

LIMITATION OF ACTION—TRUSTEE—FIDUCIARY RELATION—RETAINING TRUST PROPERTY—LIMITATIONS ACT (R.S.O., c. 75, ss. 5, 47).

*Taylor v. Davies* (1920) A.C. 636. This was an appeal from the Appellate Division S.C.O., 41 O.L.R. 403. The action was brought to upset a sale made by an assignee for creditors to the defendant, who had been appointed an inspector of the estate, and who was mortgagee of the land in question. The sale had been made at what the plaintiff claimed was a gross undervalue, in 1902, and the defendant retained the property. The action was commenced in 1914. The defendant relied on the Statute of Limitations, R.S.O. c. 75, s. 47. The Judicial Committee of the Privy Council (Lords Finlay, Cave, Sumner, and Parmoor) were of the opinion that assuming the sale in question was a breach of trust, the purchaser became a constructive and not an express trustee, and the section relied on afforded him a defence. The appeal was therefore dismissed. They held that it was not a case of trust property still retained by the trustee within the meaning of s. 47 (2); those words, in their opinion, apply to property originally taken possession of upon trust, and not to property in respect of which a constructive trust arises by reason of some impeached transaction respecting it.

BANKER—CROSSED CHEQUE—DEFECTIVE TITLE—LIABILITY OF BANKER—CUSTOMER—BILLS OF EXCHANGE ACT, AUSTRALIA, 1909, s. 88 (1)—(R.S.C., c. 119, s. 175).

*Commissioners of Taxation v. English, Scottish & Australian Bank* (1920) A.C. 683. This was an appeal from the Supreme Court of New South Wales. A cheque payable to bearer and crossed, generally, belonging to the plaintiffs was stolen. It was deposited in the defendant bank, and collected by the bank for a person who gave his name as Thallon, and cheques drawn against the proceeds were duly honoured. The bank relied on the Australian Bills of Exchange Act, 1909, s. 88 (see R.S.C. c. 119, s. 175) and the Supreme Court held that was a good defence, and its judgment was affirmed by the Judicial Committee of the Privy Council (Lords Haldane, Buckmaster, Dunedin and Atkinson), Their Lordships holding that the word "customer" in that action signifies a relationship in which duration is not of the essence, and includes a person who has opened an account the day before paying in a cheque to which he has no title.