HIS MAJESTY THE KING.....PLAINTIFF; 1921 December 3.

VS.

THE GLOBE INDEMNITY COMPANY OF CANADA AND E. T. HINCHLIFFE.....DEFENDANTS.

AND

W. H. BARBER *et al*.....THIRD PARTIES.

Judgment—Motion to vary—Jurisdiction of trial Judge—Practice.

Where the court in pronouncing judgment has dealt with all the questions of law and fact in issue between the parties, including the right of a defendant to bring in third parties to respond any judgment which might be entered against such defendant, the Court will refuse a motion to vary the judgment by finding, contrary to the actual finding of the trial judge, that the Court had jurisdiction in the third party proceeding; or, in the alternative (thereby raising a new point of law after judgment) that the judgment be varied by finding that the Court or such trial judge had no jurisdiction under the Canada Grain Act, and amendments, to grant the relief sought by the Crown in the information.

In refusing the motion, the Court held that in so far as the motion savoured of an appeal it was irregular; and, on the other hand, that if it were to be treated as a new proceeding between the parties the subject-matter of the motion was *res judicata*.

MOTION on behalf of defendant the Globe Indemnity Company of Canada to settle the jurisdiction of the Court to decide the issue between the plaintiff and defendants as well as between defendants and third parties, and to vary the judgment previously rendered in this case.

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THE KING
v.
THE GLOBE INDEMNITY COMPANY OF CANADA AND HINCHLIFFE AND BARBER.

Reasons for Judgment.

Audette J.

November 9th, 1921.

Motion heard before The Honourable Mr. Justice AUDETTE at Winnipeg.

E. L. Taylor K.C., for plaintiff.

J. B. Coyne K.C., for defendant, the Globe Indemnity Company of Canada.

J. C. Lamont, for third parties.

The questions of law raised and the facts necessary to the decision thereof are stated in the reasons for judgment.

AUDETTE J. now this (3rd day of December, 1921) delivered judgment.

This is a motion made on behalf of the defendant the Globe Indemnity Company of Canada to settle the jurisdiction of this honourable Court or of the Honourable Mr. Justice Audette to decide the third party proceedings herein and to give the relief asked for in the information herein; and to vary the judgment of the Honourable Mr. Justice AUDETTE pronounced in this cause on the twelfth day of May, A.D. 1921 on the grounds:

"(a) that this Court has jurisdiction in the third party proceedings.

"(b) that by reason of the order permitting the issue of the third party notice served upon the third parties and not moved against and the subsequent conduct of the third parties, they are precluded from setting up want of jurisdiction.

"(c) that in the alternative, by the conduct of the third parties and this defendant and the hearing of the merits of the issues raised in the third party proceedings, jurisdiction was conferred on the Honourable Mr. Justice Audette to decide the issues raised in said third party proceedings.

"(d) that in the further alternative, if the Court or the Honourable Mr. Justice AUDETTE has no jurisdiction in the third party proceedings, neither have they jurisdiction to grant relief to the Crown on the information.

"(e) and on other grounds appearing in the proceedings and as counsel may advise.

"and for a judgment against the third parties as claimed in the third party notice, or a judgment dismissing the information with costs, and in the alternative for a variation of the order for costs against this defendant in respect of the third party proceedings."

After hearing counsel for all parties, suffice it to say that by and under my judgment of the 12th May, 1921, all the issues and questions raised by the written pleadings, by the evidence and by the argument of counsel for all parties, inclusive of the contract resulting from the bond given by the Globe Indemnity Company of Canada, have been duly considered and passed upon, and such issues or questions have now become *res judicata*. It is axiomatic that there must be finality in litigation before the courts; and that a trial judge ought not to sit on appeal from his own judgment. In *Charles Bright & Co.* v. *Sellar* (1)

(1) [1904] 1 K.B. 6 at p. 11.

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Audette J.

Cozens-Hardy L. J. said:—"Since the Judicature Act no judge of the High Court has jurisdiction to re-hear, such jurisdiction being essentially appellate." If the motion here is to be treated as tantamount to a substantive and new proceeding then clearly I cannot in such proceeding vary or add to a judgment already given in another case. See case cited *supra* at p. 12.

The motion is dismissed with costs.