

that the sum paid by the Delaware Co. was properly allowed by the referee ; that the alleged abandonment took place before the making of the decree, which it would have affected, and should have been so urged ; that McKean not having taken steps to have it dealt with by the decree, could not raise it on the taking of the account ; and that, if open to him, the abandonment was not established, as the proceedings against the Delaware Co. were carried on after it exactly as before, and the money paid by the Co. must be held to have been received by the solicitor as solicitor of McKean, and not of the original holder.

Held, further, that the referee, in charging McKean with interest on money received, from the date of the receipt of each sum to a fixed date before the suit began, and allowing him the like interest on each disbursement from date of payment to the same fixed date, had not proceeded upon a wrong principle.

Earle, Q.C., and *McLean*, for appellant.

Palmer, Q.C., for respondent.

EXCHEQUER COURT.

THE QUEEN v. FINLAYSON ET AL.

Third party order—Jurisdiction—Costs.

In an action by the Crown upon two Customs export bonds it appeared that such bonds were given by the defendants personally and did not indicate that the person against whom the third party order was sought was in any way liable to the Crown in respect of said bonds. The defendants, however, claimed that in giving the bonds they were only acting as agents for such person, and that he had agreed to indemnify them against the payment thereof.

Held, that the Court had no jurisdiction to try the issue of indemnity between the defendants and such proposed third party, and that the application should be dismissed with costs to the Crown in any event.

J. M. Ferguson, for the plaintiff.

W. D. Hogg, Q.C., for the defendants.

MAGEE v. THE QUEEN AND THE CITY OF ST. JOHN.

Public works—Damages from construction—Deprivation of access—Compensation.

An interference with the public right of navigation in a harbour, which the owner of a wharf suffers in common with the public, is not sufficient to sustain a claim for compensation for the injurious affection of the property on which the wharf is situated, resulting from the construction of a public work.

But where the interference affects a private right of access which the owner has to and from the waters of the harbour, or affects the use of such water for the lading and unlading of vessels at his wharf, the claimant is entitled to compensation.

Allen, for the plaintiffs.

C. N. Skinner, Q.C., and *McKeown*, for defendants.