The learned magistrate in his written judgment states:

"The question to be determined is did the accused disperse or distribute the newspaper by selling a copy at his shop? To my mind, the offence would seem to be committed if the accused took part in distributing copies of the paper. In my view it would be straining the meaning of the word 'disperse' were I to hold that by selling a copy of the paper the accused 'dispersed' the paper or assisted in dispersing the paper."

I find the learned magistrate has rightly applied his mind to the main point in the case before him and can see no ground for upsetting his decision.

This appeal therefore fails, and I confirm the decision of the learned trial magistrate.

[SUPREME COURT]

Freetown
Feb. 23, 1961
Bankole Jones J.

IBRAHIM MOMORDU ALLIE (ADMINISTRATOR OF THE ESTATE OF ALHAJI ANTUMANI ALLIE, DECD.) . . . . *Plantiff*

v.

HAJAH FATMATTA KATAH . . . . . *Defendant*

[C. C. 310/60 and 311/60]

Real property—Bequest of property to wife for life, remainder to minor son—Conveyance of property by Official Administrator to wife in fee simple relying on "Deed of Family Arrangement"—Whether deed was "Deed of Family Arrangement"—Whether wife exercised undue influence over son—Whether sufficient evidence that deed approved by court—Whether Official Administrator acted male fide and in collusion with wife.

Bequest of property to wife for life, remainder to minor son—Purchase price not fully paid at time of testator's death—Official Administrator paid unpaid purchase price out of Testator's estate—Whether proper for Official Administrator to convey property to wife.

Momordu Allie (the testator) died on January 22, 1948. By his will he bequeathed certain properties to his wife, Hajah Fatmatta Katah (defendant), for life, with remainder to his son, Alhaji Antumani Allie (Antumani). The executors appointed in the will having renounced probate, the Official Administrator of Estates was appointed administrator of testator's estate. In July 1948, when Antumani was 18 years of age, the Official Administrator conveyed all the properties to defendant. In doing so, he relied on a "Deed of Family Arrangement," dated July 14, 1948, entered into by the Official Administrator, defendant and Antumani. Under this deed, it was agreed that some of the property in question, worth over £20,000, should be conveyed outright to defendant, while other property, worth £1,740, should be conveyed to Antumani. Defendant also agreed to pay Antumani £2,500 cash.

Antumani died on May 4, 1959. On August 6, 1960, the administrator of his estate issued a writ against defendant claiming a declaration that all the conveyances to defendant should be set aside as having been obtained from the infant Antumani against his interest and by undue influence. Defendant alleged that the deed of family arrangement had been approved by an order of court on July 14, 1948.

Held, for the plaintiff, (1) the deed dated July 14, 1948, was not a deed of family arrangement.

(2) The "Deed of Family Arrangement" (so-called) was invalid, because, both at the time when the deed was executed and at the time when Antumani, though of full age, took benefits under it, he was under the influence and dominion of the defendant.

(3) There was not sufficient evidence to establish that the "Deed of Family Arrangement" was approved by an order of court.

(4) The conveyances executed by the Official Administrator in favour of the defendant were executed by him male fide and in collusion with the defendant.

Note: This decision was reversed by the Sierra Leone and Gambia Court of Appeal on April 14, 1961. The Court of Appeal decision was reversed by the Judicial Committee of the Privy Council on January 17, 1963 and the Supreme Court decision restored.

Cases referred to: *Talbot* v. *Staniforth* (1861) 70 E.R. 837; *Playford* v. *Playford* (1845) 67 E.R. 764; *Wycherley* v. *Wycherley* (1763) 28 E.R. 864; *Hoghton* v. *Hoghton* (1852) 15 Beav. 278, 51 E.R. 545; *Wright* v. *Vanderplank* (1856) 44 E.R. 340; *Elliston* v. *Reacher* [1908] 2 Ch. 665; *Chambers* v. *Randall* [1923] 1 Ch. 149; *Pitman* v. *Ewing* [1911] A.C. 217; *In re Weston* [1900] 2 Ch. 164; *Edwards* v. *Carter* [1893] A.C. 360.

Cyrus B. Rogers-Wright for the plaintiff.
Melville C. Marke for the defendant.

BANKOLE JONES J. Two actions entitled C.C. 310/60 and C.C. 311/60 respectively were on November 22, 1960, ordered by this court to be consolidated, and the hearing of this consolidated action commenced on January 3, 1961, and was concluded on February 2, 1961.

The plaintiff is the administrator of the estate of one Alhaji Antumani Allie deceased, who died at Freetown on May 14, 1959, intestate, and is also the eldest lawful brother of full age according to Mohammedan law and custom of the said Alhaji Antumani Allie deceased (hereinafter referred to as Antumani).

The plaintiff in his writs asks for a declaration that various conveyances executed between Antumani and the defendant and one Ahmed Alhadi affecting certain properties devised in the will of one Momordu Allie deceased to the defendant for life and thereafter to the use of Antumani his heirs and assigns in fee simple, be set aside as being void and of no effect having been obtained from an infant and against his interest and by undue influence.

The properties enumerated in the writs are as follows: 23 East Street, 2 Fourah Bay Road, 2 Kissy Road, 5 and 5A Kissy Road, 21 Fisher Street, 6 Magazine Cut, 46 East Street, 50 East Street and 48 East Street, all situate in Freetown. However in his statements of claim the plaintiff contented himself with asking for the declaration sought only as regards the following properties, namely, 23, 46, 48 and 50 East Street respectively, 6 Magazine Cut and 2 Kissy Road.

The facts in this case are as follows: Momordu Allie was the father of Antumani and the husband according to Mohammedan law and custom of the defendant. He died on January 22, 1948, leaving a will dated August 30, 1946, which was confirmed by a codicil dated July 19, 1947. The defendant was one

of his widows and Antumani her only son. Both the defendant and Antumani, then an infant, survived the deceased. The executors and trustees of the will included the defendant and Antumani, all of whom renounced probate, and on March 10, 1948, letters of administration with the will annexed were granted to Ahmed Alhadi who was then the Official Administrator and the Master and Registrar of the Supreme Court.

It is said that on July 14th, 1948, a judge's order was obtained approving the terms of a deed of family arrangement alleged to have been made between the defendant, Antumani and Ahmed Alhadi, acting as trustee of the trusts created under the will, wherein the defendant agreed with Antumani and with the consent of Ahmed Alhadi to vary the trusts of the will as they affected Antumani so that the defendant should become seised in fee simple of the following properties, that is to say, 23, 46, 48 and 50 East Street respectively and 6 Magazine Cut, and that the following properties, namely, 8 Magazine Street, 17 and 17A Martin Street and 9 Walpole Street should become vested in Ahmed Alhadi in trust for Antumani and that the defendant from her own moneys should provide in favour of Antumani a sum not exceeding £1,000 for the purpose of reconditioning, restoring and securing the dwelling-house at 9 Walpole Street, and a further sum of £1,500 to promote his advancement in life.

Now the properties 23 East Street and 6 Magazine Cut were by the will of Momordu Allie (hereinafter called the " testator ") devised to the defendant for her life and after her death or re-marriage to Antumani in fee simple. The properties 46 and 50 East Street respectively were devised to the defendant for life and after her death or re-marriage upon trust for Antumani and any other child or children of the testator who were then living or who may hereafter be born to the defendant. It is not disputed that no other child of the defendant by the testator was living at the date of the testator's death, nor was there any other child born to the testator by the defendant after his death. The property 48 East Street was devised by the testator in trust for Antumani, his heirs and assigns as tenants in common with no interest whatever created in favour of the defendant. All these were the properties to be conveyed in fee simple absolute to the defendant under the terms of the Deed of Family Arrangement. On the other hand under the same deed, the following properties were vested in Ahmed Alhadi in trust for Antumani, namely, 8 Magazine Street, 17 and 17A Martin Street and 9 Walpole Street. Under the will the testator devised 9 Walpole Street upon trust for Antumani his heirs and assigns as tenants in common. The defendant had no interest whatever created in her favour in this property. No. 8 Magazine Street was devised to the defendant for her lifetime and after her death or re-marriage to Antumani in fee simple. Nos. 17 and 17A Martin Street were devised to the defendant absolutely. As to 2 Kissy Road which formed no part of the family arrangement, this was devised to the defendant for life and after her death or re-marriage to Antumani in fee simple. Yet on July 12, 1948, Ahmed Alhadi as Official Administrator by a registered deed of conveyance conveyed the entire fee simple to the defendant contrary to the provision of the will and without an order of court and described this property as forming part of the residue of the estate of the testator, which it clearly was not.

The deed of family arrangement was executed on the same day on which it is said the judge's order was obtained. The parties recited in this deed

were the defendant, Antumani and Ahmed Alhadi. The parties to the execution were only the defendant and Ahmed Alhadi. Before the execution, the defendant handed to Antumani the sum of £1,000 and after the execution a further sum of £1,500. Both amounts were paid, it is said, in pursuance of certain terms in the deed. Neither of these sums was paid to Ahmed Alhadi as trustee, for the benefit of Antumani but to Antumani himself. On the very next day five conveyances were executed by Ahmed Alhadi as Official Administrator conveying the fee simple absolute of the following properties to the defendant, namely, 23, 46, 48 and 50 East Street respectively and 6 Magazine Cut. After Antumani came of age, Ahmed Alhadi in 1954 conveyed to him in fee simple the properties situate at 17 and 17A Martin Street and at 8 Magazine Street in pursuance of the terms of the deed of family arrangement. Before his death in 1959, Antumani sold these properties and in each of the conveyances of sale was a recital of the terms of the Deed of Family Arrangement.

Now the plaintiff in his statements of claim alleges that Ahmed Alhadi male fide and in collusion with the defendant conveyed all the properties the subject-matter of this action unto and to the use of the defendant in fee simple absolute in possession, and by the exercise of undue influence on the part of the defendant obtained from Antumani his execution of the conveyances relating to these properties. As to the deed of family arrangement, the plaintiff says that this does not exist, but that if it did and was executed by Antumani, the judge's order approving of its terms was obtained by collusion between the defendant and Ahmed Alhadi and by misrepresentation and without due and proper notice to the other parties and next-of-kin of Antumani and at a time when he was an infant and against his interest. The evidence however clearly shows that Antumani took no part either in the execution of the deed of family arrangement or in that of the conveyances referred to.

At the close of the case for the defence, counsel for the plaintiff intimated that he would in his argument abandon those portions of his statements of claim which allege that Antumani was a party to the execution of the deed of family arrangement and the conveyances. Counsel for the defence submitted that this amounted to an application to amend his pleadings, and that it was too late in the day to make such an application, and it should be refused. I held that I did not think that counsel for the plaintiff was making an application to amend his pleadings. In fact he said so himself. I expressed the view that this could be a matter for comment, if at all, on the part of counsel for the defence.

Before considering the arguments advanced by counsel, there is one matter which I think needs special mention. The witness Young, the Acting Master and Registrar of the Supreme Court deposed, that after making search in his office, he could not find in his custody the file which purported to contain the order of court approving the terms of the deed of family arrangement. He, however, produced and tendered in evidence a Cause Book which purported to show that applications were made to the court for such an order to be made. The relevant portions of this Cause Book—Exh. J. are as follows. It is in the first place headed:

> "In the Matter of the Estate of Momordu Allie deceased. In the Matter of the Trusts affecting Alhadi Antumani an Infant."

Then follows these items:

Solicitor	*No.*	*Documents*	*Date*
E. A. C. John	1.	Affidavit in support	18.6.48
„	2.	Summons to approve of Deed of Family Arrangement	18.6.48
„	3.	Judge's order approving of Deed of Family Arrangement	21.6.48
C. O. E. Cole	4.	Affidavit in support	29.6.48
„	5.	Summons	29.6.48
„	6.	Summons	13.7.48
„	7.	Affidavit	14.7.48
„	8.	Judge's order approving Deed of Family Arrangement	14.7.48

On the opposite page which also dealt with this same matter is recorded one item, namely:

Solicitor	*No.*	*Documents*	*Date*
C. B. Rogers-Wright	1.	Affidavit in opposition to application, etc.	2.7.48

I intend later in this judgment to deal with the question whether there has been legal proof that a judge's order was made and if so how it can affect the issues raised in this case.

It is conceded on both sides that on the respective dates of the execution of the deed of family arrangement on the one hand, and the conveyances referred to above on the other hand, Antumani was an infant. However quite a lot of evidence was led as to when he was born. Three birth certificates were produced and tendered on this question. I really do not find these very helpful. The defendant swore that her son, Antumani, was born in October 1927 and caused to be produced a birth certificate—Exh. G which showed that a male child was born to one Fatmatta (Madingo) at Crook Street on October 16, 1927. If this certificate referred to the birth of Antumani, then he was about three months short of reaching his majority on the dates of the execution of the deed of family arrangement and the conveyances respectively.

On the other hand two witnesses for the plaintiff swore otherwise. Soknah Tarawali, the eldest widow of the testator, said that Antumani was born about eight or nine months after she gave birth at Rawdon Street to a daughter by name Kadia. She also caused to be produced a birth certificate—Exh. D which showed that a female child was born to one Sokonah Tarawally on December 6, 1929, at Rawdon Street. She said that the defendant gave birth to Antumani at No. 1 Elba Street, the defendant's mother's house where she visited her after birth. Mucktarr Kallay, another witness for the plaintiff, and brother of the defendant, swore that the defendant gave birth to Antumani at No. 1 Elba Street and not at Crook Street. He said he was present in the house when Antumani was born. If all this is true then Antumani was born late in 1930 and was almost 18 years of age when the deed of family arrangement and the conveyances were executed.

The question as to the date or time of a child's birth is a matter which ought to be peculiarly within the knowledge of the mother. In this case however I regret I cannot accept the defendant's version. She is illiterate but swore that her son was born in October 1927, the month mentioned in Exh. G, yet

she could not remember the year her first husband died, nor the year she got married to the testator. She swore she got two children by the testator (which is denied by the plaintiff and his witnesses), yet she could not remember what year the second child was born. She could not produce either the birth certificate or the death certificate of this child. Apart from all this the defendant was a most unsatisfactory witness throughout this case, and I find it difficult to place much reliance upon her evidence. I accept the version of the witnesses for the plaintiff and find that Antumani was born in late 1930 and was about 18 years old when the deed of family arrangement and the conveyances were executed.

As to the deed of family arrangement, Mr. Marke submitted that this deed was valid in law and that, effect having been given to its terms, the plaintiff cannot now question its validity. He said that Ahmed Alhadi as Official Administrator was appointed administrator of the estate of the testator and stood in the shoes of the trustees of the will and in that capacity executed the deed on behalf of Antumani who was then an infant, and also by virtue of a discretionary power contained in paragraph 36 of the will. This paragraph reads as follows:

> " I further direct that my trustees shall have the fullest power generally of determining all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts of this my will. And I further declare that any determination of my trustees in relation to any of the matters aforesaid whether made upon a question formerly or actually raised or implied in any of the acts or proceedings in relation to the premises shall bind all parties interested under this my will and shall not be objected to or questioned upon any ground whatsoever."

The fact, therefore, Mr. Marke urged, that Antumani though recited as a party to the deed did not in fact execute it, would not invalidate it. In the deed is recited the following:

> " And whereas the name of Alhadi Antumani has been inserted as a party hereto to the intent that he may be bound by these presents. . . ."

Mr. Rogers-Wright, on the other hand, argued that even if the deed fulfilled all the legal conditions of execution, yet by its very terms it ought not to stand because it is in the first place not a family arrangement and in the second place its terms are unreasonable.

As to whether the deed is a family arrangement, reference was made to Vol. 15, Halsbury's Laws of England, 2nd ed. (Hailsham), at p. 2, para. 2, for the definition of the expression " family arrangement." A family arrangement is there defined as " a transaction between members of the same family which is for the benefit of the family generally, as, for example, one which tends to the preservation of the family property, to the peace or security of the family and the avoidance of family disputes and litigation or to the saving of the honour of the family." In the case of *Talbot* v. *Staniforth* (1861) 70 E.R. 837, it was held that a purchase by a tenant for life from a reversioner although the object is the laudable one of preventing the estate being sold out of the family is not a family arrangement. The Vice-Chancellor in delivering the judgment of the court said, inter alia, at p. 847: "Persons who deal with expectant heirs must be taken to know the law, and must take the consequences of their own act."

In the present case, the defendant said that the reason why the deed was made was because Antumani wanted to sell the properties which she got conveyed to her in fee simple, to Syrians. It is difficult to appreciate how Antumani the reversioner, and an infant at that, could have sold these properties without the knowledge and consent of the defendant. Yet the defendant confessed that after the properties had been conveyed to her in fee, she herself sold one of them, namely, 46 East Street, to a Syrian.

In the case of *Playford* v. *Playford* (1845) 67 E.R. 764, a father (tenant for life) and a son (tenant-in-tail) joined in mortgaging the estate to secure payment of the debt of the son and some other property was secured to the son. It was held that such a transaction was not a family arrangement.

I am satisfied on the authorities that although Exh. H purports to be a deed of family arrangement and was registered as such, it is not in fact one.

As to whether the terms of the deed were unreasonable, the facts disclose that under this deed whilst Antumani was to receive and in fact received after his majority real properties situate at 17 and 17A Martin Street valued at £240 according to "The Declaration of Probable Value" to be found in Exh. B, 8 Magazine Street valued at £1,500 and 9 Walpole Street which in fact under the will was devised to trustees in trust for him in fee simple, as well as the sum of £1,000 to repair his own property at 9 Walpole Street and a further sum of £1,500 towards his advancement in life, the defendant was to become seised in fee simple and the very next day became so seised of the following properties, namely, 23 East Street valued at £4,000, 46 and 50 East Street declared together with 46A East Street not mentioned in the deed, but perhaps forming part of 46 East Street at £12,000, 48 East Street valued at £4,200 and 6 Magazine Cut valued at £4,000. All this shows that in terms of real properties the defendant stood to benefit and in fact benefited to the tune of over £20,000 whereas Antumani was only to benefit in the sum of £1,740 exclusive of moneys actually paid to him totalling £2,500.

Mr. Rogers-Wright submitted that the terms of this deed are far more unreasonable than those which have been held to be such in any reported cases. He said that the unreasonableness of the terms was the result of the undue influence exercised by the defendant over Antumani who was then an infant. He cited several cases in support of his proposition including the following: *Wycherley* v. *Wycherley* (1763) 28 E.R., 864; *Hoghton* v. *Hoghton* (1852) 15 Beav. 278; 51 E.R. 545; *Wright* v. *Vanderplank* (1856) 44 E.R. 340.

He submitted that the facts show that under the alleged deed of family arrangement, there has been an overreaching, an advantage taken and a lack of fair play to Antumani and in such a case the court ought to look at all the circumstances and exercise its equitable powers He argued that there is always a presumption of undue influence where a parent in an agreement reserves great benefits for himself in resettling a family estate and that the presumption must be rebutted by the parent. He referred once more to Vol. 15 of Halsbury's Laws of England, at p. 14, para. 46, which reads, inter alia:

> "Parental influence is inseparable from most cases of family arrangement . . . where it is exercised by a father to obtain some benefit for himself, it is prima facie fatal to the validity of any arrangement so far as that benefit to the father is concerned."

Mr. Rogers-Wright further argued that it would have been at the most advisable if Antumani had received separate and independent advice before the

deed was executed. See Vol. 15, Halsbury, p. 16, paras. 22 and 23. In the present case the evidence as to whether Antumani had separate and independent advice and the circumstances under which the deed was executed came from the defendant and is most illuminating.

At the very beginning of her cross-examination she deposed as follows:

> "At the time deed was made he (Antumani) was attending school. . . . In July 1948 he would be twenty years and nine months. I did not employ a solicitor to draw up the Deed of Family Arrangement. Alhadi was in charge. He paid the solicitor."

Later in her evidence she deposed as follows:

> (1) "The deed of family arrangement—Exh. H was prepared by Mr. C. O. E. Cole. I instructed him to prepare it. I paid him to do so. Mr. Cole was my solicitor. I now say that it was Alhadi who got a solicitor—Mr. Cole—to draw up the deed of family arrangement. Alhadi did everything and paid Cole. I had a lawyer, Mr. Zizer. Mr. Cole read the deed to me and so did Mr. Zizer. I do not know if Antumani had a lawyer. I now say that he had no lawyer to advise him."
>
> (2) "I understood the deed of family arrangement. Antumani was present when the deed was read over to me and when it was executed. I do not know why he did not sign. He heard the deed read as well. It was read in the office of Mr. Alhadi. Antumani was a grown-up. I had given him £1,000 before the deed was executed and £1,500 after the execution of the deed."
>
> (3) "Mr. Zizer, a solicitor, was my lawyer and my son's lawyer. I do not know whether he had any independent advice."

It is to be noted that neither under examination-in-chief nor under re-examination were questions led or answers received eliciting the circumstances under which the alleged deed of family arrangement was executed or whether it was executed with or without separate and independent advice for Antumani. It is my view and I think it is clear on the evidence, that Antumani did not receive the benefit of any separate and independent advice before the execution of this deed. If the defendant thought it proper to hand over to her son, a schoolboy, such a large amount as £1,000 before the execution of the deed and Ahmed Alhadi stood by as Antumani's trustee and allowed such a transaction to take place without any attempt on his part to get the money vested in himself (as he did in the case of real properties devised by the defendant to Antumani) for the purpose for which it is said it was intended, it seems to me that such an arrangement almost savours of bribery and provides strong evidence of undue influence. If again the defendant thought it proper to pay into her schoolboy son's hands another even larger sum of £1,500 after the execution of the deed and Ahmed Alhadi chose to stand by and took the same attitude as he did on the former occasion then again such an arrangement provides strong evidence of undue influence. It amounts to this, does it not, that for certain purposes Antumani appeared to have been treated as if he was of age and over, and for certain other purposes he was treated as the infant he was. For the purpose for which he was treated as an infant he stood to lose very considerably as against certain meagre benefits he derived from the defendant.

Mr. Marke submitted that in general where a non-executing party to a deed takes benefit under it, he is bound by the obligations under the deed. He cited

the cases of *Elliston* v. *Reacher* [1908] 2 Ch. 665, at p. 673, and *Chambers* v. *Randall* [1923] 1 Ch. 149. Both these cases proceeded on the question as to whether covenants under a building scheme can run with the land. Now the law relating to building schemes and covenants running with lands are special branches of the law and can be found discussed in Vol. 13 of Halsbury's Laws of England and other legal textbooks. In my opinion the authorities cited, with respect, do not apply to the present case.

Mr. Marke said that the facts show that when Antumani attained majority, he did nothing to repudiate the deed and in fact Ahmed Alhadi in 1954 conveyed to him in fee simple the properties 17 and 17A Martin Street and 8 Magazine Street respectively in pursuance of the deed of family arrangement, and that Antumani sold each of these properties and in each conveyance of sale was recited the terms of the deed of family arrangement—Exh. H. Mr. Marke argued that if Antumani when an infant took benefits under the deed and sold properties which he received by virtue of this same deed after he became of full age, he must be taken to have adopted and approved of the terms of the deed of family arrangement. He cited the following cases in support, namely: *Pitman* v. *Ewing* [1911] A.C. 217; *In re Weston* [1900] 2 Ch. 164; and *Edwards* v. *Carter* [1893] A.C. 360.

In the case of *Pitman* v. *Ewing* it was said that where a deed or will professes to make a general disposition of property for the benefit of a person named in it, such a person cannot accept a benefit under the instrument without at the same time conforming to all its provisions and renouncing every right inconsistent with them. The facts there were that a testator gave the life rent of a fund to his daughter and the fee to her children " in such proportions . . . and subject to such restrictions, provisions and limitations as she may direct " and failing such directions then equally among them. The daughter by one comprehensive trust disposition and settlement which was not a good exercise of the power of appointment gave the fund massed with her own estate to her children in life rent and to their children in fee. It was held that the children of the daughter claiming the fund in default of appointment must be put to their election between their own rights and the benefits conferred upon them by the will as they could not accept part and reject part of the same will. The principle established in this case is well founded but I clearly do not see how it can be applied to the present case where under what purported to be a deed of family arrangement the trustee of an infant conveyed his entire patrimony and inheritance worth about £20,000 or over to his mother in exchange for properties and money together worth less than £4,500 at a time when, as I have found, the infant received no separate and independent advice. It is said that when Antumani became of age, he sold the two real properties devised to him in pursuance of the terms of the alleged deed of family arrangement and therefore must be bound by this deed. On the evidence the defendant herself sold 46 East Street, one of the properties devised to her in fee also in pursuance of the same deed. It is not suggested that these transactions have affected the rights of third parties. The plaintiff's case is that the position between the parties is still unequal, despite sales having been made by both of them, in that the defendant still retains real properties under the alleged deed of family arrangement far exceeding in value what Antumani received from her and disposed of at a time when he was still, on the evidence, being cared for by the defendant. In my view, therefore, the case cited is not germane to the present one.

The case *In re Weston* dealt with the right of a trustee of a settlement to retain trust property as against an assignee of a bankrupt settlor. The case of *Edwards* v. *Carter* dealt with a marriage settlement of an infant husband made by his father. The infant came of age a month after he had executed it. He received annuities for a period of four years before his father's death. Thereafter he sought to set aside the settlement. It was held that the settlement as regards the husband was voidable, not void and that if he chose to repudiate it, he should have done so within a reasonable time after he came of age. He was to be treated as knowing the contents of the deed whether he knew then or not, and that his repudiation not being made within a reasonable time, he was bound by the settlement. Both these cases in my view do not apply here.

In the present case, it is not disputed that when the alleged deed of family arrangement was executed, Antumani was a schoolboy and lived with his mother. He continued to live with her even after he left school. It is not disputed that Antumani was unemployed until his death and that the defendant kept him throughout. When in September, 1954, Ahmed Alhadi conveyed to him 17 and 17A Martin Street and 8 Magazine Street and when he sold these properties, he was past his majority. Mr. Rogers-Wright submitted that even though Antumani had passed his majority, as he was still under the influence of the defendant, it could not possibly be said that his act of accepting the conveyances was an act of an unfettered and free person. He cited a number of cases and textual authorities to support this proposition. I need only refer to two of these textual authorities, namely:

(1) Kerr on Fraud and Mistake, 7th ed., at pp. 219–222. At pp. 219–220 it is stated as follows:

> "The influence which a parent has naturally over a child makes it the duty of the court to watch over and protect the interest of the child. . . . A child is presumed to be under parental influence as long as the dominion of the parent lasts. Whilst that dominion lasts it lies on the parent upholding the transaction or maintaining the gift to disprove the exercise of parental influence by showing that the child was really a free agent and had competent independent advice or had at least competent means of forming an independent judgment and fully understood what he was doing and was desirous of doing it. . . . The principle applies for at least a year after the coming of age of the child, and will extend beyond the year, if the dominion lasts, that is until the relationship has entirely ceased, not only in name but in fact and the parties are at arm's length, for the principle continues to apply for so long after the relationship has ceased as the reasons on which it is founded continue to operate."

(2) Simpson on the Law of Infants, 4th ed., at p. 86:

> "The protection afforded by law to infants, in disabling them from executing binding instruments, is extended by courts of equity in many cases after they have attained twenty-one, until they have all the information which might have been acquired in adult years. . . . These considerations apply with greater force where the deed is not intended to be solely for for the infant's benefit, but confers advantages on others."

I must say that if what purported to have been a deed of family arrangement—Exh. H— was in fact such a deed, the terms of such an instrument would not have come within the ordinary rules of the court with respect to parental influence. See Kerr on Fraud and Mistake, at pp. 220, 221. I have, however, held that Exh. H is not a deed of family arrangement.

Mr. Marke submitted that there has been no evidence of undue influence exercised by the defendant over Antumani. With respect, I think the law is that parental influence is to be presumed as long as parental authority or dominion lasts and whilst they last it lies on the parent to prove that such parental influence was not exercised, and he must do so by showing that the child had independent advice or in some other way. See Simpson's Law of Infants, at p. 131 The onus, therefore, of proving undue influence is not on the plaintiff. It is for the defendant to disprove it. I am satisfied that all the facts combine in showing that both at the time when the alleged deed of family arrangement was executed and at the time also when Antumani though of full age took benefits under the deed he was under the influence and dominion of the defendant. The defendant on her part has failed to prove that this was not so. It follows, in my opinion, that the alleged deed of family arrangement must be held invalid and of no effect, and I so hold.

I now come to the matter relating to an order of this court which it is said approved the terms of the deed of family arrangement—Exh. H. It is unfortunate and perhaps to be deprecated that a file of our Supreme Court relating to a matter which appeared to have come before it could not be traced. However, it is, I think, the law that orders and proceedings of the Supreme Court are proved by the originals or office copies. Neither has been forthcoming in this case due to no fault of the parties concerned. It was urged, and strongly so, that the Cause Book—Exh. J, to which I have made reference earlier, showed that an order dated July 14, 1948, was in fact made by a judge approving the terms of the deed of family arrangement and that those terms are to be found embodied in the deed—Exh. H.

Now, the Cause Book shows that a summons was issued in June 1948 for the approval of a deed of family arrangement: " In the matter of the Estate of Momordu Allie deceased and in the matter of the trusts affecting Alhadi Antumani an infant." Three solicitors, all alive, appeared to have taken part in this case, namely, Messrs. E. A. C. John, C. O. E. Cole and C. B. Rogers-Wright. The Cause Book shows that Mr. C. B. Rogers-Wright on July 2 filed an affidavit " in opposition to the application, etc." Prior to this, it is recorded that on June 21, 1948, a judge's order approving a deed of family arrangement was obtained. Again it is also recorded that on July 14, 1948, there was another judge's order approving of a deed of family arrangement. For the purposes of the present case the defendant relies on the second order. None of the solicitors was called to produce an office copy of this order, that is of course if they have any in their possession, nor to give such other evidence as may have assisted this court. In these circumstances it is difficult for the court to come to the conclusion that the terms recited in the alleged deed of family arrangement were in fact those approved of in the judge's order on which the defendant relies. The question whether such an order was obtained by collusion between Ahmed Alhadi and the defendant and by misrepresentation and without due and proper notice to other beneficiaries under the will of the testator and the next-of-kin of Antumani does not therefore arise.

There is one last matter for my consideration, namely whether, as the plaintiff alleges, the several conveyances executed by Ahmed Alhadi in favour of the defendant and which are sought to be set aside were so executed by him male fide and in collusion with the defendant. It is not denied that Ahmed Alhadi whilst administering the testator's estate, paid many visits to the defendant in her home. I find that these visits were wholly unconnected with

the administration of the estate. I accept the evidence that Ahmed Alhadi and the defendant lived as man and wife and that the former slept on many occasions in the house of the latter—the house where the testator before his death lived and slept with the defendant. The children of the testator including the plaintiff and Antumani himself took objection to all this and on one occasion forcibly ejected Ahmed Alhadi from the testator's house. The defendant after this incident moved all her personal belongings to the private residence of Ahmed Alhadi, according to her, for safe keeping. The position was described by the plaintiff as follows:

> "The will did not bequeath my father's wife to him (Ahmed Alhadi). I had no personal dislike for Alhadi. He allowed his official duties to be influenced by his relationship with defendant."

I find that I cannot, in face of the evidence, help holding the view that Ahmed Alhadi in his dealings with the trusts affecting Antumani acted male fide and in collusion with the defendant. If any further proof of this is required it can be found in the matter of the conveyance by him of 2 Kissy Road to the defendant in fee simple. The facts are that before the testator died he had contracted to purchase this property at the sum of £3,500 and had paid to the vendor £2,000. After his death, Ahmed Alhadi in the due administration of his estate paid the balance purchase price "out of moneys forming part of the estate of the testator." In his will, at paragraph 4, the testator devised this property to the defendant for life and after her death or re-marriage in trust for Antumani in fee. He also devised and bequeathed all the rest and residue of his estate to the defendant absolutely. However, in the course of administering the testator's estate, Ahmed Alhadi on July 12, 1948, without as much as an order of court and even before the alleged deed of family arrangement was executed conveyed this property to the defendant in fee in flagrant breach of his trust, and, contrary to the expressed provision of the testator's will, either falsely or wrongly (I prefer to think falsely) described the said property as forming part of the residuary estate of the testator. Mr. Marke submitted that the conveyance of 2 Kissy Road to the defendant, is a matter which this court has no right to adjudicate upon because this property did not come within the terms of the deed of family arrangement—Exh. H. With respect, I think he is wrong, because the plaintiff in one of his statements of claim has asked the court to set aside this conveyance among others as having been obtained by the male fides of Ahmed Alhadi and in collusion with the defendant.

On the whole of the evidence, as well as on the authorities, I have come to the conclusion that the plaintiff must succeed and I hereby order that the conveyances made and executed by Ahmed Alhadi to the defendant in fee simple relating to the following properties, namely, 23, 46, 48 and 50 East Street respectively, 6 Magazine Cut and 2 Kissy Road, be set aside and that the several devises made by the testator under his will relating to them be restored. I further order that the defendant pay the taxed costs of these proceedings.