

The judgment of the Court (BOYD, C., STREET, J., IDINGTON, J.), was delivered by

BOYD, C.—The evidence, to my mind, disproves any intelligent execution of the discharge by plaintiff. Defendant procured it to be drawn by the local conveyancer, Davidson, and he himself could not read it, and he says that having the discharge thus drawn in his pocket he did not understand it. The doctor (in attendance on plaintiff, who was old and bed-ridden) says he heard nothing of it before, and when it was produced it was the first document of that kind that he had ever seen, and that it seemed partly a mystery to him. It was apparently read over at full length by the doctor to the old man, and, without a word of explanation asked or given, was then signed. Confessedly it did not represent the real agreement as deposed to by defendant, for part of the money was still to be paid on the mortgage, though it was to be discharged. But that this was the real agreement depends entirely on the contradicted testimony of defendant. Whatever the real agreement was, it was not provided for in any manner at the time this absolute discharge was signed. This discharge should, for this reason, in all the circumstances, be set aside as not representing the real transaction, and there is no evidence by which it can be rectified. The old man was not in a condition to give away this much money secured by mortgage without having some sort of protection to see that he was being fairly dealt with. . . .

There was prompt repudiation by plaintiff on his becoming thoroughly aware of what had happened. The evidence repels the notice that plaintiff was of generous disposition, and shews that it would be unlikely that he should make such a present of hundreds of dollars during his life—whatever he might do by will. . . .

Altogether I agree with the views and conclusions of the trial Judge. . . .

The mortgage will stand for the balance due after crediting the payment on 10th March, and plaintiff disclaims seeking to retain any personal remedy against the original mortgagor.

Judgment affirmed with costs.