

Keighley, Maxsted & Co v Durant

[1901] AC 240

Chapter 5

Relevant facts

Keighley, Maxsted and Co ('KMC') authorised an agent, Roberts, to buy wheat on a joint account for him and them at a certain price. Roberts was unable to buy wheat at the price he was authorised to do so for KMC. On 11 May 1898, he contracted with Durant to purchase a large quantity of wheat at a price higher than he was authorised to purchase for KMC.

Roberts contracted with Durant in his own name and at no time during the contract negotiations did he suggest he was purchasing on behalf of KMC. However, in his own mind he intended the purchase to be on joint account between KMC and himself.

On 12 May 1898, a manager for KMC agreed to take the wheat on joint account with Roberts. However, Roberts and KMC later failed to collect the wheat and Durant was forced to resell it at a loss. Durant sued KMC and Roberts for compensation.

At first instance, the judge dismissed the claim against KMC and granted judgment against Roberts. Durant appealed against the decision dismissing the claim against KMC. The Court of Appeal upheld the appeal and ordered a new trial on the basis that there was evidence for a jury that Roberts contracted on behalf of both himself and KMC. KMC appealed to the House of Lords.

Legal issue

Did the ratification of the contract by KMC have the effect that it was bound by the contract made by Roberts with Durant?

Decision

On 20 May 1901, the House of Lords unanimously allowed KMC's appeal and reinstated the decision of the judge at first instance. While all 8 members of the panel delivered separate reasons, they agreed that a contract made by a person intending to contract on behalf of an undisclosed third party, but without the third party's authority, could not be later ratified by the third party so as to render the third party able to sue or be sued on the contract.

According to Lord Lindley:

The explanation of the doctrine that an undisclosed principal can sue and be sued on a contract made in the name of another person with his authority is, that the contract is in truth, although not in form, that of the undisclosed principal himself. Both the principal and the authority exist

when the contract is made; and the person who makes it for him is only the instrument by which the principal acts. In allowing him to sue and be sued upon it, effect is given, so far as he is concerned, to what is true in fact, although that truth may not have been known to the other contracting party.

At the same time, as a contract is constituted by the concurrence of two or more persons and by their agreement to the same terms, there is an anomaly in holding one person bound to another of whom he knows nothing and with whom he did not, in fact, intend to contract. But middlemen, through whom contracts are made, are common and useful in business transactions, and in the great mass of contracts it is a matter of indifference to either party whether there is an undisclosed principal or not. If he exists it is, to say the least, extremely convenient that he should be able to sue and be sued as a principal, and he is only allowed to do so upon terms which exclude injustice.

The reasons upon which a real principal not disclosed can sue or be sued on a contract made on his behalf by an agent acting with his authority have no application to contracts made by one person for another, but without any authority from him. Some other reason must be found to permit a person to sue or be sued upon a contract not entered into by him through an agent or otherwise.

The principle relied on, and the only principle which by our law can be invoked with any chance of success, is that known as ratification, by which an approval of what has been done is sometimes treated as equivalent to a previous authority to do it. The mere statement of the general nature of what is meant by ratification shews that it rests on a fiction. Where a man acts with an authority conferred upon him, no fiction is introduced; but where a man acts without authority and an authority is imputed to him a fiction is introduced, and care must be taken not to treat this fiction as fact. ...

Had Keighley, Maxsted & Co authorized Roberts to buy for them there would have been a contract in fact, although Durant & Co did not know of them and did not intend to sell to them. This is, no doubt, an anomaly, as already pointed out; but there is a reality behind it. To apply the same sort of reasoning to a different state of facts from which the reality is absent is to go further than any existing authority, and to extend a fiction further than is required by those necessities or conveniences of trade which led to its introduction.

Significance

This decision is authority for the proposition that an undisclosed third party will not be bound by a contract made by a person intending to contract on behalf of a third party but without the third party's actual authority. Such a contract cannot be ratified by the third party so as to render the third party able to sue or be sued under it.