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FORGED TRANSFERS OF STOCK AND THE SHEFFIELD CASE.

IN two recent cases the question has come before the English courts whether a corporation that has been induced to register a forged transfer of stock, or to allow a transfer of stock on its books under a forged power of attorney, is entitled to indemnity from the person that has induced it to do so, when he has acted in good faith and in the belief that the document was genuine. In one it was held that the person who induced the corporation to allow him to transfer the stock under the forged power of attorney thereby represented that he had authority to make the transfer, and that this representation imported a contract that the authority under which he acted was valid, and made him answerable for the damages sustained by the corporation. In the other it was held that the person who in similar circumstances induced the corporation to register the forged transfer made no representation or contract that the document was genuine and was not bound to indemnify the corporation.

The former of these cases was Starkey *v.* Bank of England,[1] in which the House of Lords affirmed the decisions of the Court of Appeal and Kekewich, J., in the same case, *sub nom.* Oliver *v.* Bank of England.[2] In this case government stock was standing

[1] [1903] A. C. 114.

[2] [1902] 1 Ch. 610; [1901] 1 Ch. 652.

in the books of the bank in the names of F. W. Oliver and his brother Edgar, who were trustees for others. Starkey and his partner, who were stockbrokers, received from F. W. Oliver instructions to sell the stock and a power of attorney to transfer it executed by him and purporting to be executed by his brother. The form of power of attorney had been obtained from the bank upon an application in the names of F. W. and Edgar Oliver, and the bank before issuing it had sent notices to them, in accordance with a practice usual in England, that it had been applied for, but no notice ever reached Edgar Oliver. The brokers, believing that the power of attorney was genuine, sold the stock, and Starkey presented the power of attorney to the bank, and on his request to act under it was allowed by the bank to transfer the stock to the purchasers. A year and a half afterwards F. W. Oliver died, and it was then discovered that Edgar Oliver's signature to the power of attorney was a forgery. He brought an action against the bank for restitution, and Starkey was made a third party upon a claim by the bank for indemnity. It was held that Starkey, in presenting the power of attorney to the bank and demanding to act under it, represented that he had the authority that he assumed to exercise, and, the bank having in consequence of his request transferred the stock, a warranty was implied that he had that authority, according to the rule established in Collen *v.* Wright.[1]

The other of the two cases was Sheffield Corporation *v.* Barclay,[2] in which the Court of Appeal reversed the decision of Lord Alverstone, C. J.[3] Stock of the corporation of Sheffield, which was transferable in the same way as the shares of companies, was standing in the names of two trustees, named Timbrell and Honnywill. In 1893, under the instructions of Timbrell, some stockbrokers sold it, and at the request of the purchasers a transfer to E. E. Barclay as representative of Barclay & Co., purporting to be executed by Timbrell and Honnywill, was delivered to Barclay & Co., who made advances to the purchasers on the security of the stock. Barclay & Co. sent the transfer to the registrar of the corporation with a letter requesting him to register it in the corporation's books in the name of E. E. Barclay and to send them the new certificates. Notices of the proposed transfer were sent to Timbrell and Honny-

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[1] 7 E. & B. 301; 8 E. & B. 647.
[2] [1903] 2 K. B. 580.
[3] [1903] 1 K. B. 1.

will by the corporation, but no reply was received from either of them. Accordingly E. E. Barclay was registered as holder of the stock and a new certificate was issued. E. E. Barclay afterwards executed transfers on the sale of the stock and the new purchasers were registered as holders. Timbrell died a few years after, and in 1901, it having been discovered that Honnywill's signature was a forgery, the corporation was obliged to replace the stock. The corporation then brought an action against E. E. Barclay and Barclay & Co. for indemnity against the loss it had suffered.

Lord Alverstone, C. J., held [1] that the defendants were liable, according to the rule, stated by Tindal, C. J., in Toplis *v.* Grane,[2] that "where an act has been done by the plaintiff under the express directions of the defendant, which occasions an injury to the rights of third persons, yet if such act is not apparently illegal in itself, but is done honestly and *bona fide* in compliance with the defendant's directions, he shall be bound to indemnify the plaintiff against the consequences thereof." [3]

This decision was reversed by the Court of Appeal (Vaughan Williams, Romer, and Stirling, L. JJ.) [4] for reasons that will be best shown by extracts from the judgments. Romer, L. J., said: [5]

"This is not the case where a person, having no independent duty or obligation to do a particular act, does that act at the request and for the purposes of another. In such a case, if the act is one not known by him at the time to be illegal, but is one that turns out to be wrongful, the person doing the act may make the person requesting it indemnify him under an implied contract. But in the present case it was the interest of the corporation itself to keep the register of stockholders and issue certificates, and the corporation was bound to keep the register correctly. . . . The corporation did not act voluntarily on the request for registration made by the defendants. It acted because of the duty cast upon it, and (partly, at any rate) for its own purposes. When it received the transfer it had a duty or obligation cast upon it, as between itself and the transferor, to see that the transfer was really the act of the transferor. Accordingly the corporation took such steps as seemed to it sufficient to satisfy itself that the transfer was genuine. It compared the signature of the transferor in its possession with the signature to the transfer, and sent notice to the transferor that it was going to act on the transfer if no objection was taken by him. In fact,

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[1] [1903] 1 K. B. 1.
[2] 5 Bing. N. C. 636, 650.
[3] See also Dugdale *v.* Lovering, L. R. 10 C. P. 196.
[4] [1903] 2 K. B. 580.
[5] P. 594.

the corporation judged and acted for itself in dealing with the transfer, and did not act merely on the request of the defendants." [After pointing out that it could not have been assumed that the transferee of stock had personally the means of seeing or ought to have seen the actual execution of the transfer, he continued:] "This being so, it appears to me that all that could be assumed by the corporation as against the transferee sending in the transfer for registration was that the transferee had taken reasonable care in the matter, and had reasonable ground for believing and did believe that the transfer, which, on the face of it, purported to be executed by the transferor, was, in fact, so executed. No representation could, in my opinion, be implied, under the circumstances, against the transferee beyond what the corporation was entitled to assume against him as above stated. I think therefore that no warranty of the execution of the transfer by the transferor ought to be implied as between the transferee and the corporation."

Vaughan Williams, L. J., delivered judgment to a similar effect, and Stirling, L. J., said: [1]

"Now the mere performance of a duty imposed by law on any one holding a definite legal position does not constitute a consideration sufficient to support a promise to him by the person to whom the duty is owed. If however the person who owes the duty departs at the request of him to whom it is due from the strict legal course of performance of that duty or puts himself in a different position from that created by law, then a consideration may arise for a promise express or implied. This is illustrated by the cases relating to the indemnity of sheriffs, which were much relied on in the argument on behalf of the plaintiff. . . . In Humphrys *v.* Pratt,[2] a sheriff, who had at the request of the execution creditor seized particular goods, was held by the House of Lords to be entitled to an indemnity, although not expressly agreed to by the execution creditor. There is, unfortunately, no report of what was said by the noble and learned lords who advised the House; but in Collins *v.* Evans,[3] the *ratio decidendi* is explained by Tindal, C. J., in delivering the judgment of the Exchequer Chamber. If, then, the goods are simply pointed out to the sheriff and he is left to follow his discretion — that is, to take the legal course — he is not entitled to indemnity; but if he is required to seize them, he is. . . . In the present case the plaintiffs were under a statutory obligation to register transfers and issue certificates; the defendant called on them to perform their duty under the statute with regard to the transfer which he forwarded to them; and as it seems to me, he did nothing more. . . . It was suggested, though somewhat faintly, that the defendant warranted to the plaintiff the genuineness of the transfer. In my judgment the defendant did not give any such warranty."

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[1] P. 597. [2] 5 Bli. N. S. 154. [3] 5 Q. B. 830.

Both Romer and Stirling, L. JJ., mention that, if there was a warranty, it was broken at the time it was given, and the statute of limitations would be an answer to any claim under it.

It seems clear that, if a corporation registers a transfer of stock by a mistake not attributable to the person that requested it to do so, the corporation is not entitled to make that person answerable for the loss on the ground that the corporation did that act at his request. But a different question arises where the original mistake is that of the person presenting the transfer and he is thereby led to make an untrue representation which induces the corporation to register the transfer, and the only mistake of the corporation consists in not discovering his mistake and in acting on his representation, the same sources of information being open to both.

Instances of the former class are found in the cases where a person executes a transfer of shares that he has already transferred or never had any title to, and the company registers this transfer and issues a new certificate at the request of the transferee, who acts in good faith. In such a case the company will even be bound to indemnify the transferee if he changes his position on the faith of the certificate.[1] If he should sell the shares and the company should be compelled to pay damages to the purchasers because they had acted on the certificate, it is obvious that the company could not call on him for indemnity on the ground that it had done an act at his request that was not apparently wrongful but had resulted in injury to the rights of third persons. The reason would be that the loss had arisen entirely from a mistake of the company in conducting its own business, and was not caused by anything that the transferee had done. The transfer that he presented for registration was exactly what it purported to be, and in presenting it he made no representation that the transferor was the holder of the shares that it assumed to transfer. All the means of knowing whether the transferor was the holder of the shares or not were in the possession of the company, and in the ordinary course of business the company would refer to them before registering the transfer. The act of the transferee in presenting the transfer could not properly have induced the company to believe that the transferor was the holder of the shares.

The Sheffield Case is one of the second class of cases. Barclay &

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[1] Balkis Consolidated Co. *v.* Tomkinson, [1893] A. C. 396; [1891] 2 Q. B. 614; Dixon *v.* Kennaway & Co., [1900] 1 Ch. 833.

Co. had advanced money upon a forged transfer of stock and, in the belief that it was genuine, sent it to the corporation with a letter in which they said they enclosed the *transfer* and requested the corporation to *register the same.* This letter seems to contain a distinct representation that the document enclosed was a transfer (that is, a genuine transfer), and a request to register it.[1] The corporation registered the transfer in accordance with the request. The means of knowing certainly whether the signatures were genuine were not in the possession of the corporation, and, though that might have been ascertained by personal inquiry from the registered holders of the stock, it was not usual for the corporation in the ordinary course of business to make such inquiries, and that source of information was equally open to Barclay & Co. In these circumstances it was hardly open to Barclay & Co. to say that the corporation was not justified in acting on their representation, and that it ought, before registering the transfer, to have made inquiries that they themselves did not think it important to make before they advanced their money on the transfer or before they made the representation concerning it to the corporation. If it was not open to them to say that, then the corporation would seem to be entitled to an indemnity from Barclay & Co., on the ground that it had done an act at their request which appeared, according to their representation, to be legal and proper, but had since turned out to be wrongful.

The Court of Appeal however took a different view of the case. Vaughan Williams, L. J., intimated, by a question during the argument, that the transfer was delivered to the corporation that it might ascertain whether it was duly executed.[2] He cites Lord Field as saying, in Balkis Consolidated Co. *v.* Tomkinson,[3] that a purchaser sending in a transfer to the corporation makes no representation which might estop him as against the corporation;[4] but all that Lord Field said was that, in sending in the transfer, which in that case was duly executed as it purported to have been,

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[1] The letter was as follows: "54, Lombard Street, London, E. C., April 15, 1893. Messrs. Barclay, Bevan, Ransom & Co. present their compliments to the registrar of the Sheffield Corporation, and beg to send inclosed the *transfer* of 8200*l.* 3½ per cent. 1883 stock, and will be obliged by his *registering the same* in the company's books in the name of their Mr. E. E. Barclay, sending them the new certificates in due course. Messrs. Barclay & Co. also inclose the amount of the registration fee. The Registrar, Sheffield." [1903] 2 K. B. p. 581.

[2] [1903] 2 K. B. p. 584.

[3] [1893] A. C. p. 413.

[4] [1903] 2 K. B. p. 587.

they made no representation that the transferor was the registered holder of the shares, and he did not intimate that they did not represent that the transfer was genuine upon which they asked the company to act. Romer, L. J., said that the corporation judged and acted for itself in dealing with the transfer and did not act merely on the request of the defendants, and that no representation could, in his opinion, be implied beyond that the transferee had taken reasonable care and believed the transfer to be genuine.[1] Stirling, L. J., said that the defendants called on the corporation to perform its duty with regard to the transfer forwarded by them and did nothing more.[2] The letter with which the transfer was forwarded is not referred to, and these views regarding the representation that was made and what the defendants requested the corporation to do seem hardly consistent with the contents of the letter.

In *Starkey's* Case[3] both the Court of Appeal and the House of Lords seem to have taken a view of similar circumstances that is directly opposed to that taken by the Court of Appeal in the *Sheffield* Case. The circumstances of the two cases were the same in all material particulars, except that the document in the former case was a power of attorney and the transaction was effected by an entry by virtue of it in the books of the bank, while in the latter case the document was a deed of transfer and the transaction consisted in registering it in the books of the corporation. In Starkey's Case there is no suggestion that the bank had a duty to ascertain for itself whether the power of attorney was duly executed, or that it judged and acted for itself in dealing with the power of attorney, and not merely on the request of Starkey, or that no representation could be implied beyond one that he had taken reasonable care and was acting in good faith. The case proceeded on the ground that Starkey, in presenting the power of attorney to the bank and claiming to act under it, represented that he had the authority contained in it, and, as the bank was thereby induced to enter into a transaction with him in his professed character of agent, he warranted the truth of the representation. Vaughan Williams, L. J., said:[4] "The broker . . . produced this authority, and upon the production of it he demanded that the bank should perform their

[1] [1903] 2 K. B. p. 595. [2] *Ibid.* p. 598.

[3] Starkey *v.* Bank of England, [1903] A. C. 114; *sub nom.* Oliver *v.* Bankof England, [1902] 1 Ch. 610.

[4] [1902] 1 Ch p. 619.

statutory duty. . . . The Bank of England, acting on that demand, did, in pursuance of this power of attorney, perform their statutory duty by allowing the transfer of the stock." By "statutory duty" he plainly refers to what would have been their duty if the power of attorney had been genuine, and not to any supposed duty to find out whether it was genuine or not. He held the case to be governed by Collen *v.* Wright,[1] which he described as "a decision which is applicable to the case of a person who is professing to act as agent of another, and so makes a representation for the purpose of inducing a third person to act, as a matter of business, upon the faith of that representation." Stirling, L. J., in the same case[2] said that Starkey came to the bank with a document purporting to be signed by two stockholders, and made a demand to be allowed to exercise the powers the document purported to confer by transferring the stock to another person, and to that the bank acceded, the entry was made, and the transfer effected, and that this transaction was within the rule of that case. In the House of Lords, Lord Halsbury said[3] that it was impossible to doubt that the document was a representation of authority on the part of the two persons whose signatures purported to be appended, and the person who presented it and demanded to act upon it was himself asserting that he had that authority, and the result was that the bank transferred the stock when only one of the two persons had given the authority.

It was argued in the Court of Appeal in this case, as in the other, that the bank made its own inquiries and acted upon the result of those inquiries, and that Starkey kept back nothing and had no means of discovering the fraud.[4] But this argument found no favor, and in the House of Lords seems to have been abandoned. Stirling, L. J., said:[5]

"It was urged that, regard being had to the precautions which the Bank of England take in comparing the signatures to powers of attorney, and to other precautions they take for the purpose of ascertaining whether the powers which are presented to them really emanate from the principals to whom the stock belongs, a warranty ought not in this case to be implied. In my opinion, that contention is not well founded. It is not sufficient to show that the bank took precautions unless it is also shown that they relied on these precautions alone."

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[1] 8 E. & B. 647.
[2] [1902] 1 Ch. p. 629.
[3] [1903] A. C. p. 117.
[4] [1902] 1 Ch. p. 616.
[5] *Ibid.* p. 630.

If Starkey made such a representation regarding the power of attorney when he presented it and demanded that the bank perform its statutory duty under it, it is difficult to understand why it is said in the Sheffield Case that Barclay & Co. did *not* represent the transfer to be what it purported to be when they presented it to the Sheffield Corporation with a request that it be registered, or why the Sheffield Corporation is said to have judged and acted for itself with regard to the transfer, while the Bank of England, which did the same things to ascertain that the power of attorney was genuine, is held to have been induced to make the transfer by Starkey's representation. If, in another case like Starkey's Case, the forgery of the power of attorney should remain undiscovered for six years, and, the warranty being then unenforceable, an action should be brought for indemnity on the same ground as in the Sheffield Case, a judgment for the defendant could not be supported by the same reasons that were given in the latter case without going contrary to the reasons given for the decision in the former case. If such an action could be maintained in that case, it would seem that the Sheffield Corporation ought also to have been successful in its action.

In the Sheffield Case, the Court of Appeal seem to have adopted the view regarding the duty of the corporation to ascertain the validity of the transfer that was announced in Simm *v.* Anglo-American Telegraph Co. by Lindley, J.,[1] who there said:

"And it appears to me that a duty is thrown on the company to look to their own register, which involves, of course, the looking after the transfer of stock or shares standing in the names of persons on the register; and that duty the company owe to those who come with transfers, and I do not see any corresponding or conflicting duty on the part of the person who brings the transfer, except, of course, that of bringing what he believes to be an honest document."

But in that case, on appeal, every judge of the Court of Appeal expressed his dissent from this view, and declared that the duty of the company regarding the register and transfers existed only for the benefit of the company itself and the then holder of the stock or shares.[2] Bramwell, L. J., said:[3]

"It has been argued . . . that the company were estopped because it was their duty to make inquiries, and because it must be taken against them

[1] 5 Q. B. D. p. 195.
[2] *Ibid.* p. 199, 203, 209, 214.
[3] P. 203.

that they were satisfied by the inquiries which they had instituted, and that they affirmed to Burge & Co. [for whom the plaintiffs were trustees,] not merely that Coates [whose signature was forged] had been a stockholder, but also that he had executed the instrument of transfer. I dissent entirely from that argument. I believe that the system of inquiry by companies before the registration of a transfer is modern: no doubt that it is a very reasonable and proper step for companies to take: nevertheless, as it seems to me, it is clearly a practice to which they have recourse for their own benefit, and not for the benefit of any one else; because, although there may be no estoppel between them and a person who brings transfers to them, there would be between them and his transferees."

Brett, L. J., said:[1]

"It is true that it is the course of business for the company to make inquiry of the person whose name is upon the register, but it seems to me that they are under no obligation to the person who sends the transfer to make that inquiry; it is obvious that they make it entirely for their own protection. I can see nothing which casts a duty upon them to make that inquiry on behalf of the alleged transferees; in truth the intending transferees, if they distrust the broker, can require to be informed of the name of the person whose stock is to be eventually transferred to them, and they can themselves make inquiry and ascertain from him whether the broker has his authority to transfer his stock."

Cotton, L. J., said:[2]

"The duty to the company is not to accept a forged transfer, and no duty to make inquiries exists towards the person bringing the transfer. It is merely an obligation upon the company to take care that they do not get into difficulties in consequence of their accepting a forged transfer, and it may be said to be an obligation towards the stockholder not to take the stock out of his name unless he has executed a transfer; but it is only a duty in this sense, that unless the company act upon a genuine transfer, they may be liable to the real stockholder. There being in my opinion no duty between Burge & Co. and the company to make inquiries, I think that there was no representation by the company to Burge & Co. that the transfer was genuine: as it seems to me, the action cannot be maintained on that ground. It is unnecessary to determine whether, if any representation had been made, Burge & Co. could be considered to have acted upon it."

According to the view expressed by Lindley, J., in that case and by the judges in the Sheffield Case, the plaintiffs in Simm's Case

[1] P. 209. [2] P. 214.

would have succeeded if Burge & Co. had acted on the certificate issued to them.

The rule, that a banker paying by mistake a forged cheque of a customer cannot recover back the money, is sometimes alluded to as applicable by analogy to a corporation registering a forged transfer of shares. But this rule, which is founded on Price *v.* Neal,[1] is an anomaly peculiar to the law of bills of exchange. It prevents the banker, at least in this country, from recovering back the money, even if the person receiving it has not changed his position, and the reason given for it in that case is that it was incumbent on the drawee to be satisfied that it was the drawer's signature before he accepted or paid the bill. But a corporation is not bound to know whether a power of attorney to transfer stock is in fact signed by a stockholder, as appears by Starkey's Case, and there is no reason why there should be any greater obligation to know his signature upon a transfer of stock.

There is one case in this country in which the question was decided whether a company could recover damages from a person who had induced it to register a transfer of shares under a forged power of attorney or a forged transfer, where he acted in good faith. In Boston & Albany Rld. Co. *v.* Richardson,[2] the defendants, having bought five railway shares, received from the broker a certificate for that number of shares standing in the name of another person, and a power of attorney to transfer the shares purporting to be signed by the shareholder, the signature being in fact a forgery. The power of attorney contained blanks for the names of the transferees and the attorney. The defendants filled in their own names as transferees and the name of their clerk as the attorney, and the clerk, acting as their agent, presented the certificate and power of attorney to the company and was allowed by it to transfer the shares on the books of the company to the defendants. On the back of the certificate was printed a form of transfer as set out below.[3] It may be observed that in this country shares in corporations are transferable either on the books of the corporation or by an instrument in writing (not under

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[1] 3 Burr. 1354; see United States Bank *v.* Bank of Georgia, 10 Wheat. p. 348–352; Dedham Bank *v.* Everett Bank, 177 Mass. 392.

[2] 135 Mass. 473.

[3] This form of transfer was as follows: "For value received the undersigned hereby transfers to —— of —— —— shares of the capital stock of the Boston & Albany Railroad Company. Dated at —— —— 18 ."

seal) which must be registered in its books, as the law of the state or the rules of the corporation may prescribe. But whichever mode of transfer is prescribed, a blank form of transfer or of power of attorney is commonly printed on the back of the certificate, and is generally, though not necessarily, used for the purpose. Even when the shares are transferable only on the books of the corporation, this instrument is commonly spoken of and regarded as a transfer.[1] The practice of sending notices to the registered shareholders before registering a transfer, or before allowing a transfer under a power of attorney, is unknown. In the case above mentioned the railway company, on discovery of the forgery, was obliged to replace the shares, and brought an action against the defendants for the damages sustained. The court held that the defendants were liable upon an implied warranty that they had the authority to make the transfer. This was what was held in Starkey's Case. The court also expressed an opinion that, if the form of transfer on the back of the certificate had been used with a forged signature, instead of the power of attorney, the result would have been the same, for in presenting it for registration the defendants would impliedly represent it as genuine and would be similarly liable upon an implied warranty. This is not going beyond the principle of the rule in Collen *v.* Wright, as stated by Brett, L. J., and adopted by the Court of Appeal in Starkey's Case,[2] viz., that "where a person either expressly or by his conduct invites another to negotiate with him upon the assertion that he is filling *a certain character*, and a contract is entered into upon that footing, he is liable to an action if he does not fill that character; but the liability arises, not from the misrepresentation alone, but from the invitation to act and from the acting in consequence of that invitation." Starkey's Case shows that this rule applies where the transaction entered into upon the invitation is not a contract but a transfer of stock. There does not seem to be any ground for a distinction between a case where the character in which one invites the other to enter into the transaction is that of a transferee of shares, and a case where the character is that of an agent to make a transfer. The transfer is itself an authority to register the transfer and does not give a complete title until it is registered. The decision in Boston & Albany Rld.

[1] The effect of such instruments signed in blank was considered in Colonial Bank *v.* Cady, 15 App. Cas. 267, 284; 38 Ch. D. 388.

[2] [1902] 1 Ch. p. 626.

Co. *v.* Richardson seems to have gone upon the same principles as these English cases as regards both points.

In the Sheffield Case, according to the reasoning in Starkey's Case, the corporation in registering the transfer acted upon the representation of Barclay & Co. that it was a transfer, and on their request that it be registered. The corporation thus departed from the strict legal course of performance of its duty, which was limited to registering genuine transfers, and in doing so violated the rights of others. It was not apparently illegal to register the transfer, and the corporation acted honestly and *bona fide* in complying with Barclay & Co's. request. If a sheriff had seized particular goods at the request of an execution creditor, he would clearly have had a right to be indemnified by the creditor. On the same principle it would seem that the corporation was entitled to be indemnified by Barclay & Co. It is submitted that the decision of Lord Alverstone, that the corporation was entitled to such indemnity, was right, and that the decision of the Court of Appeal reversing his decision was wrong.

J. L. Thorndike.