

C. of A.]

NOTES OF CASES.

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to S. Subsequently S. assigned this lease to one I. who had actual notice of the plaintiff's interest in the furniture. Evidence was given to prove that the company had notice of the relation existing between S. and the plaintiff in reference to this furniture. There was no evidence to shew that the plaintiff knew of this transaction until after it was consummated, when he promptly repudiated it.

Held, reversing the decree of Blake, V.C., that the evidence proved a partnership between the plaintiff and S.; and being joint owners of the furniture, S. had no power to convey the plaintiff's interest therein, even in the absence by the company of any notice of the partnership.

Held also, that the plaintiff was not estopped by his conduct from asserting his right to the furniture.

C. Moss (J. T. Small with him) for the appellant.

Crooks, Q.C., (Kingstone with him) for the respondent, the Rossin House Hotel Co.

Howell for official assignee.

Morphy (Winchester with him) for the respondent Irish.

Appeal allowed.

From Q. B.]

[January 15.]

ERB ET AL. V. GREAT WESTERN RAILWAY.

Bill of lading.—*Liability of railway company for fraudulent receipts issued by agent.*—31 Vict., c. 11, R. S. O., c. 116.

The agent of defendants at Chatham, a station on their line, having authority to grant bills of lading and shipping receipts for goods to be forwarded by the railway from that station, issued such documents representing certain flour to have been shipped by or received from B. & Co., and to be delivered to the plaintiffs at St. John, N.B. B. & Co. were a firm of millers at Chatham, of which the defendants' agent was a partner, and the bills of lading and receipts were fraudulently issued by such agent, no flour having been received by him. Bills of exchange drawn by B. & Co. on the plaintiffs and annexed to these bills of lading and receipts were discounted by a bank at Chatham, for B. & Co., and forwarded

to the plaintiffs, by whom they were accepted and retired.

Held, per Moss, C. J. A. and Burton, J. A., that defendants were not liable to the plaintiffs, for the agent in giving receipts for goods never received, was acting outside his authority and ceased to represent his principals. A principal is only liable for tort of agent when the misrepresentation is made, or other wrongful act is committed by the agent in the usual course of his employment and for the benefit of his master, or where the master has authorized, sanctioned, or ratified it.

Per Moss, C. J. A.—Entrusting an agent with certain powers and given duties is not a guaranty that he will not abuse those powers for his own fraudulent ends.

Per Burton, J. A.—A bill of lading is not a representation to the persons to whom it is endorsed, that the statements therein contained are true and may be relied upon.

Per Patterson, J. A., and *Blake*, V.C.—The defendants were liable to the plaintiffs for the damage they suffered.

Per Patterson, J. A.—Bills of lading are made effectual by statute as securities or representatives of value, on which money may be obtained, and persons dealing with them are not bound to enquire into the truth of the facts stated therein. Being by statute negotiable and representing goods, and being securities upon which advances can be obtained, the carrier gives them, not only with the knowledge that they may be acted upon, but with the intent that they shall be acted upon. They are representations that the facts are as therein stated, and on the faith of which money may be advanced.

Per Blake, V.C.—The plaintiffs were, under the circumstances, entitled to conclude that whatever the agent could do as shipping agent and did do, was done by the company, and that in this case the company intended to and did represent that the flour was shipped according to the tenor of the bill of lading.

Bethune, Q.C., (Durand with him) for the appellant.

M. C. Cameron, Q.C. and *C. Robinson*, Q.C., for the respondent.

Appeal dismissed.