

by the transferee, who then or afterwards pays the purchase money. As a general rule no certificate of ownership in the transferor is ever produced, nor is any given to the transferee as owner, at least till after the transaction is completed.

It is proposed to consider here in what position as to danger of loss by reason of defect in title in his vendor, a purchaser, as transferee, incurs on such a transfer, as also on transfer accompanied by other circumstances. Under the term purchaser must be understood a mortgagee or any other who gives value in money or otherwise.

The first case as to facts to be considered is that of *transfer* to a purchaser, either *forged* or under a *forged power*, and registry by the corporation of the purchaser as owner on his acceptance in the proper book; no other material facts existing.

In *Hildyard v. Southsea Co. and Keate*, 2 P.W. 76, Keate bought, on a transfer to him under a forged power, stock of the company, the property of the plaintiff, and thereafter the company paid Keate the dividends. The court held the transfer to be void and Keate liable to refund the dividends. It was said by the court:—"When Keate bought it was incumbent on him, and at his peril, to see that the letter of attorney was a true one; it was more his concern and in his power to enquire into the reality of this letter than of any other person—as to the company they were but conduit pipes—and it would be of public use that those who accept transfers of stock under letter of attorney should be obliged to take strict care of its validity, for no other person can be so properly concerned to do it."

There can be no doubt as to the above decision so far as relates to the true owner not being deprived of his shares or dividends in case of forgery where there has been but one sale (*see Barton v. North Stafford Railway*, and other cases hereinafter referred to), but the difficulty arises as to who is to suffer the loss where there is a sub-purchaser from a purchaser under a forged transfer or power who has been registered as owner. So far as the purchaser's loss under the above decision is concerned the case once was questioned, and was commented on with some disfavour, by the Lord Chancellor in a subsequent case of *Ashby v. Blackwell*, 2 Eden 299. That case; however, cannot be regarded as expressly overruling the prior one, for the decision rested chiefly on gross negligence in the company in allowing the transfer, and so alluded to by Cotton, L.J., in *Sim v. Anglo-American Company*, 5 Q.B.D. 200.

This case, therefore, does not directly overrule Hildyard's case as to loss to the purchaser; and it is to be remarked that, when, on the question of loss to a purchaser being argued in *re Bahia and San Francisco Company* hereafter mentioned the Hildyard case was referred to, Mr. Justice Blackburn did not deny the correctness of the decision, but merely distinguished the case from the Bahia case then being argued, on the ground that in the latter case the right of a sub-purchaser from a transferee under a forged transfer was in question. In *Collins on Banking*, p. 276, it is said, "If the name of the lawful holder has been forged to a transfer, which is duly registered in the books of the bank, he can compel the purchaser, though a *bona fide* purchaser, to redeliver