

FIRST DIVISIONAL COURT.

JUNE 14TH, 1918.

*TYRRELL v. TYRRELL.

Executors and Trustees—Fraud—Failure to Prove—Sale of Share of Beneficiary—Adequacy of Price—Fiduciary Relationship—Executors Acting Honestly and Reasonably—Limitations Act—Personal Liability of one Executor—Bar by Statute—Case of Concealed Fraud not Made out—Claim to Share of Amount in Hands of Executors—Finding of Surrogate Court Judge—Finality—Interest—Costs.

Appeal by the plaintiff from the judgment of RIDDELL, J., 13 O.W.N. 105.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

W. Laidlaw, K.C., and Christopher C. Robinson, for the appellant.

W. D. McPherson, K.C., and Shirley Denison, K.C., for the defendants, respondents.

HODGINS, J.A., reading the judgment of the Court, said that he saw no reason for differing from the conclusion at which the trial Judge arrived, that no fraud or overreaching had taken place on the part of the respondents.

Accepting this finding, there remained several contentions to be considered.

It was clear that the deed to the respondent Robert Tyrrell of the homestead included lot 2, which was not a part of the homestead. It was said that lot 2 was used as a cow-pasture, and was in some way appurtenant to the homestead; but that was not established as having been brought home to the mind of the appellant, nor was it clearly made out on the part of the respondents.

It was also evident that there was in the hands of the trustees, at the time the appellant sold out, money belonging to the estate and undistributed.

It was argued that the inclusion of lot 2 in the deed of the homestead, while overlooked by the appellant, should have been clearly disclosed by the trustees; and it was suggested that knowledge of the additional lot might have affected the appellant's mind in regard to his agreement to sell for \$1,000 his share in the Weston property, and that the price of \$1,000 was an inadequate price for his share.

The evidence, however, failed to establish inadequacy of price;