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made to her before the marriage. There was a gift of the money to her, and he became her trustee.

BAGGALLAY, L.J. I am of the same opinion. It is unnecessary to decide the question on the Statute of Frauds, for, in my view of the facts, there was a gift of the money by the husband to the wife.

LINDLEY, L.J. I am of the same opinion. Looking at the facts, it is impossible to escape from the conclusion that the husband gave the money to the wife. With regard to the Statute of Frauds, I am not prepared to say that I admit the view of Cave, J., to be right, though I am not prepared to say that it is wrong. But I think that the decision in *Warden v. Jones* (1) is not inconsistent with *Laythoarp v. Bryant* (2), or *Britain v. Rossiter*. (3)

Solicitor for wife: *H. A. Maude, for W. Elmsley, Leeds.*

Solicitors for trustee: *Pitman & Sons, for Malcolm & Hainsworth, Leeds.*

W. L. C.

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Dec. 18.

[IN THE COURT OF APPEAL.]

THE SOCIÉTÉ GÉNÉRALE DE PARIS AND ANOTHER v. THE
TRAMWAYS UNION COMPANY, LIMITED, AND OTHERS.

Company—Shares—Transfer—Transfer of Shares by Deed—Transfer in Blank—Delivery of Transfer by Transferor as his Deed—Equitable Mortgage of Shares—Notice—Priority—Maxim, “Qui prior est tempore, potior est jure”—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 30—Mode of giving Notice to Company—Notice to Secretary as an Individual.

Where the shares of a company registered under the Companies Act, 1862, are pursuant to the articles of association thereof to be transferred by deed, a transfer at the time when the transferor parts with the possession and control thereof, must contain the name of the transferee and must identify the shares; and a transfer in blank, that is, a transfer, which at the time above mentioned neither contains the name of the transferee nor identifies the shares, is void, even although the name of the transferee and the number and the numbers of the shares afterwards, but not in the presence nor by the direction of the transferor, are filled in, and he then adopts and acknowledges the transfer; for the

(1) 2 De G. & J. 76.

(2) 2 Bing. N. C. 735.

(3) 11 Q. B. D. 123.

mere adoption and acknowledgment by the transferor of the transfer after it has been filled in, it not being either in his possession or under his control at the time of the adoption and acknowledgment, do not amount to a delivery of the transfer by him as his deed.

Hudson v. Revett (5 Bing. 368) distinguished.

The principle established in *Dearle v. Hall* (3 Russ. 1), as to the effect of notice in determining the priorities of equitable rights, does not extend to the shares of companies registered under the Companies Act, 1862, or to companies governed by regulations having a provision similar to s. 30 of that Act.

The Companies Act, 1862, s. 30, forbids the entry of any trust on the register of companies, and where the shares of a company either registered under that statute, or containing a regulation to the like effect with s. 30 thereof, are equitably assigned or mortgaged more than once, the priority of the assignees or mortgagees will be determined by the priority of the assignments or mortgages, and not by the priority of the notices thereof given to the company:—

So held by Brett, M.R., on the ground that a notice of an equitable assignment or mortgage, in order to be effectual, must turn the person to whom it is addressed into a trustee, and the Companies Act, 1862, s. 30, and any regulation of a company of a like nature, not only forbid the entry of any trust on the register, but also exempt the company from any liability for acting in contravention of a notice of the equitable assignment or mortgage:

By Cotton, L.J., on the ground that although the directors may be personally liable for permitting a transfer to be registered in contravention of equitable rights of which they have actual notice, nevertheless the company itself is not bound to recognise trusts, and cannot be made liable for accepting a transfer by any notice not to allow it:

By Lindley, L.J., on the ground that although the directors may be personally liable if they allow a transfer to be registered which they know to be fraudulent, nevertheless the only right of an equitable assignee or mortgagee against the company is to apply to the High Court under 5 Vict. c. 5, s. 4, and Rules of the Supreme Court, 1883, Order XLVI., for an order restraining the company from allowing a transfer to be made in contravention of his rights, and the company itself is not bound to take notice of equitable interests in shares not followed up in a reasonable time by proceedings to restrain a transfer.

Semble, by Brett, M.R., that the directors and secretary of the company will not be personally liable for disregarding a notice of a trust as to shares and for allowing them to be transferred in contravention thereof.

Martin v. Sedgwick (9 Beav. 333) dissented from.

Ex parte Littledale, In re Pearse (6 De G. M. & G. 714); *Ex parte Stewart, In re Shelley* (4 De G. J. & S. 543); *Ex parte Boulton, In re Sketchley* (1 De G. & J. 163); *Ex parte Union Bank of Manchester, In re Jackson* (Law Rep. 12 Eq. 354); and *Ex parte Agra Bank, In re Worcester* (Law Rep. 3 Ch. 555) discussed.

In order that a notice to a company may be effectual, either it must be given to the company itself through its proper officers, or it must be received by the company in the course of the transaction of its business: casual knowledge, acquired by the secretary as an individual and not whilst he is engaged in transacting the business of the company, cannot be deemed notice to the company.

In March, 1881, M. deposited with S. the certificates and a blank transfer of

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100 shares in a company as security for money advanced. In February, 1882, S. died, and the secretary of the company, who was a relative of S., attended his funeral, and during a discussion of the deceased's affairs became acquainted with the existence of the charge on the shares. In December, 1882, M. was heavily in debt to the plaintiffs, and as they pressed him for payment, he fraudulently delivered to them another blank transfer of the same shares. Some days afterwards, the transfer to the plaintiffs was in the absence of M. filled up with the name of the plaintiff C. as transferee and with the numbers of the shares. The company refused to register the transfer to the plaintiffs on the ground that the certificates were not produced, and thereupon M. offered to indemnify the company against any other claim, but shortly after the executors of S. gave notice to the company of the existence of the charge in favour of their testator. The company was registered under the Companies Act, 1862, and one of the articles of association provided that the shares should be transferred by deed, and another provided that the company should not be bound by or recognise any equitable interest. In an action by the plaintiffs against the executors of S. to obtain a declaration of their title to the 100 shares :—

Held, first, that the knowledge acquired by the secretary of the company at the funeral of S. of the existence of the charge in his favour could not be deemed notice of its existence to the company itself :—

Held, secondly, that the offer of M. to indemnify the company could not be deemed to be a delivery of the transfer as his deed, after it had been filled in with the name of C. as transferee and with the numbers of the 100 shares, and that the shares had not been legally transferred to the plaintiffs who had only an equitable mortgage :—

Held, thirdly, that the notice by the plaintiffs to the company of the charge existing in their favour was notice of a trust, and therefore was invalid, and that the charge in favour of S. being prior in point of time, his executors had the better title in equity to the shares.

ACTION to establish the title of the plaintiffs to 100 shares in the Tramways Union Company.

The action was commenced in the Chancery Division, the writ of summons being issued on the 6th of January, 1883. The plaintiffs were the Société Générale de Paris and G. Colladon, their manager, and the original defendants were the Tramways Union Company, Limited, James Montgomery Walker, Janet Walker, William Stuart Walker, and Frederick Ramsay Walker. By an order made on the 18th of January by Pearson, J., all further proceedings in the action against the Tramways Union Company, Limited, were stayed. The statement of claim alleged that 100 shares had been transferred to the plaintiffs by deed duly executed by the defendant, James Montgomery Walker, and that the transfer was immediately after the delivery thereof also duly executed by the plaintiff, Colladon. Afterwards the action

was transferred to the Queen's Bench Division, and came on for trial before Lopes, J., on the 18th and 22nd days of January, 1884, when the following facts were proved :—

The Tramways Union Company, Limited, was incorporated under the Companies Act, 1862. By the twenty-second of the articles of association it was provided that "the company shall not be bound by or recognise any equitable, contingent, future, or partial interest, in any share, or any other right in respect of a share except an absolute right thereto in the person from time to time registered as the holder thereof, and, except also as regards any parent, guardian, committee, husband, executor, or administrator, or trustee in bankruptcy, his right under these presents to become a member in respect of, or to transfer a share." By the twenty-sixth of the articles of association it was provided that "subject to the exercise by the company of the powers conferred by the 'Companies Act, 1867,' of issuing share warrants to bearer, and to any regulations of the company in that behalf, shares shall be transferable only by deed executed by the transferor and transferee, and duly entered in the register of transfers." John Edward Walker was the secretary of the Tramways Union Company and the chief clerk was named Mitchell. The Defendant James Montgomery Walker had been a director of the company. James Scott Walker, James Montgomery Walker, and Logan Russell had been in partnership as stock-brokers under the name of Walker, Russell & Co. for some years before 1879. In that year it was discovered that James Montgomery Walker had incurred considerable losses (which were ultimately ascertained to amount to upwards of 11,611*l.*), by speculations unauthorized by the firm, and on making this discovery the other partners required him, as some security to them against such losses, to deliver to them the certificates of 100 fully paid-up shares in the Tramways Union Company, together with a blank transfer executed by him. This was done in the month of September, 1879. Afterwards James Scott Walker agreed to become answerable to the firm for the losses, and thereupon the said certificates and transfer were handed over to him. These 100 shares were the qualification of James Montgomery Walker

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as a director of the Tramways Union Company. It was afterwards agreed that James Scott Walker should retire from the firm as from the 31st of December, 1880. On the 9th of March, 1881, James Montgomery Walker owed James Scott Walker 12,050*l.* 19*s.* 11*d.*, and by an agreement of that date and made between James Montgomery Walker of the first part, Logan Russell of the second part, and James Scott Walker of the third part, it was, amongst other things, agreed that James Scott Walker should lend to James Montgomery Walker alone the sum of 5000*l.* to be used as capital for working the business of the remaining members of the firm, that James Montgomery Walker should receive 300*l.* half yearly for his personal use, but that the remainder of the profits, to which he should be entitled, should be paid over to James Scott Walker, upon trust, first, to pay certain premiums and interest; secondly, to pay interest at 5*l.* per cent. per annum on a debt of 2200*l.* due to John Morris, and on the debts of 12,050*l.* 19*s.* 11*d.*, and of 5000*l.* severally due to James Scott Walker; and thirdly, to discharge these three debts. The fifth clause of the agreement was as follows: "Should the said James Montgomery Walker at any time overdraw from the moneys of the business the said half-yearly sum so agreed to be paid at his disposal for personal expenses as aforesaid, then the said James Scott Walker shall be entitled at once to withdraw such sum of 5000*l.*, and to call in and compel payment of the same by the said James Montgomery Walker." The seventh clause of the agreement was as follows: "That in the event of such overdraw-ing as aforesaid the sum of 500*l.* Tramways Union Stock, the present qualification of the said James Montgomery Walker for directorship in such company and now held by the said James Scott Walker with a blank transfer, shall be considered at the disposal of the said James Scott Walker, and he shall be at liberty to register such stock in any other name or sell the same for his own benefit and as against the said debt of 5000*l.*, and any other stocks or shares then in the hands of the said James Scott Walker as trustee under this agreement shall be transferred, sold, or otherwise dealt with by him for the purposes of the trust, and the proceeds applied in discharge of the said liabilities as if the same were moneys received in cash."

Logan Russell died in the year 1881, and James Scott Walker died on the 18th of February, 1882, having appointed by his will the defendants, Janet Walker, William Stuart Walker, and Frederick Ramsay Walker, his executors. On the day of the funeral of James Scott Walker a meeting of his relatives took place at his house, and his will was read by the solicitor of the executors together with the agreement of the 9th of March, 1881. John Edward Walker, the secretary of the Tramways Union Company, was a relative of the deceased, and was present both at the funeral and at the meeting of the relatives: he heard the agreement of the 9th of March, 1881, read, and his attention was drawn to the seventh clause as to the Tramways Union shares. The executors of James Scott Walker proved his will, but they took no step to get themselves registered as holders of the shares, as they did not wish that James Montgomery Walker should be removed from the directorship. He never paid off either to the testator or to the executors the two debts of 12,050*l.* 19*s.* 11*d.* and 5000*l.* James Montgomery Walker resigned his directorship in the summer of 1882.

In December, 1882, James Montgomery Walker owed the plaintiffs, the Société Générale de Paris, upwards of 7000*l.*, and as they were pressing him for payment, he sent to them, by way of security, a transfer of shares in the Tramways Union Company. At the time when the transfer was received by the plaintiff company, it was in blank, that is, it was simply signed by the transferor, and did not contain the name of any transferee, or the number, or the numbers of the shares. The certificates were not forwarded, they being in the possession of the executors of James Scott Walker. The plaintiff, Colladon, having objected on behalf of the plaintiff company that the certificates had not been sent, was informed by James Montgomery Walker that the certificates had been lost or mislaid, but that if application were made to the Tramways Union Company, it would be put in order. The secretary of the Tramways Union Company, John Edward Walker, was then absent, but the chief clerk of that company declined to certify the transfer. The transfer was, on behalf of the plaintiff company, filled up with the name of the plaintiff Colladon as transferee, and with the number and the numbers of the shares, and, having been stamped,

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was again taken to the office of the Tramways Union Company : but the chief clerk stated that he could not certify it without a letter of indemnity from James Montgomery Walker, and the latter accordingly, by a letter dated the 28th of December, 1882, undertook, if the transfer should be certified, to hold the company harmless and indemnified against any loss in the event of the missing certificates being forthcoming. On the indemnity being presented at the office of the Tramways Union Company, the chief clerk stated that a bankers' guarantee would be required. The plaintiffs carried on the business of bankers, and thereupon on the 30th of December, a similar guarantee, signed by James Montgomery Walker and also by the plaintiff Colladon on behalf of the plaintiff company, was tendered at the office of the Tramways Union Company and was refused. And ultimately the Tramways Union Company refused altogether to certify the transfer. In the meanwhile the plaintiff company had sold the shares, but being unable to give a valid transfer they were obliged to cancel the sale at a loss of 30%. On the 4th of January, 1883, notice was given to the Tramways Union Company by the solicitors of the defendants, the executors of James Scott Walker, that the certificates of the one hundred shares originally belonging to James Montgomery Walker had been deposited by him with the testator, and that they were then in the solicitors' possession on behalf of the executors, and the company were warned not to allow any dealings with the shares by James Montgomery Walker. No evidence was given to shew that James Montgomery Walker ever saw the transfer to the plaintiff company, or had it in his custody or under his control, after it had been filled up with the name of Colladon as the transferee, and with the number and the numbers of the shares. He became a bankrupt and absconded.

Lopes, J., having reserved his judgment, on the 9th of April, 1884, declared that the plaintiffs were entitled to the one hundred shares, and ordered the defendants, the executors of James Scott Walker, to deliver to the plaintiffs, or as they should direct, the certificates of the shares and the transfers thereof in their possession, and gave judgment for the plaintiffs for 30% damages with costs.

The defendants, the executors of James Scott Walker, appealed.

Nov. 22, 27, 28. *Rigby, Q.C. (B. B. Rogers, with him)*, for the executors of James Scott Walker. The Tramways Union Company had notice of the charge upon the shares created in favour of James Scott Walker immediately after his death, which occurred on the 18th of February, 1882. Their secretary, John Edward Walker, was his relative and was present at his funeral; and the attention of the secretary was specially drawn to the agreement creating the charge. The secretary was the officer of the Tramways Union Company to whom notice ought to be given, and notice to him was notice to the company themselves; it was immaterial that he acquired the knowledge of the charge, not as secretary, but as an individual: *Gale v. Lewis* (1). The executors of James Scott Walker, therefore, are entitled to succeed on the ground of priority in giving notice of their charge.

Further, James Montgomery Walker was heavily indebted to the plaintiffs, who were taking from him any security which they could get: as they knew that he was in pecuniary difficulties, they ought to have suspected fraud when he failed to produce the certificates of the shares: they acted with negligence, when they accepted his statement that the certificates were mislaid or lost: *Spencer v. Clarke* (2). The object of issuing certificates is that they may be used as indicia of title, and the plaintiffs cannot be allowed to pass over the title of the executors who had the certificates in their possession. The plaintiffs had merely a title which the directors of the Tramways Union Company at their discretion might or might not recognise: at any rate, the latter "were not bound to permit a transfer without the production of the certificates": per Lord Cairns, L.C., in *Shropshire Union Railways and Canal Co. v. Reg.* (3); and the circumstance of the possession by the executors of the certificates may be sufficient to exclude every other kind of title. The plaintiffs' claim must fail by reason of their own negligence.

Moreover, if it is to be assumed that the notice of the charge in favour of James Scott Walker, given on the day of his funeral to the secretary of the Tramways Union Company, is invalid, the equitable title of the executors to the shares was prior in point of

(1) 9 Q. B. 730.

(2) 9 Ch. D. 137.

(3) Law Rep. 7 H. L. 496, at p. 509.

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time, and cannot be displaced, except, perhaps, by a legal transfer thereof. Both the executors and the plaintiffs were merely equitable assignees, and the Tramways Union Company, by both the Companies Act, 1862, s. 30 (1), and by No. 22 of their articles of association, were not bound to recognise, and in fact were disabled from recognising, any trusts. The intention was that the company should not be mixed up with, or embarrassed by, any dealings as to the shares except when the legal ownership is transferred. *Martin v. Sedgwick* (2) is not in point; it appears to have been a case of mortgage of shares by way of assignment. It is true that in determining the right to shares in companies under the clauses as to reputed ownership in bankruptcy statutes, it has been held to be material to consider whether notice of a mortgage has been given before the bankruptcy of the registered owner: *Ex parte Littledale*, *In re Pearse* (3); *Ex parte Boulton*, *In re Sketchley* (4); and the same doctrine applied under the Bankruptcy Act, 1869, (32 & 33 Vict. c. 71), s. 15, sub-s. 5, notwithstanding the exception therein contained as to choses in action: *Ex parte Union Bank of Manchester*, *In re Jackson*. (5) That statute was in force when the transactions took place to which the present action relates. (6) But those cases were between mortgagees of shares and the assignees or trustees in bankruptcy; the mortgagee had of course a good title as against the mortgagor, and was the "true owner" within the clause as to reputed ownership; therefore if he, without giving any notice of his title, allowed the mortgagor to remain on the register as the apparent owner, the latter was enabled to obtain a false credit, and the policy of the bankruptcy law would have been defeated, unless it had been held that the assignees or trustees in bankruptcy were entitled to the shares which had been mortgaged. The cases as to the effect of the clauses as to reputed ownership do not apply to the present action, which depends upon the conflicting rights of two sets of mortgagees.

(1) By the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 30, "no notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in

England or Ireland."

(2) 9 Beav. 333.

(3) 6 De G. M. & G. 714.

(4) 1 De G. & J. 163.

(5) Law Rep. 12 Eq. 354.

(6) See now the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii.).

Finlay, Q.C., and *J. M. Solomon*, for the plaintiffs. It will be contended for the plaintiffs, first, that they have a better title in equity; secondly, that they are the legal transferees of the shares in question.

As to the first point, the counsel for the executors of James Scott Walker has relied upon the fact, that the charge in favour of the testator was created before the charge in favour of the plaintiffs; but priority in time is the last equity to be invoked; the maxim, "Qui prior est tempore, potior est jure," must not be applied in too wide a sense: per Kindersley, V.C., in *Rice v. Rice*. (1) The only point as to which the executors can be said to have a better equity than the plaintiffs, is the possession of the certificates; but the conduct of the executors has been such as to deprive them of any priority which otherwise they might have claimed. In *Mangles v. Dixon* (2) it was held by Lord Cottenham, L.C., that notwithstanding the rule that the assignee of a chose in action takes it subject to all equities subsisting against it in the hands of the assignor, the parties entitled to such equities may lose their right to enforce them against the assignee, by neglecting to give him timely notice of any fact to which they have been accessory, tending to mislead him as to the real interest of the assignor; and although the decree of Lord Cottenham, L.C., was reversed by the House of Lords (3), the doctrine above stated stands practically unimpeached. It applies to the present case; for the testator, and afterwards his executors, allowed James Montgomery Walker to remain the apparent owner of the shares, which had been rendered subject to a charge in their favour; and owing to their neglect the plaintiffs were induced to accept those very shares as a valid security for part of the debt due to them. If the question of notice is material, the plaintiffs are entitled to succeed; the transfer to them was filled up, and having been so filled up was taken to the office of the Tramways Union Company on the 28th of December, 1882; notice of the plaintiffs' charge was thus given to the officers of that company, who demanded an indemnity before registering the transfer. The notice of the charge in favour of the testator, James Scott

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(1) 2 Drew. 73.

(2) 1 Mac. & G. 437.

(3) 3 H. L. C. 702.

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Walker, was subsequent to the notice of the charge in favour of the plaintiffs; for the notice alleged to have been given to the Tramways Union Company through their secretary at the funeral of James Scott Walker, cannot be seriously insisted on. No doubt it was intended that the Tramways Union Company should not be bound by the mere knowledge of any trust, and that no notice should be entered on the register of the company; but there was nothing to prevent the plaintiffs, as equitable mortgagees, from perfecting their title by giving notice of their mortgage to the Tramways Union Company: *Ex parte Stewart, In re Shelley*. (1) That case was decided on the Joint Stock Companies Act, 1856 (19 & 20 Vict. c. 47), s. 19, which was substantially the same as the Companies Act, 1862, s. 30; it shews that the object of those two enactments was merely that the register of a company should not be incumbered with the notice of any trust, and that they do not relieve a company from liability, if the company acts in defiance of a notice that a trust exists which affects some of its shares. Without notice the title of an equitable mortgagee is imperfect and void as against a subsequent incumbrancer: *Ex parte Boulton, In re Sketchley* (2); and therefore the claim of the executors must be postponed to that of the plaintiffs. Provided that notice is given to the company in the course of the transaction of its business, it does not matter by whom the notice is given: *Ex parte Agra Bank, In re Worcester*. (3) It is true that the three cases last cited related to the doctrine of reputed ownership, but in principle they are not to be distinguished from the present action: the argument of the counsel for the executors really is an attempt to shew that these three decisions were wrong. And it appears to follow from the reasoning of Lord Abinger, C.B., in *Cumming v. Prescott* (4), that if shares are equitably assigned or mortgaged more than once, the priority of the assignees or mortgagees will be determined, not by the priority of the assignments or mortgages, but by the priority of the notices thereof given to the company. The case last cited did not depend upon the doctrine of reputed ownership, it was a creditors' suit for administration. The real question is, who has the better title in equity to call for

(1) 4 De G. J. & S. 543.

(3) Law Rep. 3 Ch. 555.

(2) 1 De G. & J. 163.

(4) 2 Y. & C. Ex. 488, at p. 496.

a legal transfer of the shares? and the plaintiffs have the better equity, inasmuch as the notice of their charge was prior in point of time. *Martin v. Sedgwick* (1) is perhaps overruled by the decision of the House of Lords in *Shropshire Union Railways and Canal Co. v. Reg.* (2); but the judgment of Lord Cairns, L.C., in the case last named (p. 509), shews that the executors of James Scott Walker cannot rely upon the mere possession of the certificates. It has been held that the equitable mortgagee of shares has a right to sue the company, notwithstanding a clause in the company's deed of settlement that they shall not be affected by any notice of a trust: *Binney v. Ince Hall Coal and Cannel Co.* (3) The plaintiffs were entitled to a judgment and to an order for the delivery of the certificates under Rules of the Supreme Court, 1883, Order XLVIII., as well as for damages; and the executors are liable in damages, because they were tort-feasors and incited the Tramways Union Company to refuse to recognise the plaintiffs' claim, and not to transfer the shares, which meanwhile became of less value owing to a fall in the price of the market: *Dugdale v. Lovering.* (4)

As to the second point, the plaintiffs had a valid title at law to the shares, inasmuch as they were the legal transferees thereof. It was no doubt proved that the transfer to the Société Générale was drawn up in blank, and that the name of the plaintiff, Coladon, was filled in as that of the transferee at a subsequent time; and it is not denied for the plaintiffs that a transfer by deed of shares must, in order to be effectual, be complete at the time of delivery: *Hibblewhite v. M' Morine.* (5) It is true that a document which purports to be a deed, but in truth has been written and filled up after it has been signed and sealed, is invalid: Perkins's Profitable Book, ch. 2, tit. Deeds, s. 118; but it is plain from s. 154 of the same treatise that although there cannot be two effectual deliveries of the same deed, nevertheless if a first delivery is void a second will stand good. In the present case the transfer to the plaintiffs of the shares in blank was ineffectual to pass the legal ownership; but after it was filled up, it was acknow-

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(1) 9 Beav. 333.

(3) 35 L. J. (Ch.) 363.

(2) Law Rep. 7 H. L. 496.

(4) Law Rep. 10 C. P. 196.

(5) 6 M. & W. 200.

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ledged and adopted by the transferor James Montgomery Walker, who offered an indemnity to the Tramways Union Company if they would recognise the transfer. The transfer was then perfect, and was in truth then delivered by him as his deed. The present case is not to be distinguished in principle from *Hudson v. Revett* (1); and if the decision of Lord Mansfield in *Texira v. Evans* (2) was correct, the plaintiffs could fill up the transfer at any time. The alteration of a deed, in order to carry out the real intention of the parties, does not avoid it: *Hall v. Chandless*. (3)

[BRETT, M.R. The decision in that case turned upon a different point.]

A recent case as to the effect of a transfer of shares in blank is *France v. Clark* (4); the decision in that case was not adverse to the plaintiffs; for it turned upon the rights of the assignee of an equitable mortgagee, and not upon those of the equitable mortgagee himself.

Rigby, Q.C., in reply. As to the second point urged on behalf of the plaintiffs, namely, that the shares were legally transferred to them, it is to be observed that there was no delivery of the transfer by the transferor after it had been executed by the plaintiff, Colladon; there was no evidence that the transferor saw the transfer after it had been executed by Colladon. Therefore on the 28th of December, when the transferor offered an indemnity to the Tramways Union Company, no document was in existence which could be deemed to be a deed. No doubt the original intention of the transferor and of Colladon was that the name of the ultimate purchaser should be filled in.

As to the first point urged on behalf of the plaintiffs, namely, that they have a better title in equity, it is to be observed that it is plain from the judgment of Lord Westbury, L.C., in *Ex parte Stewart, In re Shelley* (5), that the Tramways Union Company were not bound to recognise equitable assignments or mortgages, but might do so if the directors thought fit. If a trading company does not enjoy a privilege (created either by statute or by

(1) 5 Bing. 368.

(4) 26 Ch. D. 257.

(2) Cited by Wilson, J., in *Master v. Miller*, 1 Anstr. 225, at p. 228.

(5) 4 De G. J. & S. 543, at pp. 547 548.

(3) 4 Bing. 123.

articles of association) to disregard all notices of equitable assignments, they will be seriously embarrassed in their business; for they will register the transfer of shares at their peril if they have notice of a charge upon them.

Cur. adv. vult.

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Dec. 18. The following judgments were delivered:—

BRETT, M.R. My judgment in this case will be short: I am almost inclined not to deliver any judgment; still as I have formed an opinion upon the matter, I shall express it shortly, and my Brothers, who are more conversant with the subject-matter of this appeal, will give more elaborate judgments.

This action was commenced against the defendants, the Tramways Union Company, and other defendants, but now the proceedings against the Tramways Union Company are stayed. The dispute between the parties has arisen out of the conduct of a person named James Montgomery Walker, who seems to me to have acted fraudulently, and the question is who is to suffer by reason of his fraud. He had raised or borrowed money from a testator who is represented in this action by his executors, and James Montgomery Walker had mortgaged or charged certain shares. He had delivered to the testator the certificates of those shares, and he had given to him a blank transfer; but neither the testator nor the executors had completed this title to the shares by getting themselves entered upon the register of the company. It is obvious, therefore, that their title was merely equitable. James Montgomery Walker, after having mortgaged his shares to the testator, borrowed money from the plaintiffs, and afterwards fraudulently assumed to hypothecate or to pledge the same shares with them. He obviously led them to suppose that he had power to pledge with them these shares, but of course he could not produce to them the certificates of the shares because they had been already deposited with the testator, and instead of them he gave to the plaintiffs a blank transfer alleging that the certificates of the shares were lost. If nothing else had happened, I apprehend what he did would have simply amounted to an equitable mortgage of these shares to these plaintiffs, which, so far as I have stated, was not a legal title vested in them. But it

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was contended that there had been a legal assignment to the plaintiffs by reason of his having executed a deed of transfer, and it was said that having done that which was equivalent to a legal assignment, he gave them a legal title. I shall not go further into that transaction than to say, that I have come to a clear opinion that this case was not brought within the principle of *Hudson v. Revett* (1), and that what happened cannot be treated as a delivery of a deed by him, and therefore that the right of the plaintiffs, like the right of these defendants who are the executors, was equitable only.

Now I come to the question, what are the rights of the several parties, both titles being merely equitable? These shares are shares in a company which is within the provisions of the Act of 1862, and also this company had, in its articles, a clause which went as far as, and probably farther than, the enactments with regard to such a company in the Act of 1862. The question resolves itself into a question of notice. It was said that the executors had given notice to the company of their equitable right, and in support of that allegation circumstances were given in evidence with regard to the knowledge, which was brought home to the secretary of the Tramways Union Company at a funeral. Now I confess that my mind never could go with the supposition that that was to be considered as a notice to the company; it was a casual notice, brought home to the secretary not as secretary, but in quite another capacity, namely, as a relative or friend of the deceased person whose funeral he was attending, and nobody, except in the stress of argument at the bar, would argue that that could be a notice to the secretary of the company as secretary of the company, and a notice to the company. Therefore, the equitable rights of the defendants existed first in point of time, but without any notice of their existence being given to the company.

Now comes the question whether the plaintiffs, although their equity was brought into existence later than the defendants', can, within any equitable doctrine, get priority over the defendants? It was alleged that they could, because, as it was said, they had first given notice to the Tramways Union Company. It is true

(1) 5 Bing. 368.

in point of fact, that they have given a notice to the secretary or chief clerk, which, if nothing existed to mar it, would, I think, have been notice to the company. But then I wish to consider what this equitable doctrine is, and what it involves. The equitable doctrine seems to me to involve this, that the plaintiffs cannot be said to have given a valid notice to the company, unless at the same time the notice is said to have involved certain consequences and liabilities upon the company, that is, to have turned them into trustees: unless the notice has had that effect, it seems to me that the equitable doctrine cannot be said to be fulfilled. This point raises a very material matter as to the position of companies, and raises this question, What is the effect upon that equitable doctrine of the 30th section in the Act of 1862, and of such a clause in the articles of association of a company, as that which is in the articles of association of the Tramways Union Company? The Act says that such a company need not take any notice of equitable trusts, it need not be bound by them; but if this notice to the company is allowed to put them into the position of trustees, it seems to me that they are put under a liability which the Act of Parliament says they are not to be subject to. If they are to be turned into trustees, of necessity they are bound to take notice of trusts. It was suggested at one time that the only meaning of that Act of Parliament was that the company need not take notice on the register of any trusts—need not enter the trusts upon the register—so that the register would be kept simple and clear. After considering the matter I cannot accept that argument. For the moment it struck me very much; but although it was said to have been the suggestion of Lord Westbury, L.C., in *Ex parte Stewart, In re Shelley* (1), yet I do not think his suggestion went that length, and I certainly do not think that that can be the meaning of the Act of Parliament. Legislation would be practically ineffective, if the meaning of the enactment is confined to that extent. Therefore, it seems to me that that Act of Parliament meant that the company need not take notice in any way of trusts. I think it contrary to sense to say that a notice can be given to a company which will involve them in responsibility, and at the same time to say that they

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(1) 4 De G. J. & S. 543, at pp. 547, 548.

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need not, and are not bound to take any notice of trusts. The one suggestion contradicts the other. Therefore, it seems to me that a person in the position of the plaintiffs, having the equitable rights of the plaintiffs, cannot, so far as the company is concerned, give a notice to that company, which shall have the effect of giving him a priority over persons in the position of the defendants. It seems to me that that cannot be so.

There is another point of view of the matter, according to which, although the notice may not enable the plaintiffs against the company to get any rights, yet being given to the secretary or to the directors, it may put the secretary or the directors into a dangerous position, if they, or any of them, after such a notice, were to do anything to assist a transfer contrary to the equity of the plaintiffs, of which they personally had notice. Whether the personal notice to the secretary, or whether the personal notice to some or all of the directors would put any responsibility in equity upon them individually, it seems to me not necessary to decide in this case. Take the secretary, for instance; the suggestion would seem to me to put him into a difficulty into which, as at present advised, I have an inclination of opinion that no man ought to be put, namely, that if he is to incur responsibility by doing anything contrary to the notice given to him by persons in the position of the plaintiffs, he may very soon afterwards be directed and ordered by his own masters to do that which would be a breach of that responsibility; and I doubt very much, although it is not necessary to decide it, whether any personal obligation can be put upon the secretary by a notice of that kind, which is not intended to be a notice to him upon which he is to act as an individual, but which is only given to him in order that he may pass it on to the directors, or the company, of whom he is the servant. The same difficulty, to my mind, exists with regard to individual directors, whether they can be made personally responsible; because directors, although they are in a different position from the secretary, are after all mere servants of the company, and I have my doubts even about them. I only say this as to the individual responsibility of persons to whom notice is actually given, by way of guarding myself from being thought to decide that point now, or to decide it before it is

absolutely necessary for the Court to come to a conclusion upon the matter. Therefore, I myself, for the reasons which I have shortly given, am of opinion that the plaintiffs in this case have no equity superior to that of the defendants, and therefore that the defendants' prior equity ought to prevail.

With regard to the authorities which have been cited as to the order and disposition clauses of the Bankruptcy Acts, my own opinion is that they do not touch this case. I think that in the great majority of cases with regard to whether shares are within the order and disposition of the bankrupt, two parts of a proposition are to be considered; they must be in the order and disposition of the bankrupt and with the consent of the true owner. My own opinion is that in all the cases but one, in which shares have been treated of, the question arose whether they were in the order and disposition of the bankrupt with the consent of the true owner, and whether the notice having been or not having been given by the equitable owner, shewed that they were or were not in the order and disposition of the bankrupt with his consent. With regard to *Ex parte Agra Bank* (1) my own view of it is this, that the Court assumed without fully considering the point which is now before us, that by reason of notice the shares were not in the order and disposition of the bankrupt, and therefore that case does not in any way decide the present point. Whether the Court may have overlooked the considerations which have been called to our attention in this case or not, is not material to consider when that case is treated, not upon appeal from it, but merely as an authority for a legal proposition.

COTTON, L.J. This action is brought with reference to 100 shares in the Tramways Union Company. That company were originally made parties to the action, but have been dismissed, and the only parties now before us are the Société Générale de Paris and their manager, Colladon, who are the plaintiffs, and the executors of James Scott Walker, who are the defendants. Another defendant, James Montgomery Walker, does not appear before us. With that statement of the parties I will read the judgment which I have prepared.

(1) Law Rep. 3 Ch. 555.

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The plaintiffs in this case seek to establish as against the defendants, the executors of James Scott Walker, a claim to 100 shares in the Tramways Union Company, now standing in the name of James Montgomery Walker. The title of the executors is admittedly equitable only, and the first question is, What is the plaintiffs' title? Is it, as alleged by the statement of claim, legal, or is it equitable only? The articles of the Tramways Union Company require that transfers of shares in the company must be by deed. It appears that at the time when James Montgomery Walker signed and sealed the instrument on which the plaintiffs rely, neither the number or numbers of the shares, nor the name of the intended transferee was inserted, but that the name of the plaintiff Colladon, and the number and numbers of the shares were afterwards filled in, but not by, or by the direction, or in the presence of the defendant, James Montgomery Walker. He, after the blanks were thus filled in, sent to the Tramways Union Company a letter to indemnify them if they would recognise the transfer of the shares without production of the certificate, which, in fact, was then in the possession of the representatives of James Scott Walker. But it does not appear that James Montgomery Walker knew whose name had been inserted as transferee, and in my opinion there is no such evidence as would justify us in finding that there was a delivery by James Montgomery Walker of the transfer as his deed after the blanks had been filled in. Under these circumstances I am of opinion that no deed of transfer of the shares in favour of the plaintiff Colladon was executed by James Montgomery Walker, so as to enable the plaintiffs to require the company to register Colladon as holder of the shares, and that the action must be considered as one by the plaintiffs to compel James Montgomery Walker specifically to perform his contract with them by transfer of the shares, notwithstanding the claims of the defendants, the executors of James Scott Walker. These claims are founded on a contract earlier in date than that under which the plaintiffs claim, and the question is, how can the plaintiffs establish that the Court is required to disregard the priority which the dates give to the executors, unless there is sufficient to give the plaintiffs an equity against the executors, so as to prevent them from

insisting as against the plaintiffs on their prior title to the shares.

The principal point urged on behalf of the plaintiffs was this, that notice of their claim to the shares was given to the company before the board had any knowledge or notice of the claim of the executors, and that on the principle laid down in *Dearle v. Hall* (1) this gave priority to the plaintiffs.

I will first dispose of the contention urged on behalf of the defendants, that in fact notice was given of their claim before any was given of the plaintiffs' charge. What the executors relied on as notice was this: the secretary of the company whose duty it was to keep, under the control of the board, the register of transfers, was a relation of James Scott Walker, and he was present when on the day of the funeral the solicitor of the deceased read, amongst other documents relating to the deceased's estate, the agreement under which the executors claim. Where notice to the board is necessary, it is not essential that notice should be given formally, but notice to be effectual must be information given or coming to them as directors, or in a matter relating to the interests of their company. But here the information given to the secretary was given to him, not as secretary to the company, but as a relation of the deceased, and not with reference to the affairs or business of the company, but as explanatory of the state of the affairs of the deceased. I am of opinion that the defendants, the executors, have not shewn that the board or the company had notice of their claim before they received notice of that of the plaintiffs.

We must, therefore, consider the question, which is one of great importance, whether the priority of notice given by the plaintiffs is sufficient to displace the prior claim of the executors. The company was one formed under the Companies Act, 1862, and the 22nd section of that Act is as follows: "The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company:" that is as far as I need read it. Then the 30th section is this, "No notice of any trust, expressed, implied, or constructive, shall be entered on the register

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or be receivable by the registrar in the case of companies under this Act and registered in England or Ireland." These two sections have this effect, that in these companies shares can be transferred, so as to give a right as against the company, by the form required by the articles or deed of settlement, and then s. 30 does in terms provide that no notice of any trust is to be entered on the register. That, therefore, excludes any notion of a trust being binding as against the company, when the Act has pointed out in what way a transfer may be effectually made so as to compel the company to receive the transferee as a shareholder. Then, besides this, the 22nd article of association goes perhaps even a little further: "The company shall not be bound by or recognise any equitable, contingent, future, or partial interest in any share, or any other right in respect of a share, except an absolute right thereto in the person from time to time registered as the holder thereof." Now, of course, that is subject to this qualification, that if there is a transfer executed so as to be effectual under the Act, and in accordance with the regulations of the company, the transferee has a right as against the company (which as long as he has not any transfer he has not) to be recognised as a legal shareholder and to be entered upon the register. The defendants say that, having regard to the Act and articles, any notice to the board would be inoperative and of no effect, that the Act and articles justify and require the board to disregard any notice given of any contract affecting shares other than an effectual deed of transfer. This contention, I think, goes too far. The clause in the Act, and that in the articles, prevent anyone from asserting as between himself and the company, that he is entitled to the position or any of the benefits of the position of a shareholder, unless he is an allottee of shares, or a transferee under an instrument, such as is required by the constitution of the company. But neither the Act of Parliament, nor the articles, in any way lay down that the directors can neglect a notice informing them of circumstances, which render it wrong for them to accept or recognise a transfer by the registered shareholder, so as to defeat or prejudice rights of which they have been informed by the notice. This is, I think, in accordance with the view expressed by Lord Westbury in *Re Stewart*. (1) What he says is this—he

(1) 4 De G. J. & S. 543, at p. 548.

is referring to an enactment like that which I have read—"The object, therefore, of the legislature was, that all persons appearing on the register should have a clear title not incumbered by the embarrassment which must arise if the legal title were permitted to be affected by notice ; or, in other words, that the company itself should not be bound by any trust, and that no notice should have any effect as against the company." In my opinion, where the board have actual knowledge of circumstances which shew a claim, though an equitable one, to shares, it would be their duty to refuse to register a transfer by the shareholder, apparently in violation of the rights of which they have knowledge, until they have investigated the conflicting claims, or have given notice to the person whose claims are apparently inconsistent with the proposed transfer. The company are not bound to recognise trusts, and, in my opinion, cannot be made liable for accepting a transfer by any notice not to allow a transfer, or by any knowledge of the board of facts inconsistent in equity with his right to transfer. But here, as in most companies, it is part of the duty of the board to control the entries on the register. I do not say that the directors would in all cases be liable, if they registered a transfer inconsistent with an equitable claim of which they have received notice, or that they are bound to keep a register or record of such notices ; but where they are asked to register a transfer which from circumstances in fact known to them at the time would be in violation of the rights of others, in my opinion they cannot, either safely to themselves or without disregard of their duty, register the transfer, at least without allowing time for inquiry and for the assertion of the equitable rights, if any, inconsistent with the claim to register the transfer. Of course as against a legal transferee any one having an equitable title would have no right to be registered, unless the person having the legal transfer had notice of the equity at the time he took that which gave him what is equivalent to a legal right, a right to go directly against the company to be registered. The cases on the question whether shares are in the order and disposition of a bankrupt, which I shall hereafter examine, are inconsistent with the contention that notice to the board can be treated as a nullity, or as, under all circumstances, of no effect. But the question

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nevertheless remains, whether the principle as to priority established in *Dearle v. Hall* (1) is applicable to equitable assignments of shares in companies where, until an effectual instrument of assignment is executed, there can be no claim against the company, however complete in equity the contract of assignment may be as between the shareholder and his transferee. Where there is an assignment, available only in equity, of an interest in personally vested in a trustee, or of a debt due to the assignor, there notice is necessary, for until notice is given, the trustee can pay to his original cestui que trust, and the debtor may pay to his creditor. But after notice the trustee holds the fund in trust for the assignee, and the debtor cannot obtain a good discharge without the concurrence of the transferee. In equity, without any further act done by the assignor there is, as against the trustee or debtor, a change of the person entitled to be considered the cestui que trust or creditor, and disregard of the assignment will, in equity, make the trustee or debtor liable. In a case like the present the company do not recognise, and are in no way bound to recognise trusts, and there is no claim against the company, unless and until a transfer of the shares is executed. But the cases as to order and disposition are strongly relied upon by the plaintiffs and must be considered. These decisions establish that in cases where shares in companies would otherwise be in the order and disposition of a bankrupt, the knowledge of the board previously to the bankruptcy of an existing equitable claim, will prevent the shares from being within the order and disposition clause. Some of these decisions may be explained by the suggestion which has been made, that where the notice has been given by the person entitled to the equitable charge or interest, this, even though the notice were ineffectual, would establish that the shares were not left in the order and disposition of the bankrupt with the consent of the true owner. But this explanation cannot apply to the decision in the case of the *Agra Bank* (2), where no notice was given by the equitable incumbrancer, but the directors had knowledge of the transaction. These cases, therefore, establish that notice to or knowledge of the board is effectual to prevent a subsequent transfer by the shareholder, that is, take

(1) 3 Russ. 1.

(2) Law Rep. 3 Ch. 555.

them out of his disposition. But in none of these cases was there any question as to the effect of notice on the priority of equitable incumbrancers, and in all cases the equitable incumbrance was of necessity prior in date to the title of the assignee. Moreover, in these cases where in the absence of notice the title of the assignee in bankruptcy prevailed, nothing further remained to be done by the shareholder, inasmuch as where shares are in the order and disposition of a bankrupt, the Act gives the assignee in bankruptcy a right thereto. These cases, therefore, are quite satisfied by giving to a notice to the board of an equitable incumbrance on shares the effect of requiring the board not to register a subsequent transfer without inquiry whether it is in violation of rights created by the transferor. As already pointed out, there is an essential difference between the nature of shares, and of an equitable assignment thereof, and that of choses in action properly so called, and assignments thereof, and in my opinion we ought not to apply the rule, established as regards the latter, to a subject-matter of so different a nature, or to lay down that a prior equitable interest in shares is to be postponed to one later in date, merely because the person entitled to the latter has first given notice of his claim, unless we are compelled by decisions so to hold.

There is, I think, one decision only, which can be quoted by the plaintiffs as in their favour, *Martin v. Sedgwick*. (1) In that case, as reported, Lord Langdale held that the interest of a cestui que trust of shares must be postponed to the claim of a person holding a security apparently effectual only in equity, created by the trustee of the shares, of which he had given notice to the company, on the ground that the cestui qui trust had given no notice to the company. If this was in fact the decision, this Court is not bound by it, and, I think, should decline to follow it, and indeed it must be considered as having been overruled by *Pinkett v. Wright* (2), afterwards affirmed in the House of Lords. (3) But in the case of *Ex parte Boulton* (4), Turner, L.J., expressed himself in terms which strongly support the plaintiffs' contention. Any opinion expressed by Turner, L.J., is entitled to the greatest

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(1) 9 Beav. 333.

(3) 12 Cl. & F. 764.

(2) 2 Hare, 120.

(4) 1 De G. & J. 178.

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weight; but the opinion which he expressed was not necessary for the decision of the case before him, which was one under the order and disposition clauses of the Bankruptcy Act; and no decision except that of *Martin v. Sedgwick* (1) could be quoted by the plaintiffs in support of the view thus expressed by Turner, L.J. In my opinion we ought not to be induced by respect for what he said, to apply the rule established in *Dearle v. Hall* (2) to dealings with property, to which in principle that rule is in our opinion not applicable. In my opinion notice of an equitable claim to shares given to directors under circumstances like those of the present case, gives no right as against the company, and operates only as a notice to them not to allow a transfer without giving the person of whose claim they have notice a reasonable time to enforce his claim, and that it is effectual only for a reasonable period, that is, for the time during which it must be presumed that the facts remain present to the minds of the directors, and that they ought to consider the claim as a continuing one, but that it in no way affects the priority inter se of those who have claims to the shares available only in equity.

That is the most important point in the present case; but there was another point urged on behalf of the plaintiffs which must not be disregarded. It was this, they said that here the executors had intentionally abstained from giving any notice to the company of their claim, or seeking to get a transfer of the shares. That was so, but it was not done in order that James Montgomery Walker might be enabled to deal with the shares; that would have made it a very different case, that would have been an act of fraud on the part of the executors, intentionally enabling him to commit a fraud, and if they had done so of course they must have suffered for it. But it was this, they did not wish to make the fact of the charge known to his fellow directors; and if it had appeared that the plaintiffs had advanced their money in consequence of no notice having been given, it would have been a matter which would have required very serious consideration, but in fact, as far as I can see on the evidence here, the plaintiffs substantially did nothing to their prejudice in reliance on the fact that there was no notice of any claim against these shares.

(1) 9 Beav. 333.

(2) 3 Russ. 1.

James Montgomery Walker was very largely indebted to them, and when he was very largely indebted to them they took an agreement from him to transfer these shares. No doubt that would make it an agreement for valuable consideration, but they did not advance money on the faith of those shares being the unfettered property of James Montgomery Walker. In my opinion they cannot therefore on that ground, if the executors of James Scott Walker are otherwise entitled to priority, contend that they have the equity against the executors which will enable them to set aside the prior equitable title of the executors.

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LINDLEY, L.J. The first matter for consideration is the title of the plaintiffs and of the defendants. The defendants' title is equitable only; they hold a blank transfer and the share certificates, but the legal title clearly is not in them. The plaintiffs' title is also equitable only. They held a transfer in blank, and then filled it up, but notwithstanding the reference to it by the transferor in his letters of indemnity the transfer in its complete state was never seen by him, nor is there any evidence to shew that he knew how it was filled up or the state in which it was, when it is contended that he ought to be treated as having re-delivered it. Had there been such evidence, I should have been prepared to infer a delivery after the transfer had been duly filled up on the authority of the case of *Hudson v. Revett*. (1) But as the evidence stands, I think such an inference ought not to be drawn, and Lopes, J., who tried the case and heard the evidence, arrived at the same conclusion.

The plaintiffs therefore must be treated as having only an agreement to transfer, and not as the legal transferees of the shares by virtue of a deed duly executed by the transferor. The titles of both parties being equitable, the next point to determine is their priorities.

The defendants contended that they were entitled to priority, first, because their security was first in point of time and they gave notice of it to the company before the plaintiffs gave the company notice of their security; and secondly because even if the defendants did not first give notice of their security, still it was first in

(1) 5 Bing. 368.

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point of date, and they have done nothing which entitles the plaintiffs to say that they have acquired a better right than the defendants to the legal ownership of the shares.

The plaintiffs, on the other hand, contend that they are entitled to priority over the defendants, first, because the plaintiffs first gave notice of their security to the Tramways Union Company; and, secondly, because even if this is not sufficient, still, by reason of the conduct of J. S. Walker and the defendants, the plaintiffs have acquired a better right than they to the legal ownership of the shares.

It will be convenient first to consider the question, whether the Tramways Company had notice of the defendants' security before the plaintiffs gave notice of their security. The notice alleged to have been given to the company of the defendants' security was given as follows: Mr. J. E. Walker, who was secretary of the Tramways Union Company, was present at the funeral of Mr. J. S. Walker. On that occasion the agreement creating his security was read, and Mr. J. E. Walker said in his evidence that he recollected the clause in the agreement relating to the shares, because it interested him as secretary to the company; but he also stated that he did not consider the notice at the funeral an official notice. Under these circumstances Lopes, J., held that what took place at the funeral was not notice to the company of the defendants' security, and I entirely concur in his decision on this point. The secretary was in no way representing the company at the funeral; no notice was given to him as the agent of the company, nor did he acquire any knowledge of the defendants' security whilst transacting the company's business, or in any way for or on behalf of the company. It appears to me, therefore, impossible to treat the company as having acquired through him notice of the defendants' security before the plaintiffs gave notice of theirs.

I proceed now to consider whether the plaintiffs obtained priority over the defendants by first giving notice to the company of their security and requiring the company to register them. Lopes, J., decided this point in favour of the plaintiffs. The point thus raised is one of very great importance, and it is surprising to find how little authority there is upon it. It becomes necessary, there-

fore, to examine it carefully upon principle. In the first place it is necessary to bear in mind that we have to deal with a company registered under the Companies Act, 1862, and not with a company which is a mere partnership with transferable shares not governed by any statute. Shares in companies governed by the Companies Act, 1862, are declared by s. 22 to be personal estate capable of being transferred in manner provided by the regulations of the company. The interest of a shareholder is a legal, not an equitable interest, and this legal interest is capable of legal transfer. The form of transfer, for example, whether it is to be by deed or not, depends on the regulations of the company. In this particular company a deed was necessary. When a shareholder, entitled to transfer his shares, has duly executed a proper transfer to an unobjectionable transferee who has duly accepted a transfer, the transferee has a legal right to the shares transferred, and he can compel the company by legal, as distinguished from equitable, proceedings to recognise his title, and can compel the company by legal proceedings, taken in his own name, to register him as a shareholder. In this respect shares are different from debts, and by reason of this difference it has been held, and I think properly, that shares in companies governed by the Companies Act, 1862, are not choses in action within the meaning of the reputed ownership clause, s. 15, of the Bankruptcy Act, 1869: *Ex parte Union Bank of Manchester*. (1) Shares in companies are no doubt often spoken of as choses in action; but that expression, which was originally confined to debts, has unfortunately been gradually extended to all incorporeal personal property,—for example, Government annuities, copyrights, and patents. But if shares in companies registered under the Companies Act, 1862, are spoken of as choses in action, care must be taken not to overlook the fact that their transferee has a legal, and not merely an equitable, right to become a shareholder. If a shareholder in a company governed by the Companies Act, 1862, does not transfer his shares, but agrees to transfer them or to hold them upon trust for another, either absolutely or by way of security, there can be no doubt as to the validity of the agreement, nor as to the effect of it as between the parties to it. As between them the agree-

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(1) Law Rep. 12 Eq. 354.

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ment or trust can be enforced ; but as regards the company the shareholder on the register remains shareholder still. He is the person to exercise the rights of a shareholder,—for example, to vote as such, to receive dividends as such, and to transfer the shares. On the other hand, he, and he alone, is liable for calls and to be put on the list of contributories if the company is wound up. The person having the beneficial interest in the shares has, as against the company, no right to them ; he has as against the company no right to have them registered in his own name. But it is necessary to consider another matter, viz., the effect of a notice given to a company by a cestui que trust or equitable mortgagee of shares in it, and in particular it is necessary to consider whether after such a notice the company can properly decline to permit the registration of a transfer by the registered holder of the shares. It is obvious that the question is one of the utmost importance not only to equitable owners and mortgagees of shares, but also to companies ; for whilst on the one hand, if the notice is valueless, an equitable owner or mortgagee will be at the mercy of the registered owner, yet on the other, if the notice operates as a stop on the transfer of the shares, companies must be careful to preserve such notices and not to disregard them. A very onerous duty will be thrown upon companies, for they will in this case not only have to keep a register of shareholders and of transfers, but in some shape or other a register of notices of equitable interests. Now, if we turn to the Companies Act, 1862, we shall find enactments requiring companies governed by it to keep a register of members : ss. 25–37. Moreover, upon the production of a proper transfer duly executed, either a transferor or a transferee can require the company to substitute the name of the transferee for that of the transferor on the register : see Companies Act, 1862, s. 35, and Companies Act, 1867, s. 26. Provision is also made for the registration of holders of share warrants entitling the bearer to be registered as a member (that is, by the Companies Act, 1867, s. 27, and following sections). There is, however, no provision in the Companies Act, 1862, or in any of the Acts amending it, requiring the company to keep any register of, or to preserve any notice of, any change in the equitable interest in shares. On the other hand, s. 30 of the Companies Act, 1862, seems expressly

intended to exonerate them from any such duty. That section enacts that "no notice of any trust, expressed, implied, or constructive, shall be entered on the register or be receivable by the registrar." In the face of this enactment it is difficult to hold that companies are bound to pay any attention to notices of equitable interests in shares. They are to be kept off the register, but the enactment is reduced to a mere regulation as to the form of a particular book, if notices of trusts, although kept out of it, are to be preserved elsewhere by companies and are to be attended to by them. I cannot put so narrow a construction on this section. Article 22 of the Tramways Union Company is more emphatic than s. 30 of the Act. It has been read, and I therefore do not deem it necessary to read it again. In the absence of some statutory enactment entitling companies to ignore notices of equitable assignments, it is, to say the least, doubtful whether they can safely do so, even although they may attempt to entitle themselves so to do by agreement or otherwise. That question will be found discussed in *Williams v. Thorp*. (1) The section in question appears to me to remove this doubt, and to relieve companies registered under the Companies Act, 1862, from the duty of attending to mere notices of equitable interests.

It must not be forgotten that a cestui que trust or equitable mortgagee of shares who is entitled to restrain a transfer can apply to the High Court under 5 Vict. c. 5, s. 4, and Order XLVI., for an order restraining the company from allowing a transfer to be made, and this appears to me to be his only remedy where he is not himself a transferee, and as such entitled to be registered as a shareholder. I wish to guard myself against being supposed to go too far: I have no doubt that if directors allow a transferor to make a transfer which they know to be fraudulent, they could be made liable for the value of the shares transferred, they would make themselves parties to his fraud. Moreover, a refusal by directors, or an omission on their part, to pay attention to a notice given to them by a person having an equitable interest in shares, and requiring the directors not to register a transfer for such time as may be necessary to allow him time to apply for a proper restraining order, would be *primâ facie* improper. Such conduct

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on the part of directors unless explained would be strong evidence of fraud on their part. But this is quite consistent with holding companies not bound to take notice of equitable interests in shares, not followed up by proceedings to restrain a transfer. It is said, however, that in *Ex parte Stewart* (1) Lord Westbury put a different construction on an enactment similar to s. 30 of the Companies Act, 1862. In *Ex parte Stewart* (1) the directors of a company registered under the Companies Act, 1856, borrowed money for the company from its bankers. One of the directors, with the knowledge of the others, deposited the certificates of his shares with the bankers as a security for this loan; and afterwards became bankrupt. The bankers gave no notice of the deposit to the company, but all the directors knew of it; it was one of the conditions of their loan. The Joint Stock Companies Act, 1856, contained s. 19 similar to s. 30 of the Companies Act, 1862, and it was contended by the assignees of the bankrupt that the notice which the directors had of the transaction did not bind the company and was nugatory, and that the shares belonged to the assignees as being in the order and disposition of the bankrupt with the consent of the true owners. Lord Westbury held that this contention could not prevail, for that, having regard to the notice which all the directors had of the deposit of the certificates with the bankers, it could not be said that the shares were in the order and disposition of the bankrupt with their consent. I need not read Lord Westbury's judgment; it will be found at pages 547 and 548. It will be observed that Lord Westbury was careful to point out that the company was not bound to recognise the equitable title of which it might have notice; but he at the same time held, as a matter of fact rather than of law, that the notice involved in the transaction itself excluded the inference that the bankers permitted the bankrupt to continue the apparent owner of the shares. Under the circumstances of the case before Lord Westbury it would have been a gross breach of faith towards the bankers and against their own interests, if the directors had allowed the shares to be transferred to the prejudice of the bankers. Lord Westbury's decision, therefore, was perfectly correct, but it is no authority for the general proposition that a

(1) 4 De G. J. & S. 543.

company registered under the Companies Act, 1856 (or 1862) is bound to take notice of the beneficial interests in shares held by its members, or is bound to prevent a transfer by such members, simply because notice of a trust or equitable security is given to the company. I understand Lord Westbury's view to have been clearly contrary to such a proposition. *Ex parte Littledale* (1) and *Ex parte Boulton* (2) shew that if shares in dock and railway companies are equitably assigned or are left standing in the name of a bankrupt, they pass to his assignees under the order and disposition clause if no notice of the assignment is given to the company, but do not so pass if notice is given. In *Ex parte Littledale* (1) the giving of the notice was considered as essential to perfect the equitable title, and as preventing a transfer by the registered shareholder: see 6 De G. M. & G. 734. Now, as the Companies Clauses Consolidation Act contains a section exonerating the companies to which it applies from noticing trusts, (and it did certainly apply to the company in question in *Ex parte Boulton* (2), and probably also to the others,) these cases go a long way. In *Ex parte Littledale* (1), however, the attention of the Court was not called to the trust section, but in *Ex parte Boulton* (2) it was, and it is curious to observe how cautious the Court was. In *Ex parte Boulton* (2) it was contended that the company had notice of the assignment, but the Court held the contrary. There was, therefore, nothing in that case to take the shares out of the reputed ownership of the bankrupt. Knight Bruce, L.J., said: "Whether the security could have been made safe against bankruptcy without a transfer I do not say; a transfer, however, was not promised, intended, or expected on either side." Turner, L.J., went a little further, and says this, which will be found at page 178, "On the other hand it was contended on the part of the respondent that the shares could be equitably mortgaged, and that no notice to the company was required, but that if notice was required there was in this case sufficient notice. It is not necessary, I think, to give any opinion upon the question whether there can be a valid equitable mortgage of railway shares, and I do not mean therefore to give my opinion upon that point,

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(1) 6 De G. M. & G. 714.

(2) 1 De G. & J. 163.

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but assuming that such mortgages can be made, I am of opinion that all the requisites which are essential to mortgages of other choses in action must be observed, and that notice to the company was therefore necessary." I understand this observation to mean in substance: "Assume that a notice to the company would have been effectual to take the shares out of the order and disposition of the bankrupt, still, as there was no notice, they were in his order and disposition." The case of *Ex parte Agra Bank* (1) appears at first sight to offer more difficulty. The Court of Appeal there held that shares registered in the name of a bankrupt were not in his order and disposition, inasmuch as the share certificates had been deposited by him with his bankers as a security for a loan, and the directors knew it, although the bankers had given no notice to the company of their security. The Court there came to the conclusion that the directors could not properly have permitted a transfer, and it certainly looks as if the Court thought that the company was bound to recognise the equitable title of the bankers. This may have been so as regards the company then in question. The company was called the San Pedro del Monte Silver Mining Company, and it does not appear under what statute, if any, it was formed. No statutory enactment relating to the non-recognition of trusts was referred to in argument or noticed by the Court. Under these circumstances it would not be safe to take this case as deciding more than that the shares there in question were not in the order and disposition of the bankrupt, inasmuch as the directors knew that the shares were not in fact the bankrupt's property. There are many other decisions on the reputed ownership clause, and its application to shares in companies, but they go no further than those I have noticed. When carefully examined, none of the cases on the reputed ownership clause decide that it is the duty of companies registered under the Companies Act, 1862 (or governed by any other statute containing such a clause as s. 30), to attend to notices of equitable assignments of their shares. In the absence of authority to the contrary, it appears to me that as regards companies registered under the Companies Act, 1862,

(1) Law Rep. 3 Ch. 555.

there is no such duty, and that to decide otherwise would be virtually to render s. 30 of no practical value. It is the duty of such companies to attend to proper transfers but not to notices of equitable titles, or to notices not to transfer given by persons having equitable interests, unless they have obtained or are about to apply for a restraining order under the statute 5 Vict. c. 5, or an injunction. If this view be correct, it follows that there is no room for the application to shares in such companies of the doctrines laid down in *Dearle v. Hall* (1), and according to which the assignee of a trust fund or debt must, in order to protect himself, give notice to the trustee or debtor, as the case may be, of the change that has taken place in the right to receive the fund or debt. If after such notice the trustee or debtor pays the original cestui que trust, or creditor, he pays the wrong person, and is liable to pay over again. On the other hand, if no such notice is given, the trustee, or debtor, has no reason for not paying his original cestui que trust or creditor, and the assignee of the trust fund or debt has only himself to blame, if such payment is made and he loses the benefit of the assignment in his favour. It is not difficult to see how similar reasoning can be applied to shares in companies not exonerated from the duty of recognising beneficial interests in their shares; and in *Cumming v. Prescott* (2) and *Martin v. Sedgwick* (3) the priorities of equitable incumbrances on shares were considered to depend on the priorities of the notices of them given to the companies. *Martin v. Sedgwick* (3), as reported, seems to have been erroneously decided, and to be contrary to *Pinkett v. Wright* (4), affirmed in *Murray v. Pinkett*. (5) But whatever may be the case with respect to shares in companies not governed by the Companies Act, 1862, or by some similar statute, it appears to me that to extend the rule laid down in *Dearle v. Hall* (1) to shares in companies which are so governed would be to mistake the principle of that decision, and to impose on companies by judicial decision duties and responsibilities from which the legislature has relieved them. The present case cannot, therefore, be decided against the defendants simply

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(1) 3 Russ. 1.

(3) 9 Beav. 333.

(2) 2 Y. & C. Ex. 488.

(4) 2 Hare, 120.

(5) 12 Cl. & F. 764.

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on the ground that they and the plaintiffs are both equitable incumbrancers, and that the plaintiffs were the first to give notice to the company of their charge.

It remains to consider what other grounds there are to entitle the plaintiffs to priority. The defendants had the share certificates and they relied on their possession of them, but they left the shares standing in the name of J. M. Walker, and if he had become bankrupt under the Bankruptcy Act, 1869, it is plain that the shares would have passed to his trustee, as being in his order and disposition. Moreover, if he had executed a proper transfer to the plaintiffs, the plaintiffs would have acquired a legal right to have the transfer to them registered, if they gave the company a proper indemnity against the consequences of registering the transfer without the production of the certificate of the ownership of the transferor. The right to the shares passes by the transfer, and the articles of the company do not make the production to the company of the transferor's certificate a condition precedent to the registration of the transfer; and on this point one may refer to *Ex parte Boulton* (1). But by reason of the execution in blank of the transfer to the plaintiffs they had not acquired any legal right to be registered. They are driven therefore to rely on what is called some better equity than the defendants'. In other words, the plaintiffs must prove some conduct on the part of the defendants, which entitles the plaintiffs to priority over them. If the defendants had left the shares in J. M. Walker's name in order that he might deal with them, the plaintiffs would, I think, be entitled to succeed. But the defendants left the shares in J. M. Walker's name not in order that he might dispose of them, but in order that he might continue to hold them. Again, if the plaintiffs had made inquiries of the company and had ascertained that J. M. Walker was the apparent owner of the shares, and had then advanced money to him on the faith of his being the owner of the shares, the plaintiffs' case would have been stronger than it is. But the plaintiffs did not do this; they merely took a blank transfer as the best security they could get for a pre-existing debt. This does not prevent the plaintiffs from being bonâ fide purchasers for value; but as they did not even get the certificates, I

(1) 1 De G. & J. 163.

doubt whether they can be treated as bonâ fide purchasers without notice. The truth is that they trusted entirely to J. M. Walker. The plaintiffs cannot truly say that they have been misled by the conduct of the defendants. There is no proof that they were so misled, nor that they have been in any way damnified by the fact that the defendants allowed the shares to stand in the name of their mortgagor. The plaintiffs, it is true, sold the shares before they got them or the certificates of them, but the defendants cannot, in my opinion, be held responsible for the loss thereby sustained. It is well settled that as a general rule the purchaser of an equitable interest in property takes it subject to all prior subsisting equitable interests in it, and in my opinion the priorities in this case must be determined by that rule, or, in other words, by the maxim, *qui prior est tempore, potior est jure*.

For the above reasons I come to the conclusion that the plaintiffs have not established any better equity to the shares than the defendants have, and in my opinion the title of the defendants, being the earliest, must prevail. The appeal, therefore, must be allowed, and judgment be entered for the defendants with costs both here and below.

Judgment for the defendants, the executors of James Scott Walker.

Solicitors for plaintiffs: *Michael Abrahams, Son & Co.*

Solicitors for defendants, the executors of James Scott Walker: *Miller, Smith, & Bell.*

J. E. H.

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