Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pease and others v. *Gloahec* (*the "Marie Joseph"*), *from the High Court of Admiralty of England; delivered on the 4th August*, 1866.

Present:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JOHN T. COLERIDGE.
SIR EDWARD VAUGHAN WILLIAMS.

THIS is an Appeal from a Decree of the Judge of the High Court of Admiralty in a cause instituted on behalf of the Appellants, the assignees and owners of a bill of lading of certain linseed cake laden on board a vessel called the "Marie Joseph" against the vessel and against the Respondent the master and owner of the vessel, pronouncing against the damage proceeded for, dismissing the Respondent from the suit, and condemning the Appellants in costs.

The question raised by the suit is the right of the shippers of the linseed cake to stop the same *in transitu* under the following circumstances.

In February 1864 Messrs. Maxwell and Dreossi, of Bordeaux, through their agent, Walter Stericker, sold to Messrs. Scarborough and Tadman, of Hull, 60 tons of linseed cake at 7*l*. 12*s*. 6*d*. per ton, payable by bill at three months from the date of the bill of lading. On the 11th February the goods were shipped on board the "Marie Joseph" at Bordeaux by Maxwell and Dreossi, and a bill of lading for the same was signed by the Respondent, the master. Maxwell and Dreossi indorsed the bill

of lading to order and assigns, and drew a bill of exchange for the price on Messrs. Scarborough and Tadman, and sent the bill of lading and bill of exchange to their agent, Stericker. On the 16th February Stericker took the bill of lading and the bill of exchange to Scarborough and Tadman, when the bill was accepted by Scarborough, and Stericker thereupon indorsed the bill of lading, and delivered it to Scarborough, together with a policy of insurance which had been effected upon the goods. A conversation then ensued between Stericker and Scarborough respecting the dealings of Scarborough and Tadman with a person named Moore, whose circumstances were supposed to be embarrassed, and Stericker asked Scarborough whether he had any objection to his holding the bill of lading. Scarborough told Stericker to take it, and delivered back the bill of lading to Stericker, who thereupon signed the following Memorandum :—

"Hull, 16 February, 1864.

"Memorandum that I have received of Messrs. Scarborough and Tadman, of Hull, a bill of lading and policy of insurance for about 60 tons linseed cakes, shipped 'Marie Joseph,' dated at Bordeaux 11th February, 1864, and which I hold as security against their acceptance of Messrs. Maxwell and Dreossi's draft for 427*l.* 1*s.* 7*d.* due the 14th May, 1864, until the cakes are sold or vessel arrives.

"Walter Stericker."

On the 18th February, Tadman, the other partner in the firm of Scarborough and Tadman, called upon Stericker and stated to him that his firm had sold the linseed cake to a Mr. Croysdale, who would accept a draft against the bill of lading. The linseed cake had not been sold to Croysdale, nor to any other person. Trusting to this misrepresentation, Stericker returned the bill of lading and the policy of insurance to Tadman. On the same day, after thus obtaining the bill of lading, in consequence of a message received from the Appellants Messrs. Pease and Co. bankers in Hull, to whom Scarborough and Tadman were largely indebted, Tadman went to the bank, and Mr. Pease called his attention to the state of his account and to the amount of the bills under discount, and asked him

for security. Tadman thereupon endorsed the bill of lading in the name of his firm, and delivered it together with the policy of insurance to Mr. Pease, and gave Messrs. Pease and Co. an unsigned memorandum authorizing them to sell the linseed cake and to place the proceeds to the credit of Scarborough and Tadman on account. Moore, in whose transactions Scarborough and Tadman were supposed to be involved, became bankrupt on the 4th March, and on the 7th March Scarborough and Tadman stopped payment. On the 5th March a telegram was sent from Maxwell and Dreossi to Stericker directing him to stop the delivery of the linseed cake, and on the 7th March he received from Maxwell and Dreossi a bill of lading endorsed to himself. The "Marie Joseph" arrived at Hull on the 5th April. The linseed cake was demanded on behalf of the Appellants upon the bill of lading endorsed to them, but Stericker afterwards went on board and presented his bill of lading and obtained possession of the goods under an indemnity from Maxwell and Dreossi to the Respondent.

Upon these facts the learned Judge of the Court of Admiralty was of opinion that the bill of lading having been obtained from Stericker by the false representations and fraud of Tadman, and having been afterwards negotiated without the consent of Stericker or of his principals, and contrary to the understanding between Stericker and Tadman, the fraudulent conduct of Tadman invalidated the indorsement to Pease and Co., and he accordingly pronounced against them.

The question is one of nicety and difficulty, and, as was stated by the Counsel in argument, no direct authority is to be found by which it can be decided. Principles, however, may be extracted from previous decisions which will serve as guides to its right determination. A bill of lading for the delivery of goods to order and assigns is a negotiable instrument, which by indorsement and delivery passes the property in the goods to the indorsee, subject only to the right of an unpaid vendor to stop them *in transitu*. The indorsee may deprive the vendor of this right by indorsing the bill of lading for valuable consideration, although the goods are not paid for, or bills have been given for the price of them which are certain to be

dishonoured, provided the indorsee for value has acted *bonâ fide*, and without notice. Although a bill of lading is a negotiable instrument, it is so only as a symbol of the goods named in it, and as was said by Lord Campbell in Gurney *v.* Behrend (3 E. and B., 634), " although the shipper may have indorsed in blank a bill of lading deliverable to his assigns, his right is not affected by an appropriation of it without his authority, and if it be stolen from him or transferred without his authority a subsequent *bonâ fide* transferee for value cannot make title under it as against the shipper of the goods." This dictum is very carefully confined in its terms to the original transfer of a bill of lading deliverable to the assigns of the shipper. In the cases which it supposes there could be no lawful assigns of the shipper, and consequently the bill of lading could have no existence as a negotiable instrument. But in the present case the shippers of the goods having obtained a bill of lading indorsed it to order and assigns, and forwarded it to Stericker for the express purpose of its being indorsed by him, and handed over to Scarborough and Tadman. By the indorsement and delivery to Scarborough and Tadman they acquired the complete property in the goods and control over the bill of lading, subject only to the right of Maxwell and Dreossi to stop *in transitu* as long as it remained in their hands. This is not denied by the Respondent, but his case is that Scarborough and Tadman having, after the indorsement and delivery of the bill of lading, returned it to Stericker to retain as a security for the payment of the bill of exchange accepted for the price of the goods, and having afterwards obtained it from him by a misrepresentation, they had no power to pass a title in it to Pease and Co., at least without being subject to the lien created by the deposit with Stericker, and consequently that the right to stop *in transitu* against Pease and Co., though *bonâ fide* indorsees for valuable consideration, still subsisted.

There can be no doubt that although the vendors had parted with the property in the bill of lading by the indorsement to Scarborough and Tadman, they acquired a title to hold it by the terms of the agreement under which it was deposited with Stericker. These terms do not include any stipu-

lation that the vendees should not so deal with the bill of lading as would in the event of their insolvency defeat the right to stop *in transitu*.

It is not even stipulated that the vendors should hold the bill of lading till the subvendees should give them a bill of exchange or other security for payment. The bill of lading was not made subject to any new condition or limitation, but was merely deposited with the vendors till the arrival of the ship or the sale of the goods.

Scarborough and Tadman had power to sell, not by reason of any authority arising out of the agreement, but by virtue of their ownership in the goods. The power to sell of course included a power to pledge. The vendors by keeping the bill of lading in their hands might have prevented Scarborough and Tadman from dealing with it. They chose to deliver it back to them, induced to do so indeed by the fraudulent representation of Tadman, but still consenting to their possession of it. The indorsees acquired no new title from the vendors by the fraud which Tadman practised, but merely obtained their own property and the means of effectually disposing of it. The vendors had not, strictly speaking, a lien, which means a right to retain property against the will of the owner of it, and which is lost when the possession is parted with. They had, by the agreement of the indorsees and owners, a right to hold the bill of lading as a security. As in the case of lien so in this case, as long as the bill of lading remained with the parties who had fraudulently obtained it, the vendors who had been cheated out of the possession might have reclaimed and recovered it. But the moment it passed into the hands of Pease and Co., to whom it was pledged and indorsed for valuable consideration without notice, the right of the vendors to follow it was taken away. This is a much stronger case than that put by C. J. Abbott, in Dyer *v.* Pearson (3 B and Cr., 42), of the real owner of goods who suffers another to have possession of his property and of those documents which are the evidence of property, being bound by a sale which he has thus enabled the other person to make; for here the person entitled to retain the possession of the instrument which represented the goods against the real owners, relinquished the possession of it to them, and enabled them to deal

with the property in their true character of owners. In the case of Kingsford *v.* Merry, (11 Exch., 577), it was held that, "When a vendee obtains possession of a chattel with the intention by the vendor to transfer both the property and possession, although the vendee has committed a false and fraudulent misrepresentation in order to effect the contract or obtain the possession, the property vests in the vendee until the vendor has done some act to disaffirm the transaction, and the legal consequence is, that if before the disaffirmance the fraudulent vendee has transferred either the whole or a partial interest in the chattel to an innocent transferee, the title of such transferee is good against the vendor."

Although this case was reversed in the Exchequer Chamber (1 Hurlst. and Norman, 503), yet it was upon a ground which did not affect the rule of law above laid down, but made it inapplicable, because in the judgment of the Court the relation of vendor and vendee did not exist between the owner of the goods and the fraudulent possessor. Here the possession was not only united to the previous ownership, with the consent (however obtained) of the person temporarily entitled to it, but transferred for the express purpose of giving to the owner absolute dominion over his own property.

An ownership, which was at the time perfect at law though voidable as to part, viz., the possession, cannot in principle be treated differently from an ownership voidable as to the whole, but in the interim protected by the interposition of a *bonâ fide* purchaser for valuable consideration.

For these reasons their Lordships will humbly recommend to Her Majesty that the Decree appealed from be reversed, with costs.