

949. Have you any recollection of ever seeing Messrs. Perry and Perry's bill of costs?—No.

950. But you do recollect getting a memorandum from Mr. Logie?—Yes.

*His Honour*.] That is all your evidence?

*Mr. Haggitt*: Yes.

*Mr. Haggitt*: Would your Honour allow me to ask Mr. Ritchie a question? It is a matter I ought to have asked about yesterday.

*His Honour*: Very well.

JOHN MACFARLANE RITCHIE recalled and examined.

951. *Mr. Haggitt*: It was suggested yesterday that you sent a number of people to Mr. Scott to get him to keep quiet?

*Mr. Chapman*: When.

*His Honour*: There is no evidence, but something of the sort was said by Sir R. Stout.

952. *Mr. Haggitt*.] I want to ask Mr. Ritchie if there was any foundation at all for saying that he did send people to Mr. Scott?—No.

953. You have not sent one?—No.

954. Nor been a party to anybody being sent?—No.

*Mr. Haggitt*: That is all. I should have asked it yesterday, I know.

*Mr. Chapman*, addressing the Court, said,—I propose first, your Honour, to state what relief we consider we are entitled to on the case as now made out. The questions raised by the pleadings are few, and there are no questions raised as to the amount of liabilities which Mr. Scott has incurred, and no question raised as to the expenses to which he has been put. We have alleged in our pleadings that in taking this run he acted as agent or as trustee for the defendants, or some of them; and we have sued the three parties because, obviously, inasmuch as one is a corporation and two are individuals, and all these discussions take place either in the first person or the third, when they take place in the third person it is equally open to question to the person with whom they took place whether the party who is addressing him and talking about "We will do this" and "We want you to do that" is addressing him on his own behalf or on behalf of the corporation which he represents. It is immaterial to us, however, against whom we obtain relief. Whatever Mr. Scott may have thought at the time of the party who was soliciting him to enter upon this liability, or whether he thought of it at all, is quite immaterial. At any rate, Mr. Ritchie, in his evidence, has told the Court that he was acting for the National Mortgage Company.

*His Honour*: There is no doubt about that. I think from any point of view of the transaction, whatever it was, it was made on behalf of the company. Mr. Scott thought so, and the other side thought that too.

*Mr. Chapman*: Yes, your Honour, Mr. Scott may have thought that. He probably did not think very much about it; but of course the question might have arisen as to the authority of Mr. Ritchie to make it; but that is cleared up by the plea which shows that the stock belonged to the Mortgage and Agency Company. All the parties pleaded that in the statement of defence. All we ask is this: We say we are entitled to the ordinary rights of a trustee. Mr. Scott has been requested by the defendants to assume this liability, and, though we allege we have proved that Mr. Scott was assured twice, if not oftener, by Mr. Henderson, who also appears to have acted on behalf of the company, that they would see him through, it is unnecessary for us to rely upon that. We claim that the liabilities arise out of the very situation and out of the very nature of the transaction. I need only refer to a few authorities on the subject, your Honour. It is laid down broadly in all the text-books on trusteeship and agency and kindred subjects—and the position of directors of a company is the same—that they are entitled to be indemnified by those for whom they act. My learned friend Sir R. Stout cited a case from 36 Chancery Division. That was one class of case where a person accepting a trust was entitled to be indemnified out of the trust estate. A very familiar class of case analogous to this is that of brokers and jobbers assuming liability on behalf of customers. Under the old rules of stock exchange all over the world, whenever a person goes to a member of the Stock Exchange and requests him to make a purchase in the market, he goes into the market, and, though everybody may know he is purchasing as an agent, he at once makes himself legally liable to the broker or jobber from whom he purchases, and it has been held in numerous cases that he is entitled to indemnity from his principal. The principal case upon the subject is that of *Cruse against Paine* (L.R. 4 Chan. Appeals, 441.) The head-note is "A firm of stock-jobbers agreed on the Stock Exchange to buy 100 shares for a certain day, and on the sale-note were the words 'with registration guaranteed.' The jobbers, before the day, gave the name of a transferee, who duly paid the purchase-money; the seller executed the deed of transfer and delivered it to the transferee. The transferee never registered the transfer, and calls were made upon the seller, who filed a bill against the jobbers for indemnity, and had since died. Held, That the jobbers were liable to indemnify the estate to the seller." The value of the words "registration guaranteed" in that case was merely to get rid of another rule of Stock Exchange—that when once the buyer's name was supplied the jobber is relieved of his liability; but it does not in any way interfere—in fact, it it fully recognises the general doctrine that a person who buys for another, and takes a liability at his request, has always to be indemnified by him, unless he contracts himself out of his right to an indemnity. Then there is another case in the same volume (*Coles v. Bristowe*, 4 Chan. Appeals, page 3), and in that case, at page 6, there is some reference made to the owner of a leasehold house finding a buyer. The Lord Chancellor says, "If I agree with the owner of a leasehold house to buy or to find a buyer for it on the 1st of January, and I do find a buyer, who is to indemnify the owner against the covenants?" That is a question, whether the person who undertakes to find a buyer, or the buyer, is to be the indemnifying party—a question that does not arise here. Then there is a case in New Zealand, of *Henderson's Trustees against Diver*, in New Zealand Law Reports, I., Supreme Court, page 369, the head-note of which is this: Where a person owing a