

J. W. McCullough, for Kendrick

W. S. Ormiston, for Forsyth.

THE MASTER referred to *Wilson v. Boulter*, 18 P. R. 107; *Confederation Life Assn. v. Labatt*, 18 P. R. 267; *Windsor Fair Grounds Assn. v. Highland Park Club*, 19 P. R. 130; *Langley v. Law Society*, 3 O. L. R. 199; and *Miller v. Sarnia Gas Co.*, 2 O. L. R. 546: and proceeded:—These cases seem to make the test of the propriety of the application of the Rule to be: “Are their common questions between all the parties, which, if decided in favour of the plaintiff, would give the defendant a right to indemnity against the third party on the ground of contract express or implied?” And which would entitle the defendant to recover against the third party the very damages which the plaintiff recovered against him. In the present action the plaintiff asks the Court to declare two things, 1st, that the payments which he seeks to recover were not in discharge of debts of the company, and 2nd, that the resolution of January last, which authorized such payments, was void. He must succeed in both these contentions unless he is to fail in his action, which really asserts a breach of trust on the part of the directors. The plaintiff attacks only the resolution of January, 1903, and does not notice the resolution of November on which the defendant relies as conferring the necessary right to indemnity as against third parties. But the resolution of November was only provisional. When it was passed there was no list of liabilities produced. When this was made known at the January meeting Renfrew refused to agree to it. Whatever may be said as to the position of the other two, it is clear that Renfrew was not in any way answerable for anything done or suffered by the partnership in reliance on that resolution; and it is equally clear that the resolution of November bore on its very face its merely provisional character. The concluding paragraph of that resolution, as set out in Kendrick’s affidavit, makes this very plain.

The first paragraph was only carrying out what had long been agreed on between the limited company and the partnership as long ago as July previous. By this the liquidator was bound, as he must admit, and to this he, as liquidator, could not possibly make any objection. It is to rescind the second paragraph, when consummated by the resolution of January last, that he seeks the aid of the Court and claims recovery of money wrongfully paid before as well as after that date, as appears from the particulars of the statement of claim.