Present: Shaw J. and De Sampayo J.

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STUART *v.* HORMUSJEE.

257—D. C. Colombo, 40,244.

Action under s. 247, Civil Procedure Code—Estoppel—Principal carrying on trade in the name of his agent—Claim by principal when goods were seized on writs against agent—Evidence Ordinance, s. 115.

The doctrine of estoppel is not a rule of evidence, but an irrebuttable presumption. If a party to any proceeding proves that he has been induced by the other party to believe in a certain state of facts and to act on such belief, then, so far as that other party is concerned, the state of facts must be assumed to be true, and the other party cannot be heard to say that they are not.

The word "intentionally" is used in section 115 of the Evidence Ordinance of 1895 for the purpose of declaring the law here to be precisely the same as the law of England.

Whatever a man's real intention may be, *i.e.*, in regard to making a representation of facts, if he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it as true,

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the party making the representation would be precluded from contesting its truth.

One Hormusjee acquired the business of one Lawrence, and appointed him manager of "Lawrence & Co.," and by power of attorney gave him the very widest powers of conducting the business, including power to sign and accept bills of exchange. Lawrence having failed to meet his acceptances given in respect of certain goods ordered by him for "Lawrence & Co.," the respondent (judgment-creditor) seized the goods on the premises of Lawrence & Co. Hormusjee claimed, and on the claim being upheld respondent brought this action under section 247 of the Civil Procedure Code.

Held, in the circumstances of this case (see judgment), that Hormusjee was estopped from denying that the goods were the property of Lawrence.

THE facts are set out in the judgment.

Bawa, K.C. (with him *F. M. de Saram*), for appellant.

Allan Drieberg (with him *F. H. B. Koch* and *H. H. Bartholomeusz*), for respondent.

Cur. adv. vult.

August 31, 1915. SHAW J.—

This action is brought by the respondent under section 247 of the Civil Procedure Code, claiming that certain goods seized in execution in two actions, Nos. 35,900 and 35,909 in the District Court of Colombo, in which he had recovered judgments against one H. A. Lawrence, should be declared liable to be sold in execution of the decrees.

The District Judge has held that the appellant is estopped by his conduct and representations from denying that the goods seized are the property of the execution-debtor, and has declared that they are liable to be sold in execution, and has further ordered that, in the event of the goods having been disposed of by the appellant, he should pay as damages to the respondent the full amount of the two judgments, namely, Rs. 1,737.14, with costs and interest thereon at the rate of nine per cent. until payment. From this decision the present appeal is brought.

It appears from the evidence that H. A. Lawrence and his father before him carried on business in the Pettah as tailors. In the time of the father the business was carried on under the name of "D. Lawrence & Co."; it does not, however, appear from the evidence what the appellation of the business was after the father's death and prior to its acquisition by the appellant.

In the year 1911 the appellant, Mr. Hormusjee, appears to have acquired the business. He appointed Mr. H. A. Lawrence as manager, and by power of attorney dated March 25, 1911, gave him the very widest powers of conducting the business, including power to sign and accept bills of exchange and other mercantile documents

in the name of the firm. The premises where the business was carried on were rented from the respondent by H. A. Lawrence in his own name, and trade stock was ordered by Lawrence from the respondent who carried on business as an importer of goods, and acceptances were given by H. A. Lawrence for the purchase price. In fact the appellant, Mr. Hormusjee, was the undisclosed principal of H. A. Lawrence, carrying on business as "Lawrence & Co." He had also ordered goods through the respondent for another business, which he personally carried on in the name of the Sewing Machine Company, the indents for which were signed in his own name, but he never informed the respondent or any one connected with his firm, and never communicated in any way to the public that he was in fact the owner of the business of "Lawrence & Co.".

H. A. Lawrence having failed to meet his acceptances given in respect of certain goods ordered by him for "Lawrence & Co.," the respondent brought the two actions, Nos. 39,500 and 39,509, District Court, Colombo, against him, and recovered judgment for Rs. 1,737.14, and interest at nine per cent.

Execution was taken out under these judgments, and the stock on the premises of "Lawrence & Co.," consisting largely of the goods in respect of which the unpaid acceptances were given, was seized. Then for the first time the appellant, Mr. Hormusjee, came forward and claimed that he was the owner of the business of "Lawrence & Co.," and that the stock was therefore his property, and not liable to be seized in execution on a judgment against H. A. Lawrence.

The Court having investigated the claim, made an order under section 244 of the Civil Procedure Code releasing the goods, and leaving the judgment-creditor to bring his action under section 247, which he has now done.

The first point taken on behalf of the appellant was that in an action under section 247 the onus is upon the plaintiff to establish the right which he claims to have the property sold in execution of the decree, and that therefore the question of an estoppel cannot arise, the contention being that estoppel is merely a rule of evidence preventing certain facts being proved in defence, and therefore not applicable to an action under section 247, where the plaintiff has himself to make out his right to have the property sold.

In my view this is too narrow a view to take of the doctrine of estoppel. By section 115 of the Evidence Ordinance, "when one person has by his declaration, act, or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he or his representative shall be allowed in any suit or proceeding between such person or his representative to deny the truth of such thing." If, therefore, a party to any proceeding, whether under section 247 of the Civil Procedure Code or not, proves that he has been induced by the other party to

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believe in a certain state of facts and to act on such belief, then, so far as that other party is concerned, the state of facts must be assumed to be true, and the other party cannot be heard to say that they are not. The doctrine of estoppel is not a rule of evidence, but rather an irrebuttable presumption, and as such it will be found classed in the books. (See *Taylor on Evidence, section 89.*) In my opinion, therefore, this contention fails.

The principal questions arising in this case are, first, whether the appellant has by representation or omission intentionally caused or permitted the respondent to believe that H. A. Lawrence was the principal of the business of "Lawrence & Co."; and second, whether such representation, if made, amounts to a representation that the stock in trade was his property. I think the answer to both these questions should be in the affirmative.

The terms of section 115 of our Evidence Ordinance, which are precisely the same as those of section 115 of the Indian Evidence Act, do not enact as law here anything different from the law of England on the subject of estoppel (*Dey v. Laha* [1]), and the word "intentionally" was used in the Ordinance for the purpose of declaring the law here to be precisely the same as the law of England. Parke B. in *Freeman v. Cooke*,[2] pointed out that the term "wilfully" used in the earlier case, *Pickard v. Sears*,[3] is really equivalent to "intentionally," and the word "intentionally" has commonly been used in subsequent cases when enunciating the doctrine of estoppel.

By the term "wilfully" or "intentionally" we must understand, if not that the party represents that to be true which he knows to be untrue, at least that he means his representation to be acted upon, and that it is acted upon accordingly; and if, whatever a man's real intention may be, *i.e.*, in regard to making a representation of fact, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it and did act upon it as true, the party making the representation would be equally precluded from contesting its truth. *Freeman v. Cooke*[2] and section 115 of our Evidence Ordinance does not make it a condition of estoppel resulting, that the person, who by his declaration or act has induced the belief on which another has acted, was either committing or seeking to commit a fraud. (See *Dey v. Laha.*[1]) To apply these principles to the present case, I think it is clear on the evidence that the appellant intended that the public generally, and the persons specially who had transactions of sale or purchase with "Lawrence & Co.," should believe that the business remained that of H. A. Lawrence, who had, and whose father had before him, previously conducted a similar business in the same locality. He could give no reason for adopting the name of "Lawrence & Co.," and to my mind the reason is obvious.

[1] *I. L. R. 20 C. 296 (R. C.)* [2] *2 Exch. 654.* [3] *6 Ad. & El. 469.*

The second question then arises, namely, whether the representation that the business of "Lawrence & Co.," was the business of H. A. Lawrence imports a representation that the trade fittings and stock on the premises are the property of H. A. Lawrence. I think it does so. At any rate it imports a representation that the fittings and stock, in so far as they are the property of "Lawrence & Co.," belong to H. A. Lawrence.

The respondent has clearly acted on the representation that H. A. Lawrence was the owner of the business, and has given credit to the business, trusting to such security as the stock might give. I am therefore of opinion that the District Judge was right in holding that the appellants are now estopped from setting up any claim to the goods seized.

One further question, however, remains. The District Judge has directed that, in the event of the property being disposed of by the appellant subsequent to its release from the seizure, the appellant should be condemned to pay as damages to the respondent the full amount of the two decrees, namely, Rs. 1,737.14, with costs, and interest thereon at nine per cent.

The goods have in fact been disposed of by the appellant, and have realized a very much smaller sum.

In my view all that the respondent is entitled to recover is the value of the goods at the time of seizure, less the costs of sale. No evidence as to the value has been given, but the respondent in his plaint referred to an annexed schedule, enumerating the goods and specifying their value. The appellant by his reply did not put the values in issue, and I think the valuation put upon the goods in the schedule, viz., Rs. 1,416.45, must be taken to be correct.

The amount which the respondent is entitled to recover is therefore, in my opinion, this sum less three per cent., the Fiscal's fee on the sale, or Rs. 1,374 in all.

I would therefore amend the decree by deleting the words "the full value of the said two decrees entered in the said two cases, to wit, Rs. 1,737.14, with costs, and interest thereon at the rate of nine per cent. per annum till payment in full," and by substituting therefor the words "the sum of Rs. 1,374, and interest thereon from the date of the claim until payment."

Although I think that the decree should be thus amended in the appellant's favour, he has failed on the main ground of appeal. I would therefore make no order as to the costs of the appeal. The respondent will get his costs of the action.

DE SAMPAYO J.—I agree.

Decree amended.