

he would ever be called upon to do so. The bill merely alleged that the holder neglected and refused to proceed against the maker for its recovery. No objection appears to have been raised by the maker as to the plaintiff's right to bring the action. It was therefore virtually the case of a plaintiff enforcing a contract of indemnity before he had suffered damage, and the same was the case in *Clendenan v. Grant*. In the latter case, however, a suit had been brought against the surety, but he had not paid the debt. In *Eddowes v. The Argentine Loan Co.*, the contract was to indemnify a firm carrying on business in the Argentine Republic, against a certain claim. The claimants had recovered judgment in respect of this claim in England against the firm, but it had no assets in England, and before it could be enforced an action would have to be brought in the Argentine Republic. The plaintiff claimed that the surety should be ordered to pay off the English judgment—but the Court of Appeal held that the plaintiff thus far had not suffered any damage, and having no property in England was not in any danger of being damaged by the English judgment, and therefore they dismissed the action.

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By the retirement of Lord Justice Cotton from the Bench in consequence of ill-health, the English Court of Appeal has lost one of its most conspicuous ornaments. At this distance we can only speak of the retired judge as he has put himself *en evidence* on the pages of the law reports. We cannot speak of those personal qualities apart from intellectual ability, which are so necessary to the satisfactory discharge of the judicial functions, and which can only be properly appreciated by actual experience of them. Judging from the reports, however, we cannot fail to recognize in the retired judge one who possesses a judicial grasp of the principles of law of the highest order, and his grasp of those principles is no less noteworthy than the facility with which he applied them. Few can read his clear exposition of facts, and notice the directness with which he was able at once to seize the crucial point of a case, without recognizing in him a master mind. In the possession of such men as James, Jessel, Cotton, and Brett, the English Court of Appeal has been singularly fortunate, and its decisions, as a rule, have commanded the highest respect. The graceful and entirely heartfelt eulogy passed on the retiring judge, both by Lord Esher, on behalf of the Court of Appeal, and by Sir Richard Webster, on behalf of the Bar, are pleasant reading to all who have the welfare of the profession at heart, and indicate not only the high esteem, but the warm affection with which the retiring judge was regarded. Such expressions of good will and appreciation men seldom live to hear themselves, it is generally only when they are dead and buried that their contemporaries give utterance to such sentiments. The cause of the learned Lord Justice's retirement is to be deplored, and it is to be hoped that a respite from the labors of the bench may enable him yet to enjoy many years of life. Mr. Justice Kay, we see, is promoted to the Court of Appeal, and Mr. Romer, Q.C., succeeds Mr. Justice Kay.