

SUPREME COURT OF ONTARIO.

1ST APPELLATE DIVISION.

JULY 2ND, 1912.

BLAISDELL v. RAYCROFT.
RAYCROFT v. COOK.

4 O. W. N. 1568.

Executors and Administrators—Action to Set Aside Sale—Purchase by Executrix—Plaintiffs Joining in Conveyance — Good Price Obtained—Laches—Shifting of Onus—Action Dismissed—Appeal—Costs.

Actions by residuary beneficiaries to set aside a sale made by executrices of certain lands belonging to the estate. The evidence shewed that at the time of the sale, some four years ago, a good price was obtained for the lands, but since then, owing to unforeseen circumstances, the lands had more than doubled in value.

Plaintiffs had joined in the deed to the purchaser and obtained certain specific legacies out of the purchase-moneys, but claimed the lands had been in reality secretly purchased by one of the executrices and that there had been a consequent breach of trust. The property had in fact been purchased to the knowledge of all by a daughter of the executrix, and shortly after conveyed to the executrix.

BOYD, C., *held* (23 O. W. R. 259; 4 O. W. N. 297) that the facts shewed that the sale was at a good price and that there had been the utmost good faith on the part of the executrix, both at that time and subsequently.

That the onus was on the plaintiffs to get rid of the deed they signed, and no sufficient grounds had been shewn.

Re Postlethwaite, 59 L. T. N. S. 59; 60 L. T. N. S. 517, and *Williams v. Scott*, 1900, A. C. 499, referred to.

Actions dismissed with costs.

SUP. CT. ONT. (1st App. Div.) dismissed appeal from above judgment with costs.

Appeal in the first case is by the plaintiffs and in the second case by the defendant from the judgments which the Chancellor, on the 7th November, 1912, directed to be entered after the trials before him sitting without a jury, at Brockville, on the 29th and 30th of the previous month of October.

The facts are fully stated in the reasons for judgment of the learned Chancellor which are reported (1912) 23 O. W. R. 259, and less fully in (1912), 4 O. W. N. 297, and it is unnecessary to repeat them.

G. F. Shepley, K.C., for appellants in first case.

F. J. French, K.C., for appellant in second case.

J. A. Hutchinson, K.C., and P. K. Holpin, for the respondent, Raycroft.