

Counsel for third party also claimed that the claim is 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," and there are certainly expressions in the judgment of the learned Chief Justice which seem to indicate that in his view the time limited by the Rule cannot be extended. That, however, does not appear to have been necessary for the decision of the case because as appears by the judgment even if there were power to extend the time the learned Chief Justice was of opinion that in the circumstances of that case the enlargement was not properly granted as a matter of judicial discretion, and with this the Divisional Court agreed. The later case of *Swale v. Canadian Pacific Rw. Co.*, 25 O. L. R. 492, which was also before a Divisional Court decided affirmatively, notwithstanding what is said in *Parent v. Cook*, that the time for delivering a third party notice may be, and it actually was, extended in that case. In this state of the authorities I do not think that *Parent v. Cook* can be said to be an authority for the proposition that there is no power to extend the time for filing a third party notice beyond that limited by Rule 165(2). I therefore hold that it was not irregular to make the order complained of. As I understand, the other irregularities, which were mentioned, were waived, and it is therefore unnecessary to consider them. It, however, remains to be determined whether the notice discloses a claim which is properly the subject of a third party notice.

For the purpose of this motion I think I must assume that the allegations in the third party notice are true in fact. The notice states the nature of the plaintiffs' action and it then proceeds: "The defendant Robert T. Armstrong, claims to be entitled to contribution from you to the extent of one-half of the sum which the plaintiff may recover against him on the ground that you are also surety for the said J. B. Armstrong Manufacturing Co. Ltd., in respect of the said matter, under another bond made by you in favour of the said plaintiff on or about the said date." The mere statement of the claim seems sufficient to shew