

goods, claiming relief over founded upon either an express or an implied warranty of title upon the sale of the goods; and it was held by Mr. Justice Meredith in the first instance and afterwards on appeal by a Divisional Court that it was a case coming within the Rule for third party proceedings.

There is, however, in addition to the circumstances I shall refer to, the fact that, according to the allegation of defendants, if the accident was caused by the subsiding of the track, that was outside of their control, and they are not liable. If that be so, the case is not one for third party proceedings.

There is not only the action by Mahoney, but also two other actions, one by representatives of a workman who was killed, and the third by a workman who was injured in the same accident; and also there may be a third claim,—although Mr. Paterson indicated that that might not be pressed—by the defendants for the damage done to the derrick.

Now it seems to me it would be improper that the third parties should be subjected to have the damages for which, if they are liable at all, they are liable for upon their breach of their warranty or undertaking, or whatever it was, to provide a safe and sufficient track, assessed piecemeal. If the third party notice is permitted to stand, there will be an assessment of part of the damages now; then it may be that if third party proceedings are taken in the other cases, there will be separate assessments there also, or if third party proceedings are not taken in those cases, there would be the necessity of an action by defendants against the third parties for the damages which they will claim to have suffered, if they fail in the actions.

Looking at that circumstance, and having regard to the terms of the Rule that the plaintiff is not to be prejudiced or unnecessarily delayed, we think the order of the Chancellor ought not to stand.

The plaintiff, as I have said, has his case entered for trial, and is ready to go on, and if, according to the practice, the result of an order letting in the third party to defend is to open the pleadings and to require a new notice of trial and a new entry of the cause, the result will be that the plaintiff will be thrown over until the next sittings of the Court for the trial of jury cases.