

I may draw attention to the fact that the expression "not manifestly tortious" has, in the later cases, been replaced by the expression "which is apparently legal." *Moxham v. Grant*, [1900] 1 Q.B. 88, and *The Englishman and The Australia*, [1895] P. 212, serve to shew the true meaning and limitation to the qualification of the general rule.

The third parties rely upon the expression "without any default on his own part" found in the judgment of Lord Davey in *Sheffield Corporation v. Barclay*, [1905] A.C. 392, in the course of a passage adopted as embodying the law in all subsequent cases (*e.g.*, *Bank of England v. Cutler*, [1908] 2 K.B. 208, at p. 231), as relieving them from responsibility. This is attributing too wide a meaning to these words. They are, it seems to me, added to indicate that there may be a duty owing by the transfer agent to the transferee, breach of which will relieve the transferee from his implied obligation to indemnify, and cannot, I think, be referred to the common error as to the title of the transferor. So that, even if the liability is based upon the doctrine of *Sheffield Corporation v. Barclay*, I can find no way of escape for Mr. Counsell. So far as he is concerned, I think he may well be relieved from costs, as he is innocent of any wrongdoing, and, so far as the evidence shews, suffers from the misconduct of Stuart.

The judgment against him, then, will be for \$600 and interest, without costs.

FEARNSIDE V. MORRIS—MASTER IN CHAMBERS—JAN. 27.

Pleading—Statement of Claim—Relevancy of Allegations—Historical Matter—Reference to Occurrences Subsequent to Matters Complained of.—Motion by the defendant, before delivery of statement of defence, to strike out paragraphs 6, 7, and 8 of the statement of claim, as irrelevant under Con. Rule 279, and therefore embarrassing. The action was for damages for personal injuries sustained by the plaintiff by the kick of a vicious horse owned by the defendant, which the plaintiff went to look at when advertised for sale by the defendant. By paragraphs 6 and 7 the plaintiff alleged that he took all due care and was not warned of the horse's ugly disposition. By paragraph 8 he alleged that subsequently the horse kicked a lantern held by the defendant or his servant, which set fire to the stable and burnt it and the horse. The Master said that there was nothing really objectionable in paragraphs 6 and 7—they