

by a commission on the part of the defendants to take evidence in England, which had never been executed. The plaintiff was not objecting to the delay, but submitted to any order that might be made. The counsel for the third party strongly pressed his motion, and relied mainly on *Parent v. Cook*, 2 O.L.R. 709, and cases there cited. *Parent v. Cook* was affirmed by a Divisional Court, 3 O.L.R. 350. The Master said that, in these circumstances, the order should not have been made, and must now be set aside. It was not by any means clear whether, even if the defendants had moved promptly, it was a proper case for an order under Con. Rule 209. The claim would have to be maintainable on the ground of indemnity. If based on the contract between the defendants and the third party, who, as an auctioneer, sold the goods for which the action was brought, then it would not be a case for the third party procedure. See *Birmingham and District Land Co. v. London and North Western R.W. Co.*, 34 Ch. D. 261 (C.A.) Another reason was, that the third party should have full discovery both from the plaintiff and the defendants, if so desired. This had been fully gone into already between the plaintiff and defendants, and to add a third party at this stage would be almost equivalent to a new action, the expense of which would, as between the plaintiff and defendants, as well as between the defendants and the third party, have to be costs against the defendants in any event. The third party had been asked to join in the action, and had refused to do so or to undertake the defence. It would, therefore, seem that he would be bound by the result. See *Parent v. Cook*, 2 O.L.R. at p. 712. These two latter grounds were only mentioned as shewing that little, if any, benefit would result to the defendants if the order was sustained. But, in setting it aside, the Master acted on the authority of *Parent v. Cook*, supra. The order must, therefore, be set aside with costs to the plaintiff in any event; and costs to the third party forthwith after taxation, unless the defendants would agree to their being fixed at \$25. *W. Laidlaw, K.C.*, for the third party. *Angus MacMurehy, K.C.*, for the defendants. *W. M. Hall*, for the plaintiff.

REX V. DEMETRIO—MIDDLETON, J., IN CHAMBERS—JAN. 19.

Criminal Law—Magistrate's Conviction for Keeping Disorderly House—Evidence—Amendment—Criminal Code, sec. 1124—Refusal to Quash Conviction—Leave to Appeal.]—Motion by the defendant, under sec. 101a, sub-sec. 9, of the