

3. In the month of January, 1893, the plaintiff having come to England to develop the Mokau Estate, consulted, and on the 17th January, 1893, became the client of the defendant firm, of which firm the defendant Flower was a member.

4. The said defendant firm on the said 17th January, 1893, agreed (and on the 26th January, 1893, such agreement was reduced into writing) with the plaintiff, in consideration of a bonus of £1,050, in addition to solicitor-and-client costs, to endeavour to form a company, or find a purchaser or lessee to take over and work a portion of the coal-measures subjacent to the Mokau Estate.

5. At the said date, the 17th January, 1893, the said Walter Johnston had advertised the sale of his interest in the Mokau Estate pursuant to the powers contained in his mortgage, and it accordingly became desirable in the interests of the plaintiff to transmit to New Zealand the sum of £1,600 or thereabouts before the 26th January, 1893.

6. On the 24th January, 1893, the defendant firm Flower, Nussey, and Fellowes, acting as the solicitors of the plaintiff, obtained from a firm of Charles Hopkinson and Sons (of which firm the defendant Charles Caesar Hopkinson was a member) a loan of £1,800 to the plaintiff at 7 per cent. per annum. With a part of this sum the said Walter Johnston was paid off and a transfer of his mortgage made to the said Charles Caesar Hopkinson or Messrs. Charles Hopkinson and Sons.

7. Soon after the transactions above mentioned the said John Plimmer, the first mortgagee of the said Mokau Estate, began to press for repayment of his mortgage loan, and the said estate was advertised by him for sale on the 8th March, 1893, but the date of such sale was, at the request of the defendant firm as solicitors to the plaintiff, postponed to the 8th April, 1893.

8. During the period between January and April, 1893, the plaintiff and the defendant firm and the defendant Flower were actively engaged in attempting to get persons to float a company to work the coal-beds under the Mokau Estate, and a company to work cement thereon, but owing to a financial crisis during such period they had not succeeded in such attempt at the time of the matters next hereinafter mentioned. There was, however, no doubt at this time that companies to work as aforesaid would ultimately be successfully floated.

9. In order to fully protect the plaintiff's interest in the Mokau Estate, it was verbally agreed between the plaintiff and the defendant Flower through the defendant Fellowes that upon the sale on the 8th April, 1893, the defendant Flower should bid up to £10,000, and should hold the Mokau Estate in the name of the defendant Flower as trustee for the plaintiff, and should reconvey the same to the plaintiff upon repayment of the amount paid for the same with interest, a reasonable bonus, and the defendant Flower's firm's reasonable costs. The defendants Flower and Hopkinson verbally agreed through the defendant Fellowes to give an undertaking to reconvey on the above terms.

10. At the said sale on the 8th April, 1893, the only bid was one in the name of the defendant Flower, who was known to be the plaintiff's solicitor, for a nominal sum in excess of the money due on the mortgages. The Mokau Estate was accordingly knocked down to the defendant Flower for £7,652.

11. In all the above matters, and in particular in the said sale, the defendant Flower acted as the solicitor and trustee of the plaintiff and not otherwise.

12. The defendant Hopkinson, who provided a portion of the purchase-money on the said sale, was fully aware of the agreement set out in paragraph 9 hereof and of the fiduciary relationship subsisting between the defendant Flower and the plaintiff.

13. On or about the 17th August, 1893, the defendant Flower, in a letter written by him to one Fellowes, member of the defendant firm of Flower, Nussey, and Fellowes, falsely and maliciously and fraudulently in breach of his duty as trustee as aforesaid wrote and published of and concerning the plaintiff's title to the Mokau Estate aforesaid the following words: "Mr. C. Hopkinson and I became the purchasers of the Mokau property" [meaning thereby the Mokau Estate aforesaid], "which has since been duly conveyed to us as purchasers, and we are in consequence just as much the absolute owners of that property as Mr. Jones" [meaning thereby the plaintiff] "would be of any property he might purchase to-morrow in any of the public auction-rooms in London." The said Fellowes was already conversant with the circumstances referred to in the said letter, and the said letter was written merely for the purpose of being communicated to intending purchasers. On receipt of the said letter the defendant Fellowes accordingly maliciously communicated the contents thereof to one Arthur Thomas Collier, of St. Albans. The said Arthur Thomas Collier was at this time carrying out negotiations with the plaintiff on behalf of a proposed purchasing syndicate consisting of Baron de Wagstaffe, Colonel North, Messrs. Dimsdale, the Earl of Dudley, and Sir William Armstrong for a sale of a portion of the coal-measures subjacent to the Mokau Estate for £150,000, and in consequence of the said communication to the said Arthur Thomas Collier the negotiations fell through and the plaintiff was thereby deprived of the said purchase-money.

14. In three letters dated respectively the 18th April, 1894, 7th May, 1894, and 15th May, 1894, sent by the defendant firm to a certain firm named Todd, Dennes, and Lamb, the defendant firm falsely and maliciously and fraudulently in breach of their duty as trustees for the plaintiff wrote and published of and concerning the plaintiff's title to the Mokau Estate the following words, that is to say,—

(a.) In the letter of the 18th April, 1894, the words "We beg to inform you that as far as we know and believe Mr. Joshua Jones" [meaning thereby the plaintiff] "has no interest whatever in the Mokau property in New Zealand. . . . The property" [meaning thereby the Mokau property] "was sold on the 8th April, 1893, as above stated at an auction for £7,652, and has since been duly conveyed to our clients" [meaning thereby the defendants Flower and Hopkinson] "and all the title-deeds have been handed over."