

ment made by the deceased, during his last illness, for the sale to his medical attendant, the defendant Tanner, of the deceased's land and buildings thereon for the sum of \$1,500, and to set aside a conveyance made pursuant to the agreement.

The action was tried without a jury at Barrie.
W. A. Boys, K.C., for the plaintiff.
M. B. Tudhope, for the defendant Tanner.

MASTEN, J., in a written judgment, found that the sale-price was not unfair as a cash-price; that the defendant Tanner had fulfilled the terms of the agreement; and that, although the vendor was in a weak and miserable physical condition, he understood and appreciated that he was selling his homestead for the price mentioned.

Notwithstanding these findings in favour of the defendant, the learned Judge was of opinion that the agreement and deed were invalid and must be set aside. The relationship of physician and patient existed between the defendant Tanner and the deceased at the time when the agreement was made, had existed for a considerable period before that, and continued afterwards until the death of the patient. The testator had no independent advice, and in certain respects the operation and effect of the agreement were unfair.

Reference to *Huguenin v. Baseley* (1807), 14 Ves. 273, 292; *Rowe v. Grand Trunk R.W. Co.* (1866), 16 U.C.C.P. 500, 506; *Vanzant v. Coates* (1917), 39 O.L.R. 557, 40 O.L.R. 556; *Wright v. Carter*, [1903] 1 Ch. 27, 50, 54.

Considering the relationship of physician and patient, the condition of the patient at the time of the transaction, the absence of independent advice, and the unfairness of the agreement in certain aspects, the defendant Tanner had failed to discharge the onus cast upon him of justifying the transaction.

The defendant Robert A. Ralston, who did not defend, benefited under the agreement, because part of the purchase-price was to be paid to him; and as against him the case was stronger, because what he was to receive was a gift from his brother, the deceased.

Judgment setting aside the agreement and deed as against both the defendants, with costs.