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followed their example. Before a different meaning is accepted, some justification must be found in the context, or the subject-matter. No such justification is provided by the fact that " held " is modified by the adverb " beneficially ". This word serves more naturally the purpose of excluding the case of a holding for the benefit of others than the purpose of so broadening the meaning of the word " held " beyond the particular significance which it normally has in relation to shares as to make it equivalent to " owned " in the most general sense of that word.

A consideration of certain other provisions of the Act strengthens the conclusion that under sub-s. (5) the only persons with whom the company and the commissioner are required to concern themselves are those who were the shareholders as appearing from the register of members on each of the relevant dates. It is natural to turn first to Div. 7, for sub-s. (5) applies only to a company which is a private company within the meaning of that Division. The definition of " private company " in s. 103 (1), taking that section as it stood when s. 80 (5) was enacted, excludes a company in which the public are substantially interested and a subsidiary of a public company. In par. (*a*) of s. 103 (2), which describes a company in which the public are substantially interested, there occurs the expression " beneficially held " in relation to shares ; and in par. (*b*), which describes a subsidiary of a public company, there occurs the expression " the beneficial ownership of the shares ". It is clear from the context that the phrases were not regarded by the legislature as interchangeable. Indeed, when the section was redrafted and a new form of it was substituted by the Act No. 44 of 1948, s. 9, the new par. (*a*) used the words " beneficially held by, or held directly or indirectly on behalf of or for the benefit of, twenty or less persons ". It is clear that " held " is treated as signifying held on the register, that the addition of " beneficially " is not regarded as altering the meaning of " held ", and that, when the legislature wishes to refer to the ownership of the beneficial interest separately from the legal interest in shares, it chooses unequivocal language for the purpose. Confirmation is provided by the definition of " nominee " in s. 103 (1), where " holds " is used in relation to a registered shareholder who is not the beneficial owner of his shares ; and also by the reference in s. 88 (3) to an individual who directly or indirectly controls the voting power, which contrasts significantly with the reference in s. 80 (5) to persons who hold shares carrying voting power.

One other matter may be mentioned in relation to Div. 7. In ss. 108 and 109 there are provisions which require that in some

circumstances loans made by a private company to any of its " shareholders ", and remuneration paid by a private company for services rendered by a " shareholder ", shall be deemed dividends paid by the company to the recipient. " Shareholder " is defined in s. 6 as including a member or stockholder, and in ss. 108 and 109 the word cannot include anyone who is not a registered holder of shares. The policy manifested by these sections might quite well have led to their being expressed so as to be applicable to loans made or remuneration paid to persons entitled to shares in equity only, as well as to registered members, but evidently the uncertainty resulting from a desertion of the register of members as the sole source of information as to the persons in respect of whom the sections apply was considered a decisive practical reason for not carrying the policy to that length. The same uncertainty provides no less cogent a consideration in relation to s. 80 (5), and goes far to answer the arguments addressed to us which were based upon examples of the injustices apt to arise from the commissioner's construction of the section. To take only one of the examples suggested, it may seem unjust that a company should be denied the right it would otherwise have to deduct losses of previous years simply because of the fortuitous circumstance that an appointment of new trustees of a settlement has led to a change in the registered membership of the company, the beneficial interests remaining unaltered. But, as against that, it must be recognized that taxing Acts often choose the method of the broad axe, the practical view being adopted that the advantages of a complete avoidance of all anomalies and inequalities of treatment may be obtained at too high a price if difficult, complicated or burdensome problems are left to be solved on the facts of individual cases. It is a comparatively simple problem which is raised by making a company's right to a deduction depend upon its satisfying the commissioner that at two dates certain of its registered shareholders held their shares for the benefit of no one but themselves. Much greater difficulty and uncertainty would be introduced into the application of the section if it were framed so as to entitle a company to require the commissioner to decide whether shares, which had changed hands between the two relevant dates according to the register of members, had nevertheless suffered no change as regards beneficial ownership. Bearing this in mind, it cannot be said to be at all improbable that the words " beneficially held " are used with their prima-facie meaning.

Reference may also be made to ss. 117, 136 (*b*) and (*c*), and s. 137 (*b*) and (*c*), where " hold " and " held " are employed to

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refer to a registered shareholding, in contexts distinguishing between the registered and the beneficial title to shares.

In the case stated the first of the two questions asked is :—(1) On 30th June 1949 were the 9,000 shares of the company in respect of which Kathleen Fitzpatrick was registered as a member in the company's register beneficially held by Murray Julius Gerloff ?

For the reasons we have stated we are of opinion that this question should be answered : No. That answer being given, the second question does not arise. The case stated will be remitted to the Chief Justice with these answers. The costs will be costs in the appeal.

Questions asked in the stated case answered as follows :—

(1) *No.*

(2) *Does not arise.*

Case remitted to the Chief Justice with these answers.

Costs, costs in the appeal.

Solicitors for the appellant, *Parker & Parker.*

Solicitor for respondent, *D. D. Bell*, Crown Solicitor for the Commonwealth.

F. T. P. B.

[HIGH COURT OF AUSTRALIA.]

BRUNDZA . . . . . APPELLANT;
PLAINTIFF,

AND

ROBBIE & CO. . . . . RESPONDENT.
DEFENDANT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Oct.* 29-31.

SYDNEY, *Dec.* 12.

Dixon C.J, McTiernan and Fullagar JJ.

Principal and Agent—Estate agent and sub-agent—Sub-agent authorized to negotiate for sale of property—Moneys received by sub-agent as deposit—Statutory liability of estate agent—Real Estate Agents Act 1930 (*Vict.*) (*No.* 3933), *s.* 34.

Section 34 of the *Real Estate Agents Act* 1930 (Vict.) provides: "Every licensed real estate agent shall be personally liable for all moneys received from or on behalf of any person by any sub-agent acting as a sub-agent for him in respect of any transaction in the capacity of sub-agent for the licensed real estate agent."

Held that an estate agent was liable under s. 34 for moneys received by the sub-agent while acting in the course of his employment as sub-agent notwithstanding that in receiving the moneys the sub-agent was not acting within the terms of his authority.

Decision of the Supreme Court of Victoria (*Sholl* J.) reversed.

APPEAL from the Supreme Court of Victoria.

Algirdas Brundza brought an action in the Supreme Court of Victoria against Robbie & Co., a firm of which the sole proprietor and owner was Robert Stanley Robinson, claiming as money had and received by the defendant to the use of the plaintiff the sum of £900 which the plaintiff had paid to one Liubinskas in contemplation of the purchase by the plaintiff of a house in North Fitzroy. The facts appear sufficiently in the judgment hereunder.

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The trial judge (*Sholl* J.) was of opinion that Liubinskas had no implied authority to bind the defendant by the receipt of any part of the £900, and that, as a matter of reasonable interpretation of the defendant's conduct, the defendant could not be held to have made to the plaintiff a representation that Liubinskas was authorized to receive any of the said moneys as the defendant's agent. His Honour declined to find that Liubinskas was a sub-agent of the defendant, and noted that the defendant's liability under s. 34 of the *Real Estate Agents Act* 1930 was dependent on proof of the sub-agency and of the receipt of the moneys in that capacity. Accordingly *Sholl* J. gave judgment for the defendant, with costs.

Against this decision the plaintiff appealed to the High Court of Australia.

E. H. Hudson Q.C. (with him *K. F. Coleman*), for the appellant. The case is within s. 34 of the *Real Estate Agents Act* 1930 (Vict.). On any view Liubinskas was performing the function of negotiating for the sale of the property. If he is doing this, he is within the definition of " real estate agent " in s. 3 of the *Real Estate Agents Act* 1928 (Vict.), and it is clear that he was performing this function for and on behalf of the respondent.

[DIXON C.J. Does any question of authority rise under s. 34.]

The only authority required is that set out in the definition. Apart from that no question of authority arises.

G. Gowans Q.C. (with him *J. W. J. Mornane*), for the respondent. In order to impose liability on the licensed real estate agent under s. 34 of the *Real Estate Agents Act* 1930 (Vict.), there must be (1) A sub-agent, i.e., a person who performs the functions of a real estate agent and who does that while in the direct employment of the real estate agent or acting for or by arrangement with him. In the present case Luibinskas was not shown to be in the direct employment of any real estate agent, nor was it shown that he was acting for any real estate agent or by arrangement with him for the purpose of selling or negotiating for the sale of land. (2) The sub-agent must be acting as a sub-agent for the particular real estate agent. (3) A receipt of money by the sub-agent in respect of the particular transaction in the capacity of sub-agent. Luibinskas in the present case was not acting in his capacity as sub-agent but in the capacity of agent for the appellant.

E. H. Hudson Q.C., in reply.

Cur. adv. vult.

THE COURT delivered the following written judgment :—

This is an appeal from a judgment of the Supreme Court of Victoria (*Sholl* J.) in an action in which the appellant Brundza was plaintiff, and Robert Stanley Robinson, who at the relevant time was carrying on business under the registered business name of Robbie & Co., was defendant. *Sholl* J. gave judgment for the defendant.

The business carried on by Robinson was that of a real estate agent, and he was registered under the *Real Estate Agents Acts* of Victoria. The action, which was framed as an action for money had and received, arose out of the fraudulent conduct of a man named Liubinskas, who at the time of the trial was serving a sentence of imprisonment in Sydney. The plaintiff paid a total sum of £900 in two amounts, one of £360 and another of £540, to Liubinskas, ostensibly in connection with the purchase of certain real property. There is no doubt that these sums were fraudulently obtained by Liubinskas from the plaintiff. The relation between Robinson and Liubinskas was and is in controversy, and the question whether Robinson is liable to make good those sums to the plaintiff is the question in the case, but Robinson was in no way party or privy to the fraud, and none of the money received by Liubinskas from the plaintiff was ever paid to Robinson. The plaintiff put his case on three bases, the first two resting on the common law and the third on statutory enactment. He said, first, that Liubinskas had such actual authority from Robinson to receive the moneys on his behalf that the payment to Liubinskas was in law a payment to Robinson. He said, alternatively, that Robinson had held out Liubinskas as his agent to receive the moneys and was therefore estopped from denying that a payment to Liubinskas was a payment to him, Robinson. He said, thirdly, that, if his claim at common law failed, he was entitled to succeed because the case fell within s. 34 of the *Real Estate Agents Act* 1930 (Vict.). The three views thus put forward can hardly be regarded as fairly raised by the pleadings, but they were treated as open to the plaintiff both at the trial and on the appeal to this Court. On the other hand, the claim to the £360, if not expressly abandoned, was not pressed before us, and we think, as will be seen, that the most that the plaintiff can recover on any view is £540.

While it is not necessary to go into minute detail, it is necessary to examine the evidence with some care. Both the plaintiff and Liubinskas are Lithuanians by birth. Another Lithuanian, named Cirvinskas, who was also defrauded of a substantial sum of money by Liubinskas, gave evidence for the plaintiff. The history of

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his dealings with Liubinskas and Robinson was put as tending to establish a relation of principal and agent—or, what is, for present practical purposes, the same thing—of agent and sub-agent between Robinson and Liubinskas. The plaintiff and Cirvinskas had only been in this country for a short time and spoke English poorly, if at all. It would appear, on the other hand, that Liubinskas spoke English well.

According to Robinson, whose evidence in this regard was accepted by *Sholl* J., he first came into contact with Liubinskas in August 1951. He had advertised for a salesman, and Liubinskas came to see him in response to the advertisement. He told Liubinskas that the position had been filled. Liubinskas said that he knew a lot of "New Australians" who wanted to purchase homes, and Robinson told him that, if he put any such business in the way of his firm, and any sales were effected through his introduction, he would pay him a commission. He also gave Liubinskas a number of his business cards. These cards contained the printed words: "Robbie & Co., Real Estate and Business Agents". They also contained the printed word: "Representative". On two of these cards, which were subsequently presented by Liubinskas to Cirvinskas and to the plaintiff respectively, Liubinskas had written in a blank space after the word "Representative" his own name and telephone number—"A. Liubinskas, XW 2294.". Robinson agreed that Liubinskas "would naturally" do this.

The dealings of Liubinskas with the plaintiff and with Cirvinskas proceeded more or less contemporaneously, but it will be convenient to recount them separately, and to take the transaction with Cirvinskas first.

Cirvinskas met Liubinskas at a church at Fitzroy which they both attended, and asked him to "look round" for a house for him. Liubinskas then saw Robinson and asked him if he had any properties in Fitzroy or Collingwood. Robinson said that he had one at 41 St. George's Road, North Fitzroy, and another at 28 Francis Street, Collingwood. He gave Liubinskas the key of the North Fitzroy property, which was unoccupied: the Collingwood property was occupied. Liubinskas showed Cirvinskas over both properties, and Cirvinskas decided to buy the Collingwood property. Liubinskas then handed him one of Robbie & Co.'s cards, and Cirvinskas paid him a deposit of £200, for which a receipt was given signed simply "A. Liubinskas.". Liubinskas then appears to have called again on Robinson. He told Robinson that his "friend", Cirvinskas, wanted to buy the Collingwood property, and he handed to Robinson a sum of £50, as his own money, so

that Robinson would " hold " the property for Cirvinskas. Robinson wrote out and signed a receipt to Cirvinskas for the £50. He then gave Liubinskas a book containing twenty-five contract forms in duplicate, telling him to get a contract signed by Cirvinskas, to give Cirvinskas the original and return the duplicate to him, Robinson. The book, when produced, contained some duty stamps in a flap inside the cover, but Robinson said that he thought he had put the stamps in at a later stage after Liubinskas had returned the book to him. Liubinskas signed in a book a receipt for the contract book. The book containing this receipt was said by Robinson to have been lost. Liubinskas went back to Cirvinskas, obtained his signature to the contract, and collected a further sum of £300 from him, for which he gave a receipt for £250. Liubinskas also appears to have obtained at some stage the signatures to the contract of the vendors of the Collingwood property. He returned the contract book to Robinson with one original missing. The sale was recorded in a book kept by Robinson as having been effected by Liubinskas. A day or two later Liubinskas told Robinson that Cirvinskas did not wish to proceed with the purchase, and Robinson gave him back the £50 which he had paid, and received back from Liubinskas the receipt which he had given for that sum. About the same time Cirvinskas, having seen the Collingwood property still advertised for sale, spoke to Liubinskas about the position. Liubinskas said that the owner had changed his mind and would like to have a larger deposit, £1,200. He thought, however, that the owner was bound by contract. He would have to see Robinson personally and talk the matter over with him. This seems to have been the last that Cirvinskas saw of Liubinskas: he had already seen the last of his £500. A little later he went to Robinson's office and was told that Liubinskas was away in Sydney. About a week later he paid a second visit, and for the first time produced to Robinson the receipts which he had for the two sums of £200 and £250. He told Robinson that he had paid £500 to Liubinskas. He said in his evidence that Robinson, who had already told him that Liubinskas was away again, said: " Well, everything is in order, and, when Liubinskas is back again, I will fix everything up with him ". Having regard, however, to Cirvinskas's limited knowledge of English, this account of what Robinson said must be regarded as very unreliable, and *Sholl* J. did not accept it. This conversation probably took place about the middle of September 1951: Cirvinskas's contract is dated 29th August.

The plaintiff, Brundza, first met Liubinskas at the same church in Fitzroy. On 19th August he asked Liubinskas if he would look

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for accommodation for him, and Liubinskas gave him one of Robbie & Co.'s cards. The plaintiff said that he had thought that Liubinskas was working for Spencer Jackson, but Liubinskas said that he was no longer working for Spencer Jackson but was working for Robbie & Co. The next day he took the plaintiff and a Mrs. Knopsova to look at a house in Seymour Grove, Brighton Beach owned by one Read. He told the plaintiff that he could get the house for £320 "key money or furniture money", and the plaintiff then and there paid him £360. The extra £40 was to defray the cost of a journey by air to Queensland, which Liubinskas said that he would have to make in order to interview the owner of the house. Later he got a receipt from Liubinskas for the sum of £360. The receipt purported to be signed by "A. J. Brown". The plaintiff became suspicious, and Liubinskas said: "If you don't believe me, I can in two hours bring the money back from Read". The plaintiff said that he needed not the money but a house, and Liubinskas said that he had "a house from Robbie & Co. at 41 St. George's Road, North Fitzroy", which he would take him to see on the following day. Robinson appears to have had nothing to do with any house in Seymour Grove, Brighton Beach, but he had the sole agency for the property in North Fitzroy, of which, as has been seen, he had given Liubinskas the key.

On the following day (which would be towards the end of August) Liubinskas called for the plaintiff and took him through the house in North Fitzroy. He said that the price was £1,400, and the plaintiff said that he would buy at that price. Liubinskas said that a further payment of £540 would be required, which he would add to the £360 previously paid to him by the plaintiff so as to make up the required "deposit" of £900 on the house in North Fitzroy. The plaintiff handed over the sum of £540 in notes. A few days later Liubinskas gave him a receipt for £900 as for a deposit on the house at 41 St. George's Road, North Fitzroy. The receipt was signed simply "A. Liubinskas". When Liubinskas failed, after two requests, to produce a contract, the plaintiff consulted his solicitors. Finally Liubinskas came to the plaintiff and said that he had brought with him the contract, but that he had made a mistake because the price of the house was not £1,400 but £2,500. The plaintiff said that he would not buy at that price, and asked for his money back. Liubinskas said: "You will get the money", but, whether this was a promise or a prophecy, it was never fulfilled. The price at which the owner of the property had placed it in Robinson's hands for sale was in fact £2,500, and, although there appears to be no positive evidence on the point, it is,

of course, highly probable that Liubinskas at all material times knew this. It may be taken that he knew it.

The remaining witness for the plaintiff was Alfred William Bowles, a conveyancing and probate clerk in the office of Messrs. Gair & Brahe, the plaintiff's solicitors. He deposed to two telephone conversations, and one personal interview, with Robinson. The plaintiff first consulted him, he said, on 5th September 1951, asking that Bowles's firm should act for him as purchaser of the property at North Fitzroy. He produced the receipts which he had got from Liubinskas, and the business card of Robbie & Co. Later, on 17th September, Bowles telephoned Robinson, and asked if he had a Mr. Liubinskas there. Robinson said that he was not in the office at the moment. Bowles asked: "Is Liubinskas employed by you?". Robinson answered: "Yes". Bowles said that he was acting for a Mr. Brundza in connection with a purchase by him of a property at North Fitzroy, that Liubinskas had collected from Brundza a deposit of £900, and that Brundza had since been informed that the price of £1,400, which had been quoted, had been increased to £2,500. Robinson said: "The price has never been £1,400: it has always been £2,500. I am not aware of any sale to a Mr. Brundza for that figure or any other amount". He said that he would check to see if any moneys had been paid to his firm, and, returning to the telephone, he said: "I have the receipt book issued by me to Liubinskas. . . . No receipt has been issued by him in respect of that particular property." Bowles asked: "On what terms is Liubinskas employed by you?" Robinson said that he was employed as a sub-agent without payment of any salary but receiving commission on any properties sold by him. He said that he had no moneys in hand and knew nothing of the transaction, but would see Liubinskas and find out a little more about the matter. He also told Bowles that he issued a particular form of receipt-book to his sub-agents and instructed them that they were to issue receipts from the official book of contract forms issued to them.

The second telephone conversation took place on 20th September, when Robinson telephoned Bowles and said that he had seen Liubinskas and that Liubinskas denied any knowledge of the transaction in question. He said that he, Robinson, knew the property at North Fitzroy, and had the sole agency for its sale.

The last conversation between Bowles and Robinson took place at a personal interview in the office of Gair & Brahe on 25th September. Robinson repeated, in answer to a question, that Liubinskas was employed by him as a sub-agent without salary

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but receiving commmission on properties which he sold or listed for sale with the firm. Bowles said that he apparently had the keys of the property at North Fitzroy, and Robinson said: "Yes, he has had the keys on numerous occasions, and has shown people through with a view to obtaining a purchaser". He added that he had had great difficulty with Liubinskas "getting him to return the keys". Whether the "difficulty" applied only to the keys of the North Fitzroy property or extended generally to keys entrusted to Liubinskas is not clear.

Robinson's account of his conversations with Bowles differed in a number of respects from the account given by Bowles. *Sholl* J. said that, as to the sequence of the discussions and their general subject matter, he preferred the evidence of Bowles. His Honour, however, was not satisfied that Robinson on any occasion made to Bowles any express admission of an employment which would cover such authority on the part of Liubinskas as it was necessary for the plaintiff to establish, and said that he could not accept as necessarily accurate his account of the actual terms employed by defendant in describing the position of Liubinskas.

Little or no importance attaches, in our opinion, to any difference between the evidence of Bowles and the evidence of Robinson. We regard his Honour as having accepted the substance of the evidence of Bowles. But, even if that evidence were accepted as entirely accurate, the use by a layman of particular terms such as "sub-agent" could carry little weight on such an issue as that which arose in this case. In any case, Robinson himself said in cross-examination that what he had said to Bowles was that Liubinskas was "a sort of sub-agent" or "more or less a sub-agent". And he said that this was the truth. He also said that he had told Bowles that Liubinskas was "paid commissions on properties he introduces to me, similar to a sub-agent". The only other point in Robinson's evidence that need be noted is that he said: "I did give Liubinskas a blank book of contract forms: I did expect him to write into the forms the names of any purchasers".

On the evidence which has been summarised above it seems clear that the plaintiff has no remedy against the defendant in respect of the sum of £360. That sum was paid by him to Liubinskas in relation to the property in Seymour Grove, Brighton Beach. Robinson had nothing whatever to do with that property, and Liubinskas was neither acting nor purporting to act on behalf of Robinson in the business relating to that property. There is nothing to connect Robinson in any way with the receipt of the £360. And, at the later stage, when Liubinskas expressly or

impliedly promised to use the £360 to make up, together with the £540, the "deposit" of £900 on the North Fitzroy property, there is again nothing that can connect Robinson with any such promise. It is Liubinskas, and not Robinson, who has received the £360, and what he does with it or promises to do with it is entirely a matter between himself and the plaintiff. It has nothing whatever to do with Robinson.

With regard to the £540 the matter is much less simple. This sum was paid by the plaintiff in connection with a proposed purchase by him of a property which was in the hands of Robinson for sale, and for which Robinson had clearly authorized Liubinskas to find a purchaser if he could. It was clearly open to the learned trial judge to find that Liubinskas was authorized by Robinson to collect on his behalf a deposit from a purchaser of the North Fitzroy property—and this without accepting the evidence of Bowles as in all respects completely accurate. And there is much to be said for the view, which was put by Mr. *Hudson*, that this was the only proper finding on the evidence. The learned judge, however, declined so to find, and, even if he had so found, the better opinion would seem to be that the plaintiff failed to establish a cause of action against Robinson for money had and received. An authority given by Robinson to Liubinskas to receive on his behalf a deposit from a purchaser of the North Fitzroy property is the most that could possibly be inferred, and such an authority, even if given in express terms, would not, in our opinion, be enough to entitle the plaintiff to maintain money had and received in the circumstances of this case.

In the circumstances of this case one might perhaps frame a claim by the plaintiff for money had and received in more than one way, but the correct way of framing it seems to be to say that the payment by the plaintiff to Liubinskas is a conditional payment. If a purchase of the property can be effected for the price of £1,400, the sum of £540, together with another sum of £360 previously paid, is to be applied as a deposit in part payment of the price. If it cannot, the whole sum of £900 is to be repaid to the plaintiff. The latter of the two alternative events has come to pass: in fact the former may be regarded as having been impossible from the beginning, Liubinskas having fraudulently misrepresented the owner's price. The money paid by the plaintiff is, therefore, repayable, and money had and received is the appropriate form of action. But *by whom* is it repayable? Now, one thing is clear. The action is based on implied contract. And the plaintiff cannot succeed unless he can establish privity of contract between himself

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and the person whom he names as defendant: see e.g. *Stephens* v. *Badcock* (1) and *Jones* v. *Carter* (2). This he cannot do as against Robinson. For Liubinskas, even if he had authority from Robinson to accept a deposit on a sale of the property, had no authority to bind Robinson by the implied terms on which he in fact received the £540. No privity is created between the plaintiff and Robinson. The plaintiff's remedy at common law is against Liubinskas and not against Robinson: cf. *Wakefield* v. *Newbon* (3). If Robinson had actually received the money, he might have become liable to the plaintiff, though (the money having been wrongfully obtained by Liubinskas) payment over by Liubinskas to Robinson would not have afforded a defence to Liubinskas: cf. *Snowden* v. *Davis* (4) and *Smith* v. *Sleap* (5).

For these reasons we are of opinion that the plaintiff's claim at common law for money had and received was rightly rejected. There was not such actual authority as would support such a claim, and no semblance of a case of "holding out" was established. The claim was not put as a claim in tort based on the principle finally established in *Lloyd* v. *Grace, Smith & Co.* (6). Nor do we think that it could have been so put. Even if that principle be not confined to cases of master and servant, the plaintiff here did not deal with Liubinskas because he believed him to represent Robinson and believed that he himself was dealing with Robinson.

It remains, however, to consider the claim based on s. 34 of the *Real Estate Agents Act* 1930. *Sholl* J. considered the claim made under the statute, but appears to have been of opinion that no such claim could be maintained unless Liubinskas had such authority to receive moneys as would have supported an action at common law. With this view we are not able to agree. It does not, of course, necessarily follow that the plaintiff is entitled to succeed on the statute.

Section 34 of the Act of 1930 is in the following terms:—"Every licensed real estate agent shall be personally liable for all moneys received from or on behalf of any person by any sub-agent acting as a sub-agent for him, in respect of any transaction in the capacity of sub-agent for the licensed real estate agent". The word "sub-agent" is defined (so far as material) by s. 4 of the Act of 1930 as meaning "any person in the direct employ of or acting for or by arrangement with a real estate agent who performs for such

(1) (1832) 3 B. & Ad. 354 [110 E.R. 133].
(2) (1845) 8 Q.B. 134 [115 E.R. 825].
(3) (1844) 6 Q.B. 276, at p. 281 [115 E.R. 107, at pp. 108, 109].
(4) (1808) 1 Taunt. 359 [127 E.R. 872].
(5) (1844) 12 M. & W. 585 [152 E.R. 1332].
(6) (1912) A.C. 716.