

J. P. JONES v. V. COWLEY.

The Supreme Court (Hunter J.) found a verdict for the Plaintiff Jones (the respondent on this appeal) for £1198/10/0 for certain flour. The defendant — Cowley — appealed.

On the 8th December, 1961 the Privy Council (Hammett C.J.) delivered the following judgment :

The Plaintiff-Respondent obtained judgment in the Supreme Court against the Defendant-Appellant for the sum of £1,198/10/0 and costs in respect of a consignment of flour from Australia of which the Defendant-Appellant took delivery after obtaining the documents of title thereto from the Respondent's employee.

The facts were not seriously in dispute and were as follows :

Mrs. Cowley ordered some flour from a firm in Australia named Wise Bros. Pty. Ltd. Some 30 tons of flour were later consigned by Wise Bros. Pty. Ltd. on the "Waimate" from Sydney to the Plaintiff in Nuku'alofa in the name under which he carries on business, namely "E. M. Jones". The Bill of Lading was made out in favour of E. M. Jones and the account of E. M. Jones with Messrs. Wise Bros. Pty. Ltd., was debited with the cost of the flour. It is clear that the sale of this flour was effected by Wise Bros. to the Plaintiff.

When the Appellant learned of this, she spoke to Mrs. Slocombe, an employee of the Respondent, and told her the flour was intended for the Appellant. Mrs. Slocombe informed the Appellant that payment for the flour was to be made by the Appellant to Mr. Jones. The Appellant then objected to this arrangement and Mrs. Slocombe said that Mr. Jones would, in that event, like to keep the whole shipment of flour himself. To this Mrs. Cowley would not agree. She then said she wanted to take the documents so as to take delivery of all the flour but was willing to sell back a part of it to Mr. Jones and this was agreed to.

It is quite clear that this flour was, at this time, the property of Mr. Jones, who had possession of the documents of title to it which were made out in his favour. When that document was handed to Mrs. Cowley, it was handed to her in pursuance of a sale of the flour by Mr. Jones, to Mrs. Cowley and she accepted it on this basis. Having taken delivery of the flour on this basis, Mrs. Cowley on the principle laid down by Section 103 of the Evidence Act was estopped by her own words and conduct from denying the lawful title of Mr. Jones to it at the time. In our opinion the learned trial Judge was correct in holding that Mr. Jones is entitled to succeed in his claim against her for the cost of the flour.

We have considered the other grounds of appeal raised at the hearing but we do not consider they are of any merit.

The Appeal is dismissed with costs to the Respondent which we fix at £10/10/0.