

RIDDELL, J.

NOVEMBER 5TH, 1909.

CHISHOLM v. HERKIMER.

*Parties—Band of Indians—Representation of Class by Members—
Rule 200—Order of Local Judge—Jurisdiction—Con. Rules
47, 48—Petition to Set aside Order and Judgment and other
Proceedings Founded thereon—Practice.*

This action was brought in the High Court on the 3rd March, 1909, by a solicitor to recover payment for his services to a Band of Indians in obtaining a decree against the Crown for a large sum: *Henry v. The King*, 9 Ex. C. R. 417.

This action was against the Chief Councillor and 4 other Councillors of the Band, on behalf of themselves and all other members of the Band, and the Band, as defendants.

On the 12th June, 1909, an order was made in the action by one of the local Judges at London, reciting that the class was numerous and the 5 individual defendants were members of the Band, and directing that the 5 defendants should defend on behalf of the Band for the benefit of all members of the Band, and that all members of the Band should be bound by any judgment that might be pronounced in the action in the same manner and to the same extent as if they were personally made parties to the action.

On the same day, no appearance having been entered, an order was made by the same local Judge reciting the order just mentioned, and that the 5 defendants named appeared by their counsel, and had submitted the rights of their co-defendants, the other members of the Band, and of the Band, to the Court, and submitted, as well on their own behalf as on behalf of all other members of the Band and the Band to such order as might be made herein, and ordering that the plaintiff be at liberty to enter final judgment against the defendants for \$10,700.47 and interest, and that said judgment should be binding upon the whole of the members of the Band in the same manner and the same extent as if they were personally made parties to this action. Upon this order judgment was entered on the 15th June, 1909, for the plaintiff against the defendants for \$10,824.01 to be paid to the plaintiff.

On the 29th June, 1909, an order was made by the same local Judge appointing the plaintiff receiver to receive all moneys due the defendants from the Government, and enjoining the defendants from receiving it until the plaintiff's judgment was paid.

The Band was composed of 267 persons.