

*Privy Council Appeal No. 129 of 1927.*

Jean Horsborough Thompson - - - - - *Appellant*

*v.*

Alister Kyle Jefferson - - - - - *Respondent*

FROM

THE HIGH COURT OF AUSTRALIA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 17TH MAY, 1928.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD WRENBURY.

LORD WARRINGTON OF CLYFFE.

[*Delivered by* THE LORD CHANCELLOR.]

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In this case the appellant brought an action in the Supreme Court of New South Wales, claiming rescission and cancellation of an indenture dated the 19th June, 1924, made between the appellant and the respondent. By that indenture the respondent assigned to the appellant certain Letters Patent for an alleged invention for wire bale ties constituting a reef knot fastening.

By her statement of claim the appellant alleged that the defendant had obtained the said contract by fraud.

At the hearing before the Trial Judge, the learned Judge held that the charge of fraud completely failed. His conclusion was that the representations made by the respondent were entirely innocent and were made in the utmost good faith.

The appellant, however, contended that, even in the absence of fraud, she was entitled to rescind the indenture on the ground of innocent misrepresentation. The misrepresentation upon which she relied appears in paragraph 3 of her statement of claim in these words: "During the negotiations the defendant repre-

sented to the said Albert H. Thompson"—who was the husband of the appellant—"that the defendant was the original inventor of the said invention." That allegation was not denied in the statement of defence and therefore is admitted for the purposes of the action. Neither the appellant's husband nor the respondent was called to give evidence as to these negotiations, and consequently the only evidence before this Board as to the making of the representation is contained in the paragraph read.

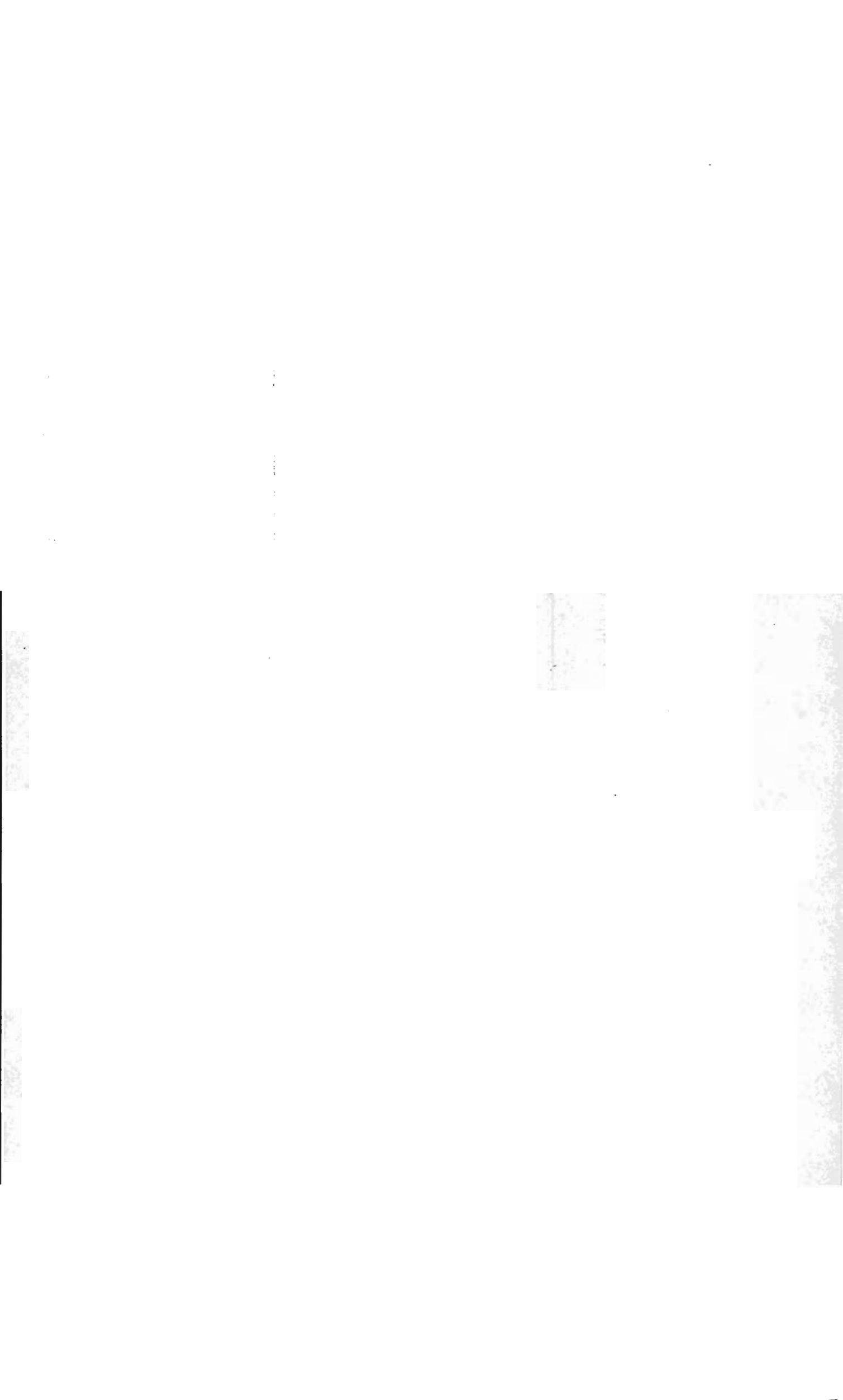
At the trial, however, the appellant herself gave evidence and she stated that her husband told her that "it"—that is, the invention—"was his own invention"—that is, the respondent's own invention. She further says that when the respondent himself came to see her, "I asked him was it his own invention, and he said yes, he had invented it."

In these circumstances it became material to consider what meaning was to be placed upon the expression in the statement of claim "that the defendant was the original inventor of the said invention." The learned Judge at the trial came to the conclusion that these words involved a representation that he was the first and true inventor of the subject matter of the Letters Patent. The High Court of Australia, reversing that decision, took the view that the words only meant that the respondent had worked out the invention himself, that it was the fruit of his own brains, and that it did not involve any representation as to the validity of the Letters Patent or as to the absence of any anticipation by other people.

In their Lordships' view the conclusion reached by the High Court of Australia is the true view to take upon the facts as proved. It was for the appellant to establish, if she could, that there had been a material misrepresentation which had induced her to enter into the contract. In their Lordships' view the statement in the statement of claim is quite consistent, to say the least of it, with the interpretation put upon the language by the High Court, and it is not disputed that, if that be the true meaning of the words, there was no untruth in the representation. It follows that there was no evidence upon which the Court could be asked properly to decide that a material misrepresentation had been made inducing the contract which was entered into and that is sufficient to dispose of the appeal.

Another point was taken, that, even assuming a misrepresentation to have been proved, it was not possible to obtain rescission of the indenture in equity after the indenture had been executed, and, therefore, the contract had been fully performed. This point was not fully argued and their Lordships express no opinion upon it; but they are not to be taken as expressing any opinion in favour of the view that this action would have been maintainable in the absence of fraud.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

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JEAN HORSBOROUGH THOMPSON

v.

ALISTER KYLE JEFFERSON.

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DELIVERED BY THE LORD CHANCELLOR.

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