

PER CURIAM:—

Their Lordships consider it to be proved in this case that Rose held the disputed shares upon a trust not disclosed by the entry in the Company's books; that he transferred them to the Bank in breach of his trust; that at the time of the transfer the Bank knew of Rose's position; and that the plaintiff turns out to be the person in whose favor the trust existed.

It has been argued for the appellants that these things are not proved, because they require a written *commencement de preuve*, and have not got it. But on this point their Lordships stopped the respondent's counsel. They are quite clear that if a written *commencement* is needed, it is to be found in the letters of Crawford and Lockhart coupled with the books of the Rolling Mills Company, and in the transfer executed by Rose to Buchanan on the 3rd June 1876.

Under these circumstances the question arises whether the Bank must not be in the same position as if they had known that the plaintiff was interested in the shares, and that the transfer by Rose was in violation of his duty to the plaintiff. Their Lordships do not impute moral blame to Mr. Buchanan or to any agent of the Bank, for those gentlemen may be guilty of nothing more than a mistake of law. Nor do they think it necessary to examine how far the relations between Rose and the plaintiff may have resembled or differed from those of an English trustee and his beneficiary, or to go into the English doctrines of constructive fraud, or constructive notice. The Bank had express notice that as regards the property transferred to them Rose stood to some person in the relation expressed by the words "in trust," and the only question is what duty was cast upon the Bank by that knowledge. Their Lordships think it wrong to say that any less duty was cast upon them than the duty of declining to take the property until they had ascertained that Rose's transfer was authorized by the nature of his trust. In fact they made no inquiry at all about the matter, following, as Mr. Buchanan says, the usual practice. So acting, they took the chance of finding that there was somebody with a prior title to demand a

transfer from Rose, and as the plaintiff is such a person they cannot retain the shares against her claim.

Their Lordships are led to this conclusion by the ordinary rules of justice as between man and man, and the ordinary expectations of mankind in transacting their affairs. If indeed they found any principle of Quebec law which absolutely forbade that property should be placed in the name of a person, with a simultaneous notice providing that his power over it should not be absolute but restricted, that would control their decision. That view has been pressed upon them from the bar with great ability and force, but, as they hold, without authority to support it. The authorities cited relate to *mandataires prête-noms*, and are to the effect that, when once property has been placed under the dominion of such an agent, third parties may safely deal with him alone, even though notice is given to them that his principal is not assenting to his acts. Their Lordships think it unnecessary to examine this statement of the powers of a *mandataire prête-nom*, for they find no definition or description of such an agent which does not require that he should have a *titre apparent*, which they understand to mean that he must be ostensible owner, made to appear to the world as absolute owner. They asked whether there was any text or case to show that an agent can be a *mandataire prête-nom* when the instrument conferring the property on him carried upon its face a declaration that his property is qualified. No such authority could be found. In this case Rose was never for an instant held out to the world as absolute owner, and therefore he never could have given a good title to a third party by his own sole authority.

Then it was argued that the words "in trust" do not show a title in any other person, and that they might be merely a mode of distinguishing one account from another in the Company's books. Their Lordships think that they do import an interest in some other person, though not in any specified person. But whatever they mean, they clearly show the infirmity or insufficiency of Rose's title; and those who choose to rely on such a title cannot com-