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*REVIEW OF CURRENT ENGLISH CASES.*

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DEED—MISREPRESENTATION AS TO CONTENTS—PLEA OF NON EST FACTUM.

*Howatson v. Webb* (1908) 1 Ch. 1. It is not surprising to find that the judgment of Warrington, J., (1907) 1 Ch. 537 (noted ante, vol. 43, p. 441) has been affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Farwell, L.JJ.). The case turns upon a defence of non est factum set up in the following circumstances. The defendant was formerly a managing clerk to one Hooper, a solicitor, and acted as Hooper's nominee in a building speculation, and certain lands were conveyed to him as such nominee. Shortly after leaving Hooper's employment Hooper requested him to execute certain deeds, and on his asking what they were, he was told they were deeds transferring the lands above referred to, and without further inquiry he executed the deeds. One of the deeds turned out to be a mortgage in favour of the plaintiff and contained a covenant by the defendant for payment of the mortgage debt, to enforce which the present action was brought. The defendant set up that the mortgage was not his deed by reason of the misrepresentation of Hooper; but the Court of Appeal agreed with Warrington, J., that the misrepresentation being only as to the contents of a deed known by the defendant to deal with the property, the defence failed. Farwell, L.J., suggests that the old cases on the effect of misrepresentation as to the contents of a deed were based on the illiterate character of the persons to whom the deed was presented for execution, and that an illiterate person was treated as a blind man, and doubts whether in the present day an educated person, who is not blind, is not estopped from setting up non est factum against a person who innocently acts upon the faith of the deed being valid. With which suggestion the Master of the Rolls concurred. The appellants contended that though the conveyance of the land might be valid, yet that the covenant to pay was not a necessary part of the mortgage and the defence of non est factum was separable and was valid as to that, but this contention failed.