

Privy Council Appeal No. 96 of 1924.

The Commonwealth Trust, Limited - - - - - *Appellants*

v.

John Akotey - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 21ST JULY, 1925.

Present at the Hearing :

LORD ATKINSON.

LORD SHAW.

LORD PARMOOR.

[*Delivered by LORD SHAW.*]

This is an appeal from a judgment of the Full Court of the Gold Coast Colony, reversing the judgment of the Judge of first instance.

The action was brought by the respondent against the appellants and a co-defendant, named Laing, for damages for the conversion of 1,050 bags of cocoa. This cocoa was consigned by respondent to Laing: the consignment notes were duly forwarded; Laing transferred these to the appellants, who, in entire good faith, took delivery of and paid Laing for the cocoa. The Full Court entered judgment for the respondent for the sum of £6,375 and costs. If the respondent is entitled to recover, this figure is not disputed. This means that the appellants are to pay a second time for the same cocoa on the alleged ground that the respondent cannot be charged with any responsibility for the sale by Laing, his consignee, and the receipt of payment by Laing.

The respondent is a grower of cocoa, and the appellants are a limited company carrying on business at Accra, including a business of general export and import. The co-defendant Laing

is dead, but it is in evidence that he had on previous occasions in the year 1920 purchased cocoa on credit from the respondent, or the respondent's factor.

A question raised in the appeal is, whether the cocoa about which the dispute has arisen had become the property of Laing, so as to place him in a position to transfer it with a good title to the appellants. The Judge of first instance held that the property in the cocoa had passed from the respondent to Laing, and if it had so passed the appellants would be entitled to judgment. The Full Court held that the sale of the cocoa had not been completed between Laing and the respondent.

A material question in the case is whether a certain letter of April 30th, 1920, is genuine. The Judge of first instance was not satisfied as to the genuineness of this letter, but the Full Court held that without deciding whether it was genuine, or not, the case could be decided apart from that. The Board is of opinion that the alleged letter cannot be relied upon as a genuine letter.

The other correspondence is as follows: the first letter of the 28th of April states that the respondent has that day "consigned 492 bags, viz.: 242 in waggon No. 1274, and 250 bags in waggon No. 1213," and the letter adds this important sentence, "And consignment note of it I have attached to this letter and I am sure you will get it safely." This letter covers part of the cocoa in question in this case. The letter ends: "Expect me on the coming Monday, and I will come and see you."

A second letter was written on the 29th of April stating that a further consignment had been made, and adding: "Consignment note of it enclosed with my best compliments." The cocoa referred to in these two letters covers 756 bags out of the 1,050 bags included in the writ of summons. A further letter was written on the 29th of April stating that the respondent had shipped 250 bags of cocoa, but these bags are not part of the cocoa in question. It includes, however, the sentence, "Find more money (cash) and I will come on Monday, May 3rd, 1920, to receive it."

Laing took possession from the railway company of the cocoa thus consigned to him by the respondent, and sold the same to Lawson, the transport manager of the appellants, who took delivery by re-consigning the bags in which the cocoa was packed to the railway sidings of the appellants. It is not disputed that the actings of the appellants were in good faith, nor that the purchase was made in ordinary course of business and for full value.

It turns out that although Laing had the goods consigned to him, he and the respondent had a difference as to price, the respondent wishing Laing to increase the figure of 50s. a ton which Laing had named.

On the 1st of May the respondent came down to Accra and saw Laing, who stated that he was prepared to pay the respondent

50s. a load, but this the respondent refused to accept. Their Lordships incline to agree with the decision of the Full Court that the price of 50s. had not been accepted by the respondent when he forwarded the consignment note to Laing, and that consequently no contract of sale had been completed at the material date.

It was further argued before their Lordships that although the property in the cocoa had not passed from the respondent, yet that the respondent had so acted as to estop him from setting up his title in answer to the claim of the appellants. Reliance was placed on the well-known statement of Ashurst J. in *Lickbarrow v. Mason* (1787) 2 T.R. 63, "that whenever one of two innocent persons must suffer by the act of a third, he who has enabled such third person to occasion the loss must sustain it." Their Lordships are clearly of opinion that the present is a plain case for the application of that principle. There is no kind of specialty in this case such as occurred in *Farquharson v. King*. [1902] A.C. 325, the parallel to which would be that the goods were delivered to Laing by the fraudulent act of respondent's agent: the goods were in fact delivered over to Laing by the direct act of the respondent himself.

To permit goods to go into the full possession of another, with all the insignia of possession thereof and of apparent title, and to leave it open to go behind that permission so given and accompanied, and upset a purchase of the goods made for full value and in good faith, would bring confusion into mercantile transactions and would be inconsistent with law and with the principles so frequently affirmed, following *Lickbarrow v. Mason* (*supra*).

Their Lordships will humbly advise His Majesty that the appeal should be allowed, the judgment of the Full Court set aside with costs, and the judgment of Beatty J. restored. The respondent will pay the costs of the appeal.

In the Privy Council.

THE COMMONWEALTH TRUST, LIMITED,

vs.

JOHN AKOTEV.

DELIVERED BY LORD SHAW.

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