Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Williams v. *Papworth and Others, from the Supreme Court of New South Wales; delivered* 21*st July* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD LINDLEY.
SIR RICHARD COUCH.
SIR HENRY STRONG.

[*Delivered by Lord Macnaghten.*]

The Respondents the children of Mrs. Sarah Theresa Smith now deceased claiming by virtue of a settlement dated the 18th of December 1883 brought an action for damages against the Appellant the Registrar-General for the Colony of New South Wales as nominal Defendant under Sections 117 and 119 of the Real Property Act. Their case was that they had been deprived of an interest in land under circumstances which in the events that had happened gave them a right to compensation out of the Assurance Fund established by the Act.

In the Colonial Courts the Defendant resisted the claim on two grounds. He contended (1) that the interest of the Plaintiffs under the settlement was not an interest in land within the meaning of the Act and (2) that if it was such an interest the action was out of time.

By consent a verdict was found for the Plaintiffs for 10,500*l.* leave being reserved to the Defendant to move to set aside the verdict and

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to enter a non-suit or a verdict for the Defendant.

A Rule Nisi was accordingly obtained.

It was discharged with costs by the Full Court.

The judgment of the Court was delivered by Darley C.J. The judgment is so clear and concise that their Lordships would have been satisfied to affirm it without further comment if the Appeal to this Board had not raised a new point on the construction of the settlement of December 1883.

By that settlement certain land was conveyed to trustees upon trust during the life of Mrs. S. T. Smith to raise an annuity or yearly rentcharge of 416*l.* to be paid to her for her separate use. After the death of Mrs. S. T. Smith which happened on the 6th of January 1890 the trustees during the lives of her children and the life of the longest survivor were to receive and take by and out of the rents issues and profits of the said hereditaments an annuity or yearly rentcharge of 416*l.* "the "said annuity or yearly rent charge to be "applied by the said trustees or trustee for the "maintenance and education of such children "or child as aforesaid." After the death of the survivor of the said children a like annuity or rentcharge was to be paid to James Club Smith the husband of Mrs. S. T. Smith for his life. Subject to the foregoing trusts the premises were to be held in trust for Frank McDonald his heirs and assigns. Afterwards in 1889 Frank McDonald brought the land under the provisions of the Real Property Act without disclosing the settlement of December 1883; and although the settlement was at the time duly registered in the office McDonald through some error or oversight on the part of the officials obtained a certificate of title free from the encumbrance created by

the settlement. McDonald however still went on paying the annuity to the trustees until his bankruptcy which happened in September 1897. It was then discovered that by the certificate Frank McDonald had acquired an absolute title to the land and that the land was vested in him at the time of his bankruptcy subject only to certain mortgages and encumbrances created subsequently to the date of the certificate. The rights of the trustees were then barred but the rights of the children if their rights are independent of the rights of their trustees are saved by the provisions of the Act in regard to persons under disability.

It was argued by the learned Counsel for the Appellant that the limitation in favour of the children one of whom was born after the date of the deed was void for remoteness. They said that according to the true construction of the settlement the trustees had a discretionary power of apportioning the annuity among the children according to their several necessities and that consequently until the class became reduced to one individual the children had only an uncertain and unascertained interest. They relied upon the use of the word "applied" and upon the direction that the annuity was for "maintenance and education." But the word "applied" does not import a power of selection: it simply means "devoted to" or "employed for the "special purpose of." Nor is a provision for the maintenance of adults anything more than a provision for their benefit. In the opinion of their Lordships the meaning of the words used in the settlement is perfectly clear. The children take a joint interest in the annuity but the shares of minors are to be applied for their maintenance and education. On a point which seems so plain it is hardly necessary to refer to

authority but there are plenty of cases on wills where similar words have received a judicial construction. In *Lewes* v. *Lewes* 16 Sim. 266 certain estates were devised to trustees in trust to receive the rents and pay thereout the yearly sum of 300*l.* for and towards the maintenance clothing and education of all and every the children of the testator's eldest son in equal shares and proportions during the life of the son. The eldest son had three children one of whom died in his father's lifetime. The Vice Chancellor said "there is no sensible way of dealing with this case "except by taking the words 'for the mainten-"'ance clothing and education' to be equivalent "to 'for the benefit of' the children" and he therefore declared that the personal representative of the deceased child was entitled to one-third of the 300*l.* a year during the life of the father. So in *Soames* v. *Martin* 10 Sim. 287 a gift for the maintenance and education of an infant where there was no disposition of the principal was held to be a gift for life; and again in *Wilkins* v. *Jodrell* 13 C.D. 564 where there was a gift of an annuity to a lady for life and in the event of her death "to be continued to her children for "their maintenance and education" with a request to a person named by the testator "to see it "carried into execution" the children were held entitled to the annuity during their lives and until the death of the survivor of them and it was determined that they took the annuity "for "their lives and the lives and life of the survivors "and survivor of them the children entitled for "the time being being entitled as joint tenants "unless they severed the joint tenancy."

As regards the two points which were argued and disposed of in the Full Court their Lordships have little or nothing to add. It could not of course be disputed that the expression "interest

" in land " unless there were something to restrict the meaning must include equitable as well as legal interests. But it was argued that the scope of the Act rightly understood requires such a restriction; otherwise it was said the labour thrown upon the office would be enormous if not intolerable. It seems rather difficult to support that contention when the Act (Sec. 14) requires every applicant for registration to state the nature of his estate or interest in the property and the nature of every estate or interest held therein by any other person " whether at law or " in equity " and provides (Section 17) that if it appears that any parties beneficially interested in the land which is the subject of the application are not parties to the application notice is to be served on all persons who shall appear to the Commissioners to have any interest in the land. Again Sec. 110 which was referred to during the argument speaks of beneficiaries claiming an estate or interest in the land there referred to.

Their Lordships also agree with the Full Court in thinking that the circumstance that the trustees are barred by limitation is no ground for holding that the beneficiaries are barred too. The statute gives a right of action to any person deprived of an interest in land through the bringing of such land under the provisions of the Act. The remedy is a statutory remedy. It is to be worked out by an action not against individuals competing for possession of land but against a fund specially provided by a system of insurance in order to compensate persons who without any fault of their own may have been deprived of their property in the course of carrying out a new scheme. There seems to be no reason why the remedy should be denied to persons who are within the very terms of the Act and have actually sustained a loss of property because

other persons who were their trustees have lost a right of action and nothing else.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.