[HIGH COURT OF AUSTRALIA.]

WILTON . . . . . APPELLANT;
DEFENDANT,

AND

FARNWORTH . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1948.

PERTH, *Sept.* 9, 14.

Latham C.J., Rich, Dixon and McTiernan JJ.

Equity—Setting aside deed—Voluntary alienation of considerable property—Inducement by donee—Substance of transaction not understood by donor—Donor of weak intellect.

A voluntary alienation of substantial property will be set aside by a Court of Equity in any circumstances which make it unconscionable for the donee to retain it.

If a gift of substantially all or most of the donor's property was procured by the donee and was improvidently made by a donor who did not understand the transaction and was of low intelligence and if the donee withheld relevant information in his but not in the donor's possession, these are circumstances sufficient to show that the transaction is unconscionable.

Decision of the Supreme Court of Western Australia (*Wolff* J.) affirmed.

APPEAL from the Supreme Court of Western Australia.

William Farnworth, a person of dull intellect and defective hearing, was a working miner of little education. In 1946, at the age of forty-two he had married Stella Ivy Wilton, a widow about sixty-five years of age with whom he had cohabited before marriage, and to whom he gave all his savings. They parted shortly after their marriage, and thereafter the wife obtained an order for maintenance of £2 10s. per week against him. She was subsequently murdered by a man named Jackson on or about 11th December 1946, and was found to have died intestate, possessed of considerable

assets. Farnworth was requested by police to go to Perth where he was shown several Savings Bank pass-books and receipts for Commonwealth bonds. The detective asked him what he intended to do with the property. He replied : " You can let the son have it, it has nothing to do with me." At some stage also he met Albert Wilton, his stepson, to whom he made the statement that he didn't want anything under his wife's estate. It appeared that on 19th December 1946, Farnworth had orally agreed that Wilton should apply for letters of administration and that Farnworth should sign all the documents necessary to lead to a grant.

On 18th or 19th January 1947 Wilton visited Farnworth at Kalgoorlie taking with him three documents. The first was a notice of application for administration ; the second was a consent by Farnworth to a grant of letters to Wilton ; the third was an indenture, the purpose of which was to make over to Wilton the whole of Farnworth's interest in his wife's estate, amounting to about £1,800. Wilton read these documents to Farnworth while he was occupied with other matters, and at Wilton's request Farnworth signed them

Letters of administration of the estate of Stella Ivy Farnworth were granted to Wilton by the Supreme Court of Western Australia on 31st January 1947.

The trial judge, *Wolff* J. found that Wilton made no attempt to explain to Farnworth the contents of the deed and its implications and that, although he executed it, Farnworth did not know he was making a gift of his share in his late wife's estate. His Honour was of opinion that Farnworth did not know at the time of signing the indenture the extent of the share to which he was entitled or its value ; that Farnworth was bustled into making the deed with unseemly haste ; that a copy of the deed had not been left with Farnworth. Upon these findings *Wolff* J. ordered that the indenture be set aside.

From this decision the defendant appealed to the High Court.

Downing K.C. (with him *M. E. Solomon*), for the appellant. The transaction was a gift, which could only be set aside if induced by fraud, coercion or undue influence, and there is no presumption of fraud because a donor is old or merely of weak intellect (*Halsbury*, 2nd ed., vol. 15, pp. 723, 724). The respondent was of sufficient age and intelligence to execute the deed, and must therefore be treated as knowing its contents (*Edwards* v. *Carter* (1) per Lord

(1) (1893) A.C. 360, at p. 367.

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Macnaghten, cited with approval by *Starke* J. in *Bank of New South Wales* v. *Rogers* (1)). There is no rule of law, as suggested by the trial judge, that independent advice was necessary (*Haskew* v. *Equity Trustees, Executors & Agency Co. Ltd.* (2) ; *MacKenzie* v. *Royal Bank of Canada* (3) ; see also the observations of *Latham* C.J. in *Johnson* v. *Buttress* (4)). The document executed by the respondent was in no sense a deed of family arrangement. The trial judge referred to *Cheshire and Fifoot* on *The Law of Contract*, p. 177, but the terms of the document in dispute do not fit in with any of the categories enumerated by the authors. If the transaction was a family arrangement, it was fairly entered into without concealment or imposition. Before such a deed is set aside a court ought to be fully satisfied that it was entered into under circumstances of wilful concealment (*Gordon* v. *Gordon* (5) per Lord *Eldon* L.C., cited with approval in *Cashin* v. *Cashin* (6)). The question at issue being the proper inference to be drawn from the facts, this Court is in as good a position to decide the question as the trial judge was (*Powell* v. *Streatham Manor Nursing Home* (7)).

Louch K.C. (with him *Stables*), for the respondent. On the question of (1) family arrangements, (2) family arrangements divesting the donor of all his property, (3) confidential relationship, he referred to *Cheshire and Fifoot* on *The Law of Contract*, p. 177. On the question of concealment he referred to *Groves* v. *Perkins* (8) ; *Gordon* v. *Gordon* (9) ; *Greenwood* v. *Greenwood* (10) ; *Smith* v. *Pidcombe* (11) ; *Cashin* v. *Cashin* (12)). On the question of compromise or matters of family arrangement he referred to *Halsbury*, 2nd ed., vol. 29, p. 596 ; *Phillipson* v. *Kerry* (13) ; *Dutton* v. *Thompson* (14) ; *Strauss* v. *Sutro* (15) ; *Yerkey* v. *Jones* (16).

Downing K.C., in reply.

Cur. adv. vult.

(1) (1941) 65 C.L.R. 42, at p. 53.
(2) (1919) 27 C.L.R. 231.
(3) (1934) A.C. 468.
(4) (1936) 56 C.L.R. 113, at pp. 119, 120.
(5) (1821) 3 Swans. 400, at pp. 463, 464 [36 E.R. 910, at p. 917].
(6) (1938) 1 All E.R. 536, at pp. 543, 545.
(7) (1935) A.C. 243.
(8) (1834) 6 Sim. 576 [58 E.R. 710].
(9) (1821) 3 Swans., at pp. 463, 464 [36 E.R., at p. 917].
(10) (1863) 2 DeG. J. & S. 28 [46 E.R. 285].
(11) (1852) 3 McN. & G. 653, at pp. 658, 659 [42 E.R. 411, at pp. 413, 414].
(12) (1938) 1 All E.R. 536, at pp. 544, 545.
(13) (1863) 32 Beav. 628 [55 E.R. 247].
(14) (1883) 23 Ch. D. 278.
(15) (1947) 177 L.T. 562.
(16) (1939) 63 C.L.R. 649, at p. 675.

The following written judgments were delivered :—

LATHAM C.J. My brother *Rich* states the facts of this case in all their relevant features. A court of equity can set aside a transaction and cancel a document on various grounds, such as fraud, undue influence, mistake, lunacy, duress, non-disclosure of material facts when there is a duty to disclose, abuse of confidential relationship, or, in some cases, failure to show that there has been no such abuse. The present case does not fall within any of these categories. All allegations of fraud were expressly withdrawn and there was no confidential relationship between the parties.

Where a man signs a document knowing that it is a legal document relating to an interest which he has in property, he is in general bound by the act of signature : see *Yerkey* v. *Jones* (1). He may not trouble to inform himself of the contents of the document, but that fact does not deprive the party with whom he deals of the rights which the document gives to him. In the absence of fraud or some other of the special circumstances of the character mentioned, a man cannot escape the consequences of signing a document by saying, and proving, that he did not understand it. Unless he was prepared to take the chance of being bound by the terms of the document, whatever they might be, it was for him to protect himself by abstaining from signing the document until he understood it and was satisfied with it. Any weakening of these principles would make chaos of every-day business transactions.

But different considerations apply in the case of transactions which are not business transactions. A gift is not a business transaction. More particularly a gift of all or most of a man's property is not a business transaction. Further, if a donee is the moving spirit in the transaction of gift, and the donor is of weak will or of poor mentality, a court of equity will set aside the gift unless it is shown that the donor understood the substance of what he was doing : *Dutton* v. *Thompson* (2). In *Clark* v. *Malpas* (3) ; *Baker* v. *Monk* (4) and *Fry* v. *Lane* (5) there were sales by an ignorant person at an undervalue and the rule stated was applied : a case of gift is *a fortiori*.

In the present case the learned trial judge found that the donor was markedly dull-witted and stupid. This must have been obvious to the defendant. I can discern no satisfactory reason for dissenting from the conclusion of the learned judge that the plaintiff did not understand what he was doing when he signed the deed which,

(1) (1939) 63 C.L.R. 649, at p. 662.
(2) (1883) 23 Ch. D. 278.
(3) (1862) 31 Beav. 80 [54 E.R. 1067].
(4) (1864) 33 Beav. 419 [55 E.R. 430].
(5) (1888) 40 Ch. D. 312.

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however unskilfully drawn, gives to the defendant the whole of the plaintiff's interest in his wife's estate.

I am therefore of opinion that the appeal should be dismissed.

RICH J. This is an appeal from the judgment of *Wolff* J. by which he ordered an indenture to be set aside and delivered up for cancellation and gave directions for consequential relief. The indenture is of a curious description but the defendant claims that it amounts to an assignment to him of the plaintiff's share in the intestate estate of the late Stella Ivy Farnworth, formerly Wilton. The deceased was the plaintiff's wife and the defendant is her son by a former marriage. The story from which the relevant facts emerge is indeed a strange one. The plaintiff is a working miner living at Kalgoorlie. In 1944 he, being then about forty years of age, proceeded to cohabit with the deceased, she being then Mrs. Wilton. Her age was sixty-three. After two or three years her husband Wilton died. Then in 1946 the plaintiff married the widow. Within a short interval their married felicity was interrupted by a decision on the part of Mrs. Farnworth to set up a boarding house in Perth. The plaintiff stuck to his work as a miner and refused to leave Kalgoorlie permanently and live with her in Perth. Her next step was to proceed against him for maintenance. Although he went to Perth and saw her about the matter she by some means induced him not to defend the proceedings and obtained an order of £2 10s. a week. On a date fixed as 11th December 1946 she was murdered by a man named Jackson and some days later her dead body was found. The plaintiff was requested by the police to come to Perth, which he immediately did. He arrived too late for the funeral—a fact he learnt through the police who interrogated him. In the course of the investigations by the police a reason appeared for supposing that the deceased had been trafficking in gold. The police had obtained Savings Bank books disclosing in various names quite considerable sums of money. They asked the plaintiff questions about these and about receipts for Commonwealth Bonds. The purpose of the police was to discover how she came by the money. He is a deaf man. Medical evidence shows that he is completely deaf in the right ear and considerably deaf in the left ear. The specialist who examined him found him unintelligent as well. The learned judge before whom he gave evidence found him to be of very dull intellect and said that he did not think that there was any doubt about the dullness of his intellect, having heard him give evidence and having taken note of the opinion of others and of his actions. The detective inspector, whose evidence was accepted,

says that he told the plaintiff of the amount in the Savings Bank account and the bonds. The detective asked him what he wanted to do with the property when the case—that is the murder charge—was finished. His reply was : " You can let the son have it, it has nothing to do with me." In fact it had a great deal to do with him, for the deceased died intestate and under the law of Western Australia the plaintiff as her husband was entitled to £500 and one-third of the net balance of the estate. The total sum which he would receive is stated to be £1,800. When the police had done with him he went to see his stepson, the defendant. He was not at home but the plaintiff met him in the street. What occurred between them is in dispute. But the account given by the plaintiff in his evidence in chief is as follows :—" We had a conversation. I said I was sorry to hear about my wife. I said I would like her wedding ring for a keepsake. He said—I don't think she had got one on. I was upset at losing my wife and not being in time for the funeral. I said—Oh, I don't want anything!—just like that. He said—I'll see that you get something. I had no idea what she had." The plaintiff added that the defendant obtained his address and said that he would be coming to Kalgoorlie in two or three weeks' time with some papers but did not say what the papers were. The trial judge did not accept the defendant's version of this conversation, according to which an elaborate discussion took place. But it does appear from the pleadings that the plaintiff agreed that the defendant should apply for letters of administration and that the plaintiff would sign the documents necessary to lead to a grant. The defendant appeared at Kalgoorlie on 18th January 1947. He was armed with three documents which he had caused his solicitors to prepare. One was a notice of application for administration. This is a document which an applicant for letters of administration to the estate of a deceased person must give to a next of kin who has a prior right unless he obtains his consent to the application. The second document was a consent by the plaintiff to a grant of letters to the defendant. These documents are obviously alternatives. The third document is the indenture in question. The following is the plaintiff's account of what occurred in relation to these documents :—" On the 18th January I was at Kalgoorlie. I was going down the passage of my lodgings when I saw Wilton outside my room with another man. I don't know the other man. I said—Good day. He said—I've got some papers for you to sign.

He had said in Fremantle he would be up in two or three weeks' time. I said—I'm going in. You'd better come in. I want to change my strides. As soon as he got into the room, no sooner did

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he get in than he sat down and pulled out the papers and read the papers and put them back in his pocket. He didn't read them out fully. All I heard was 'Farnworth.' I was changing my trousers and looking round. He did not give me the papers. I did not handle them. He put the papers back in his pocket. I thought they had something to do with winding up the estate. He did not tell me what the papers were. He did not tell me I was giving him my share in the estate. I did not know at that time what her estate consisted of. Wilton did not tell me. He said—We'll have to go across the road to the chemist to sign. We went to Mr. Elliott's. Wilton went in first. We got Elliott. He said—I want you to sign these papers. I went forward. I signed the papers. I don't know how many I signed. I signed two or three. I see my signature on the document produced (Consent to Letters of Administration to Wilton and dispensation of sureties). I also see my signature on the deed. We had a glass of milk after the signing. Wilton gave me a paper. I don't know for sure when he gave it to me. I know it was on that day. He said—Keep this, this is a copy. I just put it on the table. He said—Don't leave it there, look after it. I did not read it." Two days later the defendant left Kalgoorlie. Before he did so in a conversation with the plaintiff the defendant informed him there would be very little left after the payment of taxation. The plaintiff swore that he never intended to give the defendant his share in the estate and he was not aware that he had done so. The purpose of the indenture, however, was to make over the plaintiff's share to the defendant. It was drawn in a strange manner and it may be doubted whether it amounts to more than an inchoate gift. It is expressed as an indenture between the plaintiff and defendant, the first being called therein the husband and the second the son. It begins by a recital of the deceased's death, calling her by her four various names. Next is recited the marriage between the deceased and the plaintiff and the separation order. Then follow recitals that the deceased did not afterwards live with the plaintiff and that the defendant is her lawful son and that she had no other children. After reciting that the plaintiff and defendant are consequently entitled in the distribution of the estate and that the deceased possessed assets in Western Australia the indenture goes on to make two important recitals. The first states that the parties thereto are desirous that the defendant should receive the whole of the estate of the deceased subject to liabilities for his own use and benefit absolutely. The second recites that the parties agreed that the estate should belong to the defendant absolutely. Then comes the testatum. It is not

followed by an assignment as might be expected but by a request and authority to the defendant as intended administrator to deliver and pay to himself, under the appellation of "the son," the whole of the assets of the estate less liabilities. Then ensue a series of statements of what the plaintiff agrees to. Briefly the deed makes him agree: (1) that the delivery and payment shall be in full satisfaction of all claims and demands which he might have in connection with the estate and the distribution thereof; (2) to indemnify the defendant and/or the administrator of the estate against all actions &c. by reason of the execution of the deed and/or by reason of the delivery of the assets and payment of the monies to the defendant; (3) that he did thereby discharge and release the executors and administrators of the estate from all claims and demands; and (4) that he would not make any demands against the executors or administrators or the defendant; and (5) that the executors and administrators might forthwith proceed to deal with the estate subject to the terms of the deed. It will be seen that this deed consists of authorities which being without consideration might presumably have been revoked. To convert the transaction into a perfected gift something more was obviously required. It was necessary that the authorities should be acted upon, at all events to the point of giving the defendant legal and beneficial title to the assets of the deceased or the plaintiff's share therein amounting to ownership. But on 31st January 1947 letters of administration of the estate of the deceased were granted to the defendant by the Supreme Court. No doubt the grant vested the legal title to the assets of the deceased in the defendant. But neither at the trial nor at the hearing of the appeal was there any discussion of the question whether that fact was enough to perfect the gift to the defendant which, if the recitals are to be believed, the parties contemplated. The fact that the plaintiff left the gift inchoate does not appear to have been adverted to. The defendant took it away and had it stamped as a deed of gift. No evidence was given to show that the defendant had acted upon the authorities it contained by appropriating any of the assets to his own use. The question how and at what point, if at all, the gift was perfected, was neglected until the hearing of the appeal when the question about it was asked from the Bench. In these circumstances it is perhaps better to put the question on one side and deal with the case on the footing that the indenture amounts to a voluntary alienation of property. The deed is scarcely to be classed as a family arrangement and the defendant caused it to be prepared as only what can be regarded as a gift to him. The plaintiff says

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that he did not learn the value of the estate until late in February 1947 and that, when he heard it from an acquaintance after waiting for a visit from Wilton who said that he would come to Kalgoorlie in March, he consulted a solicitor in June. His solicitors wrote to the defendant's solicitors requesting information about the present state of the administration of the deceased's estate and as to when a distribution might be expected. The defendant's solicitors replied that they could not understand the nature of the plaintiff's question as all matters between him and the estate had already been completed. This elicited from the plaintiff's solicitors a request for information as to the facts upon which this assertion rested. By way of reply the defendant's solicitors contented themselves by enclosing a copy of the deed. Upon the facts, of which the foregoing narrative is an outline, *Wolff* J., who heard the suit, made some findings of fact which are important. They may be summarized as follows :—(1) His Honour was satisfied that the contents of the deed and its implications were not explained to the plaintiff and that, although he executed it, he did not know he was making a gift of his share in his late wife's property. (2) The plaintiff did not know the extent of the share to which he was entitled or its value. (3) The plaintiff was bustled into executing the deed with unseemly haste. (4) A copy of the deed was not left with him. (5) The defendant made no attempt to explain the nature of the transaction to the plaintiff beyond some reading of the deed which, even if he heard what was said—which His Honour thought was extremely doubtful—would not convey any sense to a person of the plaintiff's mental equipment and was a quite meaningless proceeding. (6) His Honour was not prepared to conclude that on 19th December 1946 the plaintiff was making or intending to make an entire gift of his share to the defendant but whatever intention he then had he did not retain it. His Honour inferred that on 18th January 1947 when the defendant went to Kalgoorlie he was not at all certain in his mind that the plaintiff would execute the deed. It was for that reason that he armed himself with a notice of intention to apply for letters of administration, which he left with the plaintiff notwithstanding that he did sign the deed and the consent. There is no reason on the evidence to disturb any of these findings of fact which all have a strong basis in probability as well as in the proved circumstances. In a case such as this the advantage possessed by the trial judge of seeing the parties and estimating their characters and capacities is immeasurable. For not only does it affect credibility but it affords the best evidence of what are essential factors in the case, viz., the

intelligence and other faculties of the respective parties to the transaction. Upon the findings which have been set out above it almost goes without saying that no court of equity could allow the transaction to stand. It is true that the doctrine once espoused by Lord *Romilly* that a voluntary disposition of property of substantial value could not be maintained unless the donee discharged an onus of showing that the donor understood the transaction and that it proceeded from a free exercise of his will is no longer considered to be the law : see *Yerkey* v. *Jones* (1). It is for the donor to prove some substantial reason for setting the transaction aside : see *Henry* v. *Armstrong* (2). But the jurisdiction of courts of equity is based upon unconscientious dealing. It has always been considered unconscientious to retain the advantage of a voluntary disposition of a large amount of property improvidently made by an alleged donor who did not understand the nature of the transaction and lacked information of material facts such as the nature and extent of the property particularly if made in favour of a donee possessing greater information who nevertheless withheld the facts. In the present case the capacities of the plaintiff and defendant were quite unequal. The plaintiff was sufficiently handicapped by his defect of hearing in gaining an understanding of the facts relating to his wife's property, his interest therein and the transaction into which he was invited to enter. But his intelligence placed him in an even more unequal position in dealing with the defendant in the transaction. To all this the defendant must have been fully alive. We have here an improvident transaction entirely voluntary springing from no sensible motive. The donor has no education, small intelligence and a history of curious conduct. For it must be regarded as curious conduct to marry an elderly woman, give her his savings—for so he did—then allow her to recover maintenance while carrying on an independent and presumably profitable business after leaving him against his will. When to all this is added ignorance of the relevant facts and a failure to understand the transaction, very substantial reasons have been proved for the intervention of a court of equity. Voluntary alienation of his property to the defendant was neither fair nor righteous and in the view of a court of equity it must be regarded as unconscientious for the defendant to take the gift or retain it.

On these grounds the judgment of *Wolff* J. was right and the appeal must be dismissed with costs.

(1) (1939) 63 C.L.R. 649, at pp. 678, 679.

(2) (1881) 18 Ch. D. 668.

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DIXON J. I have had the opportunity of reading the judgment of my brother *Rich* and I agree with it.

McTIERNAN J. I agree that the appeal should be dismissed. In my opinion the circumstances bring this gift within the principle upon which equity sets aside an improvident gift made by a person in the situation of the respondent and with his disabilities: see *Baker* v. *Monk* (1); *Clark* v. *Malpas* (2), cited in *Johnson* v. *Buttress* (3).

Appeal dismissed with costs.

Solicitors for the appellant: *M. E. & R. Solomon* (Perth).
Solicitors for the respondent: *Stables & Clarkson* (Kalgoorlie).

B. McP.

(1) (1864) 33 Beav. 419 [55 E.R. 430].
(2) (1862) 31 Beav. 80 [54 E.R. 1067].
(3) (1936) 56 C.L.R. 113, at p. 143.