

MABEE, J.

OCTOBER 11TH, 1906.

CHAMBERS.

LONDON AND WESTERN TRUSTS CO. v. LOSCOMBE.

Third Party Procedure—Action by Liquidators of Insolvent Company against Directors—Illegal Acts Depleting Capital of Company—Relief over against Individual Shareholders in Respect of Payments to them—Rule 209—Scope of—Indemnity, Contribution, or Relief over.

Appeal by third parties and plaintiffs from order of Master in Chambers of 28th September, 1906, giving directions as to trial of third party issues.

C. A. Moss, for third parties.

G. S. Gibbons, London, for plaintiffs.

W. E. Middleton for defendants Wortman and Durand.

MABEE, J.:—Plaintiffs are the liquidators of the Birkbeck Loan Company; defendants were, with several others, directors of that company; the statement of claim sets forth the following alleged causes of action against defendants: (1) that during several years, although the expenses and losses exceeded the profits earned, defendants "declared and paid dividends upon all the various classes of stock" in the Birkbeck Company, and that such payments were illegal and unauthorized; (2) that defendants made several illegal and improper loans, which are fully specified; (3) illegally surrendered certain mortgages; (4) illegally allowed one of the defendants to withdraw from the company \$2,348.74; (5) illegally applied and appropriated \$350 towards the expense of forming a bank; and it is said these illegal acts have depleted the capital stock of the company to the extent of \$70,000.

Defendants Wortman and Durand set up various defences, making general denials, alleging good faith, proper audits, etc., and also alleging that plaintiffs, who represent the shareholders, are not entitled to maintain an action to recover moneys alleged to have been improperly paid to such shareholders; that the shareholders who received the dividends