

act upon this question in conformity to statutes of limitation, there is none that would preclude the plaintiff.

Reference to Allcard v. Skinner (1887), 36 Ch. D. 145; Turner v. Collins, *supra*.

If there were actual fraud, as might well be found, the lapse of time would be no hindrance to the plaintiff: see Hatch v. Hatch (1804), 9 Ves. 292; McDonald v. McDonald (1892), 21 S.C.R. 201.

The appeal should be allowed with costs, and there should be judgment for the plaintiff setting aside the deed in question with costs.

RIDDELL, J., agreed in the result, for reasons stated in writing.

LENNOX, J., also agreed in the result.

MASTEN, J., agreed in the result, for the reasons stated by the Chief Justice.

Appeal allowed.

SECOND DIVISIONAL COURT.

FEBRUARY 4TH, 1916.

DALES v. BYRNE.

Solicitor—Lien for Costs—Fund Recovered by Attachment in Garnishee Proceedings—Creditors Relief Act, secs. 5(1), 6(2)—Priority of Claim for Costs of Garnishee Proceedings—Lien for Costs of Action in which Judgment Recovered by Attaching Creditor, Denied—Rule 689.

Appeal by the plaintiff's solicitor from an order made by one of the Judges of the County Court of the County of York, upon an application by the appellants for payment out of Court to them of the amount of their costs of attachment proceedings and of this action; the appellants claiming a lien upon the fund in Court upon the ground that it was created or preserved by their exertions. The order made upon the application, and now the subject of appeal, while it allowed the appellants their costs of the attachment proceedings out of the fund, directed that the balance should be paid to the sheriff for distribution among creditors, under the Creditors Relief Act, R.S.O. 1914 ch. 81.