

The bank asserted its statutory right to its lien, and the learned Judge applied the principle stated by Lord Macclesfield in *Savage v. Foster* (1723), 9 Mod. 35: "When anything in order to a purchase is publicly transacted, and a third person knows thereof, and of his own right to the lands intended to be purchased, and doth not give the purchaser notice of such right, he shall never afterwards be admitted to set up such right to avoid the purchase; for it was an apparent fraud in him not to give notice of his title to the intended purchaser." See also *Nicholson v. Hooper* (1838), 4 Myl. & Cr. 179, 186; *Re Shaver* (1871), 3 Ch. Chrs. 379.

Since those cases there had been much discussion concerning estoppel by silence; but there could be no doubt of the application of the principle when there was an interest in the carrying out of the transaction, a clear duty to speak, and a wilful maintaining of silence to the prejudice of the other.

There must be a declaration of the plaintiffs' title to the shares and an order for payment over of the dividends retained by the bank and interest thereon.

The bank should pay the costs of the plaintiffs. There should be no order as to the costs of Clarkson.

MIDDLETON, J.

FEBRUARY 3RD, 1920.

*RE ROGERS.

Will—Construction—Specific Devise of Land Described by Metes and Bounds—General Residuary Devise—Possession Taken by Testatrix, after Date of Will, of Parcel Adjoining Land Described—Will Speaking from Immediately before Death—Wills Act, sec. 27—Application of—Acquisition of Statutory Title by Executors Retaining Possession—Appurtenance—Gift Free from Ambiguity.

Motion by the executors for an order determining certain questions arising in the administration of the estate of the late Mary A. C. Rogers, who died on the 22nd September, 1910. Probate was duly issued to the executors, the National Trust Company, of the will dated the 28th May, 1907, and a codicil bearing date two days later.

The motion was heard in the Weekly Court, Toronto.

R. H. Greer, for executors and certain beneficiaries.

W. A. McMaster, for Jennie Baker and Estelle B. Richards.

G. W. Holmes, for Mrs. Fletcher.