the retirement of a partner the remaining partners should have power to buy his interest at the amount standing to his credit at the last balance. Reid sold all his interest to Stewart. Reid's name however remained on the books, and he signed all deeds relating to the business until his death, which occurred seven years after the sale. Cassels was not till then informed of the arrangement. When he found it out he claimed a right to participate in the purchase on the ground (1) that a mandate had been given to Stewart to buy Reid's interest for the partnership; (2) that under the terms of the partnership agreement the purchase could only be legally made with his consent; and (3) that Stewart had secretly acquired a benefit for himself within the scope of the partnership business. It was held that the alleged mandate was not proved. But it was argued by Sir F. Herschell (then Solicitor-General) and the Lord Advocate that, putting aside the alleged mandate, "the agreement was entered into under such circumstances as entitled the appellant to participate in it," "the acquisition of the shares of outgoing partners . . . was one of the objects of the company." "Apart from the express terms of the contract, the secret agreement by which the respondent acquired for himself alone a benefit falling within the scope of the partnership business was a breach of the good faith of the partnership, and when such a benefit was acquired each partner had a right to demand that it should be communicated to each of them equally"—"on general principles it was inequitable, having regard to the fiduciary relations due to each other, that such an agreement should be made behind the back of another partner." Without calling on the respondent, the House, consisting of Lord Selborne, L.C., and Lords Penzance, Blackburn, and Watson, dismissed the appeal. It seems to their Lordships that the decision of the Supreme Court of the Transvaal in the present case cannot stand with the decision in *Cassels* v. *Stewart*. There was at least as close a connection between the partnership and the partner's purchase in that case as there is in this. In their Lordships' opinion the order under appeal cannot be supported on authority or on any recognised doctrine of equity. Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed, the order of Smith, J., restored, and the appeal from that order dismissed with costs. The respondent will pay the costs of the appeal.

Appeal allowed.

Counsel for the Appellants—Upjohn, K.C. —Gore-Brown, K.C.—Schwann. Agents—Loughborough, Gedge, Nisbet, & Drew, Solicitors.

Counsel for the Respondent — Neville, K.C. — A. J. Parker. Agents — Telfer, Leviansky & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, July 17.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

SAMUEL AND ANOTHER *v.* NEWBOLD.

(On Appeal from the Court of Appeal in England.)

Money Lenders Act 1900 (63 *and* 64 *Vict. c.* 51)—*Harsh and Unconscionable Transaction—Proof—Excessive Interest—Onus—Section* 1.

"Excessive interest of itself is sufficient to render a contract harsh and unconscionable. Proof of excessive interest may of itself, therefore, be sufficient to entitle the debtor to relief. What amounts to excessive interest is to be determined by the tribunal in each case, the question of risk being a material matter for consideration. When excessive interest is apparently established, any facts that tend to show that such excess does not render the contract 'harsh and unconscionable' should be proved in evidence by the lender. The burden is on him."

Appeal from the judgment of the Court of Appeal (Vaughan Williams, Romer, and Cozens-Hardy), who had affirmed a decision of Kekewich, J.

The facts are fully set out in the judgment of the Lord Chancellor *infra*.

Lord Chancellor (Loreburn)—In my opinion the judgment of the Court of Appeal ought to be affirmed. The plaintiffs, Braham Samuel and Philip Samuel, trading as moneylenders under the name of P. Saunders, brought an action against James William Newbold, as the executor of one Alton, deceased, upon a promissory-note for £3300, made by the said Alton on the 3rd October 1903, in their favour. The defence in substance was raised under the Moneylenders Act 1900. Both Kekewich, J., and the Court of Appeal held that the Act did apply, and that the plaintiffs were not entitled to more than the sum of £2000, the money actually advanced, with 10 per cent. interest. This case is undoubtedly of importance, because the construction of the Act in question, which I understand has given rise to differences of opinion, comes up directly for the consideration of your Lordships. The facts of the case are in substance as follows—Alton was in the year 1903 a wealthy man. When he died in the following year his net estate was over £40,000. There appears to be no doubt that owing to intemperate habits, or, it may be, other disease, he was a person liable to be imposed upon, and singularly improvident in affairs of business. I will assume, however, that the plaintiffs were not aware of this. In the summer of 1903 one Sagar introduced Alton to the plaintiffs, and Alton borrowed from them on a pro-

missory-note the sum of £1000, on terms of repaying them the £1000 and £400 more for interest by five monthly instalments of £250, and the balance of £150 on the 6th January 1904, with a provision that in the event of default being made in the payment of any instalment the whole amount then remaining unpaid should become payable forthwith. It is unnecessary to say more than that the rate of interest under the circumstances was exorbitant, and the transaction inexplicable in the case of a wealthy man except upon the supposition that he was unfit to manage business. That first transaction, however, was ultimately settled, and for the moment I say no more of it. In September of the same year the same intermediary Sagar was instrumental in procuring a fresh application by Alton to the plaintiffs for a fresh loan. This time the proposal was that Alton should borrow £2000, upon the footing of repaying it, together with £1300 for interest, by twelve monthly payments of £275 each, and in the event of default in any one payment or part thereof the whole amount remaining unpaid to become immediately due and payable. This transaction was completed by Mr Alton giving to the plaintiffs a promissory-note for £3300 on those terms, dated the 3rd October 1903. It was, like the preceding transaction, inexplicable except on the footing that Alton was unfit to manage business. The rate of interest was, we were told, 104 per cent. per annum, if the instalments were punctually paid. In fact, owing to Alton's death, which occurred in November of 1903, default was made in one of the instalments, and according to the terms of the loan, the whole sum of £3300 became payable. Had it been paid the plaintiffs would have received interest at the rate of 418 per cent. per annum, or thereabouts. There are two further circumstances in this case which require notice. One is that in September 1903 the plaintiffs obtained a confidential report from an inquiry agency in regard to the financial position of Alton before advancing the £2000. This report stated that Alton was regarded as a man of responsibility, and was understood to be a large shareholder and director in the firm of Alton & Company, Limited, brewers; that he was reputed to be well to do, but at times inclined to be slow with his payments. He was, however, the owner of property and was considered a desirable man to deal with in the ordinary way of business. And the report added, "It is not thought that any unreasonable risk would be incurred in granting credit to the extent named." The other circumstance is that Sagar had been for years known to the plaintiffs and did business with them on the terms of receiving commission from them. He received commisson from the plaintiffs on the July transaction. He also received commission from the plaintiffs in regard to the October transaction, and he was a co-adventurer with the plaintiffs in lending the money to Alton to the extent of £500. Sagar also received from Alton a commission for procuring him this loan of £2000 in October. If it were necessary for the decision of this case, there is ample evidence that the plaintiffs were perfectly aware that Sagar was receiving a commission from Alton. And there is strong ground for believing that, notwithstanding Mr Samuel's denial, Sagar was a copartner with the plaintiffs from the commencement in the transaction of the 3rd October 1903. Apart from any question raised under the Moneylenders Act, your Lordships might well conclude that the plaintiffs were guilty of fraud which disentitles them to the benefit of their contract with Alton. But this case has been decided on the Moneylenders Act, and argued on that basis before this House. Upon that basis also I consider the plaintiffs' appeal fails. Under the Moneylenders Act 1900, sec. 1, sub-sec. 1, a court may reopen a transaction and take an account between the moneylender and the person sued upon two conditions. The first condition is that the interest charged in respect of the sum actually lent is excessive, or that the amount charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, is excessive. There cannot be any doubt that the interest charged in this case is, under the circumstances, excessive. The second condition is that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief. A serious question has been raised in this case as to the meaning and effect of these words. It has been contended that the Court cannot look at the simple point whether the transaction is "harsh and unconscionable," but that the language immediately following qualifies the meaning of the words which I have quoted. It is said that it is not enough if the transaction be harsh and unconscionable unless it be so in the sense in which courts of equity are said to have applied that language in granting relief to expectant heirs and others in a like situation. According to this argument the Act says no more than that persons borrowing from moneylenders shall have the same protection as expectant heirs formerly had, provided that the interest or charges are excessive. In my opinion this contention cannot be maintained, nor ought a court of law to be alert in placing a restricted construction upon the language of a remedial Act. The section means exactly what it says, namely, that if there is evidence which satisfies the Court that the transaction is harsh and unconscionable, using those words in a plain and not in any way technical sense, the Court may reopen it, provided of course that the case meets the other condition required. A transaction may fall within this description in many ways. It may be so because of the borrower's extreme necessity and helplessness, or because of the relation in which he stands to the lender, or because of his situation in other ways. These are only illustrations, and, as in the case of fraud, it is neither practicable nor expedient to attempt any exhaustive definition. What the Court has to do in such circumstances is, if satisfied that the

interest or charges are excessive, to see whether in truth and fact and according to its sense of justice the transaction was harsh and unconscionable. We are asked to say that an excessive rate of interest could not be of itself evidence that it was so. I do not accept that view. Excess of interest or charges may of itself be such evidence, and particularly if it be unexplained. If no justification be established the presumption hardens into a certainty. It seems to me that the policy of this Act was to enable the Court to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits and to look behind a class of contracts which lend themselves peculiarly to an abuse of power. I agree also with the Court of Appeal that the order is to be without prejudice to the right of the defendant as executor of Alton (deceased) to bring any action in respect of the transaction of July 1903.

LORD MACNAGHTEN—I agree. I think this a very idle appeal. I do not think that there is any difficulty either as regards the facts or as regards the law. It seems to me that the construction of the Moneylenders Act 1900 is plain enough, and that the evidence before your Lordships is more than sufficient to show that this case is within the mischief which the Act was designed to remedy. Before considering the precise terms of the Act I would venture to make one or two observations. The first thing I think which must strike anyone on reading the Act is that the jurisdiction created or conferred by it is not committed exclusively to the division of the High Court already conversant with somewhat analogous questions. Any branch of the High Court—any County Court—any Court in the kingdom to which the moneylender may resort for the purpose of enforcing his extreme rights, is armed with power to protect the moneylender's victim. The next observation that I would make is that although the Court of Chancery from the earliest times was familiar with questions more or less analogous it never assumed to deal with them on the principle on which this Act grants relief. In certain cases which, in modern times at any rate, have been confined to dealings with expectant heirs, including the whole class of persons for convenience sake comprehended under that designation, the Court of Chancery gave relief on terms. On the plaintiff submitting to do equity by repaying what was justly due the Court set aside the transaction which it considered unrighteous, and ordered that the securities impeached should stand as a security for the money actually advanced with interest. But the Court never remodelled the bargain. "The Chancery," as a distinguished judge said many years ago, "mends no man's bargains." So the Act involves a new departure in principle and the working of the machinery is intrusted—I will not say to more vulgar hands—but at least to a less select body; and yet it is argued that there is an atmosphere of Chancery about the Act. The question which it is said that this appeal was brought to determine is whether the view of Ridley, J., in *Wilton* v. *Osborne*, 84 L. T. Rep. 694; (1901) 2 K.B. 110, or the view of the Court of Appeal in *Re A Debtor*, 88 L. T. Rep. 401; (1903) 1 K.B. 705, was right. Ridley, J., with whom Channell, J., seems to have agreed, thought that the relief which the Act extends to a borrower must be limited to those cases in which before the Act the Court of Chancery would have given relief, and that the only standard to be applied under section 1 is that adopted by the courts of equity before the Acts. Speaking for myself, I must say that, while listening with great interest to the exhaustive exposition addressed to the House by the learned counsel for the appellants, I could not help thinking what a mockery it would be if that were all that the Act has done. What an intolerable strain would be thrown upon inferior courts unfamiliar with the doctrines and the practices of courts of equity if they were condemned or privileged to listen to lengthy arguments and venerable precedents before deciding a question which any man of common sense is just as capable of deciding as the most learned judge in the land, if he is not hampered by authorities which require no little training to discriminate and appreciate at their true value. But does the Act require anything of the sort? It says that if "there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive," and that "the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief, the court may re-open the transaction and . . . relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of principal and interest as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable." It seems to me that there are two cases contemplated by the Act. One where the interest is excessive and the transaction harsh and unconscionable; the other where the interest is excessive and the transaction is such that without the necessity of proving the transaction to be harsh and unconscionable—without going into that question at all—a court of equity would give relief. It seems to me that those two cases are meant to be distinct. I think that this is the grammatical construction of the language used. I think that it is shown by the introduction of the word "is" in the second limb of the sentence, and I think that the circumstance that the second alternative is excluded in the application of the Act to Scotland points in the same direction. It would be, of course, inapplicable to the Scottish system of jurisprudence. But in the application of the Act to Scotland nothing is introduced in its place, and the case under the first limb of the sentence is complete without anything more. The court then must be satisfied that the interest is excessive, and as an alternative that the transaction is harsh and unconscionable. I do not for a moment doubt that the interest

may be so excessive or exorbitant as of itself to show that the transaction is harsh and unconscionable, but I do not think that the court has to take two steps and make two inquiries. I think that there is but one step and but one inquiry. In dealing with the first alternative the court must be satisfied that the transaction is harsh and unconscionable, that is, as I think the latter part of the section shows, unreasonable and not in accordance with the ordinary rules of fair dealing. The rate of interest may be so monstrous as to show that by itself. There may be, as Lord Hardwicke said in one case, "an inequality so strong, gross, and manifest that it must be impossible to state it to a man of common sense without producing an exclamation at the inequality of it" (*Gwynne* v. *Heaton*, 1 Br. C. C. 1). That, I think, is the case here. But I think that the present case also falls under the second alternative. Undoubtedly there were surreptitious dealings between the moneylender and Sagar, quite enough of themselves to avoid the transaction according to the principles of a court of equity. The moneylender admits that he paid the borrower's agent a commission for introducing the business to him; that is in plain words for leading or luring the victim into his toils. One word as to the facts. On the 3rd October 1903, at the invitation of Mr Sagar, whom he had "known for years," and to whom he was about to pay a handsome commission for his intervention, besides giving him a share in the profits of the enterprise, he goes to Mr Sagar's office, and there he finds Mr Alton sitting, and, as he admits, not without traces of past intemperance on his countenance. He knew that Mr Alton was perfectly solvent, and that there was not the slightest risk in the transaction. He gives Mr Alton a cheque for £2000 and takes a bill for £3300. Mr Alton, he tells us, said, "All right," and signed the bill. The moneylender says, "That is all that passed, and I gave him the cheque and wished him good morning." It is no wonder that Mr Sager was not called to explain the transaction. But the transaction is absolutely inexplicable if Mr Alton is to be credited with any sense or any vestige of business capacity. Even assuming that Mr Alton was in some distress, it must be remembered, as Sir William Grant, M.R., said, "It is not every bargain which distress may induce one man to offer that another is at liberty to accept" (*Bowes* v. *Heaps*, 3 V. & B. 117). I agree that the appeal must be dismissed with costs.

Lord James of Hereford—I feel that, apart from the decision upon the particular case before your Lordships, it is very desirable that a judgment upon the construction of the Moneylenders Act should be clearly and distinctly expressed. I am glad that the Court of Appeal has declared that the construction put upon the Act by the judges of the King's Bench Division was incorrect. The views expressed by those judges went far to render the Act nugatory, and it is important that all doubt upon the subject should be removed. Now, the objects of the Act can easily be traced from its contents. The ends sought to be remedied by it were generally recognised. A class of men well known under the term "moneylenders" were, under different names and disguises, carrying on the business of lending money. No usury laws remained to restrain them, and so in many instances they lent money at as high a rate of interest as could be wrung from the necessities of the borrower. Terms were imposed which caused default, however technical, to add to the burden to be borne by the debtor. No sufficient legal remedy existed. The old Chancery jurisdiction was too narrow to meet the case. It was not with remaindermen and reversioners that the modern moneylender dealt. The needy, helpless, perhaps unwary, borrower was of a different class from those who had in former days applied to the Court of Chancery for relief. It was principally in the County Courts that the moneylender sought to enforce his contract, and those Courts had no power to grant direct relief against oppressive contracts. True it was that humane judges would sometimes mark their sense of the unsatisfactory state of the law by minimising the payments to be made to such an extent that many judgments given in accordance with the existing law became nugatory in their effect. To remedy such evils by affording sufficient legal protection against them the Legislature was moved to action. It certainly did not intend to leave the old law as it was. The intention certainly was to give the debtor greater legal protection against the moneylender than then existed. This appears from the statute itself. The title and the provisions of the Act all show that the Act is an amending Act, and that Vaughan Williams, L.J., was correct when he spoke of it as an "amplifying" Act. The basis of the jurisdiction of the Court when granting relief is "that the interest charged in respect of the sum actually lent is excessive' . . . then also the transaction must be harsh and unconscionable or otherwise such that a Court of equity would grant relief. On these grounds the transaction may be re-opened, and the relief given by the statute is important to be noted—"The Court may relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, charges, and interest as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable." Now, two learned judges—Ridley and Channell, JJ.—held that a contract to pay interest, however high and excessive, could not be reopened unless it was for other reasons "harsh and unconscionable" within the old practice of Courts of equity, which apart from fraud granted relief only when contracts affecting estates in remainder had been made. Such too was the argument at your Lordships' Bar. But the learned counsel for the appellants had to admit, as I understood him, that his argument went beyond the express words of

the section, and he recognised that in order to support his reading some words had to be inserted and some struck out. This argument and the judgments to which I have referred appear to me to be erroneous. But I am relieved from a further minute dissection of the terms of the section because I desire to adopt to the fullest extent the judgment delivered by the Court of Appeal in the case of *re A Debtor* (*ubi sup.*). That judgment distinctly overruled the view expressed by Ridley, J., in the case of *Wilton* v. *Osborne* (*ubi sup.*), to the effect that the only standard of relief to be applied under section 1 of the Act was that which was adopted by the courts of equity before the passing of the Act. But the Court of Appeal expressly dissented from such a limited construction of the effect of the Act. Collins, M.R., said—"Ridley, J., has held that the words of section 1 must be taken to have limited the relief to be given to a borrower to that relief which a court of equity would have given before the Act. I cannot agree with that construction. In my opinion the relief which may be given under the Act cannot thus be limited. I think that the words 'harsh and unconscionable' are distinct from, and independent of, the words which follow. Relief may be given if the bargain is harsh and unconscionable by reason of excessive interest or other excessive charges." In the same case Romer, L.J., said—"In my judgment the words 'harsh and unconscionable' stand by themselves. I should be sorry to lay down any rule which would fetter the discretion of the court of equity. . . . I should be sorry to say that the rate of interest charged and the other charges might not be so excessive as to render the transaction harsh and unconscionable." As the Court of Appeal has in the present case acted on and accepted this view, the weight of authority is overwhelmingly in favour of construing the Act without introducing into it arbitrary limitations, and this construction, I submit to your Lordships, is correct. The result at which I have arrived may therefore be summarised as follows:—Excessive interest of itself is sufficient to render a contract harsh and unconscionable. Proof of excessive interest may of itself, therefore, be sufficient to entitle the debtor to relief. What amounts to excessive interest is to be determined by the tribunal in each case, the question of risk being a material matter for consideration. When excessive interest is apparently established any facts that tend to show that such excess does not render the contract "harsh and unconscionable" should be proved in evidence by the lender. This burden is on him. Such appearing to me to be the construction that should be put upon the Moneylenders Act, and applying it so construed to the facts of the present case, I entertain no doubt of the correctness of the judgments delivered by Kekewich, J., and by the Court of Appeal. [*His Lordship went through the facts of the case, and continued as follows*]—The Court of Appeal have held that there was no appreciable risk in the lending of this money, and that the appellants were fully aware of the absence of risk. It seems scarcely possible to contest this finding upon the evidence before the Court. But if the appellants desired that different conclusions should be arrived at it was for them to give evidence that would account for the excessive interest charged. Nothing was done in this direction. The Court of Appeal further held that the rate of interest was excessive having regard to the risk or absence of risk, and that the terms, having regard to what the moneylenders knew of Alton, were harsh and unconscionable. With this finding I entirely concur. The word "excessive" applied to interest is, of course, a relative and elastic term, impossible of absolute definition. But we know the general rate of interest in commercial transactions and in loans in perfect security. We know the rate of interest which juries are in the habit of giving in cases of awarding damages. But in respect of ordinary loans deviation from these guides, dependent upon the facts of each case, must doubtless be expected, and ought to be allowed. But such a deviation must be reasonable in relation to the facts. In the present instance the minimum return of 100 per cent. is, in relation to the risk run, clearly excessive. Kekewich, J., and the Court of Appeal have so held, and in their judgment I concur. Only one step remains. This unexplained excessive interest of itself makes the contract harsh and unconscionable, and the case thereby is, in my judgment, clearly brought within the provisions of the Act. I submit that the appeal must be dismissed.

LORD ROBERTSON concurred.

LORD ATKINSON—I concur. The Moneylenders Act of 1900 in my opinion confers upon the courts of this country a new jurisdiction, and gives to borrowers a form of relief different in kind and range from that theretofore granted by any class of tribunal in this country. The relief given is not that heretofore administered by courts of equity, but differs from it in character, nature, and extent. The relief being thus different, it appeared *prima facie* to be an unsound mode of construction of the statute which would confine the grounds for giving that enlarged relief to those heretofore recognised as sufficient in courts of equity, and, in addition, merely alter the law to the extent of widening the limited class who had hitherto been able to seek relief in Chancery, so as to make it include all borrowers. I concur with the Court of Appeal that the words "harsh and unconscionable" are not qualified by those words which immediately follow—namely, "such that a court of equity would give relief." The statute, I think, did more than extend and widen the character and nature of the relief which might hitherto have been granted, or increase the number of possible applicants for equitable relief. It also extended the grounds on which this enlarged relief might be given. I am quite unable to accede to the argument pressed

upon your Lordships that interest may not be so excessive as to amount to *prima facie* evidence that advantage was taken, or a market was made of the borrower's necessity or weakness, or that an unconscionable use has been made of the power over him which the lender was in a position to exercise, so as to entitle the borrower to relief under the statute, or that the transaction was not reasonably consistent with any course of fair dealing, and therefore the borrower is entitled to relief. It will, of course, be always competent for the lender to show that, despite the excessive rate of interest, the transaction was in fact fair and reasonable, but to permit a lender to succeed in retaining the benefit of a bargain securing to him gains apparently so inordinate as those which the lender attempted to secure in this case, without giving satisfactory proof of the character which I have mentioned, would, in my opinion, altogether defeat the object of this remedial legislation. In the present case the transaction seems to me on the evidence altogether inexplicable on any system of fair dealing. The borrower was solvent, and known to be solvent. The risk was trifling, the rate of interest extravagant, the clause of forfeiture quite unnecessary for the protection of the lender's interest, and exorbitant in its character. The associate of and co-operator with the lenders, who negotiated the business, practically made the contract, received commission from both sides, and shared the spoils, was, though present in Court, not examined. Nor was any evidence given to show how the borrower, assuming that he was sane, ever came to submit to terms so onerous as those imposed upon him. In my view, therefore, the transaction *prima facie* came within the terms of the statute and the mischief that it was designed to remedy, and I agree that the appeal should be dismissed with costs.

Appeal dismissed.

Counsel for Appellants—Upjohn, K.C.—Hohler. Agent—B. Barnett, Solicitor.

Counsel for Respondents—P. Ogden Lawrance, K.C.—M. Macnaghten. Agents—Fowler & Company, Solicitors.

HOUSE OF LORDS.

Thursday, July 19.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Davey, James of Hereford, Robertson, and Atkinson.)

RUBEN AND LADENBERG *v.* GREAT FINGALL CONSOLIDATED COMPANY.

Company — Share Certificate Fraudently Issued by Secretary — Responsibility of Company—Principal and Agent.

The appellants in good faith advanced a sum of money to the secretary of a company for his private purposes on the security of a share certificate of the company. The certificate was in point of form correct, bearing the seal of the company, and appearing to be signed by two of the directors and countersigned by the secretary. The seal of the company was however affixed to it fraudulently by the secretary and without authority, and the signatures of the two directors were forged by him.

Held that the company were not estopped from pleading the invalidity of the certificate, and were not responsible to the appellants for the loss they had sustained through the fraud of the secretary.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., STIRLING, and MATHEW, L.JJ.), who had reversed a judgment of KENNEDY, J.

The facts of the case appear sufficiently from the considered judgment of their Lordships *infra.*

LORD CHANCELLOR (LOREBURN)—In this case Kennedy, J., gave judgment in favour of the plaintiffs, but stated that his decision was governed entirely by the authority of a previous case, and that his own opinion was in favour of the defendants. The Court of Appeal gave judgment in favour of the defendants, and in my opinion they arrived at a right conclusion. The question is raised by the fraud and forgery of a man named Rowe. Rowe was secretary of the defendant company. He applied to the plaintiffs, who are stockbrokers, to procure for him a loan of £20,000 in order to enable him to purchase 5000 shares in the defendant company. Accordingly, the plaintiffs arranged with a firm of bankers to advance the money upon a transfer of the shares to their names. Rowe forged a transfer in the name of one Storey as transferor. The transfer was duly executed by the bankers as transferees. And then the plaintiffs delivered it to Rowe in exchange for a certificate. The certificate purported to state that the bankers were the registered proprietors of 5000 shares; it purported to be signed by two directors, the seal was affixed to it, and it was countersigned by Rowe himself as secretary. In fact, the names of the two directors were forged by Rowe, and the company's seal was affixed by Rowe fraudulently, and not for or on behalf of or for the benefit of the defendant company, but solely for himself and for his own private purposes and advantage. Upon this the bankers advanced £20,000. When the fraud was discovered the plaintiffs were obliged to repay to the bank the sum of £20,000, and brought this action against the defendant company upon the ground that they were liable for the fraud of Rowe. The only other circumstance needing notice is that Rowe was admittedly a proper person to deliver certificates on behalf of the company. I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. The forged certificate is a pure nullity. It is quite true that persons dealing with limited liability companies are not bound to inquire into their