

House of Lords (Lord Halsbury L.C. and Lords Macnaghten, Shand, Davey, Brampton and Robertson) unanimously.

SALE OF GOODS—ESTOPPEL—LOSS OCCASIONED BY FRAUD OF THIRD PERSON—CONDUCT CONDUCTING TO FRAUD—POWER OF DISPOSITION OF GOODS GIVEN TO CLERK—FRAUD OF CLERK—SALE OF GOODS ACT 1893 (C. 71) S. 21.

In *Farquharson v. King* (1902) A.C. 325, the House of Lords (Lords Halsbury L.C. and Lords Macnaghten, Shand, Robertson and Lindley) have unanimously reversed the judgment of the Court of Appeal (1901) 2 K.B. 697 (noted ante vol. 37 p. 809). It may be remembered that the plaintiffs were timber merchants, having stocks of timber warehoused in the name of their firm with a dock company. They authorized the dock company to deliver the timber from time to time as the plaintiff's confidential clerk Capon should direct. Capon proved to be a thief, and gave fraudulent orders to the dock company to transfer the timber to the order of Brown, a fictitious person, and in the name of Brown he purported to sell the timber to the defendants to the extent of £1200. The action was brought to recover the timber thus obtained by the defendants, or its value. The majority of the Court of Appeal was of opinion that the plaintiffs by their conduct had enabled Capon to hold himself out as the owner of the timber, or as entitled to dispose of it, and on that ground the action failed. Their Lordships, however, were clearly of the opinion that it was not enough that the plaintiffs had been careless in the management of their business, or had given Capon an opportunity to steal, as even if they had, that would not estop them from claiming their property. Lord Halsbury points out that the case was in fact governed by s. 21 of the Sale of Goods Act, which provides that where goods were sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell," and mere carelessness would not have that effect; but it must be some representation which the buyer acts upon; here the buyer acted on no representation of the plaintiffs, but dealt with a fictitious person whom they never saw, and of whose title they made no inquiry, and the defendants were consequently in no better position than any other persons who buy property from a thief, and they could not set up that but for the owner's carelessness his property would not have