

care of the plaintiff during the period mentioned in the statement of claim.

The defendant appealed to the Court of Appeal.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and MIDDLETON, J.

G. Lynch-Staunton, K.C., for the defendant.

E. Meek, K.C., for the plaintiff.

GARROW, J.A.:— . . . It appears to me, with respect, that the view expressed by Latchford, J., at the trial, was the correct one. There is nothing in the evidence to shew clearly that the second agreement was intended to supersede or take the place in all respects of the first; nor is it, in my opinion, essential to reach a definite conclusion one way or the other upon that point. The words of difficulty are all in the second writing, upon which really the plaintiff's whole case rests, and are these—"and of the said Robertson agreeing to furnish to McKnight from time to time such sums of money as he, the said Robertson, may think reasonable for the care of the said McKnight during his present illness." Upon this language two questions arise: (1) the sufficiency in law of the defendant's promise to supply such sums of money as he may think reasonable; and (2) was the defendant's liability in any event to extend beyond the end of the Columbus litigation?

Dealing first with (2) . . . we are entitled upon the question of construction to look at the surrounding circumstances, which would, of course, include the making of the first writing and its contents—and that, I think, whether it was wholly superseded by the second or not. And in it we find the defendant's agreement in this respect expressed in these words, "to look after the personal interests and needs of the said Alfred McKnight during the period in which this agreement shall remain in force." And in another part of that agreement its duration is expressly limited to a period of ninety days or until the Columbus litigation is at an end. So it is beyond question that the plaintiff's claim would have been entirely baseless under the first agreement, which the defendant, it is admitted, duly performed. We have next the undisputed circumstances that no new bargain was made of which the second agreement is the result. Why it was prepared at all, no one has explained, but probably the idea was to head off an obvious objection to the first on the ground of champerty. The plaintiff was suffering from illnesses, the one