JENEVA JOHNSON-DUFF, by her Husband, WILLIAM DUFF, Appellant, v. **H. L. HARMON** and **THOMAS A. DONNELLY**, of Farrell Lines, Inc., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 10, 12, and 16, 1953. Decided May 29, 1953.

Assent obtained by undue influence, misrepresentation, or abuse of a confidential relationship, may invalidate a conveyance of real property.

On appeal from judgment dismissing plaintiff's action of ejectment, *judgment reversed.*

Nete Sie Brownell for appellant. *R. F. D. Smallwood* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Appellant, plaintiff below, asserted title to land for which appellee exhibited a deed. There is no question that appellant formerly had title to the land ; but appellee contends that she sold this land to him. Appellant, on her part, contended that the sale of the land was procured, and the deed obtained, fraudulently and by misrepresentation.

Documents exhibited in support of the title of appellant indicate that she became owner of the property in question by virtue of a quitclaim deed executed by the heirs of the late Elijah Johnson of historic fame, she herself being one of them. The property consists of about thirteen and one-half lots of one-quarter of an acre each, located at Sinkor, Monrovia. A quitclaim deed was executed in March, 1949, and probated in April, 1949.

Appellant admitted selling appellee two and one-half lots in the rear, but contended that she did not sell him the two front lots, the subject matter of this case, and that she told him she was reserving these two front lots for her own use. Appellee put in evidence the deed showing the sale of the two and one-half lots and a deed showing the sale of the two front lots ; but the latter deed is so worded as to be confusing. The uncontradicted testimony of the surveyor, Anderson, who did the survey for the two and one-half lots in the rear towards the sea, which evidence was not contradicted by either party, discloses that, after the survey and sale of the two and one-half lots in the rear, he discovered another piece of land, of about one-half a lot,

also in the rear near the beach, which piece of land he considered of no material use to anyone but Mr. Harmon who had bought the two and one-half lots. He communicated this fact to both appellant and Mr. Harmon, and suggested that they make an agreement for the purchase of this piece by Harmon. Mr. Anderson then gave the certificate of survey to Mr. Harmon with the understanding that a deed would be made out for the additional piece of land. It is significant that, among the deeds presented and placed in evidence, there is no deed for this additional one-half lot. Instead, there is a deed for eighty-two one-hundredths of an acre of land, which, as established on the trial, was surveyed by one Walker, a civil engineer, at the request of Mr. Harmon, without appellant's knowledge or instructions. During the trial it was shown that this eighty-two one-hundredths of an acre included the two front lots which appellant definitely had told appellee that she would not sell.

We ask why Mr. Walker was employed to do this special survey when appellee Harmon knew that surveyors Anderson and Adjavon were the surveyors doing the work for the Johnson heirs. The record discloses that the apparent deception was discovered when Mr. Duff, the husband of appellant, hearing that appellee Harmon had leased the two and one-half lots to Farrell Lines, also approached them for a lease of the two front lots. The agent asked Mr. Duff whether he knew what he was talking about, since they had already leased the said lots from Mr. Harmon.

Appellant repeatedly and emphatically testified that she did not sell the two front lots and did not knowingly sign the deed conveying them, although she admitted that the signature on the deed was hers, witnessed by her husband and two of Mr. Harmon's employees. Both husband and wife stated that, on the morning when they went to Mr. Harmon's law office to get the rent money due from Farrell Lines to the Johnson heirs, Mr. Harmon, as lawyer for the said company, came out in his dressing gown, and said that he was very busy, that they should sign the paper at once, and that there was no need to read it as it was the same paper they always signed when drawing the rent. They further testified that the document was folded, and that, after Mr. Harmon indicated where to sign, having confidence in him, they signed without reading, not for a moment thinking that they were signing away their property. This deed was signed February 1, 1949, and probated February 23, 1949.

Another significant fact stated by Mr. Duff is that Mr. Harmon paid her no money for the land, although the deed shows on its face that $1,650.00 was paid to appellant for the two lots. Appellee Harmon testified that this money was paid from time to time in cash and by checks; but he was unable to produce a single receipt or cancelled check indicating payment of any installment. Mr. Harmon explained that appellant

told him that she did not want anyone, by which he thought she meant her husband, to know what amount she was receiving. If this were true it seems very strange that the same Mrs. Duff, when going to receive money and sign the deed, would take her husband along with her.

Another significant fact is that the survey by Mr. Walker was made on December 15, 1948. On December 30, 1948, appellee Harmon leased the two and one-half lots to Farrell Lines. This lease did not include the two front lots, although appellee Harmon had informed Mr. Walker during the survey that he was acquiring them from Mr. Duff. Mr. Harmon himself testified that Mr. Duff came to his house more than twelve times to urge him to buy the two front lots. It follows that he must have been certain that he would get the lots in question and that he could include them in the first lease agreement, because the land was surveyed by Walker fifteen days before the lease with Farrell Lines was executed. Another lease agreement made in July, 1949, with Farrell Lines, a copy of which was put in evidence by appellee Harmon contained the following clause:

"It is mutually stipulated and agreed that the lease indenture made and entered into between the parties aforesaid for a portion of the within tract of land dated the 30th day of December, 1948, duly probated on the 3rd day of January, 1949, and registered in Vol. 62, pages 206-209 of the records of Montserrado County, be and the same is hereby cancelled and made null and void of no future effect."

The description and boundaries set out in this lease agreement is for 1,123 acres of land "more or less." This includes all of the land of appellant on the sea side. Appellee Harmon was careful to have surveyor Walker state the words "more or less" in the certificate.

It is well settled that a transaction may be set aside on proof that assent thereto was obtained through deceit or misrepresentation.

"In regard to contracts made by parties affecting their rights and interests, the general theory of the law is that there must be full and free consent in order to make it binding upon them. Hence it is said that if consent is obtained by meditated imposition or circumvention, it is to be treated as a delusion, and not as a deliberate and free act of the mind. For although the law will not generally inquire into men's acts and contracts to determine whether they are wise and prudent, yet it will not suffer them to be entrapped by the fraudulent contrivances, or cunning, or deceitful management of those who purposely mislead them. Contracts are, however,

presumed to be fair, and not unlawful or fraudulent, and the burden is on the party attacking them as fraudulent to prove the fraud by positive or circumstantial evidence." 6 R.C.L. 63031, *Contracts,* ∫ 48.

"Constructive fraud often exists where the parties to a contract have special confidential or fiduciary relation, which affords the power and means to one to take undue advantage of, or exercise undue influence over, the other. A transaction between persons so situated is watched with extreme jealousy and solicitude, and if there is found the slightest trace of undue influence or unfair advantage redress will be given to the injured party . . . and the transaction will be set aside even though it could not have been impeached had no such relation existed, whether the unconscionable advantage was obtained by misrepresentations, concealment or suppression of material facts, artifice or undue influence." 12 R.C.L. 232-34, *Fraud and Deceit,* ∫ 5.

William Duff testified, *inter alia:* "One morning my wife and myself went to the house of counsellor Harmon to receive a certain amount due to the Johnson heirs for rent, to be paid by Farrell Lines. The sum was $240.00. We went into his office ; he was not there. In five minutes time he came out in his morning robe ; he said he was busy that morning and he would like to attend my wife in time that she could go. He took out a paper and gave it to my wife to sign before she could receive the amount of $240. My wife took the paper and wanted to read it. Counsellor Harmon told her he was so busy that morning, it was not necessary for her to read it, because it was the same old thing she signed from time to time. I can plainly remember what my wife said to him: 'All right, Cousin Fayette, if you say it is not necessary for me to read it, I will sign it.' She signed the paper. After signing, counsellor Harmon passed over the paper to me and said : 'Now, Duff, you can just witness her signature.' He passed the pen over to me and I witnessed her signature. The other witnesses, Morris and 'Willis, were not present when my wife signed."

This evidence corroborates the evidence of Jeneva Duff and was not in any way contradicted by appellee. It further shows the confidence appellant had in Counsellor Harmon who was her cousin. She never for a moment thought that he would do her such a wrong.

In view of the circumstances and the law cited, we reverse the judgment of the court below and award judgment in favor of plaintiff, now appellant, with costs against appellee; and it is hereby so ordered.

Reversed.