

and containing nothing expressly explanatory of the nature of the trust intended.

The deed was not delivered to the grantees or any of them until November, 1913. In the meantime, on the 4th June, 1913, the son Frank had died. On the 16th June, 1913, Sir Sanford executed a codicil revoking all provisions of the will in favour of Frank.

On or about the 11th November, 1913, the testator executed a conveyance, dated the 30th October, 1913, of lands fronting on Besserer street, Ottawa, to his sons Walter and Hugh, two of the plaintiffs, who then, at their father's request and by his direction, executed a declaration of trust (exhibit 5) in favour of the plaintiffs of these Besserer street lands and other lands (not the homestead property) which also had been conveyed to them. It was at this time that he handed over the conveyance of the homestead property; and the plaintiffs now alleged that what then happened and a statement which their father, as they alleged, then made, constituted a parol declaration of trust of the homestead property, in their favour, sufficient to vest these lands in them beneficially.

The defendants, the only other surviving children of the testator, denied that there was at any time any declaration of trust in respect of the homestead property sufficient to satisfy the Statute of Frauds.

There was nothing in the deed of the 26th June, 1907, to indicate that the grantor had any other intention than to sever the legal from the equitable or beneficial estate, and there was evidence indicating that that, and that only, was his intention. The effect was a resulting trust in favour of the grantor or his heirs: *Lewin on Trusts*, 12th ed., p. 163. If a trust is clearly intended, the trustees cannot take beneficially: *Smith's Principles of Equity*, 4th ed., p. 41.

The grantor remained in possession of the homestead property as the owner thereof, and nothing further happened until the occurrences in November, 1913.

The evidence of the plaintiffs as to what took place on that occasion and what their father said, even if it was sufficiently definite to get at the grantor's meaning, which it was not, was not admissible to establish a trust, in the face of the obvious effect of the conveyance itself. The testimony was that of interested persons, which, if admissible at all, should be corroborated by surrounding circumstances: *Fowkes v. Pascoe* (1875), L.R. 10 Ch. 343.

The plaintiffs' contention failed; there was a resulting trust with respect to the homestead property; and it was now held in