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*Apr. 27.
*May 2.

J. R. WATKINS COMPANY v. MINKE

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Guarantee—Deeds and documents—Illiterate party—Misrepresentation as to contents—Separate obligations—Only one explained—Whether guarantee void in part.

APPEAL from the judgment of the Court of Appeal for Saskatchewan (1), affirming the judgment of Taylor J. and dismissing the appellant's action on a guarantee.

The appellant on May 29, 1922, entered into a written contract with one Jansen, whereby *inter alia* it agreed to sell to Jansen such goods as Jansen might reasonably require for sale within a prescribed area in the province of Saskatchewan. Jansen by that contract agreed to pay for such goods, and to pay carriage, freight, etc., thereon. The appellant claimed that under this contract Jansen became indebted to it in the sum of $1,545.18, and on November 25, 1922, the appellant forwarded to Jansen a new contract similar to the previous one, dated November 25, 1922, signed by it, and asking him to execute the same and obtain the signatures of two sureties thereto. This is the contract sued on by the appellant. In this contract Jansen's indebtedness to the appellant is mutually agreed between him and the appellant to be $1,545.18. The contract is in two parts: (1) a contract with the principal Jansen; and (2) an underwritten contract with the sureties. It bore the signature of Jansen, and provided that it would expire on March 1, 1924. Some time in May, 1923, Jansen obtained the signatures of the respondents Minke and Bort to the under written contract, which, after reciting the consideration therefor, among which is the sale and delivery by the appellant to Jansen of goods and other articles, and the extension of the time of payment of the indebtedness then due from Jansen to the appellant proceeds as follows:—

We, the undersigned sureties, do hereby waive notice of the acceptance of this agreement and diligence in bringing action against said second party, and jointly, severally and unconditionally promise, agree and guarantee the full and complete payment of said indebtedness the amount of which is now written in said agreement or if not, we hereby

*PRESENT:—Anglin C.J.C. and Mignault, Rinfret, Lamont and Smith JJ.

(1) [1928] 1 W.W.R. 199.

expressly authorize the amount of said indebtedness to be written therein, and jointly, severally and unconditionally promise to pay for said goods and other articles, and the prepaid freight, cartage, postal, or express charges thereon, at the time and place, and in the manner in said agreement provided.

The effect of this was to divide the guarantee into two parts, one a guarantee for the payment of a past due debt, the other a guarantee for the payment of future advances. On the termination of this second contract the appellant claimed that Jansen still owed them $1,129.54 on the old indebtedness of $1,545.18, and brought this action against Jansen as the principal debtor and Minke and Bort as sureties, to recover the said $1,129.54. In other words, the action is brought on the guarantee for the payment of the past due debt.

The action was dismissed by the trial judge, Taylor J., and his judgment was affirmed by the Court of Appeal.

The Supreme Court of Canada, after hearing counsel for the appellant and the respondents, reserved judgment, and, on a later date, dismissed the appeal with costs.

The judgment of the court was delivered by

RINFRET J.—This is a plea of *non est factum*.

The learned trial judge, in his reasons for judgment, says:—

> I am very clear that in signing the documents these two defendants were not aware and had not called to their attention in any way the covenant under which it is suggested that they assumed liability for the past indebtedness of Jansen, and that Jansen deceived them as to the contents of the document which he asked them to sign. These two defendants could then neither read nor write anything beyond their names. Bort has since, through the assistance of his children now growing up and at school, acquired a little proficiency. But they are both men of very limited understanding, limited vocabulary, slow of perception and without education. Even could they have read or had they had the document read to them, they could not without explanation have understood its meaning or effect.

These findings were not disturbed by the Court of Appeal, although, in view of one paragraph of the defence, that court thought the respondents must be held to have known they were signing a guarantee for future advances.

On these findings, the case stands as one where a document was falsely explained to illiterate persons, and they signed it believing it to contain only what was represented to them. Under these circumstances, they were not bound

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by that portion of the document containing a liability never explained to them and indeed entirely different from that which they were told they were assuming. As to that part of it, the document cannot be taken to be their act and deed.

It follows that the respondents could not be held for the past due indebtedness of Jansen, which they never intended to—and in fact never did—guarantee. The action seeking to hold them responsible for such indebtedness was therefore rightly dismissed.

The appeal fails and must be dismissed with costs.

Appeal dismissed with costs.

F. H. McLorg for the appellant.

H. Fisher K.C. and *S. M. Clark* for the respondents.