PISANI v
ATTORNEY GENERAL and others

Privy Council
Sir James Colvile, Sir Barnes Peacock, Sir Montague Smith and Sir Robert Collier.

13,14,15,16,19 June 1874.

Practice and procedure — departure from ordinary procedure by consent of parties.

Appeal to Privy Council — when objection to competence should be taken.

Solicitor and client — purchase by solicitor from client — whether impeachable.

Miss Manuela Porro, who resided at Gibraltar, and owned some real property there, made her will in 1858, whereby she specifically devised it to the respondents, Lepri and Joseph Shakery, in trust for Joseph Shakery's two children, the respondents Francis Shakery and Victoria Shakery, equally for life, with remainder to their respective children in fee; and she appointed the trustees to be her executors. In 1868, in consideration of an annuity of $1500 for her life, she conveyed the property to the appellant, Mr. Peter Henry Pisani. She died soon after, in the same year, after a short illness, during which she executed a will, which was prepared at her request by the appellant, and whereby she revoked all former wills, and bequeathed her personal estate to one Mr. Gonzalez, as her executor, in trust for three charities.

After Miss Porro's death the will of 1868 was proved by the executor. The Attorney General of Gibraltar then filed an information claiming for the Crown the lands which had belonged to her as having escheated for want of heirs.

The Attorney General failed to establish the title of the Crown by escheat but upon his motion, and by consent of all parties, the information was amended so that the rights of the defendants as between themselves might be determined. The Court ordered that the conveyance be delivered up to be cancelled; found that the will of 1868 was void, and upheld the will of 1858.

Held: (i) Departures from ordinary practice by consent are of every day occurrence and do not generally deprive either of the parties of the right of appeal.

(ii) An objection that an appeal to the Privy Council is incompetent should be taken when the application was made for leave to appeal or by petition to the Queen before the appeal comes on for hearing.

(iii) Where a solicitor purchases his client's property —

(a) he has to show, not only bona fides, but also that the bargain was a fair one and that he has not lost, by lack of diligence, better terms for his client;

(b) he should not be precipitate in taking up the bargain and should not merely suggest, but insist on, the intervention of another professional man.

Per Curiam: When the title of the Crown failed, the information should have been dismissed and the defendants left to establish their rights in the ordinary way.

Cases referred to in the judgment.

Morris v Davies, (1837) 3 Cl. & Fin. 163.
Gibson v Jeyes, (1801) 6 Ves. 266.
Savery v King, (1856) 5 H.L. Cas. 627.
Holman v Loynes, (1854) 4 De G.M. & G. 270.
Edwards v Williams, (1863) 32 L.J. Ch. 763.

Appeal

Appeal from a judgment of the Supreme Court in which a conveyance to the appellant was impeached and ordered to be delivered into court and cancelled.

Kay, Q.C., and W.W. Karslake for the appellant.

Fry, Q.C., and Bagshawe, Q.C., for the respondents.

14 May 1874: Their Lordships dealt with two preliminary objections, as follows —

Their Lordships desire to state shortly the grounds why they cannot yield to either of the preliminary applications which have been made to them: one by Mr. Kay to reverse the decree without hearing the appeal on the merits; the other by Mr. Fry to dismiss the appeal.

It will be sufficient for this purpose, without going at length into the facts of the case, to mention that the suit was an information by the Attorney General, claiming, for the Crown, lands which had belonged to a lady, Manuela Porro, as escheated for want of heirs. He made defendants to the information Pisani, the appellant, who claimed under a deed of purchase; a person called Benaim, who asserted that Pisani was trustee for him; and also the present respondents, Lepri and the two Shakerys, the former being the trustee and the latter the infant *cestuis que trust* under a will of Miss Porro made in the year 1858. The Attorney General failed to establish the title of the Crown by escheat, and thereupon the suit as originally framed ought to have been dismissed. But in the course of the cause the opposing claims of the defendants among themselves became clear, and it was proposed that the information should be amended for the purpose of enabling the court to determine and declare what those rights were. Such an alteration of the suit could only have been made, it is admitted, by consent, and the question raised by Mr. Kay yesterday was whether there was an agreement to the effect that the suit should be so altered as to give the court power to declare in that suit the rights of the defendants between themselves. He denied that such an agreement was, in fact, come to.

[*After rejecting this objection, their Lordships dealt with a second objection*].

Then we come to Mr. Fry's application. He, for the respondent, not only contended that the agreement was made and was binding, but urged what is really a preliminary objection, that the decree, so far as it declares the rights of the defendants, must be regarded as the award of an arbitrator, and consequently that the appeal is incompetent. Their Lordships would be most unwilling to uphold the agreement at all if this were to be the effect of it, because, in their opinion, such a result would be opposed to the intention of the parties. They clearly meant to keep themselves *in curia,* and the judge clearly so understood them. It is plain also that the parties and the judge thought that an appeal was open. It is true that there was a deviation from the *cursus curiae,* but the court had jurisdiction over the subject, and the assumption of the duty of another tribunal is not involved in the question. Departures from ordinary practice by consent are of every day occurrence; but unless there is an attempt to give the court a jurisdiction which it does not possess, or something occurs which is such a violent strain upon its procedure that it puts it entirely out of its course, so that a court of appeal cannot properly review the decision, such departures have never been held to deprive either of the parties of the right of appeal.

The cases referred to by Mr. Fry do not bear out his contention.

(After considering White v Duke of Buccleuch, Bickett v Morris and Stewart v Forbes, the judgment continues.)

The case of *Morris v Davies,* [1] seems to their Lordships to be a strong authority against Mr. Fry's objection. In that case there had been a trial before a jury, a motion for a new trial, and a decision that a new trial ought to be granted. But instead of sending it down for a new trial, Lord Lyndhurst, by the consent of the parties, heard and disposed of the case. Upon an appeal to the House of Lords an objection was formally taken by the Attorney General to the competency of the House to hear the appeal. The case is reported in the 5th Clark and Finelly's Reports, and the objection of the Attorney General appears on p. 222. "The Attorney General and Mr. Temple, for the respondents, took a preliminary objection, insisting that no appeal lay from a decree to which all the parties by their counsel consented to submit in order to save the expense and delay of another trial at law. The parties could not be then placed in the same relative situation for a new trial if the decree should be reversed." After an argument by the counsel for the appellant, Lord Lyndhurst said:—"When I proposed to the parties to decide the question upon the evidence they were to lay before me, instead of sending it again for trial before a jury, I did not consider that my decree was to be exempt from appeal. I never contemplated such a consequence. The saving expense and further delay was my object." Now, this appears to have been the object in the present case; the parties, as it appears to their Lordships, never contemplated that they were doing

[1] (1837) 3 Cl. & Fin. 163.

other than keeping the cause in curia, or that the judge was to hear it otherwise than as a judge, or that it was not to go on subject to all the incidents of a cause regularly heard in court, of which an appeal is one of the most important. The judge clearly so understood the arrangement. To recur to *Morris v Davies*, the Lord Chancellor says :— "The House cannot entertain the objection to the regularity of the appeal." Then he says:— "That objection was disposed of by the Appeal Committee upon evidence which is not before the House." We have only the record of the decree before us, and in that no consent appears not to appeal. If it were alleged that the appeal was brought in breach of good faith, the House might put off the hearing until the objectors produced proof of that allegation. It is admitted that there was a consent, but how far it was meant to extend is the matter in dispute. It nowhere appears that the parties agreed that the decree should be final and conclusive. In *Morris v Davies* there was a consent that the cause should be heard in an unusual way, upon which Lord Lyndhurst acted, and although it was not put into his decree, it was regarded as a perfectly binding consent, which might be proved aliunde. The House of Lords gave effect to this consent according to the intention of the parties, for it was allowed to operate so as to make Lord Lyndhurst's judgment, which would have been otherwise irregular, a regular judgment, and was not allowed to operate so as to deprive the party of his right of appeal, which had not been stipulated for. That case is in these points not unlike the present.

For these reasons, considering also that this objection was not taken in the court below when an application was made for leave to appeal; that it was not taken here, as it might have been, by a petition to the Queen before the appeal came on for hearing; and, considering, also, that this Board has always exercised a large discretion in dealing with matters of procedure on appeals from Colonial Courts, their Lordships think that they ought to hear this appeal on its merits.

23 June 1874: Judgment was given on the appeal —

The general nature of this information has been already stated. The Attorney General made three sets of persons defendants, claiming adversely to each other, viz. (1) the appellant, Mr. Pisani, who claimed the property as a purchaser from Miss Porro; (2) Mr. Benaim, who alleged that Pisani had bought as trustee for him; and (3) the respondents, who claimed under a will made by the deceased lady in 1858. The original prayer of the information was that the deed of conveyance to Pisani should be declared void, and be delivered up to be cancelled; and that it be decreed that Miss Porro died without heirs and intestate: the Attorney General alleging that the will of 1858 relied on by the respondents was revoked by a subsequent will made in 1868, which, although disposing of personalty only, contained a clause revoking former wills. After the irregular amendment had been made, by which the court obtained power, by consent, to declare the rights of the

defendants inter se, the further peculiarity occurred that the Attorney General, when he had apparently abandoned the hope of establishing the Crown's title by escheat, continued to conduct the cause in the interest of the respondents. This led to a very anomalous proceeding: for whereas in the information the Attorney General alleged that the will of 1858, under which the respondents claim, was revoked by the will of 1868, his utmost efforts were afterwards employed to shew that this latter will was obtained by the undue influence of Pisani and others when the testatrix was in extremis, and, therefore, was not a valid revocation of the former one. The result of the suit, thus distorted, was a decree, by which it was declared and ordered that the lands had not escheated to the Crown; that the deed of conveyance to the appellant, Pisani, be delivered by him into court to be cancelled; that Benaim had no title or interest; and, further, that the will of 1868 (the parties taking under it, it is to be observed, not being before the court) was void and ought to be set aside, and that the will of 1858, under which the respondents claim, was valid. The decree further ordered that the appellant should account to the respondents, and directed that he should pay the costs of the respondents and of Benaim.

The Attorney General, for the Crown, and Benaim have acquiesced in the decree; and in dealing with the present appeal, to which the respondents, claiming under the will of 1858, and the appellant are alone parties, the case may be considered as if the respondents had brought a suit to impeach the appellant's conveyance. This deed bears date 25 January 1868, and is a conveyance in fee of the property from Miss Porro to the appellant, in consideration of the payment of an annuity of $125 per month, i.e., $1500 per annum.

Two principal questions arise in the appeal, (1), whether the conveyance can stand, and, (2), whether, if not, the will of 1858 was revoked. But in the view their Lordships take of the first of these questions, it will not be necessary to consider the last.

The case of the respondents to impeach the conveyance is, that Pisani, who is a barrister, and practises also, as is usual in Gibraltar, as an attorney, was the legal adviser of Miss Porro, and that having purchased whilst he was such adviser, he has not discharged the burden, cast upon him by that relation, of shewing that the bargain was the best that could be made for his client.

It appears, from the evidence, that the property in question was devised by the father of Miss Porro, who died in 1855, to his widow and six children; and that Miss Porro, in consequence of the deaths of the other devisees, claimed to be the sole owner of it. No doubt seems to rest on the deaths of any of the devisees, except one brother, José. This José left Gibraltar about thirty-three years before the transaction in question, and from letters which Miss Porro received soon afterwards she believed he had been murdered near Madrid. Nothing more appears to have been heard or known of him.

Miss Porro was about fifty-nine years of age at the time of the conveyance. The property was held in fee simple, and consisted of a large house and other buildings. There is abundant evidence that the house was in a dilapidated condition, and required a large outlay to put and keep it in repair. It was let to poor tenants and to women of bad character, and the rents were varying and precarious. A lease was put in, dated December 1866, by which a part of the house was let to a man named Benaluz for three years at $36 a month. It contained the significant condition that, in the event of the Government or the police opposing the residence of prostitutes in the house, the contract might be avoided by the lessee. It is not to be wondered at that a lady should be desirous of getting rid of this troublesome and disreputable property. Accordingly, we find that she had, during many years, made efforts to do so, and had made up her mind to dispose of it for an annuity.

[*Their Lordships then dealt with attempts by Miss Porro to dispose of the property, including an abortive sale to one Larios.*]

A week or two after the sale to Larios had gone off, Miss Porro sent for Belilo, and it appears that she wished him to find another purchaser. She told him she would not sell for less than she had agreed with Larios, viz. an annuity of $1560. Belilo gave the particulars to Mr. Bergel, a man of position and wealth, and entered upon a negotiation with him. After looking over the property, Bergel made an offer of $1400. It was communicated to Miss Porro, who refused it; and Bergel, after an interval of a week or ten days, increased his offer to $1500. During this treaty, Pisani was spoken to, it would seem, in the first instance, by Belilo, and saw both Miss Porro and Bergel on the subject of the sale. It appears that he so far recommended her to accept Bergel's terms that he told her he thought $1500 from a man like Bergel preferable to $1560 from Larios. Miss Porro ultimately agreed to accept Bergel's offer, provided she was kept free of all legal and other expenses in the sale. This was assented to by Bergel, subject to a good title being made out, and he agreed to give Pisani $150 for preparing the deeds. Pisani prepared the conveyance, but before executing it, Bergel required to be satisfied about the brother José, and whether there was proof of his death. Pisani told him the circumstances, and what Miss Porro knew and believed; insisted there could be no doubt of José's death, and urged the acceptance of the title. Bergel, after consulting another lawyer, Mr. Stokes, refused to complete the purchase, because, to use his own words, the title did not suit him. Pisani, according to the testimony of Mr. Bergel and other witnesses, was very angry at this refusal. His charges, amounting to about $50, were paid by Bergel. Their Lordships see no reason to doubt that Pisani acted in perfect good faith throughout this transaction with Bergel.

Upon the refusal of Bergel, Pisani proposed to Belilo, and afterwards to Miss Porro herself, that he and his brother should purchase on the same terms Bergel had agreed to. Miss Porro assented to this proposal, and afterwards, on his brother refusing to join in the purchase, she agreed to sell

to Pisani alone. Accordingly, he prepared deeds of conveyance, which he left with Miss Porro, suggesting that she should get another professional man to peruse them. She, however, consulted Gonzalez about them, who advised that clauses should be inserted to the effect that Pisani should keep the premises in repair, and make no alteration in them in Miss Porro's lifetime without her consent, and that if the annuity should be in default for twelve months he should forfeit what he had previously paid on account of it. These suggestions appear to their Lordships to have been fairly carried into effect by the deed, which provides that, upon default as above, the moneys already paid shall be forfeited, and the estate reconveyed.

Benaim's claim arose as follows: After Miss Porro had agreed to sell to Pisani, Belilo mentioned to Pisani that Benoliel had told him that Benaim wished to purchase. Pisani thereupon went to Benaim and asked if he would do so at the price for which it had been sold to Bergel. Benaim asked for time to consider, and Pisani gave him until the evening. There is conflicting evidence as to this negotiation. But it is evident that Benaim himself saw Miss Porro, and that she declined to accept him as a purchaser, giving as her reason that she had already sold to Pisani. She afterwards told Gonzalez that she would never sell to Benaim because he was not a man of responsibility. The court below has declared, and, in their Lordships' opinion, rightly, that Benaim's claim has no foundation in law or in equity.

Much minute inquiry took place at the hearing as to Miss Porro's health, which it is sometimes difficult to follow. The summary of it may be found in some general opinions given by the medical witnesses. Dr. Patron, who had attended her professionally for ten or twelve years, says this:"Miss Porro had a delicate constitution, and was of a highly nervous temperament. She had tolerable health; she was always complaining, but I never attended her for any serious disease until her last illness. I have not attended her for any chronic disease....I was sometimes called in to attend her during colds or nervous attacks, which lasted seven or eight days, but never for any serious illness." Dr. Patron had been pressed in cross-examination by the Attorney General as to her chances of life. On re-examination, he thus explains:—"I have stated that Miss Porro might live for years or die next day; but, in reply to your question whether she had to my knowledge any disease which would prevent her living for years, I have stated that she was nervously constituted, and I have stated that she was healthy, and she might be both at the same time." He adds, persons of such a constitution are more liable to disease, and to complications when they are ill.

It appears she suffered at times from an affection of the throat, and Dr. Hauser, who examined it, states: "There was no hoarseness—no pain at all, but a sensation of tickling. I considered it not serious, but a very common complaint in this country arising from the climate."

There is no doubt that, during the attempts to obtain the annuity, representations were made to Bergel and others by Miss Porro's agents, that her health was in an unsatisfactory state, and that the bargain would be a good one. This was said to enhance the annuity, but it does not seem to have

obtained credit. On the contrary, there were persons who took an opposite view. Mr. Stokes, a surgeon, who had been in the habit of meeting Miss Porro at the house of friends and in public places, deposed to having seen her a month after the transaction, in the streets, and at a ball at the theatre, when she appeared in a perfect state of health. He says she used to consult him as a friend, and seldom met him without asking him some question relative to the state of her stomach or her diet. He thought her complaints were imaginary and of a trifling nature, and that she took a great deal of care of herself. Mr. Stokes says that, knowing the property, and having a good opinion of the lady's chance of long life, he dissuaded Pisani's brother from joining him in the purchase. It appears, also, that Bergel, during his treaty, consulted Dr. Patron about the lady's health, who told him she might live ten or fifteen years, or might die in a short time; and that, if he wished to make a good calculation, he might reckon the period of her life as ten years.

Miss Posso died on 26 March 1868, from pyaemia, which followed upon an abscess on the arm. The abscess came on suddenly. Dr. Patron was called in on the 4th of March. He then considered it trifling, and everything went on well until the 17th, when, he says, she got a chill. It may be collected from Dr. Patron's evidence that the abscess came on suddenly, and was not connected with any previous disease, but that Miss Porro's constitutional temperament rendered her more than ordinarily liable to pyaemia.

The case originally made by the information was that Pisani knowing or having reason to believe that Miss Porro was suffering from a disease tending materially to shorten life, made fraudulent representations to Benaim to induce him to decline to purchase, and that he fraudulently represented to Miss Porro that Benaim had so declined, and that no other person would purchase for an annuity of $1500, and by these means obtained the conveyance to himself. The counsel for the respondents, Mr. Fry, detached himself, to use his own phrase, from the case of the Attorney General. He absolved Pisani from the charge of conscious fraud, and admitted that there was no evidence to support the imputation that he acted in the belief that Miss Porro was suffering from disease likely to shorten her life. The learned counsel rested his case entirely on Pisani's relation of attorney to Miss Porro, and on the principles acted on by courts of equity when that relation exists.

Several decisions on this subject were referred to. It results from them that the court does not hold that an attorney is incapable of purchasing from his client; but watches such a transaction with jealousy, and throws on the attorney the onus of shewing that the bargain is, speaking generally, as good as any that could have been obtained by due diligence from any other purchaser.

The principle is thus stated by Lord Eldon in *Gibson v Jeyes* [1] : "An attorney buying from his client can never support it unless he can prove that his

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[1] (1801) 6 Ves. 266 at p. 271.

diligence to do the best for the vendor has been as great as if he was only an attorney dealing for that vendor with a stranger; that must be the rule. If it appears that in the bargain he has got an advantage, which with due diligence he would have prevented another person from getting, a contract under such circumstances shall not stand."

The doctrine of the court is stated much in the same way by Lord Chancellor Cranworth, in *Savery v King* [1]. The Lord Chancellor says :—"Where a solicitor purchases or obtains a benefit from a client, a court of equity expects him to be able to shew that he has taken no advantage of his professional position; that the client was so dealing with him as to be free from the influence which a solicitor must necessarily possess; and that the solicitor has done as much to protect his client's interest as he would have done in the case of the client dealing with a stranger."

The counsel for the respondents insisted that, in applying these rules to the case of a purchase from a client in consideration of an annuity, the utmost care should be taken by the attorney before entering into it; and especially that it was his duty to point out other modes of sale which might be more advantageous, and to ascertain accurately the value of his client's life, and the state of the property to be sold, and he strongly relied on the observations of Lord Justice Turner, in the case of *Holman v Loynes*[2]. Their Lordships have no doubt that, as a rule, this would be the duty of the attorney; but every case must be decided on its own circumstances, and they think there are grounds for holding that the advice and investigation referred to were not called for in the peculiar circumstances of the present sale.

In the first place, Mr. Pisani was not the general or confidential adviser of Miss Porro. He was called in as a stranger, for the first time, to advise her on the sufficiency of the deeds upon the sale to Larios, all the conditions of which had been before settled under other advice. The further security he suggested was even then prepared by Recano. He intervened in the treaty for the sale to Bergel, without apparently having been employed by Miss Porro to obtain a purchaser. But no doubt he did interpose in that treaty, and became the attorney of both parties in preparing the deeds and completing the purchase. This was the extent of his employment on behalf of Miss Porro, except in a small unexplained matter relating to a distress.

In a case where a solicitor, employed by a woman to procure an advance upon an annuity to which she was entitled, took a transfer of it to himself, of a kind which raised a doubt whether it was a sale or a mortgage, and no other solicitor was employed, the woman brought a suit to set aside the transaction :—Lord Justice Knight Bruce, in giving judgment, said, "He could not view the case as one between solicitor and client. It happened, it was true, that one of the parties was a solicitor, and the other of them had no legal advice except from that solicitor; but there had existed no previous relation of solicitor and client between them, and therefore that confidence

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[1] (1856) 5 H.L. Cas. 627 at p. 655. [2] (1854) 4 De G.M. & G. 270 at p. 278.

which was the basis of the rule of the court in similar cases did not appear to have existed, and he could not consider the case came within it." Lord Justice Turner took the same view: *Edwards v Williams* [1].

Their Lordships do not go the length of that case in the present. They think that the relation of solicitor and client existed, so far as to make it necessary for Pisani to shew that the bargain he made with Miss Porro was a fair one; but in dealing with the facts, the circumstances of the employment may be considered, and the amount of influence estimated; and they find no reason to suppose that, in this case, a high degree of confidence existed, or that much influence had been acquired.

Upon the general facts it is indisputable that Miss Porro had, for a long time before Pisani was called in, and upon other advice, resolved to sell the property for an annuity; this was a natural desire, for she wanted to increase her income, and had no relations. She had made proposals to friends and strangers, and had actually sold the property to Larios in this way, after consultation with her confidential adviser, Gonzalez, and after having had an opportunity of consulting Mr. Recano. Under these circumstances their Lordships cannot think that Pisani was guilty of any breach of duty in not suggesting to her other modes of disposing of the property.

Then as to the terms of the sale in question. It was said on Pisani's behalf that he did no more than take up the bargain which Bergel had abandoned. This is really what occurred, but the onus still lies upon him to shew that the bargain was a fair one, and the more as on the treaty with Bergel he had himself proposed to Miss Porro the abatement of the annuity from $1560 to $1500. Their Lordships have thought it right carefully to examine the evidence relating to this treaty, for unless there was perfect bona fides on the part of Pisani in the transaction with Bergel, it would have been impossible to sustain his own subsequent purchase. They are, however, on a review of it, satisfied that he acted with good faith; that, in proposing to Miss Porro to accept the offer of $1500, he had reason to think it was as much as could be obtained from Bergel or any other eligible purchaser; and that he did all in his power to induce Bergel to complete the purchase.

But bona fides alone would not be sufficient, for Pisani, having taken Bergel's bargain, is bound to shew that it was, in fact, a fair one, and that he has not lost, for want of due diligence, better terms for his client.

On the question of value, the dilapidated nature of the property and the disreputable character of the tenants, the fact the annuity had been hawked in Gibraltar for many years, and refused even at a lower rate by those who knew all the circumstances; and the cloud which rested on the title, from the uncertainty as to José's death, which had been made an objection, whether well or ill founded, by Lepri and Shakery, must be borne in mind as circumstances likely to depreciate the marketable value of the property. When, with a knowledge of all these circumstances, and under the advice of

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[1] (1863) 32 L.J. Ch. 763.

her confidential agent, Gonzalez, Miss Porro sold the property to Larios for an annuity of $1560, it may reasonably be presumed that this was the highest offer that could be obtained. Some evidence was given of the rents, outgoings, and repairs, and of the value of the property; but it does not furnish an inference that the sale to Larios was not for the largest annuity that could be obtained.

Then, as to the duty of Pisani when originally called in, and when he took part in negotiating the treaty with Bergel. Undoubtedly, if the sale for an annuity had been a new matter, it would have been his duty to suggest inquiries as to the value of Miss Porro's life, and the state and value of the property. But their Lordships cannot say that, when consulted at this late period, there was any want of due diligence in his regarding the sale to Larios, made with the advice of Gonzalez and Recano, as representing the value, and in not advising new inquiries, which would have involved further expense and delay.

The sale to Bergel became also an accomplished fact; and if Bergel had not thrown up the bargain, the property would have passed to him irrevocably for the annuity of $1500. That sale which, for the reasons already given, their Lordships think was properly and bona fide concluded, became, in its turn, a criterion of the value which could then be obtained.

If, then, fresh inquiries as to value need not have been made upon the treaty with Bergel, none were necessary when that sale went off, and another purchaser had to be found; and if there would have been no want of due diligence in selling to another at the price Bergel had agreed to give without making them, neither would there be any when Miss Porro agreed that Pisani himself, instead of a stranger, should step into Bergel's contract. His proposal was no doubt precipitate, and if there had been reason to believe that by such further delay as Miss Porro would have acquiesced in, and by further offers to others, more might have been obtained, this sale could not stand. But the evidence does not point to such a conclusion. On the contrary, after all that had occurred in the previous endeavours to sell the property, and the recent refusals of Larios and Bergel to complete, it is not improbable that any further hawking of the property would have depreciated its selling value.

It was urged that one of the motives for Miss Porro's readiness to accept $1500 from Bergel was that he was a wealthy man, from whom payment of the annuity would be safe, and it was suggested that Pisani was not wealthy. There is no evidence to support this suggestion, and Mr. Pisani, although subjected to very severe cross-examination, was not asked as to his means. His competency in this respect may therefore be reasonably assumed, and it is to be observed that, by the provisions inserted in Pisani's conveyance, and which were not in Bergel's, the property itself is made a security for the due payment of the annuity.

On the whole, their Lordships think that, having regard to the nature of Mr. Pisani's employment, he would not have been chargeable with want of due

diligence if the sale had been on the same terms to a third person, instead of to himself; and they further think that, under the special circumstances of the case, it appears with reasonable certainty that a higher annuity could not have been obtained from an eligible purchaser. The case, therefore, for setting aside the conveyance, in their opinion, fails.

Although their Lordships have come to this conclusion, they feel constrained to say that there is much in the transaction which cannot be approved of. They think Mr. Pisani would have better consulted his position as a barrister if he had been less precipitate in taking up the bargain, and if, instead of only suggesting, he had insisted on the intervention of another professional man. He ought not to be surprised that when Miss Porro died, although from causes which could not have been foreseen, a cloud of suspicion should rest on the transaction, and that an inquiry into it should be instituted. He must, therefore, bear his own costs of the suit and of this appeal.

In the view their Lordships have taken of the case, it becomes immaterial to consider the circumstances under which the will of 1868 was made, and its effect upon the prior will. The respondent's counsel intimated that they did not consider these circumstances had any material bearing upon the question of the validity of the purchase. It is, therefore, unnecessary to refer to them, and it would be improper, without necessity, to do so, as the persons who take benefits under the will of 1868 have not been made parties to the suit.

Their Lordships, in conclusion, cannot but express their regret that, when the title of the Crown failed, the information was not dismissed, and the defendants left to establish their rights as against each other in the normal way. The irregular procedure introduced by the amendment, and the continued intervention of the Attorney General, must have caused to the court below, as they have to their Lordships, great embarrassment. They have, moreover, led to a decree declaring that the will of 1868 should be set aside, although the parties claiming under it were not before the court; and to a direction that Pisani should pay Benaim's costs, although the decree declares that Benaim had no title in law or in equity. The decree in these respects cannot, in any view of the case, be supported.

In the result their Lordships will humbly advise Her Majesty that the decree under appeal, except so much thereof as orders and declares that the hereditaments and premises referred to in the information have not escheated to the Crown, and so much thereof as orders and declares that Benaim has no title to, or interest in, the said hereditaments and premises, be reversed; and that it be further declared that none of the parties to the said information are entitled to have the said conveyance of 25 January 1868, delivered up to be cancelled.

There will be no costs of the appeal.