[HIGH COURT OF AUSTRALIA.]

FISHER . . . . . APPELLANT;
DEFENDANT,

AND

THE AUTOMOBILE FINANCE COMPANY OF AUSTRALIA LIMITED . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Oct.* 16, 17; *Nov.* 1.

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

Lien—Artificer's lien—Motor vehicle let on hire-purchase agreement—Hirer in possession with owner's consent—Determination of hiring—Hirer having repairs effected—Whether artificer's lien arises in favour of person executing repairs.

An artificer's lien arises only when the work in respect of which the charges arose has been done by the order or at the request of the owner or of some person authorized by him.

Cassils & Co. and Sassoon & Co. v. *Holden Wood Bleaching Co.*, (1915) 84 L.J. K.B. 834; 112 L.T. 373, and *Pennington* v. *Reliance Motor Works Ltd.*, (1923) 1 K.B. 127, applied.

B. entered into a hire-purchase agreement with the plaintiff for the hire of a motor-truck. It was provided by the agreement that the hirer, B., should not be deemed to have any authority to pledge the owner's credit for any repairs to the truck or to create a lien thereon in respect of such repairs, and that the hirer should be deemed not to have any property in the truck except as a bailee. B. (who had made default in payment of an instalment due on 19th June 1927, and had thereby determined the hiring) left the truck with the defendant on 21st June 1927 for the purpose of repair, and the repairs were forthwith executed. The plaintiff claimed possession of the truck from the defendant, who refused to surrender possession until the lien which he alleged

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arose in respect of the repairs executed by him had been extinguished. In an action for conversion or, alternatively, for the detention of the truck by the defendant,

Held, that no right of lien arose in favour of the defendant.

Decision of the Supreme Court of Victoria (Full Court): *Automobile Finance Co. of Australia Ltd.* v. *Fisher*, (1928) V.L.R. 131; 49 A.L.T. 181, affirmed.

APPEAL from the Supreme Court of Victoria.

The respondent, the Automobile Finance Co. of Australia Ltd., brought an action in the County Court at Melbourne against the appellant, Joseph Fisher, trading as J. Fisher & Co., claiming £110 as damages for the conversion or, alternatively, for the detention of a Chevrolet motor-truck by the defendant.

On 17th May 1927 one William Brander wished to purchase on terms the motor-truck in question from Quality Cars Pty. Ltd., which was at that time the owner of the truck. The secretary of Quality Cars Pty. Ltd. thereupon rang up the secretary of the plaintiff Company, who told him the terms upon which the plaintiff would finance the transaction. These terms were communicated to Brander, who agreed to accept them. Quality Cars Pty. Ltd. thereupon verbally sold the motor-truck to the plaintiff for £92 10s. and received £92 10s. from the plaintiff. Brander signed a memorandum of sale dated 17th May 1927, which commenced: "I (hereinafter called the purchaser) William Brander, 42 Liverpool Street, North Fitzroy, hereby agree to purchase and Quality Cars Pty. Ltd. . . . hereby agree to sell Chevrolet secondhand truck reg. No. for the sum of £85—insurance £7 10s.—on the following terms." Certain terms were then set out. On 19th May 1927 Brander executed a hire-purchase agreement in which the plaintiff was recited as being the "owner" of the motor-truck and Brander was described as the "hirer," whereby he agreed to hire the motor-truck in question from the plaintiff; and, after having paid a deposit to the plaintiff, to pay to the owner as rent upon the dates set out in the second schedule the sums set out opposite such dates, and covenanted throughout the term of the agreement "at his own expense . . . to keep the motor vehicle in good order and condition." He also agreed therein that "the hirer shall not have or be deemed to have

any authority to pledge the owner's credit for any repairs to the said motor vehicle or to create a lien thereon in respect of such repairs or in respect of any other matter, but if the said motor vehicle shall be required to be repaired the hirer shall allow the owner's nominee to execute the repairs at the hirer's expense and the owner shall be entitled to possession of the said motor vehicle for such purpose." By the hire-purchase agreement it was also provided that if the hirer made default in payment of any instalment, the hiring should immediately determine, and that the hirer was to be deemed not to have any property or interest in the motor-truck except as a bailee. Brander and Quality Cars Pty. Ltd., by its secretary, also signed a document addressed to the plaintiff, dated 19th May 1927, headed "Proposal form for hire-purchase," which contained certain representations by Brander and certain warranties as to the ownership of the car and the suitability of the proposed purchaser by Quality Cars Pty. Ltd.

The hirer, Brander, who had made default in payment of an instalment due on 19th June 1927, left the motor-truck with the defendant on or about 21st June for the purpose of repair, and the repairs were forthwith executed. The defendant's answers to the plaintiff's interrogatories proved that the defendant obtained possession of the motor-truck on or about 21st June from Brander, and still had possession of it; that Brander requested the defendant to do what was necessary to put the truck into good repair; that the defendant received a letter from the plaintiff's solicitor dated 2nd August 1927 demanding possession of the truck; that the defendant refused to deliver up the truck until his lien for such repairs was extinguished; and that the value of the truck was £90.

In the County Court judgment was given for the defendant with costs to be taxed.

From this decision the plaintiff appealed to the Full Court of the Supreme Court of Victoria. That Court allowed the appeal with costs, and ordered that the judgment of the County Court should be set aside and that in lieu thereof judgment should be entered for the plaintiff with costs, and that the motor-truck in question should be delivered by the defendant to the plaintiff or, alternatively,

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that the defendant should pay to the plaintiff the value of the truck, namely, £85 : *Automobile Finance Co. of Australia Ltd.* v. *Fisher* (1).

From that decision the defendant now, by special leave, appealed to the High Court.

Owen Dixon K.C. and *Ashkanasy*, for the appellant. The transaction, which was embodied in two or three documents, constituted a bill of sale, which, not being registered, was void. The transaction was in reality that Quality Cars Pty. Ltd., being the owner, offered to transfer the property in the truck to the plaintiff Company on condition that the plaintiff paid £92 10s. to Quality Cars Pty. Ltd. and entered into a hire-purchase agreement with Brander. The hire-purchase agreement gave the plaintiff a right to take the truck from Brander on non-payment of the money. The history of the legislation contained in Part VI. of the *Instruments Act* 1915, as amended by Act No. 2857 of 1916, is as follows :—The first Act in Victoria was the *Instruments and Securities Act* of 1862 (No. 141), which was amended by Act No. 204. "*Service's Act*," which was passed in 1876 (No. 557), was held to relate only to bills of sale given by way of security (*Askew* v. *Danby* (2) ; *M'Carthy* v. *Nicholls* (3), where *dBeckett* J. indicated the differences between the two Acts). The construction to be given to the consolidated *Instruments Act* 1890 is indicated in *Askew* v. *Danby*.

[HIGGINS J. referred to *Bank of Victoria Ltd.* v. *Langlands Foundry Co.* (4).]

The relevant provisions are now contained in the *Instruments Act* 1915, Part VI., secs. 128 and 129, as amended by the *Instruments Act* 1916 (No. 2857). The two documents of 19th May 1927, namely, the hire-purchase agreement and the proposal form for the hire-purchase, together constitute one transaction, which amounts to a bill of sale—the assurance of the chattel being from the dealer, Quality Cars Pty. Ltd., to the plaintiff. The proposal form for the hire-purchase constitutes an offer by the dealer that the property

(1) (1928) V.L.R. 131; 49 A.L.T. 181.
(2) (1892) 18 V.L.R. 335; 13 A.L.T. 255.
(3) (1887) 8 A.L.T. 180.
(4) (1898) 24 V.L.R. 230; 20 A.L.T. 71.

should be transferred to the plaintiff for the purpose of hiring it to Brander. When the plaintiff accepted that offer by executing the hire-purchase agreement, there was an assurance of the truck constituted by the two documents whereby the plaintiff had power to take possession of property comprised in a bill of sale (*Instruments Act* 1915, sec. 127).

[GAVAN DUFFY J. Does this not come under the words " ordinary course of business " ?]

The words " ordinary course of business " relate to the general methods of the trade or calling, not to the ordinary business of the particular trader. It is not in the ordinary course of the calling of selling motors to pass the property to a finance company (*Tennant, Sons & Co.* v. *Howatson* (1)).

[ISAACS J. referred to *In re Hamilton Young & Co.*; *Ex parte Carter* (2), and *Dublin City Distillery Ltd.* v. *Doherty* (3).]

Alternatively, the transaction is in substance a security given by Quality Cars Pty. Ltd. over their property to be enforced if Brander should make default. In substance Quality Cars Pty. Ltd. says to the plaintiff that the latter may take from the former's customer an agreement which gives the plaintiff a right to take the truck belonging to Quality Cars Pty. Ltd. if default is made by the proposed purchaser (*Maas* v. *Pepper* (4)). The plaintiff thus obtained a licence to take possession of a chattel, and therefore the transaction constitutes a bill of sale (*Australian Metropolitan Life Assurance Co.* v. *Lea* (5); *Beckett* v. *Tower Assets Co.* (6)).

[ISAACS J. referred to *Johnson* v. *Rees* (7).

[STARKE J. referred to *McEntire* v. *Crossley Bros.* (8).]

If the documents effect a transfer, there is a bill of sale; if they do not, Quality Cars Pty. Ltd. retains the property: but in each case the transaction constitutes a bill of sale. If the Court looks beyond the documents, it is clear that the substance of the transaction does not involve a transfer to the plaintiff. That result was not intended: it was only intended that the plaintiff should get a hire-purchase agreement from Brander.

(1) (1888) 13 App. Cas. 489, at p. 493.
(2) (1905) 2 K.B. 772, at p. 787.
(3) (1914) A.C. 823, at p. 852.
(4) (1905) A.C. 102; (1902) 1 K.B. 137.
(5) (1928) V.L.R. 29; 49 A.L.T. 124.
(6) (1891) 1 Q.B. 638.
(7) (1915) 84 L.J. K.B. 1276.
(8) (1895) A.C. 457.

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The defendant had a lien over the truck in respect of the work which he had done upon it. Assuming that the general property in the truck is in the plaintiff, a lien arises for the work done in the circumstances of this case. Where the true owner put the truck into the hands of a bailee for his use extending over a considerable period of time, the person in possession has a necessary authority to put the chattel into the possession of a third person to have it repaired by him, and that authority is uncontrollable by a special agreement unknown to the repairer (*Williams* v. *Allsup* (1)). The right to create the lien rests on ostensible authority rather than upon ostensible ownership (*Singer Manufacturing Co.* v. *London and South-Western Railway Co.* (2) ; *Keene* v. *Thomas* (3) ; *Jowitt & Sons* v. *Union Cold Storage Co.* (4) ; *Cassils & Co. and Sasoon & Co.* v. *Holden Wood Bleaching Co.* (5) ; *Green* v. *All Motors Ltd.* (6) ; *Pennington* v. *Reliance Motor Works Ltd.* (7) ; *Albemarle Supply Co.* v. *Hind & Co.* (8)). The agreement between the parties is of importance only to show that the owner has assented to the user, and so assented to a position which imports authority. Full continuous user with the assent of the owner constitutes an authority. When the owner of a chattel puts another in uncontrolled use of a chattel he assents to a position which may induce others to act accordingly, and in such an event the owner will be bound (*Commonwealth Trust Ltd.* v. *Akotey* (9)) *Albemarle Supply Co.* v. *Hind & Co.* was decided by the Court of Appeal, and was followed in *Moyes* v. *Magnus Motors Ltd.* (10). This Court should follow a decision of the Court of Appeal (*Sexton* v. *Horton* (11)).

[ISAACS J. referred to *Robins* v. *National Trust Co.* (12).]

Robert Menzies (with him *Gamble*), for the respondent. This case is not affected by the bills of sale legislation. The answer to the contention that the present transaction constitutes a bill of sale is made by the Full Court. The evidence establishes a verbal sale by

(1) (1861) 10 C.B. (N.S.) 417 ; 30 L.J. C.P. 353.
(2) (1894) 1 Q.B. 833.
(3) (1905) 1 K.B. 136.
(4) (1913) 3 K.B. 1.
(5) (1915) 84 L.J. K.B. 834 ; 112 L.T. 373.
(6) (1917) 1 K.B. 625.
(7) (1923) 1 K.B. 127.
(8) (1928) 1 K.B. 307 ; (1927) 43 T.L.R. 652.
(9) (1926) A.C. 72.
(10) (1927) N.Z.L.R. 906.
(11) (1926) 38 C.L.R. 240, at p. 244.
(12) (1927) A.C. 515.

Quality Cars Pty. Ltd. to the plaintiff before any other arrangement is made. There is, therefore, no document to register. [On this point counsel was stopped.]

No right of lien arose in this case. The reasoning of the Full Court on this point is correct. In the *Albemarle Co.'s Case* (1) the Court of Appeal wrongly applied the principles of law applicable, and this Court should not feel constrained to follow any other Court into error in the application of well-known rules. Alternatively, the present case is distinguishable from the *Albemarle Co.'s Case* on the grounds indicated by *Mann* J. In all the cases cited for the appellant there was possession remaining in the person against whom the lien arose. The Courts have adhered consistently to the principle that authority must be shown in the person who gets the work done in order that a lien may arise. The authority may be express or implied, or may arise by estoppel. There is also the case of the common law lien of carriers or innkeepers (*Buxton* v. *Baughan* (2)).

[HIGGINS J. What do you say as to the judgment of the Full Court giving you a better car, in consequence of its having been repaired ?

[STARKE J. referred to *Forman & Co. Pty.* v. *The Ship Liddesdale* (3).]

The question as to the plaintiff obtaining an improved car is not to be considered, and it should not be assumed that the car was in fact improved by repair ; even if it has been so improved no lien arises (*Associated Motors Ltd.* v. *Hawke & Co.* (4)). This Court should not, in any event, send the case back for a new trial. There might have been a nonsuit, but the parties have elected to conduct the proceedings in a certain way and are bound by their conduct.

Ashkanasy, in reply. Where the use of a chattel almost necessarily involves repairs, the right to use carries implied authority to have repairs executed.

Cur. adv. vult.

(1) (1928) 1 K.B. 307 ; (1927) 43 T.L.R. 652.
(2) (1834) 6 C. & P. 674.
(3) (1900) A.C. 190.
(4) (1924) 24 S.R. (N.S.W.) 592.

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The following written judgments were delivered :—

KNOX C.J., GAVAN DUFFY AND STARKE JJ. The Supreme Court of Victoria held that the plaintiff was not entitled to an artificer's lien. The rule of law is that an artificer's lien arises only when "the work in respect of which the charges arose was done by the order or at the request of the owner or some person authorized by him" (*Cassils & Co. and Sassoon & Co.* v. *Holden Wood Bleaching Co.* (1); *Pennington* v. *Reliance Motor Works Ltd.* (2); *Hall on Possessory Liens*, p. 57). *Keene* v. *Thomas* (3), *Green* v. *All Motors Ltd.* (4) and *Albemarle Supply Co.* v. *Hind & Co.* (5) are all cases in which such an authority was inferred. The learned Judges of the Supreme Court declined to draw any such inference in the circumstances of the present case, and, in our opinion, they were right.

ISAACS J. Two questions have been argued. The first is as to whether the transaction amounted to a bill of sale. The answer is that upon the uncontroverted evidence the respondent purchased the vehicle by an oral contract, and it paid the full price. It then assumed the position of owner, with the consent of the former owner, by entering into a written hire-purchase contract by which it let the vehicle to Brander, with an option of purchase. The second is whether, in the circumstances, the appellant has a lien. I must confess I should be very glad to see some way, consistently with law, of supporting his claim to be paid. It is admitted that he has charged only a reasonable price for the repairs he did to the appellant's car, and it is not suggested that he in any way acted improperly. I should like to quote the words of *Pickford* L.J. in *Cassils' Case* (6) on this subject. The learned Lord Justice said: "One does rather regret of course that these persons should not have a remedy for the work which they have done. I should think in practice probably there would not be very much difficulty, because with firms of the standing of those concerned in this action probably, if it were fair, the work would be paid for." *Pickford* L.J., however, felt constrained to hold that there was no legal right.

(1) (1915) 112 L.T. 373
(2) (1923) 1 K.B. 127.
(3) (1905) 1 K.B. 136.
(4) (1917) 1 K.B. 625.
(5) (1928) 1 K.B. 307.
(6) (1915) 84 L.J. K.B., at p. 847.

That is my position here. It would be easy to state at once the proposition of law which is decisive of the matter. But the question has been argued with fulness and ability, and I think I should state with a little particularity how I arrive at the result.

It is, perhaps, convenient to begin with one view presented towards the end of the argument, based on *Akotey's Case* (1), namely, that the innocent third person should not suffer. That is the only ground of estoppel suggested. It is remarkable that nearly two hundred years ago, in what is perhaps a fundamental case on this point of lien, precisely the same argument was advanced and without success. In *Hartop* v. *Hoare* (2) the question was whether there was a right to retain jewels entrusted by the plaintiff to one Seamer, who deceived the plaintiff and raised money upon them. At p. 47 reference is made to the principle just stated. The answer of *Lee* C.J. was "the plaintiff here gave no power to Seamer to do the act in which the deceit was, but on the contrary hath used a prudent method to prevent it." That case may be taken to lay down in 1743 the principle that the general rule is that no lien exists over the goods of the owner for the debt of another person. The later cases support this, and establish the proposition that the goods of a person other than the debtor are not bound unless the owner expressly, impliedly or ostensibly authorizes the debtor to create either the lien contractually, or the relation which by law involves a lien. I use the word "relation" because Lord *Westbury* in *In re Leith's Estate*; *Chambers* v. *Davidson* (3) speaks of "a mercantile relation, which might involve a lien." I employ the term to indicate the entrusting of the property by the debtor to the bailee for the purpose of expending money, labour or service upon or in respect of it, the act which attracts a lien by implication of law. In *Falcke* v. *Scottish Imperial Insurance Co.* (4) *Bowen* L.J. says:—"The general principle is, beyond all question, that work and labour done or money expended by one man to preserve or benefit the property of another do not according to English law create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the expenditure. Liabilities

(1) (1926) A.C., at p. 76.
(2) (1743) 3 Atk. 43.
(3) (1866) L.R. 1 P.C. 296, at p. 305.
(4) (1886) 34 Ch. D. 234, at p. 248.

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Isaacs J.

are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will." If there is direct authority from the owner, *cadit quæstio*. But, if not, we then go to *Cassils' Case* (1), where *Buckley* L.J. (as he then was) speaks of the case where, as between the owner of the goods and an intermediate person who passes on the goods to a third party, there is an implied authority in the intermediary to bind his principal in respect of *the manner in which the goods are dealt with*. Of this, *Keene's Case* (2) and the *Singer Manufacturing Co.'s Case* (3) are given as illustrations. No doubt, on general principles of law, if the owner by any act clothes the debtor with apparent authority and allows him thus to go out into the world, then, in favour of any person who was induced thereby bona fide to act upon such apparent authority, that would be treated as the real authority (*Cole* v. *North-Western Bank* (4)). But the mere entrusting a person with property is not enough. *Lee* C.J. said so in 1743. Lord *Lindley* said as much in 1902, in *Farquharson Bros. & Co.* v. *King & Co.* (5). There must be something more in the owner's conduct, something which a reasonable man in his situation ought to anticipate might mislead (see *R. E. Jones Ltd.* v. *Waring & Gillow Ltd.* (6)). Lord *Herschell* in *London Joint Stock Bank* v. *Simmons* (7) states the position (except as to negotiable instruments) in these words: —" The general rule of the law is, that where a person has obtained the property of another from one who is dealing with it without the authority of the true owner, no title is acquired as against that owner, even though full value be given, and the property be taken in the belief that an unquestionable title thereto is being obtained, unless the person taking it can show that the true owner has so acted as to mislead him into the belief that the person dealing with the property had authority to do so. If this can be shown, a good title is acquired by personal estoppel against the true owner." It is at this point that in my opinion the *Albemarle Co.'s Case* (8) comes into play. The company there let three taxi-cabs to Botfield, the first in 1921 and the last in 1923. He kept them in Hind's

(1) (1915) 84 L.J. K.B., at p. 840.
(2) (1905) 1 K.B. 136.
(3) (1894) 1 Q.B. 833.
(4) (1875) L.R. 10 C.P. 354.
(5) (1902) A.C. 325, at p. 342.
(6) (1926) A.C. 670.
(7) (1892) A.C. 201, at p. 215.
(8) (1928) 1 K.B. 307.

garage. Hind's attended to the cabs regularly for years, and were paid by Botfield weekly up to May 1924, when he fell into arrear. In May 1925 the company claimed the cabs, and Hind's claimed a lien for balance of account due from Botfield. It is inconceivable to me that the learned members of the Court of Appeal did not regard the long continued practice of Botfield, apparently sanctioned by the owner (because there was no interference) was bona fide acted on by Hind's, and was in the circumstances to be taken as the real authority. I think it is implied in the judgment of Lord *Hanworth* M.R. It is, in my opinion, distinctly visible in that of *Scrutton* L.J. (1). Although Hind's knew there were hire-purchase agreements, which displaced any notion of Botfield's *ownership*, yet that fact, in the opinion of the Court, did not displace Hind's right, based on apparent *authority*, because so far, it was in the circumstances as they appeared, more consistent with the owner's authority to do what Botfield did, namely, create the necessary relation, which by force of law and not by any additional personal contract of Botfield, would involve a lien, than that so long and so openly Botfield was exceeding his authority. To displace that right, not merely the existence, but knowledge of the limitation was necessary. In short, I understand the *Albemarle Co.'s Case* as primarily founded on apparent authority, this not being displaced by knowledge of the undisclosed limitation. So understood, it is in line with all other cases on the subject. Otherwise it would be discordant with *Cassils' Case* (2), and that case is indubitably right.

The appeal should be dismissed.

HIGGINS J. We have already intimated that, in our opinion, there is no substance in the contention that the plaintiff Company did not acquire title to the motor-truck by purchase. The *Bills of Sale Acts* have nothing to do with the position; for there was no bill of sale, there was no document to register. The evidence of Marchant, secretary of the Quality Cars Ltd., admitted without objection or cross-examination, was as follows: "We sold the Chevrolet one-ton truck verbally to the plaintiff Company for £92 10s., and we received the £92 10s. from the plaintiff Company."

(1) (1928) 1 K.B. at p. 316 (top), p. 317 (foot), and p. 318.
(2) (1915) 84 L.J. K.B. 834.

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The property in the truck being vested in the plaintiff, the rest of the case, as to lien for repairs, is merely an application of the principle *Nemo dat quod non habet, nemo plus juris in alium transferre potest quam ipse habet.* With certain definite exceptions, such as sale in market overt, transfer of negotiable instruments, &c., no one can give title to an article to which he has no title himself; and no one except the owner can diminish the property of the owner in part, as by conferring a right of lien. I understand from the book of Professor *Sheldon Amos* on the *Civil Law of Rome* (p. 153) that, under the Roman law also, one who has his debts secured by a contract of pledge has a right of ownership of a limited kind, which is so much deducted from the otherwise complete right of the owner of the thing pledged.

There is no lien for repairs unless the repairs have been done at the request or by the authority of the owner (*Hollis* v. *Claridge* (1); *Hiscox* v. *Greenwood* (2); *Castellain* v. *Thompson* (3)); and I find no such request or authority here. There is an exception to the rule in the case of inn-keepers or of carriers, where the law imposes the burden of receiving the goods, and therefore gives the power of retaining the goods for the receivers' indemnity (*Naylor* v. *Mangles* (4)). But the present case is not within any such exception.

The facts are that on 19th May 1927 the Company let the truck to one Brander in consideration of £30 paid, and of nine monthly payments to be made of £7 12s. 10d. each. Brander was to have no property or interest in the truck except as bailee until full payment (clause 14); was to keep it in good order and condition, to make good all damage, to keep it exempt from all legal process, and to keep the Company free from all expenses; was to make no alteration without the previous written consent of the Company; was to insure. Under clause 6 of the agreement, Brander was not to have any authority to pledge the owner's credit for any repairs, or to create a lien on the truck in respect of repairs, but was to allow the Company's nominee to execute repairs at Brander's expense. Brander was to keep the truck in his sole custody and was not to

(1) (1813) 4 Taunt. 807.
(2) (1803) 4 Esp. 174.
(3) (1862) 13 C.B. (N.S.) 105.
(4) (1794) 1 Esp. 109.

pledge it or part with the possession. Notwithstanding these express provisions, Brander brought the truck to the defendant on 21st June following and, being told that the engine wanted overhauling, requested the defendant to do what was necessary. The defendant claims a lien for his charges for the repairs.

On these facts there can be no pretence that there was any express request or authority from the plaintiff Company; the Company's name was not even mentioned to the defendant. The only question that remains is: Is the Company in some way estopped from telling the truth that it had not made any request or given any authority —did it cause the defendant to believe that Brander was the owner of the truck, or that he had the authority of the Company to get the repairs done? I can find no evidence that would support such an estoppel.

It is not surprising to find that the learned Judge of County Courts, who found in favour of the lien, attached great importance to the decision of *Swift* J. and of the Court of Appeal in England in *Albemale Supply Co.* v. *Hind & Co.* (1). That case merits close scrutiny; but I do not find anything in it which qualifies the major proposition that there can be no lien unless the repairs have been done at the request or with the authority of the owner. The primary Judge and the Court of Appeal came to the conclusion, on the facts there proved, that the owner had caused the defendant to believe that the hirer had the authority. As *Scrutton* L.J. put it (2), "if a man is put in a position which *holds him out* as having a certain authority, people who act on that *holding out* are not affected by a secret limitation, of which they are ignorant, of the apparent authority." I quite concur in the view of the Judge that the repairer cannot be affected with notice of the limitation of the agreement; but the point is that there is no evidence here of any holding out of Brander as having the authority of the owner. The fact that such holding out was found in the *Albemarle Co.'s Case* does not show that there was holding out in this case. In the *Albemarle Co.'s Case* the defendant knew that the plaintiff company was the owner of the cars; and that the hirer was habitually getting the cars repaired by the

(1) (1927) 43 T.L.R. 652, 783; (1928) 1 K.B. 307.
(2) (1928) 1 K.B., at p. 318.

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defendant, and was carrying on business with the cars (see per *Swift* J. (1)). The Court came to the conclusion that the company, the owner, by its conduct, sanctioned the repairing of the cars by the defendant; and that was all that was necessary for the purposes of the law as to lien. Whether the finding of fact in that case was or was not justified is irrelevant to this case. The principle remains untouched—that no one but the owner can create a lien for repairs on the owner's property.

In *Keene* v. *Thomas* (2) the Court found that the owner had given the repairer express authority, by the agreement, to have the repairs done by the coach-builder. The case of *Singer Manufacturing Co.* v. *London and South-Western Railway Co.* (3) was an application of the exception as to carriers. The case of *Green* v. *All Motors Ltd.* (4) was a case in which authority in fact was found in the words of the agreement, to "keep the car in good repair and working condition."

I am of the opinion that the decision of the Full Court of Victoria, as expressed by *Mann* J., was right, and that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Cleverdon & Hayes.*

Solicitor for the respondent, *Gordon Gummow.*

H. D. W.

(1) (1927) 43 T.L.R. 652.
(2) (1905) 1 K.B. 136.
(3) (1894) 1 Q.B. 833.
(4) (1917) 1 K.B. 625.