

in the event of the original defendants succeeding in their defence, basing such claim upon an alleged warranty or a total failure of consideration.

Rules 185, 186, 187, 192, discussed.

*Tate v. Natural Gas and Oil Co.*, 18 P.R. 82, and *Evans v. Jaffray*, 1 O.L.R. 614, followed. *Smurthwaite v. Hannay*, (1894) A.C. 494; *Thompson v. London County Council*, (1899) 1 Q.B. 840, and *Quigley v. Waterloo Manufacturing Co.*, 1 O.L.R. 606, distinguished.

*Held*, also, that the added defendant was properly allowed to give a third party notice to a bank, upon his allegation that he acted only as the bank's agent in assigning the debt. *Confederation Life Association v. Labatt*, 18 P.R. 266, followed.

*C. D. Scott*, for plaintiff. *Hamilton Cassels*, for defendants. *George Bell*, for added defendant.

Falconbridge, C.J., Street, J., Britton, J.]

[Feb. 12.

CHEVALIER v. ROSS.

*Pleading—Amendment—Increasing amount claimed—Mistake—Money paid into Court—Acceptance by mistake.*

The plaintiff was allowed under Rule 312 to amend his statement of claim in an action upon a building contract by increasing the amount claimed for extras, and to amend his reply by changing acceptance into non-acceptance of money paid into Court by the defendant, notwithstanding that the plaintiff had filed a memorandum of acceptance, under Rule 423, although he had not taken the money out of Court; the Court being satisfied that the plaintiff had made a mistake, and, on finding it out, had moved with reasonable promptness to correct it, and that no real prejudice was done to the defendant. *Emery v. Webster*, 9 Ex. 242, followed. Order of LOUNT, J., affirmed.

*J. H. Moss*, for plaintiff. *Hellmuth*, for defendant.

Ferguson, J.]

GLENN v. RUDD.

[Feb. 12

*Contract—Statute of frauds—Master and servant—Employment for an indefinite term—Damages—Master and Servant Act, R.S.O. 1897, c. 157, s. 5.*

A sub-contract to employ a person as a salesman so long as the employers' contract with third persons might remain in force, that contract being terminable at any time, is not within the Statute of Frauds, for the sub-contract may or may not continue for a year.

Such a sub-contract does not come within s. 5 of the Master and Servant Act, R.S.O. 1897, c. 157.

The employers' contract came to an end by the voluntary dissolution of their firm :