

effect. The parties are of full age, presumably they knew what they wanted, and told their counsel what it was—presumably counsel inserted in the agreement what they intended. It seems from the document itself that the parties were content to rely each upon the promise of the other not accompanied by an order of the Court to implement the promise. No steps are to be taken in the action from execution of the consent, it is said—that also shews that no order of the Court was in contemplation.

If it be necessary a direction will be made to the Taxing Officer to tax the costs—but nothing else further than “an order confirming the settlement.”

No costs.

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HON. MR. JUSTICE SUTHERLAND.      NOVEMBER 4TH, 1912.

POLLINGTON v. CHEESEMAN.

4 O. W. N. 248.

*Parties—Third Party Notice—Motion to Strike Out—Dismissed—Rights of Parties Should be Left to Trial—Negligence Action—Relief Claimed against Insurance Company.*

Motion to strike out a third party notice served upon an insurance company in an action for damages for death of one of defendant's workmen.

The third parties claimed that, by the terms of their policy, they could not be sued until judgment was had against defendant, and that the death of the employee did not occur in the employment insured against. Defendant denied this latter statement.

MASTER-IN-CHAMBERS held (23 O. W. R. 40; 4 O. W. N. 92), that the rights of the parties should be left to the trial, and not disposed of on an interlocutory application.

*Pettigrew v. Grand Trunk Rv. Co.*, 22 O. L. R. 23; 16 O. W. R. 989, and

*Swale v. Can. Pac. Rv. Co.*, 25 O. L. R. 492; 20 O. W. R. 997, followed.

Motion dismissed with costs to defendant in third party issue in any event.

SUTHERLAND, J., affirmed judgment with costs.

An appeal by the Travellers Insurance Company of Hartford, Connecticut, from an order of the Master in Chambers, 23 O. W. R. 40; 4 O. W. N. 92, refusing to set aside a third-party notice served upon that company by the defendant.

T. N. Phelan, for the motion.

Frank McCarthy, contra.

HON. MR. JUSTICE SUTHERLAND:—Having carefully read and considered the very full reasons given by the Master