

under the circumstances, be taken to have worked for and on account of the defendant the National Railway Association from the 24th December, 1912, when he was appointed its organiser, and that the defendant the National Railway Association is bound to account to him from that date. Prior to that he is entitled to an account against the defendant the National Underwriters Limited on the basis of twenty per cent. on the whole amount subscribed and when paid, or, if not, then twenty per cent. on the first payment and an interim commission of ten per cent. on the residue until payment in full, under a verbal agreement with Menzies (a director of the National Railway Association). After the 24th December, 1912, the plaintiff is entitled to commission at twelve per cent. or such rate as has been paid since then by the defendant the National Railway Association to other similar agents, if any were employed. I am unable to assent to the argument that the resolution of the respective companies to the effect that the agreement between them was to be as if it had never existed, entitles the plaintiff to claim against the National Railway Association from the 21st June, 1912, free and clear of any intervention by its co-defendant. What had actually occurred before those resolutions were adopted could not be effectually undone so far as the plaintiff was concerned, and his rights and the corresponding liability of the National Underwriters Limited were unaffected by the rescission. The dealings of the companies would estop them from an account from one to the other or from any liability except possibly for the commission paid on the first 208 shares, but are no bar to the plaintiff's claim, nor do they give him rights to which he was not then entitled. As the defendant the National Railway Association wholly denied the plaintiff's right, it should pay the costs of action against it up to the trial. If a reference is taken as to it, further directions and subsequent costs will be reserved. As to the defendant the National Underwriters Limited, the plaintiff succeeds in shewing that it is not entitled to entangle him in an account with it after the 24th December, 1912, nor to payment by him of any amount based upon an account after that date. The plaintiff's statement of claim correctly sets out the position, and I think that this defendant should also pay the costs of action as against it, i.e., the excess caused by joining it. If a reference is had against the National Underwriters Limited, further directions and subsequent costs will be reserved, as also the costs of its counterclaim. If no reference, there will be no costs of the counterclaim, which will be dismissed. I. F. Hellmuth, K.C., and J. H. Cooke, for the plaintiff. R. McKay, K.C., for the defendants.