

deed the vendor conveyed the land to Baylis in fee, the deed containing an implied statutory covenant for title; the plaintiff subsequently acquired title under this deed. The sub-leases were subsequently discovered, and the plaintiff then brought this action for damages for breach of the implied covenant; and the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.), overruling Romer, J., held that the term of ninety-nine years was still subsisting for the benefit of the sub-leases, and was "an act done by the defendant" within the meaning of the implied covenant for right to convey, and that the creation of the sub-leases, by Baylis was an incumbrance made by "a person rightfully claiming through the defendant" within the meaning of the implied covenants for quiet enjoyment and freedom from incumbrances, and that therefore the plaintiff was entitled to recover. It was also held that though the defendant would have had a good defence against Baylis if he had brought an action for breach of covenant on the ground of Baylis' fraud, yet that he had no defence on the ground as against the plaintiff who had purchased without notice of the fraud, and was not affected by Baylis' disability.

PRACTICE—APPEAL FOR COSTS—TRUSTEE—ORD., LXX. R. 1—(ONT. RULE 1170).

*In re Beddoe, Downes v. Cottam*, (1893) 1 Ch. 547, the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) decided that when an order is made in an action respecting a trust estate allowing to a trustee costs of other proceedings in which he has been concerned as trustee, such costs are not, like the costs of the action, within the discretion of the judge under Ord. xlv., r. 1 (Ont. Rule 1170), but are charges and expenses in the administration of the trust, and are the subject of appeal. In the present case the trustee had, as the Court of Appeal thought, improperly refused to deliver up to a tenant for life the title deeds, and in consequence an action of detinue was brought against the trustee, and judgment recovered against him with costs. Kekewich, J., had allowed the trustee the costs so incurred out of the trust estate; but the Court of Appeal held that the trustee, not having shown any reasonable cause for defending the action, was not entitled to retain out of the trust estate any costs of the action beyond the amount he would have incurred had he applied for leave to defend it.