EDMUND H. DUGGAN (PLAINTIFF).....APPELLANT; 1891

AND *Dec. 1, 2, 3, 4.

THE LONDON & CANADIAN LOAN AND AGENCY COMPANY AND JAMES TURNBULL (DEFENDANTS) } RESPONDENTS. 1892 *May 2.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Transfer of stock—Shares held in trust—Duty of transferee to make inquiry

D. transferred to brokers as security for a loan certain shares in a joint stock company, the transfer expressing on its face that it was in trust. The brokers pledged these shares with other stock to a bank as security for advances, and from time to time transferred them to other financial companies, each transfer on its face purporting to be "in trust." Eventually, the Federal Bank being the holders assigned D.'s shares, and others pledged by the brokers, by a transfer signed "B. manager in trust," to T. the manager of the respondent company, who accepted the transfer "in trust." D. brought an action to redeem them on payment of the amount of the loan to him from the brokers.

Held, reversing the decision of the Court of Appeal, Taschereau and Patterson JJ. dissenting, that the form of the transfer to the loan company was sufficient to put them on inquiry as to the nature of the trust indicated, and they were only entitled to hold the shares of D. subject to payment of the amount he had borrowed on them. *Sweeny* v. *The Bank of Montreal* (12 Can. S.C.R. 661; 12 App. Cas. 617) followed.

Held, per Taschereau and Patterson JJ., that "manager in trust" on the transfer to the loan company only meant that the manager held the stock in trust for his bank, and that the transferree had a right so to regard it and was not put on the inquiry, even if such inquiry would have been possible in view of the shares not being numbered or identified in any way by which they could be traced.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment of Mr. Justice Street at the trial (2) in favour of the plaintiff.

* PRESENT:—Sir W. J. Ritchie C.J., and Strong, Taschereau Gwynne and Patterson JJ.

(1) 18 Ont. App. R. 305. (2) 19 O.R. 272.

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The plaintiff Duggan, in October, 1881, assigned to Scarth & Cochran, a firm of brokers in Toronto, 80 shares of the Toronto House Building Association as security for a loan of $1,500, and in February, 1882, he transferred to said brokers 80 other shares of the same stock as "margins" in stock speculation they were carrying on for him. Both transfers were expressed on their face to be "in trust."

A few days after the second transfer Scarth & Cochran obtained advances from the Standard Bank and transferred 80 shares, which were not numbered or otherwise identified, to "John L. Brodie, in trust, cashier," and in July, 1882, they transferred the remaining 80 shares in the same way. They afterwards shifted the loan from time to time from one bank or company to another, each transfer being made in the same way "in trust," until in 1887 the shares were transferred by the Federal Bank, the then holders, to the defendants the London and Canadian Loan and Agency Company, with which the brokers had negotiated a loan of some $14,000. The transfer by the bank in this case was also signed "J. O. Buchanan, manager, in trust," and was made to "James Turnbull, in trust," Turnbull being the manager of the defendant company. Prior to this transfer the name of the Toronto House Building Association had been changed to that of the Land Security Company and a new allotment of shares had been made which had been taken up by the Federal Bank at the request of the brokers, and the transfer to the defendant company consisted of 160 shares of old and 638 shares of new stock.

After this transfer Duggan demanded from the defendant company a re-transfer of his stock and tendered an amount sufficient to cover what he owed the brokers Scarth & Cochran. The company refused to recognize him in the matter and claimed to hold the stock for

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their advances to the brokers and they finally sold the stock. Duggan thereupon brought an action against the company and Turnbull their manager for a declaration that they could only hold the stock for the amount due by him to the brokers and asking for an account of the full value of the shares and of the defendants' dealings with them.

The action was tried before Mr. Justice Street who gave judgment in favour of the plaintiff, holding that the form of the transfer was such as to put defendants on inquiry and that they could not hold the stock for more than plaintiff owed the brokers. This decision was reversed by the Court of Appeal and the plaintiff then appealed to the Supreme Court of Canada.

McCarthy Q.C. and *Kerr* Q.C. for the appellant. Shares may be pledged as any other personal property. *Donald* v. *Suckling* (1).

The owner's title cannot be affected by the mode in which the shares are transferred any more than some informality in registration can affect the validity of a deed. See *Cole* v. *The North-western Bank* (2); *Williams* v. *The Colonial Bank* (3).

As to what a pledgee may do see *Donald* v. *Suckling* (1); Story on Bailments (4); Campbell on Sales (5).

If the respondents claim to be transferees without notice they must establish the fact. The evidence brings them within the decision in *Earl of Sheffield* v. *London Joint Stock Bank* (6); *Simmons* v. *London Joint Stock Bank* (7). See also *Williams* v. *The Colonial Bank* (3).

(1) L.R. 1 Q.B. 585.
(2) L. R. 10 C. P. 354.
(3) 36 Ch. D. 659; 38 Ch. D. 388; 15 App. Cas. 267.
(4) 9 ed. s. 324.
(5) 2 ed. p. 57.
(6) 13 App. Cas. 333.
(7) [1891] 1 Ch. 270.

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As to the intention of the parties in the transaction between Duggan and Scarth & Cochran see *Bradford Banking Co.* v. *Briggs* (1).

The learned counsel also referred to *Shaw* v. *Spencer* (2); *Muir* v. *Carter* (3); *Raphael* v. *McFarlane* (4); *Bank of Montreal* v. *Sweeny* (5).

E. Blake Q.C. and *Howland* for the respondents. In *Bank of Montreal* v. *Sweeny* (5) the bank dealt with a person who on the face of the instrument was a trustee for some person undisclosed. In this case the only fact brought to the knowledge of the respondents was that the transfer to them was signed "manager in trust." That reasonably meant in trust for the bank of which he was manager.

If a buyer of stock is obliged to make an inquiry in a case of this kind, in which inquiry he is liable to be met with false statements and evasions, there would be an end of buying and selling stocks as no one would be safe in investing money in them.

The respondents acquired an absolute title to the shares subject to redemption on payment of the advance made on them. *Briggs* v. *Massey* (6).

R. S. O. (1887) ch. 128 is an act similar to the Factors Act in England, and sections 1, 10 and 11 apply to this transaction and are a complete bar to the relief sought by the appellant. See *Williams* v. *The Colonial Bank* (7) and *City Bank* v. *Barrow* (8).

The respondents took shares without notice and the appellant must show some equitable ground upon which they should be re-transferred. *Burkinshaw* v. *Nicolls* (9).

(1) 12 App. Cas. 29.
(2) 100 Mass. 382.
(3) 16 Can. S. C. R. 473.
(4) 18 Can. S. C. R. 183.
(5) 12 Can. S.C.R. 661; 12 App. Cas. 617.
(6) 42 L. T. N. S. 49.
(7) 36 Ch. D. 659.
(8) 5 App. Cas. 664.
(9) 3 App. Cas. 1004.

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Sir W. J. RITCHIE C. J.—I entirely agree with the judgment of Mr. Justice Street in this case and think this appeal should be allowed and his judgment restored. I think that where stock is transferred in trust, and that fact appears on the face of the transfer, it is it is the bounden duty of all or any parties to whom the said stock is about to be transferred to make all reasonable inquiries and proper investigation as to the nature of the trust on which the transfer has been made, and had that been done in this case I cannot escape the conclusion that the nature of the trust to Scarth & Cochran would have been discovered, and that Scarth & Cochran never had more than a qualified interest in the shares in question; and this duty of making inquiries was not only on those who took these shares from Scarth & Cochran but on all subsequent transferees, all these transfers having been made for the benefit of Scarth & Cochran in trust. I think the defendants had such information as made it not only reasonable and proper, but their duty, to make inquiry into the origin of the title and all intermediate transfers, more particularly as the transaction was in fact between the defendants and Cochran, and had such inquiries been honestly made with a view of discovering the true position of the stock it is to be presumed correct information would have been given. It would have resulted in a discovery of the true facts, and as no such inquiry was made it is no answer to say that had the inquiry been made they might have been met by false or misleading information.

I entirely repudiate the doctrine, as I did in *The Bank of Montreal* v. *Sweeny* (1), approved of by the Privy Council (2), that banks or any others can, after their attention is called by the transfer itself to the fact that the stock is held in trust, blindly and without inquiry

(1) 12 Can. S.C.R. 661. (2) 12 App. Cas. 617.

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accept transfers of such stock and so deprive the *cestui que trust* of his property.

The money throughout was all advanced, by each and every one through whom the stock passed, for and to Scarth or Scarth & Cochran. In fact all dealings in reference thereto, including the defendants', were with Cochran. A simple inquiry from Cochran would have elicited a development of all the facts connected with the shares. Cochran having actually made the transfers to Turnbull for the defendants, as Mr. Turnbull says, "we made no inquiry, we did not think it necessary. It might belong to him or somebody else we did not know;" and I think he might have added, "We did not care."

When the transferees find on the books of the company that the shares are held in trust then, in my opinion, arises the duty to inquire.

I think this case does not come within the Factors Act.

The case to which our attention has been called of *Joint Stock Bank* v. *Simmons* (1) has no application whatever to this case. There the instrument was negotiable and there was nothing in connection with it to put any parties on inquiry. It was the case of a bond payable to vendor and a negotiable security of which plaintiffs were *bonâ fide* holders who received it for value in good faith and without knowledge of want of title in its predecessor, and without anything in connection therewith to put the holder on inquiry, and it entirely differs in its state of facts from those which this case presents.

STRONG J. concurred in the judgment of Mr. Justice Gwynne.

(1) 8 Times L.R. 478; [1892] A. C. 201.

TASCHEREAU J.—I would dismiss this appeal and hold that the appellant cannot recover against the respondents. The case of *Sweeny* v. *The Bank of Montreal* (1) is not applicable. I adopt the reasoning of the learned judges in the Court of Appeal.

GWYNNE J.—This action was brought to redeem certain shares in the stock of an incorporated company called the Landed Security Company which the plaintiff, as was alleged, had about ten years ago transferred to the defendants William B. Scarth and Robert Cochran, then carrying on business in partnership in the city of Toronto as stock brokers and money brokers, upon certain trusts and by way of security for certain advances made by them to him, and which shares by divers mesne assignments from them had been transferred to the defendants the Canadian Loan and Agency Company, of which company, at the time of their becoming possessed of the shares, the defendant Turnbull was manager. The learned judge before whom the case was tried rendered judgment for the plaintiff against all the defendants. His decree was that:

> The defendants do pay to the plaintiff the value of the one hundred and sixty shares of stock of the Landed Security Company less the balance remaining due by the plaintiff of the debt due by him to the firm of Scarth & Cochran at the time of its dissolution, and that the within named defendants other than defendant Scarth do also pay to the plaintiff the value of the six hundred and thirty-eight shares of the said stock less the balance due by the defendant Cochran in respect of their dealings subsequent to the dissolution of the said firm; the value of the shares in each case to be taken at their market value between the 15th December, 1887, the date of the plaintiff's tender to the defendants the London and Canadian Loan and Agency Company, and the 8th March, 1890.

And it was by the said decree referred to a referee to ascertain such value and to take the necessary accounts. From this judgment the London and Canadian

(1) 12 Can. S.C.R. 661; 12 App. Cas. 617.

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Loan and Agency Company and the defendant Turnbull appealed to the Court of Appeal for Ontario; that court allowed their appeal and from the judgment of that court this appeal is brought by the plaintiff. Although the judgment of Mr. Justice Street remains unimpeached against the defendants Scarth and Cochran respectively, it will be necessary to enter into a consideration of the transaction from its initiation between Duggan and Scarth & Cochran in order to the determination of the question raised by the appeal as to the liability of the defendants, the London and Canadian Loan and Agency Company, to the plaintiff.

In 1881 the appellant was possessed as absolute owner of 160 fully paid up shares in the capital stock of a company incorporated by an act of the legislature of the province of Ontario under the name of "The Toronto House Building Association," which name was subsequently by another act of the legislature changed to "The Landed Security Company." By the act of incorporation of the above company it was enacted that the stock of the company should be deemed to be personalty and should be assignable, but that on transfer of any share should be valid until entered in the books of the company according to such forms as the directors might from time to time appoint. The directors accordingly opened a book in which all transfers should be made in a form adopted by the directors and printed in the book which was called the transfer book.

The act of incorporation did not require the company to issue, and there is no evidence that they ever did issue, any certificates of ownership of shares in the company. An owner of shares in the company had no means, so far as appeared at least, of evidencing his title to shares in the company except by reference to the books of the company which contained the only

evidence of any person being a proprietor of shares in the company, whether he was such by original allotment by the directors or by transfer from an original allottee. Being so possessed of the above 160 shares the appellant applied to the defendants Scarth & Cochran, then carrying on the business of stock brokers and money lenders in partnership, for a loan of $1,500. The negotiation for such loan was made and completed with the defendant Cochran, and it was agreed that the appellant should transfer to the defendants Scarth & Cochran 80 of the said shares as security for such loan. To perfect this transaction the appellant on the 26th day of October, 1881, went to the office of the company and had the printed form of transfer in the books of the company filled up and signed the same, which when so filled up and signed was as follows:—

For value received I, Edmund H. Duggan, of Toronto, do hereby assign and transfer unto W. B. Scarth and Robert Cochran in trust of Toronto, eighty (80) shares in the stock of the funds of the Toronto House Building Association of Toronto, numbered in the books of the association as shares No. ——— on which has been paid the sum of two thousand dollars subject to the provisions of the act of Parliament authorising the incorporation of the association and the by-laws, rules and regulations thereof already passed or hereafter to be passed in accordance therewith.

Witness my hand at the office of the association this 26th day of October, in the year of our Lord one thousand eight hundred and eighty-one.

(Sgd.) E. H. DUGGAN.

On the following day, on the 27th October, 1881, the defendants Scarth & Cochran signed an acceptance of the above transfer at the foot of the transfer in the books of the company as follows:

I hereby accept the foregoing transfer of eighty (80) shares of the stock of the Toronto House Building Association on the conditions and subject to the provisions above mentioned.

(Sgd.) W. B. SCARTH,
" ROBERT COCHRAN, } *In trust.*

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It does not appear what was the time, if any was named, for repayment of the loan and in the absence of a time fixed by agreement of the parties we must take it to have been repayable upon notice being given to the appellant demanding repayment, and there is no suggestion that any such demand ever was made. It was not disputed that the transfer of the shares was to be solely as security for repayment of the loan, or that the agreement upon which the loan was effected was that the transferees of the shares should have power, in the event of default in repayment of the loan, to sell the shares or so many thereof as might be necessary to realize repayment of the loan with interest, and that they should pay or transfer to the appellant any surplus of money or of shares which might remain after such repayment. Upon the transfer of the eighty shares to the defendants Scarth & Cochran in trust as expressed in the instrument of transfer the loan was made, and there does not appear on the evidence to have been any default committed by the appellant so as to have given any occasion for the exercise of the transferees' power of sale of the shares. In the month of February, 1882, the appellant entered into a further agreement with the defendants Scarth & Cochran, namely, that they should in their capacity of stock brokers purchase shares for him on margin, as it is called, in the Hudson Bay Company and Canada N.W. Land Company upon the security of divers other shares then held by the appellant in different companies, such shares when transferred by the defendants Scarth & Cochran to be held by them as collateral security merely for any balance that upon an account taken between them and the appellant should become due to them by the appellant upon the purchase of said shares in the said Hudson Bay Company, and in the said Canada N. W. Land Company; accordingly in pursuance of such

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agreement among other shares transferred to the defendants Scarth & Cochran by the appellant he, upon the 20th day of February, 1882, transferred to them eighty other fully paid up shares in the said Toronto House Building Association by an instrument duly filled up and signed by him in the transfer book of the said association, which instrument so signed is as follows :—

For value received I, Edmund Henry Duggan, of Toronto, Esquire, do hereby assign and transfer unto Messrs. Scarth & Cochran Brokers, of Toronto, in trust, eighty shares in the stock of the funds of the Toronto House-building Association of Toronto, numbered in the books of the association as shares No. , on which has been paid the sum of two thousand dollars, subject to the provisions of the Act of Parliament authorizing the incorporation of the company, and the by-laws, rules and regulations thereof already passed or hereafter to be passed in accordance therewith. Witness my hand at the office of the association this 20th day of February, 1882.

(Sgd.) E. H. DUGGAN.

And on the 22nd day of the said month of February, the defendants Scarth & Cochran accepted the above by a note at the foot of the said transfer in the transfer book of the said association as follows :

I hereby accept the foregoing transfer of eighty shares of the Toronto House Building Association, on the conditions and subject to the provisions above mentioned. Dated this 22nd day of February, 1882.

(Sgd.) SCARTH, COCHRAN & Co.

Now that the defendants Scarth & Cochran held these last-mentioned shares solely upon trust cannot, I apprehend, admit of a doubt, and that such trust was that the shares so transferred by the appellant in trust should be held by the transferees only as collateral security to await the result of the transaction entered into by the appellant through them as brokers in the purchase on margin for the appellant of shares in the Hudson Bay Company, and in the Canada N. W. Land Company; and that this was well

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understood by the defendants Scarth & Cochran fully appears by the accounts rendered by them from time to time to the appellant, wherein also it appears that they themselves transferred to the like account and acknowledged themselves to hold the eighty shares transferred to them in security for the $1,500 loan upon the like trust as the shares transferred in February, 1882, namely, as collateral security only to await the result of the said purchases as margin. In the month of October, 1882, in an account then rendered by them to the appellant of shares purchased for him in the Hudson Bay Company and in the Canada N.W. Land Company they acknowledge themselves to then hold as stocks of the appellant held as margin the following shares:

50 Building and Loan	$1,250	
80 Land Security	2,100	
80 do do 80 British Am. As. Co.	6,600	$9,950

On the 2nd February, 1883, they charge the appellant in account with him in respect of the purchases on margin with $1,610.33 which appears by the evidence to be the amount of the loan of $1,500 obtained in October, 1881; and in an account rendered by them on the 31st January, 1886, they bring in the appellant their debtor in the sum of $3,751.14, for which they still acknowledge themselves to hold as "collateral" the 160 shares landed security and 50 shares Building and Loan. On the 6th March, 1886, they charge the appellant with $1,487.50 paid by them for him for new shares, to which the appellant became entitled in the Landed Security Company as holder of the old 160 shares in Toronto Building Association, and on the 30th September, 1886, the defendant Robert Cochran renders to the appellant an account of everything from the beginning in his Robert Cochran's own name, and not

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in the names of Scarth & Cochran in which account, including the amount charged on March the 6th as paid for new shares accrued to the appellant in the Landed Security Company the appellant is brought in debtor in the sum of $5,142.94, and between that date and the 1st of July, 1887, the appellant is debited with other large sums of money as paid on account of other new shares in the Landed Security Company as accruing to him in right of the old 160 shares in the Toronto Building Association, such new shares in the whole amounting to 638, and during all this time Scarth & Cochran and Robert Cochran in the accounts rendered on the 30th September, 1886, and subsequently thereto, give the appellant credit for the dividends at the 160 old shares and the 638 new shares regularly as they became due and payable. Now under these circumstances there can be no doubt that the defendants Scarth & Cochran held the appellant's shares in the Landed Security Company, both the old and the new shares which accrued in right of the old, upon trust only as security for the balance of their account on their transactions with the appellant; neither can there, I think, be any doubt that the words "in trust" as inserted by the appellant in the instrument which he signed transferring the legal interest in the shares so transferred must be read as having been inserted by the appellant for the purpose of securing himself in the event of any breach by the defendants Scarth & Cochran of the trust condition subject to which they held the shares, and in the reasonable expectation that any person accepting a transfer of the shares from them would be put upon inquiry as to the nature of the trust. That the defendants Scarth & Cochran committed a palpable breach of the trust condition subject to which they held the shares cannot admit of doubt, and the only question before us is

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whether under the circumstances appearing in evidence the Canadian Loan and Agency Company are to be affected by that trust or can they hold the shares which they acknowledge they acquired in virtue only of their contract with Cochran free from all obligation to the appellant in respect of shares which Scarth & Cochran held from him subject to a trust condition in his favour, or in the words of Lord Bramwell in *The Earl of Sheffield* v. *The London Joint Stock Bank* (1), whether under the circumstances appearing the defendants, The London and Canadian Loan and Agency Company, must not be held to have had notice of such facts and matters as made it reasonable that inquiry should have been made by them into Cochran's title to deal with the shares as his own. The evidence bearing upon this point is that upon the 7th September, 1887, Cochran applied to the company through their manager and agent, the defendant Turnbull, for a loan of $14,300 upon the security of 160 old shares and 638 new shares of the Landed Security Company of which he represented himself to be the owner. Mr. Turnbull knew Cochran to be a stock broker and had had previous dealing with him as such; he did not, he says, consider whether the shares were Cochran's own or shares belonging to his clients; Cochran represented them to be his own and Turnbull dealt with him as the owner upon such representation; thereupon Turnbull, on the behalf of his company, came to an agreement with Cochran to lend him the $14,300 upon the terms set forth in a deed of hypothecation which upon the transfer of the shares being effected as hereinafter mentioned Cochran executed under his hand and seal, and which as so executed is as follows:

In consideration of fourteen thousand three hundred dollars this day advanced by the London and Canadian Loan and Agency Com-

(1) 13 App. Cas. 346.

pany (limited), I have deposited with the said company as security the following shares, viz., one hundred and sixty shares of fully paid up Landed Security Company, say, $4,000, and six hundred and thirty-eight shares of 20 per cent paid Landed Security Company, say $3,190, and covenant and agree to repay the said advance to the said company in three months with interest thereon until repaid at the rate of six and one-half per cent per annum, at their head office in Toronto, and in default thereof, but without prejudice to the company to recover on the said covenant, hereby authorize the company to sell the said shares without notice in such manner, and either by public or private sale, as they may see fit, the net proceeds to be applied to the payment of the said advance and interest, and the surplus, if any, to be accounted for to the undersigned. In case of deficiency I promise to pay to the company the amount thereof forthwith thereafter with interest thereon as aforesaid. If at any time the said shares should be quoted in the ordinary newspaper reports at a price under 220 per cent respectively on the nominal par value of such shares I undertake to make good to the company on demand forthwith the difference between the value of the said shares at the price above mentioned and at such reduced quotations, in default whereof the company are to be entitled to claim payment at once of the full amount of the said loan with interest thereon as aforesaid, and in case of non-payment to be at liberty to sell the said shares as above mentioned, and the company are not in any case to be liable for any loss arising from any sale of said shares. In the event of the undersigned having any other loan or loans from the said company the margin of which is insufficient, or in which any deficiency may exist under their respective terms, the company shall not be bound to release the securities hereby deposited until such insufficiency of margin or deficiency shall be made good; and in the event of any sale of the above securities under the powers granted to the company hereunder the company may apply any surplus that may remain in satisfaction, of any claim which they may have against the undersigned in respect of any other loan or loans under the respective provisions thereof. Any demand or notice which the company may think necessary to make or give is to be held sufficient if mailed to the persons so to be notified at their usual post office address or left at their usual place of business, but it is not to be obligatory on the company to make or give any such demand or notice.

Dated at Toronto this 7th day of September, 1887.

(Sgd.) ROBT. COCHRAN. (SEAL.)

The terms of loan having been agreed upon Cochran and Turnbull went to the office of the Landed Security

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Company and there Cochran produced a power of attorney bearing date the same 7th day of September, executed in his favour by one James Oliver Buchanan as manager of the Federal Bank, of which bank he then was manager, which power of attorney was in the words following:

Know all men by these presents that I, James Oliver Buchanan, Manager in trust, of Toronto, hereby nominate and appoint Robert Cochran, broker, of Toronto, my true and lawful attorney for me and in my name to transfer one hundred and sixty fully paid up shares and six hundred and thirty-eight 20 p.c. paid up shares in the stock of the Land Security Company, and as my act and deed to execute all covenants and agreements required to be executed by members subscribing for unadvanced shares and I hereby agree to ratify and confirm whatever my said attorney shall lawfully do in the premises by virtue hereof.

Witness my hand and seal this 7th day of Sept., 1887.

(Sgd.) J. O. BUCHANAN, SEAL.
Manager in trust.

Thereupon Cochran under and in virtue of the said power of attorney executed, in the transfer book of the Landed Security Company, two several instruments of transfer of shares which the said London and Canadian Loan and Agency Company through their manager and agent accepted (for that appears to me the effect of the transaction) and which instruments of transfer and acceptances thereof are as follows:

1st. For value received I, J. O. Buchanan, manager in trust, do hereby assign and transfer unto James Turnbull in trust, one hundred and sixty old shares in the stock of the funds of the Land Security Company of Toronto numbered in the books of the company as shares No.——— on which has been paid the sum of four thousand dollars ($4000) subject to the provisions of the Act of Parliament authorising the incorporation of the company, and the by-laws, rules and regulations thereof already passed or hereafter to be passed in accordance therewith. Witness my hand at the office of the company this 7th day of September, 1887.

J. O. BUCHANAN,
Manager, in trust.
Per ROBERT COCHRAN,
His Attorney.

I hereby accept the foregoing transfer of one hundred and sixty (160) old shares of the stock of the Land Security Company at the conditions and subject to the provisions above mentioned.

Dated this 7th day of September, A.D. 1887.

JAMES TURNBULL,
In trust.

2nd. For value received I, J. O. Buchanan, manager in trust, of Toronto, do hereby assign and transfer unto James Turnbull, in trust, six hundred and thirty-eight (638) new shares in the stock of the funds of the Land Security Company, of Toronto, numbered in the books of the company as shares No. ———, on which has been paid the sum of $3,190, thirty-one hundred and ninety dollars, subject to the provisions of the act of parliament authorizing the incorporation of the company, and the by-laws, rules and regulations thereof already passed or hereafter to be passed in accordance therewith.

Witness my hand at the office of the company this 7th day of September, 1887.

J. O. BUCHANAN,
Manager, in trust.
Per ROBERT COCHRAN,
His Attorney.

I hereby accept the foregoing transfer of six hundred and thirty-eight (638) shares of the stock of the Land Security Company on the conditions and subject to the provisions above mentioned.

Dated this 7th day of September, A.D. 1887.

J. TURNBULL,
In trust.

Now the manager of the London and Canadian Loan and Agency Company having thus accepted these transfers to give effect to the terms of the hypothecation deed above set out in full, and by way of security for the loan then made by the company to Cochran, the company through their manager had notice that the shares which Cochran had offered to the company as security for the loan he was negotiating with them for, and of which shares he had represented himself to be the owner, did not belong to him, but were in truth the property of the Federal Bank, held for them in the books of the Land Security Company in the name of their manager, J. O. Buchanan. Mr. Turnbull not-

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withstanding never asked Cochran for any explanation of this discrepancy between his statement as to the ownership of the shares, and his transferring them as the property of the bank who appear to have held them in the name of their manager subject to some trust and under a power of attorney given to him, Cochran, by the bank's manager. He says:

> We, that is the company, made no inquiries as to the title to the stock. We believed the stock might belong to him (Cochran) or it might belong to some body else. We did not know and of course, in the absence of anything to the contrary, we assumed it to belong to him.

Again:

> We did not think it necessary to inquire whether he was the owner or not the owner. We did not think it was any part of our business.

But he had notice by the transfers that Cochran was not the owner and that the Federal Bank were, yet he made no inquiries. The transfers having been executed by the manager of the bank with the words "manager in trust" added to his name, the London and Canadian Loan and Agency Company and their manager were, I think, put upon inquiry whether there was any, and if any what, trust attached to the shares and what was the nature of the bank's title. We see that if the manager of the London and Canadian Loan and Agency had made inquiry of Cochran or the bank, he must have learned that the title which the Federal Bank had was derived from the Standard Bank and the Home Savings and Loan Company, which institutions also held the shares transferred by them respectively subject to some trust, and that they severally derived title from the Merchants Bank who also held the shares subject to some trust and acquired title from the defendants Scarth & Cochran, who claimed title only under transfers executed by the appellant to them, which transfers expressly stated that the shares

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were only transferred by the appellant to them on some trust. They would then have learned that Cochran alone had never any title to the shares, and that the defendants Scarth & Cochran held them only as trustees and subject to a trust imposed by the appellant the nature of which he could explain. If the Loan Company and their agent Turnbull abstained from inquiry as to the nature of the trust from a conception formed in the mind of their manager that the words "in trust" and "manager in trust," as used in the instruments of transfer from the Federal Bank had a meaning more limited than upon inquiry might prove to be correct, they must abide the consequences of their misconception. Cochran produced no certificate of ownership or any other document evidencing his ownership of the shares. It does not appear that any document ever had been in existence evidencing any title to the shares in him other than the instrument of transfer to Scarth & Cochran in trust, executed by the appellant; the case was not that of one offering a pledge of his evidence of title to the shares as the owner but it was the case of one dealing with shares as owner, but offering no evidence whatever of ownership, and the persons making him a loan upon the security of the shares having notice by the transfer which they accepted that he was not the owner but that the Federal Bank who held them upon some trust were. Under these circumstances the Loan and Agency Company were, in my opinion, put upon inquiry into the nature of Cochran's title to the shares and his right to deal with them and such inquiry must have led them to the knowledge that he never had any right to deal with them to any greater extent than the amount of the appellant's liability to the defendants Scarth & Cochran from whom the loan company's title to the shares is traced. Having made no inquiry into the

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nature of the title of the persons with whom they dealt for the shares it is but reasonable that they should take subject to the trust to which he was subjected by the instrument of transfer which constituted his sole title. This is the principle involved in *Shaw* v. *Spencer* (1) which, in my opinion, enunciates sound law. It cannot be said that the appellant enabled Scarth & Cochran or either of them to commit the fraudulent breach of trust which they have committed to the appellant's prejudice when be declared on the face of the instrument transferring the title to them that it was to them as trustees that the shares were transferred. If the contention of the respondent should prevail under the circumstances appearing in the present case it must equally prevail although the instrument of transfer executed by the appellant should have set out in the most precise terms the trust purposes upon and subject to which the transfer of the shares was made. If we should hold that the London and Canadian Loan Company were not under the circumstances appearing in the present case put upon inquiry into the nature of the title they were acquiring through their agreement with Cochran, I can see no possible mode by which an owner of shares in the company could transfer them to trustees upon trust in favour of the transferrer if the statement in the deed of transfer that the transfer is made to the transferees in trust is not sufficient to put all persons dealing with such transferee who at least as in the present case produces no document whatever evidencing his title upon inquiry as to the nature of his title. The appeal must, in my opinion, be allowed and the judgment of Mr. Justice Street be restored.

PATTERSON J.—The learned judges who delivered their opinions in the court below have ably and ex-

(1) 100 Mass 382.

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haustively explained the grounds on which the judgment is based. I think we should affirm the judgment upon the same grounds. Great reliance was placed in support of the appeal upon the case of *The Earl of Sheffield* v. *London Joint Stock Bank* (1) before the House of Lords, and *Simmons* v. *London Joint Stock Bank* (2) before the Court of Appeal, but the view taken of those cases in the court below is borne out by the recent decision of the House of Lords in the latter case (3) reversing the judgment of the Court of Appeal and explaining the effect of the judgment in the *Earl of Sheffield's Case* (1).

The defendant company, through the defendant Turnbull who was assistant manager of the company, took a transfer of the shares in question from J. O. Buchanan, the manager of the Federal Bank, as security for money lent by the company to Cochran. Mr. Buchanan had held the shares on behalf of his bank as security for money lent to Cochran. Some of the shares had been transferred to him on the books of the company by previous holders, and some were new stock allotted to him as the holder of the older shares. In each case the transfer or allotment was to "J. O. Buchanan, manager, in trust." He transferred the shares to Turnbull by a document which described him as "J. O. Buchanan, manager, in trust," and was signed "J. O. Buchanan, manager in trust, per Robt. Cochran his attorney," transferring the shares to "James Turnbull, in trust."

The argument has turned to a great extent on the force to be attributed to these words "in trust." In two or three cases which came to this court from the province of Quebec, the leading case being *Sweeny* v. *The Bank of Montreal* (4) which went to the Privy

(1) 13 App. Cas. 333.
(2) [1891] 1 Ch. 270.
(3) [1892] A. C. 201.
(4) 12 Can. S. C. R. 661.

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Council (1), the term was held to convey an intimation that the property was held on behalf of a *cestui que trust* and to call for inquiry by one dealing with the nominal holder as to who was the *cestui que trust*, and the title was read just as if, instead of stopping at the word "trust," it had gone on to say "in trust for so and so." Now suppose the extended form of expression had been used in the transfers to Buchanan and to Turnbull. It would be "Buchanan in trust for the Federal Bank" and "Turnbull in trust for the Land Security Company." That was what was meant and what the parties all understood. The transfers might as well, except for the form which was adopted for convenience sake, have been direct to the bank and to the company. Whether Turnbull or his company found the Federal Bank recognized on the books of the Land Security Company as the absolute holder of the shares, or found that they were held by Buchanan on behalf of the bank, I find no authority for holding that there was a duty to carry any inquiry into the title farther back. The existence of such a duty can be contended for only, as it appears to me, by attributing to those words "in trust" a meaning that was not intended by the persons who wrote them and which they would not naturally convey to a person reading together the associated words "J. O. Buchanan manager in trust." Buchanan would naturally be understood, as Turnbull understood from the document without further inquiry, to hold as manager in trust for his bank. That is the extent of the notice conveyed by the words, and there is nothing to suggest that the legal estate which passed by the transfer may be subject to any equities as against the bank.

There might, as I apprehend, be serious practical difficulties in the way of tracing back the title to

(1) 12 App. Cas. 617.

shares which have nothing in the way of numbers or certificates by which they may be identified, but which are transferred only in the books of the company. The possibility of this may be a reason for caution before acceding to the general proposition on which the action is founded. But however this may be I am not satisfied that the inquiry, if carried back in the present case, would compel the result for which the appellant contends. We should find, it is true, one or two instances in which the words "in trust" may be less distinct in their application than in the case of Buchanan. Thus we find 45 shares once transferred as security for a loan to the Home Savings and Loan Company in trust, not to an officer of the company, and we find that while the plaintiff's first transfer of 80 shares to Scarth & Cochran in trust was to secure a loan from a company of which they were managers, his second transfer of 80 shares to "Scarth & Cochran, brokers in trust," was as collateral security on another transaction and not in respect of a loan effected at the time. The use of the words "in trust," may in these two instances be capable of some explanation that does not now call for close examination, possibly, in the case of the Home Company, that the transfer which was from "Wm. Cooke, cashier in trust," was upon a printed form similar to that on which Mr. Cooke on the same day transferred 235 shares to "H. S. Strathy, cashier in trust,"—forms seemingly prepared for transfers to individual officers and not to corporations—and in the case of the second 80 shares there may be the same or some other way of accounting for the use of the words. The question would be whether the words implied a declaration of trust in favour of the plaintiff, or would properly be so understood. It is undeniable that, as between the plaintiff and Scarth & Cochran, the plaintiff's right to

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redeem his stock in no way depended on those words. It may be easily assumed that if those parties had intended to say that the transfer was by way of pledge or mortgage they would have said so. In place of that they use an expression which appears to be not unusual in these transactions where one lending money for another, whether as broker or manager of a bank or a loan company, takes security in his own name, and which in that situation is an apt expression. We may further note that whatever difference, if any, there may have been in the two transfers of 80 shares each, yet the whole 160 original shares together with the 638 new shares would seem to have been afterwards regarded by the plaintiff as on exactly the same footing. The decision of the appeal does not, in my view, turn upon this topic. I allude to it chiefly for the purpose of expressing my doubts of the ability of the plaintiff to sustain his claim even if it were to be held that the respondents ought to have inquired further into the history of the shares.

In my opinion we should dismiss the appeal.

Appeal allowed with costs (1).

Solicitors for appellant: *Kerr, McDonald, Davidson, & Patterson.*

Solicitors for respondents: *Howland, Arnoldi & Bristol.*

(1) Leave to appeal to the Judicial Committee of the Privy Council has been granted in this case.