

## CASE COMMENT - PHILLIPS V BROOKS LTD

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### INTRODUCTION

*Phillips v Brooks Ltd* is an English law case on ‘mistake of identity’ but later it turned out to be a fraudulent act demonstrating the lack of free consent. It was decided by the Judge Horridge of the Kings Bench Division in the year 1919. This case showcases the intervention of rights by a third party, transferring of title of any property or goods, and intention to transfer of title. Phillips v Brooks Ltd is a case that shows how someone commits fraud which creates a lot of confusion and legal needs to determine who should be granted the genuine title to that object.

### FACTS

Phillips, the petitioner, was the owner of a jewelry shop. On April 15, 1918, a man named North entered the shop and selected pearls at the price of 2550 £ and a ring worth 450 £ and gave a cheque worth 3000 £. He told the shopkeeper that he was Sir George Bullough who lives in St. James Square. North purchased a ring and pearls from the petitioner and then told Phillips that the following day was his wife’s birthday, therefore he wanted to take the ring with him. Phillips volunteered to deliver the ring before even being paid because he had so much faith in Sir George Bullough. The cheque given by North was dishonored and Phillips gets to know that North fraudulently took that ring from him. Later, North sold that ring to the defendants, in the name of Firth to the bona fide lenders, Brooks Ltd for 350 £. As a result, Brooks Ltd was sued by the plaintiff and asked them to return the ring to Phillips.

### LEGAL ISSUE

This case first started with an issue of mistake of identity because the person named North presented himself to be someone else and acquired the property. Later, it was determined to be a case of fraud as Mr. North acquired the property in a malicious way that is fraudulent which raises the case of not being able to give free consent on the part of the petitioner. Later the issue of who would hold the right title of property arose, which was then under the defendants. The legal issues and questions then arose were

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- Was there free consent on the part of the petitioner, Phillips?
- Will the fraud in this case lead to the contract being void or voidable?
- Can a person who has acquired any property by fraud can transfer the property to a bona fide buyer i.e. can North sell the ring to Brooks Ltd?
- Who will be the ring's legitimate owner?

### **RULE OR LAWS INVOLVED**

At the beginning of the case, it was considered that it was the case of a 'mistake of identity' in which the law says that, a mistake of identity occurs when one party is deceived by any other person by any wrongful means or misrepresentation to fraud him and gain.

The English laws involved in this particular case are related to free consent and the fraudulent act under it. Also, "The Larceny Act, 1916<sup>1</sup>" has been mentioned in the judgment which gives details about the crime against possession.

Whereas under the "Indian Contract Act 1872<sup>2</sup>", free consent is defined under Section 14 which tells that a meeting of minds is necessary further within the Act under Section 17 fraud is explained. It states that if any of the following stated acts are made by any of the contracting parties to deceive or induce a party will be liable under fraud, the acts are-

- If there is a concealment of any fact
- A promise is made without the intention of being carried out
- Any act to deceive the other party
- Any act which is considered fraudulent under the eyes of the law
- Mere silence or hiding of facts also comes under the ambit of fraud

This case also includes the statutes given under "The Sales of Goods Act, 1930<sup>3</sup>", especially under Section 29 (possession under voidable contract) which states that- if any person who has acquired the possession of goods by fraud, coercion, misrepresentation or undue influence and then sell those goods to some other person, then the buyer of the goods gets the good title of the goods.

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<sup>1</sup> Larceny Act 1916

<sup>2</sup> The Indian Contract Act, 1872

<sup>3</sup> The Sale of Goods Act, 1930

**Cases related to judgment are -**

- Edmunds v Merchants Despatch Transportation Co.
- Cundy v Lindsay

**ANALYSIS**

Both the plaintiff and the defendants in the case have used specific case laws to support their claims in court, and these arguments are-

**Plaintiff's arguments**

Plaintiffs cited the case of "*Hardman v Booth*<sup>4</sup>" where the clerk misrepresented him to be the business owner leading to the deal between claimant and the company. Later the court held the decision in the claimant's favor and stated that there was no contract between the claimant and the defendant and ownership of the property was not passed. therefore, the claimant was entitled to the proceeds of the sale. Also, in the case of "*Cundy v Lindsay*<sup>5</sup>" where a person obtained goods from another party deceitfully by inducing the belief that he was from a very reputable firm to get things in his favor and gains, it was said that there was no contract between the plaintiff and the claimant and therefore judgment was held in the favor of the claimant. Therefore, the plaintiff, in this case, intended to enter into a contract with Sir George Bullough but instead entered into one with another person named North due to misrepresentation, the entire transaction was void, and North was unable to transfer the title to the defendants, who are now liable to the plaintiff.

In "*Smith v Wheatcroft*<sup>6</sup>" the court said that whenever the consideration of any person with whom the contract is made and that person is misunderstood to be someone else then, the consent is destroyed therefore annuls the contract. Therefore, in this case, too, there is no contract between Phillips and North because there was no free consent and hence North cannot sell it to another person and Phillips should get his property back. The plaintiffs also referred to The Larceny Act 1916 under sections 1, 32, and 45 which states how the person should be punished under the fraud case and also talks about the crime related to possession of goods.

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<sup>4</sup> *Hardman v Booth* (1863) 1 Hurlstone and Coltman 803

<sup>5</sup> *Cundy v Lindsay* (1878) 3 App. Cas. 459

<sup>6</sup> *Smith v Wheatcroft* (1878) 9 Ch. D. 223, 230

**Defendant's arguments:**

Defendants countered the argument by referring to "*Hardman v Booth*" that in that case the owner of the goods was induced with a particular business and not with the swindler personally, therefore that case is completely different from the ongoing case, and *Hardman v Booth* has nothing to relate with this particular case. Then, referring to "*Cundy v Lindsay*" the defendants stated that in this case also there was a written inducement in the minds of the owner of the goods whom the defendants portrayed to be from a reputable firm by imposing a similar name.

In the present case, the contract was made between the plaintiff and the man North, who was present in front of the plaintiff in flesh and blood while entering into the contract that is when he came to buy the ring. In both the cases, *Hardman v Booth* and *Cundy v Lindsay* there was no intention of passing on the property whereas in the present case, there was the intention to part with the property because even if there had been some other person than North, Phillips would have sold ring to that person.

**THE JUDGMENT WAS GIVEN BY THE COURT:**

This is one of the cases which illustrates the comparison between mistake and fraud in a contract. The general rule says that a mistake does not affect a contract but when it comes to the mistake of identity then the contract is declared to be void whereas, in the case of fraud, the contract is said to be voidable. In this case-

Phillips sold the ring to North thinking him to be Sir George Bullough. Although, North misrepresented himself to be someone else to fraudulently acquire the ring the fact is that Phillips intended to sell the ring to any person identified by sight and hearing; "it does not defeat the sale". Also, this was a de facto contract in which the plaintiff intended to pass the property which was the ring to the person buying it; in this case, Honorable Judge Horridge J told his opinion that "the property did pass to the swindler who bought the goods".

This was a case of fraud because the rogue, North misrepresented himself to be someone else and acquired the property of the plaintiff. Referring to the expressions used in the judgment of Morton CJ: "The fact that the seller was induced to sell by the fraud of the buyer made the sale voidable, but not void".

In the American case of “*Edmunds v Merchants Despatch Transportation Company*<sup>7</sup>”, the court stated that even if a person fraudulently buys any property then he becomes the owner of that property also. Therefore, in this case, North had acquired the title of the ring and then passed it to the defendants which gives the ownership to Brooks Ltd and they are not liable to give the ring back to the plaintiff. Similarly, in “*Cundy v Lindsay*”, the court said that a person who has acquired a property fraudulently and someone bought it in good faith gets the title and ownership of that particular object.

### **According to Law in India**

If this case is analyzed according to the law in India, then the following sections and laws will be included-

Section 14 of the Indian Contract Act, of 1872, the definition of free consent which states that both the persons who are entering into the contract should understand the same thing in the same sense which means that there should be a meeting of minds otherwise it won't be free consent which can lead to the contract be void or voidable. The consent, in this case, was not free because there was fraud caused to the plaintiff which is defined under Section 17 of the Indian Contract Act, of 1872 which states that- if any person with the intent of deceiving another party or induces another party to their gain or for causing harm to another is called fraud. According to the case, there was fraud which was caused to the plaintiff by a man named North which led to the consent to be not free at the part of the plaintiff.

Further, in this case, North sold the fraudulently acquired ring to Brooks Ltd in the name of Firth. Under Section 29 of The Sales of Goods Act, 1930 it is stated that any person who has acquired the possession of goods by fraud or any wrong way and then sells those goods to some other person, then the buyer of the goods gets the good title of the goods. Since Brooks Ltd bought the ring in good faith from North, they became the owners of the ring and got the good title of it.

According to both English and Indian law, the defendants, Brooks Ltd are the right owners of the ring and are entitled to it. Judgment was in the favor of the defendants. The first issue in this case was whether there was fraud and will the contract be voidable or not, it was found that it was a clear case of fraud and not the mistake of identity which makes the contract

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<sup>7</sup>*Edmunds v Merchants Despatch Transportation Company* (1883) 135 Mass. 283

voidable not void. Later, it was found out who would be the owner of the ring, which was recognized to be the defendant by the court and certain laws and other previous judgments.

## CONCLUSION

I agree with the judgment given in this case because of the compelling facts that surrounded it. The defendants had paid a significant amount to purchase the ring in question, and since they did so in good faith without the knowledge of fraud, they should get possession of the ring. To defend their right to keep the ring, it becomes a matter of integrity and fairness. A genuine buyer shouldn't be required to pay compensation for the fraud done to and by someone else. Given these factors, it can be fairly inferred that Brooks Ltd is the legitimate owner of the ring.

The judgment in the case was mostly based on the decision that who would be the rightful owner of the ring whereas it should have also ruled about the compensation which should be given to the plaintiff for the huge loss that he has suffered. A holistic approach should have been followed and not just determining the ownership should have been the main motive of the case, but also the plaintiff's setback should have been taken into consideration. Since the plaintiff had been frauded by Section 17 of the Indian Contract Act, 1872, his right to have free consent under Section 14 of the Indian Contract Act, 1872 has been violated, and he should have received some damages from the rogue, North who frauded him.

Broadly looking at this case, it shows how the legal process is complex and tedious. The judgment should not be given only based on who gets to keep something, but also about making things fair for everyone. The law should make sure that honest people are not punished for someone else's bad actions. In a situation like this, the court should think about both who should own the item and how to make things right for the person who was cheated. This way, the legal system treats everyone in a just and efficient manner. This will also maintain the belief of people in the legal system.