Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The London and Canadian Loan and Agency Company, Limited, and Another, v. *Duggan*, *from the Supreme Court of the Dominion of Canada; delivered 22nd July* 1893.

Present:

THE LORD CHANCELLOR.
LORD WATSON.
LORD HALSBURY.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
LORD SHAND.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The controversy between the parties to this Appeal, which has occasioned much difference of opinion in the Courts below, relates to 798 shares of the Land Security Company of Toronto, of which 160 were old shares fully paid up, and 638 were new shares upon which 20 per cent. had been paid.

The capital of the Land Security Company, which was incorporated under Statutes of the Province of Ontario, has not been turned into stock, and is not divided into shares of a certain fixed amount. Its shares are neither numbered, nor otherwise identified; so that each share simply represents an aliquot part of the concern carried on by the Company, which cannot be precisely ascertained except by reference to its stock ledger.

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The Statutes enact that no transfer of the Company's shares shall be valid until entered in its books, according to the forms prescribed, from time to time, by the directors. They make no provision for the issue of share-certificates, or any document of title, to members of the Company; and no such document has ever been issued. The only legal evidence of the ownership of shares which have been transmitted from the original allottee, is to be found in the transfer book of the Company.

It is not matter of dispute that the 160 old shares at one time belonged to the Respondent, Edmund Henry Duggan, who, in 1882, transferred them to Scarth and Cochran, a firm of brokers in Toronto, in security of advances. After receiving the transfer, that firm proceeded to use the shares in raising loans for their own accommodation, and as in right of these shares, and in the interest of the Respondent, they obtained an allotment of the 638 new shares which are now in question. On obtaining the allotment, they dealt with these new shares also for the purpose of obtaining money-advances on their own account. In the course of these transactions, which extended over a period of several years, Scarth and Cochran repeatedly paid up the advances made to them by procuring a fresh loan; and, on these occasions, the shares were transferred to the new lender by the previous holder of them. In the beginning of 1887, their lender was the Federal Bank, to whom they had agreed to convey in security the whole of these 798 shares; and that agreement had been duly carried out by the previous holders executing transfers, in the transfer book of the Company, in favour of "J. O. "Buchanan, Manager in trust," which were accepted by him, under the same designation.

In 1887, Scarth and Cochran arranged with

the Appellants, the London and Canadian Loan and Agency Company, Limited, for an advance of $14,300, to enable them to discharge their debt to the Federal Bank, upon condition of the shares held by the Bank, in name of their manager, being transferred as security to the Appellants. In pursuance of that arrangement, two transfers, one of the 160 old, and the other of the 638 new shares, were, on the 7th September 1887, duly executed in the transfer book of the Land Security Company, bearing to be granted by "J. O. Buchanan, Manager in trust" to the Appellant, "James Turnbull in trust." The said Appellant was at that time the manager of the Appellant Company. Each of these transfers was executed by "J. O. Buchanan, "Manager in trust," as transferor, per Robert Cochran his Attorney, and was accepted by the Appellant James Turnbull, who added the words "in trust" to his signature. The power of attorney by J. O. Buchanan in favour of Cochran was also entered in the transfer book.

The Appellant Company sold the shares; and after payment of their advance to Scarth and Cochran, there remained a balance, for which they have all along been willing to account. In this action, which was brought by the Respondent Duggan, before the Chancery Division of the High Court of Justice of the Province of Ontario, he claims payment from the Appellants, not of the price received for the shares, but of their full market value, under deduction only of such debt, if any, as he owed to Scarth and Cochran. Alternatively, he claims the balance of the price, after satisfying Scarth and Cochran's debt to the Appellant Company.

The legal principles involved in this appeal may be of interest to the mercantile community; but, in the circumstances of the case, their Lordships have not found their application to be attended with difficulty.

It is conceded on all hands that, in any question between him and Scarth and Cochran, the Respondent would have been entitled to get back his shares, or their proceeds, upon payment of the debt which he owed to the firm. Whether the successive transferees, who held the shares intermediately between Scarth and Cochran and the Federal Bank, were affected by the relations which admittedly subsisted between that firm and the Respondent, is a matter upon which their Lordships do not find it necessary to express any opinion. No such trust, in favour of the Respondent, as has been held to exist in this case, could affect holders of the shares after Scarth and Cochran, unless it was disclosed on the face of their author's title, or was otherwise notified to them. The evidence shows, and all the learned Judges in the Courts below assumed, that the Appellants had no intimation of the existence of a trust running with the shares, other than was conveyed to them by the terms of their transferor's title as it stood in the books of the Company. They had a right to satisfy themselves by inspection of the books, that J. O. Buchanan, as representing the Bank of which he was manager, was *in titulo* to transfer to them; and, whether they enquired so far or not, they must be held to have done so. But they had no right, and were under no duty, to trace back the history of the shares, in the course of their transmission from the Respondent.

The fate of this appeal must therefore depend upon the single issue,—whether the words "Mana-" ger in trust" appended to the designation and signature of J. O. Buchanan in the transfer book, indicate that he was trustee for some beneficiary other than the Federal Bank, or merely import that he held the shares for behoof of the Bank. Apart from the evidence, their Lordships have no hesitation in holding that the added words, according to their natural construction, mean that

Buchanan, as an official of the Bank, held in trust for his employers, and are not calculated to suggest that he stood in a fiduciary relation to any other person.

It was argued that these words, even though they might not clearly indicate a trust for others than the Bank, were at least so ambiguous as to cast upon the Appellants the duty of making enquiry. Their Lordships are not of opinion that any such ambiguity exists. But the argument, had there been some foundation for it, would have come to nothing; because it is clearly proved that the Federal Bank intended Buchanan to hold for them, and for them only; and it is also proved, and is assumed by the learned Judges who found for the Respondent, that the Appellants, if they had enquired, would have received a positive assurance to that effect.

Their Lordships will therefore humbly advise Her Majesty to reverse the decision of the Supreme Court of Canada, to restore the judgment of the Court of Appeal; and to order the Respondent to pay to the Appellants the costs incurred by them before the Supreme Court, and to declare that the Appellants are to be at liberty to retain the sum of 3,080. 5 dollars mentioned in the certificate of the Court of Appeal in payment *pro tanto* of their taxed costs in the Supreme Court as well as of the costs to which they have been found entitled by the Judgment of the Court of Appeal. The Respondent must also pay to the Appellants their costs of this appeal.