

4. By memorandum of further charge bearing date on or about the 1st November, 1906, in consideration of the plaintiff thereby further charging the lands with the payment to the defendants, as such executors as aforesaid, of an additional sum of £500, the said defendants agreed to extend and extended the period fixed by the said memorandum of mortgage of the 27th July, 1906, for repayment of the principal and interest moneys thereby secured until the 30th day of May, 1907.

5. In and during the years 1906 and 1907 the plaintiff was to the knowledge of the defendants other than the defendant Herrman Lewis in treaty with Messrs. Doyle and Wright, of Bishopsgate Street, in the City of London, acting on behalf of a proposed syndicate for a sale of the said Mokau Estate for £ , and the defendants other than the defendant Herrman Lewis and (or) their attorney or solicitor and (or) agents, with intent to prevent the plaintiff from selling the said lands or any part thereof and thereby obtaining the means of redeeming the same, and intending to take advantage of the plaintiff's want of means and to acquire the said Mokau Estate to themselves at a gross undervalue by the exercise of the statutory powers conferred upon mortgagees by the provisions of the said Land Transfer Acts, and on divers days and times between the 27th July, 1906, and the 30th May, 1907, falsely and maliciously published both verbally and in writing to Messrs. Doyle and Wright, one F. Seward, and to divers other persons in the City of London whose names and addresses the plaintiff cannot give until discovery has been obtained from the said defendants, the words following: "The Mokau Estate is the property of the executors of the late Wickham Flower. Jones" [meaning the plaintiff] "possesses no beneficial interest in it. The coal it contains is only lignite and worthless; it crumbles away on exposure to the atmosphere. Flower" [meaning Wickham Flower] "obtained a scientific report to that effect." The defendants other than the defendant Herrman Lewis intended to prevent and did in fact prevent the sale of the said property to any person whatsoever, and in particular intended to prevent and did in fact prevent the said sale to the persons and at the time in this paragraph set out; and the same defendants, without giving to the plaintiff any of the notices required by the said Land Transfer Acts in that behalf, and before any default on the plaintiff's part subsequently to the 30th May, 1907, in payment of the said principal and interest moneys secured by the said memorandum of mortgage, the defendants other than the defendant Herrman Lewis, on the 10th August, 1907, contrary to the said memorandum of mortgage, and the true intent and meaning of the said security and the said deed of further charge respectively, wrongfully and unjustly, and also contrary to the covenants and conditions implied by law on the part of mortgagees in that behalf, caused the mortgaged premises to be put up for sale by public auction by the Registrar of the Supreme Court of Taranaki at New Plymouth, and to be knocked down to the said defendants at the price of £19,500, being the sum then claimed by the said defendants to be due to them under the said securities for principal, interest, and costs, and on the 3rd September, 1907, caused or procured the said Registrar, under the provisions of the said Acts, to execute to the said defendants as such executors as aforesaid a transfer of the said lands freed and discharged from all liability on account of the said mortgage. By wrongfully advertising the said Mokau Estate for sale by public auction as aforesaid the said defendants slandered the plaintiff's title thereto and occasioned the plaintiff great injury.

6. At the time of the sale and transfer in the last preceding paragraph mentioned there was pending in the High Court of Justice, Chancery Division (Mr. Justice Parker), an action brought by the plaintiff against the defendants other than the defendant Herrman Lewis claiming amongst other things redemption of the said mortgaged premises, with an account on the basis of wilful default and an inquiry as to the damage sustained by the plaintiff by reason of the said defendants' wrongful act in confirming certain trespassers in possession of divers parts of the said premises. Upon the hearing of an interlocutory application made in the said action on the 1st day of November, 1907, Mr. Justice Parker expressed a doubt whether the action ought not to have been brought by the plaintiff in this honourable Court, and in consequence of that expression of opinion the plaintiff allowed the said action to be dismissed for want of prosecution, and in December, 1907, proceeded to the Dominion of New Zealand to protect his interests. The dismissal of the said action in the circumstances aforesaid did not operate as a judgment of the said Court.

7. In April, 1907, the plaintiff lodged a caveat under the provisions of the said Acts forbidding the registration of any dealings with regard to the said land without notice to the plaintiff. The attorney and solicitor in the Dominion of New Zealand of the defendants as such executors as aforesaid was and is one James Palmer Campbell, of Wellington, solicitor. The said James Palmer Campbell then was and still is the solicitor of the defendant Herrman Lewis in various transactions, and also solicitor to one Thomas George Macarthy.

8. On the 10th June, 1908, the defendants other than the defendant Herrman Lewis, by a memorandum of transfer executed by the said James Palmer Campbell as attorney for and on behalf of the said defendants, in consideration of an alleged payment by the said Herrman Lewis of £14,000, transferred to the defendant Herrman Lewis all their interest of the said defendants as executors of Wickham Flower (deceased) in the said Mokau Estate. The transfer to the defendant Herrman Lewis was a bogus one executed in fraud of the plaintiff's rights and beneficial or equitable interests, whereof the defendant Herrman Lewis then had actual notice. No consideration passed for the said alleged transfer, and the defendant Herrman Lewis was the creature of the other defendants and their attorney or agent and acted by their procurement, and the same was a breach of the said defendants' duty as mortgagees of the said property and trustees thereof for the plaintiff.

9. On the 13th December, 1909, the defendant Herrman Lewis, by a memorandum of mortgage dated that day, in consideration of £25,271, mortgaged to one Thomas George Macarthy all his interest in the said lands by way of securing to the said Thomas George Macarthy repayment