

tunity of insisting on the price being handed over to them as soon as paid. Assuming, however, that under the contract with Denis Daly & Sons the plaintiffs acquired as pledgees, a special property in the flour deposited in their name, it 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 the sale by them as owners, without any intervention on the part of the pledgees. If, having obtained the goods for the purpose of selling them, and having sold them, the pledgors had kept the price instead of handing it over to the pledgees, the latter could not have disputed the title of the buyer, and would have had no remedy except by action against the pledgors for breach of contract. In compliance with the agreement, the flour was delivered by the plaintiffs to Denis Daly & Sons, the pledgors, with the full intention that they should sell it as their own and make a good title to it to their vendees. It is true that the possession of the goods was obtained by the fraud of the pledgors, but this appears to us to make no difference in the result. The flour having been given up by the plaintiffs to Denis Daly & Sons, conformably to the contract, to sell as their own, the special property vested in the plaintiffs as pledgees, whatever it may have been, was intentionally surrendered; and the possession having been parted with, the contract of pledge was, at all events for the time being, at an end. The abandonment of the property in, and the surrender of, the thing pledged might, as between the pledgees and pledgors, have been revoked as having been obtained by fraud, so long as the goods remained in the hands of the pledgors.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 latter acquired, as it appears to us, an indefeasible title. The analogy to a case of sale where the vendor is induced to part with his property by fraud appears to us complete; and the principle laid down by the Court of Common Pleas in *White v. Garden*, *ubi sup.*, and by the House of Lords in *Cundy v. Lindsay*, *ubi sup.*, and acted upon by this court in *Moyce v. Newington*, *ubi sup.*, is, we think, applicable to the case before us; and we are therefore of opinion that the defendants acquired a good title to the flour by their contract with Denis

Daly & Sons. Our view of the case being founded on the assumption that the property in the goods became, by the act of the pledgees, re-vested in the pledgors, it makes no difference that the goods, having been parted with by the plaintiffs with a view to their being sold, were, instead of being sold, pledged. The property having, by the act of the pledgees, become re-vested in the pledgors, the latter were as competent to dispose of the goods by way of pledge as by that of sale. Nor in this view of the case is it in any way material that the larger portion of the money advanced by the defendants to Denis Daly & Sons was paid (if we are to take the fact to have been so) before the possession of the flour was given up by the plaintiffs. The property in the flour was made over to the defendants, and the possession of it given up to them, by Denis Daly & Sons, for good consideration, when the full property in it was, as we think, in the latter, and the transfer took place by virtue of a contract whereby the money was to be advanced on the pledge of the goods. That the money was paid down before the goods were delivered, provided the property in the goods was in Denis Daly & Sons when, in fulfillment of the contract, they transferred the property in, and gave possession of, the flour, can make no difference. But there is a further ground on which we are of opinion that the defendants are entitled to our judgment. We are prepared to hold, as we intimated in *Moyce v. Newington*, *ubi sup.*, that where one of two innocent parties must suffer from the fraud of a third, the loss should fall on the one who enabled the third party to commit the fraud. It has been so held by the Supreme Court of Judicature of the State of New York in a case of *Root v. French*, 13 Wend. 570. In *Vickers v. Hertz*, L. R., 2 H. of L. Sc. 115, Lord Chancellor Hatherley says: "If one person arms another with a symbol of property, he should be the sufferer, and not the person who gives credit to the operation and is misled by it." It is on this principle that the legislation with reference to fraudulent sales made by factors or agents entrusted with the possession of goods or of the documents of title to goods has been based. It was on this ground that the Court of Session in *Pochin v. Robinow*, 3d Series, vol. 7, p. 622, and in *Vickers v. Hertz*, L. R., 2 H. of L. Sc. 115, independently of the