HIS MAJESTY THE KING (PLAINTIFF);

AND

W. J. HUME (DEFENDANT);

AND

CONSOLIDATED DISTILLERIES LIMITED (DEFENDANT) ..... } APPELLANT

AND

CONSOLIDATED EXPORTERS CORPORATION LTD. (THIRD PARTY).... } RESPONDENT.

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*March 14.
*May 5.
*June 11.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Exchequer Court—Jurisdiction—Third party procedure introducing matter purely of civil right as between subject and subject—B.N.A. Act, s. 101 (establishment of courts for better administration of "the laws of Canada")—Exchequer Court Act, R.S.C., 1927, c. 34, ss. 30, 87, 88—Exchequer Court Rules 262-269.*

The Crown took proceedings in the Exchequer Court to recover from defendant upon certain bonds. Defendant, by third party notice, in the form prescribed by Exchequer Court Rule 262, claimed indemnity against the third party under an agreement between defendant and the third party. Upon motion by the third party, Audette J. ([1929] Ex. C.R., 101) set aside the third party notice, without prejudice to any existing right of indemnity which defendant might have. Defendant appealed.

*Held* (Newcombe J. dissenting): The third party notice was rightly set aside. It was not authorized by the Exchequer Court Rules, construed with due regard to s. 101 of the *B.N.A. Act*, which authorized

(1) [1895] 2 Ch. 603.

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Cannon JJ

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the creation of that court, and to the terms in which Parliament has conferred jurisdiction on it (*Exchequer Court Act,* R.S.C., 1927, c. 34; s. 30 particularly dealt with). The words "the laws of Canada" in said s. 101 mean laws enacted by the Dominion Parliament and within its competence; s. 101 does not enable Parliament to set up a court competent to deal with matters purely of civil right in a province as between subject and subject. Therefore, even if, *ex facie,* said rule 262 might be broad enough to include a third party procedure in a case such as that in question, it cannot have been intended to have any such effect, since so to construe it would be to attribute to the Exchequer Court an intention, by its rules, to confer upon itself a jurisdiction which it would transcend the power of Parliament to give to it. Nor can it be said that it is "necessarily incidental" (*Montreal* v. *Montreal Street Ry.,* [1912] A.C., 333, at pp. 344-6) to the exercise by that court of the jurisdiction conferred upon it, that it should possess power to deal with matters such as were here attempted to be introduced by the third party procedure, even where they arise out of the disposition of cases within its jurisdiction.

*Per* Newcombe J. (dissenting): The words "the laws of Canada" in s. 101 of the *B.N.A. Act* include any law which operates in the Dominion, whether by statute or as part of the common law. The Dominion's powers under s. 101 were not intended so to be restricted or controlled as to cease to be exercisable when they come into contact with an issue between individuals relating to property and civil rights in a province. In the *Exchequer Court Act* Parliament has validly given the Exchequer Court jurisdiction in cases within which the present action falls; and the third party procedure in question was authorized by rules (which are statutory rules) validly made.

APPEAL by the defendant Consolidated Distilleries Limited from the judgment of Audette J., of the Exchequer Court of Canada (1), granting (without prejudice to any existing right of indemnity which the defendant might have) a motion made by the third party to set aside the third party notice issued herein by the said defendant, on the ground that the issue raised by the third party notice between the defendant and the third party was one over which that court had no jurisdiction. The material facts of the case are sufficiently stated in the judgment of Anglin C.J.C., now reported. The appeal was dismissed with costs, Newcombe J. dissenting.

*F. T. Collins* for the appellant.

*R. S. Robertson K.C.* and *G. H. Sedgewick K.C.* for the respondent.

The judgment of the majority of the court (Anglin C.J.C. and Rinfret, Lamont and Cannon JJ.) was delivered by

(1) [1929] Ex. C.R., 101.

ANGLIN C.J.C.—The Attorney-General, by his information, filed in the Exchequer Court of Canada, on the 26th of December, 1928, claimed, upon seven export bonds, to recover from the defendant (appellant) the sum of $445,093, with interest at five per cent. from the 15th of October, 1924, the date of the bonds. An agreement under seal of the 24th of October, 1924, is produced, whereby the third party covenants to indemnify the appellant against any loss, damages or expenses which the appellant may suffer or be put to by reason of these bonds; and, by third party notice, filed on the 31st of January, 1929, the appellant claimed indemnity under the said agreement, adopting the third party procedure of the Exchequer Court, Rules 262 to 269 inclusive, according to the form prescribed by Rule 262, whereby the third party is notified in the following terms:—

And take notice that if you wish to dispute the plaintiff's claim in this action as against the defendant, Consolidated Distilleries Limited, or your liability to the defendant, Consolidated Distilleries Limited, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the defendant Consolidated Distilleries Limited and your own liability to indemnify to the extent herein claimed, which may be summarily enforced against you, the whole with costs.

The defendant, by its defence filed on the 12th of February, 1929, pleaded, among other allegations, its right to indemnity and the issue and service of the third party notice.

It should here be observed that Rule 262 of the third party procedure, as it appears at p. 503 of Audette's Exchequer Court Practice, 2nd ed., was rescinded on the 28th of May, 1921, and replaced by the following:—

Where a defendant claims to be entitled to contribution or indemnify from or entitled to relief over against any person not a party to the action, he may issue a notice (hereinafter called the third party notice) in the form given in schedule "Z" to these rules, with such variations as circumstances may require, which shall be stamped with the seal of the Court and shall state the nature and grounds of the claims.

A copy of the notice shall be filed with the Registrar, and a copy together with a copy of the information, petition of right, or statement of claim, as the case may be, shall be served on the third party within the time limited for the delivery of his defence.

The third party, immediately upon the service of the notice, obtained a summons against the defendant, dated the 8th of February, 1929, to shew cause why the third

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party notice should not be set aside. The motion was heard on the 12th of February before Audette J., and, by order of the 4th of March, that learned judge directed that the third party notice " be and the same is hereby set aside, without prejudice to any existing right of indemnity which the defendant may have." This order proceeded upon the ground that the Exchequer Court had no jurisdiction, the learned judge holding that the issue involved

> is a separate and distinct controversy from the one raised between the plaintiff and the defendant; it is resting upon a separate cause of action which must be tried and determined in the provincial court having jurisdiction over such matters (1).

The defendant appealed to this Court. Although its case was not, perhaps, very fully submitted, in substance its counsel contended that the third party notice, which it had given, is authorized by the Exchequer Court Rules (262 to 269 inclusive) and that the rules so authorizing it are within the competence of that Court.

In construing the rules of the Exchequer Court, however, attention must always be paid to s. 101 of the *British North America Act* (1867), which authorized the creation of that Court, and to the terms in which Parliament has conferred jurisdiction on it. It is not conceivable that, by mere rule of court, it should have been intended to enlarge the jurisdiction thus conferred, so as to embrace matters which it would not be otherwise competent for that Court to hear and determine. S. 101 of the *British North America Act* reads as follows:

> The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

It is to be observed that the " additional courts ", which Parliament is hereby authorized to establish, are courts " for the better administration of the laws of Canada." In the collocation in which they are found, and having regard to the other provisions of the *British North America Act,* the words, " the laws of Canada," must signify laws enacted by the Dominion Parliament and within its competence. If they should be taken to mean laws in force anywhere in Canada, which is the alternative suggested, s. 101 would be

(1) [1929] Ex. C.R. 101, at p. 102.

wide enough to confer jurisdiction on Parliament to create courts empowered to deal with the whole range of matters within the exclusive jurisdiction of the provincial legislatures, including "property and civil rights" in the provinces, although, by s. 92 (14) of the *British North America Act*,

> The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts

is part of the jurisdiction conferred exclusively upon the provincial legislatures.

When we come to look at the *Exchequer Court Act* itself (R.S.C., 1927, c. 34) we find that by s. 30, which outlines its general jurisdiction, that court is given,

> concurrent original jurisdiction in Canada
>
> (*a*) in all cases relating to the revenue in which it is sought to enforce any law of Canada, including, etc.;
>
> (*b*) in all cases in which it is sought at the instance of the Attorney-General of Canada, to impeach or annul any patent of invention, or any patent, lease or other instrument respecting lands;
>
> (*c*) in all cases in which demand is made or relief sought against any officer of the Crown for anything done or omitted to be done in the performance of his duty as such officer; and
>
> (*d*) in all other actions and suits of a civil nature at common law or equity in which the Crown is plaintiff or petitioner.

It will be noted that in every instance the jurisdiction of the Court is confined to matters directly affecting the Crown in the right of the Dominion and to cases affecting its revenue, "in which it is sought to enforce any law of Canada."

While there can be no doubt that the powers of Parliament under s. 101 are of an overriding character, when the matter dealt with is within the legislative jurisdiction of the Parliament of Canada, it seems equally clear that they do not enable it to set up a court competent to deal with matters purely of civil right as between subject and subject. While the law, under which the defendant in the present instance seeks to impose a liability on the third party to indemnify it by virtue of a contract between them, is a law of Canada in the sense that it is in force in Canada, it is not a law of Canada in the sense that it would be competent for the Parliament of Canada to enact, modify or amend it. The matter is purely one of exclusive pro-

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vincial jurisdiction, concerning, as it does, a civil right in some one of the provinces (s. 92 (13) ).

It would, therefore, in our opinion, be beyond the power of Parliament to legislate directly for the enforcement of such a right in the Exchequer Court of Canada, as between subject and subject, and it seems reasonably clear that Parliament has made no attempt to do so. What Parliament cannot do directly, by way of conferring jurisdiction upon the Exchequer Court, that court cannot itself do by virtue of any rule it may pass. It follows that, even if, *ex facie,* rule 262 of the Exchequer Court might be broad enough to include a third party procedure in a case such as that now before us, it cannot have been intended to have any such effect, since so to construe it would be to attribute to the Exchequer Court an intention, by its rules, to confer upon itself a jurisdiction which it would transcend the power of Parliament to give to it.

On this short ground the present appeal should be dismissed.

While it might conceivably be convenient in some cases to have the Exchequer Court exercise, by way of third party procedure, a jurisdiction such as that here invoked, it certainly cannot be said that it is "necessarily incidental" (*City of Montreal* v. *Montreal Street Railway* (1) ) to the exercise by that court of the jurisdiction conferred upon it by Parliament, that it should possess power to deal with such matters, even where they arise out of the disposition of cases within its jurisdiction. On the other hand, in many cases, and not at all improbably in the present case, it would be highly inconvenient that the Crown should be delayed in its recovery against the defendant liable to it while that defendant litigated with the third party a claim—possibly very contentious—to be indemnified by it.

NEWCOMBE J.—Notwithstanding what was said at the hearing, and the view entertained by the majority of the Court, I am not persuaded to join in the dismissal of this appeal, and I shall mention briefly some of my reasons in favour of the jurisdiction.

(1) [1912] A.C. 333, at pp. 344-6.

The question depends upon the interpretation of sec. 101 of the *British North America Act, 1867*, by which it is provided that

> The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a General Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

By sec. 30 of the *Exchequer Court Act*, R.S.C., 1927, chapter 34,

> The Exchequer Court shall have and possess concurrent original jurisdiction in Canada
>
> (*a*) in all cases relating to the revenue in which it is sought to enforce any law of Canada, including actions, suits and proceedings by way of information to enforce penalties and proceedings by way of information *in rem*, and as well in *qui tam* suits for penalties or forfeiture as where the suit is on behalf of the Crown alone;
>
> * * * * *
>
> (*d*) In all other actions and suits of a civil nature at common law or equity in which the Crown is plaintiff or petitioner.

Lord Robertson, pronouncing the judgment of the Judicial Committee in *Crown Grain Company Ltd.* v. *Day* (1), said, with respect to the jurisdiction of the Supreme Court of Canada:

> The appellants maintain that the implied condition of the power of the Dominion Parliament to set up a Court of Appeal was that the Court so set up should be liable to have its jurisdiction circumscribed by provincial legislation dealing with those subject-matters of litigation which, like that of contracts, are committed to the provincial Legislatures. The argument necessarily goes so far as to justify the wholesale exclusion of appeals in suits relating to matters within the region of provincial legislation. As this region covers the larger part of the common subjects of litigation, the result would be the virtual defeat of the main purposes of the Court of Appeal.
>
> It is to be observed that the subject in conflict belongs primarily to the subject-matter committed to the Dominion Parliament, namely, the establishment of the Court of Appeal for Canada. But, further, let it be assumed that the subject-matter is open to both legislative bodies; if the powers thus overlap, the enactment of the Dominion Parliament must prevail. This has already been laid down in *Dobie* v. *Temporalities Board* (2); and *Grand Trunk Ry. Co. of Canada* v. *Attorney-General of Canada* (3).

From this it may be inferred that the Parliament of Canada, in the execution of its powers under s. 101, has ancilliary legislative authority of the same character as it possesses under the enumerations of s. 91. But the case is capable of being stated even more strongly, seeing that the

(1) [1908] A.C., 504, at p. 507. (2) (1882) 7 App. Cas. 136.
(3) [1907] A.C. 65.

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powers of Parliament under s. 101 are expressly declared to be exercisable, "notwithstanding anything in this Act"; so that not only may the Parliament, within the scope of what is comprised in

> the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada

effectively exercise powers of the ancillary variety, like those which are exemplified in such cases as *Tennant* v. *The Union Bank of Canada* (1), and *The Royal Bank of Canada* v. *Larue* (2); but it has moreover, perhaps by the most comprehensive language which the Imperial Parliament could have adopted, the unfettered power to establish courts "for the better administration of the laws of Canada"; an expression which it is my purpose to shew is apt to include any law which operates in the Dominion, whether by statute or as part of the common law. It is of no use to suggest interference with the exclusive powers of the provinces. The Exchequer Court, constituted under s. 101, is not intended to interfere with or affect provincial powers or courts under the 14th head of s. 92; and that clause must, of course, be read with s. 101, which, within the intent of its language, is meant to prevail over anything to the contrary.

The law by which the defendant seeks to have its claim for indemnity established is, I think, a law of Canada not less truly than the law by which the Attorney-General, on behalf of the Crown, seeks to recover the penalties stipulated by the bonds in suit. If this meaning be admissible, it simplifies the application of the statute; whereas the restricted interpretation which has been adopted involves difficulties and improbabilities which are, I fear, too serious to be overcome.

The respondent is willing to concede that "the laws of Canada", in the context, embrace not only the statutes competently enacted by the Dominion, but also those provisions of the common law, as it exists in each of the provinces, which Parliament is empowered, in its discretion, to declare or change. It is thus suggested that anything is a law of Canada which the Parliament of Canada has power

(1) [1894] A.C. 31. (2) [1928] A.C. 187.

to enact; but there can be no law without a sanction; and therefore it must come to this, if such a contention can prevail, that the power of Parliament to enact constitutes the subject matter a law of Canada, although there has been no enactment; a proposition which seems to me incomprehensible. But, if I correctly apprehend the view expressed by the majority of the Court, the words extend only to laws competently enacted by the Parliament of Canada.

Now, with great respect, I find it impossible to reconcile with reason or probability the suggestion that, if the Imperial Parliament had intended so to limit the Dominion power, it would have chosen an expression so ill qualified for the purpose, and so well adapted to a broader and more natural meaning; seeing, especially, that elsewhere throughout the Act, other and more apt words have been used to distinguish Parliamentary enactments from those which derive their force from the legislatures; and seeing moreover that, if there be no laws of Canada except those which are enacted by the Parliament of Canada, the Exchequer Court is, I venture to think, denuded of the greater part of the jurisdiction which it was designed to possess, and has heretofore generously and habitually exercised.

It is true that in 1897, before the the third party rule was promulgated, Burbidge J. refused to make a third party order in *The Queen* v. *Finlayson* (1), saying that he had no jurisdiction over an issue between the defendant and Mr. Corby, and that he had made such an order in one case only, where the Crown was defendant and all parties consented. This suggests that the learned judge may have refused in the exercise of his discretionary power; but his reason for denying the application is not very perfectly stated, and at that time the practice was not regulated, as now, by the procedure subsequently introduced and sanctioned by the learned judge's successor, on 28th May, 1921, which provides:

> Where a defendant claims to be entitled to contribution or indemnity from or entitled to relief over against any person not a party to the action, he may issue a notice (hereinafter called the third party notice) in the form given in schedule "Z" to these rules, with such variations as circumstances may require, which shall be stamped with the seal of the Court and shall state the nature and grounds of the claims.

(1) (1897) 5 Ex. Court of Canada Reports, 387.

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A copy of the notice shall be filed with the Registrar, and a copy together with a copy of the information, petition of right, or statement of claim, as the case may be, shall be served on the third party within the time limited for the delivery of his defence.

I wonder whether every clause of the *British North America Acts* is not a law of Canada? What about such sections as 41 and 65? Then there are the two great sections, 91 and 92, designed for the distribution and sanction of the Dominion and provincial legislative powers and enactments which are to have force in any part of the Dominion or of a province. Surely these are laws of Canada. There are legislative powers which may be exercised concurrently; see s. 95, respecting *Agriculture and Immigration;* and there are enactments of provincial origin which remain in force, although the power to supersede or alter them has passed to the Dominion, as in the case of works wholly situate within a province, which are, after their execution, declared by the Parliament of Canada to be for the general advantage, under the 10th enumeration of s. 92. And there is s. 93, respecting *Education.* In the case of agriculture and immigration, there might be identical laws in force in a province at the same time, one enacted by Parliament, the other by the legislature. If Parliament were then to repeal its Act, the law would, I suppose, nevertheless remain, by virtue of its provincial sanction. But would that law, which had until then been a law of Canada, and still continued to operate as theretofore, not persist as a law of Canada?

It was not doubted at the hearing that there might be a law of Canada having local operation confined to a single province or part of a province; then if the sanction be adequate, why is a law not a law? What about the uniform laws, which might be produced by the execution of the powers conferred by s. 94?

Section 129 must not be overlooked. To which category are to be referred the Imperial Acts included within the exception? Are these not laws of Canada, or are they laws of Canada only if they relate to matters which, had it not been for the exception, would have been within the legislative authority of the Parliament of Canada?

The late Mr. Lefroy, who was a very careful commentator, in his Canadian Federal System, at pages 685 *et seq.*,

referring to *Attorney-General for Ontario* v. *Attorney-General for Canada* (1), and the submission of Sir Robert Finlay, that "the laws of Canada" mean the laws of the Dominion as distinguished from the laws of the provinces, tells us that,

> In the course of the argument, on Sir Robert Finlay so contending, Lord Macnaghten is reported as observing: "Is that so very clear? I am not quite sure about that. I should have thought that the laws of Canada might embrace the laws of the several provinces."

But as this proved to be a side-point, it was not decided.

Mr. Lefroy also calls attention to the discussion which took place upon Mr. Bethune's application to the Judicial Committee for special leave to appeal in *McLaren* v. *Caldwell* (2), the notes of which are printed in (1883) 3 Can. Law Times, 343-346. The question was there debated as to the application and effect of the concluding words of s. 101 in relation to the general court of appeal for Canada, which, by the earlier words of the section, the Parliament of Canada is empowered to constitute, maintain and organize; and Sir Barnes Peacock, pronouncing the decision, although granting leave to appeal upon other points involved, said (3):

> There is one other point to which their Lordships wish to allude, that is, the objection which has been made to the jurisdiction of the Dominion Parliament to pass the law with reference to the Supreme Court of Canada, and also the power of the Supreme Court of Canada to entertain such an appeal as this, which involves a question of the construction of the Acts of the Provincial Parliament. Their Lordships do not think there is any ground for allowing that question to be raised on the hearing of the appeal.

See also the observations of Strong, C.J., in *The City of Quebec* v. *The Queen* (4).

If the Exchequer Court has jurisdiction only for the administration of Dominion statutes, or laws which might be enacted as Dominion statutes, then what is to be done with civil proceedings by or against the Crown, involving the enforcement of contracts, actions of assumpsit, etc., and petitions of right generally? See the reporter's note in

(1) [1912] A.C. 571.
(2) (1882) 8 Can. S.C.R. 435.
(3) (1883) 3 Can. Law Times, 343, at p. 346.
(4) (1894) 24 Can. S.C.R., 420, at pp. 428-430.

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*Smith* v. *Upton* (1); *Feather* v. *The Queen* (2); *Thomas* v. *The Queen* (3). All such actions, when the Dominion Crown is a party, have been uniformly entertained and adjudicated in the Exchequer Court, and nobody has questioned its jurisdiction, although there would seem to be no adequate foundation for it if "the laws of Canada" consist only in Dominion statutes. What possible jurisdiction, I wonder, has the court to adjudge a simple action of assumpsit for or against the Crown, if its jurisdiction be limited to Dominion statutes, or even if, by any ingenuity of interpretation, it extend also to provisions which, though not enacted, would be competent to Parliament to enact? Or, for instance, if the Dominion Crown, having become an ordinary bailee of goods in one of the provinces, fail to fulfil its obligation to deliver the goods, doubtless a petition of right would lie, but the case would not be ruled by any Dominion statute, or, I shall assume, any law that the Parliament of Canada could make. Nevertheless the Exchequer Court would readily, in accordance with all past practice, try and determine the petition, and it would be governed by the common or statute law effective in the province. I confess I do not see how such a case is admitted to a jurisdiction which extends only to the administration of Dominion statutes.

The exclusive jurisdiction of the Exchequer Court is defined by the *Exchequer Court Act* in secs. 18 and 19, *et seq.*, and one cannot read these sections without realizing that Parliament interpreted its powers as extending far beyond the limit which is now suggested. It was said by Sir Montague Smith, in the course of his judgment in *Citizens and Queen Insurance Companies* v. *Parsons* (4), that

> The declarations of the Dominion Parliament are not, of course, conclusive upon the construction of the *British North America Act;* but when the proper construction of the language used in that Act to define the distribution of legislative powers is doubtful, the interpretation put upon it by the Dominion Parliament in its actual legislation may properly be considered.

The Crown frequently interpleads two subjects—a procedure which is specially provided for by s. 25 of the *Ex-*

(1) (1843) 6 M. & Gr. 251, at pp. 252, 253.
(2) (1865) 6 B. & S., 257, at p. 294.
(3) (1874) L.R. 10 Q.B. 31, at p. 43.
(4) (1881) 7 App. Cas. 96, at p. 116.

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*chequer Court Act.* Proceedings under this clause have not been uncommon, and, like third party proceedings, they have for their object the determination of claims between individuals, but the jurisdiction in cases of interpleader has, so far as I am aware, never been doubted.

To mention another example, the principle of *Lord Campbell's Act* had, at the Union, been legislatively adopted by all the uniting provinces, and it was therefore the law in every one of them. Is it not to be embraced within the laws of Canada for the purposes of s. 101?

I have already shewn that, in the constitution of the Exchequer Court of Canada, Parliament has given the court original jurisdiction, concurrent with that of the provincial courts, in all cases relating to the revenue in which it is sought to enforce any law of Canada, and in all other actions and suits of a civil nature at common law or equity in which the Crown is plaintiff or petitioner; and the present action falls under one or other or both of these descriptions.

The rules defining the practice and procedure of the Exchequer Court are statutory rules, and not subject to be reviewed judicially, so long as they are not *ultra vires* of Parliament to enact, and the procedure now in question, which has been condemned by the learned judge below, has been expressly sanctioned in the manner authorized by secs. 87 and 88 of the *Exchequer Court Act.* See *Institute of Patent Agents* v. *Lockwood* (1). The rules of court are designed for the better administration of the laws of Canada, and there can be no question as to the advantage, in experience and fact, of the practice introduced and authorized by third party procedure.

For my part, I cannot suppose that the Dominion powers under s. 101 are intended so to be restricted or controlled as to cease to be exercisable when they come into contact with an issue between individuals relating to property and civil rights in a province. *Appeal dismissed with costs.*

Solicitors for the appellant: *Meredith, Holden, Heward & Holden.*

Solicitors for the respondent: *Fasken, Robertson, Aitchison, Pickup & Calvin.*

(1) [1894] A.C., 347, at pp. 359, 360.