IRELAND.

APPEAL FROM THE COURT OF EXCHEQUER.

JAMES CANE—*Appellant.*

JOSHUA LORD ALLEN—*Respondent.*

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

AN attorney may contract with his client, provided no advantage be taken of the confidential relation. If he be employed to sell, and chooses to deal for the estate to be sold, he must withdraw from the connexion, or put himself completely at arm's length, and show, if the contract be questioned, that he has given the same advice for the benefit of his client as he would have done if the sale had been to a third party. If employed as a general land-agent, he is bound, if he purchases any of the estates in respect of which he is agent, to communicate to his principal all the knowledge acquired by him as agent, of the real value of the estate. But the mere circumstance of his being attorney does not prevent his entering into a valid contract with his client, and therefore a decree of the Irish Court of Exchequer, dismissing a bill for specific performance of a contract, apparently on the ground that it was one between attorney and client, was reversed on appeal to the House of Lords.

After bill, answer, and replication, no farther steps were taken in the cause for upwards of 20 years: this not of itself a reason for refusing a specific performance, there being acquiescence on both sides. But held to be a good reason for not giving costs where otherwise they would have been given.

Statement of the facts and circumstances.

IN 1746 James Cane, an attorney, Appellant's father, purchased from John, fourth Lord Allen, Respondent's brother, the estate of Castle Dillon, in the county of Kildare, in Ireland. In 1751 he also purchased from the same Lord Allen the lands

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

of Inchicore, &c. in the county of Dublin, then in Lord Allen's possession, for a sum of 4126*l.*, being at the rate of 22 years' purchase; and this estate was, by deeds of lease and release, of the 7th and 8th May, 1751, conveyed to Cane.

By another deed, of the same date, it was stipulated that Cane should have credit for a sum of 962*l.* paid by him in compromising two debts affecting the purchased estates, as part payment of the purchase money; and that he should be allowed to retain the remainder of the purchase money to pay off other incumbrances, which he did to a considerable amount, having compromised several debts, allowing Lord Allen the advantage of the compromise, and taking credit only for the sums actually paid.

A small portion of the Dublin estate had been devised by John, third Lord Allen, to one Richard Cooper for life. By articles dated the same 8th May, 1751, it was agreed, that on the death of Richard Cooper, Lord Allen should sell and convey to Cane this part of the estate, at 22 years' purchase, computed according to the rent then (in 1751) paid for the same, the purchase money to be paid when the lands should be conveyed. Under a subsequent agreement in 1752, however, Cane advanced 261*l.* in part of the purchase money, for which he was to be allowed interest till Cooper's death, at 4*l.* 10s. per cent.

Agreement of which the specific performance was claimed.

In 1753 John, fourth Lord Allen, died, leaving Respondent his heir at law, who succeeded to the estates and title.

In 1757 James Cane died, and in February,

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

1784, Cooper died. Appellant, eldest son and heir at law of James Cane, claimed a specific performance of the agreement of 8th May, 1751, as to the part of the Dublin estate which had been held by Cooper. The Respondent refused, and, on April 28, 1784, Appellant filed his bill for specific performance. Respondent put in his answer 8th November, 1784, impeaching the transactions between his brother and James Cane, on the ground that Cane, being Lord Allen's confidential attorney, had taken advantage of his embarrassments to purchase the estates at an under-value, and offering to account for and repay the money advanced by Cane.

Bill for specific performance, April 28, 1784.

The Appellant filed his replication 24th February, 1786, but having, in consequence of ill health, as was stated, gone to reside in the south of France, no farther steps were taken till 1807, when the Appellant served a subpœna to rejoin. Witnesses were examined, and Edward Cane, James Cane's brother, deposed, that he had heard and believed, but otherwise knew not, that J. Cane had been employed as attorney for John, fourth Lord Allen, and the Respondent, but never heard of his having been so employed by John, third Lord Allen. But there appeared no other evidence to show that Cane had been Lord Allen's attorney before the purchase of the Kildare estate in 1746, and no other evidence to show that he did any business for him as such before the purchase and agreement of 1751, except one item of 24*l.* in a bill of costs which was incurred in 1750, in protecting the Kildare estate, purchased by Cane, from one of Lord Allen's creditors. Some evidence was also given, that one *Howard*

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

Decree, Feb. 23, 1809.

had been employed as the attorney of the third and fourth Lords Allen.

The cause having been heard on 23d February, 1809, present only two of the Judges, a decree was made, "that, upon Respondent's consenting to ac-"count to the representatives of James Cane for the "sum of 261*l.* with interest for the same at 4*l.* 10*s.* "per cent. the bill should be dismissed without "costs." From this decree the Appellant lodged his appeal.

Argued for the Appellant:—The delay in prosecuting the suit was accounted for, and at any rate Respondent had it in his power to force the cause to a hearing and have the bill dismissed, and there was evidence that he considered it as a *lis pendens*. The conveyance of the Dublin estate, then in possession of Lord Allen, and agreement for the conveyance of the reversionary part, formed only one transaction, and the conveyance was acquiesced in by Respondent himself from 1754 to 1784, and no pretence made of any new discovery of circumstances. The agreement of 1752 was besides a deliberate act of confirmation, and John, fourth Lord Allen, or Respondent after him, might, even if the case had rested on the executory article alone, have at any time filed a bill to have it delivered up to be cancelled. Even if the relation of attorney and client between the parties had been proved to have existed at the time of the agreement and purchase, imposing on Cane the duty of making out a case above all suspicion, and if there had been circumstances requiring explanation, the length of time and acquiescence would have raised the presumption

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

that all was fair. But there was no sufficient evidence of the existence of the relation. No landagency, or agency on the subject of the purchase, had been proved; no sufficient evidence had been given of the general confidence and relation of attorney and client between Cane and third or fourth Lord Allen, nor any proof of such a relation in any suit respecting the title to the lands; but if all these had existed, and the length of time and acquiescence were out of the question, still it was sufficient that the agreement was fair, as it was in this case. In a case not then reported, *Sands* was attorney for *Mrs. Montesquieu* in a matter of partition, where one of the subjects was a valuable advowson. There were two presentations before hers, and *Sands*, having a son intended for the church, purchased her interest for 150*l.* which sum he deducted from a large bill of costs which he had against *Mrs. Montesquieu.* Under the circumstances, it was clear that more could have been got for it, and it soon came into possession; but the Court sustained the sale, as all appeared fair. In any view of the case, the decree was wrong. If the agreement was not binding, the 261*l.* advanced must be considered as a loan, and the highest legal rate of interest (6 per cent.) ought to have been allowed. Besides, the decree did not make it mandatory on the Respondent to pay it, but left it at his option to do so or not; the alternative being, that in case he did not pay it, the bill should not be dismissed. The Court ought to have decreed it to be a specific lien on the lands mentioned in the executory agreement of 1751.

Montesquieu v. Sands.

May 16, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

Argued for Respondent:—It was admitted to be not sufficient to say that Cane was Lord Allen's attorney; but here it also appeared that Lord Allen was in embarrassed circumstances, and that the agreement was improvident on his part.

May 18, 1814.

Lord Eldon (Chancellor.) The strong impression on his mind was, that this decree was wrong. If it proceeded on the ground that an attorney could not enter into a contract with his client, there was no such doctrine in our law. If one, not employed before as an attorney, was employed for the sale of an estate, and advised his employer to sell it to himself, (the attorney,) the Courts of Equity would say,—'The nature of your employment was such as ren-'dered it incumbent on you to give the best advice 'to your employer;' and unless he withdrew from that connexion, or put himself completely at arm's length, he must show, in case the contract were questioned, that he had given the same disinterested advice that he naturally would have given if the contract had been made with another party. So, where one was employed as a general agent in the management of real estates, and by that means, and at the expense of his principal, acquired knowledge respecting the value of the property which the proprietor himself did not possess; if the agent were employed to sell, and chose to deal with his principal, he must communicate all the knowledge which he as agent had gained as to the real value of the estate. But the mere fact of his being an attorney, if he stood at arm's length, would not vitiate the contract.

No such rule as that an attorney cannot contract with his client.

Vide Gibson v. Jeyes, 6 Ves. 266. 278.

Contracts between attorney and client.

Contracts between land-agent and principal.

May 18, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

Here then was a contract for the sale of an estate, one part of which Lord Allen had in actual possession, the other part in reversion. The contract and conveyance, with respect to the part in possession, could clearly not be touched in any Court; and then they had to consider whether the contract as to the other portion was not part of the same transaction. If that transaction had been managed in a different way, it was clear it could not be touched. If the reversion had been granted, and the money paid at first, with an agreement that interest should be allowed for it till the death of Cooper, the whole would have been one transaction; and unless some such circumstance as he had stated should appear, the contract could not be set aside.

Then as to length of time, the suit had been suffered to sleep for 21 years before the decree. But there had been an acquiescence on both sides; and if the agreement had been unfair, a bill might have been filed to have it delivered up immediately to be cancelled.

The decree, if it were to be affirmed, must be altered, in so far as it proceeded on the undertaking, or consent, of the Defendant to account. But, on the general ground, if they were to decide now, he should say, that the appeal ought to be dismissed. From deference to the opinion of the Court below, however, it was proper that the case should be farther considered.

Lord Redesdale. The Plaintiff had a lien on the estate for the money he had advanced and the interest upon it. That was clear; and it might be doubted whether, in case the decision could be

May 18, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

supported, the Plaintiff could be bound to the rate of interest (*4l.* 10*s.* per cent.) mentioned in the agreement, instead of being allowed the lawful interest of the country.

The mere circumstance of one being attorney for another did not disqualify the attorney from purchasing from his principal.

But, on the general question, he was at a loss to conceive how the mere circumstance of being an attorney, not even employed as agent to sell the estate, could vitiate the contract. There was no such case. But at any rate he could not see that Cane had been employed by Lord Allen as an attorney till the purchase of the Kildare estate. Having made that purchase, Cane had set about paying off the incumbrances which Lord Allen had charged himself to relieve.

He did not however agree that any great favour had been shown by Cane to Lord Allen in giving up the advantages which he gained in compounding the debts; for if a purchaser bought up incumbrances which the seller was bound to relieve, he ought not to charge more than he paid, as that was the amount of the damage which he sustained by the breach of the covenant. He conceived that to be clearly the rule, and he wished it to be attended to.

If a purchaser compromises debts charged on the purchased premises, (the vendor being bound to relieve the incumbrances,) he ought not to charge the vendor more than he actually pays, as that is the amount of the damage which he sustains by breach of the covenant.

Cane then purchased the other estate for a sum which was considered sufficient to pay off the incumbrances: he advanced 962*l.* and stipulated that the rest of the purchase money should remain in his hands for discharging the incumbrances. That was perfectly fair, as the money must have at any rate been placed in the hands of a trustee for that purpose. The estate was sold at 22 years' purchase, which was a large price at that time.

The only evidence that Cane was employed as attorney for Lord Allen commenced with the discharge of these judgments. It was impossible to say with certainty that he was so employed before 1750. All the evidence given by Cane's brother, who, he believed, went into the army when very young, and had been chiefly employed abroad, was this,—that he had heard and believed, but did not know, that Cane had been employed as attorney for the present and for the late Lord Allen. Then came the bill of costs. Any thing that was done arose merely from the judgments, and it appeared that fees had been refused on the ground of Cane's interest in the subject.

The case then stood thus:—After the purchase of the Kildare estate, Cane was for his own interest engaged in procuring the discharge of these judgments; and after the purchase of the Inchicore estate, he was employed in applying the money to relieve the incumbrances. He did not see any charge in his bill for the deed by which the money was to be left in his hands, which ought to be paid for by Lord Allen, and this might afford some ground of inference that Lord Allen had employed another attorney.

It did therefore appear to him, that the relation of attorney and client did not exist between these parties so as to place Cane in a situation to throw any obstacle in the way of his making this purchase. He was not employed to sell, nor in the character of a general agent or manager, and took no advantage of confidence placed in him by Lord Allen, or

May 18, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

of any superior knowledge of the value of the estate, acquired as agent.

Another view of the case was, that Lord Allen was a distressed man. But 22 years' purchase had been given, and no advantage taken. The purchase money for the reversionary part, it was true, was not to be paid till the death of Cooper, and, as the price was to be 22 years' purchase, to be computed according to the then present rent, if the lands were improved in the mean time, that would be a method of taking what was more valuable. But then the whole was one transaction—one entire estate, and Lord Allen must otherwise have borrowed money at the highest lawful rate of interest in Ireland, and it came to the same thing as if he had mortgaged his estate.

The only other ground was the delay. The cause had slept from 1786 till 1807. But no case had been stated where the mere length of time during which a suit had been kept depending, operated as a bar. Lord Allen might have applied to have the bill dismissed, and he ought to have tendered the 261*l.* advanced by Cane, with interest. But as Lord Hardwicke had said in a certain case, of which he did not recollect the name, "he was afraid to "rouse the sleeping lion."

Upon the whole, the impression on his mind was, that the decree was wrong. It would be extremely mischievous to carry the rule to such an extent as to make it impossible for an attorney to purchase the estate of a client, even though not employed in the particular transaction.

No man could have a greater respect than he had for the Chief Baron, by whom, with only one other Judge, the decree had been made; and from deference to the opinion of these Judges, he agreed that the case ought to undergo some farther consideration.

May 18, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

Lord Redesdale. After having again considered the case, he continued of the same opinion, that the decree ought to be reversed, and the agreement of 1751 specifically performed. The costs ought to follow the judgment, but considering the delay that had taken place, it might be proper to give no costs on either side.

May 20, 1814.

Specific performance ought to have been decreed.

Costs.

Lord Eldon (Chancellor.) He had again looked at the case, and repeated, that he could find no such doctrine as that an attorney could not deal with his client. If the attorney were employed to sell, if he dealt for the property, he must put an end to the confidential relation, or put himself completely at arm's length; or if the contract was afterwards quarrelled, it would be incumbent upon him to show that he had made a reasonable use of that confidence, and had given as ample and correct advice and information to his client as he would have done if his client had been dealing with a third person. He conceived also, that if an attorney were employed as agent in the management of a landed estate, he could not deal with his principal for that estate without honestly communicating to the principal all the knowledge respecting its value which he had acquired as his agent; and unless he

Contracts between attorney and client.

The point of distinction between attorney and trustee to sell, as to contracts with principal and *cestui que trust*, appears to be this:—An attorney, retaining the character, may contract, subject to the *onus* of making it thoroughly manifest that he has taken no advantage of his confi-

May 20, 1814.

CONTRACT.—ATTORNEY AND CLIENT.

did this, the contract, if questioned, could not be supported. But independent of these particular circumstances, an attorney did not stand exactly in the situation of a trustee. The general rule, that a trustee to sell could not purchase the trust estate, was now pretty well settled. But there was no such rule with respect to an attorney.

In purchasing this estate, it was natural to deal for this reversionary corner. The whole appeared to have been considered as one transaction, and that transaction contained nothing unfair. In this case, if the suit had been prosecuted diligently, he should think the Appellant ought to have his costs; but as by his want of diligence he had given some countenance to the opposition made to it, it was reasonable that no costs should be given on either side.

dential situation. In the case of a trustee, it is not sufficient to show that no advantage has been taken, the general rule being, that he must divest himself of the character. (*Vide* Fox v. Mackreth, 2 Bro. C. C. 400. 4 Bro. P. C. Tom. Ed. 258.—Campbell v. Walker, 5 Ves. 678.—*Ex parte* Lacy, 6 Ves. 627.—And (where the rule was relaxed as to a trustee) Coles v. Trecothick, 9 Ves 234.

Decree of the Court below *reversed*.

Agent for Appellant, PINKETT.

Agent for Respondent, WARD.