

Those things are found as matters of fact, and they are placed beyond the range of dispute and controversy in the case. If that is so, what is the consequence? It is that Blenkarn was acting here just in the same way as if he had forged the signature of Blenkiron & Sons to the applications for goods, and as if, when in return the goods were forwarded, and letters were sent accompanying them, he had intercepted the goods and intercepted the letters, and had taken possession of the goods and of the letters which were addressed to and intended for, not himself, but the firm of Blenkiron & Sons. Now, stating the matter shortly in that way, I ask the question, is it possible to imagine that in that state of things any contract could have arisen between the respondents and Blenkarn? Of him they knew nothing, and of him they never thought, with him they never intended to deal. Their minds never, even for an instant of time, rested upon him, and as between him and them there was no *consensus* of mind which could lead to any agreement, or to any contract whatever. As between him and them there was merely the one side to a contract where, in order to produce a contract, two sides would be required. With the firm of Blenkiron & Sons of course there was no contract, for as to them the matter was entirely unknown, and therefore the pretence of a contract was a failure. The result, therefore, is this, that your Lordships have not here to deal with one of those cases in which there is *de facto* a contract made which may afterward be impeached and set aside on the ground of fraud; but you have to deal with a case which ranges itself under a completely different chapter of law, the case, namely, in which the contract never comes into existence. That being so, it is idle to talk of the property passing. The property remained, as it originally had been, the property of the respondents, and the title which it was attempted to give to the appellants was a title which could not be given to them. I, therefore, move your Lordships, that this appeal be dismissed with costs, and the judgment of the Court of Appeal be affirmed.

Lord HATHERLEY.—My Lords, I have come to the same conclusion as that which has just been expressed by my noble and learned friend on the woolsack. The real question we have to consider here is this, whether or not any con-

tract was actually entered into between the respondents and a person named Alfred Blenkarn, who imposed upon them in the manner described by the verdict of the jury: the case that was tried being one as between the alleged vendors and a person who had purchased from Alfred Blenkarn. Now the case is simply this, as put by the learned judge in the court below; it was most carefully stated as we might expect it would be by that learned judge: "Is it made out to your satisfaction that Alfred Blenkarn, with a fraudulent intent to induce customers generally, and Mr. Thomson in particular, to give him the credit of the good character which belonged to William Blenkiron & Sons, wrote those letters in the way you have heard, and had those invoices headed as you have heard? And further than that, did he actually by that fraud induce Mr. Thomson to send the goods to 37 Wood Street?" Both these questions were answered in the affirmative by the jury. What then was the result? It was that there were letters written by a man endeavoring by contrivance and fraud, as appears upon the face of the letters themselves, to obtain the credit of the well-known firm of Blenkiron & Sons, Wood street. This was done by a falsification of the signature of the Blenkirons, writing his own name in such a manner as that it appeared to represent the signature of that firm. And, further, his letters and invoices were headed "Wood street," which was not an accurate way of heading them, for he occupied only a room on a third floor, looking into Little Love lane on one side, and into Wood street on the other. He headed them in that way in order that by these two devices he might represent himself to the respondents as Blenkiron of Wood street. He did that purposely; and it is found that he induced the respondents by that device to send the goods to Blenkiron of Wood street. I apprehend, therefore, that if there could be said to have been any sale at all, it failed for want of a purchaser. The sale, if made out upon such a transaction as this, would have been a sale to the Blenkirons of Wood street, if they had chosen to adopt it, and to no other person whatever; not to this Alfred Blenkarn, with whom the respondents had not, and with whom they did not wish to have, any dealings whatever. It appears to me that this brings the case completely within