

## **Johnson v Buttress**

**(1936) 56 CLR 113**

Chapter 5 (page 232)

### **Relevant facts**

John Spencer Buttress was 67 years old, illiterate, unintelligent and ignorant of business affairs. He had a history of relying on the advice of others in relation to business matters and had made frequent changes to his will. In 1931, he had become increasingly reliant on the advice of a distant relation of his deceased wife, Mary Johnson.

On 24 April 1931, Buttress transferred a cottage on a property at Maroubra to Johnson for no consideration. The transfer was executed in Johnson's solicitor's office. Buttress did not have independent advice about the transfer and there was evidence to show that he did not understand the irrevocable nature of the transfer.

John Buttress died in 1934. His son, John Spencer Raymond Buttress, obtained letters of administration of his father's estate. The son commenced proceedings in the Supreme Court of NSW to have the transfer of the cottage set aside on the basis that it was made under undue influence. The trial judge decided that the transfer of the cottage was the result of undue influence and set it aside. Johnson appealed to the High Court.

### **Legal issue**

Was there, before the transfer, a relationship of trust and confidence between Buttress and Johnson such that a presumption of undue influence arose in relation to the transfer of the cottage? And, if so, could Johnson successfully rebut that presumption?

### **Decision**

On 17 August 1936, the High Court (Latham CJ, Starke, Dixon, Evatt and McTiernan JJ) unanimously dismissed the appeal and upheld the trial judge's decision.

In separate reasons (with the exception of Justice Evatt who agreed with Justice Dixon), the members of the Court decided that the evidence established that a relation of trust and confidence did exist between Buttress and Johnson such that the presumption of undue influence arose. The Court further decided that Johnson was not able to rebut this presumption.

Chief Justice Latham summarised the doctrine of undue influence as follows:

*The jurisdiction of a court of Equity to set aside gifts inter vivos which have been procured by undue influence is exercised where undue influence being presumed from the relations existing between the parties, the presumption has not been rebutted. Where certain special relations*

*exist undue influence is presumed in the case of such gifts. These relations include those of parent and child, guardian and ward, trustee and cestui que trust, solicitor and client, physician and patient, and cases of religious influence. The relations mentioned, however, do not constitute an exhaustive list of the cases in which undue influence will be presumed from personal relations. Wherever the relation between donor and donee is such that the latter is in a position to exercise dominion over the former by reason of the trust and confidence reposed in the latter, the presumption of undue influence is raised ...*

*Where such a relation of what may be called, from one point of view, dominion, and from another point of view, dependence, exists, the age and condition of the donor are irrelevant so far as raising the presumption of undue influence is concerned. It must be affirmatively shown by the donee that the gift was (to use the words of Eldon, L.C, in the leading case of Huguenin v Baseley, (1807) 14 Ves. 273, 9 R R 276, White and Tudor's Leading Cases in Equity, 7th ed , Vol I. at 247), 'the pure, voluntary, well-understood act of the mind' of the donor.*

In relation to the issue of whether Johnson had successfully rebutted the presumption of undue influence in relation to the transfer, given the relationship of trust and confidence between Johnson and John Buttress, Chief Justice Latham said:

*... in order to maintain the transaction, it was necessary for the defendant to show affirmatively that the deceased knew what he was doing when he made the transfer, in the sense that he understood its effect and significance in relation to himself, and further to show that the transfer was the result of his own will.*

According to Justice Dixon:

*The basis of the equitable jurisdiction to set aside an alienation [transfer] of property on the ground of undue influence is the prevention of an unconscientious use of any special capacity or opportunity that may exist or arise of affecting the alienor's will or freedom of judgment in reference to such a matter. The source of power to practise such a domination may be found in no antecedent relation, but in a particular situation, or in the deliberate contrivance of the party. If this be so, facts must be proved showing that the transaction was the outcome of such an actual influence over the mind of the alienor that it cannot be considered his free act. But the parties may antecedently stand in a relation that gives to one an authority or influence over the other from the abuse of which it is proper that he should be protected. When they stand in such a relation, the party in the position of influence cannot maintain his beneficial title to property of substantial value made over to him by the other as a gift, unless he satisfies the court that he took no advantage of the donor, but that the gift was the independent and well understood act of a man in a position to exercise a free judgment based on information as full as that of the donee.*

## **Significance**

This decision is authority for the following propositions:

1. A person unduly influences another to bestow a gift if he or she unconscientiously uses some special capacity or opportunity to affect the will or freedom of that other to do so.

2. The factors a court will consider in determining whether the requisite relationship of influence exists include the intelligence of the donor, the donor's experience and understanding of business matters, whether the donor was independently advised, and whether the donor was accustomed to relying on the judgement of the stronger party in business affairs.
3. If a relation of trust and confidence is established, a presumption of undue influence arises in relation to the gift. The presumption can be rebutted by the donee demonstrating that they took no advantage of the donor and the gift was the result of the independent and well understood act of the donor who was in a position to exercise their free judgment based on information as full as that of the donee.