

Limited, against John L. Bostock and the Canadian Canning Company.

On or about the 22nd September, 1909, the action was discontinued by the plaintiffs as against the Canadian Canning Company Limited.

A third party notice was served by the defendant Bostock, claiming relief against the Canadian Canning Company Limited. The action proceeded to trial and judgment was given therein on the 20th October, 1910, in favour of the plaintiffs against the defendant Bostock, with a reference to ascertain the amount of damages and judgment also that the Canadian Canning Company indemnify said Bostock as therein set out.

Upon the present application, counsel for the Canadian Canning Company Limited took exception to the jurisdiction to entertain the petition herein.

In view of the finding of the trial Judge when disposing of the action, I am inclined to think it is not open now to the company to object to the jurisdiction.

The judgment of *Grocers Wholesale Company v. Bostock*, is reported in 17 O. W. R. 128, and at p. 141, the trial Judge says as follows: "The fact that the third parties here plead in their statement of defence to the jurisdiction does not help them. Their election was made on entering their appearance, and that appearance standing they cannot take a new position."

However, upon the merits of this application, with some hesitation, I have come to the conclusion that the prayer of petition cannot be granted.

The notice of lien on which the petitioners mainly rely is contained in a letter dated the 20th September, 1909, directed by the petitioners to the solicitors in Vancouver from whom they had originally received instructions to appear for the defendant, Bostock. I quote from this letter. "Up to date we have not been paid any fees by Mr. Bostock and we would not care, under the circumstances, to incur any further costs unless our bill up to the present is paid and we are assured that the balance will be paid."

In a letter dated the following day they also say: "We wish that you would in the meantime take up the question of our costs with Mr. Bostock and write us as to whom we are to look for payment of our costs."