

dant Hastings a tax sale certificate covering a parcel of land in the City of Winnipeg in 1st November, 1894, and at the same time obtained from Hastings a letter which after acknowledging the receipt of the certificate, proceeded as follows: "And I hereby acknowledge the transfer of said tax sale certificate to me under this date and that I hold the said land mentioned therein and also said tax sale certificate in trust for one John R. MacArthur of the City of Winnipeg." Hastings was at the time a member of a law firm which was and for some time had been acting as solicitors for Duncan MacArthur, and the object of the trust was that Hastings should procure a tax deed of the land for the benefit of John R. MacArthur as a security.

On 13th February, 1895, a tax deed was issued by the City of Winnipeg to Hastings as assignee of the tax sale certificate, Duncan MacArthur paying to the city \$178 as the balance of the purchase money payable for the land.

The title remained in Hastings until March, 1897, when he conveyed the land to his co-defendant Mrs. Stenning as part security for an indebtedness to her. Mrs. Stenning afterwards procured a certificate of title for the land under "The Real Property Act," and in April, 1899, an agreement was entered into between her and Hastings whereby the latter purported to release all his claim to the land and to grant to her his interest therein in consideration of the sum of \$460, which sum was to be credited on his indebtedness to her, Hastings being released to that extent, but remaining liable for the balance of her claim which he had subsequently settled in full. During all this time Mrs. Stenning had no knowledge of any claim on the part of the plaintiffs and believed the land to be vacant, although there really was a building on it occupied by a tenant who paid rent to a real estate agent, who accounted for it to MacArthur.

MacArthur, being thus in receipt of the rents, had no knowledge of Mrs. Stenning's claim until he heard that some one else had paid taxes on the land which, at the time of the commencement of the action, was valued at \$2,000.

The statement of claim asked to have the deed and certificate of title in Mrs. Stenning's name set aside, or that she be declared a trustee of the land for John R. MacArthur. Defendants at the trial offered oral evidence to shew that the land was held by Hastings upon trusts other than that set out in the written declaration of trust, but the trial judge refused to allow such evidence to contradict the writing.

Held, 1 Notice of the plaintiff's claim was not to be attributed to Mrs. Stenning on account of her solicitor's knowledge of the facts, because where the circumstances of the case shew that