

decision, and it was also held that the plaintiff's claim against the society for sick pay was brought by him in his capacity as a member against whom an order for costs could properly be made, and that even if the claim was in strictness on the part of the son, the plaintiff was "a party" to the arbitration proceedings within the meaning of the rules and as such liable to be ordered to pay costs.

TRUSTEE AND CESTUI QUE TRUST—BREACH OF TRUST—CONFLICTING EQUITIES—LEGAL TITLE—NEGLIGENCE.

*Burgis v. Constantine* (1908) 2 K.B. 484 is an illustration of the maxim that where the equities are equal the law must prevail, and also of that other maxim "Qui prior est tempore potior est jure." In this case in furtherance of a project for the formation of a company to purchase a ship, the plaintiffs, who were the owners of shares in a ship, transferred them to one Wilfrid Hine, the senior partner in a firm of Hine & Co., which managed the ship's business, as trustee for them, with power to sell the shares if the company was formed, and Wilfrid Hine was registered as owner of the shares so transferred. The project of forming a company proved abortive; but the plaintiffs allowed the shares to remain in the name of Wilfrid Hine. Subsequently Alfred Hine, who acted as the manager of Hine & Co.'s business, procured Wilfrid Hine to sign a blank form of mortgage. This he took to Holman, an agent of the defendant, who filled it up as a mortgage to secure £4,000, on the faith of which the defendant advanced the £4,000 to Alfred Hine, which was used for the purposes of Hine & Co.'s business. The pretended mortgage was duly registered, and the plaintiffs brought the present action to set it aside, and for a declaration that it was null and void, and that the defendant was not entitled to be registered as mortgagee. Bigham, J., who tried the action held that the mortgage in question having been executed in blank was null and void, but he considered that the defendant was, nevertheless, entitled to an equitable charge on the ship for the money advanced, and so ordered. The Court of Appeal (Barnes, P.P.D., and Moulton and Farwell, L.JJ.) reversed his decision, in so far as it awarded a charge in favour of the defendant. As the Court of Appeal points out, the mortgage being a nullity, although Wilfrid Hine might be liable in damages on an agreement to give a mortgage to secure the money advanced, yet not being the beneficial owner of the ship, the contract could not have been specifically enforced as against him.