T. MILBURN AND OTHERS (DEFENDANTS) ..... } APPELLANTS; 1901 *Nov. 11.

AND

WILLIAM ARTHUR WILSON (PLAINTIFF) AND THE HIGHWAY ADVERTISING COMPANY OF CANADA (DEFENDANT) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Principal and agent—Promoters of company—Agent to solicit subscriptions—False representations—Ratification—Benefit.

Promoters of a company employed an agent to solicit subscriptions for stock and W. was induced to subscribe on false representations by the agent of the number of shares already taken up. In an action by W. to recover the amount of his subscription from the promoters.

Held, affirming the judgment of the Court of Appeal (2 Ont. L. R. 261) that the latter, having benefitted by the sum paid by W. were liable to repay it though they did not authorize and had no knowledge of the false representations of their agent.

Held, per Strong C.J., that neither express authority to make the representations nor subsequent ratification or participation in benefit were necessary to make the promoters liable; the rule of *respondeat superior* applies as in other cases of agency.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment at the trial in favour of the plaintiff.

The action is an action for deceit in procuring the plaintiff to subscribe and pay for ten shares of stock in a company promoted by the individual defendants which was afterwards incorporated as the Highway Advertising Company of Canada (Limited).

* PRESENT:—Sir Henry Strong C.J. and Gwynne, Sedgewick, Girouard and Davies JJ.

(1) 2 Ont. L. R. 261, sub nom. *Wilson* v. *Hotchkiss*.

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The alleged fraud was committed by the defendants Hotchkiss and McKay who were authorized by the other defendants (appellants) to canvass for and obtain subscriptions for stock in the intended company and consisted substantially in the statements made to the plaintiff by these two defendants that they and their co-defendants had not only between them already subscribed for $50.000 in the stock of the company but that the whole sum subscribed for had actually been paid into a bank for the company. Relying upon these statements as evidence of the soundness and practical character of the scheme and on the faith of their being true, the plaintiff subscribed for ten shares and paid over the whole amount to the defendants.

It was found as a fact at the trial and not disputed by the appellants at the hearing that the plaintiff was induced to subscribe for stock on the false representations made by Hotchkiss and McKay. The appellants claimed, however, that they neither authorized the agents to make such representations nor ratified their action by acquiescence or otherwise and that they were not liable for what their agents did beyond the scope of their authority. Whether or not they were liable in such case was the sole question to be decided by the appeal.

Shepley K.C. for the appellants.

Aylesworth K.C. and *McEvoy* for the respondent Wilson.

R. V. Sinclair for the respondent company.

The judgment of the court was delivered by:

THE CHIEF JUSTICE: (Oral).—We do not think that we should withhold our judgment in this case. It is to be regretted that an appeal was taken to this court

considering the amount involved, the nature of the questions raised and the unanimity of opinions in the courts below, especially in the Court of Appeal.

I have no hesitation in saying that I am quite prepared to adopt the principle of law laid down by Mr. Justice Lindley (1), namely, that where false representations have been made by an agent in executing his mandate, though the principal has not directly authorized such representations, yet the rule of *respondeat superior* applies as in other cases, and it is not essential that the principal should have ratified or derived benefit from the act of his agent.

I am not sure that all my learned brothers will concur in this, but I am sure they will agree as to what Mr. Justice Moss finds to be the effect of the evidence, namely, that it is patent from the depositions that the principals, if they did not expressly authorise the statement made by their agents, did receive benefit from it in getting the money sought to be recovered by this action. I cannot do better than read an extract from the judgment of Mr. Justice Moss, who says:

> It was essential to the plaintiff's case that he should establish either that the appellants themselves were knowingly guilty of actual misrepresentations on the faith of which he acted, or that they authorised Hotchkiss and McKay, or one of them, to act for them in obtaining the plaintiff's subscription, or that they received the plaintiff's money or some of it, or that in some way they derived a profit or benefit from the fraud practised upon the plaintiff. I think upon the testimony the plaintiff has succeeded in establishing the three latter propositions.

For myself I go further than this and say that neither express authority to make the representations nor subsequent ratification or participation in benefits were necessary ingredients to make the appellants liable, though I agree with Mr. Justice Moss in his

(1) Lindley on Partnership, (6 ed.) p. 161.

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conclusion from the evidence that the latter element was in fact present here.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Kilmer, Irving & Porter.*

Solicitors for the respondent, Wilson: *McEvoy, Pope & Perrin.*

Solicitors for the respondent, The Highway Advertising Co.: *Hanna & Burnham.*