by the admission that the defendants have made, if his case was tried with theirs. The plaintiff, S., would also be prejudiced, as he could not then rely on the admission alone. Justice will not, therefore, best be done in this case by having but one trial. I may add that a very strong case would be required for us to overrule the judgment of three tribunals in a matter of discretion

BAGGALLAY, L. J., concurred.

BRETT, L. J., in his judgment said:—P. ought to have resisted the order making him a third party, but he appeared. We cannot, however, do injustice because the parties have blundered. The question is, are we to make any order by which P. will take a part at the trial of this action. It seems to me that to answer that involves no decision on any rule or on any order; it is a question as to how to do justice in the particular case. I am of opinion that we ought not in this case to order one trial.

[NOTE.—*Imp. O. 16, r. 18 and Ont. O. No. 108 are identical except that the latter does not require the leave of the Court or Judge before service of a third party notice, nor does it require the notice to be "stamped with the seal with which writs of summons are sealed." Imp. O. 16, r. 21 and Ont. O. No. 111 are identical except that the latter empowers a Court or Judge to determine as to the costs of the proceedings. A subsequent application in this matter, arising out of the one here noted, is noted in 17 C. L. J. 369.*

HARTMONT v. FOSTER.

Imp. Jud. A. 1873. s. 49. O. 1. r. 2.—Ont. Jud. A. s. 32. O. 1. r. 2.

No appeal lies from a judge's order dealing with the costs of an interpleader issue, made as between the parties.

[Nov. 24, C. of A.—45 L. T. N. S. 429.

A verdict having been directed for the claimant on the trial of an interpleader issue, the execution creditor took out a summons that the claimant might be directed to pay costs.

The summons came before Caves, J., who referred it to Hawkins, J., before whom the parties attended when he was sitting at Westminster.

Hawkins, J., then made an order directing the claimant to pay the costs of the execution creditor and of the sheriff.

Denman and Williams, JJ., having held that no appeal would lie from this order, the claimant now appealed to this court.

BRETT, L. J., after deciding that Hawkins, J. was sitting in a legal sense, not in Court but in Chambers, and therefore had jurisdiction to make the order proceeded to deal with the contention that O. 1, r. 2 gives an appeal in interpleader. He said:—

"To make out this proposition, the party desiring to appeal must show not only that O. 1. r. 2 applies (which it certainly does), but further that the practice before the Jud. Act was to entertain appeals from orders made as to costs in interpleader proceedings as between the par-