

namely, the expense of searching the title. If this has been overlooked, I would allow the claim now to be made and would allow the result to be modified accordingly.

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MR. HOLMESTED, SENIOR REGISTRAR. OCTOBER 10TH, 1913.

DOMINION BANK v. ARMSTRONG.

5 O. W. N. 105.

*Parties—Third Parties—Service of Third Party Notice—Extension of Time for—Irregularity.— Rules 165, 176—Proper Subject of Third Party Notice—Claim for Contribution.*

MR. HOLMESTED dismissed motion by third party to set aside notice.

Featherston Aylesworth, for third party.

R. D. Moorhead, for defendant.

MR. HOLMESTED:—This is an action brought by the plaintiffs against the defendant on a bond of indemnity or guaranty given by the defendant to the plaintiffs to secure advances made by the bank to a firm of J. B. Armstrong Manufacturing Co. Ltd. The statement of defence was filed on 22nd May last. On the 29th September last an order was made *ex parte* allowing the defendant to file a third party notice against the applicant. This notice was filed and served before the order issued. The order was made *nunc pro tunc*, I presume, so as to antedate the filing of the notice, which was subsequently re-served after the issue of the notice.

The third party moves to set aside the notice for irregularity and because the order allowing its service was an improper exercise of the discretion of the Court. Several grounds of irregularity were mentioned. The notice of motion has not been left with me, and I am not able to say what irregularities are specified therein; but those mentioned on the argument were that the order was made after the time allowed for defence, that the order was not made till after the notice was served, that it was made to take effect *nunc pro tunc*, but all irregularities except that first mentioned were as I understand, abandoned at the argument.