

PASSING OF PROPERTY OBTAINED BY FRAUD.

Rep. N. S. 535) the contract between the vendor and the fraudulent third person was held to have passed the goods. In that case the plaintiff purchased some sheep in an open market recently established under a local Act, paid a fair price for them, and removed them to his farm. The person from whom he purchased them had obtained them just before from the defendant for a cheque upon a bank which had no account in his name; but plaintiff knew nothing of this. When the cheque was dishonoured the defendant took criminal proceedings against the drawer, and afterwards got him convicted for obtaining the sheep under false pretences. On the day before the conviction the defendant, with a policeman, removed the sheep from the plaintiff's to his own farm, and the plaintiff now brought this action to recover them. The court held that the plaintiff was entitled to recover, holding it to be settled law, that, though a seller is induced to sell by the fraud and false pretences of the buyer, and though it is competent to the seller by reason of such fraud to avoid the contract, yet till he does some act so to avoid it, the property remains in the buyer; and that if he, in the meantime, has parted with the thing sold to an innocent purchaser the title of the latter cannot be defeated by the original seller.

These two cases illustrate clearly the principles which relate to the passing of property obtained by fraud. In the first there was no actual passing of property from the original vendor to the fraudulent third person, so that he could not give a good title to it to the defendant; in the second there was an actual passing of the property and the contract not having been set aside before sale to an innocent vendee the latter was held entitled to keep it. The present case of *Babcock v. Lawson* differed considerably in the facts from both these, though the principle upon which they were decided was held equally applicable. The plaintiffs, who are merchants at Liverpool, had lent to another firm of merchants there, their acceptances for the sum of £11,500, on the security of a certain quantity of flour, under a memorandum addressed to the plaintiffs in these terms:—"As security on our part we have warehoused in your

name certain lots of flour, and in consideration of your delivering it to us or our order as sold, we undertake to pay you proceeds of all sales thereof on receipt." The plaintiffs paid their acceptances as they became due, and had paid them to the amount of nearly £7,000, and, in the meantime the borrowing firm applied to the defendant to advance them the sum of £2,500 on the security of 1,500 sacks of the flour, which he agreed to do, not knowing that it had already been warehoused as security to the plaintiffs, and stipulating for absolute possession of the flour, and for the power to sell it. In order to give such possession the borrowing firm brought to the plaintiffs a note stating that they had sold to the defendant the 1,500 sacks of flour, the proceeds of which they engaged to pay to the plaintiffs; and thereupon the plaintiffs gave them a delivery order, under which the flour was delivered to defendants, who thereupon advanced the £2,500, and then sold the flour in the Liverpool market for £2,647. The borrowing firm paid only £500 to the plaintiffs, who, being unable to obtain more of the proceeds, sued defendant for the value of their property on the ground that the transfer had been obtained from them by fraud. The court gave judgment for the defendant on two grounds. Assuming—as to which they had doubt—that the contract conferred on the pledgees a special property in the flour, and gave them more than the mere custody, so that they might know of a sale, this was subject to the right of the pledgors to have the flour given up to them on their finding a purchaser, for the purpose of a sale by them as owners without any intervention by the pledgees, and the flour having been surrendered intentionally, and the possession parted with, the contract of pledge was, for the time being, at an end. The transaction might as between the pledgor and the pledgee have been revoked as obtained by fraud, so long as the flour remained in the hands of the pledgors; but when, prior to any such revocation, the property in the goods had been transferred by the owners for good consideration to a *bona fide* transferee, the defendant, the latter acquired an indefeasible title, and on this ground alone he was held entitled to judgment.