

In order to ascertain how far, if at all, these defences are maintainable, it is necessary to inquire what were the rights of the respondent which arose out of the agreement.

I apprehend that, so soon as the services of the respondent which constituted the consideration for the deceased's promise were performed, the deceased became a trustee for the respondent of the 10 shares and the respondent the equitable owner of them.

The position of a purchaser of land before conveyance was considered by this Court in *In re Flatt and United Counties of Prescott and Russell* (1890), 18 A.R. 1, and it was held, upon a review of the authorities, that until the conditions upon which the conveyance is to be made are performed and the purchaser becomes entitled to the conveyance he does not become the equitable owner of the land or the vendor a trustee for him. MacLennan, J.A., was of opinion that this was the position of the parties from the making of the contract, but the other members of the Court did not think so.

I know of no reason why the same rule should not be applicable to a purchase of shares in a joint stock company; and, if that be the case, the Limitations Act has no application, the shares being trust property still retained by the trustee, and, therefore, within the exceptions mentioned in sub-sec. 2 of sec. 47.

The respondent's claim may be also supported upon the ground that he is entitled to specific performance of the contract to transfer the shares to him. That such an action will lie is well settled: *Fry*, 5th ed., pars. 76 and 1497, and cases there cited. There is no Statute of Limitations applicable to an action for the recovery of personal property: *Charter v. Watson*, [1899] 1 Ch. 175; *London and Midland Bank v. Mitchell*, [1899] 2 Ch. 161; and, therefore, no statutory bar to such an action, though doubtless laches and delay for even a shorter time than the statutory period of limitation in the case of real property may be a bar to it.

It is to be observed that laches and delay, except in so far as they are involved in the defence founded on the Limitations Act, are not pleaded; but, even if they were, the explanations offered by the respondent for the delay in bringing his action, if true—and they have been believed by the learned trial Judge to be true—would be an answer to such a defence.

The testimony of the respondent as to the reasons for the delay was not corroborated by other testimony; but, in my