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In the Privy Council.

No. 10 of 1950.

UNIVERSITY OF LONDON  
W.C.I.  
28MAR1951  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL FROM THE SUPREME  
COURT OF CANADA

BETWEEN

WILLIAM R. GLOVER ... .. APPELLANT

AND

ALBERT GLOVER (Personal Representative of EVELYN  
GLOVER now deceased) ... .. RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—The Appellant appeals from a judgment of the Supreme Court of Canada (Kellock, Taschereau and Locke JJ., Rinfret C.J. and Kerwin J. dissenting) dated the 24th June, 1949, allowing an appeal from the judgment of the Court of Appeal for Ontario (Henderson, Roach and Aylesworth JJ.A. dated the 27th May, 1948, which had allowed an appeal from the judgment at trial of LeBel, J., dated the 14th June, 1947.

p. 273  
p. 261  
p. 252

2.—The judgment of LeBel, J. had, at the suit of Evelyn Glover, the widow of Albert Glover, declared fraudulent and void a certain quit claim deed from Albert Glover and Evelyn Glover (who joined to bar her dower) to the Appellant dated the 29th July, 1944, but not registered until the 19th January, 1946, after Albert Glovers' death, and had ordered that the deed be set aside and the registration thereof cancelled. The judgment also reserved an accounting by the Appellant of the rents and profits from the 1st May, 1935, of the properties comprised in the quit claim deed.

p. 252, l. 18  
p. 252, l. 25

3.—These properties, centrally situated in Kingston and known as 170, 172 and 174, Earl Street, had been acquired by Albert Glover, a grocer, in 1907. In 1926 he had retired from the grocery business and had devoted his time to the remodelling and rebuilding of the properties, obtaining

p. 168  
p. 94, l. 37-p. 95, l. 15

p. 174

a loan of \$25,000 from the London Life Insurance Company on first mortgage, which was used for converting the main building (174, Earl Street) into modern apartments.

p. 91, ll. 26-35 ; p. 131,  
ll. 34-39  
p. 95, ll. 14-25  
p. 95, ll. 26-31 ; p. 201

4.—The Appellant, a successful dentist practising in Kingston, lent Albert Glover (his brother, eight years older than himself) \$8,000 to complete the conversion. In January, 1927, this and other loans were consolidated and secured by a second mortgage on the properties for \$25,000.

p. 96, ll. 14-26 ; p. 99,  
ll. 8-27 ; p. 122, ll. 26-42;  
p. 125, l. 11-p. 127, l. 24  
p. 182

5.—In 1931 Albert Glover did further work on the properties, and borrowed money from the Appellant and apparently from another brother, Robert J. Glover. On the 1st July, 1931, the second mortgage for \$25,000 was replaced by a second mortgage for \$34,500 in favour of the Appellant and Robert J. Glover. In 1935 Robert J. Glover assigned his interest in this second mortgage to the Appellant without consideration. 10

p. 126, ll. 1-8 ; p. 169

p. 100, l. 10-p. 107, l. 38 ;  
p. 132, l. 14-p. 133, l. 44

6.—In 1935 the Appellant also paid on behalf of Albert Glover \$3,000 to the London Life Insurance Company as interest on the first mortgage. An arrangement was made at this time between the Appellant and Albert Glover under which Albert Glover agreed to let the Appellant look after the finances and the Appellant received from Albert Glover all the rents from the apartments except what Albert Glover required for his living expenses. The Appellant opened in the Bank of Montreal a trust account in which he deposited all the moneys which Albert Glover brought him each month from the apartments. Out of the trust account the Appellant paid, pursuant to the arrangement, all disbursements in connection with the properties, including mortgage payments, taxes, insurance, fuel, light, water and repairs, as well as payments of a capital nature for refrigerators, alterations, oil furnaces, and repayments of mortgage principal. The Appellant claimed at times to have put money of his own into the trust account to meet payments from it. He also admitted using money from the account for his own purposes, but said such money was always repaid. 20

p. 146, ll. 4-21 ; p. 101,  
ll. 39-46

p. 102, ll. 13-21

p. 133, ll. 10-15

p. 103, l. 40-p. 104, l. 16 ;  
p. 204  
p. 105, l. 37-p. 106, l. 27 ;  
p. 215  
p. 133, ll. 30-44  
p. 254, ll. 23-27

7.—The bank pass-book and statements for the trust account were not produced by the Appellant, but the Appellant did produce two books of account which he kept from the 1st May, 1935,—one of the rents which he received from Albert Glover, and one of the expenses he incurred in respect of the apartments. These books were never shown to Albert Glover, and LeBel, J., thought it doubtful if they would have meant much to him if they had been shown to him. From the beginning to the end of their financial transactions, Albert Glover does not appear to have received from the Appellant any sort of statement of account, either of moneys advanced over the years, or of rents received, or of payments out of the trust account. The Appellant said that Albert Glover never asked for a statement. It would thus appear that Albert Glover relied implicitly on the Appellant to guide his affairs. 30 40

p. 77, l. 29-p. 78, l. 2 ;  
p. 98, ll. 26-44 ; p. 133,  
ll. 30-44

p. 77, ll. 37-44

8.—On the 11th July, 1938, the second mortgage for \$34,500 was discharged, and the Appellant took a new mortgage from Albert Glover for \$15,000 bearing interest at 5% per annum, and repayable in five years in semi-annual payments of \$500, the balance being payable on the 1st July, 1943. The Appellant said that he discharged the mortgage for \$34,500 because his brother Tom, a barrister (who was in Kingston but was not called as a witness, the Appellant saying he was not in good health) had advised the Appellant that on the Appellant's death the second mortgage would be taken at face value for succession duty purposes, and because he knew he would never get the money anyway.

p. 237

p. 186

p. 118, ll. 2-36 ; p. 127,  
l. 25-p. 129, l. 27

9.—In 1942 or 1943 the Appellant and Albert Glover were concerned in the purchase and conversion into apartments of a property known as the Robertson property, of which the stable was also converted into a residence which was sold at a substantial profit. Financially the venture was highly successful. The conveyance was taken in the Appellant's name, and he claimed to be the sole owner and to have paid Albert Glover \$500 on the 24th September, 1945, for Albert Glover's work in planning and supervising the conversion. The Appellant alleged that he entered the venture reluctantly at the persuasion of Albert Glover, and had done so merely to provide Albert Glover with an occupation and interest in life. The Appellant, however, said "we thought we could" make money by buying it, and he noted in his book of account: "in reckoning the cost of Robertson house to date, we should count interest on purchase price as well as money spent on repairs, etc." Albert Glover regarded himself as a partner, but whatever the relationship between the Appellant and Albert Glover in the Robertson house, the Respondent submits that the venture and its immediate and great success is inconsistent with there being in Albert Glover's mind any idea that his own venture into the apartment business in the Earl Street properties had been financially disastrous. Indeed in 1942 and 1943 Albert Glover had expended large sums (which the Appellant claimed to have supplied) in dividing one apartment into two and in building an addition at 174, Earl Street, and in building an addition at 170, Earl Street.

p. 119, l. 31-p. 121, l. 9 ;  
p. 131, l. 48-p. 132, l. 11 ;  
p. 140, l. 7-p. 141, l. 6

p. 132, l. 10

p. 229, l. 5

p. 33, ll. 30-36 ; p. 37,  
ll. 27-33

p. 108, l. 3-p. 109, l. 24

10.—The new mortgage of the 11th July, 1938, was varied on the 15th July, 1944, by an agreement which recited that \$15,000 was then owing on the mortgage with interest at 5% per annum from the 1st July, 1938, reduced the rate of interest to 3% per annum, and provided for half-yearly payments of \$500, the balance to be paid on the 1st July, 1949. This agreement was not originally produced by the Appellant, and was only produced during his cross-examination at trial. The rents regularly received by the Appellant appear entirely to have been left out of account when the position between the Appellant and Albert Glover were adjusted by this agreement.

p. 231

p. 102, ll. 26-28 ; p. 105,  
ll. 24-27 ; p. 129, l. 35-  
p. 131, l. 13

## RECORD

p. 190  
p. 141, ll. 21-42

11.—This adjustment took place on the 15th June, 1944, yet on the 29th July, 1944, Albert Glover signed the quit claim deed which for an expressed consideration of \$1, transferred to the Appellant the properties, which, apart from a few chattels, constituted everything Albert Glover had in the world.

12.—The evidence established that when the quit claim deed was signed the position was as follows :

p. 146, ll. 1-3

(A) From the time when the Appellant began receiving the rents until the 29th July, 1944, the receipts exceeded the disbursements by \$7,233.11. 10

p. 132, ll. 14-46 ; p. 136,  
ll. 12-32

(B) In addition Albert Glover had with Evelyn Glover occupied an apartment rent free, and had retained from the rents received all that was required for their living expenses.

p. 146, ll. 4-21

(C) The disbursements, although not allowing for depreciation, included the costs of refrigerators, a new furnace, alterations and other capital expenditure.

p. 147, ll. 14-19

(D) Moreover, out of the rents received there had been repaid to the London Life Insurance Company \$11,843.01 of principal moneys, so that the first mortgage indebtedness had been reduced to about \$13,000. 20

p. 129, ll. 32-34 ; p. 134,  
ll. 17-20 ; p. 146, ll. 1-3 ;  
pp. 242-251  
p. 136, ll. 33-36  
p. 134, ll. 32-34 ; p. 286,  
l. 47-p. 287, l. 1

(E) The financial results had been better in the later than in the earlier years. With the war, " the depression years had gone."

(F) Shortage of housing ensured that there would be no difficulty in letting apartments, and the favourable war situation made possible a relaxation of rent control, with even larger profits than had previously been obtained.

p. 27, ll. 32-38

p. 165, l. 22-p. 166, l. 33

(G) The value of the properties could reasonably be placed as high as \$85,000. The plaintiff's valuer gave a figure of \$75,000 to \$85,000. The municipal assessment was \$33,540 but the assessor agreed that the assessment had no relation to sales value, which might be three times as much. The plaintiff's valuer gave actual instances of even greater disparity. A valuer called by the Appellant gave a figure of \$50,000 to \$60,000 based on replacement at 30 cents per cubic foot. A distinguished investment expert called by the Appellant sought to reduce the value to \$34,000 to \$45,000, but this was based on the provision of reserves from current revenue to replace the entire capital investment during the estimated life of the buildings, and appears entirely to have left out of account that when the life of the buildings was exhausted the land would remain. The value of land so centrally situated would obviously be high. 30 40

p. 166, l. 45-p. 167, l. 24

p. 154, l. 2-p. 156, l. 35

p. 161, l. 6-p. 163, l. 52

p. 191, l. 37

(H) The total mortgage indebtedness was slightly under \$32,500, and Albert Glover had just made an agreement with the Appellant

for a favourable interest rate and easy terms of repayment of the second mortgage. pp. 231-233

(I) Albert Glover, then 77 or 78 years of age, had been suffering for some years from arteriosclerosis and, as might therefore have been expected, had deteriorated mentally. After considering all the evidence about his mental condition, LeBel, J., found that although Albert Glover was not mentally ill, his mental powers had become impaired. p. 45, l. 31-p. 49, l. 3 ; p. 30, ll. 29-39 ; p. 34, l. 37-p. 35, l. 16 ; p. 62, ll. 22-42 ; p. 63, l. 18-p. 65, l. 34 p. 256, ll. 1-7

10 (J) The Appellant while furnishing no accounts told Albert Glover that Albert Glover's indebtedness to the Appellant was around \$50,000, and the Appellant had said to Albert Glover, "We should get our business straightened up"; to which Albert Glover had replied that he was ready any time. p. 77, ll. 29-44 ; p. 111, ll. 8-13 ; p. 113, l. 46-p. 114, l. 14

(K) The Appellant stated that Albert Glover had said to the Appellant on more than one occasion, "Well, it's your property anyway," because Albert Glover knew he had lost all his equity ; but the Appellant did not disabuse Albert Glover's mind by telling of the then favourable state of the finances. p. 111, ll. 8-36

20 (L) To get the business straightened up the Appellant instructed Mr. Dwyer to prepare the quit claim deed, but did not at any time discuss with Albert Glover the execution of such a deed, or the effect of the draft deed. p. 114, ll. 15-18 ; p. 115, ll. 5-15

(M) Mr. Dwyer was the Appellant's solicitor, and was not and never had been Albert Glover's solicitor, although at one stage of his evidence the Appellant tried to create the false impression that Mr. Dwyer was Albert Glover's solicitor. p. 78, l. 6-p. 79, l. 33 ; p. 114, l. 17-p. 115, l. 37 ; p. 138, l. 39-p. 139, l. 11

30 (N) Since 1935 the Appellant had been conducting Albert Glover's financial affairs for him, and Albert Glover reposed such complete confidence in the Appellant that he was ready to sign anything which the Appellant asked him to sign. p. 142, ll. 8-31

(O) Although the Appellant had not discussed a quit claim deed with Albert Glover, and although the Appellant knew that Albert Glover had no knowledge of the terms or effect of the draft deed, the Appellant asked Albert Glover to sign the deed, and on the 29th July, 1944, drove Albert Glover and Evelyn Glover to Mr. Dwyer's office for the purpose of signing the deed. p. 142, l. 31 ; p. 79, ll. 13-28

40 (P) The Appellant alleges that he instructed Mr. Dwyer (who died before trial) to explain the deed and its effect to Albert Glover, but although the Appellant was present throughout the interview the Appellant could not say that Mr. Dwyer did so. The Appellant purported to be a disinterested party, paying no attention to the conversation. p. 79, ll. 28-33 ; p. 115, ll. 8-15 ; p. 116, l. 20-p. 117, l. 8 ; p. 139, ll. 12-29

p. 191-192  
p. 192, l. 3  
p. 191, ll. 32-38

13.—Accordingly Albert Glover and Evelyn Glover signed the quit claim deed. The affidavit by the Appellant attached thereto pursuant to the Land Transfer Tax Act gave the total consideration as \$32,444.25, being the \$1 mentioned in the deed, the balance due under the first mortgage to the London Life Insurance Company, and the amount due under the second mortgage to the Appellant. It is clear that Albert Glover transferred the whole of his equity in the properties for the nominal consideration of \$1.

p. 49, ll. 12-28 ; p. 141,  
ll. 21-37  
p. 195

14.—Notwithstanding that, if the quit claim deed were valid, Albert Glover then owned only a few chattels and had no prospect of acquiring other estate, Albert Glover on the fourth day after he had signed the deed, 10 executed a will dated the 2nd August, 1944, whereby he left his whole estate to the Appellant as executor and trustee on trust to pay the income to Evelyn Glover for life, to pay her funeral and testamentary expenses, and on Evelyn Glover's death to give the corpus to Albert Moore Glover, his son.

p. 45, ll. 19-24 ; p. 46,  
ll. 1-5  
p. 32, l. 33-p. 33, l. 20 ;  
p. 136, ll. 40-44

15.—On the 23rd December, 1945, Albert Glover died as a result of a stroke, at the age of 79. Up till that time absolutely no change had been made in the way in which the apartments were managed, and the rents collected and dealt with.

p. 169

16.—On the 19th January, 1946, the quit claim deed was registered 20 in the Land Registry.

p. I  
p. IX

17.—On the 9th March, 1946, Evelyn Glover and Albert Moore Glover commenced proceedings to set aside the quit claim deed, but Albert Moore Glover's action was dismissed under the terms of an order for examination on discovery with which he (being then on military duty in Halifax) did not comply.

p. 252

18.—The action was tried by LeBel, J., at Kingston, and resulted in an order setting aside the deed and the registration thereof.

pp. 253-259  
p. 255, ll. 3-16

p. 255, l. 17-p. 256, l. 9

19.—In his reasons for judgment, LeBel, J., after setting out the facts concerning the loans and mortgages, refused to accept the explanation 30 for the reduction of the \$34,500 mortgage to one for \$15,000. LeBel, J., then examined the evidence about Albert Glover's health, stating that he could place no reliance on the evidence of Evelyn Glover on that or other matters. He reached the conclusion that, although Albert Glover was not mentally ill when he executed the quit claim deed, his mental powers had become impaired.

p. 256, l. 10-p. 257, l. 5

20.—LeBel, J., then dealt with the execution of the quit claim deed, and held that the document had been prepared on the Appellant's instructions, and that the Appellant had not established that the document or its effect had been explained to Albert Glover or Evelyn Glover. 40

p. 257, ll. 5-7

LeBel, J., was satisfied that Albert Glover did not understand the purport of the document. LeBel, J., thought it significant that within a few days after disposing of all his worldly possessions except a few moveables, Albert Glover made a will nominating the Appellant as executor and trustee to pay the income to Evelyn Glover for life and the corpus to Albert Moore Glover on her death ; that after the execution of the deed until Albert Glover died some 17 months later no change whatever was made in the 1935 arrangement about the rents and management of the properties ; and that the quit claim deed was not registered until about  
 10 a month after Albert Glover's death, although the mortgages, other than the first in 1927, had been promptly registered.

21.—Turning to the law, LeBel, J., entertained no doubt, upon all the facts of the case, that the Appellant stood in a fiduciary relationship to Albert Glover, and he held it established that the Appellant had taken advantage of his position. LeBel, J., also thought that the transaction could not stand because Albert Glover had no independent advice as to the meaning and effect of the quit claim deed. Accordingly LeBel, J., set aside the deed and its registration, held the Plaintiff entitled to an accounting of the rents and profits of the properties since the 1st May, 1935,  
 20 and said that the Appellant was at liberty to claim against Albert Glover's estate for such sum as he claims to be due to him over his mortgage for \$19,500.

22.—In the Court of Appeal Henderson and Aylesworth, JJ.A., agreed with the reasons and conclusions of Roach, J.A., who set out the facts, noting incidentally that after the Appellant took charge of the finances there never was any accounting between Albert Glover and the Appellant, but that Albert Glover had unlimited confidence in the Appellant ; treating the \$19,500 by which the mortgage debt was reduced on the 11th July, 1938, as a continuing unsecured debt ; and confessing great difficulty in understanding why 42 days after the extension agreement of the 15th June, 1944,  
 30 there should be such a complete reversal of the respective attitudes of the Appellant and Albert Glover as the quit claim deed showed, and why Albert Glover should make a will leaving the income of his estate to his wife when he had no capital which would earn income. Roach, J.A., held, however, that the Appellant did not stand in a fiduciary relationship to Albert Glover and that their legal relationship was merely that of creditor and debtor, mortgagee and mortgagor. Accordingly he thought that the onus of proving undue influence was on the plaintiff, who had not satisfied it. He thought that Albert Glover at the material date was entirely  
 40 rational, and, although Albert Glover reposed an unusual confidence in the Appellant, the trust was mutual, giving an opportunity for fraud—but none had been proved. The curious unexplained circumstances of the extension agreement, the quit claim deed, and the will in close succession did not, in the opinion of Roach, J.A., necessarily lead to the conclusion that the appellant obtained the deed by misconduct, since it was possible that

p. 257, ll. 8-38

p. 257, l. 38-p. 258, l. 11

p. 258, ll. 12-26

p. 258, ll. 27-47

p. 258, l. 48-p. 259, l. 14

p. 262, l. 15 ; p. 272, l. 19

p. 263, l. 42-p. 272, l. 18

p. 266, ll. 9-26

p. 266, ll. 27-50

p. 268, l. 7-p. 269, l. 7

p. 269, l. 47-p. 270, l. 14

p. 270, ll. 15-39

p. 270, l. 40-p. 271, l. 11

p. 271, ll. 12-38

- p. 271, ll. 39-46  
 p. 272, ll. 1-15
- Albert Glover thought it useless to hold on longer to properties which (so Roach, J.A., said) had never carried themselves, had frozen rents, and had no immediate prospects. Finally Roach, J.A., thought that the consideration was not disproportionate to the true value, as, in his opinion, the apartments with their mortgage encumbrances would not be attractive to any purchaser. Although the Appellant was an unsatisfactory witness, Roach, J.A., thought it would be wrong to hold that the Appellant had so completely reversed his attitude to his brother as to do him the injustice alleged.
- pp. 262-263
- 23.—Henderson, J.A., added some comments in which he appears to have accepted it as proved that when the quit claim deed was executed Albert Glover owed the Appellant \$75,941.70, and to have attached importance to the fact that no rent was paid for the apartment which Albert Glover and his wife occupied. Henderson, J.A., purported to find that Albert Glover had no equity whatever in the properties. He also held that the attempt to question the mental capacity of Albert Glover entirely failed. 10
- p. 274
- 24.—In the Supreme Court of Canada Rinfret, C.J., and Kerwin, J., agreed with the Court of Appeal that the Appellant did not stand in a fiduciary relationship to Albert Glover and that, although it was difficult to find an explanation of some of the occurrences, it would be wrong to hold that the Appellant had done Albert Glover the injustice alleged. 20
- pp. 274-281  
 p. 274, ll. 31-37
- p. 276, ll. 14-51
- p. 277, l. 1-p. 278, l. 1
- p. 278, ll. 1-19
- p. 278, l. 20-p. 279, l. 12
- p. 279, ll. 13-44
- 25.—Kellock, J., in whose reasons for judgment Taschereau, J., concurred, found that the evidence fully substantiated the finding of LeBel, J., that Albert Glover's mental powers had become impaired before the material date. After summarising the dealings since 1920 between the Appellant and Albert Glover, Kellock, J., set out the trial judge's findings about the relationship between them, and part of the Appellant's own evidence that Albert Glover would sign anything if the Appellant asked him and that the Appellant had asked him to sign the quit claim deed. Kellock, J., found the Appellant's account of what took place in Mr. Dwyer's office when the deed was executed quite incredible; and the subsequent history, in his opinion, was inconsistent with any view other than that, as LeBel, J., had found, the quit claim deed was not explained to Albert Glover and Albert Glover never understood what he was signing. This history included the failure to register the deed, the absence of change in the manner of dealing with the rents, and the making of Albert Glover's will. Kellock, J., criticised the Court of Appeal's view of this history as based on errors of fact and on assumptions inconsistent with the evidence and with findings of fact which had not been overruled. Kellock, J., also found that the evidence showed the transaction to be strikingly improvident and that Albert Glover's alleged statement that he had lost the property showed that the Appellant did not tell Albert Glover and Albert Glover did not appreciate that the apartments showed a substantial profit. On 30 40



the law and findings of the trial judge Kellock, J., thought that it was impossible to uphold the transaction. The Appellant's explanation was incapable of acceptance, and the inference was reasonably plain that the appellant had determined to acquire the properties for himself intending to look after Albert Glover while he lived, but having no such feelings towards the rest of the family.

p. 279, l. 45-p. 280, l. 51  
p. 281, ll. 1-20

26.—Locke, J., agreed that the judgment of Le Bel, J., should be restored. He reviewed the financial dealings between the Appellant and Albert Glover, finding that the Appellant treated Albert Glover with the greatest consideration and generosity, but he could not on the evidence determine the exact amount of Albert Glover's indebtedness to the Appellant on the 15th June, 1944. The quit claim deed was made for an expressed consideration of \$1, and the evidence did not support the plea that the real consideration was the release of all Albert Glover's indebtedness to the Appellant. Locke, J., thought that the consideration was the release of the Appellant's mortgage and his assumption of liability on the mortgage to the London Life Insurance Company. Locke, J., held that the evidence of value, although unsatisfactory, established a fair value considerably in excess of \$32,423.25, the amount of the existing encumbrances. He greatly doubted whether Albert Glover was in any condition to appreciate the favourable circumstances of July, 1944, affecting the value of the property; and the making of the will could only be explained on the basis of the trial judge's finding that Albert Glover did not understand the nature and effect of the quit claim deed and was unaware that he had divested himself of practically all his assets. On the Appellant's own evidence of his relationship to Albert Glover, Locke, J., disagreed with the Court of Appeal that the legal relationship was only that of creditor and debtor, mortgagee and mortgagor, and that there was no fiduciary relationship. The Appellant was not merely the trustee of the revenues since 1935 but was Albert Glover's financial agent and adviser. On the authorities, Locke, J., thought that the onus was on the Appellant to prove that his power was not abused. He agreed with the trial judge that the onus had not been discharged and that the transaction could not stand. Locke, J., did not think, however, that a proper decision turned on burden of proof. If a fiduciary relationship did not exist, still the confidence of Albert Glover in the Appellant and the Appellant's exercise of his influence to obtain the quit claim deed had been affirmatively proved.

p. 281-290

p. 284, l. 17-p. 285, l. 23

p. 285, ll. 24-33

p. 285, ll. 34-45.

p. 285, l. 46-p. 287, l. 22

p. 287, l. 23-p. 288, l. 8

p. 288, l. 9-p. 289, l. 37

p. 289, l. 38-p. 290, l. 21

27.—The Respondent submits that LeBel, J., and the Supreme Court of Canada were right in holding that the quit claim deed should be set aside. In all material respects the law of Ontario appears to be the same as the law of England. The Respondent respectfully submits that by a long series of authorities the following principles are established :—

(A) Any influence brought to bear upon a person entering into an agreement or consenting to a disposal of property which, having

regard to the age and capacity of the party, the nature of the transaction, and all the circumstances, appears to have been such as to preclude the exercise of free and deliberate judgment is considered by courts of equity to be undue influence, and is a ground for setting aside the act procured by its employment. The difference between a gift and a manifestly disadvantageous contract is for this purpose only a matter of degree.

(B) There is no rule defining inflexibly what kind or amount of compulsion or influence is sufficient ground for avoiding a transaction whether by way of agreement or by way of gift. The question to be decided in each case is whether the party was a free and voluntary agent. 10

(C) The principles apply to every case where influence is acquired and abused, where confidence is reposed and betrayed. There are two classes of such cases: first, where the court is satisfied that influence was expressly used by the donee or grantee; second, where the relations between the parties have, at or shortly before the execution of the gift or grant, been such as to raise a presumption that the donee or grantee had influence over the donor or grantor. Given a position of general and habitual influence, its exercise in the particular case is presumed. 20

(D) "Whenever it appears that any party to a transaction from which he or she derives some large or immoderate benefit occupies such a position in relation to his or her benefactor as to give the recipient a dominating influence over the latter, that benefit is presumed to have been obtained by the exercise of some undue influence on the part of the recipient."—Crocket, J., in *McKay v. Clow* (1947) S.C.R. 643.

(E) "Inadequacy of consideration, or the absence of independent professional advice, becomes a most material circumstance when one of the parties to a transaction is from age, ignorance, incapacity, recklessness, weakness of mind, body or disposition, or from humble position or other circumstances, unable to protect himself. In all such cases whatever be the nature of the action the onus of proof rests on the party who seeks to uphold it, to show that the other performed the act or entered into the transaction voluntarily and deliberately, knowing its nature and effect, and that his consent to perform the act or become a party to the transaction was not obtained by reason of any undue advantage or of any undue influence exerted over him."—Kerr on Fraud and Mistake, 6th ed., p. 200. 40

(F) "The jurisdiction is founded on a principle of correcting abuses of confidence, and . . . it ought to be applied whatever may be the nature of the confidence reposed, on the relationship of the parties between whom it has subsisted."—Turner, V.C., in *Billage v. Southee* (1852) 9 Here, 534.

28.—It is submitted that in the present case, having regard to the evidence as to Albert Glover's state of health, the relations between the parties, their feelings towards each other as shown by their conduct, and all the facts and circumstances surrounding the execution of the quit claim deed, it was the duty of the appellant to satisfy the court that Albert Glover not only comprehended what he was doing when he executed the deed, but that he was not subjected to any pressure or undue influence in connection therewith; that the parties were on an equal footing; that Albert Glover was protected by independent advice, and that the transaction  
10 was fair and just.

29.—The respondent contends not only that the Appellant failed to prove any of the matters which it was incumbent upon him to prove, but also that the evidence affirmatively established that Albert Glover did not comprehend what he was doing when he executed the quit claim deed; that he was subjected to pressure and undue influence; that in financial matters the appellant was in a dominating position; that Albert Glover had no independent advice; and that the transaction was highly improvident.

30.—The respondent submits that the judgment of the Supreme Court  
20 of Canada is founded on sound legal principles and on a careful and proper consideration of all the evidence, and that this appeal should therefore be dismissed for the following amongst other

### REASONS

1. BECAUSE the findings of fact of the trial judge were proper findings.
2. BECAUSE there was a confidential relationship between the parties to the quit claim deed which the Appellant abused.
3. BECAUSE there was an inequality of position between the parties to the quit claim deed, and the transfer was made at an under-value.
- 30 4. BECAUSE there had been no accounting by the Appellant, and Albert Glover did not know and had no means of knowing his true position when the quit claim deed was signed.
5. BECAUSE Albert Glover had received no independent advice.
6. BECAUSE the transaction was improvident.
7. BECAUSE Albert Glover did not understand the nature or effect of the quit claim deed.

C. M. SMITH.  
FRANK GAHAN.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

WILLIAM R. GLOVER ... *Appellant*

AND

ALBERT GLOVER (Personal  
Representative of Evelyn  
Glover now deceased) ... *Respondent.*

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CASE FOR THE RESPONDENT

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BLAKE & REDDEN,  
17 Victoria Street,  
London, S.W.1,  
*Solicitors for the Respondent.*