

Mackintosh Vs. Wingrove

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Court : Kolkata

Decided On : Jun-17-1878

Reported in : (1879)ILR4Cal137

Judge : Richard Garth, C.J. and ;Markby, J.

Appellant : Mackintosh

Respondent : Wingrove

Judgement :

Richard Garth, C.J.

1. The learned Judge has somewhat misconceived the true principle of the decision in Mackintosh v. Hunt (I.L.R., 2 Cal., 202).

2. The equitable defence which formed the ground of the High Court's judgment in that case was founded upon two considerations, neither of which would have been sufficient without the other, namely:

1st.--That the bargain made by Mackintosh with the defendant Hunt was grossly extortionate, and calculated to deceive an unwary young man as to its real character; and

2ndly.--That although the other maker of the note, Norender Dutt, might have understood the nature of the transaction, it appeared that the defendant Hunt had

never even read the note, and was not aware of its true meaning.

3. If there had been nothing unfair or unreasonable in the contract itself, and the defendant had reaped the benefit of it, the fact of his not understanding its nature would have been no valid answer to the claim.

4. Or, on the other hand, however extortionate the bargain might have been, if the defendant thoroughly understood and consented to it, there would have been no ground for equitable interference.

5. It was only the concurrence of the two elements--an inequitable bargain and ignorance of the unfair nature of the transaction on the part of the defendant--which justified the Court in modifying the decree.

6. In this case the Judge finds, as a fact, that the defendant was perfectly aware of the contract which she made, and consequently the principle of *Mackintosh v. Hunt* (1.L.R., 2 Cal., 202) does not apply. If people with their eyes open choose wilfully and knowingly to enter into unconscionable bargains, the law has no right to protect them.

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