

SHEFFIELD CORPORATION -VS- BARCLAY [1905]

AC 392 1905

House of Lords

Lord Halsbury, Lord Davey, Lord Robertson

FACTS:

Authorised irredeemable stock in Sheffield Corporation was registered in the **joint names** of Timbrell and Honnywill. Timbrell executed an appropriate form of transfer of the stock in his own name but forged the signature of Honnywill. The forged transfer was in favour of a bank, Barclay's, as a lender. The bank sent the forged transfer to the Corporation for registration and the Corporation acted upon that request. The bank was thus given a stock certificate and, before or after that, the bank's stock was sold on to holders for value to whom, the Bank having returned its certificate to the Corporation, the Corporation gave fresh stock certificates.

Timbrell died and Honnywill then discovered the fraud and successfully insisted in proceedings that the stock of which he had been defrauded should be restored to him, as it was, at the Corporation's expense. The Corporation then sued the bank for an indemnity. Had the Corporation any remedy against the bank which had asked it to act upon the forged transfer?

HELD:

The corporation was entitled to an indemnity from the bank. bAdopting Dugdale -v- Lovering: *"The principle insisted upon by Mr Cave in his argument quoted above has been undoubtedly sanctioned as part of the law by several old decisions, and I think the principle as enunciated is well-established."*

Lord Davey: "I think that the appellants [Sheffield Corporation] have a statutory duty to register all valid transfers, and on the demand of the transferee to issue to him a fresh certificate of title to the stock comprised therein. But, of course, it is a breach of their duty and a wrong to the existing holders of stock for the appellants to remove their names and register the stock in the name of the proposed transferee if the latter has, in fact, no title to require the appellants to do so. I am further of opinion that where a person invested with a statutory or common law duty of a ministerial character is called upon to exercise that duty on the request, direction, or demand of another (it does not seem to me to matter which word you use), and without any default on his own part acts in a manner which is apparently legal but is, in fact, illegal and a breach of the duty, and thereby incurs liability to third parties, there is implied by law a contract by the person making the request to keep indemnified the person having the duty against any liability which may result from such exercise of the supposed duty.

And it makes no difference that the person making the request is not aware of the invalidity in his title to make the request, or could not with reasonable diligence have discovered it." and as to Dugdale v Lovering: "I am also of opinion that the authority keeping a stock register has no duty of keeping the register correct which they owe to those who come with transfers. Their only duty (if that be the proper expression) is one which they owe to the stockholders who are on the register. This point was decided by all the learned Judges who took part in the decision of the first case of Simm -vs- Anglo-American Telegraph [5 QBD 188]. I will content myself with quoting the language of Cotton L.J. [at 214] *"The duty of the company is not to accept a forged transfer, and no duty to make inquiries exists towards the person bringing the transfer. It is merely an obligation upon the company to take care that they do not get into difficulties in consequence of their accepting a forged transfer, and it may be said to be an obligation towards the stockholder not to take the stock out of his name unless he has executed a transfer; but it is only a duty in this sense, that unless the company act upon a genuine transfer they may be liable to the real stockholder."*