

Privy Council Appeal No. 127 of 1924.

Dr. F. V. Nanka-Bruce - - - - - *Appellant*

v.

The Commonwealth Trust, Limited - - - - - *Respondents*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 21ST JULY, 1925.

Present at the Hearing :

LORD ATKINSON.

LORD SHAW.

LORD PARMOOR.

[*Delivered by* LORD SHAW.]

This is an appeal from the judgment of the Full Court of the Gold Coast Colony affirming a judgment of Beatty J. without a jury.

The appellant is a planter and shipper of cocoa, carrying on business at Accra. The respondents carry on business at Accra as general exporters and importers.

One, Laing (the co-defendant with the respondents in the action), was an editor of a newspaper in Accra and a buyer and seller of cocoa. He had previously made purchases of cocoa from the appellant.

The claim of the appellant against the respondents is for damages for conversion of 160 bags of cocoa. The history of this cocoa, so far as is material to the present case, and stated neutrally, is as follows: The appellant entered into a general arrangement with Laing under which Laing was to receive cocoa from the appellant at the price of 59s. per load of 60 lbs. It was recognised

that Laing would resell the cocoa to other merchants and that when these other merchants took delivery by a transfer of the consignment notes the goods would be weighed up at their premises and the weights tested there. That operation being completed, the *cumulo* amount payable by Laing on the contract made with the appellant was, of course, ascertained.

On the 24th April, 1920, the 160 bags of cocoa were despatched by rail by the appellant to Accra under a consignment note made out in favour of Laing. Laing then acted with the goods thus: He sold them to the respondents and handed to the respondents' representatives the railway consignment note. The respondents took delivery and credited Laing with the price at which they had purchased the goods. Laing's conduct seems unquestionably to have been dishonest conduct. Both Courts have, however, found that the conduct of the respondents was quite honest and that they purchased the goods for value and without any notice of any objection to or defect in the title of Laing or the contract under which he had acquired the goods. Both Courts have concurrently found that Laing purchased the cocoa from the appellant. The appellant attacked this finding as erroneous in law, alleging that the weighing up of the goods must be treated as having been a condition precedent to operative sale.

Their Lordships agree that the provision as to the weight of the goods being tested was not a condition precedent to sale. The goods were transferred, their price was fixed, and the testing was merely to see whether the goods fitted the weights as represented, but this testing was not suspensive of the contract of sale or a condition precedent to it. To effect such suspension or impose such a condition would require a clear contract between vendor and vendee to that effect. In this case there was no contract whatsoever to carry into effect the weighing, which was simply a means to satisfy the purchaser that he had what he had bargained for and that the full price claimed per the contract was therefore due.

The law upon this branch of the contract of sale is thus expressed by the Lord Chancellor, Lord Cairns, in *Cundy and another v. Lindsay and others*, App. Cas., Vol. III, part I, pp. 463-464:—

“ Now, with regard to the title to personal property, the settled and well known rules of law 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 good 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 of the property, there the purchaser will obtain a good title, even although afterwards it should appear that there were circumstances connected with that contract, which would enable the original owner of the goods to reduce it, and to set it aside, because these circumstances so enabling the original owner of the goods, or of the chattel, to reduce the contract and to set it aside, 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."

Applying that law their Lordships find no difficulty in affirming that these goods were *de facto* sold to Laing by the appellant, and that so far as the respondents were concerned they were honestly and for value bought by them from Laing. Suppose it to be the case that the appellant, defrauded by Laing to whom he had sold the goods, could have treated the transaction as voidable on that account and sued Laing for remission accordingly, that cannot in law form a ground of impeachment as against buyers in good faith and for value from the person, like Laing, thus vested in the goods by a *de facto* contract.

This is an end of the case. . Another point might have been raised, namely whether the respondents should not succeed on the ground that Laing, whether vendee or not, was put in possession of the goods of the appellant and in the position of selling them to others, in short on the principle just applied by this Board in the case of *The Commonwealth Trust, Limited v. Akotey*. But such an argument need not be entered upon.

Their Lordships are of opinion that the conclusion arrived at in the careful judgment of the Full Court was right. They will humbly advise His Majesty that the appeal should be disallowed with costs.

Dr. F. V. NANKA-BRUCE,

vs.

THE COMMONWEALTH TRUST, LIMITED.

DELIVERED BY LORD SHAW.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1925.