

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

A.275/80

288

No Special  
Consideration

BETWEEN W EDWARDS of Christchurch,  
Land Salesman, Administrator in  
the Estate of F Edwards,  
Deceased, late of Christchurch,  
Retired Carpenter

Plaintiff

A N D W EDWARDS of  
Christchurch,

Defendant

Hearing: 30 and 31 May 1983  
Counsel: C.B. Atkinson Q.C. for Plaintiff  
C.A. McVeigh and Karen G. Feltham for Defendant  
Judgment: 7 JUN 1983

JUDGMENT OF ROPER J.

The Plaintiff, as Administrator of his late father's estate, claims that the Defendant, who is a grandson of the deceased, Robert Edwards, and a nephew of the Plaintiff, is indebted to the estate for various sums arising out of property and loan transactions between the deceased and the Defendant. R : Edwards died on the 1978.

The first transaction in issue concerns an advance of \$8,500 by F Edwards in 1973 to enable the Defendant to purchase a property at It is accepted by the Defendant that it was a loan transaction and that there is a balance of principal and interest owing to the estate. As Counsel have intimated that they will be able to agree as to the precise amount owing I do not have to concern myself with it further. The same applies to a claim for \$157.13 being interest at 7½% per annum agreed to be paid on an amount for which judgment was obtained against the Defendant in the Magistrate's Court. If, after checking the available receipts, it is found that the sum is still owing the

Defendant will pay it. I reject Mr Atkinson's submission that the interest rate should be increased to 11% from the date of issue of the writ.

I come now to the real problem in this case and that concerns a claim for \$14,000 said to be owing by the Defendant for a property at \_\_\_\_\_ purchased from F \_\_\_\_\_ Edwards on or about the \_\_\_\_\_ 1975.

It is necessary to consider some family background, and R \_\_\_\_\_ Edwards' character as it emerged in evidence. The Defendant is \_\_\_\_\_ When he was about three years old his parents separated and he and his brother \_\_\_\_\_ went to live with R \_\_\_\_\_ and his wife. The Defendant spent most of his young life with his grandparents until he went flatting after leaving school, and Paul remained with them until he was 20. The grandparents' own children had all left home by the time the two young boys went to live with them so naturally the boys came to be treated as sons rather than grandchildren. R \_\_\_\_\_ Edwards had been a coalminer on the West Coast until the mines closed during the depression when he moved to Christchurch. He was described as a man who could turn his hand to anything. He started dealing. He accumulated properties, which he let, although in later years his main source of income appears to have come from money-lending.

R \_\_\_\_\_ Edwards was described by the Plaintiff as a very honest man whose word was his bond. It was also said that he thought himself virtually indestructible and would live to be at least a 100. The Defendant and Paul saw him as an eccentric to whom money was a god. When the Defendant and \_\_\_\_\_ were older they assisted with the maintenance of their grandfather's properties and in 1973, when the Defendant was only about \_\_\_\_\_ his grandfather loaned him the money to buy \_\_\_\_\_ That became, and still is, the Defendant's home. A few months later the grandfather loaned Paul the money to buy a property at Harrow Street.

By a memorandum of transfer dated the  
1975 R \_\_\_\_\_ Edwards transferred a property in \_\_\_\_\_ Street

to the Defendant for a stated consideration of \$10,000. The Inland Revenue Department, influenced by the close relationship between the parties, regarded the consideration as inadequate and assessed it at \$11,900, which I believe was the Government valuation. The additional \$1900 was assessed as a gift although no duty was payable. A short time later R Edwards transferred a property in to could not recall with certainty what sum was stated as consideration. The property backs onto the Defendant's property at

According to the Defendant, , which the grandfather had owned for some twenty years, was transferred to him as a gift. He said that it was at the insistence of his grandmother that his grandfather transferred to him, and to the object being to save death duties.

The Defendant said that the only proviso was that any income derived from t was to be applied to paying off the loan on The original suggestion was that should be transferred to the Defendant and Paul jointly, but to save later arguments it was decided that each should have a property. This is evidence on the matter:-

"In relation to the purchase of 1 Street that conversation took place, before was transferred into my brother's name we had that conversation probably a week or a fortnight something like that before. My brother and I were present at that conversation and both my grandparents. The nature of the transfer of to my brother, he said it was going to be his after his death as long as we paid the rates and maintenance and he received all the rentals for as long as he lived. As to what was the idea of letting us have these two properties, I think he just wanted to see us get on seeing our parents sort of didn't take an interest in us it was his way of letting us follow in his footsteps. There was no suggestion from either of them that either of us should pay for them. It was sort of he just said you know I want to let you grandchildren have something."

It is common ground that up to the date of the grandfather's death neither the Defendant nor            had paid the purchase price for            Streets, although income from            may have been applied in reduction of            Street.

After F            Edwards' death the following documents were found among his private papers:-

1. The certificates of title to            Streets.
2. A handwritten unregistered mortgage signed by the Defendant evidencing advances of \$8,500 in respect of            and \$14,000 for
3. An undated receipt which reads:-

"RECEIVED FROM

R. Edwards the sum of Twenty Thousand Dollars as a loan on            for which I give you a mortgage on same \$20,000.00            'W. Edwards'            "

4. A number of small school note books in which loan transactions with the Defendant and            , and others, were recorded.

It seems that R            Edwards was very careful in money matters. He did his own conveyancing and kept his own accounting records. He did not have a cheque account. I think it fair to say that he would not have taken kindly to any invasion of his hard-earned wealth by the Revenue or undeserving strangers.

Three of the school note books referred to relate to loan transactions with the Defendant. Loans and repayments on            and for cars are recorded, and in one there is this statement of account:-

"Loan on	1/8/75	14,000.000
Int to 1/2/76 @ 6%		<u>420.000</u>
		14,420.000
Int. to 1/8/76 @ 6%		<u>432.600</u>
		14,852.600
Int. to 1/8/77 @ 6%		<u>445.560</u>
		15,298.160
Int. to 1/2/78 @ 6%		<u>458.940</u>
		15,757.100
Int. to 1/8/78 @ 6%		<u>472.710</u>
		16,229.810 "

And in another this acknowledgment:-

"I Wayne Edwards dated 21.2.78 have received from Mr R. Edwards this 21 day of February 1978 for the sum of \$14000.00 to help in my business you may add this amount to what I owe you on 7 Edmond St I will get a mortgage for the whole amount to make things secure for you

Signed

'W. Edwards"

Witness 'E. Edwards' "

(I understand that the witness "E. Edwards" was the grandmother.)

Although on the face of the documents there appear to be two loans for \$14,000, one relating to the purchase of Street, and one to finance the Defendant's business, it was accepted by Mr Atkinson that only one loan of \$14,000 is in issue. Similar records were found relating to including a mortgage over Street for \$18,000.

After finding the documents the Plaintiff had a meeting with the Defendant and at which the Defendant maintained that Street had been a gift from his grandfather. The Defendant's explanation for signing the mortgage and other acknowledgments of debt was that his grandfather had learned of his matrimonial problems and feared that the Defendant's wife might be able to claim half the Defendant's property including Street. This is his evidence:-

"My grandfather and grandmother's reaction to my marriage breaking up at that time,

their initial wasn't a surprise to them, only thing grandfather was concerned about was she should get something he had worked for such as the property. Ex.6, I see that statement, and that is my signature at the bottom of it, the one before my grandmother's signature. As to the circumstances of my signing that, when my wife left she immediately placed a caveat over the properties and I told this to my grandfather which he said to protect the properties it would be a good idea to make up this document so there would be no equity left in the properties in the way of a loan offset against a mortgage on and properties. I wrote that out and signed it and my grandmother witnessed it. Following that - witness referred to Ex.3 - I recognise that handwritten Memorandum of Mortgage, that is dated March 1978. My grandfather wrote that out, that was along the same lines as the alleged loan in the book along with this paper to block the way of any matrimonial property act."

And Paul's evidence:-

"As to why he said he wanted him to sign it, he said I hear you are having trouble with your marriage at the moment, my brother, and in his own interests and for the sake of himself all the years he worked to obtain these properties if in the event that his wife did claim half his matrimonial property that he would have this unregistered Memorandum of Mortgage and if she did go for half his matrimonial property that he would register it immediately to protect himself. Because he didn't want to see the wife get what he had earned over those years. As to any suggestion that my brother actually owed that amount of money, he just wanted to protect himself against say an outsider for want of a better word."

It could be inferred from evidence on the point that the grandfather was primarily interested in protecting himself rather than the Defendant; and the fact that he had also sign a mortgage in respect of , although Paul was not having matrimonial problems, adds weight to that view. Both the Defendant and accepted that at least during their grandfather's lifetime any income from Streets was to be paid to their grandfather, and it may be that

this evidence from Paul in cross-examination in relation to Streets indicates the real position:-

"COUNSEL: You recognised during his lifetime you had an obligation to him? Oh yes, he thought he was going to live for ever so ultimately he thought I'll get this back.  
BENCH: As rent? Yes plus we did all the maintenance so he thought good, beauty."

That passage seems to indicate that in the long run the grandfather expected to be paid for both properties, and anticipated living long enough to receive payment. Although he may well have been concerned at the possibility of the Defendant's wife making a claim on the documentation is as consistent with his looking to his own interests as the Defendant's. And apart from the acknowledgments signed by the Defendant, R Edwards did record the \$14,000 loan, with the interest due from time to time, in his note books, just as he recorded other loans to the Defendant.

has actually paid, or made arrangements for payment, of all sums due to the estate, including whatever was outstanding on He still challenges his liability to pay but says he did so to avoid causing his grandmother distress.

Why the loan on was recorded consistently as \$14,000 when the consideration in the transfer was \$10,000 (or \$11,900 after the Inland Revenue Department's intervention) must remain a mystery. The Defendant couldn't explain it so that we are left with the Defendant's acknowledgment in three separate documents that that was the level of indebtedness.

Mr McVeigh accepted that the onus of proving a gift was on the Defendant; and the principles to be applied in such a case are succinctly stated in Halsbury 4th Ed. Vol. 20 in paras 15 and 16:-

" 15. Proof of gifts by deceased persons.

A gift alleged to have been made by a deceased person cannot, as a general rule, be established

without some corroboration. In some cases the judges have definitely stated that the court cannot act on the unsupported testimony of a person in his own favour, but there is now no hard and fast rule that the evidence of the alleged donee must be disbelieved if uncorroborated. It must be examined with scrupulous care, even with suspicion, but if it brings conviction to the tribunal which has to try the case that conviction will be acted on.

#### 16. Corroboration.

Corroboration is some testimony supporting a material point in the testimony to be corroborated. It may be supplied by the evidence of some other person, by some attendant circumstances or by some facts established from another source. The mere fact that the subject of the alleged gift was kept in the house belonging to the wife, if that was the home or one of the homes of the husband, would not be regarded as corroborative of the wife's allegation of a gift. On the other hand, proof that the alleged donor was at the time making gifts to other members of his family is corroborative of the claimant's story."

(I should mention that there was no evidence of other gifts to members of R Edwards' family.)

The evidence falls well short of satisfying me that Street was gifted to the Defendant, but in so deciding I mean no criticism of the Defendant. Just what R Edwards had in mind is far from certain, but the circumstances were such that the Defendant may well have misunderstood his intentions, if indeed they were clear to R Edwards himself. Even if it could be said that R Edwards intended a gift, as some of the witnesses stated, it was never completed in the sense that R Edwards did not do everything necessary to transfer the property to the Defendant and to render the gift binding upon himself as donor.

The Defendant's alternative defence is that the Plaintiff is estopped from claiming the purchase price of Street by reason of "the actions, representations and conduct of the deceased."



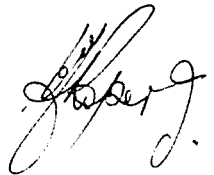
I will accept for the purposes of this argument that there were representations and conduct sufficient to raise the plea of promissory estoppel, although in truth it is not all that clear that this was so. As to fulfilment of the second criteria, namely that it would be inequitable in the circumstances to enforce strict legal rights, Mr McVeigh submitted that the law in this field had developed to the stage where there was now no longer an onus on a Defendant to prove detriment, but that it was for the Plaintiff to prove that the circumstances were such that equity should not intervene. He referred to the judgment of Lord Denning M.R. in Greasley & Others v. Cooke [1980] 3 All E.R. 710 at p.713:-

"Applying those principles here it can be seen that the assurances given by Kenneth and Hedley to the defendant, leading her to believe that she would be allowed to stay in the house as long as she wished, raised an equity in her favour. There was no need for her to prove that she acted on the faith of those assurances. It is to be presumed that she did so. There is no need for her to prove that she acted to her detriment or to her prejudice. Suffice it that she stayed on in the house, looking after , when otherwise she might have left and got a job elsewhere. The equity having thus been raised in her favour, it is for the courts of equity to decide in what way that equity should be satisfied. In this case it should be by allowing her to stay on in the house as long as she wishes."

I see that as a case where detriment could be presumed from the particular circumstances, so calling for a rebuttal from the Plaintiffs. At the end of the day it is simply a question of whether, on the whole of the evidence, it would be unconscionable for the representor to enforce his strict legal right. I must agree with Mr Atkinson that in the circumstances of the present case no question of detriment or inequity arises. It has not been proved and the facts are not such as to raise a presumption of it. The Defendant has had the use of the property over the years (latterly as a storage yard in connection with his business) with a liability for interest at a rate which made for a modest rental.

I therefore reject Mr McVeigh's plea. If the parties require judgment to be entered after computation of the sums due they can apply for a further fixture.

(I think the late R Edwards was largely responsible for the misunderstandings that ensued and it may be that as this is a "family" matter the beneficiaries under his will could see their way clear to modify their claim, particularly as regards the sum due for Grafton Street and the rate of interest applicable.)

A handwritten signature in cursive script, appearing to read 'J. P. J.', is located on the right side of the page.

Solicitors:

Macfarlane Son & Partners, Christchurch, for Plaintiff  
T.D. Harman & Son, Christchurch, for Defendant