

and because the order allowing its service was an improper exercise of the discretion of the Court. The motion was heard by the Senior Registrar, sitting for the Master in Chambers. Several grounds of irregularity were mentioned: (1) that the order was made after the time allowed for defence; (2) that the order was not made till after the notice was served; (3) that it was made to take effect *nunc pro tunc*; but all irregularities except the first were abandoned at the argument. Counsel for the third party also contended that the claim was not properly the subject of a third party notice. In support of the first objection *Parent v. Cook*, 2 O.L.R. 709, affirmed 3 O.L.R. 350, was relied on as establishing that the time for delivering a third party notice cannot be extended under what is now Rule 176. Rule 165 requires a third party notice to be delivered "within the time limited for the delivery of the defence." The learned Registrar referred to the later case of *Swale v. Canadian Pacific R.W. Co.*, 25 O.L.R. 492, which was also before a Divisional Court, and which decided affirmatively, notwithstanding what was said in *Parent v. Cook*, that the time for delivering a third party notice might be, and it actually was, extended in that case; and said that, in this state of the authorities, he did not think that *Parent v. Cook* could be said to be an authority for the proposition that there was no power to extend the time for filing a third party notice beyond that limited by Rule 165 (2); and, therefore, it was not irregular to make the order complained of.

—Upon the question whether the notice disclosed a claim which was properly the subject of a third party notice, for the purpose of the motion it should be assumed that the allegations in the third party notice were true in fact. The notice stated the nature of the plaintiffs' action, and it then proceeded: "The defendant Robert T. Armstrong claims to be entitled to contribution from you to the extent of one-half of the sum which the plaintiffs may recover against him, on the ground that you are also surety for the said J. B. Armstrong Manufacturing Company Limited, in respect of the said matter, under another bond made by you in favour of the said plaintiffs on or about the said date." The mere statement of the claim seemed sufficient to shew that it was clearly a case in which a third party notice should be allowed. The third party denied that he signed the bond which was referred to in the second paragraph of the statement of claim on which the defendant's liability was based; but, even if the merits of the third party notice could be gone into on this motion, the defendant did not pretend or assert that the third party did sign the bond; his claim was based on