

the plaintiff could not succeed by any amendment setting up that the conveyance was fraudulent under the Statute of Elizabeth.

4. The husband, after the conveyance was made, had no interest in the land that could be bound by the registration of the certificate of judgment, and so the plaintiff could not have a declaration that the wife held the land as trustee for him.

Action dismissed without costs as the defendants had given false testimony in the case.

*McKay*, for plaintiff. *Hallen*, for defendant.

---

Mathers, J.]                      ARBUTHNOT v. DUPAS.                      [Dec. 15, 1905.

*Principal and agent—Undisclosed principal—Payment to agent, when a discharge to principal.*

The plaintiff's claim was for the price of lumber used in the erection of a house on the defendant's land, but which had been sold to the defendant's husband and on his credit alone. Upon discovering facts which led him to believe that the husband had only acted as the defendant's agent in buying the lumber, the plaintiff brought this action.

The trial judge found in favour of the plaintiff as to the agency, but the defendant swore that she had furnished her husband with the money to pay for the lumber at the time it was bought, and contended, on the authority of *Thomson v. Davenport*, 9 B. & C. 78, and *Stokes v. Armstrong*, L.R. 7 Q.B. 598, that her liability as an undisclosed principal was discharged by such payment.

Held, following *Irvine v. Watson*, 5 Q.B.D. 102, and *Heald v. Kenworthy*, 10 Ex. 739, that the proper rule is that such discharge only takes place when the conduct of the seller has been such as to make it unjust for him to call upon the undisclosed principal for payment, or when the character of the business is such as naturally to lead the principal to suppose that the seller would give credit to the agent alone. See also Pollock on Contracts, p. 104; Broom's Common Law, p. 585, and Addison on Contracts, 1903 ed., p. 149. Verdict of County Court judge in favour of plaintiff affirmed on appeal, with costs.

*A. J. Andrews* and *R. M. Noble*, for plaintiff. *Hoskin*, for defendant.