Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of James Motz v. *Henrietta Moreau, from a Judgment of the Court of Queen's Bench for Lower Canada; delivered 8th February,* 1860.

Present:

LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.
SIR JOHN TAYLOR COLERIDGE.

THIS is an appeal from a judgment of the Court of Queen's Bench of Lower Canada sitting in appeal, by which that Court reversed a judgment of the Superior Court of Lower Canada for the district of Quebec. The Appellant James Motz, the Plaintiff in the suit in the Superior Court, is the eldest son of the marriage of John Motz and Christiana Mc Phee. There were two other children of that marriage, William Andrew Motz and Catherine Motz.

John Motz, the father, died on the 1st October, 1819, having, by his will, given all his property, real and personal, movable and immovable, to his wife, Christiana Mc Phee. In the month of December 1819, Christiana Mc Phee, his widow, intermarried with Joseph Carrier. Upon this marriage a community of the movable, but not of the immovable, property of the husband and wife took effect, according to the law of Canada. There was issue of this marriage, one child only, Joseph Carrier the younger.

On the 23rd September, 1823, the Court of Queen's Bench of Lower Canada, upon the application of Joseph Carrier and Christiana Mc Phee, appointed Lewis Harper to be the tutor and John Kerry to be the sub-tutor of the appellant James Motz and of the two other children of John Motz,

all of whom were then minors; and the same Court, on the 8th October, 1824, in a suit instituted by Carrier and his wife against Lewis Harper, ordered the will of John Motz to be carried into effect, and made deliverance to Christiana Mc Phee of all the property given and bequeathed to her by the will.

On the 24th December, 1828, Christiana Mc Phee made her will, by which she directed all her debts and funeral expenses to be paid out of her estate by her testamentary executor, thereinafter named, and gave and bequeathed to her husband Joseph Carrier, the use and enjoyment, during his life, of the whole of the property, real and personal, movable and immovable, without exception or reserve, which she might be possessed of, of whatsoever value the same might be, and wheresoever situate, thereby expressly dispensing the said Joseph Carrier from making any inventory of the said property, trusting entirely to his discretion in that respect; and as to the property of her estate, to be enjoyed as aforesaid by the said Joseph Carrier during his life, she willed, devised, and bequeathed the same unto her husband the said Joseph Carrier, and Joseph Carrier her son, and to James Motz the Appellant, William Motz, and Catherine Motz, her children, issue of her first marriage with the said John Motz, thereby instituting them, the said Joseph Carrier, Joseph Carrier the younger, James Motz the Appellant, William Motz, and Catherine Motz, her children, her universal and residuary legatees, in full and entire property, ordering that her said property, movable and immovable, should be divided between them, all share and share alike, and she appointed Joseph Carrier, her husband, for the execution of that her will.

On the 18th April, 1829, Christiana Mc Phee died. On the 21st August, 1830, the Court of Queen's Bench of Lower Canada, upon the application of Joseph Carrier, representing that William Andrew Motz and Catherine Motz were still minors, appointed Joseph Carrier to be their tutor, and the appellant James Motz to be their sub-tutor.

In this proceeding it is to be observed that the Appellant, James Motz, was treated as being of full age; and no notice was taken of Lewis Harper, the tutor first appointed, although he was then living: he did not die till some time in the year 1831.

Joseph Carrier, it appears, about the same time procured himself to be appointed the tutor, and Frederick Dion to be the sub-tutor of the infant, Joseph Carrier the younger; and on the 31st of August, 1830, an inventory was taken of the property of the community of Joseph Carrier and Christiana Mc Phee; the minors W. A. Motz and Catherine Motz being represented by the Appellant James Motz, their sub-tutor, and Joseph Carrier the younger by his sub-tutor.

By this inventory it was made to appear that the whole property of the community between Joseph Carrier and Christiana Mc Phee amounted to 5,053*l.* 3*s.* 2*d.*, of which a moiety, amounting to 2,526*l.* 11*s.* 3*d.*, belonged to the estate of Christiana Mc Phee, and under her will was to be enjoyed by Joseph Carrier during his life, and on his death to be divided in fifths between Joseph Carrier, Joseph Carrier the younger, the Appellant James Motz, William Andrew Motz, and Catherine Motz. The share of each of these parties, therefore, according to the inventory, amounted to 505*l.* 6*s.* 3*d.*

This inventory appears to have been closed, so far as the infant Joseph Carrier was concerned, on the 17th September, 1830; but it does not appear ever to have been closed so far as the Appellant James Motz, and William Andrew Motz and Catherine Motz, were concerned.

Soon after the making of this inventory, and on the 27th April, 1831, the Appellant, James Motz, in consideration of the sum of 505*l.* 6*s.* 3*d.*, then paid to him by Joseph Carrier (being the amount of his share of his mother Christiana Mc Phee's estate, as found by the inventory), and in consideration of Joseph Carrier's undertaking to pay all the debts and expenses to which the share might be liable, assigned to Joseph Carrier all his rights both as heir of his father, and as heir and legatee of his mother, without any exception or reserve.

On the 3rd of October, 1831, Joseph Carrier married the Respondent, Henrietta Moreau, and there are several children of this marriage.

On the 7th December, 1833, William Andrew Motz assigned to Joseph Carrier all his rights as heir of his father, and as heir and legatee of his mother, in the same manner and for the same considerations as his brother, the Appellant James Motz, had done.

On the 9th December, 1837, Catherine Motz died a minor, and intestate, leaving the Appellant James Motz and William Andrew Motz her heirs.

On the 4th July, 1839, Joseph Carrier came to an account with William Andrew Motz in respect of his moiety of the sum of 505*l.* 6*s.* 3*d.*, appearing by the inventory to be the share of Catherine Motz of the estate of her mother Christiana Mc Phee. By this account it appears that Joseph Carrier charged William Andrew Motz with his share of a debt represented to have been due from the community, and not to have been included in the inventory, but to have been since paid by Carrier, and also with his share of the loss upon a debt due to the community, and included in the inventory, but which had not been fully realized; and further with his share of the funeral and some other expenses of Catherine Motz. These sums were by the account deducted from the moiety of the 505*l.* 6*s.* 3*d.*, leaving a balance of 142*l.* 11*s.* 3*d.* due to William Andrew Motz, of which he acknowledged the receipt, and he also signed a memorandum at the foot of the account, admitting it to be correct.

On the 30th April, 1841, the Appellant, James Motz, came to a general settlement of accounts with Joseph Carrier, and Joseph Carrier and the Appellant James Motz then signed a memorandum by which they acknowledged to have settled all accounts generally, of whatever description, between them, including what Joseph Carrier was accountable for to the Appellant, James Motz, for his share of the succession of Catherine Motz, his sister; and they further acknowledged that the result of the settlement was, that Joseph Carrier was debtor to James Motz in the sum of 76*l.* 5*s.* 1*d.*, and that Joseph Carrier had paid that sum to the Appellant, James Motz: and by this memorandum the Appellant, James Motz, confirmed and approved the account rendered by Joseph Carrier, of the succession of Catherine Motz on the 4th July, 1839 (being the account rendered to William Andrew Motz), and acquitted Carrier from that account, and from rendering any other account, discharging him from all claims and demands in respect of the succession of Catherine Motz, and from all other demands whatsoever, which he had against him up to that day; and Carrier, on his part, acquitted and discharged the

Appellant, James Motz, from all claims and demands which he had against him up to that day, whether for advances, or on any other accounts, and the parties mutually acquitted each other.

On the 2nd September, 1851, Joseph Carrier died, having, by his will, dated the 21st June, 1851, given and bequeathed the whole of his estate, movable and immovable, to his wife, Henrietta Moreau, for her life or widowhood, and, subject to her interest, to his children by her, and their issue.

Soon after the death of Joseph Carrier, his widow, the Respondent, Henrietta Moreau, was appointed tutor to her children, and she was afterwards also appointed tutor to the substitution created by her husband's will.

On the 8th March, 1852, William Andrew Motz assigned to the Appellant, James Motz, all his rights, shares, and portions in the estates and succession of his late father, mother, and sister. This assignment purports, on the face of it, to have been made for good value received; but the particulars of the consideration do not appear on the face of the instrument.

On the 28th June, 1852, the Appellant, James Motz, instituted the suit out of which this appeal arises, in the Superior Court of the district of Quebec, against Henrietta Moreau, in her own right, in respect of the community between her and Joseph Carrier, and as legatee under his will, and tutor to her children and to the succession created by the will, and against Joseph Carrier the younger, who seems to have been a formal party merely as legatee under the will of Christiana McPhee. The Appellant, James Motz, instituted this suit in his character of legatee of Christiana McPhee, and of assignee of William Andrew Motz, and of heir of Catherine Motz. By the declaration he impeaches the inventory of the 31st August, 1830; the assignment by him of the 27th April, 1831; the assignment by William Andrew Motz of the 7th December, 1833; the account settled with William Andrew Motz on the 8th July, 1839; and the account settled with himself on the 30th April, 1841; and seeks to have those instruments and accounts declared to be void and of no effect, and in effect to have the accounts taken of the estate of Christiana McPhee and of the administration thereof, and to have her

estate distributed and divided in fifths according to the directions of her will. The declaration also sought relief as to a moiety of a sum of 600*l.* which had been the subject of a deed of donation by Joseph Carrier and Christiana McPhee to the Appellant James Motz and his brother and sister; and it further asked to have it declared that the community between Joseph Carrier and Christiana McPhee had not been determined, but was still subsisting; but these two latter points were decided against the Appellant in the Superior Court, and there having been no appeal by him from the decision upon them the points are not open upon this appeal.

The grounds assigned by the declaration for impeaching the instruments and accounts in question are these:—As to the inventory, that it was not made in the presence of Lewis Harper, the tutor of the minors Motz, and lawful contradictor; that the character of tutor assumed by Joseph Carrier was an usurped character; that the Appellant was not, in fact, sub-tutor of his brother and sister, and had been wrongly placed in that position by Joseph Carrier, he, the Appellant, being then a minor and under the power of Joseph Carrier; that the inventory was incomplete, incorrect, and false; that Joseph Carrier had included in it, as part of the community, property of Christiana McPhee, and had not accounted for other property of hers which had been alienated by him during the community. As to the assignment of the 27th April, 1831: that the consideration was less than half the value of the Appellant's share of the immovable property; that Joseph Carrier had never accounted with the Appellant for his share of the successions of his father and mother, and could not legally deal with him in the matter, and that the consideration was founded on false and erroneous calculations, and was much below the value; that the Appellant was then a minor, and that the transaction was with Carrier, who was the guardian of the Appellant's person and property, in his character of stepfather and pro-tutor, and that it was had without any account rendered accompanied by vouchers, and without any true and lawful inventory being made, and without the Appellant's having been put in the position of knowing the value of the property, and without the presence

of a tutor *ad hoc*. As to the assignment of the 7th December, 1833, precisely similar reasons were alleged. As to the account of the 4th of July, 1839, the grounds assigned were that it was informal, incorrect, illegal, and incomplete, and that it was not accompanied by vouchers, nor sworn by Carrier to be just and true; and as to the settlement of account of the 30th of April, 1841, it was impeached upon the ground that it had not been preceded by the rendering of any lawful account accompanied by vouchers, and had not been sworn to be just and true.

The Respondent, Henrietta Moreau, pleaded to the action. The second plea was that the action was wholly barred by the lapse of more than ten years, between persons of full age, and not privileged, since the several instruments and accounts sought to be impeached had been made and passed, and by the lapse of more than ten years since the Appellant and those whom he represented in the action had attained majority; and by her fourth plea the Respondent put in issue all the facts of the case.

The Appellant replied to the second plea that the ten years' prescription did not apply to the case; Joseph Carrier having been the tutor, protutor, and guardian of the Appellant and of his brother and sister, and not having rendered any account nor produced vouchers. And further, that Carrier having had the usufruct of Christiana McPhee's property during his life, the prescription did not begin to run till his death, and that the instruments and accounts sought to be impeached were affected by fraud and deceit, and that there could be no prescription in the case of fraud or deceit.

There is a great deal of evidence in the cause both on the one side and on the other, relating mainly to the ages of the Appellant and of William Andrew Motz, and to the extent and value of the property comprised in the community between Joseph Carrier and Christiana Mc Phee, and to the disposition of that property; but in the view which their Lordships have taken of the case, it is not necessary to enter into an examination of this evidence. It is sufficient to observe that the Appellant, James Motz, was, in the progress of the

cause, examined on interrogatories exhibited on the part of the Respondent Henrietta Moreau. That by the first of these interrogatories he was asked whether he had not sworn in an affidavit which he had desired to file in support of his demand, that Christiana McPhee and Joseph Carrier had often told him that Jacob Pozer was largely indebted to the succession of the late John Motz, that is to say, in the sum of 500*l.* currency, for money advanced and lent by the said John Motz in or about the year 1817; that the late William Fisher Scott was indebted to the succession of the late John Motz in the sum of 800*l.* currency, for money lent to the said William Fisher Scott by the late John Motz; and that divers other sums of money were due to the said succession by the late James McCullum and John Grout, to the amount of some hundred pounds currency: and that by the second of these interrogatories he was asked whether he had not sworn in the said affidavit, that he knew that the late Joseph Carrier and Christiana McPhee, after having bought a house in the lower town of Quebec in the month of August 1817, had still in their possession, belonging to them and forming part of their community, a very large sum of money, that is to say, the sum of 3,000*l.*, or thereabouts; and that at the death of Christiana McPhee in April 1829, their fortunes had been augmented, and they had in their possession a sum of about 4,000*l.* currency in gold, silver, and bills of exchange, and that he counted the same, and that he enjoyed the entire confidence of his mother up to the time of her decease; and that his mother and Joseph Carrier had also belonging to them a large stock in trade of the value of more than 2,000*l.* currency, with other movables of the value of more than 1,000*l.* currency, the whole estimated by him at a low value, besides debts to a considerable amount, independently of immovable property belonging to John Motz, and to the community between Joseph Carrier and Christiana McPhee; and that the Appellant's answer to these interrogatories was as follows:—

To the first interrogatory, answer—Yes; and in addition to those sums I omitted to mention the name of another person called to my memory since the closing of my enquêtes, by Mr. Hamel, road-surveyor of this city; I allude to a person of the name of M'Eachan or M'Eachern, well known to the said

Mr. Hamel, and of whom the said Joseph Carrier often spoke to me as being indebted to the estate of my late father, John Motz, in the sum of, I think, three hundred and fifty pounds, which, together with the interest that would have accrued thereupon in in the year eighteen hundred and thirty, when Mr. Carrier made his inventory of the 31st of August, would have amounted to about five hundred pounds or upwards, and which sum has not been entered by the said Joseph Carrier in his said inventory of the 31st August, 1830; it likewise appears by Plaintiff's Exhibit No. 34, filed in this cause, that he, the said Joseph Carrier, received in hand, well and duly paid, from Mrs. W. F. Scott, wife of the said William Fisher Scott, the sum of one hundred and seventy-two pounds seventeen shillings and seven pence, on account of some moneys lent by the said John Motz to the said William Fisher Scott, and that that amount was never entered in the said inventory notwithstanding that he, the said Joseph Carrier, had been collocated in the cause of Grant *versus* Vanfelson and himself, the said Joseph Carrier, opposant, on the 17th of April, eighteen hundred and thirty, about one year after the death of the said late Christiana M'Phee, and about four months before his said inventory. It appears, likewise, that he, the said Joseph Carrier, had been collocated in the cause of Dalrymple *versus* Scott, and him, the said Joseph Carrier, opposant, for the sum of two hundred and fifty pounds currency, as appears by Plaintiff's Exhibit No. 39, filed in this cause, neither of which has been entered in his said inventory of the 31st August, 1830.

Second. Yes; I attested to those facts in that affidavit, and I know them to be true, and I called them to the recollection of the said Joseph Carrier about the time of the said inventory in 1830. I likewise called to his recollection the circumstance of his having left home a short time before that period, and during his widowhood, and of his having left one of his iron chests (for he had two in the house at that time) wide open with the key in the lock thereof, which key remained in my possession from the Saturday afternoon, the day of his departure, until the following Monday, the day of his return, during which time the house was left under my charge and control. I counted upon that occasion, during his absence, upwards of three thousand pounds in gold, silver, and bank bills, which were inclosed in that iron chest. I told him at that time, about the time of the said inventory, that I had counted that sum in the iron chest, and that I knew that the estate of my late father and mother was worth more than he represented it to be. Whereupon he replied, " We have no time to think of these matters now; I only intend this inventory as a matter of form; I will make it all right hereafter; I consider you as my own child, and have made you in my last will and testament one of my heirs." I told him that I knew he intended to do what was right, but again represented unto him that I knew the estate of my late father and mother was worth more than he represented it to be; upon which he got annoyed, and replied, that he was not obliged to render me any account whatever of the succession, that he had the usufruct and enjoyment thereof during his lifetime, and that if I did not hold my tongue he would not give me a fraction, but that if I trusted to him he would carry out my mother's will, as ordered by her in the will itself.

Shortly after my mother's death he turned me out of doors,

and compelled me to provide for myself, and to abandon the study of my profession, which profession I had studied for the space of two years and nine months, with Mr. M'Pherson, notary public; he gave me no means of supporting myself, and left me completely destitute; he knew of my embarrassed circumstances, and that I was largely indebted for boarding, lodging, clothing, and for maintaining the ordinary necessaries of life; and in the month of April, 1831, he inveigled me into making a *transport de droits successifs*, filed in this cause as Plaintiff's Exhibit No. 13, and which I was compelled to do, and did, in my desperate circumstances, with the understanding that my mother's will should be carried out after his death, as had been ordered therein by herself. I was obliged to make this *transport de droits successifs* because I had no means whatever to procure the ordinary wants of life; this transport was made without a *reddition de comptes*, without the presence of my tutor nor of a tutor *ad hoc*, without any of the formalities required by law, *non visis tabulis*. It was, therefore, only after the death of the said Joseph Carrier, which took place in 1851, and when I saw his last will and testament, that I could discover and became aware of the frauds and deceit that he had been guilty of towards me in our transactions, and that I found out that I had been inveigled into those transactions by his deceitful dissimulations, delusive language, and plotting intrigue.

In this state of circumstances, the Superior Court by its decree declared the instruments and accounts impeached by the declaration, to be null and void, and, in effect, decreed the accounts prayed by the Appellant, the Appellant accounting for what had been received by him and those whom he represented, with interest; but as to the deed of gift and the continuance of the community, the Superior Court dismissed the Appellant's claims. The Court of Queen's Bench, on the other hand, dismissed the suit, saving to the Appellant any remedy he might have by special action.

In disposing of this case their Lordships do not think it necessary to enter into the question of the age or non-age of the Appellant and William Andrew Motz at the respective periods when the assignments to Joseph Carrier were made by them, or into any examination of the evidence as to the truth or falsehood of the inventory, or as to the extent or value of the property comprised in the community between Joseph Carrier and Christiana Mc Phee. They are fully satisfied that the inventory was not correct, and they are not less satisfied that, whether the Appellant was of age at the date of the inventory or not, and whether the Appellant and William Andrew Motz were of age or under age at the times

when they made the assignments to Joseph Carrier, those assignments were made by them so soon after they had attained their majority, and under such circumstances, that standing by themselves, without reference to any question of time or conduct, they could not possibly be maintained, according to the law of Canada.

Neither do their Lordships think it necessary, in determining this case, to enter into the question so much discussed in these papers, and debated in the argument at the bar, whether the ten years' prescription does or does not bar the Appellant's claims. They assume in favour of the Appellant that it does not: but claims, although not barred by prescription, may be extinguished by release, or destroyed by conduct operating as a release; and their Lordships are of opinion that the claims made by the Appellant in this suit have been so extinguished or destroyed.

It appears from the passages which have been read from the Appellant's answer to the Respondent's interrogatories, that the Appellant throughout knew that the inventory on which all the subsequent transactions complained of in this suit were based, did not contain a just and true account of the property of the community between Joseph Carrier and his mother, Christiana M'Phee—that it was full of errors and omissions. With knowledge of these facts, he dealt with Joseph Carrier, and, several months after the date of the inventory, during which the relations between them appear, from his statement, to have been by no means amicable, he completed with Carrier the transaction of the 27th April, 1831.

That transaction was not a mere transaction of account and payment. The Appellant had at that time no right to claim any payment whatever. It was a transaction not merely of account and payment, but of sale and purchase. It was a sale and purchase upon terms which might or might not turn out to be beneficial to the Appellant, according to the duration of Joseph Carrier's life, upon the determination of which the Appellant's interest depended.

These considerations, however, are not, as has been already said, sufficient in their Lordships' judgment to justify the conclusion that the transaction, standing by itself, could have been supported; but the transac-

tion could at any time have been impeached by the Appellant. He might at any time have sued to set it aside. He took no such proceeding, nor, so far as appears from the evidence, even intimated any dissent from the transaction during the whole of Carrier's life. During the whole of that period he adhered to the transaction, and took the benefit of it; and not only so, but in April 1841, he settled all accounts with Carrier, and signed a memorandum which, if it does not amount to an absolute release, at all events approaches so closely to it that it can scarcely be considered in any other light. There is no pretence for saying that the Appellant was at this time in any degree under the influence of Carrier. He was at this time independent of any such influence, of mature age, and fully competent to judge what it was most for his interest to do; and he then deliberately adopted this course. Their Lordships are of opinion that he must abide by it. He says that he entered into the transaction of 1831 upon the faith of promises made to him by Carrier that he would, by his will, carry out the dispositions which had been made by his wife, Christiana McPhee; and it was said for the Appellant at the bar that by the law of Canada the transaction of 1831 was wholly null and void, and did not admit of confirmation; but their Lordships cannot impute to the Appellant, more especially as he seems to have been brought up to the profession of the law, that he did not know that a will was a revocable instrument, and they find it impossible to suppose that the Appellant could have acted upon the promises which he alleges to have been made to him by Carrier, when they find that Carrier turned him out of the house shortly after his mother's death, and that not only is there no proof of any reconciliation between them, but that there appears to have been litigation between them in the year 1844, upon the subject of the deed of donation of 600*l.* to which allusion has been made. And with respect to what was said as to the law of Canada upon the subject of confirmation, however strong the law may be upon that subject, their Lordships do not find that it disables parties from releasing their rights, or from disentitling themselves by their conduct from enforcing them. The question here is not whether the inventory was null and void, and incapable of confirmation, but whether the

assignment made by the Appellant can now be set aside; for if the assignment stands the Appellant's rights are gone. Looking at the case in this point of view, it was said for the Appellant that he was not bound to sue until the death of Carrier, when his interest came into possession, and this may well be so; but although the Appellant may have been entitled to institute the suit, it does not follow that he was entitled to succeed in it: and seeing that the transaction of 1831 was entered into with full knowledge on the part of the Appellant that the inventory was not correct, and was followed by the transaction of 1841, which, in their Lordships' judgment, was, or was tantamount to, a release, they are of opinion that the Appellant was not so entitled to succeed. In order so to entitle him he was bound, as their Lordships think, to show that the transaction of 1841 was open to impeachment, as the original transaction had itself been, and in their Lordships' opinion he has failed to do so. The transaction of 1841 was not a mere sequence of the original transaction; it was, in some respects, a new and independent transaction. It cannot have proceeded upon the faith of the inventory, for the Appellant knew the inventory to be incorrect. It cannot be affected by any considerations of influence or control arising from the relation between the parties, for the Appellant had long been emancipated from any such influence or control. Their Lordships are satisfied that the Appellant when he entered into this transaction well knew that the original transaction was open to impeachment, and deliberately determined that it was more for his interest to release than to prosecute his claims. In cases of this nature the position in which the person whose title is sought to be impeached has been placed must always be borne in mind, although it may not decide the question whether the transaction ought to be set aside. In this case the Appellant has abstained from suing to impeach these transactions until the death of Carrier, by whom, had he been living, they might have been elucidated and explained.

Upon these grounds their Lordships are of opinion that the Appellant's claims, so far as respects his individual interests, cannot be maintained. The same reasons which preclude the

Appellant's individual claims seem to their Lordships to preclude also his claims as co-heir of his sister. The claims set up by the Appellant as assignee of his brother William Andrew Motz have appeared to their Lordships to be more open to consideration; but William A. Motz settled accounts with Joseph Carrier upon the footing of the inventory, knowing, as appears by the account itself, that the inventory was not correct, and their Lordships, therefore, do not think that this part of the case can be distinguished. They give no opinion upon the question whether such an assignment can in any case be made the foundation of a suit, but they think it right to say that assignments taken as this has evidently been, for the mere purpose of prosecuting a suit, are not entitled to any favourable consideration.

Upon the whole, therefore, their Lordships will humbly recommend Her Majesty to dismiss this appeal; but their Lordships highly disapprove of transactions of this description entered into by persons standing in confidential relations, and upon this ground, and upon the ground of there having been a difference of opinion in the Courts in Canada, and to some extent between the Judges of the Court from which this appeal comes, they will humbly recommend that the dismissal be without costs.