

1875.

Ross
v.
Scott.

no other reason." This gives no satisfactory explanation of his keeping an account of the expense. If the land was bought for himself we would naturally expect to find him take the earliest opportunity of letting the plaintiff know it. If he meant the plaintiff to know he claimed it, to tell him he kept such an account was the surest way of leading him to an opposite conclusion. The only rational inference to be deduced from this statement is, that *Ross* was interested in his keeping this account, and he could have no interest unless he was entitled to the property or an interest in it. The other witnesses leave no doubt as to the defendant's object in keeping the account. *Rennie*, a friend of the defendant, and interested in the sale, says, "The defendant said he would keep an exact account of all his expenses to come against the plaintiff when I was paid." The plaintiff says that when the defendant promised to keep the account it was in answer to the plaintiff's proposal to get some clearing done, and for that purpose to trade a horse. It is inexplicable, if the defendant thought he held the property for himself, that he did not then assert his title, and let the plaintiff know that the clearing was none of his business.

Judgment.

The keeping of this account of the expense he was at in regard to the land I consider to be an act quite inconsistent with the notion of the defendant's beneficial ownership, and sufficient within the authorities in our Courts to admit parol evidence of what the real agreement was; and I quite agree in the statement of my brother *Blake* that the evidence establishes the agreement set out in the bill.

On the other ground it is important to remember that the plaintiff was a second mortgagee on the property, and I think it satisfactorily established that he refrained from getting an agent to bid for his protection upon the promise of the defendant to do so, and I think the evi-