

The statute, however, contains a provision—sec. 32—as to cases of concealed fraud. The section refers to designed fraud: *Petre v. Petre* (1853), 1 Drew. 371, 398; and Davies was not chargeable with that kind of fraud. Even assuming that his conduct was fraudulent, there was nothing to warrant the conclusion that the fraud was concealed. If it was concealed, the respondent had failed to satisfy the onus which rested upon her of establishing that the fraud could not have been discovered by the exercise of reasonable diligence on her part.

The finding of the trial Judge that the plaintiff's husband always believed that Davies was in possession as mortgagee should be reversed. At the time of the assignment, the assignors, Taylor Brothers, were hopelessly insolvent, and every one concerned recognised that such was their financial condition. The plaintiff's husband was one of the assignors.

It was argued that the effect of sec. 47 (2) of the Limitations Act was to exclude from the operation of the Act the excepted claims mentioned in it in the case of all trusts, including a constructive trust; but the Chief Justice was not of that opinion.

The Limitations Act was, therefore, a bar to the action of the respondent.

Again, Davies did not at any time, though an inspector, occupy a fiduciary position towards the assignee or the creditors as to the property in question; and, with regard to the proof of his claim, the valuation of his security, and the proceedings consequent upon the filing of his claim, he was entitled to deal and act as he might have done had he not been an inspector. What was done, including the giving of the release of the equity of redemption, was understood by every one concerned as being done under sec. 20 (4) of the Assignments and Preferences Act, R.S.O. 1897 ch. 147.

It was, however, contended that, being an inspector, Davies was disqualified from entering into the arrangement that was made between him and the assignee, even if the transaction was to be treated as the carrying out of the provisions of sec. 20 (4); that, because of Davies' position as inspector, the assignee could not deal with him even for the purposes of sec. 20 (4). To this contention effect could not be given.

The principle of the decision in *Bell v. Ross* (1885), 11 A.R. 458, is applicable to a case arising under sec. 20 (4).

In all the circumstances, the proper inference was, that the assignee's assent to the retention by Davies of his security was given under the authority of the creditors within the meaning of sec. 20 (4).