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not take away the prohibition against the use of the word "dentist," and that the appellant has been guilty of the offence which it is to be taken under the amendment has been charged against him. I think the appeal must be dismissed.

Appeal dismissed.

Solicitors, for the appellant, *Rogers & Rogers.*
Solicitor, for the respondent, *Joske.*

B. L.

Foll *Australia & New Zealand Banking Group Ltd* v *Widin* (1990) 102 ALR 289

Dist *Tonitto* v *Bassal*..... (1992) 28 NSWLR 564

Refd to *Epic Feast Pty Ltd* v *Mawson KL M Holdings Pty Ltd (in liq)* (1998) 71 SASR 161

[HIGH COURT OF AUSTRALIA.]

THOMSON . . . . . APPELLANT;
DEFENDANT,

AND

McINNES . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *June* 19, 20, 21.

Griffith C.J., Barton and O'Connor JJ.

Contract—Sale of land—Memorandum in writing—Signature of party to be charged—Personal act—Contract contained in several documents—Reference from one document to another—Instruments Act 1890 (*Vict.*) (*No.* 1103), *secs.* 208, 209.

Sec. 208 of the *Instruments Act* 1890 (Vict.) is a transcript of sec. 4 of the *Statute of Frauds* (29 Car. II. c. 3), and sec. 209 provides that "notwithstanding anything in this Act contained no action shall be brought upon any contract or sale of lands tenements or hereditaments or any interest in or concerning them if the agreement or the memorandum or note thereof on which such action shall be brought be signed by any person other than the party to be charged therewith unless such person so signing be thereunto lawfully authorized in writing signed by the party to be so charged."

Held, that either the signature to the memorandum or note of the contract must be the personal act of the party to be charged or, if the document is signed by another person on behalf of that party, the signature to the authority of that other person must be the personal act of the party to be charged.

Held, therefore, that a memorandum of a contract signed by another person with the name of the party to be charged, who was illiterate, at the request and in the presence of that party was not signed by that party within the meaning of sec. 208.

Where a memorandum of a contract is sought to be constituted from several documents, the reference in the document signed by the party to be charged must be to some other document, the identity of which may be proved by parol evidence, and not merely to some transaction in the course of which another document may or may not have been written.

Held, therefore, that the words "purchase money" in a receipt given by the vendor of land for a sum of money "being a deposit and first part purchase money" could not refer to another document.

Decision of *à Beckett* J.: *McInnes* v. *Thomson*, (1911) V.L.R., 118; 32 A.L.T., 139, reversed.

APPEAL from the Supreme Court of Victoria.

An action was brought in the Supreme Court by Donald McInnes against Ellen Thomson claiming specific performance of a contract whereby the defendant agreed to sell and the plaintiff to buy the defendant's freehold property of 320 acres, with an adjoining block of land held by the defendant under lease from the Crown as a grazing area given in, at the price of 30s. per acre. The contract was alleged to be contained in some or others of the documents hereinafter set out. The plaintiff also claimed damages for loss of profit and for costs and expenses caused by the defendant not giving possession as agreed, and, alternatively, damages for breach of the contract.

The defendant by her defence (*inter alia*) denied the making of the contract alleged, denied that any of the documents was signed by her or by her authority, and denied that there was any memorandum of the contract in writing signed by her or signed by any person on her behalf thereunto lawfully authorized in writing within secs. 208 and 209 of the *Instruments Act* 1890.

At the trial before *à Beckett* J. evidence was given to the following effect:—

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The defendant, who was a widow and old and illiterate, resided on the land in question with her son Robert Thomson, who, on 27th February 1909, at the defendant's request and in her presence, wrote the following letter to the plaintiff's brother:—

"Dear Sir,

"I write to ask if you will show this to your brother, as I can honestly say he could make one pound per week on this place out of sheep alone, but I would not be able to sell it until near the end of this year, as I must build a house at Byaduk first, and I have to do up the house. I would like your brother to come and see me when he is not doing anything, and see the ground for himself, and if I could see him and have a talk with him, and then if he cares to buy the place, I would give up possession about next January. There is a lot of drains dug on the ground, that you did not see, and a fine fruit garden. I have no more to say any more than it is a good paddock for a poor man, and I would like to make a sale with your brother.

"I remain yours truly

"Mrs. E. Thomson, Bessiebelle P.O."

The plaintiff was shown this letter and afterwards called on the defendant and asked her how much she wanted for the freehold land. She said she wanted 30s. an acre with the leasehold land given in. The plaintiff agreed to buy the land at this price and asked when the defendant would give up possession. She said she would do so at the end of the year.

On 25th March one James Toohey, at the defendant's request and in her presence, wrote the following letter to the plaintiff:—

"Dear Sir,

"About the sale of my land will you give me a sale note that you agree to take the land and pay deposit? Then I will go ahead and get the transfers fixed up. If I sell the sheep before end of year, you can have the place immediately after I dispose of them.

"Yours truly

"Ellen Thomson."

At the same time Toohey, in the defendant's presence and at her request, wrote out the following document which was sent with the above letter to the plaintiff:—

"I hereby agree to purchase Mrs. Ellen Thomson's freehold property of 320 acres more or less—lease block given in—at 30s. an acre cash, delivery end of 1909. Money placed to credit as soon as transfer of freehold is ready, the land referred to is in Minhamite Shire, Bessiebelle District."

On 29th March the plaintiff sent back to the defendant the above document, signed by himself and by an attesting witness, enclosed in the following letter:—

"Dear Madam,

"Enclosed please find sale note of your land signed that I agree to purchase 320 acres freehold at 30s. per acre, leasehold given in, and kindly let me know what deposit you should want.

"I am, yours faithfully,

"Donald McInnes."

On 6th April the defendant's son—whether by the defendant's directions or not did not appear—wrote to the plaintiff the following letter:—

"Dear Sir,

"In reply to your letter *re* deposit I have to state I will require fifty pounds deposit delivered to me at my residence here.

"Yours etc.,

"Ellen Thomson."

On 17th April the plaintiff at the defendant's residence paid the defendant £50 and received from her the following receipt which was written by her son at her request and in her presence:—

"I have this day received from Mr. Donald McInnes the sum of fifty pounds sterling being a deposit and first part purchase money for 320 acres of land in the Parish of Broadwater.

"Ellen Thomson, *pro* R. Thomson."

On this receipt was a one penny duty stamp upon which the defendant's son had similarly written "E.T. 17/4/09."

On 21st April Toohey wrote the following letter to the plaintiff at the defendant's request:—

"Dear Sir,

"Referring to the lease block I am handing over to you, I shall expect to be paid for the improvements on it. There is a large

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dam on it—the fencing—pump &c., say £40 the lot. Let me know if you are willing to give this, as I cannot give away my improvements and the land too, and then we can go ahead.

"Yours truly, Ellen Thomson

"Pro."

The plaintiff offered to give £30 for the improvements and afterwards increased his offer to £40, but the defendant would not accept either offer, and at the end of the year 1909 refused to give up possession of the land.

à Beckett J. held that the documents signed with the defendant's name, by her direction and in her presence, were signed by her within the meaning of sec. 208 of the *Instruments Act* 1890, and that there was a sufficient memorandum of the contract within that section, and he ordered specific performance of the contract, and he also awarded the plaintiff £50 damages: *McInnes* v. *Thomson* (1).

From this decision the defendant now appealed to the High Court.

McArthur, for the appellant. There is no memorandum in writing within sec. 208 of the *Instruments Act* 1890. The letters are not connected by reference from one to the other. There must be in the document signed by the party to be charged a reference to another document in which the terms of the contract are stated, and it is not sufficient that there is a reference to a transaction in the course of which a document may have been prepared: *Smith's Leading Cases*, 11th ed., p. 308; *Long* v. *Millar* (2); *Baumann* v. *James* (3); *Ridgway* v. *Wharton* (4); *Oliver* v. *Hunting* (5); *Dobell* v. *Hutchinson* (6); *Studds* v. *Watson* (7); *Potter* v. *Peters* (8).

[BARTON J. referred to *Wylson* v. *Dunn* (9).]

Even if the documents relied upon are sufficiently connected together, they do not contain all the terms of the contract. They do not contain the alleged agreement by the appellant to give the leasehold lands in, nor do they contain the term that posses-

(1) (1911) V.L.R., 118; 32 A.L.T., 139.
(2) 4 C.P.D., 450.
(3) L.R. 3 Ch., 508.
(4) 6 H.L.C., 238; 27 L.J. Ch., 46.
(5) 44 Ch. D., 205.
(6) 3 A. & E., 355.
(7) 28 Ch. D., 305.
(8) 64 L.J. Ch., 357.
(9) 34 Ch. D., 569.

sion should not be given until the end of the year, which the evidence shows the parties agreed to, nor do they state the amount of the deposit. There is no sufficient signature of the appellant to any of the documents within the meaning of sec. 208 of the *Instruments Act* 1890. The signature under that section and sec. 209 must be a personal act of the party to be charged: *Hyde* v. *Johnson* (1); *Hirst* v. *West Riding Union Banking Co. Ltd.* (2); *Toms* v. *Cuming* (3); *Swift* v. *Jewsbury* (4); *In re Whitley Partners Ltd.* (5). It may be by a mark: *Baker* v. *Dening* (6); or by initials: *In re Blewitt* (7). In the case of a printed signature there must be some writing by the party to be charged which recognizes the printed signature as intended to be his signature: *Schneider* v. *Norris* (8); *Boyle* v. *Basan* (9); *Saunderson* v. *Jackson* (10). [He also referred to *Godwin* v. *Francis* (11); *Christie* v. *Permewan, Wright & Co. Ltd.* (12).] There is no case which recognizes a signature by an amanuensis as a different thing from a signature by an agent The Act clearly draws a distinction between cases where a personal act of signing is necessary and those where it is not. Thus, under secs. 128 and 215, as well as secs. 208 and 209, the signature must be a personal act, while under secs. 210 and 213 the signature may be by an agent.

Davis, for the respondent. This is not a case of agency within the meaning of secs. 208 and 209, but is a signature by the party to be charged by an amanuensis. All that sec. 209 does is to require the authority of the agent to be in writing. It makes no change in the nature of the signature of the principal as required by sec. 208. Such a signature has been held to be sufficient under the *Statute of Frauds* if it is brought home to the party to be charged as having been done with his authority: *Fry on Specific Performance*; *Tourret* v. *Cripps* (13); *R.* v. *Moore*; *Ex parte Myers* (14); *Lord Halsbury's Laws of England*, vol. I., p. 154; *Ball* v.

(1) 5 L.J. (N.S.), C.P., 291; 3 Sco., 289.
(2) (1901) 2 K.B., 560.
(3) 7 Man. & G., 88.
(4) L.R. 9 Q.B., 301, at p. 316.
(5) 32 Ch. D., 337.
(6) 8 A. & E., 94.
(7) 5 P D., 116.
(8) 2 M. & S., 286.
(9) 8 A.L.T., 82.
(10) 2 Bos. & P., 238.
(11) L.R. 5 C.P., 295.
(12) 1 C.L.R., 693, at p. 700.
(13) 48 L.J., Ch., 567.
(14) 10 V.L R. (L.), 322; 6 A.L.T., 151.

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Dunsterville (1); *Rex* v. *Inhabitants of Longnor* (2); *Helshaw* v. *Langley* (3). If this is a case of a signature by an agent, then the appellant subsequently ratified the authority of the agent by her subsequent acts, and in particular by receiving part of the purchase money. Subsequent ratification is sufficient even where the prior authority is required to be in writing: *Leake on Contracts*, 4th ed., p. 312; *Lord Halsbury's Laws of England*, vol. I., p. 179. Payment of the purchase money is a sufficient ratification of the authority of the agent to make the contract: *The Bonita* (4); *Tupper* v. *Foulkes* (5); *Fry on Specific Performance*, 4th ed., p. 269. The documents are sufficiently connected together to constitute a memorandum of the contract. The reference in the letter of 25th March from the appellant to the respondent to a "sale note," and the enclosure in it of the document that the respondent agreed to purchase, and which was signed by him and returned on 29th March, sufficiently incorporates that document. In the receipt of 17th April, signed by the appellant, the words "purchase money" refer to the letter of 25th March and the document enclosed in it, just as in *Long* v. *Millar* (6) the word "purchase" was held to refer to a prior document. Although there is no express reference, it is sufficient if the documents can be connected by reasonable inference: *Lord Halsbury's Laws of England*, vol. VII., p. 369. He also referred to *Cave* v. *Hastings* (7); *Allen* v. *Bennett* (8); *Pearce* v. *Gardner* (9); *Craig* v. *Elliott* (10); *Sheers* v. *Thimbleby & Son* (11); *Nene Valley Drainage Commissioners* v. *Dunkley* (12).

McArthur, in reply, referred to *Taylor* v. *Smith* (13).

GRIFFITH C.J. This is a suit for the specific performance of a contract for the sale of land. The only defence with which it is material to deal on this appeal is the defence of what is commonly called the *Statute of Frauds*, that is, that there was no note or

(1) 4 T.R., 313.
(2) 4 B. & Ad., 647.
(3) 11 L J., Ch., 17.
(4) 5 L.T. (N.S.), 141; 30 L.J. Ad., 145.
(5) 9 C.B.N.S., 797.
(6) 4 C.P.D., 450.
(7) 7 Q.B.D., 125.
(8) 3 Taunt., 169.
(9) (1897) 1 Q.B., 688.
(10) 15 L.R. Ir., 257.
(11) 76 L.T., 709.
(12) 4 Ch. D., 1.
(13) (1893) 2 Q.B., 65.

memorandum of the alleged contract signed by the party to be charged, or by any person authorized by her. Two questions are raised, one depending upon the facts of that particular case, the other, of larger importance, depending upon the construction of sec. 209 of the *Instruments Act* 1890, to which I will afterwards refer.

Sec. 208 of that Act is a transcript of sec. 4 of the *Statute of Frauds*, and it is not necessary to read it. It is well known that the note or memorandum which the Statute requires need not be contained in one piece of paper. It is sufficient if the note signed by the party to be charged refers to some other document in such a manner as to incorporate it with the document signed, so that they can be read together. That has been settled for a long time. But the whole contract must be shown by the writing. The reference, therefore, in the document signed must be to some other document as such, and not merely to some transaction or event in the course of which another document may or may not have been written. The reference may, of course, be made in various ways. Whether there is a reference or not depends, first of all, upon the construction of the document which is signed. You must, first of all, find some words in that document which are capable of being construed as referring to another document in the sense I have indicated, that is, as referring to a document, and not to a transaction or event. If there are words capable of such a construction, then, and not before, the question arises as to their meaning. As was pointed out by *Thesiger* L.J. in *Long* v. *Millar* (1), the rule is merely a particular application of the well known doctrine of latent ambiguity. Parol evidence is admissible for the purpose of showing that a word capable of having reference to a particular thing has really such a reference. The same thing had been pointed out by *Archibald* J. in *Peirce* v. *Corf* (2). The reference to the other document may be made in various ways. Thus in *Ridgway* v. *Wharton* (3) it was held that the word "instructions" could be read as referring to another document, and that the identity of the document to which it referred could be proved by parol evidence. So in *Baumann* v.

(1) 4 C.P.D., 450, at p. 456.
(2) L.R. 9 Q.B., 210, at p. 218.
(3) 6 H.L.C., 238.

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James (1) the words "rent and terms agreed upon" were held to refer to a written agreement, and in *Long* v. *Millar* (2) the words "the purchase" used in a receipt were held to mean a written document. But in all the cases it was held that the word in question meant a written document. *Kekewich* J. in *Oliver* v. *Hunting* (3) suggested that this was the old rule, and that there was now a new rule. With the greatest respect for that learned Judge I do not agree with him. The rule has always been the same. Some Judges may have been more liberal in their application of the rule than others, or may have taken a more liberal view of the words to be construed. The rule is thus stated by *Baggallay* L.J. in *Long* v. *Millar* (4):—"The true principle is that there must exist a writing to which the document signed by the party to be charged can refer, but that this document may be identified by verbal evidence." I think it is unfortunate that any doubt should be entertained as to that doctrine. It is as well settled as any doctrine relating to contracts.

I proceed to apply the rule to the present case. It is sought to apply it to two documents. The first is a document dated 25th March 1909 and is as follows:—

"Dear Sir—About the sale of my land will you give me a sale note that you agree to take the land and pay deposit? Then I will go ahead and get the transfers fixed up. If I sell the sheep before end of year, you can have the place immediately after I dispose of them.

"Yours truly, Ellen Thomson,
"Per."

It is sought to connect that document, which does not contain the terms of the sale, with another document which is as follows:—

"I hereby agree to purchase Mrs. Ellen Thomson's freehold property of 320 acres more or less—Lease block given in—at 30s. an acre cash. Delivery end of 1909. Money placed to credit as soon as transfer of freehold is ready. The land referred to is in Minhamite Shire, Bessiebelle District.

"March '09. Please sign—Donald McInnes.
"Witness—Norman McInnes."

(1) L.R. 3 Ch., 508.
(2) 4 C.P.D., 450.
(3) 44 Ch. D., 205.
(4) 4 C.P.D., 450, at p. 455.

Those two documents, the second without the signatures of the respondent and the witness, were placed in one envelope and addressed to the respondent. It is contended that under those circumstances the words "a sale note" used in the first of the two documents must be construed as relating to the document enclosed in the same envelope, which was in the terms of a bought note. It may be so, and there is a good deal to be said in favour of that contention. But I do not think it necessary to decide that question for the reason that the letter of 25th March was answered on 29th March by a letter in which the respondent said:—

"Dear Madam—Enclosed please find sale note of your land signed that I agree to purchase 320 acres freehold at 30s. per acre, leasehold given in, and kindly let me know what deposit you should want."

When you read these documents together it appears that the appellant asked the respondent to sign a sale note and also to pay a deposit, the amount of which was not mentioned, and that the respondent inquired what was the deposit she required. It appears, therefore, that at that time it was contemplated by both parties that there should be a deposit, but that the amount of it was not fixed. That is sufficient to show on the face of the documents that there was no completed bargain between the parties.

The other document relied upon is a document of 17th April 1909, which is as follows:—

"I have this day received from Donald McInnes the sum of fifty pounds sterling, being a deposit and first part purchase money for 320 acres of land in the Parish of Broadwater.

"Ellen Thomson, *pro* R. Thomson."

It is contended that the words "purchase money" in that document refer to the document enclosed with the letter of 25th March, or to both the document and the letter. The first question is, can the words "being a deposit and first part purchase money" be construed as a reference to a written document? In my opinion it is impossible to so construe them. They refer to a transaction and cannot be construed as referring to a written document. There is no other note or memorandum put forward.

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That is sufficient to dispose of the case, but I will refer now to the other question raised.

The two documents said to have been signed by the appellant were not signed by herself personally. She is an old and illiterate woman, and apparently unable to write. The first of the two documents was signed with her name by a Mr. Toohey, a school teacher, to whom the appellant had been a stranger until shortly before he wrote this letter, and whom she asked to write and sign the letter for her. Whether the letter correctly expressed what she desired it is not necessary to inquire. The other document, that of 17th April, and signed "Ellen Thomson, *pro* R. Thomson," (*pro* being evidently a mistake for "*per*") was signed by her son also in her presence, and at her request. It is contended for the respondent, and so *à Beckett* J. held, that that is a sufficient signature by the person to be charged within sec. 208 of the *Instruments Act* 1890. Sec. 209 of that Act provides that "Notwithstanding anything in this Act contained no action shall be brought upon any contract or sale of lands tenements or hereditaments or any interest in or concerning them if the agreement or the memorandum or note thereof on which such action shall be brought be signed by any person other than the party to be charged therewith unless such person so signing be thereunto lawfully authorized in writing signed by the party to be so charged."

The appellant relied, amongst other cases, on *Hyde* v. *Johnson* (1), in which, under a Statute which used almost identical words, it was held that the signature must be made by the person to be charged with his own hand. In that case the document which was relied on to revive a Statute-barred debt was signed, by the wife of the person sought to be charged, with his name and at his request. It does not appear whether it was signed in his presence, but he handed it to a carrier to be delivered to the plaintiff. It was held by the Court of Common Pleas that the document was not signed within the meaning of the Statute in question, which required "some writing to be signed by the party chargeable thereby." The Court compared that Statute with the *Statute of Frauds* and said it was *in pari materio*, and

(1) 5 L.J. (N.S.) C.P., 291; 2 Bing., N.C., 776.

they also compared the particular section with the other sections of the *Statute of Frauds* and came to the conclusion that the signature required was a signature to be made by the hand of the person to be charged. The same thing was held in *Swift* v. *Jewsbury* (1), a case arising on the same Statute but on a somewhat different point. The Court treated the case as that of a signature of an agent. In *In re Whitley Partners Ltd.* (2), a case under the *Companies Act* 1862 which requires the memorandum of association of a company to be signed by an intending member, the memorandum had been signed by another person with the member's name at the latter's request. The Court of Appeal held that that was a sufficient signature, but treated it as a signature by an agent.

When reference is made to the *Statute of Frauds* itself, the matter appears to me to be abundantly clear. Sec. 5 of that Statute dealt with a proviso now to be found in the *Wills Act*. It required that all devises or bequests of land should be in writing "and signed by the party so devising the same or by some other person in his presence and by his express directions." Whatever the *Statute of Frauds* meant when it was passed, it means now. It appears, therefore, that in the *Statute of Frauds* the legislature contemplated three different modes of signature, first, by a person with his own hand, secondly, by an amanuensis signing the name of another person in that other person's presence by his direction, and, thirdly, by an agent. I think it is impossible that a signature by an amanuensis can be regarded as a signature by the person with his own hand. And that was the view taken in *Hyde* v. *Johnson* (3). I will only add that I venture to adopt what was said by *Bramwell* B. in *Swift* v. *Jewsbury* (4), dealing with another Statute:—"In my opinion the effect of the Statute is this, that a man should not be liable for a fraudulent representation as to another person's means unless he puts it down in writing, and acknowledges his responsibility for it by his own signature. He is neither to have the words proved by word of mouth, nor the authority given to an agent for whose act it is sought to make him responsible proved

(1) L.R. 9 Q.B., 301.
(2) 32 Ch. D., 337.
(3) 5 L.J. (N.S.) C.P., 291.
(4) L.R. 9 Q.B., 301, at p. 316.

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by word of mouth." In my opinion that language is applicable to sec. 209 of the *Instruments Act* 1890. So that there has been no document in this case which comes within the Statute, and the respondent on that ground also has failed to make out his case. Having regard to all the circumstances of the case, I think it is extremely doubtful whether this old woman was willing to do what was stated in these documents, although the persons who signed them for her no doubt discharged their duties to the best of their abilities, and believed they were correctly stating what she meant to convey to them. I am of opinion that the appeal should be allowed.

BARTON J. I cannot usefully add anything to what the learned Chief Justice has said in his judgment just pronounced, with which I agree.

O'CONNOR J. I am of the same opinion, and have not much to add to what has been already said. In my opinion the appeal must be allowed on two grounds. First, because according to the proper construction of secs. 208 and 209 of the *Instruments Act* 1890 there was no document evidencing the contract signed either by the party to be charged, or by his agent thereunto lawfully authorized in writing. The signatures to the various documents are written in different forms, but all were written in the following manner. The appellant employed an amanuensis to write each of the letters and requested him to sign it for her, and each was signed by the amanuensis for her in her presence. There can be no ground for the contention that there was any authorization of any agent to sign these documents upon the appellant's behalf, and, as I follow Mr. *Davis's* argument, he did not contest that position, but he urged in the course of a very ingenious argument that the signing of the appellant's name by the person whom she employed to write the letter was a signing by herself which was good under sec. 208. A number of cases were cited to the Court dealing with Statutes which required the signatures of the parties to documents, but it is not necessary for me to do more than mention two of them. In *Hyde* v. *Johnson* (1) the words to be construed were "signed by the party charge-

(1) 5 L.J. (N.S.) C.P., 291.

able thereby." In that case, for reasons to which the learned Chief Justice has referred, it was held that a letter written by a man's wife and signed by her on his behalf was not signed by the party chargeable thereby, although the wife was requested by him to sign in very much the same way as Toohey was requested by the appellant in this case to sign. In that case it was held that that was not a compliance with the Statute. The other case to which I shall refer is illustrative of the other class of cases cited. It is *In re Whitley Partners Ltd.* (1). There the question was whether the memorandum of association of a company had been signed so as to bind a shareholder. The *Companies Act* 1862, by sec. 6, provides that "any seven or more persons associated for any lawful purpose may by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability." Sec. 11 provides that "the memorandum of association . . . shall be signed by each subscriber in the presence of, and be attested by, one witness at least." It was held that it was sufficient if a subscriber's name was written by someone who had the subscriber's authority to write it, though it did not purport to be written by that person as agent. There is one consideration which reconciles these apparently conflicting lines of cases, and it is this: A Statute may sometimes use language which, strictly read, would require a personal signature, yet the whole of the provisions of the Statute taken together may make it apparent that the Statute does not require a personal signature. That was held to be the case in *In re Whitley Partners Ltd.* (1), and that was the reason for the decision. The principle upon which the Court proceeded is very well stated by *Bowen* L.J. as follows (2):—"In every case where an Act requires a signature it is a pure question of construction on the terms of the particular Act whether its words are satisfied by signature by an agent. In some cases on some Acts the Courts have come to the conclusion that personal signature was required. In other cases on other Acts they have held that signature by an agent was sufficient. The law on the subject is

(1) 32 Ch. D., 337.

(2) 32 Ch. D., 337, at p. 340.

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thus summed up by *Blackburn* J. in *Reg.* v. *Justices of Kent* (1): 'No doubt at common law, where a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it; nevertheless there may be cases in which a Statute may require personal signature.' *Quain* J. then says, 'We ought not to restrict the common law rule, *qui facit per alium facit per se*, unless the Statute makes a personal signature indispensable.'" Applying the principle there laid down to the interpretation of the *Instruments Act* 1890, it appears to me impossible to escape from the conclusion that sec. 208 of the Statute—which is really sec. 4 of the *Statute of Frauds*—does require a personal signature of the party to be charged. I think that is demonstrated by an examination of the different sections of the Act, a course which was taken by *Tindal* C.J. in *Hyde* v. *Johnston* (2), as pointed out by the learned Chief Justice. I therefore am of opinion that the only way in which secs. 208 and 209 can be interpreted so as to give effect to the intention of the legislature is to hold that a personal signature of the party to be charged, or a signature by his agent authorized in writing, is necessary. There cannot to my mind be a confusing of the distinction between the person who signs, whether in his own handwriting or as a marksman, and the person who requests someone to sign for him. I think in all cases there must be a personal signature by the party to be charged.

The other ground upon which it seems to me the appeal must be allowed is that there is no connection in writing between the documents necessary to make out a contract. The document which I may call the key document of the series is the receipt of 17th April. Without that it is impossible to make certain of all the terms of the agreement. From the other documents it is apparent that one of the terms was payment of a deposit, and there is nothing to show that the parties had agreed as to the amount of the deposit, unless the receipt can be taken as evidence of that agreement. Under the rule laid down that, where you wish to make out a contract from several documents, you must show that the document signed by the party to be charged

(1) L.R. 8 Q.B., 305, at p. 307. (2) 5 L.J. (N.S.) C.P., 291.

refers to the others on which you rely. Mr. *Davis*, being thus obliged to show that the receipt referred to the other documents, relied on the words "purchase money" in the receipt as indicating the existence of a written agreement to which those words referred, thereby embodying the documents which had gone before. If he were right, that would make out a concluded contract. The learned Judge below took that view, acting upon the case of *Long* v. *Millar* (1). In that case the words relied upon to connect the documents were "the purchase." The Court held, as pointed out by *Bramwell* L.J. (2), that those words "must mean an agreement to purchase, and it becomes apparent that the agreement alluded to is the agreement signed by the plaintiff, so soon as the two documents are placed side by side"; but it seems to me quite impossible, having regard to the principle upon which the cases proceed, to successfully contend that "purchase money" necessarily connotes the existence of a written agreement. The ordinary meaning of "purchase money" is the amount of money due on a purchase of land. Unless you assume that every purchase of land must be by writing, the words "purchase money" carry you no further than a statement of the amount to be paid for the land. It was contended that *Long* v. *Millar* (1) was a sufficient authority for the construction Mr. *Davis* contended for, but it seems to me the true principle upon which that and all the other cases cited proceed is this, that a document which is said to refer to another must on its face refer to that other, and parol evidence is only admissible to establish the identity of the document referred to. *Thesiger* L.J., in the passage already referred to in *Long* v. *Millar* (3), puts the matter expressly upon the ground that the rule is only a particular application of the doctrine as to latent ambiguity. *Archibald* J. in *Peirce* v. *Corf* (4), speaking also of the principle upon which documents may be connected with one another for the purpose of making out a contract, says:—"No doubt the reference may be made in various ways, but it must be of such a nature as to make it clear that the one does refer to the other; and on that point there seems to me to be a failure here to connect these two

(1) 4 C.P.D., 450.
(2) 4 C P.D., 450, at p. 454.
(3) 4 C.P.D., 450, at p. 456.
(4) L.R. 9 Q.B., 210, at p. 218.

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documents together. It is impossible to do it except by the intervention of parol evidence. That would be going beyond any purpose for which parol evidence is admissible, which is merely to explain a latent ambiguity, and therefore there is no sufficient connection between the papers to constitute a contract within the *Statute of Frauds*." Now, that is a principle the application of which is entirely consistent with preserving the integrity of the *Statute of Frauds* and the other Statutes which follow its provisions requiring that there shall be written evidence of certain kinds of contracts. In my opinion in the application of that principle it is impossible to say that " purchase money " could mean an agreement for purchase, and therefore there is nothing in the receipt capable of bearing a meaning such as is necessary to constitute a reference to the prior documents. Upon that ground also I agree that the respondent's case fails, and that the appeal should be allowed.

Appeal allowed. Judgment appealed from discharged. Judgment for the plaintiff for £50 with costs up to the time of payment into Court. Judgment for the defendant as to the rest with costs. Plaintiff to pay the costs of the appeal.

Solicitor, for appellant, *A. Phillips* for *H. Walker*, Hamilton.

Solicitor, for respondent, *W. Bruce* for *J. B. Westacott*, Hamilton.

B. L.