

It will be observed on consideration of these judgments that the opinion of the learned judges was unanimous, that the Act had not, in the slightest degree, shifted the onus which theretofore lay on the party dealing with the expectant heir to prove the absence of fraud or unfair dealing.

The effect of the Act would seem to be that subsequent to its passage the inadequacy of consideration must be so gross as to amount to evidence of fraud.

Speaking of the decision in *Brenchley v. Higgins*, Mr. Walter Ashburner in his recent work on Equity says (p. 411): "The decision, therefore, might be supported on the grounds stated above, but the Court of Appeal while professing to follow Lord Selborne speak as though an expectant heir still stood in a privileged position, and lay down that the onus lies on a purchaser from him of shewing that the transaction was bona fide, without fraud, or unfair dealing. Where the price is grossly inadequate that onus, if the language of the Court is pressed—will be almost impossible to sustain."

It may be added that there has been no precise rule either before or since the Act as to what difference between the real value and the price paid constitutes inadequacy. Under the Roman law anything in excess of half the real value was deemed sufficient to uphold the transaction; but under the rules of English equity the Court decides each case on its own circumstances.

One cannot fail to be struck on reading the above quoted judgments, with the avidity with which the learned judges seized upon the term "unfair dealing" as their warrant for declining to consider that the English Act had made any change either in the onus probandi or in the general attitude of the Courts toward cases of the nature of those dealt with in this article.

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Owing to the difference in conditions of the two countries, the number of persons in Ontario occupying the position of heirs and reversioners is comparatively restricted, and the cases in our own courts are accordingly not numerous.

The law upon the subject was, however, considered in the case of *Morley v. Totten*, 6 Gr. 178, and it was there held that the same rule applies in Ontario as in England.