

damages which he has incurred while acting reasonably, and if by acting reasonably he could have minimised or reduced the damages that he has sustained to a smaller amount, it is only the smaller amount that he can recover. I think, however, that in considering that proposition in regard to such a case as this, one must in estimating the standard of reasonableness take into account the circumstances affecting the plaintiff. My view is that the plaintiff could have repaired his car whilst litigation was pending and by so doing he could have minimised the damages. I therefore award the plaintiff for loss of use of his car the sum of Le2.00 a day for two months, *i.e.*, Le120.00. As regards general damages, I award the plaintiff the sum of Le200.00.

As regards extra nourishment, both counsel during the trial agreed that this item should be struck out.

Summary

Personal injuries	-	Le1,875.00
Loss of use of car	-	Le 120.00
General damages	-	Le 200.00

There is therefore judgment for the plaintiff for the sum of Le2,195.00 with costs to be taxed.

Judgment for the plaintiff.

PHILLIPS *v.* PHILLIPS, PHILLIPS, PHILLIPS and COKER

SUPREME COURT (Browne-Marke, J.): June 3rd, 1967
(Civil Case No. 440/65)

- [1] **Contract—duress and undue influence—illegal agreement—equitable relief available on proof of duress or undue influence:** In order to obtain equitable relief in respect of an illegal transaction, a plaintiff must prove not only the illegality itself but also that his consent was procured under duress or undue influence (page 188, lines 17–21).
- [2] **Contract—duress and undue influence—undue influence—burden of proof—if influential relationship, burden on donee to prove donor's independent will:** Where the relations between a donor and donee raise a presumption that the donee had influence over the donor, the burden of proof is on the donee to establish that it was the donor's spontaneous act in circumstances which enabled him to exercise an independent will (page 188, lines 25–30).
- [3] **Contract—duress and undue influence—undue influence—meaning and effect of undue influence:** Where two persons stand in such a

relationship that, while it continues, confidence is necessarily reposed by one and influence is possessed by the other, then if the latter, by abusing the confidence or exerting the influence, obtains any advantage at the expense of the confiding party, he will not be permitted to retain it (page 188, lines 5-11).

- [4] **Contract—illegal contracts—equitable relief—plaintiff must prove illegality and that consent procured by duress or undue influence to obtain relief:** See [1] above. 5
- [5] **Documents—interpretation—admission of extrinsic evidence—to vary or add to documents—parol evidence admissible to resolve ambiguity:** Parol evidence may be admitted to resolve some ambiguity in the interpretation of a document (page 186, lines 25-27). 10
- [6] **Evidence—burden of proof—undue influence—if influential relationship, burden on donee to prove donor's independent will:** See [2] above.
- [7] **Land Law—conveyancing—fraudulent and voidable conveyances—undue influence—burden of proof—if influential relationship, burden on donee to prove donor's independent will:** See [2] above. 15
- [8] **Land Law—conveyancing—fraudulent and voidable conveyances—undue influence—meaning and effect of undue influence:** See [3] above. 20

The plaintiff brought an action against the defendants for (a) a declaration of title to a house and land, (b) an order restraining the defendants from interfering with his possession or ownership, and (c) an order setting aside that part of a voluntary conveyance which related to the same property, on the ground of undue influence. 25

The plaintiff was the only son of his father, and illegitimate. He lived with his father in a house belonging to the latter until January, 1965, when his father, who was then in poor health but able to move about, went to live in another house. The plaintiff continued to live in the first house. In March, by a voluntary conveyance, his father conveyed the first house to the defendants, the children of the father's brother, some of them legitimate. The deed was witnessed by a justice of the peace, and the father affixed his thumbprint, though he was literate. In July he died, aged 74. 30

The plaintiff commenced the present proceedings, alleging that the defendants had removed his father from the first house, that the execution of the conveyance of the first house to them had been obtained by undue influence and at a time when his father did not know what he was doing, and that his father had previously sold the same house to him, the plaintiff, and had given a receipt which was evidence of the sale. 35
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He contended that the fact that his father had put his thumbprint on the conveyance showed he had executed it under compulsion, and that the defendants had exercised influence over his father because they had prevented him from returning to his first house. He produced a receipt signed by his father which mentioned only land.

The defendants contended that the receipt was no evidence of the sale of a house. They denied preventing the plaintiff's father from returning to the first house. They brought evidence that the father had put his thumbprint on the conveyance because he was too nervous to sign it, but that he did so freely and understood what the conveyance contained; and they contended that the plaintiff had not discharged the burden of proving any part of his case.

Cases referred to:

- (1) *Inche Noriah v. Shaik Allie Bin Omar*, [1929] A.C. 127; [1928] All E.R. Rep. 189, applied.
- (2) *Jones v. Merionethshire Perm. Benefit Bldg. Socy.*, [1892] 1 Ch. 173; (1891), 65 L.T. 685, *dictum* of Lindley, L.J. applied.
- (3) *Tate v. Williamson* (1866), L.R. 2 Ch. App. 55; 15 L.T. 549, *dicta* of Lord Chelmsford, L.C. applied.

Millar for the plaintiff;
Doe-Smith for the defendants.

BROWNE-MARKE, J.:

The plaintiff's claim is for:

(a) A declaration that he is entitled to premises and hereditaments situated at 5 Wellesley Street, Freetown as against the defendants, who claim as volunteers, and that he is the fee simple owner.

(b) An order restraining the defendants, their servants or privies from entering upon, dispossessing or in any way interfering with the possession or ownership of the plaintiff of the said premises and hereditaments.

(c) A further order setting aside that part of a voluntary conveyance, dated March 27th, 1965, relating to the above premises on the ground that the same was obtained by the undue influence of the alleged donees, the defendants.

The plaintiff said in evidence that he was the only son of the late Victor Christian Phillips who died on July 4th, 1965. His father was married but had no child by his wife, who pre-deceased him.

He added that he stayed with his father at 5 Wellesley Street until the defendants removed his father from the premises on January 12th, 1965, in the absence of the plaintiff, and that his father did not return to that address before his death. He agreed that his father was ill at the time he was removed by two of the defendants, Daniel and Samuel Phillips, his cousins, who called him a bastard child with no right to look after his father. He could not say whether the two defendants named were the lawful children of his father's brother who had also died. 5

The plaintiff said that he visited his late father at 5 Elizabeth Lane to which the father was removed, and that he asked his cousins, Daniel and Samuel Phillips, in the presence of their mother and his father, why they had taken his father away. He said that they replied that he was a bastard child and should not care for his father. The plaintiff stated that his father was willing to go with him but that the two defendants would not allow him. There was a row as a result, and a lot of abuse before he left the house. 10 15

The house at Wellesley Street was owned by his father. Sometime in September 1966, the plaintiff said that he was transferred to Lungi and that, on his return, he discovered that all his belongings had been thrown out of the house and the house itself closed with a padlock. He had not recovered anything. He found out, as a result of investigation, that his cousins had evicted him but he did not speak to them about the incident. He said that his father was literate and that, during his lifetime, he (the plaintiff) bought a piece of land from his father at Wellesley Street for £180. He said his father made a conveyance to him of the property but kept it himself. He (the plaintiff) had only a receipt, which he tendered in evidence. The defendants, he continued, made out a document which they alleged conveyed the property at Wellesley Street to them. That document, he pointed out, was thumbprinted although his late father was literate. He challenged the validity of the document. 20 25 30

As regards his alleged illegal eviction from the Wellesley Street property, the plaintiff said that the defendants took out an eviction summons against him in November 1965 and that the court gave him one month's notice to quit. He was ultimately evicted in October 1966. The land, he said, was his property and he asked the court to return it to him. 35

In cross-examination the plaintiff agreed that the property at 5 Wellesley Street was not mentioned in the receipt, but he insisted 40

that what he bought from his father was the house and land. He saw the conveyance which his father prepared, but stated that his father then kept it in his safe. He said further that, when his father left Wellesley Street, he was not too ill and was moving about, and that he saw him at the Elizabeth Lane property which also belonged to his father. He said he knew that his late father and the defendants' late father had the same parents, and that he had lived at 5 Wellesley Street since 1939 and got married there.

[The learned judge then reviewed the evidence of Bishop Jones, Mrs. Jones, Mrs. Aboko Leigh, and Mr. Jones and continued:]

It is the duty of the plaintiff to prove the allegations contained in his statement of claim. In para. 3 he said that, as a result of negotiations initiated at the desire of his late father, he (the plaintiff) bought, and his late father sold, premises at 5 Wellesley Street and that a receipt, duly executed by his late father, was evidence of the purchase and sale.

The evidence of Bishop Jones on the validity of the receipt, to the effect that it bore the signature of the plaintiff's father, was not challenged; but all that it contained was that the plaintiff paid £180 to his father for land. The plaintiff said that the amount was paid for the house and land, but his evidence went much further than what the receipt in fact contained. Besides, his own witness, Mrs. Aboko Leigh, said that his father told her before his death that he had sold a portion of the land to the plaintiff and, as far as she knew, there was no house on the portion sold. She had no knowledge of the conveyance. Parol evidence may be given to clear up some ambiguity, but the receipt seems clear enough in its terms to be easily understood.

In para. 4 the plaintiff alleged that his father became ill in January 1965 and that thereupon the defendants, despite the protestations of the plaintiff, removed his father to their house at 5 Elizabeth Lane. He failed to support this allegation. In evidence he said that his father was removed in his absence. How he got to know that the defendants took him away he did not say. The account he gave of quarrels between the defendants and himself appeared to be after his father had left Wellesley Street. He said that his father was able to move about at the time, and I see no reason why the father could not have resisted if he was being removed against his will, and why the father did not ask the plaintiff to take him back when he (the plaintiff) called at Elizabeth Lane on the day of the removal to see him. On the contrary, the second

defendant said that he paid his usual visit to 5 Elizabeth Lane after work, met the plaintiff's father there, and was told that he would be staying there for a period of time.

In para. 5, the plaintiff alleged that, at a time when his father could not possibly have been aware of what he was doing, on March 27th, 1965 in fact, the defendants, by undue influence, procured the execution of a deed of voluntary conveyance which, among other properties, purported to convey 5 Wellesley Street to the defendants in consideration of natural love and affection.

The plaintiff said, in support, that his father was literate and that he had never seen him put his thumbprint on any document. He visited his father several times at Elizabeth Lane to take him back, but the defendants refused to let him take him away and threw stones at him. He saw his father every weekend in March, and said that he could only speak to him in the absence of the defendants. He did not say that his father told him when they were alone together that he was being induced to sign a deed.

The defence called Mr. J.N.A. Jones, who witnessed the document, to give evidence. I regard Mr. Jones as an independent and impartial witness and his evidence was straightforward. Mr. Jones said that he had never known the plaintiff's father before he was invited by the second defendant to witness the deed as a justice of the peace. He stated that the plaintiff's father was lying on a bed, and that he spoke to him and asked him whether he was aware of the contents of the document. The reply was "Yes." The plaintiff's father told him he could write but that, when he (Mr. Jones) asked him to sign, he was very nervous and, as he had an inkpad with him, he took the thumbprint of the plaintiff's father and signed as a witness to the thumbprint. He emphasised that no one put pressure on the plaintiff's father to sign the document in his presence. He could not remember whether the second defendant said anything during the execution of the document. The plaintiff cannot explain undue influence simply by the unpleasantness which he said existed between himself and his cousins. He must give some positive proof of such undue influence. Significantly, he was prepared to accept the transfer to his cousins of all the other properties contained in the deed with the exception of 5 Wellesley Street.

The equitable doctrine of undue influence is a comprehensive phrase, covering influence in particular relations and also cases of coercion or pressure outside those special relations. As was said by Lord Chelmsford, L.C. in *Tate v. Williamson* (3) (L.R. 2 Ch. App.

at 61; 15 L.T. at 550)—“the Courts have always been careful not to fetter this useful jurisdiction by defining the exact limits of its exercise.” Later in the same case he said (L.R. 2 Ch. App. at 61; 15 L.T. at 550):

“Wherever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not be impeached if no such confidential relation had existed.”

It is said that undue influence has a special meaning outside the various expressions used to denote absence of consent but, in the decisions, the expression “undue influence” is often used as a generic term to cover cases of absence of free consent. In *Jones v. Merionethshire Perm. Benefit Bldg. Socy.* (2) Lindley, L.J. said that a plaintiff ([1892] 1 Ch. at 182; 65 L.T. at 689)—“In order to obtain relief in Equity . . . must prove not only that the transaction is illegal, but something more: he must prove either pressure or undue influence.”

In the headnote to the Privy Council case of *Inche Noriah v. Shaik Allie Bin Omar* (1) it is stated that the judgment of their lordships proceeded on the ground that—

“where the relations between the donor and donee raise a presumption that the donee had influence over the donor [as they held on the facts of that case], the Court will set aside the gift unless . . . the donee establishes that it was the spontaneous act of the donor acting in circumstances which enabled him to exercise an independent will.”

I am prepared to accept that the plaintiff might have bought a portion of land from his father as evidenced by the receipt, but that is not the subject of his claim. I hold that, in the light of the evidence before this court, the claim fails. The plaintiff is therefore not entitled to a declaration that he is the fee simple owner of the property at 5 Wellesley Street. The court cannot, as a result, make an order restraining the defendants from entering or dispossessing the plaintiff of the property. Neither can it make an order to set aside that part of the voluntary conveyance relating to the property.

Judgment for the defendants.