Privy Council Appeal No 57 of 2004

Blue Haven Enterprises Limited *Appellant*

v.

(1) Dulcie Ermine Tully
(2) Eric Clive Robinson *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR DECISION OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, OF THE

21st February 2006, Delivered the 29th March 2006

Present at the hearing:-

Lord Nicholls of Birkenhead
Lord Steyn
Lord Hope of Craighead
Lord Scott of Foscote
Lord Brown of Eaton-under-Heywood

---

*[Delivered by **Lord Scott of Foscote**]*

1. The issue on this appeal is whether in the events which have happened the appellant, Blue Haven Enterprises Ltd ("Blue Haven"), can succeed in its claim for unjust enrichment against the 2nd respondent, Mr Robinson. Their Lordships have concluded, in agreement with the trial judge, Langrin J, and the majority in the Court of Appeal, Downer JA and Walker JA (Harrison

JA dissenting), that it cannot. To explain why that is so it is necessary to start by recounting the essential facts which led to the claim being made.

The facts

2. The 1st respondent, Mrs Tully, is the executrix of the deceased owners of an estate in the Blue Mountains region of Jamaica. The estate is about 95 acres in extent. In 1985, when the story begins, the estate was undeveloped (its condition was described as "ruinate") and its title was unregistered. But it was eminently suitable for development as a coffee plantation and Mrs Tully wanted to sell it.

3. By a contract dated 14 November 1985 Mrs Tully contracted to sell the estate to Mr Robinson for the sum of $260,000 (references to $s in this judgment are references to Jamaican $s – their Lordships have been told that in 1985 the rate of exchange was roughly $10 to £1 but that rampant inflation has taken the rate to around $113 to £1). Mr Robinson wanted to develop the estate as a coffee plantation. The estate was described in the contract as containing 130 acres or thereabouts. The discrepancy between 130 acres and 95 acres led not surprisingly to a dispute between Mrs Tully and Mr Robinson. Mr Robinson contended that he was entitled to an abatement of the price to take account of the substantially reduced acreage that Mrs Tully could sell. Mrs Tully disagreed and, after serving a notice to complete, purported to terminate the contract. She put the estate on the market again. Mr Robinson responded by commencing proceedings (No E160 of 1987) for a declaration that he was entitled to a pro rata abatement of the purchase price and for an injunction to restrain Mrs Tully from selling to anyone else.

4. Mr Robinson's proceedings were successful. On 11 January 1989 Gordon J gave judgment in his favour allowing him a price abatement of $71,000 and granting an injunction restraining Mrs Tully from selling the estate otherwise than in accordance with the 1985 contract "or from pursuing further any existing contract of sale in relation to the said land otherwise than to [Mr Robinson]". Mrs Tully appealed but on 13 July 1992 the Court of Appeal dismissed her appeal and on 10 March 1993 the Privy Council dismissed her petition for leave to appeal. So the injunction granted on 11 January 1989 was confirmed.

5. Unfortunately Mrs Tully had already entered into a contract dated 5 January 1988 to sell the estate to a Dr Oswald White "or his nominee" for the sum of $450,000. Blue Haven, a company controlled by Dr White, was his nominee. But it is convenient to continue to refer to Dr White as the intending purchaser of the estate. Dr White, like Mr Robinson, wanted to develop the estate as a coffee plantation. Mrs Tully had told him nothing, and he knew nothing, of her 1985 contract with Mr Robinson or of the litigation regarding that contract.

6. The 1988 contract required the $450,000 purchase price to be paid in three stages: $67,500 was to be paid as a deposit on the signing of the contract, a further $112,500 was to be paid upon the production of a survey plan of the estate, and the balance of $270,000 was to be paid on completion. Completion was to take place "on the issue of a Registered Title for the lands" in the name of Dr White or his nominee. It is interesting to notice that the contract contained a price abatement provision allowing a price reduction if the survey should disclose that the estate contained less than 100 acres. The reduction was to be $3000 per acre for the shortfall. It appears that Mrs Tully and her attorney, Mr Fraser, had learnt something from their experience with Mr Robinson.

7. The $67,500 and $112,500 together constituted 40 per cent of the purchase price of $450,000. The contract provided that upon the payment by Dr White of 40 per cent of the purchase price (whether the full price or an abated price) he would become entitled to take possession of the estate and on or about 29 September 1988 Dr White was allowed to take possession. Paragraph 9 of the agreed statement of facts says that -

> "Dr White paid the purchase price under the [1988] contract and was put into possession of the land by letter dated 29 September 1988..."

The "letter" was signed by Mr Fraser, Mrs Tully's attorney, and was expressed to certify that Dr White was "entitled as from the date hereof to possession ..." of the estate. The document, and Dr White's entry into possession, predated the grant by Gordon J of the injunction. Their Lordships infer that by 29 September 1988 Dr White had paid 40 per cent of the purchase price. He was under no obligation to pay more than that until completion and there is no evidence or reason to believe that he did so.

8. Once in possession Dr White set about developing the estate as a coffee plantation. He cleared land for planting and planted some 60 acres with coffee plants. He also put in place some of the necessary infrastructure of a coffee plantation, including the building of workers' cottages, a coffee house and offices and constructing a road. By 1992 the coffee plants were sufficiently mature for a crop to be taken and in 1992/1993 and 1993/1994 Dr White harvested and sold a coffee crop.

9. Critical factual issues in this case are when Mr Robinson became aware of Dr White's activities on the estate and when Dr White became aware of Mr Robinson's claim to the estate. Mr Robinson's first knowledge that Mrs Tully had contracted to sell the estate to someone else came in August 1988. Mrs Tully had applied for an order dismissing Mr Robinson's 1987 proceedings on the ground of his delay in prosecuting them. The application failed but an affidavit in support of it was sworn by Mr Fraser on 3 August 1988. In his affidavit Mr Fraser said that

> "... the Defendant [Mrs Tully] has entered into a contract to sell the land ... and the absence of prosecution of the suit is impeding the said sale."

This was nearly two months before Dr White took possession and it is a reasonable inference that the contents of the affidavit came to Mr Robinson's attention at a time before Dr White had gone into possession of the estate. The information that Mrs Tully had entered into a contract to sell the estate to someone is probably the reason why the injunction granted by Gordon J on 11 January 1989 took the form that it did.

10. There is no evidence that in the period between August 1988 and January 1989 Mr Robinson visited the estate. He had no reason to know that the unknown second purchaser had paid a substantial part of the purchase price, been allowed to take possession and begun the development of the estate as a coffee plantation. He did, however, visit the estate towards the end of January 1989 and visited it again a month or so later. Langrin J recorded in his judgment (pp 206/207 of the Record) Mr Robinson's evidence about these two visits.

> "[Mr Robinson] visited the property where he observed that someone had just begun planting coffee. He wanted to stop

> anyone from planting coffee on the land. He saw one Mr Dillon on the property whom he asked who was planting the coffee. Mr Dillon said he did not know. Mr Robinson testified that he told him what they were doing is illegal because there was a court order making him the owner of the land. Mr Dillon refused to give his employer's name and Mr Robinson asked him to give his employers a note. Robinson wrote a note including his telephone number and address and requested him to give the note to his employer. The conversation with Mr Dillon lasted about half an hour. About one month later he returned to the property and spoke to Mr Dillon who said he had delivered the message to Dr White."

Mr Dillon was Dr White's farm manager. Thereafter Mr Robinson visited the property about three times a year until 1994. There is no evidence that he spoke again to Mr Dillon.

11. Mr Dillon was not called to give evidence at the trial and Dr White, who had been murdered on 18 June 1993, was not alive to do so. Evidence was, however, given by Mrs White, Dr White's widow. She gave evidence of a telephone conversation in 1992 between her husband and Mrs Tully. She had heard Dr White's end of the conversation. The relevant passage from the transcript of her evidence reads as follows :

> "He [Dr White] told her he had heard about Mr Robinson, someone came there saying he had purchase the land."

12. This evidence led Langrin J to make the following findings about Mr Robinson's January 1989 visit.

> "... in January 1989, when the planting of coffee had commenced Robinson informed Dillon, Dr White's farm manager, of his ownership of the land and sent a note to Dr White informing him of the situation. This information was related to Dr White."

Their Lordships will return to these findings and their significance but it is convenient to record here that both in the courts below and before the Board it was submitted that there was no admissible evidence that Mr Dillon had

given to Dr White the note given to him (Mr Dillon) by Mr Robinson. Mr Robinson's evidence that, on his second visit, Mr Dillon had said that he had given the note to Dr White was not evidence that Mr Dillon had in fact done so. Their Lordships agree that Mr Robinson's evidence was not direct evidence of the truth of Mr Dillon's statement. He (Mr Robinson) could not give evidence about what had passed between Mr Dillon and Dr White. The judge's finding that "This information was related [by Mr Dillon] to Dr White" had to be based upon inferences open to be drawn by the judge from other primary evidence.

13. In their Lordships' opinion there was ample primary evidence to justify the inference that, on a balance of probabilities, Mr Dillon had delivered to Dr White Mr Robinson's note, and had done so shortly after Mr Robinson's visit to the estate in January 1989. First, Mrs White's evidence, referred to above, shows that the note must have been given to Dr White. No one has suggested any other way in which Dr White would have become aware of Mr Robinson's name and that Mr Robinson was claiming to be the owner of the estate. Lord Gifford QC, counsel for Blue Haven, pointed out that Mrs White was referring to a telephone conversation in 1992 and suggested that the note may not have been given to Dr White until shortly before the conversation took place. This suggestion seems to their Lordships highly improbable. The strong probability is that Mr Dillon would have delivered the note to Dr White shortly after it had been handed to him (Mr Dillon). The notion that Mr Dillon might, three years later, have remedied his omission to deliver the message promptly is fanciful. Second, it was Mr Dillon's duty, as Dr White's farm manager, to deliver the note promptly and, at the same time, to inform his employer of what Mr Robinson had said. In the absence of any evidence to the contrary, it is a fair presumption that Mr Dillon discharged his duty. And, thirdly, Mr Dillon told Mr Robinson in the course of the later visit to the estate in February 1989 that he had given Dr White the note. The inference that that was so was open to be drawn and the judge's finding that "This information was related to Dr White" cannot, in their Lordships' view, be challenged.

14. The factual position, therefore, is that in or shortly after January 1989 Dr White knew that a Mr Robinson, whose telephone number had been included in the note, was claiming to be the owner of the estate and was objecting to the work Dr White's people were carrying out. What did Dr White do about this? The answer is 'Nothing'. He did not contact Mr Robinson at any stage. At some point he spoke to Mrs Tully about Mr

Robinson. Mrs White's evidence about Dr White's telephone conversation with Mrs Tully in 1992, to which reference has already been made in paragraph 11 above, continued as follows :

> "A ... he [Dr White] wanted to know how that could be and she told him ...
>
> Q He said how could that be?
> A Right.
> Q Did she respond?
> A Yes, she said nonsense.
> Q She said nonsense?
> A Right. That he wanted to buy the land and she gave him time and he didn't come up with the money and she gave back his money or something to that effect, and he had no claim on the land. He was disgruntled, she said he was a disgruntled person."

Mrs Tully's explanation of Mr Robinson's advent, referred to in the last passage of the cited transcript, must have been relayed by Dr White to Mrs White. If, as Mrs White's evidence appears to suggest, Dr White's request for an explanation about Mr Robinson and his interest in the estate was not put to Mrs Tully until the 1992 telephone conversation, Dr White's previous disinterest is very puzzling. A prudent person in Dr White's position would surely either have contacted the individual who had claimed to be the owner of the estate or the vendor with a request for an explanation, or, indeed, have done both things. A possible explanation is that Dr White did contact Mrs Tully after receiving from Mr Dillon Mr Robinson's note and that Mrs White was recalling an earlier conversation between Mrs Tully and her husband. In the absence of any relevant findings of fact, however, this puzzle must be left unresolved. But what is certain is that Mr Robinson's note to Dr White elicited no response from Dr White to Mr Robinson and that Mr Robinson's request to be given Dr White's name had been refused by Mr Dillon, Dr White's farm manager.

15. In November 1991 Mrs Tully obtained a registered title to the estate in the names of herself and another. And an instrument of transfer of the title to Blue Haven was prepared. But, of course, the transfer could not be completed. The injunction granted on 11 January 1989 stood in the way. It

seems likely that Dr White, or his attorneys, complained about the delay in completion for on 21 September 1992 a letter from Mr Fraser to Dr White's attorneys said that

> "... we are unable to proceed to complete your sale at this time, as a prior Purchaser whose contract we had rescinded has obtained a judgment in his favour in respect of the purchase of the subject lands."

This letter constituted the first formal notification by Mrs Tully to Dr White of Mr Robinson's prior contract. It is a notification that she or her attorneys ought to have been given, at latest, promptly after the 11 January 1989 order made by Gordon J.

16. In the meantime, earlier in September 1992, Mr Robinson commenced proceedings against Mrs Tully for specific performance of the 1985 contract and for possession of the estate. He applied for summary judgment and on 13 January 1993 was granted the relief sought. On 13 June 1994 the Court of Appeal dismissed Mrs Tully's appeal against the specific performance order. On18 January 1994 a writ of possession was executed, enabling Mr Robinson to obtain possession of the estate from Blue Haven. Blue Haven (or Mrs White) applied for leave to intervene in the action in order to apply to set aside the specific performance order, but the application was dismissed on 27 January 1994. A registered title to the estate was issued to Mr Robinson on 21 July 1995.

17. The consequence of all these events is that Mr Robinson became the owner and in possession of an established coffee plantation, with the necessary infrastructure, the cost of the development having been borne by Dr White, or Blue Haven, in the mistaken belief that Dr White, or Blue Haven, would acquire on completion of the 1988 contract a good title to the estate.

<u>The present proceedings</u>

18. Proceedings were accordingly commenced by Blue Haven against Mrs Tully and Mr Robinson. The claim against Mrs Tully was a straightforward claim for damages for breach of contract. The claim against Mr Robinson was a double-edged claim. First it was claimed that Blue Haven had a better entitlement than Mr Robinson to be the registered owner

of the estate. This claim was advanced before Langrin J and before the Court of Appeal but was rejected by both. The claim was advanced before the Board in Blue Haven's original printed Case but was abandoned by Lord Gifford at the outset of his oral submissions to the Board on Blue Haven's behalf. He supplied their Lordships with a supplemental appellant's Case which concentrated solely on Blue Haven's alternative claim against Mr Robinson, namely, a monetary claim based on unjust enrichment.

19. It is clear that Mr Robinson has been enriched. The first question is at whose expense Mr Robinson has been enriched. He will have been enriched at Blue Haven's (or Dr White's) expense only to the extent that recovery by Blue Haven from Mrs Tully is not possible. Evidence was given at the trial that the value of the estate in 1993, inclusive of coffee plants and all the infrastructure, was $19,144,000. Mrs Tully offered no defence to Blue Haven's damages claim and Langrin J made an order against her for payment to Blue Haven of damages of $20 million. But their Lordships have been given to understand that she is worthless and that the damages will turn out to be irrecoverable. There appears to be no evidence that that is so but their Lordships have heard this appeal on the assumption that it is and that the only recovery Blue Haven can hope to make is recovery against Mr Robinson.

Unjust enrichment

20. On the assumption referred to above, there is no doubt whatever that Mr Robinson has been enriched at Blue Haven's (or Dr White's) expense. Mr Robinson bought the estate in order to develop it as a coffee plantation. It was developed by Dr White. Mr Robinson must have expected to bear the cost of the development. He has not had to do so. The critical question is not whether Mr Robinson has been enriched at Blue Haven's expense but whether the circumstances in which that enrichment came about place Mr Robinson under an equitable obligation to compensate Blue Haven accordingly. In order to answer that question reference must be made to the legal principles to be applied.

The law

21. Blue Haven's case was originally argued as one of proprietary estoppel by acquiescence. A proprietary remedy is no longer sought but the principles relied on are the same. It is contended that Mr Robinson stood by

while Dr White developed the estate under an obvious misapprehension that he, or Blue Haven, would in due course on completion of the 1988 contract become the registered owner of the estate. Mr Robinson ought, it is said, to have taken effective steps to correct that misapprehension; in the event the misapprehension was not corrected until 1992 when Mrs Tully's attorney's letter of 21 September 1992 was received by Dr White's attorneys; Mr Robinson's efforts to draw his prior interest to Dr White's attention were inadequate. In these circumstances, it is said, Mr Robinson has an equitable obligation to compensate Blue Haven.

22. The foundation stones of the principle espoused by Blue Haven were laid by Ramsden v Dyson (1866) LR 1 HL 129 and *Willmott v Barber* (1880) 15 Ch D 96. Both were cases in which a claimant sought to establish a proprietary interest in someone else's property on the ground that he (the claimant) had spent money on the property in the belief that it was his and that that belief had been encouraged by the true owner passively standing by without intervening. In *Ramsden v Dyson* Lord Cranworth said, at pp 140-141:

> "If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title; and that it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented."

And in *Willmott v Barber* Fry J famously stated the five so-called *probanda* that a claimant should endeavour to establish. He said, at pp 105–106:

> "A man is not to be deprived of his legal rights unless he has acted in such a way at would make it fraudulent for him to set up those rights. What then are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly the plaintiff must have expended some money

> or must have done some act (not necessarily on the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. It he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do."

In both the passage cited from Lord Cranworth's speech and the passage cited from Fry J's judgment, the necessity for showing the defendant to be guilty of unconscionable behaviour clearly appears. Lord Cranworth uses the word "dishonest". Fry J speaks of "fraud". Subsequent case law has reduced the rigidity of Fry J's apparent insistence that each of the five *probanda* be established to the letter. In *Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd (Note)*[1982] QB 133, 151–152 Oliver J (as he then was) said,

> "the more recent cases indicate, in my judgment, that the application of the *Ramsden v Dyson* ... principle – whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial – requires a much broader approach which is directed at ascertaining whether, in particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

23. Oliver J's concentration on unconscionable behaviour on the part of the defendant rather than on the *Willmott v Barber* five *probanda* was implicitly approved by Lord Templeman in giving the judgment of the Privy Council in *Attorney General of Hong Kong v Humphrey's Estate (Queen's Gardens) Ltd* [1987] AC 114, 123 and is referred to in *Snell's Equity*, 31st ed (2005), para 10.16 as "the most important authoritative modern statement of the doctrine". Their Lordships are of the same opinion. Fry J's five *probanda* remain a highly convenient and authoritative yardstick for identifying the presence, or absence, of unconscionable behaviour on the part of a defendant sufficient to require an equitable remedy, but they are not necessarily determinative.

24. Oliver J's reference to "proprietary estoppel, estoppel by acquiescence, estoppel by encouragement" might appear to suggest that in every case the claim must be based on some species of misrepresentation made by the defendant. But Oliver J's key that unlocks the door to the equitable remedy is unconscionable behaviour and although it might be difficult to fashion the key without a representation by the defendant it would not, in principle, necessarily be impossible to do so. Enrichment of A brought about by improvements to A's property made by B otherwise than pursuant to some representation, express or implied, by acquiescence or by encouragement, for which A is responsible would not usually entitle B to an equitable remedy. But the reason would be that A's behaviour in refusing to pay for improvements that he had not asked for or encouraged could not, without more, be described as unconscionable. In the *Taylor Fashions* case the first plaintiff, Taylor Fashions Ltd, lessees of the defendants' premises, had spent money in installing a lift in the premises. They had done so in the mistaken belief, shared by the defendants, that they had a valid and enforceable option for a new lease. But the mistaken belief had not been created or encouraged by the defendants. As Oliver J said, at pp 155-156:

> "So far as acquiescence pure and simple is concerned the defendants could not lawfully object to the work and could be under no duty to Taylors to communicate that which they did not know themselves, namely that the non-registration of the option rendered it unenforceable. So far as encouragement is concerned, it is not in my judgment possible fairly to say that the mere presence of the defendants' representative at a site meeting 'encouraged' Taylors in their belief that the option was valid."

Oliver J summed up the situation at p 157:

> "Whilst, therefore, it may not seem very admirable for the defendants to avail themselves of a technicality which runs counter to the common assumptions entertained by all the parties to the transaction, that is what the law permits them to do; and I cannot find, in the circumstances of this case, and even given the flexibility of the equitable principles, that Taylors have discharged the burden of showing that it is dishonest or unconscionable for them to do so."

So, absent any acquiescence or encouragement or any other species of representation by the defendants on to which Taylors could fasten, the defendants' behaviour could not be shown to be unconscionable.

25. Lord Gifford did not attempt to extend the established jurisprudence. He accepted that for his client to succeed it was necessary to show that Mr Robinson had done something, or had just stood by, in circumstances where his actions, or inaction, would make it unconscionable for him to refuse to re-imburse Dr White for the cost of the development. He accepted that the circumstance that Mr Robinson would, if Dr White had not already carried out the development, have carried out the same development at his (Mr Robinson's) expense was not sufficient. Lord Gifford was, in effect, accepting that Blue Haven needed to satisfy the last of Fry J's *probanda* and show that Mr Robinson "encouraged [Dr White] in his expenditure of money or in the other acts which he [did], either directly or by abstaining from asserting his legal right."

26. In their Lordships' opinion Blue Haven cannot clear this hurdle. Mr Robinson did his best to draw his prior interest to Dr White's attention. He gave his name and telephone number to Mr Dillon, Dr White's agent on site. He told Mr Dillon that he was the owner of the estate. His request to be told the name of Mr Dillon's employer was refused. He was told by Mr Dillon that the note on which he had written his name and telephone number had been give to Mr Dillon's employer. But nobody thereafter communicated with him. No doubt on his later visits to the estate Mr Robinson saw the work on the developing coffee plantation continuing. But, so far as he was concerned, he had issued an appropriate warning. If Mr Dillon's employer, whoever that might be, wanted to go ahead in spite of the warning, decided

to ignore it, that was not Mr Robinson's responsibility or fault. Lord Gifford suggested that Mr Robinson ought to have instituted inquiries elsewhere in order to discover who it was who was in possession of the coffee plantation, but their Lordships do not think Mr Robinson was under any obligation to turn detective.

27. Lord Gifford suggested also that Mr Robinson, having observed on his later visits to the estate that work on its development as a coffee plantation was continuing, should have made further efforts to draw his interest in the estate to the attention of the developer. As to that, remarks made by Sir James Wigram V-C over 150 years ago in *The Master or Keeper, Fellows and Scholars of Clare Hall v Harding* (1848) 6 Hare 273 seem to their Lordships very much in point. The Vice-Chancellor said, at pp 296–297:

> "If a party in possession of an estate, knowing that another claims the property, will, with his eyes open, spend money upon it, I know of no case in which it has been held that he can, in the absence of special circumstances, keep the lawful owner out of possession, unless he will re-imburse the party in possession the expenditure he has made. ..... I speak, of course, of those cases in which the claim of the party out of possession has been distinctly made. Here Henry Harding made claim to the entirety of the property in question from the commencement of the correspondence I have referred to .... It was said, indeed, that Henry Harding, seeing the expenditure going on, ought in fairness to have reasserted his claim, but that as a question of law I cannot accede to."

Similarly, in the present case, their Lordships do not think that Mr Robinson, who had been told that his note had been delivered to Dr White, needed to have reasserted his claim. The fact that he did not reassert it cannot, in the circumstances of this case, reasonably be described as "dishonest" or "unconscionable".

28. Their Lordships therefore conclude, in agreement with Langrin J and the majority in the Court of Appeal, that Mr Robinson cannot be regarded as having made any representation that Dr White was entitled to develop the estate as a coffee plantation. On the contrary, such representation as Mr Robinson did make, orally to Mr Dillon, was to the reverse effect and his

note to Mr Dillon's employer must have been intended to give him the opportunity to confirm to the employer personally what he had said to Mr Dillon. The case built on an alleged representation by acquiescence was rightly rejected by Langrin J and the majority in the Court of Appeal.

29. Accordingly their Lordships will humbly advise Her Majesty that this appeal should be dismissed with costs.