co-defendant to obtain a mynpacht from the Government indirectly, to which, in fact, the co-defendant is not entitled, and that consequently by the false representation of a werf the public are kept out of their rights. Unfortunately, the case is not at present before us in that form; no claim is made to the ground by reason of the ground having been illegally reserved, and that it ought to be proclaimed anew; but the contention is that the ground has not been reserved, and is, therefore, already proclaimed ground. As already said, it seems to me that as a fact the ground was not proclaimed, but was reserved as a werf. Under these circumstances, the plaintiff can at present not succeed, but it would be unreasonable now to decide that he may not be able to succeed in some other way by action. There must accordingly be absolution from the instance, with costs. It is unnecessary to decide upon the second plea of the co-defendant.

Attorney for the plaintiff: *Fred. Kleyn.*

Attorney for the co-defendant: *J. H. L. Findlay.*

FRENKEL & CO. *v.* FREISMAN AND SHAPIRO.

Coram:
KOTZE, C.J.

1897
16 *July.*
17 ,,
31 ,,

FRAUD—*ACTIO DOLI*—BENEFIT—CREDIT OF THE PERSON—FALSE REPRESENTATION.

Where a person, on being asked in regard to the means and credit of a third party, replied that such third party was sound, and that he sold to the third party whatever the latter wanted, and that only a small amount was owing by him, well knowing that these representations were false:—Held, *that the loss suffered in consequence of these representations could be recovered from the person who had made them, as they were comprised under the definition of* dolus.

In the actio doli *it is not necessary to show that the person guilty of the fraud derived any benefit therefrom.*

THIS was an action for the payment of money, by reason of the defendants having, by means of false and fraudulent representa-

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tions with regard to the credit and financial position of a certain firm of Kaplan & Co., induced the plaintiff company to enter into transactions with the said firm of Kaplan & Co., with the view of benefiting themselves thereby, and in consequence of which the plaintiff had sustained a loss of 211*l.* 3*s.* 6*d.* The facts as set out in the summons, and the evidence tendered in Court appear fully from the judgment of Kotzé, C. J.

Curlewis, for the plaintiff: Acts always speak more strongly than words. It is plain from the acts of the defendants that they knew that Kaplan & Co. were not solvent at the end of January. Knowing this they tell Frenkel he can give credit to Kaplan & Co. Frenkel did so and has suffered a loss. (*Pollock on Torts, p.* 259.)

Papenfus, for the defendants: The plaintiff must show *dolus* on the part of the defendants. He must definitely prove that the fact that Kaplan & Co. were not solvent was known to the defendants. The defendants are entitled to the benefit of any doubt. The defendants desired, in their transactions with Kaplan & Co., to reduce their outstanding debts. They did not know that Kaplan & Co. were unable to pay. The plaintiff has himself to blame; why did he not personally inspect the books of Kaplan & Co. in order to ascertain their true position in January? There is nothing to show that we have been benefited by the alleged fraud.

Curlewis, in reply: It is not necessary to show that the defendants have derived a benefit from their fraud. As a fact they have been benefited, for they have received 240*l.* in payment from Kaplan & Co.

Cur. ad. vult.

Postea. 31st July.

KOTZÉ, C. J.: This case, which came before me in the Circuit Court at Johannesburg on the 16th and 17th July, is an action for the payment of 211*l.* 3*s.* 6*d.*, by reason of a false representation made by the defendants to the plaintiffs in regard to the financial position and credit of a certain firm known as Kaplan & Co., upon which the plaintiffs have acted, and in consequence of which they have been prejudiced. Having heard and considered the evidence, I have arrived at the conclusion that the account

given by Mr. Frenkel is correct, more especially as he has very favourably impressed me. It has been proved to my satisfaction that in the beginning of February of this year, one Levit, a member of the firm of Kaplan & Co., which carried on a baker's business, went to Mr. Frenkel, member of the firm of Frenkel & Co., and asked to purchase flour on credit. Not knowing Levit, Frenkel asked him for a reference, whereupon Levit referred Frenkel to the firm of Freisman and Shapiro, the defendants. On the afternoon of the same day on which this occurred Frenkel went to Freisman and Shapiro and told them what had transpired between himself and Levit, and then put the question to them whether he might give the firm of Kaplan & Co. credit, to which he received the reply—"Kaplan & Co. are good. They owe us a small amount, and Frenkel could give them what they wanted to purchase, only they liked to buy too cheaply." Shapiro, one of the defendants, added to this that Kaplan & Co. always paid well, and desired to buy a kind of flour which Freisman and Shapiro had not then in stock. The plaintiffs thereupon supplied Kaplan & Co. with flour, and in the beginning of May, 1897, when this firm appeared to be insolvent, it owed the plaintiffs an amount of 211*l.* 3*s.* 6*d.* It has also been proved that a few days before the representation in regard to the credit of Kaplan & Co., made by the defendants to the plaintiffs, the defendants obtained from Kaplan & Co., who owed them at that time 416*l.*, a cession of their lease with the view of securing themselves, and shortly after this they stopped the credit of Kaplan & Co. These facts, however, they did not communicate to Frenkel. They simply suppressed them. The question is now whether, upon these facts, the defendants are liable to make good the loss of 211*l.* 3*s.* 6*d.* which the plaintiffs have sustained through their having given credit to Kaplan & Co.?

The defendants are charged with fraud, and in the *Pandects* we find the following definition of fraud (*dolus*), which has been adopted by Voet and other writers: "*omnis machinatio, calliditas, fallacia, ad circumveniendum, fallendum, decipiendum aliquem adhibita.*" This definition is certainly wide enough to embrace the conduct of the defendants. It admits of no doubt that where a defendant makes a false representation, knowing it to be false, with the view of inducing the plaintiff to act on it, and the plaintiff does so act upon it, to his prejudice, he will be entitled to sue the defendant

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for the loss sustained thereby. (*Broom, Common Law, 4th ed., pp.* 343-4; *Addison on Torts, 4th ed., p.* 836; *Pollock on Torts, p.* 259.) There are many decided cases which clearly lay this down. It is further quite unnecessary to show that the defendants have been benefited by the false representation. (*Addison, l. c.*)

Inasmuch as the defendants, when they made the representation to Frenkel, knew that they had stopped the credit of Kaplan & Co. and had obtained from them a cession of the lease, and that Kaplan & Co. owed them over 400*l.*, I must come to the conclusion that they suppressed all this to Frenkel with an intentional and fraudulent object, and that they have therefore knowingly made a false representation intending that Frenkel should act thereon, which he has done. The object of the defendants was plainly to let Kaplan & Co. deal with Frenkel & Co., not themselves to give any more credit to Kaplan & Co., and by means of the cession to force Kaplan & Co. to pay off from time to time what was due to them. The allegation of the defendants that at the end of January the firm of Kaplan & Co. possessed sufficient assets is not supported by any proof, and the fact remains that when in May it became known that Kaplan & Co. were insolvent, there was hardly anything found in their estate. I am accordingly of opinion that there must be judgment in favour of the plaintiffs for the amount of 211*l.* 3*s.* 6*d.*, with interest at six per cent., *a tempore moræ*, and costs.

Attorneys for the plaintiffs: *Gregorowski* and *Bauman*.

Attorneys for the defendants: *Lindsay* and *Innes*.

Coram: AMES-HOFF, J.

MATABELE SYNDICATE *v.* LIPPERT AND OTHERS.

PRIVATE CORRESPONDENCE—INSPECTION OF.

1897

10 *August.*

Inspection of private correspondence of the respondent granted by the Court, in so far as such correspondence related to certain concessions with respect to which an action was pending in the Court.

THIS was an application to order the respondent to allow an inspection of all correspondence which had passed between Lippert