

21/1962

IN THE PRIVY COUNCIL.

No. 2 of 1960.

ON APPEAL

FROM THE SUPREME COURT OF GIBRALTAR

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N

JOHN VINCENT STAGNETTO,
LEWIS RICHARD STAGNETTO and
HENRY J.S. NORTON
(Defendants) Appellants

68198

- and -

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LOUIS ABRINES and GEORGE A.
LAVERELLO and HENRY J. DURHAM
Trustees of the Estate of
Richard Abrines deceased
(Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

Record

1. This is an appeal from the Judgment of Chief Justice Herbert James Marlowe Flaxman in the Supreme Court of Gibraltar on the 2nd day of June 1959 adjudging that a sale of certain property by tenants for life, purporting to act under powers conferred on them by the Settled Land Act 1882 which is the Operative Statute in Gibraltar, to the Appellants be set aside and that the Respondents should have certain consequential relief.

p.99

2. The Action was commenced by the first-named Respondent alone as a person beneficially interested under the will of Richard Abrines deceased; the Second and Third named Respondents, the Trustees of the Estate of Richard Abrines deceased, were joined as Plaintiffs by Order of the Chief Justice made at the trial of the action.

p.24

3. By their action the Respondents claimed against the Appellants in their individual capacities and as Executors and Trustees of the Will of Lewis Stagnetto deceased for an Order that the sale of certain property in Gibraltar by Rosa and Mary Abrines (hereinafter referred to as "the Tenants for life") to Lewis Stagnetto should be set aside, that the property should be re-vested in the trustees of the estate of Richard Abrines

p. 3

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- Record and for consequential relief on the grounds, inter alia, that the tenants for life had received personal inducement to sell the property, that in the circumstances the sale was not made at the best price obtainable, constituted a fraud on the remaindermen and was not within the power of the Tenants for Life under the provisions of the Settled Land Act 1882.
- p.8 4. The Appellants, by their defence, admitted that the sum of 25,000 Pesetas was paid to the Tenants for Life and that repayment has never been demanded but otherwise traversed the allegations contained in the Statement of Claim. 10
5. Rosa and Mary Abrines were tenants for life under the will of Richard Abrines deceased of certain real and personal property including land in Gibraltar being numbers 393, 394 and R.numbers 599 and 600 in the General Plan of the Garrison of Gibraltar part of the premises in the said land was let to Stagnetto Schembri & Co. a firm of grocers to whom the tenants for life owed a considerable sum of money. 20
- In 1932 Lewis Stagnetto, the senior partner in the firm of Stagnetto Schembri & Co., induced the Tenants for Life to sell him the fee simple of the land in Gibraltar for the sum of 300,000 Pesetas and contemporaneously agreed to lend them the sum of 25,000 pesetas.
- pp.70-71
pp.25-28 6. The action was heard before Chief Justice Herbert James Marlowe Flaxman between the 9th and 10th days of February 1959. Louis Ernest Abrines gave evidence of Rosa Abrines informing him in 1954 of the personal benefit she had obtained from the sale. He knew nothing of the matter before and was only 12 years old when the sale was effected. 30
- pp.29-30
pp.33-42 Frederick Richard Morrison gave evidence of the value of the property sold in 1932. Rosa Abrines gave evidence that the purpose of selling the property was to pay her debts and the money they received from Stagnetto was used for that purpose and was a gift not a loan. She said that Stagnetto wanted the payment of a sum of money to the Life Tenants to be kept secret. 40
- pp.43-55 7. The Appellants called five witnesses. John Vincent Stagnetto, son of Louis Stagnetto deceased, who was at the material time a partner

- of his father, stated his father informed him he had agreed to the loan before he died, no interest was provided for, repayment was never demanded. The completion of the sale and the loan took place on the same day. Record
- 10 Lewis Richard Stagnetto, another son of Lewis Stagnetto, said that they could not have pressed the Tenants for Life to repay them. Our solicitors told us that our father had promised to make the loan before he died. pp.55-57
- Henry John Stephen Norten, son in law of Lewis Stagnetto, confirmed that a loan of 25,000 pesetas free of interest was made to the tenants for life. (All previous "loans" had carried interest and repayment was demanded). pp.58-59
- Paul Emmanuel Carrara gave evidence as to a method of valuing property. pp.59-61
- 20 Albert Isola, solicitor to Lewis Stagnetto, stated he was aware of the loan to the tenants for life. The completion of the sale of the property and the loan took place on the same day. pp.61-69
8. Chief Justice Flaxman in a reserved Judgment given on the 13th day of April 1959 said he was satisfied that there was a 'side' inducement to persuade the tenants for life to sell the property to Stagnetto and that they obtained an improper personal benefit as persons in a fiduciary capacity. pp.87-98
- 30 That the sale was not a sale at the best price obtainable applying the test of Sterling J. in Chandler v. Bradley (1897) 1 Ch. 315 and therefore did not comply with the provisions of S.4(1) of the Settled Land Act, 1882. p.98
- That it made no difference that the inducement was a loan or not a gift. p.95
- 40 That by making a "side" payment to the Tenants for Life the Appellants were excluded from the protection afforded by Section 54 of the Settled Land Act 1882. p.97
- That the evidence established beyond reasonable doubt that both the tenants for life and Stagnetto contravened the rule of equity that a person in a fiduciary capacity may not be p.98

Record

swayed by personal interests to the prejudice of those it is his duty to protect.

9. The Respondents respectfully submit that the Judgment of the learned trial Judge is correct and ought to be approved and that the Appeal herein should be dismissed with costs for the following among other

R E A S O N S

1. Because the reasons given by the Chief Justice for his Judgment are right;
2. Because on the evidence no other conclusion was possible.

J.E. RICARDO