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LOUGHNAN V. BARRY AND BYRNE.

[Irish Rep.]

sent, for the defendants to move to have the verdict set aside and a verdict entered for them, if the Court should be of opinion that a verdict should have been so directed.

A conditional order having been obtained, "that the verdict had for the plaintiff be set aside, and a verdict entered for the defendants, pursuant to leave reserved, or that said verdict be set aside and a new trial granted on the ground of misdirection."

Monahan, Q. C., (with him *H. H. Macdermot*), on behalf of the plaintiff, showed cause. The doctrine of *Kingsford v. Merry*, 1 H. & N. 503, 11 Ex. 577, does not protect the defendants, for firstly, they were not purchasers or innocent transferees, but the salemasters of Neill; and secondly, they had full notice and knowledge of the transaction with him. A cheque is an order for the payment of money; and its nature assumes that there is cash in bank to meet it on the moment of its being passed: *Lockett's Case*, Leach C. C. 94, 6 T. R. 567, n., 2 E. P. C. 940; 2 Russ. on Cr., 4th ed., 640, n. a. The passing of it, therefore, is equivalent to a representation of there being immediate funds at the bank applicable to its payment: *R. v. Parker*, 8 C. & P. 331; *R. v. Jackson*, 3 Comp. 370. On the first finding, Neill was guilty of legal fraud; and the second finding is not inconsistent, even if upon it he would not have been guilty of criminal fraud.* But even in a criminal point of view, the offence of obtaining goods by false pretences might exist without an intention in fact to defraud: *Re Naylor*, L. R. 1 C. C. R. 4. [MORRIS, J.—Is there any statement there, that Naylor had reasonable grounds for believing that Moss would take the goods? None; but the jury find that, at the time of the pretence, Naylor intended to pay for the goods. That case shows that a pre-conceived design to get the goods without payment was unnecessary. The contrary was contended for on the former argument of this case. There is only a short report in the Irish Reports, but the arguments are fully and accurately stated in 5 Ir. L. T. Reports, 189. [MORRIS, J.—In the absence of any conversation or statement to the contrary at the time of a sale, it appears to me that the giving of a cheque in payment would be equivalent to a ready-money transaction. But the purchaser could not be indicted, if he had reasonable grounds for believing that it would be met.†] The transaction was a ready-money one,

and there is no evidence that the cheque was taken otherwise than as ready money. Fraud may vitiate a sale, though it do not amount to a criminal offence. Falsehood in fact, going to the substance of the consideration, gives a right to rescind the contract: *Reese River Co. v. Smith*, L. R. 4 E. & Ir. App., 79. [MORRIS, J.—Suppose that Neill had himself retained the cattle, would the plaintiff be justified in retaking them from him? My present impression is that he would*]. Neill would have had no answer to an action of trover.† The defendants were Neill's agents, and as such liable: *Perkins v. Smith*,‡ 1 Wils. 328. Not being innocent transferees without notice, they are not entitled to protection: *Irving v. Molloy*, 7 Bing 543. The sale to Neill being vitiated by fraud, no property passed: *Noble v. Adams*, 7 Taunt. 59; and the defendants, having got possession of the goods and the proceeds, are liable to the true owner in trover and for money had and received.§ *Hill v. Perrott*, 3 Taunt. 274; *Abbotts v. Barry*, 5 Moore 98, 2 Br. & B. 369. It is not necessary to show that an action of deceit would lie against

was good and available, and would be paid when presented at the bank. It was post-dated and crossed; but was not presented through a banker; and before the day of post-date, the traverser was arrested, and thereby, as contended, prevented from earning money to meet it. He had previously had an account in the bank, but only a nominal sum remained to his credit. *R. v. Parker*, 2 Moo. C. C., 1, was cited. Held, that there was an existing false pretence, i.e., that the cheque was a good one:—"It was not necessary to accompany the cheque by a guarantee of the solvency of the drawer, or to the effect that money would be at the bank to meet it. A cheque represented money, and bore on the face of it an implied statement that the drawer had authority to draw upon the bank—that he had funds at the bank, a portion of which he could withdraw. A post-dated cheque [see *Watson v. Poulson*, 15 Jur. 1111—R.] in this respect differed in no way from one dated the day it was given. The question then was, when the prisoner gave this cheque, had he any funds to meet it, or had he any reasonable expectation of having funds?" *R. v. Bathurst*, 1 A. J. R., 40.—*REP.*

* A having bought goods from B, with a pre-conceived design not to pay, but with a view of obtaining money on them by giving a bill of sale; and having misrepresented his ability to pay: Held, that B was justified in rescinding the contract and re-taking the goods: *Dixon v. Heweston*, 16 L. T. N. S., 295. See *Gillard v. Brittain*, 8 M. & W., 575; *Clough v. L. & N. W. Ry.*, L. R. 7, Ex. 34; *Nickling v. Heaps*, 21 L. T., N. S. 754; *Harvey v. Mayne*, 6 Ir. L. T. R. 130, and notes thereto.—*REP.*

† If the facts amounted to felony, see *Wells v. Abraham*, L. R. 7 Q. B. 554, 41 L. J., Q. B. 306, 26 L. T., N. S. 433; *Desborough v. Homes*, 1 F. & F. 6.—*REP.*

‡ See *Fowler v. Hollins*, L. R. 7 Q. B. 816.—*REP.*

§ See *British v. Amer. Telegraph Co. v. Adson Bank*, L. R. 7 Ex. 122; and note to 5 Ir. L. T. R. 192.—*REP.*

* So, see *Foster v. Charles*, 7 Bing. 105. See note, 5 Ir. L. T. R., 191.—*REP.*

† In a recent case in Australia, a prisoner was indicted for obtaining money by a false pretence that a cheque