

35

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY

SUIT NO. E 24 of 1976

BETWEEN	STANLEY LALOR	PLAINTIFF
AND	AINSWORTH CAMPBELL	DEFENDANT

H. Small and H. Pearson instructed by Miss Sonia Jones for the plaintiff.

W. B. Frankson Q.C. instructed by Gaynair & Fraser for the defendant.

December 10, 11, 1981; February 15, 16, 1982, and
September 24, 1982.

JUDGMENT

Wright J.

In November, 1968, Stanley Lalor killed his common-law wife and in a state of hopelessness gave himself up to the police. He was charged with murder. A preliminary examination was held and he was committed to stand his trial at the Manchester Assizes to be held in February, 1969. He apparently resigned himself to what seemed his inevitable fate. (He said he expected to pay the extreme penalty). He had no legal representation. He was poor and could not finance his defence and, according to him, had not discussed the matter of his defence with anyone in Mandeville. He was kept at the General Penitentiary to await his trial. And so his condition remained until just a matter of days before the commencement of the Assizes. On the 30th January, 1969 the defendant, a Barrister-at-law, for some 18 years and at the time of this trial a member of the Honourable House of Representatives on the Government side, entered this abysmally bleak and hopeless world of the plaintiff. There were no portents that out of that meeting could come charges of such gross impropriety that, if proved, could lead to the forfeiture of his standing at the Bar. The plaintiff's account of the meeting, which is denied by the defendant, is not without its dramatic element. It needs to be stated that these two gentlemen were strangers to each other. The plaintiff had

not arranged the defendant's appearance nor did he expect him. It is against this background that their differing accounts of the meeting must be judged.

The plaintiff's account is that while he was locked away in his dark and foully cell a warder came and told him he had a visitor and when he came out he saw the defendant who was "dressed like a decent gentleman - in tie and jacket" and without any preliminaries the defendant said to him -

"You have any cow or any land?"

Whereupon he responded:

"I have a parcel of land in Porus, Manchester."

The defendant queried "You will sell it" to which the plaintiff replied "yes" and the defendant followed up with "I will buy it and talk in your behalf." Next, the defendant asked the price and he told him £700. Then he asked if the plaintiff had anyone in Porus who could point out the land and the plaintiff told him to "go to Mr. Victor Karram, a friend of mine." After that they discussed the cost of defending the plaintiff. That was his account in his evidence-in-chief. In cross-examination, he had this to say:

"Mr. Campbell's appearance at the General Penitentiary was a complete surprise to me. I expected no such person. Did not ask how he came to be there. Thought he was manna that fell from heaven and accepted it bountifully. I did not ask him any questions. I only listened in great frustration. I did answer his questions. Up to now we don't reach the point of my asking him what was his business."

A rather strange meeting if ever there was one. A point of interest, and one which is relevant to the question of the plaintiff's credit is this: upon the mere mention by the plaintiff that he had this parcel of land the defendant, without more, agreed to buy the land!

In continuation, the plaintiff related that one week later the defendant returned to the General Penitentiary accompanied by Mr. J. V. Karram, the friend to whom he had directed the defendant.

The latter offered to pay £500 for the land and this price was accepted though he said he thought the price should be £800 - £900. However, because of his circumstances, he sold it far cheaper. Of his condition he said he was in great despair and did not know what to do.

The defendant said his fees to defend the plaintiff would be 400 guineas. According to the plaintiff he had had no previous dealings with a lawyer nor had he any other experience with a criminal case. His greatest wish was to get a Barrister-at-law and to save his life. He tendered in evidence as Ex. 1 a copy of the Agreement for Sale which was handed to him. With the exception of the price and the names of the adjoining land owners (which were written in) the agreement is typewritten. The plaintiff said he did not supply the names of his neighbours. The agreement called for the immediate payment of £300 and for possession on the payment thereof. The plaintiff denied receiving the amount of £300 on 31/1/69 though he said the defendant signed a promissary note for £80 which together with other papers he got from the defendant he gave to Mr. Karram to be taken to his Aunt Elizabeth Biggs for safe-keeping.

The defendant represented him at his trial and he was convicted of manslaughter and sentenced to 15 years imprisonment at hard labour. He did not appeal. He was satisfied with the result. After he had served 5 years of his sentence he "recognized" he was not supposed to have paid for his defence because the defendant had been assigned to defend him. And so he began making contacts. He consulted with the Legal Aid Clinic, Mr. Hugh Small and church people and so it came about that a writ was filed on his behalf on the 3rd February, 1976 while he was still in prison claiming

- " (a) A Declaration that the contract and/or Conveyance and/or Transfer entered into between the Plaintiff and the Defendant is voidable at the instance of the Plaintiff on the ground that undue influence was exercised at the time of the transaction in or about January of 1969, in relation to property at Porus in the Parish of Manchester.

- (b) Further or in this alternative the Plaintiff's claim is for an Order that the Defendant herein reconvey or re-Transfer the said property to the Plaintiff.
- (c) Further or in the alternative that the Defendant refund the value of fees paid to him by the Plaintiff being money had and received by the Defendant to his use and benefit in circumstances where there was no consideration.
- (d) Further or in the alternative the Plaintiff's claim is against the Defendant for fraudulent mis-representation.
- (e) An injunction to restrain the Defendant from selling, leasing, conveying, mortgaging or transferring the said land or any part thereof."

This was followed up by an application for an Interim Injunction on the 17th March, 1976 which was granted and subsequently extended. The Statement of Claim bearing date 9th July, 1976 was filed only after the defendant had moved to strike out the writ of Summons on the ground that the time for filing the Statement of Claim had passed. The statement of claim spells out in frightening details the charge against the defendant. It reads:

- " 1. In or about January 1969, the Plaintiff was remanded in custody at the General Penitentiary on a charge of murder.
- 2. The Defendant who is an Attorney-at-law, was assigned to conduct the Plaintiff's Defence.
- 3. In anticipation of and/or in pursuance of such assignment and the grant to the Plaintiff of a Legal Aid Certificate, the Defendant interviewed the Plaintiff, at the General Penitentiary.
- 4. The Defendant informed the Plaintiff that the fee which would be payable to him for conducting the defence of the Plaintiff would be 400 guineas (\$840.00) and proposed that the Plaintiff sell to him his parcel of land consisting of approximately one acre and situate at Porus in the parish of Manchester in return for the Defendant conducting his defence and giving him a promissory note for £80.00 (\$160.00).

5. The Plaintiff was induced to agree to the aforesaid proposal and to sign and agreement for sale of the said property, dated January 31, 1969, while acting under the influence of the Defendant.

PARTICULARS OF UNDUE INFLUENCE

1. At the time of agreeing to the said sale, the Plaintiff was on a murder charge and the relationship between the Plaintiff and the Defendant was one of Attorney and client.
2. The Plaintiff was worried, distressed and distraught and was relying exclusively on the advice of the Defendant in whom he placed his trust and confidence.
3. The Plaintiff made the said agreement at the Defendant's request and on the Defendant's sole advice, and because the Defendant represented to him that it was necessary to do so in order to obtain legal representation in respect of his trial on the said murder charge, and/or that the Defendant would not otherwise be under a duty to conduct his defence.
6. Further or in the alternative, the Defendant represented to the Plaintiff that it was necessary and/or proper for him to enter into the transaction for the sale of the said property in order to obtain legal representation or for his defence, to be conducted by the Defendant. The Defendant made the said representation falsely and fraudulently well knowing the same to be untrue or alternatively not caring whether the same was true or false and with intent to induce the Plaintiff to agree to sell the said property to him.

6.

PARTICULARS

- (a) The Defendant failed to explain the provisions of the relevant laws relating to legal aid assignments or that he would be eligible for or entitled to payment from public funds for conducting the Plaintiff's defence.
- (b) The Defendant represented to the Plaintiff that he was in the circumstances entitled to charge and could properly charge the Plaintiff a fee which would be payable by the Plaintiff.
- (c) The Plaintiff repeats the particulars set out in paragraph 5 hereof.

7. Relying on the Defendant's said representations the Plaintiff entered into the agreement for the sale of the said property.

8. In the premises, there was no binding or concluded agreement made between the parties, and/or the agreement is voidable at the instance of the Plaintiff.

AND the Plaintiff claims:

- (a) A Declaration that the Contract and/or Conveyance and/or Transfer entered into between the Plaintiff and the Defendant is voidable at the instance of the Plaintiff on the ground that undue influence was exercised at the time of the transaction in or about January of 1969, in relation to property at Porus in the Parish of Manchester.
- (b) Further or in this alternative the Plaintiff's claim is for an order that the Defendant herein reconvey or retransfer the said property to the Plaintiff.
- (c) Further or in the alternative that the Defendant

refund the value of fees paid to him by the Defendant being money had and received by the Defendant to his use and benefit in circumstances where there was no consideration.

- (d) Damages for fraud.
- (e) An injunction to restrain the Defendant from selling, leasing, conveying, mortgaging or transferring the said land or any part thereof.
- (f) Further or other relief."

The defence was filed on 1st October 1976 and is as follows:

- "1. Paragraph 1 of the Statement of Claim is admitted.
- 2. Save that the Defendant admits that he is an Attorney-at-law, paragraph 2 of the Statement of Claim is denied, and the Defendant specifically denies that he was assigned to conduct the Plaintiff's defence as alleged or at all.
- 3. Further the Defendant says that if, which is not admitted, a Certificate of Assignment was issued to him, he had no knowledge of the same nor did he receive the same when he undertook and conducted the Plaintiff's defence.
- 4. Save that the Defendant admits that on divers occasions he visited and interviewed the Plaintiff at the General Penitentiary, paragraph 3 of the Statement of Claim is expressly denied. The Defendant will say that his first visit to the Plaintiff was undertaken at the express invitation of the Plaintiff, communicated to the Defendant by the Plaintiff's agent authorised in that behalf and all subsequent visit or visits (save as hereinafter appears) were undertaken as the Defendant found it necessary to take proper instructions from the Plaintiff, and were not undertaken in anticipation of and/or in pursuance of any assignment made under a Legal Aid Certificate granted to the Plaintiff or anticipated as alleged or at all.
- 5. The Defendant will say further that on or about the 30th day of January, 1969, on the occasion of his first visit to the Plaintiff, the Plaintiff retained the Defendant to appear in the Manchester Circuit and conduct his defence to a charge of Murder then pending against the Plaintiff and agreed in writing to pay the Defendant the sum of Four Hundred Guineas for his services in his behalf.

8.

6. On or about the 31st day of January 1969, the Plaintiff's agent one Mr. Faris Karram offered to sell to the Defendant, and the Defendant agreed to purchase one quarter acre of land situated at Porus in the parish of Manchester, then owned by the Plaintiff for the price of FIVE HUNDRED POUNDS, whereupon the Defendant prepared an Agreement for Sale, and together with the said Faris Karram attended upon the Plaintiff at the General Penitentiary where the Plaintiff and the Defendant executed the said Agreement in the presence of the aforesaid Faris Karram who subscribed his name as witness. (The Defendant will at the trial of this action refer to the said Agreement more fully for its terms and effect.)

7. It was a condition of the said Agreement that the Defendant would pay to the Plaintiff the sum of THREE HUNDRED POUNDS on the execution of a Common Law Conveyance, and the balance when a Registered Title in respect of the said land was obtained.

8. The Defendant on the 31st day of January 1969, paid to the Plaintiff the aforesaid sum of THREE HUNDRED POUNDS and holds the Plaintiff's receipt in acknowledgment of the said payment, and duly entered into possession of the said land.

9. In the premises, save where the foregoing consists of admissions, paragraph 4 of the Statement of Claim is denied and the Defendant expressly denies that he promised or gave to the Plaintiff a promissory note in the circumstances as alleged or at all.

10. As to paragraph 5 of the Statement of Claim, the Defendant repeats paragraph 6 hereof, and specifically denies that he induced the Plaintiff to enter into the alleged or any proposal, and denies that the Plaintiff was acting under his influence in or about the making of the alleged Agreement or any Agreement as alleged or at all. Further the Defendant denies that he influenced the Plaintiff by any threat or coercion, or that in entering into the Agreement with the Plaintiff, he prevented the Plaintiff from obtaining or enjoying any advantage the Plaintiff then possessed or would otherwise have obtained, and the particulars of undue influence as set out in paragraph 5 of the Statement of Claim are expressly denied.

9.

11. The Defendant denies that he represented to the Plaintiff that it was necessary and/or proper for him to enter into the transaction for the sale of the property, in order to obtain legal representation or for his defence to be conducted by the defendant as alleged or at all, or that he made the alleged or any representation falsely and fraudently or with intent to induce the Plaintiff to agree to sell the property to him as alleged or at all, and each and every allegation of false and fraudulent representation alleged against him in paragraph 6 of the Statement of Claim and the particulars thereof are specifically denied.

12. The Defendant specifically denies that the Plaintiff entered into the Agreement for the sale of the property upon reliance on any representation made by him to the Plaintiff as alleged or at all and says that the circumstances surrounding the making of the said Agreement are as hereinbefore set out and not otherwise.

13. In the premises the Defendant will contend that the Agreement entered into between the Plaintiff and himself was consummated after negotiations between himself and the Plaintiff's trusted agent conducted at arm's length and was freely ratified and adopted by the Plaintiff without any inducement or representation whatsoever moving from the Defendant.

14. The Defendant will further contend that in the premises the Plaintiff is not entitled to the relief claimed or to any relief.

15. Save as is herein expressly admitted the Defendant denies each and every allegation against him in the Statement of Claim as fully as if the same were herein separately set out and traversed sereatim."

I have taken care to set out the pleadings in full to facilitate a ready appreciation of the seriousness of the charges levelled against the defendant as well as his response thereto. The astonishing feature of this case, which must be very rare as cases go, is that the defendant finds himself gravely imperilled by the man to whom he was as manna falling from heaven and to whom, by virtue of his advocacy, he gave a new lease on life. Until he came, the plaintiff said he had no hope. If the defendant were heard to sigh "et tu

Stanley?" it would be understandable.

On the plaintiff's release from prison - having been reprieved on the 26th May, 1978 - he returned to Porus and began dispossessing the defendant's tenants who occupied the premises in question. He had sold the place with an unfinished two-bedroom house which the defendant had rendered habitable and had let to tenants. The plaintiff claimed that at first he demanded rent from the tenants which was resisted but that he was advised by the Attorney General to re-take possession. To the end of his evidence-in-chief the plaintiff maintained that Mr. Karram was not his agent and that he had not authorised him to offer his land for sale.

Having regard to the issues at stake, the cross-examination of the plaintiff was quite understandably a gruelling one. Pressed as to the nature of his relationship with Mr. Karram whom the defendant claimed he dealt with as the plaintiff's agent he gave the following response:

"I have known Mr. Karram from school days. We went to school together. He is my trusted friend. I could call him in times of trouble. I called to him in my time of trouble. I didn't call him. Now say I did not call him. I sent somebody to him. I sent Mr. Campbell to him while I was in G.P. Up to then I had not called upon Mr. Karram. He came to me in Mandeville after I got into trouble before the Preliminary Examination at the Mandeville Lock up. He came to me on several occasions. He brought me a Bible on one occasion. We spoke about nothing on the other occasions. We discussed nothing. No, did not discuss the question of my defence. He handed me the Bible and sympathised and gone after he said alright. On all visits he just sympathised. I was in Mandeville for about two months. Can't tell the number of times he visited me. Sometimes he would come two times for the week. I never discussed with anyone the question of getting a lawyer to defend me.....I was surprised when Mr. Karram turned up at G.P. I did not expect him. He was not there at my invitation. He was then my trusted friend. I would not seek his advice and counsel up to then Did not think of seeking Mr. Karram's advice when he visited me at G.P. I asked him nothing about the price at G.P."

If this account appears equivocal I may add that the written words

do not give the full picture. But for the fact that Mr. Frankson is a very experienced advocate he might have been bewildered by the obduracy of the witness in supplying even that account.

Questioned about the defendant's second visit to the G.P. the plaintiff said he expected Mr. Campbell

"to sign papers when he came on the behalf of selling him the land. I sold the land to Mr. Campbell at the time the two gentlemen arrived."

Then followed this encounter:

Q: You expected them to come with papers for a sale that had not yet taken place?

A: Ask again.

Q: Repeated.

A: That business took place from the first time Mr. Campbell came.

Q: Which is true as to the time the sale took place?

A: I say the business took place after Mr. Campbell and Karram came.

Q: It's not true you agreed to sell the place to Mr. Campbell on his first visit.

A: Please ask me again.

Mr. Frankson did not oblige.

The questioning shifted to the method of valuation of the premises and elicited the information that the plaintiff had not had a valuation of the premises done. This was the only piece of land he had ever bought and he had no experience in land value (He had bought the land about 1965 for £60). The valuation of £750 which he put on the land was just picked out of his head. He knew Mr. Karram had done well in his business. He bought lands and had experience in land matters. Yet although Mr. Karram was his trusted friend he did not ask him about the value of his land.

There was another lengthy skirmish concerning the role played by Mr. Karram and in holding on to the stance he originally assumed the witness gave due warning of the caution with which his statements must be approached. Here is a portion of that skirmish:

Q: You had asked your good friend and trusted valuator to sell your property for you to enable you to hire a Barrister?

A: No sir.

Q: Mr. Karram was the person who carried out the sale of the property with Mr. Campbell?

A: No sir.

Q: They simply came to the G.P. to obtain your signature to the necessary documents and to get your approval of what your agent Mr. Karram had done.

A: No sir.

Q: At no time did Mr. Campbell have any discussion with you about the price to be paid but with Mr. Karram.

A: No sir.

Q: You placed your trust and confidence in your friend Mr. V. Karram in relation to the business including the sale of the land.

A: Mr. Karram did not know anything about the sale until Mr. Campbell visited him. Yes, I did put my trust and confidence in Mr. Karram in relation to the sale of the land.

Q: Mr. Karram at that time to your certain knowledge was an experienced land valuator and agent.

A: I never knew Mr. Karram as a valuator. I knew him as a friend.

At this stage he was confronted with an affidavit which he had sworn to ground his application for the Interim Injunction paragraph 4 of which reads - in part:-

"Sometime after this Mr. Campbell returned to the General Penitentiary with a Mr. Victor Karram who is a real estate agent and valuator etc."

His response was that it was only when he read the affidavit that he knew that Mr. Karram was a valuator. Quite obviously, it would not now serve his best interests to adhere to his sworn testimony and so he denied it. He said that in Porus there were hundreds of persons including his aunt, his uncle and his daughter - who could show the land to Mr. Campbell but it was only Mr. Karram he could trust to do so. As to Mr. Karram's visit to the General Penitentiary with Mr. Campbell he said that the purpose was to see that Mr. Campbell got the land. He did not understand that it was Mr. Karram's desire that Mr. Campbell should get the land. Mr. Campbell must have had a reason why he brought Mr. Karram.

Further, he said he had not discussed with Mr. Karram the sale of the land with a view to securing the services of a lawyer.

It was not because of this that Mr. Karram came to see that Mr. Campbell got the land. Then this -

"Mr. Karram would have satisfied my request by simply taking Mr. Campbell to see the land. It was necessary for him to come to Kingston with Mr. Campbell because he had got my message to show Mr. Campbell the land. Now say there was no necessity for him to come to Kingston. Mr. Campbell told me he requested him to come because he brought him. No, he did not tell me so. Mr. Karram told me Mr. Campbell requested him to come. He said he met him at his office. He did not tell me at G.P. that Mr. Campbell asked him to come. I say so because I see him come. I learned that Mr. Karram had been to Mr. Campbell's office to see him - not about land. I learned why he went sometime this month.

Q: Had you known that, you would not have said Mr. Campbell asked him to come?

A: He said he went to Mr. Campbell's office and then to the G.P. Had I known that I would not have said Mr. Karram came with Mr. Campbell to see that Mr. Campbell got the land.

This vacillation characterised his evidence throughout a lengthy and intense cross-examination - whatever the topic under query. Not unnaturally, the burden of the cross-examination concerned the circumstances of the sale and Mr. Karram's name bulked largely in this cross-examination. He had this further to say:-

"I did not want Mr. Karram to offer any advice. If Mr. Campbell really wanted I would sell him because I was in trouble. My concerns then were that Mr. Campbell should want the place and the price was right. I had made up my mind quite independently to sell Mr. Campbell the place. I agreed when Mr. Campbell and Mr. Karram came to have Mr. Campbell represent me - when we settled the business. I discussed it with Mr. Karram on that day. He did not recommend that I use Mr. Campbell. I understand his representing me. I did not discuss it with Mr. Karram. I did not say I had discussed it with him. Mr. Karram remained about ½ hour with me at G.P. and during that time neither of us said anything about Mr. Campbell representing me."

Asked if he had told Mr. Karram why he was selling the place to Mr. Campbell, he replied, after a long and fidgety pause, "no". The ½ hour was occupied by Mr. Campbell writing up some papers which he signed - 3 in all. Exhibit 1 (The agreement for sale) was one of those 3 papers. He sought to denigrate this Agreement by testifying

that he was just told to sign and moreover the document was folded so as to reveal only the portion to be signed. When he was challenged to demonstrate by folding the paper it was shown that his signature could not have been affixed with the paper so folded. He was forced to open the paper so as to reveal his signature. Shown a duplicate of Exhibit 1, he said it was one of the three documents he signed. It was tendered as Exhibit 2. He admitted that Mr. Karram's signature appears on both and that he did not think the papers were folded up at the time Mr. Karram signed. He could not tell what was the nature of the other document. All that mattered to him was that he was glad to be getting a Barrister.

Next, having ascertained from the plaintiff that he knows what a cheque is and that he neither saw nor received any at the G.P. Mr. Frankson placed in his hands a cheque (which at a later stage was admitted in evidence as Exhibit 3) for the amount of £300 drawn by A. W. Campbell, to Stanley Lalor bearing date January 31, 1969 and endorsed with the signature Stanley Lalor which is in all respects similar to the plaintiff's signature which he admitted signing on other documents. At first sight of the cheque he gave a smile which was more correctly half a smile and the other half an attempted laugh that froze - somewhat akin to what would appear on the face of a little boy caught by his mother with his hand in the cookie jar and who in response to his mother's ominous silence eventually says that he didn't know that a cookie jar was there! The plaintiff to the accompaniment of this hybrid smile promptly said "This is not my writing." Then he settled into a studied gaze at the endorsement for some time before he spoke. It was clear that he was very uncomfortable. He fidgeted in the chair, whistled silently, tapped the rails beside him, muttered to himself without shifting that transfixed gaze. Eventually, he spoke:

"I want to deny the signature here because I don't make my "S" like this. I never signed this. I never signed no cheque. If I did is only because they said sign this, sign this. I have a special way to sign my "S" I did not observe the date of the cheque (this in answer to further question). I never

15.

saw it, never got it. This is the first time in my life I am seeing it. The date is 31.1.69 - same as date in Exhibit 1."

So in one fell swoop, he was impeaching both his "manna that fall from heaven" and his "trusted friend from boyhood days." The reason, I think is clear.

Mr. Frankson next presented another of the three documents which the plaintiff admitted signing. This was the Conveyance which was admitted in evidence as Exhibit 4 over the objection of Mr. Small who contended that since the document was not stamped it breached section 36 of the Stamp Duty Act. But the document was not being advanced to secure its enforcement but for the sole purpose of impugning and discrediting the witness and was clearly admissible for that purpose.

The plaintiff testified that the receipt given him at the time he purchased the land had been written by Mr. Karram whom he had consulted to ensure that the boundaries were properly described. It had been left with his aunt Elizabeth Biggs (Miss Lizzy) for safekeeping. He said he had sent both the defendant and Mr. Karram to her. But when the receipt was shown to him his reaction was rather strange. He responded:

"First I am seeing this paper. Don't believe this is the paper I got when I paid the man the money for the land. If Mr. Karram wrote it then it is because he is the only person I trust. I really can't describe my paper right now. It is such a long time. He couldn't get any registered receipt at the P.O. at the time. It is over 15 years now I haven't seen this paper. This is the first time I recognise this paper. I can't recognise this paper. Now say it is not the first time. (This retraction came after he had struggled with the question of recognising the paper for about 2 minutes). First saw it when I gave my aunt. Can't recall the date. It was before I got in trouble. From I buy the piece of land is the second time I am seeing the paper. I got it at the time of purchase."

This document eventually became Exhibit 7.

The witness produced another of his smiles when shown a document dated 30/1/69 which he admitted signing. It was his retainer

of Mr. Ainsworth W. Campbell to defend him for a fee of 400 guineas, which was admitted in evidence as Exhibit 5. The witness was unsure of the significance of the date. He would not admit that was the day before Mr. Karram came. All he said he knew was that Mr. Campbell came twice to see him and that it was on the second visit that they arranged the price. Indeed he said the contents of the document were not true. He had only signed, as he had been told by Mr. Campbell, in his frustration, and he did so because of his distraught condition. However, when asked to identify the untrue contents it turned out that it was only the date he disputed. Of this he said:

"The correct date must be 31st - the last time he and Mr. Karram were there."

Nevertheless, at the time he signed, he intended that Mr. Campbell's fees should come from the sale of the property.

His attention was next turned to the vexed question of Legal Aid. He was asked -

Q: Are you saying at the time of signing the paper, you knew you were going to get legal aid?

A: No sir. I never told anybody so. It was 5 years after I knew Mr. Campbell was a legal aid for me. While awaiting trial I never knew I was getting Legal Aid. I never at any time applied for Legal Aid. A gentleman told me about Legal Aid but I knew nothing more about Legal Aid."

It is evident that if the plaintiff signed any document, the purport of which was not clear to him that document relates to the question of Legal Aid. His answers make it clear that he had no idea he had ever applied for Legal Aid. He testified that a gentleman came to him at Mandeville before the Preliminary Examination and asked him some questions about his family. He did not recall signing any document then. He went through the Preliminary Examination unrepresented and on 30.1/69 when Mr. Campbell visited him with only a few days before the opening of the Circuit Court he still had no lawyer nor had he any information that there were any considerations to assign him a lawyer. His case was first on the list for trial. The need for speed by any lawyer who undertook to defend him at that

late stage is clearly indicated.

The witness was only alerted to the fact that he had indeed signed an application for Legal Aid when Mr. Frankson showed him the document which became Exhibit 6. It is in two parts. Actually, it is a photostat copy of two short documents on a foolscap size paper. One document (Form D) is an application to the Judge presiding at the Circuit Court for a Defence Certificate and was signed by the plaintiff, presumably at the General Penitentiary on the 4th February, 1969 apparently in pursuance of an investigator's report dated 18.11.68 recommending Legal Aid for Stanley Lalor (vide Exhibit 8). It bears the stamp of the Supreme Court Registry with date 6th February 1969. There is no evidence of any earlier application. And be it noted that this application was signed some days after he had concluded arrangements to defend himself. The question may well be asked why did it take over 2½ months for an application form to be presented after the investigator had recommended Legal Aid? But an answer will never be found. It is probably strangled in bureaucratic red-tape and inertia.

The other part of the Exhibit is headed "Legal Aid Certificate By Judge". It is dated 11th February, 1969 and signed by U. N. Parnell, Judge certifying that Stanley Lalor should have Legal Aid. At the foot of the document is a note dated 11/2/69 over the signature of the Deputy Registrar which reads "Assign Mr. A. Campbell". So, it took 7 days from the signing of the application by Stanley Lalor to get the application before a judge. And on the very day the judge awarded his certificate the Deputy Registrar made his note. This was obviously done in Kingston because the judge who presided at the Manchester Circuit Court was Mr. Justice Grannum and what is more, the trial was concluded on the 11th February, 1969 the very day action was being taken in Kingston to provide Stanley Lalor with a lawyer to defend him! By that time all arrangements had been finalized between Mr. Campbell and his client Mr. Lalor - the retainer and agreement to pay the agreed fees had been signed on 30.1.69, the Agreement for Sale had been signed and so

had been the conveyance, the fees had been paid in part by the cheque which had been endorsed and handed back to Mr. Campbell - all on 31st January 1969. The end of the Legal Aid Activity, so far as the documents show is this cryptic note -

"Assign Mr. A. Campbell"

Is it a directive to someone? Is it a reminder to the Deputy (from himself) to assign Mr. Campbell? Is it a statement of something done?

No evidence was adduced to clarify or, what is essential, to say that even at the late stage any notice of this intended assignment was in fact sent to Mr. Campbell who would have had to return the assignment. The cheque which the plaintiff had endorsed on 31st January, 1969 was negotiated at the Bank on February 4, 1969! Yet, it is plain beyond peradventure that the very bedrock of the plaintiff's case embodying such gross charges of impropriety against the defendant is the assumed validity and relevance of the assignment. The Statement of Claim says so very strongly and Mr. Small in presenting the plaintiff's case was no less clamant. Indeed, in his opening, Mr. Small set the stage for a tense atmosphere in the courtroom - believing, no doubt, in the justice of his cause. In dealing with what turned out to be Exhibit 6 he had this to say:-

"An interesting situation will arise concerning the application for Legal Aid. Miss Jones will testify concerning her search for the Legal Aid certificate. The search revealed that a Legal Aid certificate was in existence and note of assignment made upon it. Later when it was sought to photocopy it, it was discovered that it was no longer in the file. The Registrar and Deputy Registrar will be called and secondary evidence will be adduced of a photocopy made by Miss Jones previously".

The inference to be drawn, to me, seemed to be this: there is something sinister about the disappearance of this most vital document after it had reposed in the safety of the Registrar's file for these many years. Who would be interested in its disappearance but he who stood to lose by its appearance? And who could that be but the defendant?

Further, in his opening address, Mr. Small crystallised the issues as he saw them - 7 in all:

- Issue no. 1. Was there a Legal Aid Certificate/ Assignment with reference to the charge against the plaintiff.
- Issue no. 2. Did the defendant see the plaintiff pursuant to such assignment or through trip made by plaintiff's trusted friend.
- Issue no. 3. Was the proposal to sell the land in order to facilitate the plaintiff to retain the defendant by private treaty.
- Issue no. 4. Was the agreement entered into by plaintiff on defendant's sole advice.
- Issue no. 5. Was Mr. F. V. Karram plaintiff's agent and, if so, was he authorised to sell or offer for sale the plaintiff's land.
- Issue no. 6. Was the sum of £500 a fair price for the land.
- Issue no. 7. Was the plaintiff acting under undue influence of the defendant and so leading to the defendant being fraudulent i.e. constructive fraud.

For reasons which appear from the answers elicited in cross-examination when the plaintiff left the witness-box, neither Miss Sonia Jones, nor the Registrar nor the Deputy Registrar took his place there. And the promise to call Mr. F. V. Karram was not kept. Quite understandably the effervescence of spirit which attended counsel's opening of the case had largely fizzled out.

Quite predictably, the evidence by the defendant followed the course indicated in the cross-examination. The defendant had known Mr. Karram as a businessman in Porus. He had purchased petrol at Mr. Karram's service station on several occasions, but had had no other transactions with him. About the middle of January while he was at his chambers at 53 Church Street, Mr. Karram and the plaintiff's aunt Miss Elizabeth Biggs, attended there. He understood them to be acting on behalf of Stanley Lalor, the plaintiff, a total stranger to him. In order to finance Lalor's defence, Mr. Karram was selling Lalor's $\frac{1}{4}$ acre of land at Porus for which he asked £600. Mr. Karram described the land and he expressed his interest.

444

Whereupon Mr. Karram requested him to undertake Lalor's defence. A few days later, he went to Porus and was shown the land by Mr. Karram. On it was an unfinished two-bedroom house. Some of the walls were in place as well as part of the roof, one room had no flooring and the other was either fully or mostly floored. There were no ceilings. No out buildings and no toilet facilities. The roof was of galvanized zinc sheets. Lumber was exposed to the weather. He estimated it would require between £400 - £500 to render it habitable. He offered £500 which he thought to be a very reasonable price. Mr. Karram accepted though, as he was later to admit, the price may have been subject to Lalor's approval. Mr. Karram seemed quite knowledgeable in land matters so partly because of that and partly because of the expense to the plaintiff of a valuation by another person he did not advise such a valuation. He felt quite satisfied with Mr. Karram's competence to protect Lalor's interest.

At Mr. Karram's request after he had decided to buy, he visited the plaintiff at the General Penitentiary on the 30th January 1969. He was emphatic that the meeting was not as the plaintiff had described. There was no enquiry about land or cattle as stated by the plaintiff nor was there any transaction between them regarding the land. That had already been settled with Mr. Karram who had assured him he was the only friend the plaintiff had to assist him. He had the plaintiff sign the retainer (Exhibit 5) and thereafter he took a statement from the plaintiff.

By arrangement, Mr. Karram came to the defendant's chambers on 31st January, 1969. In discussing the land with Mr. Karram he had promised to prepare the necessary papers; which he did. Along with Mr. Karram, he went to the General Penitentiary that same day where the plaintiff signed the papers (Exhibits 1, 2 and 4) after Mr. Karram had explained the matter to him. He in no way influenced the plaintiff either in his decision to sell the land, or the price at which it was sold. The cheque for £300 (Exhibit 3) was presented to the plaintiff who endorsed and returned it to him as part-payment of his fees. The agreement for sale stated the balance to be due

245

on completion. Possession was immediate on signing. At no time in his dealings with the case was there any mention of Legal Aid. Indeed, the plaintiff bears him out on this. It was not until years later he was to hear about Legal Aid. But more of this anon.

He undertook the plaintiff's defence with results satisfactory to them both. That seems to have left him with the basis for saying he was the plaintiff's only friend on earth - without taking into account the admitted years of friendship between the plaintiff and Mr. Karram. It was his efforts in what he regarded as a challenging case that gave the plaintiff any hope and a new lease on life to boot. Then too, he was defending his character against a very serious charge. Mr. Small had sought to counter the defendant's insistence that he had dealt fairly with the plaintiff by having Karram's presence and concurrence at the signing of the documents on 31st September, 1969 by suggesting to him:

Q: Not true. You took advantage of the relationship of your position as Barrister-at-law.

This elicited the reply -

"I am his best friend. Had he come to me and had not had the advice he had from you, it might very well be I'd have given him back the land."

This very personal note was introduced into the proceedings after many questions on the propriety of the transaction relating to the sale of the land to the defendant during which the defendant testified that he was not at the time of the transaction aware of any specific rules relating to such dealings save that he was obliged to deal fairly with all persons.

Questioned as to why portions of the Agreement for Sale, (Exhibit 1) including the price, were in handwriting whereas the greater portion of the document is typewritten he replied that so far as the price was concerned, it was still subject to the plaintiff's confirmation so it had not been typed in. The other handwritten portions relate to three boundaries. He rejected the suggestion that he had prepared the document and filled in the handwritten portions at the time of execution. He rather thought that at the time

the document was being typed he didn't have adequate description of the boundaries and the neighbours but that they were filled in before confronting the plaintiff with them. Implicit in the questions relating to the appearance of the documents is the suggestion that the sale transaction was really conducted between the plaintiff and the defendant at the General Penitentiary on 31st January, 1969 and not earlier between the defendant and Mr. Karram, as the defendant contends. There were also other questions touching on the language of the conveyance and the provision made for the payment of the balance of the purchase price, but he explained that it is clear beyond doubt the plaintiff had been paid only £300. So that there was no question of him having to part with the land for less than the agreed price. It is to be noted that for the thirteen years since the signing of the Agreement for Sale the only step taken by the defendant towards confirming his ownership of the land was to have it surveyed. It is a point in his favour that he displayed no haste in that regard.

From the Statement of Claim and Mr. Small's opening, it is evident that Exhibit 6 (the documents dealing with the question of Legal Aid) is an important part of the plaintiff's case. Accordingly, the presentation of the photo copies of these documents by the attorney for the defence, it would have been thought, effectively neutralised that the aspect of the plaintiff's case. But Mr. Small was not about to retract the accusation contained in the pleadings; so he asked the defendant what had happened to the originals of those documents. This was much more than the defendant could be expected to accept with composure even though it appeared that Mr. Small was merely taunting him. He exploded. He explained that his first knowledge of any Legal Aid or assignment concerning the case was years after the trial; maybe about the time that the plaintiff began his quest to regain possession of the land. He enquired at the Supreme Court Registry and upon being advised of the existence of the documents, he applied for and was supplied with Exhibit 6. This he did in defence of himself lest the documents be made to disappear, as

has in fact happened, leaving him without an effective answer to the charge. Hence, the mischief begun could be furthered to his detriment.

Paragraph 6 of the Defence states 31st January 1969 as the date the land was offered to the defendant and inasmuch as his evidence differed he was questioned about it. He responded that it would have been more accurate to have stated that the offer had been made before 31st January, 1969, and moreover, he doubted that he saw the defence before it had been filed. The pleading telescoped the incidents of the sale to 31st January 1969 but I accept the defendant's evidence as to the various stages in the transaction.

Concerning Mr. Karram's agency in response to Mr. Small's denial thereof, the defendant replied that that was the capacity in which he understood Mr. Karram to have been acting from the time he made the initial approach to him and nothing was ever said or done to the contrary. Indeed, the plaintiff had ratified what Mr. Karram had done. I find as a fact that Mr. Karram so acted and there is nothing to cast any doubt on that conclusion.

Mr. Small clung tenaciously to the point that, since the retainer was signed on 30th January 1969 and the Agreement for Sale on 31st January 1969, at the time the Agreement for Sale was signed the plaintiff was the defendant's client. And that is in fact so. But the negotiations concerning the land had already been in progress with Mr. Karram. Indeed, had those negotiations fallen through the plaintiff and the defendant may never have met!

In his closing address, Mr. Small, reacting as he said to the view reflected in answers given by the defendant in cross-examination that there had been impropriety in advising the plaintiff said, inter alia,

"In those jurisdictions from which we got our profession a number of rules have evolved to protect clients who dispose of their property to their attorneys in their professional capacity. They have responsibility to their colleagues and the public to so practice the profession that the public will not feel those who have knowledge of the law use such knowledge to protect themselves against the public. No intention to bring Mr. Campbell into disrepute but if a client feels he has a grievance the matter should come to the court

746

for the protection of the legal as well as the judicial system. No vengeance or vindictiveness. The pleadings were settled by two of the most respected members of the profession."

No one should quarrel with the principle set out above but it may well be said that the concessions made reflect a much chastened view bearing in mind the plaintiff's pleadings and the manner in which the case was opened. The statement concerning the settling of the pleadings makes it all the more amazing that eminent practitioners could have drafted such pleadings without the benefit of the obviously necessary documents - much like ardent and enthusiastic crusaders rushing to join the fray without first locating their weapons. To do so they must have placed great reliance on the word of the plaintiff, which, as events were to show, was not worth the breath with which it was uttered.

In the result Mr. Small suffered no little embarrassment when in cross-examination the plaintiff was plied with document after document about which the former knew nothing. But he frankly admitted that some of the allegations made had not been supported by evidence -

para. 3 - no evidence concerning the Legal Aid Certificate.

para. 4 - no precise evidence about the promissory note.

para. 6 - evidence falls short of the strong representation made.

He explained however, that having regard to the instructions received and the literacy of the plaintiff there had been no impropriety in the Statement of Claim as pleaded.

Compelled on the state of the evidence, to admit the failure to establish paragraphs 2, 3, and 4 of the Statement of Claim, Mr. Small nonetheless insisted that the plaintiff ought to succeed on the claims of undue influence and fraud (See paras. 5 and 6 of Statement of Claim). Paragraph 5 of the Statement of Claim seems to be saying that the plaintiff had had no intention to sell his land but that he was induced to do so by the defendant abusing his position as the plaintiff's Barrister-at-law and at a time when, because of the plaintiff's predicament, he could not do otherwise than rely on the sole advice of counsel who represented that it was necessary

to sell the land in order to secure legal representation at his trial and/or that otherwise the defendant was under no duty to conduct his defence. But what must not be lost sight of is the fact that the contention in paragraph 5 flows for the allegation in paragraph 2 viz, that the defendant had been assigned to conduct the plaintiff's defence. However, in an effort to neutralise the virus of failure from running its full course, so as to affect paragraph 5 fatally it is submitted that the undue influence may have flowed from the fact that the defendant was well dressed in contrast to the plaintiff in his foully cell and distraught condition. My attention has not been directed to any authority which forbids an attorney to approach his client properly clad lest he exercises undue influence on the latter. Indeed, there can be no such authority, and if there were, I could not accord it any respect. But this submission ignores the fact that we are dealing with the issues arising on the pleadings and, accordingly, the plaintiff's case is not at large. Otherwise a defendant would never know what charge he must prepare to meet. I have no hesitation in finding that paragraph 5 goes the way of paras. 2, 3, 4 - it fails.

There remains the question of fraud. As pleaded in paragraph 6 this is actual fraud of which particulars are supplied. It is clear that moral turpitude is involved in this allegation. What it alleges is that the defendant, having accepted the Legal Aid assignment he was in duty bound to act in conformity therewith and was not entitled while so acting to obtain any fees from the plaintiff. However, he kept this a secret from the plaintiff and falsely and fraudulently represented to him that it was necessary for the plaintiff to enter into the transaction for the sale of the property in order to secure legal representation for his defence. In the end Mr. Small submitted that what was contended for was constructive fraud that does not involve any moral turpitude.

I must continue to express my amazement that such pleadings could have been drawn up without the benefit of documentary or any proof, for that matter, that an assignment had actually been made to

the defendant. Because the gravamen of the charge against the defendant is that he acted dishonourably in not acting in conformity with the Legal Aid assignment which brought him into contact with the plaintiff as his counsel.

To put the matter beyond all doubt let me state that I reject the plaintiff's case in toto. I find that the plaintiff displays a peculiar penchant for prevarication and deceit such as disentitles him to be believed even on non-crucial matters. And this has nothing to do with his literacy. The acceptable evidence does not favour the resolution of any of the 7 issues proposed by Mr. Small in the plaintiff's favour.

I accept the defendant's version as to how the relationship came about as well as the role played by Mr. Karram before and up to 31.1.69. It seemed more probable that Mr. Karram acted under the due authorisation of the plaintiff from the commencement of his involvement but even if that were not so and Mr. Karram had involved himself on the basis of the long-standing friendship with the plaintiff and out of concern for him, yet he acted in the best interests of the plaintiff and protected his interest. What he did was unconditionally ratified by the plaintiff. It is not known for how long Mr. Karram had been trying to sell the land but what is certain is that the land was not sold to the defendant because he was on the market seeking land to purchase. On the contrary the sale conducted through Mr. Karram was for the sole benefit of the plaintiff. I accept the defendant's evidence that the price of £500 was a fair one - there is no acceptable evidence to the contrary.

Attention was drawn to The Third Edition of Halsbury's Laws of England Vol. 3 at paragraph 67 headed 'Duty of Counsel not to disclose or misuse information'. It reads:

"The employment of counsel places him in a confidential position and imposes upon him the duty not to communicate to any third person the information which has been confided to him as counsel and not to use either such information or his position as counsel to his client's detriment.
The courts will interfere by injunction to prevent counsel from disclosing the secrets of the client and will set aside any deed or

27.

transaction by which a barrister has through making use of the confidence reposed in him gained an advantage to himself to the detriment of his client.

If a client being under the influence of counsel executes a deed in favour of counsel, the deed is liable to be set aside on the ground of undue influence. If there is such undue influence existing when the deed is executed it is immaterial that the relation of counsel and client had then ceased. Where there is no undue influence, a deed executed by a client in favour of his counsel may stand as a voluntary instrument, and is not void on grounds of public policy".

I find that the defendant's conduct has not transgressed the principles herein stated.

No disrespect is intended by not referring to other authorities which were brought to the court's attention but, having regard to the facts as I find them it is not necessary to advert to these.

On reflection it is obvious that the bringing of this action was at least unfortunate, bearing as it does, the seeds of its own destruction.

The plaintiff is not entitled to any of the reliefs sought. Judgment is entered for the defendant with costs to be agreed or taxed.