

Moss, J. A.]

ECKENSWEILLER v. COYLE.

[April 12.]

*Appeal—Third party—“Party affected by the appeal”—Rules 799, 811—
Notices—Duty of plaintiff as appellant—Duty of defendants.*

The defendants, alleging that another person was liable to indemnify them against the plaintiff's claim, caused him to be served with a third party notice under Rule 209. The third party appeared, and an order was made under Rule 213 that he should be at liberty to appear at the trial, and such part as the judge should direct, and be bound by the result; that question of his liability to indemnify the defendants should be tried after trial of the action; and that pleadings should be delivered between the defendants and him. The judge who tried the case dismissed the action, but held the party bound to indemnify the defendants against any costs they incurred in action. The third party appealed from this judgment to a Divisional Court, and the plaintiff appealed to the Court of Appeal.

Held, that the third party was a “party affected by the appeal” of the plaintiff within the meaning of Rules 799 (2) and 811, and it was the plaintiff's duty to give the notices therein provided for; but there duty as regards the third party ended, unless he was in a position to demand some relief against him, and the third party was not, by the order made before the trial, placed in the position of a defendant so as to entitle the plaintiff to relief against him. But as the defendants, for their own convenience, brought the third party into the action, and did not procure him to be made a defendant, they should, if they desired to retain him before the court for the purposes of the plaintiff's appeal, do whatever might be necessary to that end beyond what was required of the plaintiff under Rules 799 and 811.

W. H. Blake, for plaintiff. *Masten*, for defendants. *J. H. Moss*, for third party.

Ferguson, J.]

COPE v. CRICHTON.

[April 24.]

Equitable estate—Assignment of interest in land—Title—Right to possession—Subsequent mortgage—Notice—Registry laws—Limitation of actions—Commencement of statutory period—Tenancy at will.

The plaintiff's father, being in possession of a farm under an unregistered agreement with a loan company for the sale thereof to him, assigned the agreement and all his interest thereunder by way of security to one who gave a bond to reassign upon repayment of a small sum advanced. Neither the assignment nor the bond was registered. The money was repaid, but there was no reassignment. Subsequently on the 3rd April, 1886, the father assigned all his interest in the land to the plaintiff for good and valuable consideration, the plaintiff having no notice or knowledge of the previous assignment. This assignment was duly registered. The plaintiff lived on the farm with his father and mother, whom he had covenanted to maintain during their lives, until July, 1888, when he went