

for the supply to them of the material by the plaintiffs in England. By reason of the delay in supplying this material, the third parties cancelled the contract with the defendants, whereupon the defendants notified the plaintiffs of the cancellation of the plaintiffs' contract. Neither the plaintiffs nor the defendants accepted the cancellation. The plaintiffs sued the defendants for damages, whereupon the defendants brought in the third parties by the practice provided by the Rules. The judgment at the trial was in favour of the plaintiffs against the defendants, and in favour of the third parties upon the claim over of the defendants. The defendants appealed both as to the plaintiffs' judgment and as to the dismissal of their claim over.

The learned Judge said that he agreed with the conclusion of the trial Judge in respect of the claim of the plaintiffs; and had come to the conclusion that the case was not one in which the third party Rules applied, and there was no power to grant any relief to the defendants against the third parties in this action, unless by consent.

When the third parties cancelled their contract, the cause of action in the defendants against them was complete, and they might have brought their action at once. The damages they could claim (assuming the contract to have been broken and the cancellation wrongful) would be the difference between what the third party promised to pay and the cost to the defendants. Nothing done by the third parties was the cause of the damages sought in this action by the plaintiffs against the defendants. The loss of the defendants was due to their own act, and not to any act by the third parties—there was no case for indemnity or contribution or relief over. What the defendants must pay was the difference between the amount they agreed to pay to the plaintiffs and the cost to the plaintiffs of supplying the goods. What the defendants must claim from the third parties had nothing to do with this—it was calculated on different facts and a different principle: *Campbell v. Farley* (1898), 18 P.R. 97; *Wynne v. Tempest*, [1897] 1 Ch. 110.

The regular course would be to dismiss the appeal of the defendants against the third parties, without prejudice to an action being brought by the defendants against the third parties; but, as all parties desired their rights to be disposed of in this action, and the trial Judge had entertained and disposed of the third party claim, and his judgment thereon was right, both appeals should be dismissed with costs.

HODGINS, J.A., agreed with RIDDELL, J.