

possessed by the loan company, its liquidator, and the shareholders of the association at the time of the transfer; and the rights in question could be enforced in the second action.

The learned Judge could not see that the Limitations Act helped the defendants.

It would be a mistake to regard these directors as trustees only in the ordinary sense of that term: they were the elected and statutory stewards and agents of the association. The arm of the Court is still as powerful to compel a fraudulent, conniving agent to disgorge his secret, ill-gotten gains as in 1844, when *Charter v. Trevelyan*, 11 Cl. & F. 714, was decided. Even if these directors were to be regarded as trustees and nothing more, and whether express or by construction or implication of law, sec. 47 of the Limitations Act recognises the continuance of the principles enunciated in that case, and expressly excepts, by sub-sec. 2, all cases of fraudulent breach of trust.

The defendants were joint wrong-doers, and consequently each became responsible for himself and his associates. There was no right to judgment against them separately in addition to the ordinary judgment against persons joining in a tort.

There should be judgment for the plaintiffs in the second action against the defendants for \$30,000, with interest upon the several instalments thereof at 7 per cent. from the dates of payment of the instalments to Davies, and the costs of the second action, including the costs of the evidence of witnesses called in the first action (subsequently made to apply in both actions), except that nothing should be added in respect of the attendance of the plaintiff Hancock prior to the 21st June, 1920, and the plaintiffs must not tax counsel fees for the hearings prior to that date. Subject to any specific directions as to costs, if any were given on interlocutory motions, the costs should be taxed as if there were only one action.

The first action should be dismissed, with costs of all proceedings therein, and including the fees, if any, paid to witnesses necessary to the defence throughout, and with counsel fees to the close of the hearing on the 21st March. These costs, too, should be taxed as if there were only one action.

All the amendments asked for in either action should be allowed.