it should not be found as a fact that the payment was made with any corrupt purpose. The so-called commission was in truth an abatement of the price, equivalent to a commission that might have been expected to be paid if an agent intervened—a device sometimes resorted to in order to make a reduction of price more palatable. Even if Parsons did, in some sense, become Burnaby's agent, there was no principle upon which Burnaby could be supposed to have had knowledge of Parsons's fraud. The rule that the knowledge of the agent is the knowledge of the principal is not of universal application, and does not apply where the agent is engaged in a fraudulent course of conduct, and disclosure would mean disclosure of his own fraud: American Surety Co. v. Pauly (1898), 170 U.S. 133.

Then it was said that there was a right to follow the plaintiff's money into the hands of Burnaby. But the agent was entrusted with the possession of the money, and the transaction, being carried out by Burnaby in good faith, could not be attacked in this way. The statement in Bowstead's Law of Agency, art. 110, must be taken subject to the introductory proviso.

Finally, it was argued that the transaction carried out by Parsons was with regard to a totally different subject-matter than that contemplated by his agency; and, therefore, there was a right to rescind. But the case was this: an agent entrusted with money to purchase a thing for his principal purchases something entirely different from a vendor who is in no way in fault. The transaction must be maintained in favour of the innocent vendor. The agent who made the contract for the plaintiff received exactly what he bargained for; and there was no mistake as to the subject-matter.

Action dismissed with costs to the defendants the Burnabys.