

RECENT ENGLISH PRACTICE CASES.

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TOMLINSON V. THE LAND AND FINANCE CORPORATION (LIMITED).

Interpleader issue—Security for costs.

In an interpleader issue directed upon the application of a sheriff, between an execution creditor upon whose execution the goods in question have been seized, and an adverse claimant, both parties to the issue are in the position of plaintiffs, and a defendant in the issue may be ordered to give security for costs in any case in which a plaintiff may be so ordered, and the rule that a defendant cannot be compelled to give security does not apply.

[14 Q. B. D. 539—C. A.]

An interpleader issue had been directed on the application of the sheriff, between the claimant of goods seized under execution, as plaintiff, and the execution creditors as defendants. The execution creditors were an insolvent company, which was being compulsorily wound up. The plaintiff in the issue applied for security for costs. The Divisional Court of the Q. B. D. had ordered security to be given, and the Court of Appeal affirmed the order.

BOWEN, L. J.—“In the present case the issue has been directed on the application of the sheriff; and it seems to me that the substance and not the form of the proceeding must be looked at; in that point of view the defendant company is really a plaintiff, and being insolvent is liable to give security for costs.”

EDEN V. WEARDALE IRON AND COAL CO.

Third party—Counter claim by third party against plaintiff.

Rules S. C. of 1883—Ord. 16, rr. 48, 52, 53—Ord. 19, r. 3 (Ont. R. 107, 110, 111, 127).

The Court has no power to give a third party who has been served with notice by a defendant under Ord. 16, r. 48, leave to file a counter-claim against the original plaintiff.

[28 Ch. D. 333—C. A.]

FRY, L. J.—“The primary object of the introduction of a third party is to prevent the necessity of two actions. In the first place, it is for the determination of all questions between the plaintiff and the defendant who brings in the third party; and in the second place, for the determination of

questions between the defendant and the third party, against whom the defendant claims contribution or indemnity. I think it is confined to these two classes of questions. If the procedure is extended to questions between the plaintiff and the third party, it will cause great inconvenience to litigants.”

DRAGE V. HARTOPP.

l'arties—Rules S. C. 1883, Ord. 16, r. 11 (Ont. R. 103).

[28 Ch. D. 414.]

One of two executors having absconded, the other executor sued a mortgagor without adding the absconding executor.

The Court refused, on the application of the defendant, to add the absconding executor as defendant.

PEARSON, J.—“A question may arise whether he (the absconding defendant) is interested in the subject matter, and if any question of that sort does arise, the Court will be able to deal with it and protect the defendant. I have no power to add him as a plaintiff. If he is added as defendant he would be out of the jurisdiction, and I have no evidence of where he is, and there is no evidence that it would be possible for the Court to make an order for substituted service.”

I refuse to make the order.