

North-West Territories.

SUPREME COURT.

En Banc.]

[June 5.

PAUL v. FLINN.

Pleading—Embarrassing—Adding parties—Third party procedure.

This was an appeal (by special leave) from an order of RICHARDSON, J., striking out certain paragraphs of the statement of defence. The action was brought for foreclosure of a mortgage given by the defendant and K., his since-deceased partner, to plaintiffs. Prior to the issue of the writ an order was made under sec. 492 (10) of the Judicature Ordinance, that no action be brought, and that all actions and proceedings pending against the administratrix of the estate of K. be stayed for a period of four months.

The paragraphs of the statement of defence struck out alleged that as the defendant was the surviving partner of the firm of K. and himself, the administratrix of the estate of K. should be made a party, inasmuch as he was entitled to contribution from the said estate, and by the above order was prevented from proceeding against the estate for contribution. From the order striking out this portion of the statement of defence the defendant appealed.

Held, that the said paragraphs were bad in law and were properly struck out; that if the defendant wanted the administratrix of the estate of K. joined as a defendant, he should have applied under sec. 46 of the Judicature Ordinance, and that the defendant's proper means of obtaining the contribution he alleged he was entitled to was by the Third Party procedure provided by the Judicature Ordinance.

Appeal dismissed with costs.

Robson, for respondent.

Secord, Q.C., for appellant.

WESTERN ASSINIBOIA JUDICIAL DISTRICT.

RICHARDSON, J.]

[June 8.

MASSEY v. McLELLAN.

Writ of execution—Expiration of—Judicature Ordinance, sec. 327, and Ordinance No. 5 of 1894.

Plaintiffs issued a fi. fa. lands on 7th October, 1893. Under sec. 327 of the Judicature Ordinance, as then in force, every writ of execution remained in force for one year from its date and no longer, if unexecuted, unless renewed. By Ordinance No. 5 of 1894, which came into force 7th September, 1894, said sec. 327 was amended so as to read: "Every writ of execution . . . shall remain in force for two years from its date, and no longer, if unexecuted, unless renewed. . . ."

Plaintiff's writ of execution was not renewed until 22nd August, 1895. Under it the sheriff sold certain lands.

Upon application to confirm such sale,