

1910 a dividend of ten per cent. and two bonuses of \$200 and \$700 per share were declared. Before any of these were paid, Counsell had transferred two of the shares; he received the \$200 bonus on the third share. The dividend and the \$700 bonus were held by the defendants pending this litigation.

The defendants brought in both John Stuart and Counsell as third parties and claimed indemnity against them.

W. J. Elliott, for the plaintiff.

C. A. Moss, for the defendants.

I. F. Hellmuth, K.C., and J. R. Meredith, for the third party Stuart.

Glyn Osler and R. C. H. Cassels, for the third party Counsell.

MIDDLETON, J.:— . . . Upon the evidence, I cannot find that there was any authority in John Stuart to deal with this stock. His conduct is without excuse or justification of any kind, and the plaintiff has in no way ratified what he did. There is nothing upon which an estoppel can be based. . . .

The shares in question were never validly transferred from the plaintiff, and she has done nothing to preclude her from asserting her title to them. She is, therefore, entitled to a judgment declaring that she is (as administratrix) the holder of the three shares in question, and directing the share-register of the defendants to be rectified accordingly. She is also entitled to judgment against the defendants for the amount of the bonuses and dividend declared, with interest from the dates when they were respectively payable, and her costs. . . .

So far as John Stuart is concerned, he clearly undertook to assign shares standing in the name of his son without having any colour of right to do so, and appointed the secretary of the club his attorney to make the transfer. His wrongful act is the cause of all the trouble; and I have no hesitation in awarding against him a judgment over for the amount which the defendants may be called upon to pay the plaintiff (over and above the dividend and bonus which they still have in hand), including costs and also their costs of defence and of the third party proceedings.

The position of Counsell is different; he is an innocent purchaser; he bought the stock in good faith; and it is not suggested that he had any knowledge of the absence of title in his vendor. . . . Like any one else who purchases from one not the owner, he acquired no title, and he must refund the amount of