J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 62/83

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Ross, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

BETWEEN	-	ANTHONY BROWN	-	PLAINTIFF/APPELLANT
AND	-	ASTON BLACK	-	DEFENDANT/RESPONDENT

W.B. Frankson, Q.C. for Plaintiff/Appellant.

H.G. Edwards, Q.C. for Defendant/Respondent.

February 27, 28; & March 29, 1985

ROWE, P.:

At the end of the two day hearing we dismissed the appeal and promised to reduce our reasons to writing, which we now do. Parnell J. in giving judgment for the defendant, accepted him and his witnesses as simple, truthful and reliable witnesses whose evidence was credible in their entirety while he formed the most adverse and unfavourable view of the defendant whose testimony he rejected characterizing him as "a rascal and schemer". Mr. Frankson's very full submissions did not in any persuade us that Parnell J. was in error in concluding that the appellant was a grasping, unethical man, who attempted to use his position of trusted friend and aspirant to the family, to unjustifiably enrich himself at the expense of the respondent, his brothers and his sisters.

By Writ C.L. 1976/B 387, the appellant sought the remedies of damages for breach of contract and of injunction to restrain the respondent from mining marl and gravel from the respondent's quarry at "Blowfire" in St. Ann. A further claim for specific performance was added in the Statement of Claim filed in July 1977. These remedies were based upon allegations by the appellant that by a written agreement between the appellant and the respondent dated the 23rd day of July, 1976, the respondent granted to the appellant exclusive rights to remove marl and gravel from the respondent's premises known as "Blowfire" in St. Ann for 20 years from the 23rd day of July, 1976 at the yearly rental of $8,000 payable on the usual quarter days, and that in breach of that agreement the respondent had prevented and was continuing to prevent the appellant from mining and removing the marl and gravel.

In the form in which the defence stood at trial it contained two main contentions. Firstly, that if the agreement in writing pleaded by the appellant was as he said, then the respondent's signature thereto was obtained by fraudulent mis-representation. Secondly, at paragraphs 6A and 6B, the respondent pleaded:

> "6A. The defendant denies that the alleged agreement dated the 23rd day of July, 1976 purporting to be made between him and the plaintiff and pleaded at paragraph 3 of the Statement of Claim, was or is his agreement.
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> 6B. The defendant states that at the time he signed the alleged agreement he was mistaken as to its nature and contents, in that at the time, the plaintiff fraudulently represented to him and he honestly believed that the said alleged agreement was a document for the licensing of the said quarry, Blowfire, and he signed the alleged agreement in that belief."

Parnell J. found that the plea of "non est factum" was made out and entered judgment for the respondent. Three grounds of appeal were filed, the essence of which, Mr. Frankson found to be, that the learned trial judge failed to appreciate the law which supports the plea of non est factum and failed to appreciate that the onus of proving non est factum rested on the respondent, an onus which he failed to discharge. At the outset, Mr. Frankson squarely faced the difficulty that the evidence tendered by the appellant had been rejected by the trial judge but he submitted that this rejection could not apply to evidence of the appellant which was either corroborated by the respondent or which went unchallenged.

What then was the purport of the respondent's evidence? Aston Black, then 58 years of age, was one of seven children, who were entitled on intestacy to 10 acres of land formerly the property of their deceased father, on which was situate a marl pit, Blowfire, which stood on its own 2 acre-lot. In 1974, by an agreement with Asphalt Paving Co. Ltd., the respondent, acting on behalf of the joint-owners, permitted Asphalt Paving Co. Ltd. to transform the "little marl pit" into a quarry from which Asphalt Paving Co. Ltd. mined marl and paid to the respondent a royalty of 22¢ per cubic yard. This contract lasted for about one year during which the respondent was paid fortnightly sums ranging from $4,000 to $500. His sister recalled that her share in this period was $300 - 250 fortnightly. The applicant was privy to the arrangement between Asphalt Paving Company and the respondent in that he was the company's agent on site during the feeder-road construction for which the marl was supplied. Eda McKenzie, the respondent's sister, received the appellant into her home and provided him with board and

lodging. Millicent was her 19 year old daughter, a graduate of Holmwood Technical School and a student of Jamaica School of Agriculture. The appellant befriended Millicent and impregnated her, to the surprise of Eda McKenzie and to the shame and confusion of Millicent. In 1983, grand-mother McKenzie, without assistance from the appellant was caring for the child while Millicent continued her studies in the U.S.A.

Notwithstanding Millicent's pregnancy, the respondent and his sister retained excellent relationships with the appellant who first suggested to Eda McKenzie that he wished a site upon which to erect a block-making factory. She referred him to the respondent and thither he went. The appellant pretended to the respondent that he had ordered machinery from Bermuda for a block factory and that as he had nowhere to build that factory, he requested the respondent to lease him a site at Blowfire promising to pay $8,000 per quarter and in addition 30 cents per cubic yard for marl used. It was the respondent's desire that both his sister and himself should sign the necessary agreement but the appellant then and there produced "a piece of paper out of a book and asked me to sign for him". Respondent is illiterate to the knowledge of the appellant, but can sign his name and write his address without being able to spell or read the words. Respondent signed the paper and away the appellant went. Some days later when the respondent returned from his cultivation he found the appellant awaiting him at his home. On this occasion the appellant produced two pieces of paper, which he said he had got from the Licensing Authority, for the respondent's signature. It was then after 3 p.m. and the appellant said he had to return the signed documents to Kingston on that very day before 5 p.m. other-

wise he would have to wait a whole year, presumably to be able to receive governmental authority to set up and operate his block factory. The respondent appreciating the immediacy of the situation, signed the two documents and returned them to the appellant who then drove away in his motor car and with 50 cents as the Licensing Fee.

On both the occasions when the respondent was asked to sign documents the appellant did not come alone. He was accompanied on the first occasion by Peter Myrie and Millicent, and on the second occasion by Peter Myrie and a "big young lady", none of whom, however, was present with the respondent and the appellant while they conversed nor did any of them witness the signing by the respondent.

Content that he had made a businesslike contract, the respondent went to Kingston in the course of his trade as a mason and returned three weeks later to hear some unpleasant news and to see a great quantity of marl mined from Blowfire ready for sale. He contacted the appellant and remonstrated with him as the activities of the appellant at the quarry were not in accord with their agreement. Steps were taken by the respondent to effectively prevent the appellant from exploiting the quarry and this culminated in the action by the appellant in the instant case.

It had been the **actual** intention of the appellant to mine marl at Blowfire quarry and to supply the same to the Ministry of Works for use in the construction of the St. Ann's Bay by-pass road. The document which he represented as an agreement to enable him to get a site for a block-factory was in fact an agreement for a lease of the quarry at the rate of $8,000 per annum. The second document which the appellant represented to be an application by the respondent for a

licence to operate the quarry in accordance with the Quarries Act, 1958, was in fact an exclusive licence granted to the appellant for a period of twenty years to exploit the quarry for his sole use and benefit subject to the payment of royalty of $8,000 per annum.

Quite apart from the defence relied upon by the respondent, there was an inherent improbability in the contract sued upon. Here was a man who had for a time enjoyed royalty of as much as $4,000 a fortnight for marl used on a by-pass road. Would he be willing to let his quarry for $8,000 per annum when he knew that marl would be required for a major by-pass road? If there was a prospect of further payments of $4,000 per fortnight, what could induce him to settle for $2,000 every three months? But that is not all? Why would he give an exclusive licence to mine the quarry to anyone for twenty years? To these questions, the learned trial judge had no anwers.

On the trial judge's findings of fact, the respondent was illiterate and therefore a person under disability. Mr. Frankson submitted that notwithstanding the respondent's incapacity, if he acted recklessly or negligently in signing the document, he could not afterwards successfully rely upon the plea of non est factum, as the law imposed on him a duty to act responsibly, to seek advice, to take advice, to get someone to read the documents to him. In any event, said he, the person suffering from incapacity must establish that a radical and fundamental distinction existed between the document he thought he had signed and the actual document which in the event he signed. Mr. Frankson further submitted

that the respondent was careless for his own safety and imprudently neglected to ask the appellant to read the document aloud to him or to ask his niece, who admittedly was on the premises on at least one occasion, to read the document to him. When the respondent acceded to the entreaties of the appellant to sign in haste, that too, Mr. Frankson said, was an imprudent act, as the respondent should properly have consulted with his literate sister before signing. As to the nature of the two sets of documents, appellant's counsel submitted that it was in the contemplation of the respondent that he would alienate a portion of his property at Blowfire for an extended period of time to enable the appellant to erect a block-making factory thereon and to so operate it as a commercially viable enterprise. In that regard, he said, twenty years was not by any means a long time for the appellant to recoup his investments. Furthermore, it had to be understood that a man would not willingly erect a block-making factory if he did not have some control over the raw-material, that is, the marl, and consequently the term affording the appellant exclusive mining rights over the quarry for 20 years was fair and reasonable, and to be inferred as being in the contemplation of the respondent. Therefore, he said, there was neither radical nor fundamental difference between the document which the respondent signed and that which he intended to sign.

Parnell J. had found that:

> "The plaintiff deliberately misrepresented to the defendant the true state of affairs by telling him that he wanted a lease to put up a block factory but at the same time the plaintiff placed before the illiterate man an agreement granting exclusive mining rights to him the plaintiff for 20 years to secure marl and

> "gravel. The illiterate defendant was therefore misled as to the nature of the document which he signed and also as to its contents."

The history of the plea of non est factum came up for consideration in the House of Lords in 1970 in the case of Saunders v. Anglia Building Society [1970] 3 All E.R. 961. Rose Maud Gallie aged 78 years was the lessee of a house situate at 12, Dunkeld Road, Goodmayes, Essex with over 900 years to run. She wished to benefit her nephew Parkin upon her death and had made a will leaving to Parkin her leasehold interest in the house. She handed over the title deeds to Parkin with the request that she be allowed to live in the house for the remainder of her life. Parkin was estranged from his wife and did not wish to have any property in his own name from which she could derive maintenance. Parkin agreed with William Lee to cause Mrs. Gallie's leasehold premises to be assigned to Lee so that Lee could mortgage the same and use the proceeds to obtain a home of his own. Parkin would benefit by a payment of £25 monthly by Lee to Parkin's mistress. Lee on the advice of a dishonest Solicitor's Clerk placed before Mrs. Gallie the assignment of the lease for her signature and represented to Mrs. Gallie that the document was a deed of gift of the leasehold premises to Parkin. Mrs. Gallie who did not read the document as her glasses had been broken and she could not see without them, signed in the belief that she was signing a deed of gift but with knowledge that Lee would somehow be able to borrow money on the security of the documents. Lee borrowed money from the Northampton Town and County Building Society which later changed its name to Anglia Building Society, and a further loan as second mortgage on the property. Lee defaulted in his payments on the two mortgages and the Building Society sought to enforce its lien against the security. Mrs. Gallie pleaded that she was not bound by the assignment as

it was not her deed. The trial judge upheld her claim, holding that a deed of gift to one person was of a different character from a conveyance on sale to quite another person. This decision was over-turned by a unanimous Court of Appeal and there was a further appeal to the House of Lords. All five Law Lords gave considered judgments.

In the Court of Appeal the question was much debated as to the circumstances in which the plea of non est factum could be successfully raised. Lord Denning posed the question thus:

> "What is the effect in law when a man signs a deed, or a contract, or other document without reading it; and afterwards it turns out to be an entirely different transaction from what he thought it was? He says that he was induced to sign the document by the fraud of another, or at any rate, that he was under a fundamental mistake about it. So he comes to the court and claims that he is not bound by it.
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> "In such a case, the legal effect is one of two: Either the deed is not his deed at all (non est factum): Or it is his deed, but it was induced by fraud or mistake (fraud or mistake). There is a great deal of difference between the two. If the deed is not his deed at all, (non est factum) he is not bound by his signature any more than he is bound by a forgery. The document is a nullity just as if a rogue had forged his signature. No one can claim title under it, not even an innocent purchaser who bought on the faith of it, without notice of anything wrong, yet he takes nothing by the document. On the other hand, if the deed was his deed, but his signature was obtained from him by fraud or under the influence of mistake (fraud or mistake) the document is not a nullity at all. It is only voidable, and in order to avoid it, the person who signed the document must avoid it before innocent persons have acquired title under it. "

Gallie v. Lee [1969] 1 All E.R. 1062 at 1066 I to 1067 B.

Nothing was said in the House of Lords to throw doubt upon the effect of the successful plea of non est factum as adumbrated above by Lord Denning M.R., but it is timely to draw attention to the importance placed by Lord Denning upon the necessity to protect the rights of innocent persons who act upon a signed document.

Lord Reid in the House of Lords at p. 963 C of the Report, set out his understanding of the scope of the doctrine of non est factum. He said:

> "The plea of non est factum obviously applies when the person sought to be held liable did not in fact sign the document. But at least since the sixteenth century it has also been held to apply in certain cases so as to enable a person who in fact signed a document to say it is not his deed. Obviously any such extension must be kept within very narrow limits if it is not to shake the confidence of those who habitually and rightly rely on signatures when there is no obvious reason to doubt their validity. Originally this extension appears to have been made in favour of those who were unable to read owing to blindness or illiteracy and who therefore had to trust someone to tell them what they were signing. I think that it must also apply in favour of those who are permanently or temporarily unable through no fault of their own to have without explanation any real understanding of the purport of a particular document, whether that be from defective education, illness or innate incapacity."

Lord Wilberforce stated the principle of non est factum at page 972 of the Report and at page 973 b-d dealt specifically with its applicability to persons labouring under an incapacity. He said:

> "The preceding paragraphs contemplate persons who are adult and literate: the conclusion as to such persons is that, while there are cases in which they may successfully plead non est factum, these cases will, in modern times, be rare. As to persons who are illiterate, or blind or lacking in understanding, the law is in a dilemma. On the one hand, the law is traditionally, and rightly, ready to relieve them against hardship and imposition. On the other hand, regard has to be paid to the position of

> "innocent third parties who cannot be expected, and often would have no means, to know the condition or status of the signer. The law ought, in my opinion, to give relief if satisfied that consent was truly lacking but will require of signers even in this class that they act responsibly and carefully according to their circumstances in putting their signatures to legal documents."

The passages quoted above eloquently illustrate that the respondent was a person who could take advantage of the non est factum rule based upon his illiteracy. But he had to go further and to show that the document which he signed was fundamentally or radically different from the one which he thought he was signing. Parnell J. had found that the respondent "was misled as to the nature of the document and also as to its contents". Was this the proper test? Up to the time of Gallie v. Lee supra, it was customary to draw a distinction between a mistake as to the class of documents and a mistake as to the contents of the documents. Lord Denning at page 1067 letter D of the Report formulated the distinction thus:

> "If the man was mistaken as to the class or character to which the transaction belonged, that is to say, as to the essential nature of the transaction, it is not his document, and he can rely on non est factum. If he was aware of its essential nature, but only mistaken as to the contents of the document, it is his document and he can only rely on fraud or mistake. "

Upon consideration Lord Denning could find no justification for the distinction as in his view a mistake as to contents could be just as fundamental as a mistake as to class and character and he rejected the distinction. It was left to the House of Lords to state the applicable rule in Saunders v. Anglia Building Society supra. Lord Reid said at page 964 - a-e:

"Finally, there is the question to what extent or in what way must there be a difference between that which in fact he signed and that which he believed he was signing. In an endeavour to keep the plea within bounds there have been many attempts to lay down a dividing line. But any dividing line suggested has been difficult to apply in practice and has sometimes led to unreasonable results. In particular I do not think that the modern division between the character and the contents of a document is at all satisfactory. Some of the older authorities suggest a more flexible test so that one can take all factors into consideration. There was a period when here as elsewhere in the law hard and fast dividing lines were sought, but I think that experience has shown that often they do not produce certainty but do produce unreasonable results.

"I think that in the older authorities difference in practical result was more important than difference in legal character. If a man thinks that he is signing a document which will cost him £10 and the actual document would cost him £1,000 it could not be right to deny him this remedy simply because the legal character of the two was the same. It is true that we must then deal with questions of degree but that is a familiar task for the courts and I would not expect it to give rise to a flood of litigation.

"There must I think be a radical difference between what he signed and what he thought he was signing - or one could use the words 'fundamental' or 'serious' or 'very substantial'. But what amounts to a radical difference will depend on all the circumstances. If he thinks he is giving property to A whereas the document gives it to B the difference may often be of vital importance, but in the circumstances of the present case I do not think that it is. I think that it must be left to the courts to determine in each case in light of all the facts whether there was or was not a sufficiently great difference. The plea non est factum is in a sense illogical when applied to a case where the man in fact signed the deed. But it is none the worse for that if applied in a reasonable way."

Although I have quoted at length from the speech of Lord Reid, as he intimated that he was in general agreement with the speech of Lord Pearson, I set out the concluding passage from the speech of Lord Pearson at pages 982 j - 983:

> "The degree of difference required. The judgments in the older cases used a variety of expressions to signify the degree or kind of difference that, for the purposes of the plea of non est factum, must be shown to exist between the document as it was and the document as it was believed to be. More recently there has been a tendency to draw a firm distinction between: (a) a difference in character or class, which is sufficient for the purposes of the plea; and (b) a difference only in contents, which is not sufficient. This distinction has been helpful in some cases, but, as the judgments of the Court of Appeal have shown, it would produce wrong results if it were applied as a rigid rule for all cases. In my opinion, one has to use a more general phrase, such as 'fundamentally different' or 'radically different'."

Parnell J. was aware of the decision in Saunders v. Anglia Building Society supra and in using terms appropriate to pre Gallie v. Lee decisions he must not be taken not to have grasped the necessity to determine that the rule of non est factum can only apply if the document actually signed is fundamentally different from that which the person intended to sign. A lease to erect a block factory is in our opinion a fundamentally different contract from an exclusive licence to mine marl and gravel for a period of twenty years. Applying the test propounded by the House of Lords in Saunders v. Anglia Building Society, supra, we hold that the respondent discharged the onus of proving that the documents upon which the appellant relied were not his documents.

But it was argued that the respondent could not succeed in his plea as he was guilty of carelessness in signing the documents in the way he did. It was argued that the respondent conld only discharge the onus of proof which rested upon him if he had caused the documents to be read to him by either the appellant or his niece or any of the literate persons present and if in the reading the reader had mis-represented the contents

of the documents. Mr. Frankson sought support for this proposition from the judgment of Byles J. in Foster v. MacKinnon [1869] L.R. 4 C.P. 704 at 711. There Byles J. who was dealing with a case of a literate gentleman of very advanced years who had affixed his signature to the back of a bill of exchange in the mistaken belief, due to mis-representation, that the document was a guarantee, said:

> "It seems plain, on principle and on authority, that, if a blind man, or a man who cannot read, or who for some reason (not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs; then, at least if there be no negligence, the signature so obtained is of no force. And it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.
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> "The authorities appear to us to support this view of the law. In Thoroughgood's case, Co. Rep. 9. b, it was held that, if an illiterate man have a deed falsely read over to him, and he then seals and delivers the parchment, that parchment is nevertheless not his deed."

In commenting on this passage in Saunders v. Anglia Building Society, supra, at p. 967, Viscount Dilhorne drew attention to a significant fact that failure to read a document before signing is not ipso facto negligence. He said:

> "It is to be observed that Byles J. did not say that failure to read the contract by a person who could read was of itself negligence debarring him from repudiating his signature. He recognized that there might be cases where a person forebode to read without being negligent."

And speaking for himself Viscount Dilhorne said at page 969:

> "I do not think that it can be said that in every case failure to read a document by literate person amounts to carelessness ..... In every case the person who signs the document must exercise reasonable care, and what amounts to reasonable care will depend upon the circumstances of the case and the nature of the document which it is thought is being signed."

It is a question of fact for the jury or judge sitting as a tribunal of fact, to determine whether or not there has been carelessness on the part of the signer. If failure by a literate person to read a document before signing is not by itself ipso facto negligence, a fortiori, failure by an illiterate person to have the document read over to him, could not carry with it a presumption that he was negligent. In order for an illiterate person to know what is contained on the printed or written page, he has to rely on someone who can read. If that someone explains to him the purport of the document and the signer understands what is explained to him and then he signs, how can it afterwards ever be said by the person who did the explaining, "You are a careless fool, you should never have taken my word for it, you should have called in independent persons to read and explain to you."

Parnell J. found that the respondent had no clear opportunity to receive independent advice as the two persons who accompanied the appellant and who signed the documents as witnesses had a special relationship to the appellant, the one, his foreman, the other, his young girl-friend. We see no reason to depart from the findings of the learned trial judge on this issue and we hold that in the circumstances the respondent had proved satisfactorily that he was not negligent.

Mr. Edwards, however, argued that it was not open to the applicant to allege negligence on the part of the respondent as in the words of the learned trial judge it was the appellant who had used "strategy and craftiness to overawe or circumvent the illiterate one"; and he referred us to a decision of the High Court of Australia Petelin v. Cullen [1975] 132 C.L.R. 355. This was an appeal from the Supreme Court of New South Wales and was decided by a very strong bench of the High Court (Barwick C.J., McTiernan, Gibbs, Stephen and Mason JJ.). A landowner who spoke very little English and could not read English granted an option to purchase land which was exercisable within six months of the grant. After the expiration of the period, the grantor wishing to have the option extended sent a letter to the landowner enclosing a cheque and a form. The letter asked "for a further six months' extension of the option" and the form was to acknowledge receipt of the cheque and the grant of the extension. The grantor's agent told the landowner to "sign it that you received $50" and the landowner signed. When the grantor attempted to exercise the extended option and to seek specific performance thereof, the landowner pleaded non est factum. The trial judge dismissed the action for specific performance. The Court of Appeal of the Supreme Court of New South Wales reversed that decision and finally the High Court of Australia restored the decision of the trial judge. A single judgment was delivered by the High Court and it is commendable for its simple lucidity. Coming as it did after the decision of the House of Lords in Saunders v. Anglia Building Society supra, it is of especial importance as it adopted the reasoning of the House of Lords and applied it to a case where the party signing was illiterate and where in addition no innocent person had acquired a right under and by virtue of the document signed. At pages 359 - 360 of the Report the Court said:

"The class of persons who can avail themselves of the defence is limited. It is available to those who are unable to read owing to blindness or illiteracy and who must rely on others for advice as to what they are signing; it is also available to those who through no fault of their own are unable to have any understanding of the purport of a particular document. To make out the defence a defendant must show that he signed the document in the belief that it was radically different from what it was in fact and that, at least as against innocent persons, his failure to read and understand it was not due to carelessness on his part. Finally, it is accepted that there is a heavy onus on a defendant who seeks to establish the defence. All this is made clear by the recent decision of the House of Lords in Saunders v. Anglia Building Society (Gallie v. Lee) (10).

"Before the learned judge no reference was made to that decision. This omission may explain why His Honour did not deal with the element of carelessness. However this may be, the Court of Appeal overruled his decision on the ground that the absence of carelessness was a necessary or material element in the making out of the defence and that on the facts the appellant was careless.

"It is now settled beyond any shadow of doubt that when we speak of negligence or carelessness in connexion with non est factum we are not referring to the tort of negligence but to a mere failure to take reasonable precautions in ascertaining the character of a document before signing it. The insistence that such precautions should be taken as a condition of making out the defence is of fundamental importance when the defence is asserted against an innocent person, whether a third party to the transaction or not, who relies on the document and the signature which it bears and who is unaware of the circumstances in which it came to be executed. It is otherwise when the defence is asserted against the other party to the transaction who is aware of the circumstances in which it came to be executed and who knows (because the document was signed on his representation) or has reason to suspect that it was executed under some misapprehension as to its character. In such a case the law must give effect to the policy which requires that a person should not be held to a bargain to which he has not brought a consenting mind for there is no conflicting or countervailing consideration to be accommodated - no innocent person has placed reliance on the signature without reason to doubt its validity.

"On this analysis the element of carelessness has no relevance to the present case." (Emphasis mine).

We concluded that the appeal should be dismissed on the ground that the respondent being illiterate was duped by the appellant to sign two sets of documents which were radically or fundamentally different from those which the appellant pretended to the respondent that they were, that in so signing the appellant was not guilty of any negligence and that even if he were to be said to have been careless in not obtaining independent advice before signing the documents, the appellant could not rely upon his own falsehood and trickery to gain an advantage over the respondent because the appellant knew that the respondent was unaware of the nature of the documents which he had signed.

It was for these reasons that we upheld the decision of Parnell J. and dismissed the appeal.