

Correspondence.

CONVEYANCES "IN TRUST"

Editor, Canada Law Journal,

Dear Sir:—

Referring to my article in your issue of February last, relative to the case of *Re McKinley and McCullough*, 51, D.L.R. 659, and 46, O.L.R. 535, decided by our Court of Appeal, which deals with the question of Conveyances to Grantees "in trust", I think it is worth while calling attention to the case (decided by the Privy Council) of *Bank of Montreal v. Sweeney*, A.C. (1887) 617 which held that in the case of a transfer of shares by a holder to whom they have been assigned "in trust", a transferee from such holder is bound to inquire whether the transfer is authorised by the nature of the trust.

Lord Halsbury, L.C. :—in his judgment says:—

"The bank had express notice that, as regards the property transferred to them, Rose stood to some person in the relation expressed by the words "in trust", and the only question is what duty was cast upon the bank by that knowledge. Their Lordships think it wrong to say that any less duty was cast upon them than the duty of declining to take the property until they had ascertained that Rose's transfer was authorised by the nature of his trust. In fact they made no inquiry at all about the matter, following, as Mr. Buchanan says, the usual practice. So acting, they took the chance of finding that there was somebody with a prior title to demand a transfer from Rose, and as the plaintiff is such a person they cannot retain the shares against her claim."

"Then it was argued that the words "in trust" do not show a title in any other person, and that they might be merely a mode of distinguishing one account from another in the Company's books. Their Lordships think that they do import an interest in some other person, though not in any specified person. But whatever they mean, they clearly show the infirmity or insufficiency of Rose's title: and those who choose to rely on such a title cannot complain when the true owner comes forward to claim his own.

It seems curious that this case was apparently not referred to when the matter was before the Court of Appeal.

Yours truly,

London, Ont.
Nov., 1922.

F. P. BETTS.