

MAN.
C. A.
TRADES
HALL CO.
v.
ERIE
TOBACCO
CO.
Perdue, J.A.

in order to save the bank, divided the shares which had been thus acquired in violation of the Bank Act, sec. 76, among themselves and their friends, the transferees giving promissory notes to the bank for the shares. These notes were indorsed by the bank to the plaintiff, who sued the makers. It was held that the plaintiff was entitled to recover upon the notes. Garrow, J.A., giving the judgment of the Court of Appeal, said that he could see nothing in law to prevent the bank, while repudiating the purchases and demanding repayment, from also asserting a lien upon the shares upon the principle applied by Lord Selborne in *Great Eastern R. Co. v. Turner*, *supra*.

Upon these authorities it appears to me that the ownership of the tobacco in question had passed to the plaintiff company and had become its property, even though the transaction in which the company had originally acquired the goods was *ultra vires*. If the plaintiff had become the actual owner of the goods, as I think it had, then a usual incident of ownership would follow and the plaintiffs might sell the goods in order to reimburse itself the money it had paid out. The defendant company has obtained the goods on a promise to restore them or to return similar goods of equal value. The defendant is a trading corporation and no question is raised as to its capacity to purchase goods. Upon defendant's refusal to carry out its promise, the plaintiff might sue for goods sold and delivered, treating the matter as a sale.

The trial Judge seems to have been of opinion that the plaintiff had power to purchase the goods, but he does not deal with the question whether it had power to enter into the contract to deal in tobacco on commission, being the contract under which the goods were received. His judgment was based upon the document of 3rd February which he regarded as a ratification by the directors. I have already dealt with the question of ratification.

Turning now to the counterclaim, it appears to me that the defendant has utterly failed to shew that the plaintiff had authority to enter into the contract. The only means by which the verdict for the defendant can be supported is, it appears to me, by applying the rule that

a corporation must account for and pay to the other party the benefits it receives from *ultra vires* engagements: Brice on *Ultra Vires*, 3rd ed., pp. 641-643.

This rule was founded upon the *Phœnix Life Assurance Co.* case and other cases referred to in the text book. It will be necessary

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