

pay the costs which defendants have paid or may have to pay under the judgment of 28th June to plaintiff—the costs of their own appeal and the costs of the third party's appeal against them—as they would not otherwise receive the full indemnity to which they were by his contract entitled from the third party.

J. Bicknell, K.C., for the third party.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

OSLER, J.A.:—The appeal being a step in the cause, presenting it to the Court for review just as it came before the Court below for trial, this Court has the same jurisdiction over all the costs of the proceedings therein as the trial Judge had over those which had been incurred when the case was before him. The Court is disposing of all appeals, for convenience sake, as well as to prevent delay in the recovery of the judgment to which plaintiff was entitled, by two orders instead of one, and the time to deal with the question of what costs defendants should receive from Crang is when that part of the appeals which concerns his liability to them falls to be decided. The jurisdiction to do this was not at an end when the order of the 28th June was made, and the proper time to deal with these costs is when the Court is dismissing the third party's appeal, and thus making a final disposition of the litigation as it came before the Court. As to the costs of the third party's own appeal against plaintiff, they should have been ordered to be paid by the third party to plaintiff directly, instead of by defendants in the first instance. The defendants are entitled to be recouped by the third party the costs which may have been paid by them under that part of the order. As to the other costs defendants ask for, they are entitled to them, as their proceedings were not taken unnecessarily or wantonly, but reasonably and in their own interest and for their own protection. They are, therefore, within the scope of the third party's contract of indemnity, and the order should go in the form proposed by defendants. No costs of this motion. The taxing officer should see that the order does not bear with undue severity upon the third party, seeing that all the appeals were argued together, that he had the labouring oar in them all, and that the contention of defendants as to his liability turned chiefly, if not altogether, upon the construction of the contract between them.