

complained of into the premises of our customer; the act complained of, as between you and us, is your act, not ours, and we are entitled to relief over against you." This is a case of two or more persons alleged to be subject to a common liability other than for fraud or other wilful tort: *Johnston v. Wild*, 44 Ch.D. 146. Unlike the cases of *Wade v. Pakenham* (1903), 2 O.W.R. 1183; *Miller v. Sarnia Gas Co.* (1900), 2 O.L.R. 546; *Parent v. Cook*, 2 O.L.R. 709, 3 O.L.R. 350; and *Wilson v. Boulter* (1898), 18 P.R. 107—where the claims were divergent, or the measure of damages or the principles governing the 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 a defendant, no more than a plaintiff is, is not called upon to prove his claim in Chambers: *Pettigrew v. Grand Trunk R.W. Co.*, 22 O.L.R. 23. Rule 165 (Rules of 1913) says: "Where a defendant claims to be entitled," etc. The Rule provides a 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 *bonâ 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 that 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 R.W. Co.*, 25 O.L.R. 492, at p. 500: "I am convinced that the Con. Rule has been given quite too narrow an application, and hope that the matter may receive full consideration in an appellate Court." In the same case, Mr. Justice Middleton, sitting in a 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."