

But, whatever may be hereafter decided as to the position of those directors (including, be it always remembered, Pakenham and Boyer, who now as defendants are seeking indemnity from their co-directors against their own acts), who voted for the resolution and authorized the payment of the amounts set out in schedule A., Renfrew, who voted against that resolution, cannot be held personally responsible.

The very peculiar facts of this case, and the dual character of Pakenham and Boyer as members of the partnership and afterwards directors of the limited company, present an insuperable difficulty to the application of the third party practice. Whatever rights the other two members of the partnership, Forsyth and Kendrick, may have against the directors or some of them, it is inconceivable that Pakenham and Boyer, as defendants to the action and members of the partnership, can call upon the directors, including themselves, to indemnify them against what they not only did, but did in defiance of the opposition of Renfrew at least. For there is no contribution among joint tort-feasors. There is also the other objection, that the recovery sought by the plaintiff is for sums different from these mentioned in the agreement of November. So that even the alleged indemnity is not co-extensive with the plaintiff's claim, and so the present case does not comply with the rule laid down in *Miller v. Sarnia Gas Co.*, supra. So far as I can understand the matter, it is only Kendrick and Forsyth that can have any claim against the directors, and, for the reasons already given, they must be left to take such an action as they may be advised to assert such claim, if any exists. The third party notice must be discharged, as not being suitable to a case presenting such peculiar complications as the present,

I see no good reasons for depriving Renfrew of his costs.

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CARTWRIGHT, MASTER.

DECEMBER 31ST, 1903.

CHAMBERS.

### KNAPP v. CARLEY.

*Lis Pendens—Motion to Vacate—Tying up Land pending Result of Previous Action—Summary Dismissal of Action.*

In October, 1902, an agreement was made between Knapp and Carley to exchange farms on 1st March, 1903. However, on the previous day, Carley conveyed his farm to Patterson; and on 2nd March Knapp brought an action against Carley and Patterson to have this sale set aside as being fraudulent and void, and to enforce specific performance of the agree-