

BOYD, C.:—The trial Judge was of opinion that the parol evidence was insufficient to establish a case of trust in the acquisition of the land held by the defendant, so as to give relief to plaintiff notwithstanding the Statute of Frauds. Doubtless the law set forth in *James v. Smith*, [1891] 1 Ch. 388, is modified and perhaps changed entirely by *Rochefoucauld v. Bertram*, [1897] 1 Ch. 207; but it is essential that the evidence of such alleged trust be clear and complete to the satisfaction of the Court. That element is here lacking, and the judgment should be affirmed. It is not a case for costs of appeal.

MEREDITH, J., gave reasons in writing for coming to the same conclusion.

DECEMBER 3RD, 1902.

DIVISIONAL COURT.

STANDARD TRADING CO. v. SEYBOLD.

Security for Costs—Præcipe Order for—Application for Increased Amount—Election—Costs.

Appeal by plaintiffs from order of MACMAHON, J., ante 724, reversing order of local Master at Ottawa refusing defendants' application for increased security for costs, and requiring plaintiffs to give additional security by bond in \$600 or by payment into Court of \$300.

J. H. Moss, for plaintiffs.

D. L. McCarthy, for defendants.

THE COURT (BOYD, C., MEREDITH, J.) held that the Master was not bound by the decisions to limit the defendants to the amount of security provided for by the præcipe order obtained by them, and the Judge having on appeal exercised a discretion, it would not now be interfered with. In the cases relied on by the Master, *Bell v. Landon*, 9 P. R. 100, had been strained beyond its fair application.

Appeal dismissed, but order of MACMAHON, J., varied by directing that the costs of the motion before the Master and of the first appeal should be costs in the cause. Costs of this appeal also to be costs in the cause.