

Since writing the above, *Burchill v. Gowrie*, [1910] A.C. 614, has come to hand, which very strongly supports the plaintiff's case.

MULOCK, C.J., concurred.

SUTHERLAND, J., dissented, for reasons stated in writing. He agreed with the opinion of the trial Judge.

MIDDLETON, J.

FEBRUARY 2ND, 1911.

STUART v. HAMILTON JOCKEY CLUB.

*Company—Shares—Transfer by Unauthorised Person—Liability of Company to True Owner—Rectification of Register—Indemnity against Person Purporting to Transfer and against Transferee—Dividend Received by Transferee—Subsequent Transfer—Indemnity in Respect of Dividend Received by Subsequent Transferee—Tortious Act—Remedy—Costs.*

Action by the widow of John J. Stuart, deceased, for a declaration of her right, as administratrix with the will annexed of the estate of her late husband, to three shares of the capital stock of the defendants, an incorporated company, and to compel the defendants to register her as the holder of the shares as such administratrix.

The shares stood in the name of John J. Stuart, and, after his death, his father, John Stuart, assumed to sell them to J. L. Counsell, and executed a document by which he purported to sell, assign, and transfer three shares "standing in the name of John J. Stuart on the books of the said club," and appointed the secretary of the club his attorney to make the transfer upon the books of the club. The secretary assumed that Stuart was executor of his son, and made the transfer to Counsell as from "John J. Stuart estate," and signed it thus: "John J. Stuart estate, John Stuart, executor J. J. Stuart estate, by his attorney, A. R. Loudon" (seal).

This was in June, 1906. The plaintiff did not know of it till March, 1910, or perhaps a year earlier, and began this action in September, 1910.

At the time of the death and at the time of the transfer to Counsell the shares were not supposed to be of value, but in