[HIGH COURT OF AUSTRALIA.]

GRACE BROTHERS LIMITED . . . . APPELLANT;
PLAINTIFF,

AND

LAWSON . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1922.

SYDNEY, *Dec.* 1.

Knox C.J., Isaacs and Gavan Duffy JJ.

Bailment—Goods stored for reward—Delivery by bailee to auctioneer—Sale by auctioneer—Delivery and sale procured by fraud of third person—Rights of bailee against auctioneer—Conversion—Money had and received.

The owner of certain furniture sent it to the plaintiff's warehouse for storage for reward. Shortly afterwards a person, falsely representing himself to be the owner of the furniture, instructed the defendant, an auctioneer, to sell the furniture, which, he said, would be sent by the plaintiff to the defendant's auction rooms. Afterwards the plaintiff, acting upon the fraudulent representations of one of its employees, sent the furniture, in respect of which all charges for storage had been paid, to the defendant's auction rooms under such circumstances as to raise an implication that the plaintiff had no further interest in the furniture and that the defendant should account to the owner for it. The defendant sold the furniture and paid the purchase-money to the person who had falsely represented himself to be, and whom the defendant still believed to be, the owner.

Held, that the plaintiff could not maintain an action against the defendant either for conversion or for money had and received.

Decision of the Supreme Court of New South Wales: *Grace Bros.* v. *Lawson*, (1922) 22 S.R. (N.S.W.), 460, affirmed.

APPEAL from the Supreme Court of New South Wales.

On 4th June 1920 Dr. Sydney Dodds sent to Grace Bros. Ltd., to be stored for reward, certain furniture. Later in the same month

a person, falsely representing himself to be Dr. Dodds, went to James Robert Lawson, an auctioneer, and gave him instructions for the sale by auction of furniture which, he said, would be sent to Lawson by Grace Bros. Ltd. On 29th June one Sweeney, an employee of Grace Bros. Ltd. employed in the storage department of that company, by means of certain fraudulent entries in a time-sheet induced the company to send the furniture of Dr. Dodds to Lawson. At that time all the charges for the storage of the furniture had been paid. The company had frequently sent furniture to Lawson to be sold, and according to the ordinary course of business, when furniture upon which all charges were paid was sent without any special instructions, Lawson would deal with it according to the directions of the owner. Accordingly when Lawson received the furniture of Dr. Dodds he sold it by auction and paid the proceeds of the sale to the person who had falsely represented himself to be, and whom Lawson still believed to be, Dr. Dodds. Subsequently Dr. Dodds brought an action against Grace Bros. Ltd. for conversion of the furniture, and recovered judgment for £465. Grace Bros. Ltd. then brought the present action in the Supreme Court against Lawson for conversion of the furniture, claiming £622 19s. 7d. damages. The action was heard before *Ferguson* J. and a jury. At the hearing the declaration was, by consent, amended by adding a count for money had and received. At the close of the plaintiff's case an application by the defendant for a nonsuit was refused, and, the defendant having called no evidence, the jury, having found in answer to questions put to them that (*inter alia*) the furniture in question was the property of Dr. Dodds, by direction of the learned Judge gave a verdict for the plaintiff for £573 9s. 7d. The defendant thereupon moved before the Full Court for an order that a verdict be entered for the defendant or that a new trial be granted; and the Full Court upon that motion ordered that the verdict should be set aside and a nonsuit entered: *Grace Bros.* v. *Lawson* (1).

From that decision the plaintiff now appealed to the High Court.

Alec Thomson K.C. and *Sheridan*, for the appellant. Assuming

(1) (1922) 22 S.R. (N.S.W.), 460.

H. C. OF A. 1922.

GRACE BROS. LTD. v. LAWSON.

that the furniture when delivered to the respondent was lawfully in his possession, he owed some duty to the appellant in respect of it. If the respondent became a sub-bailee it was upon the terms that he should only deal with the furniture as directed by the true owner, and, if within a reasonable time he got no instructions from the true owner, then that he should return it to the appellant. If while the furniture was in the possession of the respondent the appellant had discovered the fraud, the respondent would have been bound to return it on demand, and if after the furniture was sold and while the proceeds of the sale were in the respondent's hands the fraud had been discovered, the respondent would have been bound to pay those proceeds to the appellant. The fact that the proceeds had been paid away to a person who was not the true owner can make no difference in the obligations of the respondent. If there was no contractual duty upon the respondent he is liable in conversion. When the appellant parted with the possession of the furniture it still remained a bailee and retained the right to possession upon which it could maintain an action for conversion. [Counsel referred to *Jelks* v. *Hayward* (1).]

[KNOX C.J. referred to *Hollins* v. *Fowler* (2).

[ISAACS J. referred to *Lancashire and Yorkshire Railway* v. *MacNicoll* (3); *Van Oppen & Co.* v. *Tredegars Ltd.* (4).]

Leverrier K.C. and *Collins*, for the respondent, were not called upon.

KNOX C.J. In my opinion this appeal must be dismissed. The position between the plaintiff and the defendant appears to be that the plaintiff, no doubt on a mistaken view as to the identity of a certain person or by reason of some fraud practised on it, delivered to the defendant a quantity of furniture without in fact giving him any instructions as to it. The previous course of dealing between the parties raised an implication that as far as the plaintiff was concerned it had no interest in the furniture or concern as to what was done with it. That would not, of course, be any protection to the

(1) (1905) 2 K.B., 460.
(2) (1874) L.R. 7 H.L., 757.
(3) (1918) 88 L.J. K.B., 601.
(4) (1921) 37 T.L.R., 504.

defendant as against the true owner of the furniture in respect of any dealing with it by the defendant; but that is a matter which does not arise in the present case. The furniture having been sold by the defendant on the instructions, presumably, of the person who committed the fraud, the true owner made a claim upon the plaintiff which it could not resist. Having satisfied that claim, the plaintiff endeavoured in this action to recoup its loss from the defendant. The case is put in two ways: The plaintiff says that the defendant was guilty of conversion of the furniture, and it also sues for the proceeds of the sale of the furniture as money had and received. The question upon the first count must depend upon whether as against the plaintiff the defendant did wrongfully convert the goods. In my opinion the plaintiff cannot succeed on the count for conversion because when the plaintiff handed the furniture to the defendant it in effect told him that it was no concern of the plaintiff what he did with it. The intention of the plaintiff no doubt was that the defendant should deal with the furniture in accordance with the instructions of the person whom the plaintiff believed to be the true owner. However that may be, the plaintiff voluntarily handed over the furniture to the defendant and in effect intimated to the defendant that it had no further interest in it. In these circumstances, nothing having intervened, the mistake not having been discovered and no demand having been made by the plaintiff before the sale for the return of the furniture, I do not see how any claim can be maintained against the defendant on the ground of conversion.

The alternative claim for money had and received, in my opinion, also fails. The plaintiff did not intend to and did not in fact either authorize the defendant to sell the furniture or enter into any contractual relation whatever with him. The defendant sold the furniture and received the proceeds of sale, not on behalf of the plaintiff, but on behalf of the person who gave him instructions and was believed by him to be the true owner of the furniture. What rights the plaintiff might have had if demand had been made on the defendant for the furniture before he sold it or for the proceeds of sale before he parted with them, it is not necessary to consider, for no such demand was made.

H. C. OF A. 1922.

GRACE BROS. LTD. v. LAWSON.

Isaacs J.

In my opinion the Supreme Court was right in entering a nonsuit, and the appeal should be dismissed.

ISAACS J. I agree that this appeal ought to be dismissed. This case does not depend upon whether the respondent had mediately or immediately authority of the true owner of the goods to sell them or of the true owner of the money to dispose of it. The goods belonged to Dodds, and, if he had sued Lawson for their conversion, there would have been no answer. Similarly, if he had waived the tort and claimed the proceeds from Lawson, there would have been no answer. Dodds, however, sues Grace Bros. for conversion and recovered damages, not recognizing either the delivery to Lawson or the sale by Lawson. The rights of the present parties then must depend entirely on their mutual relations. Admittedly those relations did not constitute a lawful authority to sell or otherwise dispose of the goods or their proceeds. But they did constitute a representation of such lawful authority. The representation, on the uncontroverted facts, was that Grace Bros., having in their possession certain goods belonging to one S. Dodds, had been directed by him to end their possession of the goods by handing them over to Lawson at his auction rooms, and that Lawson was to account to Dodds only for them, Grace Bros.' connection having terminated. If Lawson had retained the goods or if having sold them he had retained the money, then, if Grace Bros. on discovering their error had redemanded the goods or their proceeds, I entertain no doubt Lawson would have been bound to restore what he had, less any expense he had incurred in the meantime. But Lawson having *bonâ fide* acted on the representation, while it was a live representation unwithdrawn and unqualified, that Grace Bros. had no further connection with the goods and that therefore Lawson must take the risk of ascertaining and dealing with the true owner, he is not to be prejudiced by their tardy discovery of the mistake they had led him into. The whole point of the case is that they had represented to him, not that unless he dealt with the true owner he was to account to them, but that, they having in fact the full authority of the true owner to hand him the goods, it was the true owner and

not they in any circumstances to whom Lawson was to be accountable, he being left to find the true owner.

The case falls directly within the words of Lord *Shand*, speaking for the Privy Council in *Sarat Chunder Dey* v. *Gopal Chunder Laha* (1): "The law of this country gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself, or must have acted with an intention to mislead or deceive." His Lordship then states that what the law mainly regards is "the position of the person who was induced to act; and the principle on which the law" rests "is, that it would be most inequitable and unjust to him that if another, by a representation made, or by conduct amounting to a representation, has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it."

Now, when Lawson was in effect left to take the risk of finding the true owner, and he *bonâ fide* and without negligence did so, how can Grace Bros. go back on that? In my opinion they are precluded from denying the truth of the representation, completely and *bonâ fide* acted on while it lasted, that the true owner had authorized the transfer of the possession of the goods from them to Lawson to be accounted for to the true owner.

GAVAN DUFFY J. I agree that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Laurence & Laurence.*
Solicitor for the respondent, *S. M. Stephens.*

B. L.

(1) (1892) L.R. 19 Ind. App., 203, at pp. 215-216.