Under the agreement with the Mount Royal Bond Company, one of the items of stock distributed was $50,000 preferred stock, which by the agreement was to be given to Marshall. The claim put forward in these actions by McConnell and Patton was that this $50,000 of stock was to be held by Marshall in trust, one-half for himself and for one Johnson, one-fourth for McConnell, and one-fourth for Patton. The stock was issued in the name of Murphy. Murphy, it is admitted, holds in trust only, and he is ready to deal with the stock as the Court may declare. The Dominion Manufacturers Limited is not concerned in the controversy. As said in the judgment in the other case, the original scheme involved the remuneration of the promoters by the issue to them of common stock only. As put by Marshall in this case, the securing of $50,000 of preferred stock for the promoters was the result of the manipulations of Mr. McConnell. This was sought because it was realised that the common stock would probably be of no value. What Mr. Marshall asks me to find is that two experienced financiers, such as McConnell and Patton, suggested and brought about this result for the sole benefit of Mr. Marshall, and to their own detriment.

The question is entirely one of fact, and I have no hesitation in finding that the plaintiffs have proved their case.

Mr. Bell argued that, because the stock was by the terms of the written agreement to be issued in the name of Marshall, parol evidence could not be received to shew that Marshall took in trust, or that there was an agreement for the sharing. This, I think, is quite fallacious. This is not any attempt to contradict in any way the terms of the written agreement. It is a subsidiary and collateral transaction, which can, as I understand the law, always be shewn.

Beyond this, the technical rule would have no application, because the agreement on which Mr. Bell relies as being the only document which may be looked at is not an agreement to which McConnell and Patton are parties. It is altogether res inter alios acta.

If I am correct in my finding of fact, and it was, as I think it was, clearly understood by Marshall that the stock was to be equally divided, then the law could not be so impotent as to permit Marshall, in fraud of this agreement, to retain all the stock himself.

The plaintiff's title in each case should be declared, and the defendant Marshall should be ordered to pay the costs of the plaintiff and of his co-defendants.