

in the mining claims for \$5,000; the payment of \$3,000 on account; the securing of the balance by a mortgage (the mortgage or charge now sought to be enforced) executed by the defendants "as trustees for certain beneficiaries, including themselves;" that the defendant McKenzie had paid to the plaintiff \$388.22 "in full of his one-sixth interest" in the claims and in payment of his liability under the mortgage; and, for the consideration mentioned, the plaintiff released McKenzie from all claims in respect of the one-sixth interest of McKenzie.

The learned Judge said that it was clear that the plaintiff's intention in executing the release was to free from the operation of the charge the one-sixth share which McKenzie had in his own right in the mining locations, and nothing more. He did not intend to and did not release the remaining five-sixths owned in common by the two defendants, nor to relieve them from their covenants to pay the balance due on the mortgage. The recital was wider in scope, but its general terms were controlled by the clear, definite, and particular words in the operative part of the deed: *Rooke v. Lord Kensington* (1856), 2 K. & J. 753, 771. The defence that McKenzie had been discharged from all liability in respect of the mortgage had not been established.

Again, the defendants said that, to the knowledge of the plaintiff, they executed the mortgage "as trustees for certain other parties and interests," and were not personally liable. No doubt, the relation of trustee and cestui que trust existed between the defendants and their associates in the purchase and in the ownership of the half interest recorded in the name of the defendants, and the plaintiff was probably aware of the fact. But quoad the plaintiff the same relation did not exist. Upon the charge or mortgage he could have no recourse against the defendants' cestuis que trust. The defendants, as the registered owners of a half-interest in the mining claims, charged that interest with the payment of the mortgage-money and interest, and assumed by their covenants the personal obligation of paying it. They could not derive any advantage from the relation existing between them and their associates, whether that relation was known to the plaintiff or not. That defence also failed.

As a further defence the defendants alleged that the purchase was induced by the payment by the plaintiff of a secret commission to one Maxwell who acted for the defendants and their associates in making the purchase, and they counterclaimed to be repaid the \$3,000 they had paid the plaintiff and for the cancellation of the charge. Upon the evidence, the learned Judge found that no commission, secret or otherwise, was paid by the