

lieving that they were dealing with that firm. Blenkarn had no means of paying for the goods, and on the discovery of the fraud he was prosecuted for obtaining goods by false pretenses, and was convicted. Before his conviction he had sold some of the goods to the defendants in the ordinary way of business, and the defendants had resold them before the fraud was discovered. It was admitted that they were *bona fide* purchasers for value.

The Queen's Bench Division directed the verdict to be entered for the defendants on the ground that the property in the goods had passed to Blenkarn, and from him to the defendants, but this decision was reversed as above mentioned.

The *Solicitor-General*, (Sir H. S. Giffard, Q.C.), *Benjamin*, Q.C., and *B. F. Williams*, for appellants.

*Wills*, Q.C., and *Hullarton*, for respondents.

The LORD CHANCELLOR (Cairns). My Lords, you have in this case to discharge a duty which is always a disagreeable one for any court, namely, to determine as between two parties, both of whom are perfectly innocent, upon which of the two the consequences of a fraud practiced upon both of them must fall. In discharging that duty your Lordships can do no more than apply rigorously the settled and well-known rules of law. With regard to the title to personal property, those rules may, I take it, be thus expressed: By the law of our country the purchaser of a chattel takes the chattel as a general rule, subject to what may turn out to be certain infirmities in the title. If he purchases the chattel in market overt, he obtains a title which is good against all the world; but if he does not purchase the chattel in market overt, and if it turns out that the chattel has been found by the person who professed to sell it, the purchaser will not obtain a title as against the real owner. If it turns out that the chattel has been stolen by the person who has professed to sell it, the purchaser will not obtain a title. If it turns out that the chattel has come into the hands of the person who professed to sell it by a *de facto* contract, that is to say, a contract which has purported to pass the property to him from the owner, then the purchaser will obtain a good title, even though afterward it should appear that there were circumstances connected with the contract

which would enable the original owner of the goods to reduce it and to set it aside, because those circumstances will not be allowed to interfere with a title for valuable consideration obtained by some third party during the interval while the contract remained unreduced. The question, therefore, in the present case, as your Lordships will observe, really becomes the very short and simple one which I am about to state. Was there any contract which, with regard to the goods in question in this case, had passed the property from Messrs. Lindsay to Alfred Blenkarn? If there was any contract passing the property, even though, as I have said, it might afterwards be open to a process of reduction on the ground of fraud, still in the meantime Blenkarn might have conveyed a good title for valuable consideration to the present appellants. Now there are two observations bearing upon the solution of that question which I desire to make. In the first place, if the property in the goods passed, it could only pass by way of contract, there is nothing else which could have passed the property. The second observation is this, your Lordships are not here embarrassed by any conflict of evidence, or any evidence whatever, as to conversations or as to acts done; the whole history of the transaction lies upon paper. The principal parties concerned, the respondents and Blenkarn, never came in contact personally: everything that was done was done by writing. What has to be judged of, and what the jury in the present case had to judge of, was merely the conclusion to be derived from that writing, as applied to the admitted facts of the case. Now, discharging that duty, and answering that inquiry, what the jurors have found in substance is this: they have found that by the form of the signatures to the letters which were written by Blenkarn, by the mode in which his letters and his applications to the respondents were made out, and by the way in which he left uncorrected the mode and form in which in turn he was addressed by the respondents, that by all those means he led, and intended to lead, the respondents to believe, and they did believe, that the person with whom they were communicating was not Blenkarn, the dishonest and irresponsible man, but was a well-known and solvent house of Blenkarn & Sons, doing business in the same street.