

over the defence and defend that action in the name of McDonald, and would set up his (Peuchen's) claim against Levesconte as a defence to Levesconte's claim against McDonald, but McDonald refused to allow him (Peuchen) to defend the action and refused to accept an assignment of Peuchen's claim against Levesconte, and allowed judgment to go by default.

Upon this defence, Peuchen failed at the trial, the trial Judge finding the facts against him, and properly so, upon the evidence, the Chief Justice said. In addition, Peuchen could succeed only upon a reformation of the deed, for nothing like an independent collateral agreement based upon a good consideration was proved, and no claim for reformation was made.

The only other point raised at the trial was whether the plaintiff was entitled to interest upon the amount of the judgment against him in the other action. The trial Judge gave him interest, very properly, because the plaintiff was liable for interest upon that judgment, and liable because the defendant had hitherto broken his covenant to save the plaintiff harmless from the claim in that action.

Upon this appeal, it was argued that the plaintiff's claim was one which could not be the subject of a special endorsement on the writ of summons. The writ was specially endorsed, the defence was set up in an affidavit filed with the appearance, and the endorsement and the affidavit made up the record upon which the action was tried (Rule 56). The learned Chief Justice was of opinion that the claim was properly the subject of a special endorsement; and, if it were not, it was so treated by both plaintiff and defendant, and the action tried accordingly, and so the trial could not be treated as a nullity.

The plaintiff was entitled not only to interest, but to costs of the former action as between solicitor and client.

Peuchen's claim against Levesconte was for damages for deceit, and was not assignable.

In an action for indemnity, when law and equity are administered in the one Court, a plaintiff may have judgment for the full amount against which he is indemnified, though he has yet paid no part of it, and may never pay any part of it—that is, in cases in which the defendant is not concerned in the application of the money; and that is this case: whether McDonald pays Levesconte or not, does not affect Levesconte—McDonald alone is answerable to him for this debt: see *Liverpool Mortgage Insurance Co.'s case*, [1914] 2 Ch. 617; *British Union and National Insurance Co. v. Rawson*, [1916] 2 Ch. 476.

The appeal should be dismissed.