

moneys he spent were less than the \$2,000 and were directly taken out of this sum.

I have been unable to find that the case of *Rowland v. Chapman* has been considered in any subsequent decision; and while, in the circumstances presented to Buckley, J., the decision may have been correct, I do not think it can be considered as at all conclusive upon the facts of this case. As said by Lord Alverstone, C.J., in *Andrews v. Ramsay*, [1903] 2 K.B. 635, "It is impossible to say what the result might have been if the agent in this case had acted honestly." See also *Harrington v. Victoria Graving Dock Co.* (1878), L.R. 3 Q.B. 549, and *Shipway v. Broadwood*, [1899] 1 Q.B. 369, where it is laid down that the effect of a bribe is not important, but rather the intent.

The Courts seem to have shewn a tendency in the later cases to lay stress upon the breach of duty to disclose rather than upon fraud in the transaction. In *Harrington v. Victoria Graving Dock Co.*, the giving of a bribe, or even the promise of a bribe, though it did not influence the mind of the agent, was said to be an obviously corrupt bargain and could not be enforced.

In *Mayor, etc., of Salford v. Lever*, [1891] 1 Q.B. 168, the ground of action is expressly stated to be fraud; "the truth is, there are two frauds, both separate and distinct; one by the agent with regard to his principal, the other a combination fraud by the two persons by conspiring to defraud:" per Lord Esher, M.R.

In *Lands Allotment Co. v. Broad*, 13 R. 699, Romer, J., says that the only ground on which the plaintiff company can make the defendant liable is by establishing a case of fraud on his part. But in *Grant v. Gold Exploration and Development Syndicate Limited*, [1900] 1 Q.B. 232, emphasis is put upon the breach of what Vaughan Williams, L.J., calls "a constructive fiduciary duty:" and Collins, L.J., holds that the seller is responsible as for money had and received to the use of the buyer, even though possibly he could not have been made liable in an action of deceit.

This aspect of the case is pointed out in *Hovenden v. Millhoff* (1900), 83 L.T.R. 41, by Vaughan Williams, L.J.; and in *Rowland v. Chapman*, 17 Times L.R. 669, Buckley, J., limits the fiduciary duty to cases where in fact the duty and interest of the agent conflicted. See also the judgment in appeal in *Krolík v. Essex Land Co.* (1904), 3 O.W.R. 508; *Andrews v. Ramsay & Co.*, [1903] 2 K.B. 635.

But, upon whichever ground it is finally rested, I am glad