

*Mr. Rees* : Let the judgment be taken, but not Sir Robert Stout's opinion.

*The Chairman* : I cannot allow the matter to go back in this way, or take *ex parte* statements from either the counsel for the plaintiff or from the counsel for the defendant.

*Mr. Bloxam* : He is pointing out the opinion of the Court of Appeal.

*Mr. Rees* : The position was this : Ell was acting for himself ; he had no lawyer ; there was a mistake ; in consequence of that mistake the whole thing had to go back.

*Mr. Bloxam* : I think you will find that Mr. Jellicoe had appeared for the plaintiff.

*Mr. Rees* : Mr. Jellicoe had previously appeared ; but the position was as I have just stated.

*Mr. Bloxam* : Then, on page 48 of Mr. Ell's evidence [Registrar's notes] he says, " My position with Mr. Harper on the 1st June, 1873, was as follows : Assuming that item (the exhibit H, No. 23 of Appendix No. 19), the bill drawn in settlement of the £147, is correct, I owed in addition £250 (mortgage) on Minchin's land, £200 on Perkin's land, £1,000 on Cadman's land, and he owed me at the time £5 cash paid, Gardener's deposit ; £100 paid by Macpherson and not accounted for against Harper's agents."

*Mr. Rees* : That is not it at all—it was a stock account.

*Mr. Bloxam* : But it did not include all the transactions between them ; that was the reason it was gone into.

*The Chairman.*] Will you explain what this receipt means for £250 ?

*Mr. Bloxam* : It comes in twice, for they made a separate charge of it. In what way I will refer to in the other evidence. It is a separate charge in Ell's statement ; I was going to follow that through. In page 58, evidence of Mr. Gardener [Registrar's notes], he says, " I remember that on the 6th September I paid Messrs. Hanmer and Harper £5 on account of Mr. Ell ; he had bought the equity of redemption of certain land through Shannon, and I bought his bargain from him. I had a receipt from Mr. Harper himself." Now, that shows that in 1872 there were some transactions that were not accounted for.

*The Chairman* : Here we are going back again to something earlier than 1873 and the settlement.

*Mr. Bloxam* : If this was meant to cover transactions between 1870 and 1873. When the matter was gone into it was found that it did not cover all the transactions between 1870 and 1873 ; therefore it was gone into. I am simply showing the items between 1870 and 1873.

*Mr. Rees* : If Mr. Bloxam says this was his reading of the order—that he thought it was the right interpretation, or that if a mistake were made he was doing what he believed to be right—there is an end of it so far as he is concerned.

*Mr. Bloxam* : I say that I was right ; there is a matter of £808 put on to Mr. Ell's judgment on the other side ; if there had been a settlement it would not be in the judgment which he obtained.

*Mr. Rees* : Here is the arbitrator's and the Registrar's ruling—their verdict in point of fact. They state that there was a settlement closing the account [Registrar's notes].

*The Chairman* : The question for us is whether the petitioner has suffered or not. If he has, that fact might form the basis of a recommendation.

*Mr. Bloxam* : I am endeavouring to make this matter as short as I can. I would be perjured if these charges were true.

*Mr. Rees* : Some of those statements are very like it.

*Mr. Bloxam* : If you would say that outside, apart from your privilege.

*Mr. Rees* : I would say it outside ; and it is not at all improbable but I shall take out a criminal information against you.

*Mr. Bloxam* : On page 65 [Registrar's notes] Ell says, " I do not recollect having a settlement of account with Harper in June, 1873.

*Mr. Rees* : The whole of that should be read, coming after, " I do not recollect a settlement of accounts."

*Mr. Bloxam* : He says, " I had another action pending with Mr. Harper and another. These accounts were being taken in each action simultaneously." On page 68 [Registrar's notes] Mr. Harper says, " In June, 1873, I went through the accounts with Mr. Ell. At the commencement of this action Mr. Ell refused to admit the correctness of the account produced by me purporting to be a settlement of the stock transactions between us in 1873. He further claimed the right to go behind that date, and to produce accounts previous to that time, and to require me to do the same." He was cross-examined by Mr. Austin, who appeared for Ell. The refusal took place before the arbitrator. The exhibit held by Harper is the account referred to. The exhibit B [inquiry by Mr. Conolly, H.-6, 1889] was produced. The effect of it was that there was no final settlement of accounts in 1873. When Ell settled in 1873 they gave him a credit of £100 for potatoes. He represented they were worth £6 a ton.

*The Chairman* : In that paragraph " settlement " means an adjustment of the account. Mr. Harper understood there was a settlement.

*Mr. Rees* : He says so over and over again on oath. Mr. Harper does. That bill was given in settlement. Here is the account rendered to Ell as to the item £147 13s. It is on folio 16 of the Registrar's accounts.

*The Chairman* : Are the settled accounts only stock transactions ?

*Mr. Rees* : Nothing but stock transactions. There were two actions ; one for stock transactions.

*Mr. Bloxam* : No, Mr. Rees.

*Mr. Rees* : Each party produced an account.

*Mr. Lake* : Is there a counter-statement in evidence ?

*Mr. Rees* : Ell produced an account ; the other side produced an account : here they are both [vide Appendix 7].

*Mr. Allen* : Has the Registrar gone behind the settled account as regards stock accounts ?