Privy Council Appeal No. 84 of 1935

James Augustus Williams - - - - - *Appellant*

v.

Patience Pratt Johnson (since deceased) now represented by Jabez Gustavus Williams and another - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH JULY, 1937.

Present at the Hearing:

LORD RUSSELL OF KILLOWEN.
LORD ROCHE.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This appeal is brought from a judgment of the West African Court of Appeal which reversed the judgment of the trial judge Webber C.J., who had dismissed the action. The case is a very peculiar one in its facts. It might almost be described as *sui generis*.

The action was brought by an old widow lady, Mrs. Johnson, who at the time of the matters complained of in the action was some 82 or 83 years of age. The defendant is a medical man, who had on the occasions of two illnesses of the plaintiff (in the years 1928 and 1930) attended her professionally. He was not what she called her "family doctor," but he was an intimate friend of hers. He apparently made no charge for his professional services; he said, "I never regarded her as a paying patient. I never charged her for the medicines." The 1930 illness was occasioned by the old lady falling down and it lasted throughout the month of August, 1930; but by the end of the month her cure was complete. On the 4th February, 1931, she executed a deed of that date, by which she purported to convey to the defendant in fee simple, certain land in Charlotte Street, in Freetown, together with the building thereon. The deed purports to be a conveyance on sale for the sum of £1,500, but it is not in dispute that there never was a sale. The conveyance must be treated as a voluntary conveyance.

On the 9th July, 1932, Mrs. Johnson issued her writ, and on the 31st March, 1933, she delivered her statement of claim. By that document she claimed to have the conveyance set aside and a reconveyance of the house and land by the defendant to her. Her claim as appears from the allega-

tions in paragraphs 2, 3 and 4 of the statement of claim was based on two grounds (1) that the deed was executed by her under the influence of the defendant, her medical attendant, without independent advice, and (2) that she executed the conveyance in ignorance of its true nature. This second allegation, which looks like a charge of fraud against the defendant, has in fact disappeared from the case, and may be disregarded. The case was tried and decided on two issues only, viz. (1) were the defendant and plaintiff in the confidential relationship of doctor and patient?, and (2) was the influence which, by reason of the existence of that relationship is presumed to have produced the gift, rebutted by the defendant?

The Chief Justice who tried the case having had the great advantage of hearing the witnesses, held that on the evidence the true relationship was more like that of mother and son, and that it was " difficult to understand how a casual attendance on two occasions . . . . . can be said to create such a relationship as to make that relationship of a confidential and fiduciary character." He further held that even assuming that such a relationship had been established, the presumption of influence had been rebutted. It had, he said, been proved to his satisfaction, having regard to all the circumstances, " that the gift was the result of the free exercise of independent will."

The Court of Appeal took the contrary view upon both points. They were of opinion (1) that the relation of doctor and patient existed between the parties and (2) that the presumption of influence had not been rebutted by the defendant.

Against this decision of the Court of Appeal the defendant has appealed to His Majesty in Council.

Their Lordships appreciate that the reversal of the findings of fact of a judge who has tried the case without the assistance of a jury is well within the competence of an appellate Court, who are in fact re-hearing the case; but as was well said by Lord Esher, M.R., in *Colonial Securities Trust Company* v. *Massey* [1896] 1 Q.B. 38, the case cited by Brooke J. in his judgment, the presumption is that the decision of the trial judge on the facts was right and that presumption must be displaced by the appellant. In considering what advice they should tender to His Majesty in the present case, the question for their Lordships to answer is in effect the same. Has the plaintiff displaced to their satisfaction this presumption of the correctness of the view entertained by the trial judge?

As regards the first question, the answer is they think, in the affirmative. The learned Chief Justice seems to have paid insufficient attention to the basis upon which the presumption of influence arising from this intimate relationship rests. He dismisses the question by describing the defendant's attendances as "a casual attendance on two occasions." That conclusion is not, in their Lordships opinion, justified

by the evidence. So far from being " casual," the attendances represented attention and care by the defendant to his patient throughout the courses of the two illnesses. The illness of 1930 was clearly no light matter, as the defendant attended the plaintiff during the whole of August, and was one which afforded just such an opportunity for generating those feelings of confidence and gratitude, calculated to produce the influence (no doubt unconsciously operative) which creates a desire to confer benefits on the medical adviser and against which the patient requires protection. Upon this first question, their Lordships agree with the Court of Appeal that in this case, the question of the validity of the gift made by the plaintiff by the conveyance of the 4th February, 1931, must be dealt with upon the footing that the donor and donee stood in the relationship of patient and doctor or had stood in that relationship so recently as to necessitate that the defendant should rebut the presumption of influence arising from that relationship.

The principle which applies to the abovementioned second issue is to be found in the judgment delivered by the Lord Chancellor in *Inche Noriah* v. *Shaik Allie Bin Omar* [1929] A.C. 127. It may be stated as follows: where the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor, the Court will set aside the voluntary gift unless it is proved that in fact the gift was the spontaneous act of the donor acting under circumstances which enabled the donor to exercise an independent will and which justify the Court in holding that the gift was the result of a free exercise of the donor's will.

In the case cited the question was discussed whether the presumption can be rebutted in any other way than by proof of independent legal advice and also as to what constituted sufficient independent legal advice. Their Lordships were not prepared to accept the view that independent legal advice is the only way in which the presumption can be rebutted: and they were not prepared to affirm that legal advice, when given, does not rebut the presumption, unless it be shown that the advice was taken. They held that it was necessary for the donee to prove that the gift was the result of the free exercise of the independent will of the donor. It was pointed out that the most obvious way to prove the abovementioned fact is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing and in many cases where there are no other circumstances this may be the only means by which the donee can rebut the presumption. The fact, however, to be established, said their Lordships, was that which has been already stated, and if evidence is given of

circumstances sufficient to establish that fact they saw no reason for disregarding them merely because they do not include the advice from a lawyer. They refused to lay down what advice must be received in order to satisfy the rule where independent legal advice is relied on further than to say that it must be given with a knowledge on the part of the adviser of all relevant circumstances and must be such as a competent and honest adviser would give if acting solely in the interest of the donor.

The learned Chief Justice who tried the case referred to the decision in the abovementioned case and adopted the principle therein stated. He came to the conclusion that the plaintiff was aware of the true nature of the transaction, that she deliberately chose a conveyance (meaning a document which was in form a conveyance for value) in preference to a deed of gift, that she signed the deed well knowing the contents thereof, that the contents were read out to her and that she understood everything that was said to her at the time.

He recognised that the onus was upon the defendant to prove that the gift was the result of the free exercise of the plaintiff's independent will and as already stated he held that this had been proved to his satisfaction, having regard to the circumstances.

In their Lordships opinion the question for decision in this appeal is whether there was evidence which justified the Chief Justice in arriving at the abovementioned findings. The fact that the plaintiff had the benefit of the advice of Mr. Barlatt, the solicitor, of whose independence the Chief Justice was satisfied, and who was selected by the plaintiff herself to prepare the deed, cannot be relied upon as sufficient by itself to rebut the presumption of influence by the defendant, because it was not proved that Mr. Barlatt had a knowledge of all relevant circumstances and it was for the defendant to prove it; in particular it was not proved that Mr. Barlatt knew the total of the plaintiff's property or what proportion the portion conveyed to the defendant bore to the said total.

But it was not upon the advice given by Mr. Barlatt, the solicitor, to the plaintiff that the Chief Justice either solely or chiefly relied. It is material, however, to note that the solicitor explained to the plaintiff the other legal forms of carrying out her intention, viz.: by a deed of gift or by a will which could be revoked, but that the plaintiff preferred the form of a conveyance for value and that the plaintiff told the solicitor that she had thought it all out and that she knew what she was doing.

The plaintiff's preference for the form of a conveyance for value probably was not uninfluenced by litigation with another claimant to her property.

There were other matters which need not be mentioned in detail, such as the withdrawal of her will, her arrangements as to the interim dealing with the rents of the property, and another gift of property at and about the same time to a Mrs. Williams, which the Chief Justice was entitled to and did take into consideration.

There is, however, one matter which in their Lordships' opinion is of very great importance and which distinguishes this case from other cases in which a question, similar to that now under consideration has arisen.

In many of such cases the question came up for consideration after the donor was dead. In this case, however, both the donor and the donee, the plaintiff and the defendant, were available as witnesses and gave evidence at the trial. The Chief Justice, therefore, had the great advantage of seeing both parties in the witness box, and of hearing their evidence.

He came to the conclusion that the plaintiff was well educated and did not betray any sign of mental weakness and that she had competently administered her son's estate. This finding, in their Lordship's opinion, is supported by the evidence of Mr. Barlatt which goes to show that she was an intelligent, astute and strong willed woman.

The Chief Justice did not believe the evidence of the plaintiff and he accepted unreservedly the evidence of the defendant.

Their Lordships see no reason to dissent from such finding given as it was by one who was in a much better position to judge of the matter than their Lordships. In view of that finding and the other evidence in the case, it is not surprising that the Chief Justice came to the conclusion that the presumption of influence by the defendant upon the plaintiff had been rebutted and that the transaction was the result of the free exercise of the plaintiff's independent will.

The learned Chief Justice applied the correct principle to the consideration of the matter, and their Lordships are of opinion that there was sufficient evidence to justify him in arriving at the abovementioned conclusion and consequently that his decision should not have been disturbed. The result is that the appeal must be allowed, the order of the Court of Appeal dated the 16th April, 1935, set aside and the judgment of the Chief Justice of the 1st October, 1934, restored. The plaintiff having died, her legal personal representatives were made respondents to the appeal, and they must pay the defendant's costs in the Court of Appeal and of the appeal to His Majesty in Council. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

JAMES AUGUSTUS WILLIAMS

v

PATIENCE PRATT JOHNSON
(SINCE DECEASED)

DELIVERED BY SIR LANCELOT SANDERSON

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