

If T pays A, does not constitute payment to P, unless agent has actual or apparent authority to receive payment or P later ratifies the action - **Butwick v Grant**

If A committed misrepresented and tort, P liable if A acted within actual or apparent authority or P ratified A's action - **Lloyd v Grace, Smith**

Relationship between A and T

GR : Only P may sue and be sued - **Montgomerie v UK Mutual Steamship Association** (Wright J)

It is not the case that, if a P is liable, his A cannot be - **Yeung Kai Yung v HK and Shanghai Banking Corporation**

Merger - **Debenham's Ltd v Perkins** (Scrutton LJ, Having merged the contract in judgment, one cannot sue the contract to get a second judgment)

Election - **Thomas v Davenport** (T must have full knowledge of identity of P before he can elect whether to sue P or A)

Professor Treitel - A will not be liable if A has apparent authority or P ratifies his action

Sealy and Hooley - A will be liable regardless of whether he has apparent authority or ratification by P because liability is owed personally to T

Commercial Agents (Council Directive) Regulations 1993

Self employed - Independent contractor

Continuing authority - As opposed from appointing for single transaction

On behalf of - A acts as commercial agent, not P

Authority to negotiate - **Parks v Esso Petroleum** (Selling petrol does not require negotiation, no authority)

Watteau v Fenwick

Facts : Humble transferred ownership of hotel to Fenwick but he remained as manager. F did not change anything including the 'H' on the door. He restricted H's authority, cannot buy anything except beer and mineral water. H bought cigars from Watteau.

Judgment : Judgment for W. F was sleeping partner of hotel and liable to pay partnership debts. F liable for anything done by H within usual authority of manager

Problems :

1) The ratio is unsound - F was not sleeping partner, he was the owner and H did not have usual authority. His actual authority was expressly restricted

Reform?

Uncertainty in case laws, ROT clauses give less protection to seller than expected due to practical problems such as difficulty in proving clauses have been incorporated into contract, problems accessing buyer's premises to identify goods and difficulty in distinguishing seller's goods from those supplied by others ; those paid from those not, risk of goods losing identity after manufacturing process)

Various reports and consultation papers published (Cork Committee 1982, Diamond Report 1989, Law Commission's Final Report on Company Security Interests 2015) but none adopted

Passing of Title

GR : s.21(1) Nemo dat quod non habet

Exceptions : s.21(1) Unless owner is precluded from denying seller's authority to sell through conduct

1) Estoppel by Representation

Henderson v Williams (True owner having enabled A to hold himself out as owner, could not set up title against that of T) / **Farquharson Bros v King** (As clerk used an assumed name, true owner was held not to have hold out clerk to T as their A to sell to them, not estopped from denying clerk's authority to sell)

2) Estoppel by Negligence

Moorgate Mercantile v Twichings (If activity on part of owner to safeguard his property will not estop him from asserting his right) / **Mercantile Credit v Hamblin** (Owner had reasonable grounds to believe in dealer, hence not negligent in signing blank form that was fraudulently used by car dealer to sell the car to a finance company)

3) Power of Sale and Resale

s.21(2)(b) : Does not affect contract of sale under order of court or statutory power of sale

*Means that owner can still proceed with sale if granted by court, does not matter that he does not have title

*Retains power of sale granted under pledges

4) Sale Under Voidable Title

s.23 : Title not void at time of sale, buyer acquires good title

Car and Universal Finance v Caldwell (Seller induced by fraud but informed Automobile Association and Police after finding out, before fraud sold the car, title voided)

5) Seller in Possession

s.24 : Seller continues to have possession after selling goods, subsequent buyer gets title