

Helgeson as a party to the action." The two motions were argued together before Cumberland, Co. J., local judge at Brandon, who held that the third party notice provided for in Rules 245 and 246 is wholly inapplicable in such a case, being intended for use when the third party may be supposed to have some ground which he may be able to urge against the plaintiff's right to recover from the defendants, the object of giving the notice being that if he fails to come in and urge such ground it will not be open to him afterwards, when the defendant seeks indemnity or contribution or other relief over against him, to say that the plaintiff should not have been permitted to get his judgment against the defendant.

In the usual case the plaintiff is asserting something against the defendant and the latter is denying it. If the plaintiff succeeds, the defendant proposes to ask the third party for relief over, so he says to the third party: "Come in and help me fight this issue and be bound by the result."

Here the defendants are not asking the third party to come in and help them to contest any point.

If the defendants prove that the plaintiff is not a holder in due course, they will succeed in the action and will require no relief over against Helgeson; but, if the plaintiff is a holder in due course, he is entitled to judgment and should not be delayed in recovering it by what might be prolonged litigation between the defendants and Helgeson: *Bower v. Hartley*, 1 Q.B.D. 656, and King's Bench Act, Rule 250.

Helgeson's motion granted and that of the defendants refused with costs.

*Held*, on appeal that the discretion exercised by the local judge in making the orders should not be interfered with and that the appeal should be dismissed with costs.

*Burbidge*, for plaintiff. *Hough*, K.C., for defendants. *Pitblado*, for Helgeson.

Mathers, J.]

SMITH v. VAN BUREN.

[May 13.

*Garnishment—Liability of purchaser of land after assignment of agreement to third party—Order as to payments still to fall due—King's Bench Act, Rule 764.*

Before the commencement of this action the defendant had sold certain lands to one McInnes under an agreement whereby