

CARTWRIGHT, MASTER.

SEPTEMBER 28TH, 1906.

CHAMBERS.

LONDON AND WESTERN TRUSTS CO. v. LUSCOMBE.

*Third Party Procedure—Winding-up of Company—Action by Liquidators against Directors for Paying Dividends out of Capital—Bringing in Shareholders who Received Dividends as Third Parties.*

Motion by defendants for order for trial of third party issue.

W. E. Middleton, for defendants.

Featherston Aylesworth, for third parties.

G. S. Gibbons, London, for plaintiffs.

THE MASTER:—The action is brought by the liquidators of the Birkbeck Loan Company, alleging that the defendants, who were directors of the insolvent company, improperly paid dividends out of capital, and to compel them to refund such amounts so improperly paid.

Two of the defendants obtained the usual third party order. They claim to be indemnified by the shareholders for any such money paid to shareholders, and two of the shareholders have been made third parties, as test cases.

It was contended by the third parties and the plaintiffs that the order should be discharged. It was not denied that there were 126 shareholders on the date of the Winding-up order, and that during the last 6 years there have been 48 transfers of shares.

The following cases were cited: Wye Valley R. W. Co. v. Hawes, 16 Ch. D. 489; Flitchoff's Case, 21 Ch. D. 520; Moxham v. Grant, [1900] 1 Q. B. 88; Davey v. Cory, [1901] A. C. 477.

These cases seem to shew that there is authority to issue the third party notice; that such an order should not be made