

The price to be paid for the property is, in my opinion, for the reasons I have mentioned, uncertain, and not less so than was the price to be paid by the plaintiff in *Douglas v. Baynes*, [1908] A. C. 477, and it was in that case held that what was relied on as an agreement could not be specifically enforced because of the uncertainty as to the price to be paid.

Appeal dismissed with costs.

TEETZEL and CLUTE, JJ., concurred, the latter giving reasons in writing.

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DIVISIONAL COURT.

JUNE 27<sup>TH</sup>, 1910.

LAMB v. FRANKLIN.

*Trusts and Trustees—Purchase of Land by Trustee from Cestui que Trust — Resale at Profit — Action to Recover Profit — Knowledge—Laches—Acquiescence.*

Appeal by the plaintiff from the judgment of FALCONBRIDGE, C.J.K.B., ante 395, dismissing the action without costs.

The plaintiff was the devisee under the will of Thomas Lamb, deceased; the defendant Franklin was the surviving executor and trustee under the will. The lands and certain chattels were devised and bequeathed to the executors, or the survivor of them, and they were directed to collect the debts and pay the legacies, "and, as soon as they consider it advisable and safe, to convey the said lands to my son John Lamb," the plaintiff, "his heirs and assigns." On the 4th April, 1899, the defendant Franklin conveyed the lands in question to the plaintiff, and on the same day purchased the same from the plaintiff for \$1,800, although the conveyance was not in fact executed until the 13th April, 1899, and on that day the defendant Franklin sold the property to Thomas Lamb, a brother of the plaintiff, for \$2,100.

The action was brought to set aside these conveyances or to recover the profit made.

The trial Judge characterised the evidence of the plaintiff and his wife as unworthy of belief; and he found that the plaintiff was barred by acquiescence and laches.

The appeal was heard by CLUTE, SUTHERLAND, and MIDDLETON, JJ.