

in the place of the defendants, who were the survivors of the original trustees, and those appointed by the congregation in the place of those deceased; and claimed possession of the said land, and also asked for a declaration that they were the owners in trust for the said brethren.

*Held*, that the legal estate in the lands was vested in the defendants; that the plaintiffs failed to prove any title thereto, and the defendants were therefore entitled to retain the possession thereof, and the declaration of ownership asked for by the plaintiffs was refused.

*German*, for plaintiffs. *Cropper*, for defendants.

#### FOURTH DIVISION COURT, COUNTY OF PERTH.

Barron, Co. J.]

[March 30.

FARRELL T. SCHOOL TRUSTEES SCHOOL SECTION NO. 2, NORTH EASTHOPE.

*Equitable assignment—Order to pay a particular sum—Intent thereby to assign a particular fund, shown by correspondence—Fund designated in documents other than the order.*

The plaintiff sued as assignee of one Stewart of an order in favour of Stewart from one Bell on the defendants for \$96.45, which order was in the following words: "Shakespeare, Sept. 29. \$96.45. To Trustees of SS. No. 2, North Easthope. Please pay Mr. P. Stewart the sum of ninety-six Dollars, and charge to my account. J. N. Bell." This document was given to Stewart enclosed in a letter to one of the trustees, which letter said, *inter alia*, "will you kindly accept the enclosed orders, and we can deduct it from my salary to-morrow when we settle." This amount was in fact coming to Bell on account of salary, and only on that account. Notwithstanding notice of the above document and letter the trustees paid the full amount of salary to Bell, on the pretence or belief that the absence of the year in the first mentioned document, absolved them from liability to Stewart.

BARRON, Co. J.:—The order of September 29 is nothing more than a bill of exchange. It indicates no fund out of which the money is to be paid, and in fact is less in favour of the holder of it, than was the bill of exchange in favour of the plaintiff in the case of *Hall v. Prittie*, 17 A.R. 306, and I am bound by that authority even though the fact be that there is in this case no other fund out of which the money could be paid to Stewart. See *Bush v. Foote*, 58 Miss. 5; 38 Am. Rep. 310. But accompanying this order or bill of exchange is a letter in which appears the words above quoted. It has been held that a draft payable generally, operates as an equitable assignment where an intent to assign a particular fund is shown by correspondence accompanying the draft. Here the letter says to deduct the amount from salary. So that the amount