[HIGH COURT OF AUSTRALIA.]

FYSH . . . . . APPELLANT;
PLAINTIFF,

AND

PAGE . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

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HOBART, *Mar.* 13, 14; SYDNEY, *April* 13.

Dixon C.J., Webb, Fullagar and Kitto JJ.

Trusts—Duties of trustee—Purchase of trust property—Knowledge of beneficiary at time of purchase—Action to set transaction aside—Unexplained delay of thirteen years in commencing—Increase in monetary value of property by reason of changed economic conditions—Effect of delay on action.

The defendant, one of two persons appointed both executor and trustee under a will, who had not proved the will and had not acted in either capacity renounced the offices nearly four months after the death of the testator. In the interval he had as purchaser executed through an agent an agreement for sale of the trust property with his co-trustee, with the authority of the plaintiff widow, who was unaware of the fact that the defendant was to be the purchaser. The plaintiff found this out before the time for completion but she executed the conveyance nevertheless.

Held, (1) that between his appointment and his renunciation an executor trustee is not necessarily incapacitated from becoming a purchaser from an executor trustee who does accept office; (2) that an action by a beneficiary to set aside a sale to a fiduciary may be defeated by delay if the delay means that to grant relief would place the party whose title might otherwise be voidable on equitable grounds in an unreasonable situation, or if, because of change of circumstances, it would give the party claiming relief an unjust advantage.

Decision of the Supreme Court of Tasmania (*Morris* C.J.), affirmed.

APPEAL from the Supreme Court of Tasmania.

On 26th August 1954 Amy Fysh commenced an action in the Supreme Court of Tasmania against Richard Malcolmson Page in which the statement of claim was substantially as follows:—

1. By his will dated 18th February 1936 Charles Willis Fysh of Brightside, New Norfolk, in Tasmania appointed the defendant and

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William Gerrard Terry to be trustees thereof and gave devised and bequeathed the whole of his property including Brightside and the Goat Hills to the plaintiff his widow.

2. The said Charles Willis Fysh died on 26th July 1941.

3. On 8th October 1941 the defendant employed A. G. Webster & Sons Ltd. to make an offer to the defendant for the said properties.

4. On 9th October 1941 the said A. G. Webster & Sons Ltd. presented to the plaintiff and obtained her signature to the following document :—

" To Messrs. Page & Terry
Trustees Estate late C. W. Fysh

As sole beneficiary under the will of my late husband I authorise you to accept the offer made by Messrs. A. G. Webster & Sons Ltd. for Brightside namely £4,600.

Dated 9th Oct. 1941.

(sgd.) Amy Fysh

Witness
(sgd.) D. E. Hopkins ".

5. By agreement in writing negotiated by the said A. G. Webster & Sons Ltd. and made between William Gerrard Terry of Hayes as trustee of the estate of the late Charles Willis Fysh as vendor and the defendant as purchaser the vendor agreed to sell and the defendant agreed to purchase the said properties of Brightside and Goat Hills containing 2,814 acres or thereabouts for £4,600.

6. On 14th November 1941 the defendant executed a deed poll which was registered in the office of the Registrar of Deeds No. 21/5971 whereby he purported to renounce and disclaim the executorship and trusteeship of the said will.

7. Thereafter the said will was proved in the Supreme Court of Tasmania by the said William Gerrard Terry who by assent dated 10th April 1942 assented to the said devise in favour of the plaintiff.

8. By indenture dated 29th May 1942 No. 21/7582 the plaintiff conveyed the said properties to the defendant for the price of £4,600 in completion of the contract mentioned in par. 5 hereof.

9. The plaintiff was a widow of little or no business experience whose husband had recently died and whose only two sons were then overseas with the fighting forces. The mortgagees of the said properties had exposed the same for sale by public auction on 17th June 1941. For the purpose of the said sale the defendant made a valuation of the said properties in excess of the said sum of £4,600.

The said transaction was completed without providing the plaintiff with independent advice.

The plaintiff claims :—(a) a declaration that the defendant was a trustee of the said properties for the plaintiff at the time when the said contract mentioned in cl. 5 was made and that the defendant was and at all times thereafter remained a trustee thereof for the plaintiff and that his purported purchase thereof was inoperative ; (b) a decree setting aside the said purchase as an unconscionable and inequitable transaction ; (c) inquiries as to profits and accounts ; (d) costs ; (e) further and other relief.

By his defence dated 13th January 1955 the defendant admitted the allegations contained in pars. 1, 2, 5, 6, 7 and 8 of the statement of claim, did not admit those contained in par. 4 thereof, and denied those contained in pars. 3 and 9 thereof and pleaded as follows :

10. The defendant never acted as a trustee or executor of the said will.

11. Further or alternatively the defendant was only a " bare trustee ".

12. Further or alternatively, the right (if any) of the plaintiff to bring this action did not first accrue to the plaintiff within twelve years before the commencement of the action, and the plaintiff's alleged claim was and is barred by the *Limitation of Actions Acts* 1836 and 1875 and/or the *Mercantile Law Act* 1935.

13. Further or alternatively, if the said purchase did constitute a breach of trust, which is denied, the plaintiff is barred by laches and acquiesence from maintaining any claim that the said purchase should now be set aside or that the defendant account to her further or at all in respect thereof. Particulars of laches and acquiescence. The plaintiff, acting under the advice of her own family solicitor, who also acted for the defendant in the purchase, completed the same by executing the indenture referred to in par. 8 of the statement of claim. Since 29th May 1942 until March 1954, the plaintiff never objected to the said purchase.

The action was heard before *Morris* C.J., who, in a judgment delivered on 19th September 1955, ordered that judgment be entered for the defendant.

From this decision the plaintiff appealed to the High Court.

R. C. Wright and *M. G. Everett*, for the appellant.

F. M. Neasey, for the respondent.

Cur. adv. vult.

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The following written judgments were delivered :—

DIXON C.J., WEBB AND KITTO JJ. On 10th October 1941 the respondent Page became a purchaser for the price of £4,600 of a farm near New Norfolk containing about 2,814 acres. The vendor was one Terry who described himself in the contract as trustee of the estate of the late C. W. Fysh. Fysh had died on 26th July of the same year leaving a will by which he appointed both the respondent Page and Terry his trustees and executors. He devised and bequeathed all his property to them in trust for his wife for her absolute use and benefit. At the time of the sale by Terry to Page the will had not been proved. Page by deed poll dated 14th November renounced probate and disclaimed the trust and Terry thereupon proved the will as sole executor. On 10th April 1942 Terry assented to the devise in favour of the widow and on 10th May 1942 she completed the sale to Page by conveying the property to him. Page had already entered into possession of the farm and apparently ever since he has continued in occupation. Thirteen years later, by a writ issued on 26th August 1954, the widow commenced against the respondent Page the suit out of which this appeal arises. She claimed a declaration that Page was trustee of the property for her at the time of the purchase and had remained so and that the purchase was inoperative ; she further claimed a decree setting aside the purchase as an unconscionable and inequitable transaction and an order for accounts and inquiries.

The suit was heard by *Morris* C.J. who entered judgment for the defendant, determining that the purchase should not be set aside and that Page, the defendant, was not a constructive trustee for Mrs. Fysh, the plaintiff. From that judgment she now appeals to this Court.

It appears that for some thirty years before his death Fysh had farmed the property in question, which was called as to part Brightside and as to part Goat Hills. A considerable area was cultivated, there was a great deal of it used for cattle and there was a small orchard. He and his wife, who seems to have been somewhat younger than her husband, lived in the homestead. They had two daughters and two sons. The latter at the time of their father's death were serving in the armed forces, one in Palestine and the other a prisoner of war. Fysh had been ill for three years before his death and in 1939 had found it necessary to lease the farm except the homestead where they lived. His wife owned 1,000 acres nearby of cattle country which was used as a summer run for the Brightside cattle. It was called Paddy's Flat. Page, a farmer who held the adjoining farm, took a lease of Paddy's Flat in 1937

at a rent of £125 per annum. In that year Fysh's property was placed in the hands of A. G. Webster & Sons Ltd. as agents for sale at a price of £6,200. In 1939 attempts to sell the property were renewed. Apparently at that time a valuation was made in which Page assisted. Perhaps it was for the purposes of a mortgage. The value was put down at £6,000. On 17th June 1941 the property was submitted for auction. On that occasion the value assigned to it was £5,000 and a reserve at that figure was placed upon it, but there was no bid. Mrs. Fysh seems to have been the responsible party in these matters. Probably, as she says, she was a woman of little or no business experience but for some ten years before her husband's death it had fallen to her lot to keep the accounts, supply the figures for the preparation of the income tax return and deal with the bits of business incidental to the property. She says: "For the last nine or ten years I was the member of the Fysh family who was running the property." Terry was an orchardist living in the same district but neither he nor Page seems to have taken any part in the affairs of Fysh or his wife. When Fysh died Page came over to see the widow and repeated his visit at intervals. On one occasion at least he rode round and inspected the fences. Otherwise he seems to have done nothing with reference to Fysh's property during the ten weeks between the death of Fysh and the purchase of Brightside by Page. Who took the next step about selling the property does not clearly appear. Certainly it was not Terry. Probably Mrs. Fysh saw A. G. Webster & Sons Ltd. about it. At all events the managing director's impression was that she was definitely anxious to sell, being worried because things were getting beyond her. Page says that he was told by some agent that he could purchase the farm for £4,500. He sought the financial assistance of H. Jones & Co. and the managing director of that concern, on 22nd September 1941, called on A. G. Webster & Sons, and on his behalf but apparently without disclosing his principal's identity, offered that price subject to possession being given in February or June 1942. On the following day Mrs. Fysh through Webster & Sons learned of the offer and took time to consider it and discuss it with her daughter. Webster & Sons sent for the tenant and found that he was agreeable to surrender possession on 1st March provided that he received £200 as compensation. They next saw H. Jones & Co.'s managing director. He was prepared to add to the £4,500 the £200 which the tenant demanded and later in the day went further and expressed his willingness to pay Mrs. Fysh £4,600 and make the best terms he could with the tenant. He would not, however, consider buying Paddy's Flat and that had

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been the attitude some time before of Page when he had been asked to buy it. All this was on 7th October 1941. On 9th October Mrs. Fysh called at Webster & Sons and accepted the offer. Their managing director, who did not know that Page was the purchaser, wrote out a document which she signed addressed to " Messrs. Page & Terry Trustees Estate late C. W. Fysh ". This document ran :—"As sole beneficiary under the will of my late husband, I hereby authorise you to accept the offer made by Messrs. A. G. Webster & Sons Ltd. for ' Brightside ', namely Four thousand six hundred pounds." It appears that on the day before, viz. 8th October, another officer of A. G. Webster & Sons Ltd., a salesman, had attended the solicitor for the estate and informed him of the offer. The solicitor had told him that Page and Terry were the trustees and would have to sign the contract of sale. The solicitor proceeded to write to Page and Terry asking for instructions to prove the will. A document dated a day earlier still, viz. 7th October 1941 was put in evidence. It takes the form of a letter signed by the tenant addressed to Mrs. Fysh agreeing to relinquish his lease on 1st March 1942 on condition that she paid him £175 compensation, that his rent stopped as from 15th February and that she accepted these terms in writing within seven days. The tenant's signature was witnessed by the same officer of A. G. Webster & Sons Ltd. and presumably he composed it. What is surprising about it is that it is dated as from Brightside, New Norfolk. It is witnessed by the managing director of H. Jones & Co. and on 7th October 1941. That is unexplained.

On 9th October 1941, after leaving the office where she had signed the authority to the trustees of the will to accept the offer of £4,600 Mrs. Fysh, who was accompanied by her daughter, met Page in the street. She said : " I hear Websters have got a purchaser." Page, she says, turned to her daughter and said : " I'm the purchaser but for God's sake don't say anything about it." At Websters she had not been told that he was the purchaser and for the reason, it seems clear enough, that they did not know it. Next day, that is 10th October 1941, the salesman representing A. G. Webster & Sons visited her. She told him that she knew Page was the purchaser. She made no complaint or objection, but expressed her desire to sell Paddy's Flat. She was told that Page would not buy it. In the meantime at some stage H. Jones & Co. had agreed to finance Page and he thinks that from that source he was informed that he must renounce or disclaim the offices of executor and trustee if he was to buy the land. Terry says that he had talked to him of doing so. On 10th October a printed form of agreement was

filled in at the office of Webster & Co. and signed by Terry and by Page. Terry was expressed to be the party of the one part as trustee of the estate of the late C. W. Fysh and was described as the vendor. Page was the party of the other part and was described as the purchaser. The operative clauses provided for a sale of the land known as Brightside and Goat Hills by Terry to Page for the price of £4,600 payable by a deposit of £200 and the balance on completion with interest at five per cent per annum in the meantime. The time for completion was fixed as 1st March 1942 when vacant possession was to be given. A clause made the agreement subject to the grant of probate, which "the trustee" undertook to obtain as early as possible. This document might be treated as implying a disclaimer on the part of Page, but however that may be, Page executed on 14th November 1941 a formal renunciation which the solicitor had begun to draw a fortnight earlier. On 16th October Mrs. Fysh and Terry had seen the solicitor, told him of the sale and instructed him to prove the will. The property was subject to a first mortgage of £1,500 and a second mortgage of £750 and there was about seventy-six pounds of interest owing at death. The unsecured debts of the deceased amounted to £218. At the settlement, which took place on or about 29th May 1942, these liabilities were all discharged. Meanwhile, however, on 10th April 1942 Terry having obtained probate, executed an instrument assenting to the devise in favour of Mrs. Fysh. The instrument is not in evidence, but it is taken for granted that it operated under s. 36 of the *Administration and Probate Act* 1935 (Tas.) to vest in Mrs. Fysh the estate or interest of her husband in the land and to do so as from his death. Accordingly the transaction was completed by a conveyance from Mrs. Fysh to Page. Page had been let into possession about 1st March 1942 when he paid the compensation (£175) to the tenant. He continued tenant of Paddy's Flat but at a rental reduced as from April 1941 to seventy pounds per annum. In the thirteen years that passed before Mrs. Fysh disowned the sale to Page what she was doing is not clearly shown. At first she seems to have lived with her married daughter and then to have spent some three years in Melbourne. She swore that all along she felt that she was badly treated but it was not convenient to take proceedings; she was not well enough and she had a sick daughter: she did not feel up to going to a solicitor. At length, however, she did go. Her solicitors wrote on 18th March 1954 to Page on her behalf impugning the validity of the sale to Page and making five points expressly. First, the disclaimer was after the contract: second the price was below the value placed upon it by

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Page's own valuation; third, the time of the transaction was one of great anxiety; Mrs. Fysh's sons were abroad and one was posted missing believed killed; fourth, the price was not independently examined in the interests of Mrs. Fysh; fifth, Page had afterwards reduced the rent for Paddy's Flat, the suggestion in this point doubtless being that he was at once dominating and grasping.

Morris C.J. adopted the view that the foregoing facts disclosed no fiduciary relationship between Page and Mrs. Fysh but that if there was one, the conditions under which a fiduciary may purchase from his beneficiary were satisfied. This appears to mean that the relation had terminated with the disclaimer; that the transaction had not been impeached within a reasonable time, that there was no fraud or concealment, that there was independent advice and that the consideration was adequate. When the learned judge said that the conditions mentioned in *Halsbury's Laws of England*, 2nd ed., vol. 33, p. 284, were satisfied this, it would seem, must have been his Honour's meaning. In the judgment of the Supreme Court of Victoria in *Clark* v. *Clark* (1), which was reversed in the Privy Council (2), *Holroyd* J., speaking for himself, *Stawell* C.J. and *Higinbotham* J. said: "In our opinion, until a person appointed executor unmistakably divests himself of that character, or by his solemn act puts it out of his power ever to clothe himself with it, he is as much incapacitated from purchasing from his co-executor as if he had obtained probate. The possibility of those evils which a Court of Equity apprehends from the conflict between his interest and his duty attaches to his acting in a doubtful as well as in a dual character" (3). If this proposition were law the first step in support of the right which Mrs. Fysh claims would be effectively taken. But Sir *Arthur Hobhouse* in delivering the judgment of the Board expressed a very different view. "And their Lordships cannot agree", he said, "that a sale is to be avoided, merely because when entered upon the purchaser may, at his option, become the trustee of the property purchased, though in point of fact he never does become such. A man so placed might possibly use his power in such a way as to raise a case for setting aside the transaction, and whether David so acted is one of the questions to be decided. But that is a different thing altogether from the absolute disability attaching to one who would at the same moment be a vendor in trust for others and a purchaser on his own behalf" (4). David Clark, whom this passage mentions, was the surviving partner of the testator in that case and one of the two executors

(1) (1882) 8 V.L.R., E. 303.
(2) (1884) 9 App. Cas. 733.
(3) (1882) 8 V.L.R., E., at p. 321.
(4) (1884) 9 App. Cas., at p. 737.

appointed by his will. The transaction was quite different from that in the present case and in the facts their Lordships perceived no ground for impeaching it. The appellant therefore finds no difficulty in distinguishing the actual decision. But the case certainly means that a person who is appointed an executor or trustee if he neither proves nor acts and subsequently renounces or disclaims is in the interval under no absolute incapacity from becoming a purchaser from an executor or trustee who does accept the office. It is in fact treated in the argument presented for Mrs. Fysh as one element, to which other considerations are added. One such consideration is, so it is contended, that immediately on the death of Fysh his realty devolved pursuant to s. 4 of the *Administration and Probate Act* 1935 upon the executors mentioned in his will, although the result of the disclaimer by Page might be that thereafter it must be considered to have vested as at death in Terry alone as executor. On this footing he was a trustee of the legal estate on 10th October 1941. It is unnecessary to pursue this argument. For plainly enough such a technical vesting could not matter in a question of the existence of a fiduciary or confidential relationship with Mrs. Fysh and as the disclaimer operated from Fysh's death the legal estate must now be regarded as having vested *ab initio* in Terry. A peculiarity in the case is that while on 9th October 1941 Mrs. Fysh authorised a sale of the farm for £4,600 the authority would not on its terms cover a sale to Page because it was an authority to Page and Terry as executors to sell. A further peculiarity is that while on 10th October 1941 Terry entered into a contract of sale to Page he made it impossible for himself to carry it out by vesting the property in Mrs. Fysh. She was not contractually bound to carry out the contract but her conveyance did effectuate it in fact. It is her conveyance therefore which matters. For it was the instrument and the only instrument which really involved a disposition of the property binding her whether contractually or in point of interest. The fact is not unimportant perhaps, because it means that it was on 29th May 1942 that Mrs. Fysh took the only step which involved any alienation of her interest. At that date she knew of course that Page was the purchaser. By that time Page had entered into possession. She had discussed his purchase of Brightside months ago not only with Websters but also with the solicitor, who acted for the estate as well as for other parties in the transaction. She had discussed it with him as early as 16th October 1941. Possibly she was under the impression that she was bound by the sale and that it only remained for her to complete it by conveyance when she would receive the

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net balance of the purchase money after the payment of mortgage and other debts. But she manifested, so far as the evidence shows, no reluctance to complete and she certainly raised no objection. It would seem therefore that the question of setting aside the transaction should be decided on the facts as they existed at the time of the conveyance. But however that may be, Mrs. Fysh must rest her claim to rescind the transaction on the general jurisdiction of the court to set aside an alienation of property brought about by unconscientious and unfair dealing. She cannot sustain her claim on the ground that Page occupied a fiduciary position necessarily disqualifying him from purchasing the trust property or that he stood in a specific relation to her of confidence or of influence. She can of course use his appointment by the will and the delay in disclaiming the offices of executor and trustee as one of the general circumstances of the case. In other words, these facts may take their place with other circumstances which she may rely upon in combination to show that there was unconscientious dealing or that a relation in fact of confidence or of influence existed between Page and herself. But her difficulty is that the evidence does not affirmatively show any of these things and it may indeed be doubted whether circumstances appear in evidence which would even cast the burden upon Page of explaining or justifying the transaction. But the point of most importance is the character of her equitable title if any to relief. What has been said makes it clear that she could not impeach the transaction except in virtue of an equity to set it aside to which she became entitled because of some unfair or unconscientious dealing. This means that the sale stood effective in law and equity unless and until she elected to avoid it and to seek rescission. But for a dozen years she stood by without attempting to do any such thing. In the meantime by 1952 the monetary expression of the value of the land had more than doubled. By the time of the issue of the writ the figure had grown still further. Since 1941 when Page made the purchase land sales control has come and gone. We have experienced a progressive loss in the purchasing power of money which is reflected in the expression of values. Rescission with *restitutio in integrum* would mean that Mrs. Fysh would receive back the farm possessing a value which if expressed in money is doubled or trebled, and Page would receive back the same amount of money he paid, viz. £4,600, without any adjustment on amount of the decreased purchasing power of the money. It is natural to suspect that the change in the monetary value of the land has seemed to Mrs. Fysh the most persuasive argument that in 1941 she must have been overreached. " It is

only a rule of equity, that a trustee shall not purchase. In all cases in which length of time has not been allowed to operate against the title to relief, it has been shown that there has been a continuance of the circumstances under which the transaction first took place, as of the distress of the parties, or of the improper influence used, or of some other circumstance" : per Sir *William Grant* M.R., *Gregory* v. *Gregory* (1). In *Roberts* v. *Tunstall* (2), a tenant for life who was also a trustee of the remainder with a power of appointment among a class, purchased the interest in remainder at an undervalue and obtained releases of the estate in remainder from the power of appointment. Fifteen years later a suit was brought to set aside the transaction but it failed on the ground of delay. *Wigram* V.C. said : "Where a transaction of this kind has been brought about by misrepresentation, concealment, or undue influence, or where the vendor is dependent on the bounty of the purchaser, the Court considers that the right of the vendor to rescind the sale exists, without the imputation of *laches*, until such time as it is shown that he was released from the position in which he was placed by those circumstances. The poverty of a vendor, added to the other circumstances, is also a material ingredient in such a case. But where none of these special grounds of complaint exist—where there is no misrepresentation, concealment or undue influence, and no dependency of the seller on the purchaser—where the right to rescind the transaction is an equity arising out of the transaction itself, as in the case of the sale of a reversionary interest, is it to be said that waiver will not apply, or that no time will be a bar, merely because the seller was poor ?" (3). When the Court is asked to rip up a transaction years after it has been completed the lapse of time itself is one of the elements bearing upon the equities that exist entitling the plaintiff to relief. If a plaintiff establishes prima-facie grounds for relief the question whether he is defeated by delay must itself be governed by the kind of considerations upon which the principles of equity proceed. If the delay means that to grant relief would place the party whose title might otherwise be voidable on equitable grounds in an unreasonable situation, or if, because of change of circumstances, it would give the party claiming relief an unjust advantage or would impose an unfair prejudice on the opposite party, these are matters which may suffice to answer the prima-facie grounds for relief. See *Lindsay Petroleum Co.* v. *Hurd* (4) and the observation in Lord

(1) (1815) G. Cooper 201, at p. 204 [35 E.R. 530, at p. 532].
(2) (1845) 4 Ha. 257 [67 E.R. 645].
(3) (1845) 4 Ha., at p. 267 [67 E.R., at p. 649].
(4) (1874) L.R. 5 P.C. 221, at p. 239 et seq.

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Blackburn's speech in *Erlanger* v. *New Sombrero Phosphate Co.* (1).

It is obvious that to rip up in 1956 the sale of Brightside made in 1941 would spell great injustice to the purchaser, and would give Mrs. Fysh an advantage which she would owe only to lapse of time and the economic changes that have occurred. Her delay is really unexplained; for she accounted for it on no grounds which could affect the justice of the matter as between the parties. The long period in which Page has been left in unquestioned possession of the estate, the great change of circumstance that has occurred in the meantime and the unequal situation which rescission would produce, are factors which must be considered with the very slender case, if any there be, for equitable relief open upon the facts proved as they stood in 1942. When these matters are so considered it becomes evident that rescission of the transaction at this date is out of the question.

The appeal should be dismissed with costs.

FULLAGAR J. In this case I have had the advantage of reading the judgment of the Chief Justice and *Webb* and *Kitto* JJ. I have not formed any opinion as to whether the appellant could or could not, if she had brought her suit ten or twelve years ago, have succeeded in having the impeached transaction set aside. I will only say that it is not, to my mind, established that there was anything intrinsically unfair in that transaction. I agree that, having regard to all the circumstances of the case, the lapse of time must be held fatal to her claim. The passage quoted by *Dixon* C.J., *Webb* and *Kitto* JJ. from *Roberts* v. *Tunstall* (2) seems to me to be eminently in point here. The appeal should, in my opinion, be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Crisp & Wright.*

Solicitors for the respondent, *Murdoch, Cuthbert, Clarke & Neasey.*

R. D. B.

(1) (1878) 3 A.C. 1218, at pp. 1278, 1279.

(2) (1845) 4 Ha. 257 [67 E.R. 645].