

STATUTE OF FRAUDS (29 CAR. II., C. 3), S. 4—GUARANTY OR INDEMNITY—ORAL AGREEMENT TO SHARE COMMISSION AND LOSSES ON STOCK EXCHANGE TRANSACTIONS.

*Sutton v. Grey*, (1894) 1 Q.B. 285, is an illustration of the difficulty which sometimes arises in determining whether a contract is one of guaranty or indemnity. In this case the plaintiffs and defendant had made an oral agreement whereby the defendant was to introduce clients to the plaintiffs (who were stockbrokers), on the understanding that all commissions earned on transactions for clients so introduced should be divided between the plaintiffs and the defendant, and that, in the event of any loss, the defendant would share it equally with the plaintiffs. The action was to recover half the loss the plaintiffs had sustained in transactions for a client whom the defendant had introduced. The defendant endeavoured to escape liability on the ground that the contract was one to answer for the debt, default, or miscarriage of another, and was void under the Statute of Frauds, s. 4, because it was not in writing. The Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.J.J.) agreed with Bowen, L.J., who tried the action, that the contract was not one of guaranty, but one of indemnity. While admitting the difficulty of drawing the line between the two kinds of contract, the Court of Appeal was of opinion that the test by which they are to be distinguished is furnished by the case of *Coutourier v. Hastie*, 8 Ex. 40, and is "whether the person who makes the promise is, but for the liability which attaches to him by reason of the promise, totally unconnected with the transaction, or whether he has an interest in it independently of the promise" (*per* Lopes, L.J., p. 290). Applying this test to the promise in question, the fact that the transaction which resulted in the loss was entered into for the mutual benefit of both plaintiffs and defendant, and was, in fact, merely a mode of regulating the terms of the defendant's employment, was held to make the case one of indemnity, and therefore not within the statute, although in the result the defendant might, in fact, have to answer for the default of another.

ADULTERATION—CERTIFICATE OF ANALYSIS, FORM OF—SALE OF FOODS AND DRUGS ACT, 1875 (38 & 39 VICT., C. 63), SS. 6, 18—(R.S.C., C. 107, SS. 6, 11).

In *Bakewell v. Davis*, (1894) 1 Q.B. 296, a Divisional Court (Charles and Wright, J.J.) determined that the certificate of an analyst, under The Sale of Foods and Drugs Act, 1875, of the