

## **Breskvar v Wall (1971) 126 CLR 376**

<http://lawcasesummaries.com/knowledge-base/breskvar-v-wall/>

### **Facts**

- The Breskvars owned property as joint tenants.
- They borrowed some money and as security, provided the man who lent the money a blank transfer form
- The man who lent the money inserted the name of his grandson, Wall.
- The man who registered the transfer then entered into a contract to sell the land
- The purchaser inspected the register and saw the grandson was the owner
- Before completed, the original owner lodged a caveat saying it was his and the document was fraudulent
- He said that the indefeasibility was affected by fraud

### **Issue**

- Indefeasibility – whether a caveat had priority over the right to register a transfer of property where the caveat holder had provided consent to transfer
- Who had priority?

### **Held**

- The equitable interest of the new purchaser had priority
- Menzies J said the man who inserted the name had committed fraud and this would have been an exception to the grandson (the grandson did not obtain indefeasibility) but the grandson had sold the property which changed the situation by creating a new equitable interest
- Barwick J said the Torrens system is not a system of registration by title but title by registration. Therefore consequently a registration from a void instrument is effective according to the terms; it does not matter why it is void.
- The registration was effective even though it had been created by a void instrument
- Windeyer J said a doctrine of indefeasible title was seen as the very essence of the Torrens system
- Barwick J referred to *Frazer* and its approach to indefeasibility.
- McTiernan and Barwick JJ said that you must look at all the factors. They noted the equitable interest was created before the equitable interest of the new purchaser whose title had not been registered.
- Gibbs J said the original owner lost their priority by their conduct. Therefore they can only get damages by fraud. They can't get the property.

### **RELEVANCE/PRINCIPLE**

- An earlier equitable interest holder will lose out to a later equitable interest holder if they are bona

fide and the later equitable interest allowed an assumption to be made.

- Even registration of a void instrument will be valid and create property rights.

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