

I. F. Hellmuth, K.C., and M. H. Ludwig, K.C., for the defendant Davies.

W. N. Tilley, K.C., and R. H. Parmenter, for the defendant Clarkson.

LENNOX, J., read an elaborate judgment in which he reviewed the facts and discussed the law. He said that the two outstanding questions were: (1) whether the provisions of the Assignments and Preferences Act, R.S.O. 1914 ch. 134, had been substantially complied with; and (2) whether the defendant Davies, being an inspector of the estate of Taylor Brothers, was in a position to contract with the creditors and take a conveyance.

The learned Judge was of opinion that the defendant Clarkson, as assignee, acted throughout in good faith, but that his valuation of the land was made upon a wrong basis; that the assignee's error was the beginning of a chain of errors culminating in the improvident execution of the deed to Davies; and that Davies knowingly availed himself of the advantage it afforded him. The sale was made at a price much below the value of the property.

The position of an inspector as to purchase is defined in *Re Canada Woollen Mills Limited, Long's Case* (1905), 9 O.L.R. 367, as a fiduciary position as regards the disposal of the assets; and this trustee, Davies, never really discharged himself from his duties as a trustee. By sec. 22(3) of the statute, an inspector is debarred from purchasing.

Upon the evidence, if the property had been fairly advertised and offered for sale by competition in 1901, it would have realised a sum largely in excess of the total sum charged thereon by the Davies mortgage—a sum more than sufficient to pay in full the other creditors entitled to rank on the estate.

There was a very long delay in bringing action. The Statute of Limitations did not apply directly, Davies being a trustee; and there had been no acquiescence in or adoption of the transaction. Delay should not work a forfeiture of a plaintiff's rights so long as the parties can be restored to their former position, or justice can still be done; and particularly so if the action is founded upon a breach of trust. The delay, in the circumstances, was not a bar to giving the plaintiff relief.

Judgment declaring the conveyance to Davies void and directing its cancellation and the revesting of the land in the defendant Clarkson, with costs against the estate of Davies. No costs against the assignee. Terms of the judgment to be spoken to.