

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of McVity  
and another v. Tranouth and another, from  
the Supreme Court of Canada ; delivered the  
3rd December 1907.*

---

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

*[Delivered by Lord Macnaghten.]*

The only question in this case is which of two innocent parties is to bear the loss occasioned by the fraud of one Sootheran, a dishonest lawyer. One of the parties trusted him as professional adviser; the other dealt at arm's length with him as an honest man.

In their Lordships' opinion the question is concluded by the Act Rev. Stat. Ontario, chapter 136, section 87.

The Appellants, who are mortgagees, took their mortgage from Sootheran, who was on the register as owner of the land which was mortgaged to them. The land had been conveyed to Sootheran by the female Respondent on the occasion of her marriage with the other Respondent to the intent that it might be re-conveyed to both. Sootheran registered the conveyance to himself. He executed the re-conveyance. But he failed to register it, and deceived his clients by producing a forged certificate of registration.

The Act makes every instrument affecting lands "void against any subsequent purchaser

“ or mortgagee for valuable consideration without actual notice, unless such instrument is registered.” The re-conveyance being unregistered was, therefore, void against the Appellants, who advanced their money without notice. As between Sootheran and the Respondents, the deed of re-conveyance was perfectly valid. And consequently before the date of Sootheran’s mortgage to the Appellants, no action could have been brought to recover the land. The mortgage was executed on the 30th of August 1895. The writ in this action was issued on the 12th of May 1903. The Statute of Limitations does not, therefore, afford any defence to the Respondents. No other ground of defence was seriously argued at the hearing before this Board.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal should be allowed, and the Orders of the Court of Appeal for Ontario and the Supreme Court of Canada discharged with costs.

The Respondents must pay the costs of this Appeal.

---