

The defendants alleged that, at a point below the plaintiff's ferry docks, the appellants had erected a dam and power plant in such a manner that driving logs down the river was impeded, and that the sluiceway provided by the appellants in their dam was inadequate for the purposes intended; and that, if the plaintiff was impeded in the operation of the ferry, it was by reason of the erection and construction of the dam and power plant by the appellants and the inadequacy of the means provided for floating logs past the sluice or dam.

The procedure under Rule 209 is confined to claims for contribution over, indemnity over, and other relief over, against the third party.

Featherston Aylesworth, for the appellants.

A. E. Knox, for the defendants, contended that the case came within that part of the Rule providing for other relief over.

TEETZEL, J.:—Prior to 1895 the Rule was the same as the English Rule, and was limited to claims for contribution or indemnity. In that year it was held, as to the provision for indemnity, in *Payne v. Coughell*, 17 P. R. 39, following the English decisions, that the Rule applied only “to claims for indemnity as such, either at law or in equity, and did not apply to a right to damages arising from breach of contract, the latter being a right given by law in consequence of the breach of a contract between the parties, while the former is given by the contract itself.”

The Rule was subsequently amended by inserting the words “or any other relief over against.” As was suggested in *Confederation Life Association v. Labatt*, 18 P. R. 266, the amendment was probably made in consequence of *Payne v. Coughell* and other cases shewing the former narrow compass of the Rule. . . .

[Reference to the *Labatt* case and remarks of Street, J., at p. 269.]

The defendants do not claim a right against the third parties by reason of breach of any express or implied contract; and I think the material falls short of charging tortious acts against the defendants, because, for all that appears, the third parties may have erected their dam and sluiceway within their legal rights.

Assuming, however, that the third parties are guilty of tort . . . no case was cited, nor have I been able to find any case, where a claim for relief over has been allowed to be made by a defendant against a third party in consequence of a tort committed by the third party—other than cases . . . under sec. 609 of the Consolidated Municipal Act, 1903. . . . I am of