Butler v Fairclough (1917) 23 CLR 78

http://localhost:8888/LawCaseSummaries/knowledge-base/butler-v-fairclouch/

Facts

- The owner of a crown lease which was charged with a mortgage obtained a loan, providing the lease as security
- The loan was not registered however
- The owner of the loan decided to sell the loan, and the purchaser inspected the register but did not see the loan.
- 5 days after that, the person who had lodged the loan, added a caveat to state their equitable interest in the loan.
- 5 days after that the purchaser lodged the transfer document and the person who lodged the caveat was notified
- The purchaser later withdrew the application for transfer but then did lodge it, and the registrar did not notify the caveat.
- The person who put on the caveat said it was fraud.

Issue

- Does failing to lodge a caveat promptly amount to postponing conduct?

Held

- Registration was valid; once registered the caveator lost their priority.
- The legislation that governed caveats tried to protect the caveatour and recognise equitable rights unless precluded by
- The caveator must take action within 14 days or their caveat will lapse, however a caveaor may not wish to restrict the registration and that therefore the caveator does not need to do anything.
- Imports personal dishonesty or moral turpitude
- Isaacs J: that it must be the fraud of the registered proprietor, and in this case the owner was not responsible for the registrar's failure to notify.
- If all things are equal, the earliest equity wins, but it can lose its priority if the holder does something bad (e.g. not acting promptly to protect the interest).
- The party who lodged the caveat lost their priority by failing to lodge the priority promptly and before the purchase price had been paid.
- **An equitable interest first in time can lose its time by act or omission which can induce the later equitable interest to act to his or her detriment (e.g. the delay).**
