[HIGH COURT OF AUSTRALIA.]

SVENSON . . . . . APPELLANT;
DEFENDANT,

AND

PAYNE AND ANOTHER . . . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Dec.* 3-5, 19.

Latham C.J., Rich and Williams JJ.

Estoppel—Hotel—Lease by life tenant-trustee under will—Term in excess of trustee's power granted by will—Death of trustee—Claim by remainderman that lease be declared void—Repairs and renovations to hotel—Expenditure of large sums by lessee—Knowledge, at material times, of remainderman of details of lease, expenditure and her rights—Acquiescence—Appropriate remedy.

A life tenant, who was also the trustee under the will, granted a lease of certain hotel property to the licensee who, on the faith of the lease, agreed to, and did, expend a considerable sum of money upon improving the property in accordance with statutory requirements. The licensee did not search against the title of the life tenant. The term of the lease exceeded the period authorized by the will but the remainderman, the daughter of the life tenant, although aware of the negotiations, was in no sense a party thereto and was not regarded by either the life tenant or the licensee as interested in the matter. After the lease had been executed and before any money had been expended, the remainderman became aware of the life tenant's limited powers of leasing, but refrained during his lifetime from taking any action in the matter, being of the belief that the life tenant, her father, was entitled to exercise complete control during his lifetime and that there was nothing which she could do. After the death of the life tenant, the remainderman applied for equitable relief.

Held that, in the circumstances, the remainderman was not estopped by her conduct and that the lease was void and should be cancelled without compensation to the licensee.

Ramsden v. *Dyson*, (1865) L.R. 1 H.L. 128, and *Willmott* v. *Barber*, (1880) 15 Ch. D. 96, considered.

Decision of the Supreme Court of New South Wales (*Roper* J.), affirmed.

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APPEAL from the Supreme Court of New South Wales.

A suit by way of statement of claim was brought in the equitable jurisdiction of the Supreme Court of New South Wales by Alice Maud Payne and Gwendoline Sarah Frances Elizabeth Furnell as executrices and trustees of the will of John Payne deceased, and by the second-mentioned plaintiff in her personal capacity against Ivan Waldemar Svenson, Tooth & Co. Ltd. and Commonwealth Savings Bank of Australia for, *inter alia*, a declaration that a certain indenture of lease bearing date 25th June 1934 was void and of no effect and that the court order that it be delivered up for cancellation to the plaintiffs.

The following statement of the facts is substantially as it appears in the judgment of *Roper* J., before whom the suit was heard.

John Payne died on 28th May 1919, leaving a will of which probate was, on 3rd October 1919, granted to one of his sons, John Sutton Payne, the sole executor and trustee named in the will. At the time of his death, John Payne was the tenant in fee simple, subject to a mortgage to the defendant Commonwealth Savings Bank of Australia, of land on which the Court House Hotel, Wellington, was erected. The said land is under the old system of title and the legal estate therein has at all material times been vested in the defendant Commonwealth Savings Bank of Australia. Under the provisions of his will, and of an order subsequently made under the *Testator's Family Maintenance and Guardianship of Infants Act* 1916-1938 (N.S.W.), this property was, with other property, charged with the payment of the sum of £3 per week to the testator's widow; but, subject to this, it was devised to John Sutton Payne for his life and after his death, in the events which have happened, to his daughter, the plaintiff Gwendoline Sarah Frances Elizabeth Furnell, absolutely. The trustee was, under the provisions of the will, empowered to grant leases for terms not exceeding seven years.

By a deed dated 16th October 1933, and made between John Sutton Payne and each of the defendants in the suit, John Sutton Payne purported to lease the hotel property to the defendant Svenson for a term of ten years commencing on 1st February 1934. The deed provided for the payment of a bonus of £1,900, as to which it was recited that £400 had already been spent by the lessee in improvements on the property, and £1,500 was to be paid on the execution of the deed, and for the payment by the lessee of a rent of £7 per week and of rates and taxes.

By a deed dated 25th June 1934, and made between the same parties as executed the deed of 16th October 1933, John Sutton Payne purported to lease the same property to Svenson for a further term

of fifteen years commencing on the expiry of the previous lease. Under the terms of the new lease, the lessee was bound to carry out certain work on the premises which had been agreed upon between the parties, and the rent was fixed at £8 per week, the lessee to pay rates and taxes.

John Sutton Payne died on 15th February 1943. By statement of claim, the plaintiffs as executrices, and the plaintiff Mrs. Furnell also in her own right as the beneficiary under the will of John Payne, sought to have it declared that the second lease referred to above was void.

In answer to this claim, Svenson relied on concurrence and acquiescence on the part of the plaintiffs and on an estoppel against them based on allegations which were set forth in the statement of defence as follows:—"The plaintiffs are estopped from saying that the indenture bearing date" 25th June 1934 "is absolutely void and of no effect and that the same constitutes a blot upon their title to the said premises because prior to the execution of the said indenture the said John Sutton Payne was required pursuant to s. 40A of the *Liquor Act* of New South Wales to carry out certain work and alterations on the said premises involving the expenditure of large sums of money and in consideration of the said John Sutton Payne granting to me a lease of the said premises upon the terms and conditions in the said indenture set forth I agreed with the said John Sutton Payne to carry out the said works and alterations and to expend thereon large sums of money and upon the execution of the said indenture I carried out the works and alterations required to be carried out by the said order and expended thereon large sums of money and I say that prior to my so doing the plaintiffs and each of them had knowledge of the facts herein set forth and by their silence permitted and induced me to enter into the said lease and to carry out the said works and alterations and expend thereon the said large sums of money."

No inquiry as to John Sutton Payne's power to grant either of the leases nor any investigation of the title was made before either of the leases was taken, although Svenson knew before the negotiations commenced in connection with the first lease that John Sutton Payne was a trustee of the estate vested in him. After the execution of the deed of 25th June 1934, Svenson spent a sum of over £2,500 in altering and improving the hotel buildings. Most of the work which involved this expenditure was effected between October 1934 and March 1935, and the balance of it at a later date.

Mrs. Furnell, whom *Roper* J. accepted as "a truthful and reliable witness," was not consulted before either of the leases was granted as to whether she concurred in them. It was not until some time

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after 25th June 1934 that she was aware that she had a present interest in remainder in the hotel or that her father's powers of leasing or otherwise dealing with the property were limited, or that her consent to any of the transactions was in any way material. She was present in the house of her father when an interview took place between her father and Svenson and the business leading to the execution of the second lease was discussed; but she took no part in the discussion and the business was not discussed in her presence. Her husband, who at that time was a student at law and who later was admitted to the Bar of New South Wales, was present on one occasion in the office of the country manager of the defendant, Tooth & Co., when the question of the proposed expenditure on the hotel and the proposed lease of it was discussed. He, however, was not there to represent his wife and her interests, but at the request of and to assist his father-in-law, and he was not then aware of his wife's interest.

Shortly after 25th June 1934, Mrs. Furnell did learn that the property had been leased, in effect for twenty-five years, and that Svenson (or Tooth & Co. Ltd.) intended to spend a considerable sum of money on it and at a later stage, but, before the money or the bulk of it had been spent, that she was entitled to the property in remainder after her father's life interest, and that the lease was not in conformity with his powers of leasing. She took no steps in the matter until after her father's death. She said that, shortly after June 1934, her mother told her that her father had given a lease of the hotel property for twenty-five years to Svenson and she informed her husband of this. Subsequently, before the end of 1935, her husband informed her that, having made a search, he had discovered that her father had the power to lease the hotel for not more than seven years, but that she could do nothing about it in his lifetime, an opinion which she said she accepted and believed implicitly. When asked in cross-examination did she, upon being informed of her father's powers of leasing, decide that she would do nothing at all about the fifteen-years lease, or did she decide that she would do nothing for the present but would take action against Svenson after her father died, Mrs. Furnell replied "I did not think I could do anything about it"; she "made no decision at all"; she regarded the property "as being solely" her father's property.

Upon the facts, *Roper* J. found:—1. that Svenson did make a mistake as to his rights in that he wrongly thought that John Sutton Payne had the power to grant the lease now in question. He had constructive notice of the limitation of John Sutton Payne's powers, but he was entitled, in order to show this element of acquiescence, to

rely on the absence of actual knowledge; 2. that Svenson expended money on the faith of his mistaken belief; 3. that Mrs. Furnell knew of her interest in remainder and of the limited extent of her father's powers before Svenson had expended the money; but that she did not know that she could then assert any right. She had been advised, on learning of her interest, and believed that she could do nothing during her father's lifetime; 4. that Mrs. Furnell did not know that Svenson held a mistaken belief of his own rights. She had no means of knowing that the usual course of investigation undertaken in such a transaction had not been followed, and his action in spending the money was not inconsistent with knowledge of the true position because he may have been taking a deliberate risk on the duration of her father's life; and 5. that, having discovered the existence of her interest in remainder before the money was expended by Svenson, Mrs. Furnell did nothing until after her father died, and that, of course, was after the money was expended by Svenson. She did nothing, however, not with the idea of encouraging Svenson to expend money on the property which was ultimately to come to her, but because she believed that there was nothing which she could do.

The indenture was declared void and of no effect and it was ordered to be delivered up for cancellation to the plaintiffs.

From that decision the defendant Ivan Waldemar Svenson appealed to the High Court. The defendants Tooth & Co. Ltd, and the Commonwealth Savings Bank of Australia submitted at the hearing and were not represented on the appeal.

A. R. Taylor K.C. (with him *R. L. Taylor*), for the appellant. The evidence establishes that the respondent remainderman knew (i) that negotiations were proceeding between her father and the licensee, Svenson, for the granting of a lease to the latter; (ii) generally, the terms of the lease; (iii) what her own rights were in the matter; (iv) that, under that lease, the licensee would be required to expend a large sum of money; and (v) that, on the faith of his mistaken belief as to his own rights, he was actually expending the money. Although she knew all those facts before the commencement of any of the work involved, she did nothing, that is, she acquiesced. In *Willmott* v. *Barber* (1), the defendant did not know that the sub-lessee had acted in a mistaken belief as to his own rights, but in this case the remainderman did know what her rights were, of the defect in the lease, and of the expenditure of the money. The only inference open in the circumstances is that, if the remainderman had applied her mind to the matter, she must have known that the money was being

(1) (1880) 15 Ch. D. 96.

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expended by the licensee and was being so expended by him on the faith of his getting a good title for twenty-five years. It was not open to the trial judge to find that the remainderman believed that she could not do anything; even if it were so open, it was not open to the judge reasonably to hold that she did nothing because she believed there was not anything she could do. Knowing what her interest was, the fact that she believed she could not do anything while her father lived should not prejudice the licensee. There was a duty cast on the remainderman to warn the licensee not to proceed, and she failed to discharge that duty. An indication by her to the licensee that she had a claim or objected to the lease would have been sufficient (*Russell* v. *Watts* (1), and see *White & Tudor's Leading Cases in Equity*, 9th ed. (1928), vol. 1, pp. 396 et seq.).

[RICH J. referred to *Canadian Pacific Railway Co.* v. *The King* (2).]

The remainderman is estopped by her conduct. Either there should be a lease by estoppel or, alternatively, the remainderman should make compensation to the licensee for the benefits derived by her (*Ramsden* v. *Dyson* (3), *Halsbury's Laws of England*, 2nd ed., vol. 13, pp. 85, 86, 497).

[WILLIAMS J. referred to *Dann* v. *Spurrier* (4) and *Stiles* v. *Cowper* (5).]

In seeking equitable relief, the remainderman must be prepared to submit to any terms or conditions which the court thinks proper to impose (*Langman* v. *Handover* (6)). When exercising its equitable jurisdiction, the court should look at all the circumstances. Compensation is payable irrespective of the belief of the remainderman (*Neesom* v. *Clarkson* (7) ; *Davey* v. *Durrant* (8)). There was no basis for the finding that the remainderman believed that the licensee was taking a risk on the life tenant's longevity.

Weston K.C. (with him *Asprey*), for the respondents. The true position on the evidence is that the remainderman was completely unaware as to whether her father, the life tenant, in some way had the whole fee simple in him, the property passing to her, perhaps, under his will, or whether in her belief it was his during his lifetime, in the lawyer's sense of that expression, and hers afterwards. It was a father dealing with his daughter, an actual notice of trusteeship and a *cestui que trust*. *Ramsden* v. *Dyson* (3) is based upon fraud, or wilful wrongdoing, or some conscious wrongdoing on the

(1) (1883) 25 Ch. D. 559, at p. 576.
(2) (1931) A.C. 414, at p. 429.
(3) (1865) L.R. 1 H.L. 129.
(4) (1802) 7 Ves. Jun. 231 [32 E.R. 94].
(5) (1748) 3 Atk. 692 [28 E.R. 1198].
(6) (1929) 43 C.L.R. 334, at pp. 351, 352.
(7) (1845) 4 Hare 97 [67 E.R. 576].
(8) (1857) 1 De G. & J. 535, at p. 554 [44 E.R. 830, at p. 838].

part of the person in the position of the remainderman. There has to be a conscious lying-by. In this case there was not any fraud, wrongdoing, or conscious lying-by on the part of the remainderman; she simply thought that she could not do anything in the matter. It was a physical state of mind. By the failure to search against the life tenant's title, inferentially on instructions from the licensee and the appellant company, the licensee must be taken to have had constructive knowledge of the true position and to have accepted the risk and acquiesced (*Proctor* v. *Bennis* (1)). The remainderman never applied her mind to what business risk was being incurred by the licensee. She was not under any duty to apply her mind. It was a psychological inquiry and her failure to do so is immaterial. The rule in *Ramsden* v. *Dyson* (2) and in equitable estoppel is that the party affected is left in doubt. The trial judge's first finding of fact cannot stand and the second finding of fact fails automatically. If this case be established as a *Ramsden* v. *Dyson* (2) case, those findings are clearly wrong in the sense that they cannot be arrived at affirmatively, and even in the sense that the contrary is the position in fact and law. The remarks by *Fry* J. in *Willmott* v. *Barber* (3) are mere *dicta*. In the circumstances, the licensee and the appellant company are the authors of their own wrong. No case is made that they were induced to act at all by any positive thing done by the remainderman. Assuming, however, that this case is covered by *Ramsden* v. *Dyson* (2), the lease is not necessarily affirmed and there may be fair terms. If it is not so covered, then the question of terms is at large on the question of whether the remainderman has a right to fair terms apart from that case. The passage in *Halsbury's Laws of England*, 2nd ed., vol. 13, p. 86, par. 80, is not a question of fair terms in the ordinary sense of that expression; it is part of the substantive law of the court. If the executrices of the head will sued in ejectment under s. 11 of the *Conveyancing Act* 1919-1943 (N.S.W.) because of what the life tenant had done, there would be an estoppel or it might be held that they were not affected by any misconduct.

[WILLIAMS J. referred to *Bowes* v. *East London Waterworks* (4).]

That case is a complete answer to this suit. A person with a legal or equitable interest is entitled to come into equity to have a blot on the title removed (*Hayward* v. *Dimsdale* (5); *Onions* v. *Cohen* (6); *Cooper* v. *Commissioners of Taxation* (7)).

(1) (1887) 37 Ch. D. 740, at pp. 761, 762.
(2) (1865) L.R. 1 H.L. 129.
(3) (1880) 15 Ch. D., at p. 101.
(4) (1818) 3 Madd. 374 [56 E.R. 543].
(5) (1810) 17 Ves. Jun. 111 [34 E.R. 43].
(6) (1865) 2 H. & N. 354 [71 E.R. 501].
(7) (1897) 19 L.R. (N.S.W.) Eq. 1, at p. 7.

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Taylor K.C., in reply. This is not the ordinary case of deceit; the requisites of this particular form of estoppel are those set out in *Willmott* v. *Barber* (1), which is a true account of the elements referred to in *Ramsden* v. *Dyson* (2). It is neither obvious nor reasonably clear that the licensee and the appellant company refrained from searching against the life tenant's title because of an apprehended defect therein. It is a proper assumption that such search was not made because, in the circumstances, it was deemed unnecessary. The matter of inducement was dealt with in *Allan* v. *Gotch* (3) and *Smith* v. *Chadwick* (4).

[LATHAM C.J. referred to *Halsbury's Laws of England*, 2nd ed., vol. 23, p. 48.]

The suit should be dismissed. Alternatively, if the lease be declared void, it should be on terms that the licensee should obtain compensation.

Weston K.C., by leave. The remainderman is not estopped by conduct (*Jorden* v. *Money* (5); *Davis* v. *Bunn* (6)).

Cur. adv. vult.

Dec. 19.

The following written judgment was delivered:—

LATHAM C.J., RICH and WILLIAMS JJ. Appeal from a decree of the Supreme Court of New South Wales in its equitable jurisdiction (*Roper* J.) declaring that an indenture of lease of the Court House Hotel, Wellington, dated 25th June 1934 and made between John Sutton Payne (of whose will the plaintiffs are the executrices) and the defendants Svenson and Tooth & Co. Ltd. is void, and that it should be delivered up for cancellation. The defendant Svenson is the lessee under the lease, Tooth & Co. Ltd. are the mortgagees of his leasehold interest, the Commonwealth Savings Bank, the other defendant, is the mortgagee of the freehold and, as the land is under the old law, has the legal estate.

J. S. Payne was the executor of the will of his father John Payne, who died on 28th May 1919. The plaintiffs, as executrices of the will of J. S. Payne, are the executrices also of the will of John Payne, and they sue in that capacity. Mrs. Furnell also sues in her personal capacity. J. S. Payne was entitled under the will of his father to a life interest in residue, which included the Court House Hotel,

(1) (1880) 15 Ch. D., at pp. 105, 106.
(2) (1865) L.R. 1 H.L. 129.
(3) (1883) 9 V.L.R. 371.
(4) (1884) 9 App. Cas. 187, at p. 195.
(5) (1854) 5 H.L.C. 185 [10 E.R. 868].
(6) Noted (1941) 15 A.L.J. 294, at p. 296.

Wellington. After his death, his children were entitled to the property upon attaining the age of 21 years. In fact he had only one child, the plaintiff, Mrs. G. F. E. Furnell. The interest of Mrs. Furnell in the property is equitable, the legal estate being in the Commonwealth Savings Bank. J. S. Payne died on 15th February 1943. His father's will provided that his trustee should have power to grant leases for terms not exceeding seven years.

On 16th October 1933, J. S. Payne gave a lease to the defendant Svenson for a term of ten years, commencing on 1st February 1934. The Licensing Court required the expenditure of a considerable sum of money in renovations and improvements to the hotel—*Liquor Act* 1912 (N.S.W.), s. 40A. An arrangement was made under which Svenson agreed to spend a sum which ultimately amounted to £2,555 in complying with the requirements of the court. As part of this arrangement, J. S. Payne on 25th June 1934 granted to him a lease for fifteen years to commence at the date of expiry of the ten-year lease already granted. No searches of title were made on behalf of Svenson. He knew, however, that J. S. Payne was a trustee of the land. He had constructive notice of what a search would have disclosed—i.e. of the limitation upon the trustee's power of leasing.

It is not disputed that J. S. Payne had no power to grant either of the leases. They were valid during his life, but did not bind the remainderman: See cases cited in *Halsbury's Laws of England*, 2nd ed., vol. 20, pp. 29-30.

The defendants, however, claimed that the second lease (the term of the first having expired) should be held to be binding on the remainderman, Mrs. Furnell, on the principle of *Ramsden* v. *Dyson* (1). That principle is stated in the following words:—"If a stranger begins to build on any land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title; and that it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented" (2). See also *Willmott* v. *Barber* (3).

The lease which is now in question was executed in June 1934 and Svenson began the work of repairs &c. in October 1934. It was contended for Svenson that Mrs. Furnell knew that he was spending

(1) (1865) L.R. 1 H.L. 129.
(2) (1865) L.R. 1 H.L., at pp. 140, 141.
(3) (1880) 15 Ch. D. 96.

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money on the hotel premises in consideration of receiving the fifteen-year lease, and that she allowed him to proceed with that expenditure without informing him of her rights (of which, it was contended, she was aware), and that therefore she was estopped by her acquiescence and concurrence in his actions from contending that the lease is void.

The learned trial judge found that Svenson did make a mistake as to his rights, in that he believed, though erroneously, that J. S. Payne had power to grant the lease. This finding has been attacked by the respondent because Svenson, though called as a witness, was not asked, and accordingly did not answer, the simple question whether he did believe that he had a valid lease. The inference drawn by the learned judge is, however, open upon the facts. It is prima facie improbable that Svenson would have agreed to incur so substantial an expenditure unless he thought that he was getting a good lease, especially when he was already in possession under an existing lease for ten years, and under s. 40A of the *Liquor Act*, if the owner had not complied with the requirements of the licensing authority, he could have applied to the Licensing Court for authority to do the work himself and then have recouped himself by deductions of the amount expended from the rent accruing due from time to time in the future. We do not think that we should disturb the finding of the learned judge upon this point.

His Honour also found that Svenson expended his money on the faith of his belief.

The evidence which was accepted by his Honour showed that Mrs. Furnell was not a party in any sense to the negotiations for the lease. She was aware that some negotiations were going on, but she was not regarded by either Svenson or her father as interested in the matter. Her father assumed complete control, and she, his Honour found, believed that he was entitled to exercise complete control during his life. Mrs. Furnell was informed of the execution of the lease before Svenson began his expenditure of money. She admitted that, after she knew that the lease had been executed and before Svenson had expended any money in making the repairs &c. to the hotel, she became aware through her husband, who was at the time a law student, and who made a search of her grandfather's will in the Probate Office, that her father's powers of leasing as trustee were limited to seven years and that he had no power to grant the fifteen years' lease (although she apparently understood that a twenty-five years' lease had been granted). But she also gave evidence, which the learned judge accepted, that she thought that she could not do anything to protect her rights during her father's lifetime.

The defendant Svenson adduced evidence with the object of showing that Mrs. Furnell said in his presence that whatever her father decided would be acceptable to her, but this evidence was not believed by the learned judge. There was no other evidence that Svenson was in any way induced to act by anything that Mrs. Furnell said or did or by any supposed concurrence on her part in the granting of the lease.

But the principle of *Ramsden* v. *Dyson* (1), as we have said, is that, where the owner of the land sees the mistake into which the stranger has fallen, he must not abstain from setting him right, for it is his duty to be active and to state his adverse title. It is on this ground mainly that the appellant has contended that Mrs. Furnell is estopped from denying that Svenson is entitled in equity to the lease for fifteen years. On this aspect of the case, his Honour made two important findings of fact which have been strongly attacked by the appellant. These findings were that (1) " Mrs. Furnell did not know that Svenson held a mistaken belief of his own rights. She had no means of knowing that the usual course of investigation undertaken in such a transaction had not been followed, and his action in spending the money was not inconsistent with knowledge of the true position because he may have been taking a deliberate risk on the duration of her father's life " ; and (2) " having discovered the existence of her interest in remainder before the money was expended by Svenson, Mrs. Furnell did nothing until after her father died . . . not with the idea of encouraging Svenson to expend the money on the property which was ultimately to come to her, but because she believed that there was nothing which she could do."

Both findings were, in our opinion, open to his Honour on the evidence. It would have been a simple and prudent, and, on the evidence, a usual, course for Svenson, and Tooth & Co. Ltd., who were financing him, to search the title. No doubt in 1934 the father was sixty-two years of age, but he was in good health and the existing and further leases were binding during his life. On Mrs. Furnell's understanding of the transaction, the expenditure was referable to the grant of a lease for twenty-five years, and many licensees might well think that it was worth while to expend the money on modernizing a hotel in consideration of such an extended term and to take the risk of a healthy life tenant living for the necessary period. They would get an immediate benefit from the expenditure, and it would be a simple precaution for the licensee and the tenant for life to agree that the latter should insure his life for the amount

(1) (1865) L.R. 1 H.L. 129.

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expended and assign the policy to the licensee in the event of his death during the term of the lease. It is clear from the evidence that Mrs. Furnell had practically no knowledge of the details of the transaction. She said that no business at all was done in her presence. It was her husband who, knowing that it was usual to grant leases of hotels only for short terms, became disturbed at the length of the leases granted to Svenson, and communicated his anxiety to his wife, and this led him to the search of the will. It is clear from their evidence that he advised her, and she believed that, since she was not entitled in possession during her father's lifetime, she could do nothing until after his death, so that when, at one stage of her cross-examination, she said that she had decided that she would do nothing she meant, we think, in the light of a fair reading of the whole of her evidence, that she had decided to do nothing during his lifetime, and did not mean that she had decided to acquiesce in the lease. It is true, as Mr. *Taylor* said, that, even if she were unable to take any legal proceedings to avoid the lease at the time, she could at least have warned Svenson that she would not recognize the lease in the event of her father's death. But, with her knowledge and her belief, there was no reason why this aspect of the matter should present itself to her mind.

On the evidence which his Honour accepted, it was simply a case of a lease granted by a life tenant to a lessee who agreed to expend money on the faith of the lease without the concurrence of the remainderman, the term of which the remainderman ascertained, subsequently to the grant of the lease but before the expenditure was incurred, exceeded the period authorized by the will. A person must be deemed in law to intend the natural and probable consequences of his acts. Therefore, a person entitled to the immediate possession of property who sees a stranger spending money on that property under such circumstances that he must be aware that the stranger is doing so in the mistaken belief that it is his own property and does nothing to make the stranger aware of his mistake will be prevented from exercising his legal rights to the prejudice of rights held in equity to have been created in the stranger as the consequence of his conduct. But a remainderman who finds a stranger expending money on property by agreement with the life tenant may well believe that the stranger is prepared to accept such title as the life tenant can bestow. As *Fry* J. pointed out in *Willmott* v. *Barber* (1), where the requisites necessary to raise the estoppel are set out, a person is not deprived of his legal rights unless he has acted

(1) (1880) 15 Ch. D., at pp. 105, 106.

in such a way as to make it fraudulent in the equitable sense for him to set up those rights. If Mrs. Furnell had not caused any search to be made and had remained unaware that she was entitled in remainder under her grandfather's will to the hotel, and that her father as trustee had no power to grant a lease for more than seven years which would be binding after his death, there would have been no case against her based on estoppel. As the result of the search, she ascertained that the lease would not be binding except during her father's lifetime, but she also honestly believed that she could do nothing until after his death. To act on this belief would not, in our opinion, be conduct on her part which would make it fraudulent for her not to assert her rights until after his death. The only case of which we are aware in which the estoppel was enforced against a remainderman in respect of a lease granted by a tenant for life is *Stiles* v. *Cowper* (1). But there the lessee had not only expended money during the lifetime of the tenant for life in building upon the demised premises on the faith of a lease which became void upon his death, but after his death the remainderman permitted the lessee to remain in possession and accepted rent for six years, and during this period the lessee at his own expense built new offices. In *Dann* v. *Spurrier* (2), Lord *Eldon* said that " the party setting up the estoppel must prove the case by strong and cogent evidence." Svenson did not know Mrs. Furnell in the matter at all, and in all the circumstances we fail to see how she could be said to have done or omitted to do anything to encourage him. Svenson, we think, took the ordinary risk of any lessee that the landlord with whom he contracted could give him a good title.

Alternatively, the appellant asks for an order that Mrs. Furnell should repay the amount he expended on the hotel on the faith of receiving a lease for fifteen years on the determination of the existing lease. We think that, strictly, the defendant Svenson (the defendants Tooth & Co. Ltd. and the Commonwealth Savings Bank of Australia submitting) should have counterclaimed for a new lease of the hotel to himself for the same term of fifteen years but containing the usual and proper covenants for leases of hotels as was done in the case of *Stiles* v. *Cowper* (1), and that in this counterclaim he could have prayed, as was done in *Dann* v. *Spurrier* (2), for an order that such a lease be executed, or, in the alternative, that the plaintiffs should pay him the moneys he had expended in improving the hotel. But we are of opinion that either form of relief depends upon the appellant bringing himself within the principles of *Ramsden*

(1) (1748) 3 Atk. 692 [28 E.R. 1198]. (2) (1802) 7 Ves. Jun. 231 [32 E.R. 94].

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v. *Dyson* (1). In that event, the court of equity has a wide discretion to grant the relief which is appropriate in all the circumstances (*Plimmer* v. *Mayor &c. of Wellington* (2)). The proper relief in the present proceedings, if the appellant had succeeded in bringing himself within the principles of *Ramsden* v. *Dyson* (1), would have been to grant him a lease for fifteen years as was done in *Stiles* v. *Cowper* (3).

As, however, the appellant has failed to bring himself within this principle, the appeal fails and must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Smithers, Warren & Lyons.*
Solicitors for the respondents, *A. J. Reynolds & Pilling.*

J. B.

(1) (1865) L.R. 1 H.L. 129. (2) (1884) 9 App. Cas. 699, at pp. 713, 714.
(3) (1748) 3 Atk. 692 [28 E.R. 1198].