

# Fraud

## Professor William Gummow AC

The distinction drawn by the Privy Council in *Assets Company Ltd v Mere Roihi* [1905] AC 176 (at 201-212), between “actual fraud - dishonesty of some sort” and “constructive or equitable fraud” soon thereafter was afforded canonical status in the case law in Australia and elsewhere. But inadequacies in the distinction have become apparent. Thus, Equity certainly interferes upon collusive exercises of a mortgagee’s power of sale displaying “actual fraud”, while on the other hand, the wilful blindness of the morally obtuse may be put to a jury as evidence from which to infer “common law “ fraud.

Section 6 of the new Land Transfer Act 2017 defines “fraud” as understood in the exception in para (a) of s 52(1) to the “title by registration” conferred by s 51, but noting that in any event, nothing in s 51 “affects” the in personam jurisdiction of the High Court.

This paper considers the extent to which these provisions:

- (a) are apt to quieten disputes as to the scope of “indefeasibility”,
  - (b) differ from legislative measures in some Australian States, and
  - (c) offer assistance to Courts in the various jurisdictions which have adopted the approach in *Mere Roihi*.
-