

assessment varied, here, if anything, it is one culminating wrong, the third parties alleged to be the most important link in the chain of liability, the same inevitable measure of damages (although if assessed by different tribunals they may not measure the same) and to be assessed upon the same principles.

I have used the word alleged advisedly, because the defendant, no more than a plaintiff is, is not called upon to prove his claim in Chambers, *Pettigrew v. Grand Trunk Rw. Co.*, 22 O. L. R. 23. Consolidated Rule 165 says: "Where a defendant claims to be entitled" etc. The rule provides substitute for an action and is intended to prevent multiplicity of actions, and the scandal arising from contradictory results based upon the same facts. If the defendant apparently has a *bona fide* claim, of a character covered by the rule, there is no right to try this claim either as to fact or law in Chambers. He proceeds, as a plaintiff does, at the peril of costs. Other considerations arise of course if it is clear beyond argument that the defendant cannot have a legal claim. The rule is remedial and should receive a liberal interpretation. In construing it, sec. 57 of the Judicature Act and particularly sub-sec. 7 of this section, should be kept in mind, and as far as possible made effective.

I entirely agree with Mr. Justice Riddell when he says in *Swale v. Canadian Pacific Rw. Co.*, 25 O. L. R. at p. 500: "I am convinced that the Consolidated Rule has been given quite too narrow an application and I hope that the matter may receive full consideration in an appellate Court." In the same case, Mr. Justice Middleton, sitting in the Divisional Court, said: "The right to invoke the third party procedure exists whenever the plaintiff's claim against the defendant, if successful, will result in the defendant having a claim against the third party to recover from him the damages which he has been compelled to pay to the plaintiff."

The defendants appear to be acting in good faith, they set up a claim which may prove to be valid, they ask to have it tried now, it is a convenient time, the plaintiff does not object and the rule in my opinion is intended to cover such a claim.

The third party will have 8 days to enter an appearance.

The motion will be dismissed with costs to the plaintiff and defendant in the cause.