

The next question was, whether undue influence was exercised by the husband or by any one else. Upon the evidence, if there was any undue influence, it was not that of the husband.

Mr. Cameron, a solicitor, who endeavoured to act as a friend to the plaintiff and also to the defendants, was present when the note was signed, but not as solicitor for the defendants; and there was no foundation for the charges which the respondent made against him—misrepresentation, fraud, and duress.

From *Willes v. Barron*, [1902] A.C. 271, 283, it might be argued that, by voluntarily assuming the roll of candid friend, advising both the appellant and the respondent, Mr. Cameron assumed not only a moral but a legal obligation to the respondent, and placed himself, to the knowledge of and with the approval of the appellant, in the position of solicitor advising both parties. Even if Mr. Cameron did occupy that position (which he did not), the contention must fail, because there was no mistake, dishonesty, or neglect. Neither was Mr. Cameron, in this transaction, acting for the appellant, and the appellant was not responsible for Mr. Cameron's advice, wrongdoing, or neglect, if any.

The appellant was asserting a right—a doubtful right perhaps—but doing so in good faith; the respondent, desiring to save her daughter from the loss of property which had been transferred to her by the defendant Thomas W. Fox—a loss which would result if the plaintiff's alleged right were enforced, negotiated, with the benefit of Mr. Cameron's honest opinion, a bargain whereby the appellant gave up that right and his judgment against Thomas W. Fox, and gave six years' time for payment. Such a compromise should not lightly be set aside: see *Lucy's Case* (1853), 4 DeG. M. & G. 356.

It was argued that the note sued upon was held by Macdonald as collateral security for an indebtedness of Thomas W. Fox and one Joyce, and that the notes taken from Joyce bore interest at 6 per cent. per annum, while the note sued on bore interest at 5 per cent.; and, therefore, the respondent as surety was discharged from liability: *Bolton v. Salmon*, [1891] 2 Ch. 48. The result of the evidence was, that, at the time the note was made, it was the judgment against Thomas W. Fox that was being settled, and that it was intended that the defendants should, as they did, become primarily liable for the claim of Macdonald, and that the getting and taking of the notes from Joyce was something to be done in ease of the defendants, and therefore the respondent was not a mere surety for Joyce, and that the authority cited was not applicable to the facts.

The appeal should be allowed with costs, and judgment should be entered against the separate estate of Rosella Fox for the amount of the appellant's claim and costs.