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JEFFERSON V THOMPSON.

JUDGMENT.

KNOX C.J.
SAVAN DUFFY J.

We have had the advantage of reading the ~~judgment~~ about to be delivered by our brother Higgins. We agree that for the reasons stated by him the appeal should be allowed and the suit dismissed.

JEFFERSON

V.

THOMPSON

JUDGMENT

HIGGINS J.

The plaintiff here is a lady who is the purchaser and assignee of certain patents;and she brings an action against the assignor for ^{re}restitution of the indenture of assignment,for repayment of the purchase moneys which she has already paid,for an injunction against further proceedings on the promissory notes given,and for cancellation of the notes. The learned judge at the trial(Long Innes J) granted the relief sought on the ground of "innocent misrepresentation" made by the vendor;and this is an appeal from that decree.

It appears that the husband of the plaintiff conducted the business negotiations on her behalf;and it is alleged in the statement of claim, and not denied in the defence,and therefore to be treated as admitted, that the defendant represented to the husband that the defendant was "the original inventor of the said invention". The invention was of a certain wire tie for bales. The trial judge takes the representation to mean that the defendant was the first inventor in point of time---as I understand,anywhere;and accepting that interpretation,His Honour finds the representation was untrue----untrue as to one of the claims made in the specification---but that the representation was made in good faith and in entire innocence.

We shall assume,for the sake of argument,that the representation in

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this sense is shown to be false, and that the falsehood of the representation is established by showing that one of the claims made in the specification is too wide; but we must not be understood as so deciding. We address our remarks to the meaning of the words used under the circumstances. But what the defendant meant to convey, and what the plaintiff or her husband understood him to convey, by the words, would depend much on the context in the conversation in which they were used. Unfortunately, neither the husband nor the defendant has given evidence of the conversation or the circumstances (the husband, we are informed, was ill at the trial); and we have to rely wholly on the technical admission in the pleadings. Taking these words as they stand, and bearing in mind that the defendant has been found innocent of any fraud, what should be taken as the true meaning in an honest man's mouth?

There is one meaning given in the Oxford dictionary for "original" that might well fit the case; 4(b) made composed or done by the person himself (not imitated from another): first hand"; as when Dryden said "I have added some original papers of my own". The defendant was speaking to the husband, who must be presumed to know the risks to which patents are subject on such points as novelty; and in order to reassure the husband to some extent as to such risks, the defendant may have merely meant,

"Well, at any rate, this invention was not derived by me from someone else;

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it was the fruit of my own brains; I worked it out myself; I am ^{the} inventor
at first hand, not at second hand. It was not cribbed by me". Such a
meaning is quite consistent with the words "the original inventor" ----
the original inventor of the invention described in the letters patent, ~~///~~
as distinguished from the first man to give it to the public. This
meaning gains in probability from the plaintiff's own statement in cross-
examination : —

"Mr Jefferson came out on the 19th and explained it to me. It was a
very simple invention. I asked him was it his own invention; and he
said yes, he had invented it ~~///~~. Then the plaintiff says that this
statement was what weighed with her in deciding to put her money into the
patent; and yet it cannot mean that the defendant asserted that no one else
had previously seized the same idea. It was "his own" — not derived."

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The recital in the deed of assignment seems to us, so far as it goes,
to confirm this meaning----- "Whereas the assignor claims to be the
actual true and first and original inventor of a certain invention" etc
"True and first inventor" are the words used in the statute of James
(21 Jas 1 c 3), and it refers to the person who first discloses the
invention to the public; "^{or} actual invention ~~ion~~" does not include a person
importing an invention from abroad (Patent ~~///~~ Act s. 4); so that the meaning
left available for "original inventor" is that the invention sprang
from himself in person ---- as Athena from the head of Zeus.

I may add that if, as contended, the words conveyed the meaning

that the defendant was the first in point of time, any-where, who thought out such a method of tying bales, it is hard to see that the statement could be anything but fraudulent. How could the defendant know such a fact? If he did not know it, the statement must have been made in reckless ~~dis~~regard of truth. Yet fraud, admittedly, is out of the question; and it is our duty, even if the two meanings of the words were equally possible, to accept that meaning which would be innocent.

We are all of opinion that on this ground,----the ground of merits of the case----the appeal must be allowed. It must be far more satisfactory for an honest man to feel that he succeeds on the merits, rather than succeeds on the technical ground (if applicable) that the plaintiff is barred from the remedy of ^srecission by reason of the

transaction having passed into the realm of conveyance. We quite concur with the learned judge (Harvey J.) who heard the motion for injunction, that the law on this subject is not satisfactorily settled; and we are glad that it is not necessary for us, in the present state of the authorities, to decide the question. Speaking for myself, only, I may add that I am not satisfied that the indenture was meant to be the

completion of the agreement. It seems rather like a ^{more} formal substitute for the short agreement; and this would explain the dating of the indenture back some days to the 19th of June, the date of the agreement, and also would explain the fact that the statement of claim claims recission of the indenture only, not of the agreement.

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We think that the appeal should be allowed with costs and that the suit should be dismissed with costs; costs to be taxed and paid by the plaintiff to the defendant. Remit to the Supreme Court to do what is proper in pursuance of this opinion.

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