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### LIABILITY OF INNOCENT PARTY FOR FRAUD OF ANOTHER.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S  
BENCH DIVISION, JUNE 10, 1879.

BABCOCK V. LAWSON.

Where of two innocent parties one must suffer from the fraud of a third, the loss should fall on the one who enabled the third party to commit the fraud.

Plaintiffs had lent to D. D. & Sons their acceptances for £11,500, taking a memorandum in this form: "As security for the due fulfilment on our part of this undertaking, we have warehoused in your name sundry lots of flour, and in consideration of your delivering to us, or our order, said flour as sold, we further undertake to specifically pay you proceeds of all sales thereof immediately on their receipt. D. D. & Sons." This undertaking was renewed upon the acceptances falling due. Subsequently the defendants, in entire ignorance of the above facts, and believing the flour to be the property of D. D. & Sons, agreed to advance a sum of £2,500 on the security of the flour, but on the terms that they were to have absolute possession of the flour and to have power to sell it.

D. D. & Sons then fraudulently misrepresented to plaintiffs that they had found a purchaser for the flour and would hand over to them the amount received as the price; whereupon the plaintiffs were induced to part with the possession of the flour, and for that purpose gave a delivery order to D. D. & Sons. The defendants having obtained possession of the flour and sold it, this action was brought to recover its value. *Held*, that as the flour had been given up by the plaintiffs to D. D. & Sons conformably to the contract to sell as their own, the special property vested in the plaintiffs as pledgees, if any, was intentionally surrendered, and though such surrender might have been revoked as having been obtained by fraud so long as the goods remained in the hands of the pledgors, when once the property in them had been transferred for good consideration to a *bona fide* transferee, the latter acquired an indefeasible title. *Held*, also, that the plaintiffs, having put it in the power of D. D. & Sons to commit the fraud, must be the sufferers rather than the defendants, who were merely innocent transferees for value.

This was a special case, stated in an action brought by the plaintiffs against the defendants to recover the value of certain flour.

The facts are fully set out in the judgment of the court.

*T. H. James (Herschell, Q. C., with him)*, for plaintiffs, cited *Halliday v. Holgate*, 18 L. T. Rep. (N. S.) 656; L. R., 3 Ex. 299; *Cundy v. Lindsay*, 38 L. T. Rep. (N. S.) 573; L. R. 3 App. Cas. 459; *Kingsford v. Merry*, 28 L. T. Rep. (O. S.) 236; 1 H. & N. 503; *Roberts v. Wyatt*, 2 Taunt. 268; *Hollins v. Fowler*, 33 L. T. Rep. (N. S.) 73; L. R., 7 H. of L. Cas. 757.

*Cohen, Q. C. (Warr with him)*, for defendants, cited *Knights v. Wiffen*, 23 L. T. Rep. (N. S.) 610; L. R., 5 Q. B. 660; *Vickers v. Hertz*, L. R., 2 Sc. App. 115; *White v. Garden*, 17 L. T. Rep. (O. S.) 64; 10 C. B. 919; *Attenborough v. St. Katharine's Dock Co.*, 38 L. T. Rep. (N. S.) 404; L. R., 3 C. P. Div. 450; *Pease v. Gloaghe*, 15 L. T. Rep. (N. S.) 6; L. R., 1 P. C. 219; *Moyce v. Newington*, 39 L. T. Rep. (N. S.) 535; L. R., 4 Q. B. Div. 35; *Root v. French*, 13 Wend. 570.

COCKBURN, C. J. This was an action for the wrongful conversion of a quantity of flour alleged to be the property of the plaintiffs. The facts were shortly these: The plaintiffs, who are merchants at Liverpool, had lent to the firm of Denis Daly and Sons, also merchants at Liverpool, their acceptances for the sum of £11,500 (for which Denis Daly & Sons undertook to provide at or before maturity), on the security of certain flour, a memorandum as to such security being given by Denis Daly & Sons in these terms: "As security for the due fulfilment on our part of this undertaking, we have warehoused in your name sundry lots of flour, and in consideration of your delivering to us or our order said flour as sold, we further undertake to specifically pay you proceeds of all sales thereof immediately on their receipt." The flour was accordingly warehoused in the name of the plaintiffs in a room let to them for the purpose, and of which they kept the key and paid the rent. Three of the acceptances thus given by the plaintiffs, amounting in the whole to £6,500, having been in due time provided for by Denis Daly & Sons, it was agreed between them and the plaintiffs that the two remaining bills, for £2,500 each, should be renewed, which was accordingly done, a memorandum similar to the former one being again given by Denis Daly & Sons, whereby they undertook to provide for the acceptances at or before maturity, with this addition: "As security for the due