

his fiduciary position as one of the inspectors of the estate of the assignors, under and subject to the same obligations, liabilities, and disabilities as an express trustee; and, if this proposition could not be supported, the main ground upon which the judgment proceeded disappeared.

In the opinion of the Chief Justice, Davies was neither an express trustee nor did he stand in the same position as an express trustee, but, if a trustee at all as to the matters in question, he was a constructive trustee.

Reference to authorities: *Soar v. Ashwell*, [1893] 2 Q.B. 390, specially referred to.

Assuming that Davies was an inspector when the conveyance of the equity of redemption was made to him, there was no intention, on the part of any of the parties to the transaction which led to the making of the conveyance, that he should be a trustee of the land conveyed; and, if the taking of the conveyance was in effect taking possession of the trust property, he did not take possession in his capacity of fiduciary agent of the creditors, nor was he entrusted with it in that capacity. He took possession of it in his own right and as owner of it; and, if, owing to his fiduciary position as inspector, he could not, in the circumstances, hold it except subject to the trusts of the assignment, his position was that of a constructive trustee, by reason of the equitable rule which did not permit him, in those circumstances, to hold the property for himself discharged of the trust.

That the Limitations Act applies to a constructive trust and may be invoked by a constructive trustee, in answer to a claim for the recovery of the property upon which the trust is in equity impressed, is beyond doubt: *Halsbury's Laws of England*, vol. 19, p. 274; *Soar v. Ashwell*, *supra*, at p. 395.

The Limitations Act, 10 Edw. VII. ch. 34, now R.S.O. 1914 ch. 75, applies not only to what before the Judicature Act were actions at law, but also to what were then suits in equity; for, by sec. 2 (a), "action" includes "any civil proceeding." Section 5 prescribes 10 years as the time within which an action to recover any land must be brought, and the 10 years are to be reckoned from the time at which the right to bring the action first accrued to some person through whom the person bringing the action claims, or at which the right to bring the action first accrued to the person bringing it. If this were all, the respondent's right to bring this action was barred before it was begun. It is an action to recover land within the meaning of sec. 5, and the right to bring it first accrued after the making of the impeached conveyance.