

Westlaw Delivery Summary Report for 35, IP MAY 09

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**Boulton v Jones**

(1857) 2 Hurlstone and Norman 564

1857

[564] Nov. 25, 1857.—The defendants, who had been in the habit of dealing with B., sent a written order for goods directed to B. The plaintiff, who on the same day had bought B.'s business, executed the order without giving the defendants any notice that the goods were not supplied by B. Held, that the plaintiff could not maintain an action for the price of the goods against the defendants.

[S. C. 27 L. J. Ex. 117; 3 Jur. (N. S.) 1156; 6 W. R. 107. Discussed, *British Waggon Company v. Lea*, 1880, 5 Q. B. D. 152. Followed, *Grierson, Oldham and Company, Limited v. Forbes, Maxwell and Company, Limited*, 1895, 22 Rettie, 812.]

Action for goods sold. Plea. Never indebted.

At the trial before the Assessor of the Court of Passage at Liverpool, it appeared that the plaintiff had been foreman and manager to one Brocklehurst, a pipe hose manufacturer, with whom the defendants had been in the habit of dealing, and with whom they had a running account. On the morning of the 13th January, 1857, the plaintiff bought Brocklehurst's stock, fixtures, and business, and paid for them. In the afternoon of the same day, the defendant's servant brought a written order, addressed to Brocklehurst, for three 50-feet leather hose 2½ in. The goods were supplied by the plaintiff. The plaintiff's book keeper struck out the name of Brocklehurst and inserted the name of the plaintiff in the order. An invoice was afterwards sent in by the plaintiff to the defendants, who said they knew nothing of him. Upon these facts, the jury, under direction of the Assessor, found a verdict for the plaintiff, and leave was reserved to the defendants to move to enter a verdict for them.

Mellish having obtained a rule nisi accordingly,

M'Oubrey, now shewed cause. It is not denied by the defendants that the goods, for the price of which this action is brought, were the goods of the plaintiff. No one but the plaintiff could have sued for the price of them. By keeping the goods after notice that the plaintiff was the owner, the defendants must be taken to have adopted the contract with him. *Bickerton v. Burrell* (5 M. & Sel. 383) turned on the point that notice had not been given, before action brought, that the plaintiff was the party really interested. In that case the plaintiff represented himself as agent for another [565] person. In *Humble v. Hunter* (12 Q. B. 310) the plaintiff had allowed her son *234 to represent himself as owner. Here the defendant may have known of the change of name in the orders. In *Rayner v. Grote* (15 M. & W. 359) the plaintiff had represented himself to be merely the agent, but, being really the principal, he was held entitled to maintain the action. He referred also to *Skinner v. Stocks* (4 B. & Ald. 437).

Mellish, in support of the rule. This is not a case of principal and agent. In *Rayner v. Grote* (15 M. & W. 359) there was evidence that, at the time of the delivery of the first parcel of the goods, the defendant had notice that the plaintiff was the principal. [Martin, B. Here there was some evidence of acceptance, the invoice was sent in and the goods were not returned.] They may have been destroyed, and, in fact, were probably used at the time they were ordered. No set-off could be pleaded to the present action in respect of any debt which might be due from Brocklehurst to the defendant: *Isberg v. Bowden* (8 Exch. 852). The question is not to whom the goods belonged, but with whom the contract was made. *Humble v. Hunter* (12 Q. B. 310) and *Bickerton v. Burrell* (5 M. & Sel. 383) are authorities in favour of the defendants.

Pollock, C. B. The point raised is, whether the facts proved did not shew an intention on the part of the defendants to deal with Brocklehurst. The plaintiff, who succeeded Brocklehurst in business, executed the order without any intimation of

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157 E.R. 232 (1857) 2 Hurl. & N. 564 (1857) 27 L.J. Ex. 117 (1857) 30 L.T. O.S. 188 157 E.R. 232 (1857) 2 Hurl.

& N. 564 (1857) 27 L.J. Ex. 117 (1857) 30 L.T. O.S. 188 (Cite as: **157 E.R. 232**)

the change that had taken place, and brought this action to recover the price of the goods supplied. It is a rule of law, that if a person intends to contract with A., B. cannot give himself any right under it. Here the order in writing was given to [566] Brocklehurst. Possibly Brocklehurst might have adopted the act of the plaintiff in supplying the goods, and maintained an action for their price. But since the plaintiff has chosen to sue, the only course the defendants could take was to plead that there was no contract with him.

Rule absolute.

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Martin , B. I am of the same opinion. This is not a case of principal and agent. If there was any contract at all, it was not with the plaintiff. If a man goes to a shop and makes a contract, intending it to be with one particular person, no other person can convert that into a contract with him.

Bramwell , B. The admitted facts are, that the defendants sent to a shop an order for goods, supposing they were dealing with Brocklehurst. The plaintiff, who supplied the goods, did not deceive them. If the plaintiff were now at liberty to sue the defendants, they would be deprived of their right of set-off as against Brocklehurst. When a contract is made, in which the personality of the contracting party is or may be of importance, as a contract with a man to write a book, or the like, or where there might be a set-off, no other person can interpose and adopt the contract. As to the difficulty that the defendants need not pay anybody, I do not see why they should, unless they have made a contract either express or implied. I decide the case on the ground that the defendants did not know that the plaintiff was the person who supplied the goods, and that allowing the plaintiff to treat the contract as made with him would be a prejudice to the defendants.

Channell , B. In order to entitle the plaintiff to recover he must shew that there was a contract with himself. The order was given to the plaintiff's predecessor in business. The plaintiff executes it without notifying to the defendants [567] who it was who executed the order. When the invoice was delivered in the name of the plaintiff, it may be that the defendants were not in a situation to return the goods.

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KEYCITE**C Boulton v Jones, , , , (Ex Ct,1857) (NO. 518858)**

Direct History and Negative Indirect Judicial Treatments from U.K. & E.U. cases are not included in KeyCite coverage. For History and Citing References from the U.K., run a search in the UK-CASELOC database.

History**Direct History**

=> **1 Boulton v Jones**, 1857 WL 8265, (1857) 2 Hurl. & N. 564, (1857) 30 L.T. O.S. 188, (1857) 27 L.J. Ex. 117, 157 E.R. 232 (Ex Ct 1857) (NO. 518858)

Negative and Cautionary Citing References (Canada)*Distinguished in*

C 2 Campbellville Gravel Supply Ltd. v Cook Paving Co., 70 D.L.R. (2d) 354, [1968] 2 O.R. 679, 1968 CarswellOnt 195 (Ont. C.A. Jun 21, 1968)

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Positive & Neutral Cases (Canada)*Followed in*

- H** [2](#) Sherwood Design Services Inc. v. 872935 Ontario Ltd., 158 D.L.R. (4th) 440, 38 B.L.R. (2d) 157, 109 O.A.C. 77, 1998 CarswellOnt 1739, 39 O.R. (3d) 576, [1998] O.J. No. 1611 (Ont. C.A. Apr 20, 1998)
- C** [3](#) R. v Rosen, 37 C.C.C. 381, 61 D.L.R. 500, 1920 CarswellQue 146, 33 Que. K.B. 104, 27 R. de Jur. 32 (C.A. Que. Dec 29, 1920)
- [4](#) Maritime Manufacturers & Contractors Co. v. Berringer, 46 D.L.R. 247, 53 N.S.R. 169, 1919 CarswellNS 20 (N.S. C.A. Apr 09, 1919)

Secondary Sources (Canada)

- [5](#) CED Contracts V.1.(e), V -- Mistake, Non Est Factum, and Rectification, 1 -- Mistake, (e) -- Mistake of Identity
- [6](#) The Measure of Restitution, 52 U. Toronto L.J. 163, 219 (2002)

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