

was thereupon enlarged to allow the third parties to move before me to amend the order as to directions so as to conform to the order made in *Deseronto v. Rathbun*, 11 O. L. R. 433. In my understanding and use of this term this is what was meant by "the usual form" it having been settled by Sir W. R. Meredith, C.J.O., in that case.

The motion was made under C. R. 640. But I hardly think it applies under the facts of this case. There was no "accidental slip or omission." What was done was done after a good deal of discussion and various attempts at settlement of the order as is shewn by the lapse of over 3 weeks between 4th and 30th of March.

But perhaps a remedy can be given under the very wide language of C. R. 312 and the decisions on that rule and the provisions of 36 Vict. ch. 8, where it originally appeared.

I refer especially to the judgment of the Court of Appeal in *Gilleland v. Wadsworth*, 1 A. R. 82, and *Peterkin v. MacFarlane*, 4 A. R. at pp. 44 and 45. In both of those cases an appeal was allowed from the refusal of the trial Judge to allow an amendment "To do otherwise would be to avow that a decision by which a party was finally bound was given not according to the right and justice of the case but according to what may have been an error or a slip," per Patterson, J.A. I refer also what I said in *Muir v. Guinane*, 6 O. W. R. 65, 10 O. L. R. 367, on a similar question.

See too, Yearly Practice, 1912, (Red book) vol. 1, 352, and cases cited.

As the order of 4th March, 1912, provided in clause 1 that "the third parties shall be bound by the result of the trial between the plaintiff and the applicants (defendants)" the third parties desire leave to appeal not only against the defendants' judgment as against them but also to be allowed to shew if they can that the judgment in favour of plaintiff is excessive.

It would seem contrary to natural justice that any party should be bound by a judgment without the right to appeal therefrom, unless he has expressly consented to do so.

Here there is no such consent, and it does seem that this is just a case in which C. R. 312 should be applied to allow the third parties to question the judgment by which they are bound.

This can be done on proper terms—which will be to give to defendants proper indemnity both as to the judgment and the costs which they have been ordered to pay to