

that they had paid the purchase-money; and the fact that they had debited the purchase-money to Scott's account would again tell very heavily against them. No doubt the real fact of the matter could have been proved by verbal evidence, and in such a case verbal evidence is sufficient, in spite of the Statute of Frauds; but it would have taken very strong evidence to have satisfied the Court under the circumstances before it would have held Scott a trustee for the company, and the onus of proof in that case would undoubtedly have been upon the present defendants, and they would have had to satisfy the Court in the clearest possible way that Scott was a trustee for them. Now, there are authorities on that subject to be found in "Lewin on Trusts," page 167; "Godefroi on Trusts," 174; Smith's "Principles of Equity," page 67 and the following pages. In every case it is laid down that parol evidence, where admitted under such circumstances, must prove the facts very clearly. The statement is repeated in all the books to which I have referred—that parol evidence, although admissible, requires to prove the facts very clearly; and that is my answer to the case which my learned friend puts of the run having gone up in value, and the company trying to compel Scott to give it up. But I submit that if that is the rule in a case of that kind, yet where the converse is the case, as this is now, the same rule must still apply. If the parties came before the Court to set up an equity, as Mr. Scott here comes before the Court to set up an equity, as opposed to the legal status in himself, that the parol evidence which he gives in support of his case must be exceedingly satisfactory, and must make his case perfectly clear. This proves that my learned friend's contention is not the correct one—that the onus of proof is upon us—but that the onus of proof is, in point of fact, upon Mr. Scott. Mr. Scott is setting up as against the lease in his own name that he is trustee of that lease for the company, and he is trying to satisfy the Court of that fact by parol evidence. I submit that the case is exactly the same in point of principle as if the company were setting up as against the lease that Scott was trustee for them; and that being so, the rule which I have referred to, and which is stated in "Lewin on Trusts," and in these other books, is to be followed, and then it lies upon Mr. Scott to satisfy the Court that he is a trustee for the company, and it is not for the defendants to disprove the fact. Now, your Honour, my learned friend took up a good deal of time this morning in trying to satisfy the Court that Mr. Scott was entitled to the ordinary rights of a trustee, and that the trustee was entitled to indemnity from a *cestui que trust*. We do not dispute that for a moment if the relation of trustee and *cestui que trust* is established. I take the law to be perfectly clear. If I say to a person go and buy me a piece of land, without saying anything else, and he does so, I am bound to indemnify him against the consequences of acts done by him, and to repay him all moneys in connection with the purchase made. We admit there can be no doubt about that. My learned friend might have saved himself the trouble of arguing the point. My learned friend Mr. Solomon admitted as much in his opening remarks, and there can be no doubt it is the law; but I submit that if I induce a person by promise of reward, or out of friendship for me, or on any other account, to take up for himself something which I am afraid to touch myself, and to give me a benefit out of what is his purchase, then that there is no implied contract to indemnify him on my part, and that the risk is all his own; and I say that that is this case. Of course, the man who puts himself in such a position may be a fool, but the Court has nothing to do with that. I submit, your Honour, that the whole question here is a question of credibility between the plaintiff on the one side and Ritchie and Henderson on the other. My learned friends seem to catch at little points in order to turn the scale of evidence in their favour, such as Mr. Ritchie's telegram, in which he says that the money had been paid to Scott when it had not; and the fact of Mr. Henderson having taken a legal opinion whether an appeal against the fine was likely to succeed or not: but these little points, I submit, are not of the slightest importance; they throw no light at all upon the case, and cannot help the position. The telegram—the matter of the telegram was easily explainable, and was satisfactorily explained. At the time Mr. Ritchie received the telegram to which his was an answer he was away miles back from Timaru—in the back country; he had no opportunity of making inquiries or referring to his books, or anything else. He thought that the amount Mr. Scott was entitled to be paid had been paid, and he said so; whereas the fact turned out to be that it had not been paid, because it had not been asked for. There was the explanation of that circumstance that was to throw such an immense amount of light on Mr. Ritchie's credibility. My learned friend Sir Robert Stout said so, but my learned friend Mr. Chapman did not; he had the justice to say that he did not accuse Mr. Ritchie of saying anything but what he believed to be true.

*Mr. Chapman*: Mr. Ritchie's explanations came after Sir R. Stout addressed the Court, your Honour.

*Mr. Haggitt*: But because it was pleaded; because it had been admitted on the pleading that the answer to the telegram was untrue, it was suggested that that gave so much greater force to his having made a deliberate misstatement. My learned friend was particularly eloquent upon the subject of his not having been informed, up to the very last moment, that it was not correct. Well, my learned friend knows perfectly well what the explanation was; he knew that Mr. Ritchie was not in town, and that he did not return to town until two days before the statement of defence was filed.

*Mr. Chapman*: I knew that, on the contrary, Mr. Ritchie had been in town.

*Mr. Haggitt*: My learned friend referred to myself, and said that I never informed him. The first intimation I had of it was on the very day on which the plea was delivered to him; so that my personal explanation, I trust, is satisfactory.

*Mr. Chapman*: Since my friend is going outside the evidence, I say that Mr. Ritchie was in town at an earlier date, for I saw him.

*Mr. Haggitt*: If he was here he was only down for a day or two, and I did not know of it. At all events, he did not attend to this case while in town, or give any instructions about it. But this is making a fuss, I submit, about matters which are perfectly immaterial, and really can have nothing to do with influencing the decision of the Court. Then, again, there is the other