H. L. Drayton, K.C., for the plaintiff, contended that, upon the undisputed facts, the plaintiff was entitled to recover; that the defendant Franklin, being the executor of the will, and a trustee for the plaintiff, could not profit out of the estate, and the plaintiff as cestui que trust was entitled to the profit.

J. E. Farewell, K.C., and W. H. Harris, for the defendant Franklin.

CLUTE, J.:— . . . In Lewin on Trusts, 11th ed., p. 562, it is said: "A trustee for sale, that is, a trustee who is selling, is absolutely and entirely disabled from purchasing the trust property. For this proposition numerous authorities are cited; and this is so whether the purchase be made in the trustee's own name or in the name of a trustee for him, directly or indirectly; for it is said that he who undertakes to act for another in any matter cannot in the same matter act for himself. "The situation of the trustee gives him an opportunity of knowing the value of the property, and, as he acquires that knowledge at the expense of the cestui que trust, he is bound to apply it for the cestui que trust's benefit:" Ex p. James, 8 Ves. 348; Smedley v. Varley, 23 Beav. 358; Crosskill v. Bower, 32 Beav. 86. That is the general rule. Lewin, however, points out a few instances where a trustee will be at liberty to become a purchaser. The present case does not seem to fall within any of the exceptions.

Mr. Farewell, in support of the transaction, referred to Downs v. Grazebrooke, 3 Mer. 200; Coles v. Trecothick, 9 Ves. 234; Morris v. Royal, 11 Ves. 355. None of these cases, I think, support the position contended for, or bring the case within those exceptional circumstances where the purchase by a trustee from his cestui que trust has been upheld. . . .

Even if the transaction might have been successfully attacked at an earlier period, the question is now, whether laches and acquiescence and the death of the co-executor and his solicitor, who had knowledge of the transaction, are sufficient to preclude the plaintiff from succeeding. . . .

[Reference to In re Cross, Hartson v. Denison, 20 Ch. D. 109; Bright v. Legerton, 29 Beav. 60, 2 DeG. F. & J. 606.]

In Bright v. Legerton there had been a much longer delay, but I think some significance must be given to the change in the law which reduces the statutory period for the limitation of actions. In regard to equitable claims, other than breaches of trust, a Court of equity, except in special circumstances, will not allow relief to be sought against the very transaction to which the appli-