

with by the shareholder after receiving it; but it does not entitle the company to lend money to A. with express notice that he is a mere trustee for B.: *Bank of Montreal v. Sweeny*, 12 App. Cas. 617; *Simpson v. Molsons Bank*, [1895] A. C. 270; *London and Canadian L. & H. Co. v. Duggan*, [1893] A. C. 506; *Great Eastern R. W. Co. v. Turner*, L. R. 8 Ch. 149.

The only shares which passed by the mortgage of July, 1897, were the six shares of class A.

The company cannot consolidate their two mortgages against the defendant Anna K. Johnston, in whom the equity of redemption in the land mortgaged is vested; because they have not shewn any notice to her, at the time she acquired the equity, that any other mortgage existed in the hands of the company: *Stark v. Reid*, 26 O. R. 257.

The examination for discovery of Amelia Johnston is not evidence against Anna K. Johnston.

Appeal allowed.

[MARCH 3RD, 1902.

DIVISIONAL COURT.

HEFFERNAN v. McNAB.

Will—Construction—Bequest of Interest on Payments to be made by Devisees of Land—Sale of Land by Testator after making his will—Failure of Bequest.

Appeal by plaintiff from judgment of MACMAHON, J., in action by a legatee under the will of Michael McNab, deceased, for its construction, and to set aside a release of his claims thereunder. The testator devised a farm to each of his sons John and Albert, charged with the payment \$2,000 and \$1,000 respectively. Subsequently he sold both the farms to John, and took back a mortgage for \$5,000, with interest at 4 per cent. per annum. The 9th clause of the will was as follows: "I hereby authorize my said executors to purchase and erect a fit and proper tombstone over my grave, and I hereby will that my executors do pay over to my beloved nephew, Edward Heffernan, the interest accruing from the payments to be made by John, James, and Albert McNab, yearly, until the last payment is made by them to my executors, and not before then will my executors furnish them with good and sufficient deeds." At the time of the death of the testator, Albert was also indebted to him. The trial Judge held that the plaintiff, the nephew, took nothing, and was bound by the release he gave.

J. R. Roaf and W. T. J. Lee, for plaintiff.

E. F. B. Johnston, K.C., and J. D. Falconbridge, for defendants.