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under section 73 was not a *bond fide* application which the plaintiffs did not intend to prosecute. It is clear that they neither withdrew nor abandoned their application. The Registrar's order dismissing the application was one merely refusing to register the document because no evidence of the execution thereof had been placed before him. We agree with the remarks in *Sajibullah Sirkar v. Haji Khosh Mohamed Sirkar* (1). In our opinion the decision of the court below is correct. The appeal fails.

Appeal dismissed.

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November 23.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

GANPAT PRASAD AND ANOTHER (DEFENDANTS) v. SARJU (PLAINTIFF).^{*}
Act No. IX of 1872 (Indian Contract Act), section 235—Principal and agent—Untrue representation by agent as to extent of his authority—Liability of agent.

Held that section 235 of the Indian Contract Act, 1872, applies as much to the case of a person who untruly represents the extent of the authority given to him by another as to that of a person who represents himself to be the agent of another when in fact he has no authority from him whatever. *Collen v. Wright* (2) referred to.

THE facts of this case were as follows :—

One Munna Lal, who was the proprietor of a shop at Katni, had some 500 bags of grain stored at Badausa in the Banda district. He authorized the defendants appellants, who owned a shop at Karwi in the latter district, to sell the above-mentioned grain at the rate of $9\frac{1}{4}$ seers to rupee. On the 25th of December, 1907, defendants sold the 500 bags of grain to the plaintiff respondent, Sarju, who was also a shop-keeper at Karwi, at the rate of 9 seers 6 chhataks to the rupee, and the latter paid Rs. 51 as earnest money. Delivery was to be taken in 8 days. Munna Lal prohibited the defendants from selling the grain at the lower rate, and delivery was not effected. Thereupon Sarju brought a suit against Munna Lal which was dismissed on the ground that the sale was not complete. The defendants were not parties to this suit. The plaintiff then sued

^{*} Second Appeal No. 385 of 1911, from a decree of Muhammad Ali, District Judge of Banda, dated the 25th of March, 1911, modifying a decree of Achal Behari, Subordinate Judge of Banda, dated the 31st of January, 1910.

(1) (1886) I. L. R., 13 Cal., 264. (2) (1857) 27 L. J., Q. B., 215 ; 7 E. & B., 301.

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the present defendants, claiming Rs. 51 on account of the earnest money paid, Rs. 252-1-0, on account of costs of the former suit, and Rs. 424-0-3, on account of loss occasioned by the representation of the defendants that they were authorized to sell the grain at the rate agreed upon. The defence was that there was no misrepresentation and that the sale was not complete. The court of first instance held that section 230 of the Contract Act applied and dismissed the suit, awarding only Rs. 51 on account of the earnest money paid. The lower appellate court reversed the decree, holding that the case was governed by section 235 of the Contract Act. It did not award any costs of the previous litigation. The defendants appealed.

Dr. *Tej Bahadur Sapru* (with him *Munshi Benode Bihari*), for the appellants:—

The sole question is whether section 230 or 235 of the Contract Act is applicable. Section 235 applies only to a person untruly representing himself to be the authorized agent of another. There was no such untrue representation in the present case. Agency was admitted by all parties. There was no such untrue representation as comes within section 235. That section refers to an untrue representation as to the very fact of agency, not as to its terms. He referred to *Collen v. Wright* (1) and *Hoare v. Dresser* (2).

[*CHAMBER, J.*, referred to *Starkey v. Bank of England* (3); and *Chr. Salvesen and Co. v. Rederi Aktiebolaget Nordstjeran* (4) was also referred to by the other side.]

The rule of English law is larger than the Indian law. Section 235 has not been framed wide enough to cover those cases. It only refers to a case of total absence of authority. Sections 226 to 238 refer to cases between principal and agent or between principal and third parties. None of these can apply where an agent is sued himself by a third party. He is not personally bound in such a case. Section 230 applies. In the case of warranty, too, the Indian Legislature has given it a very narrow and limited meaning. It must have been its express intention to do so.

(1) 7 E. and B., 301.

(2) (1859) 7 H. L., 290.

(3) (1903) A. C., 114.

(4) (1905) A. C., 302.

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Mr. *M. L. Agarwala* (with him *Munshi Damodar Das*,) for the respondents, was not called upon.

KARAMAT HUSAIN and CHAMIER, J.J.—There has been some discussion in this Court as to what the lower appellate court intended to find, but in our opinion the findings are perfectly clear. The appellants here were commission agents carrying on business at Karwi in the Banda district. One Munna Lal, the proprietor of a shop at Katni in the Central Provinces, had five hundred bags of grain stored at Badausa in the Banda district. On the 25th of December, 1907, the defendants acting as commission agents of behalf of Munna Lal, sold the five hundred bags of grain to the respondent at the rate of 9 seers 6 chataks to the rupee, and the respondent paid them Rs. 51 as earnest money. Delivery of the grain was to be given in eight days ; but Munna Lal, the owner of the grain, refused to allow the appellants to deliver it to the respondent on the ground that he had not authorized them to sell the grain at the rate at which it was sold. The learned Judge finds distinctly that the appellants were authorized by Munna Lal to sell the grain at the rate of 9½ seers to a rupee and were not authorized to sell it, as they did, at the rate of 9 seers 6 chataks to a rupee. He also finds distinctly that the appellants did not inform the respondent at the time of the sale that they were not authorized to sell the grain at the rate of 9 seers 6 chataks to a rupee. He says :—“ It follows from this finding that they untruly represented themselves to be authorized agents of Munna Lal to sell his grain at the rate of 9 seers 6 chataks to a rupee and are therefore liable under section 235 of the Indian Contract Act to compensate the respondent for the damages sustained by him.” He gave the respondent a decree for Rs. 425, but refused to give him the costs spent by him in a previous suit against Munna Lal on the ground that he might have impleaded the appellants in the previous suit and so have saved the expense of the present suit. The respondent has filed cross-objections with regard to the refusal of the learned Judge to give him the costs of the previous suit. The objections were filed beyond time and the reason given for not filing them within time is unsatisfactory. We decline to consider the cross-objections.

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On behalf of the appellants it is contended that section 235 of the Contract Act does not apply to the case. Dr. *Tej Bahadur* argues that it was intended to apply only to the case of a person who represents himself to be the agent of another when in fact he has no authority from him whatever, but not to the case of a person who untruly represents the extent of the authority given to him by another. Dr. *Tej Bahadur* concedes that the case of *Collen v. Wright* (1), on which section 235 is obviously based, has been applied to both classes of cases in England. It seems to us clear that section 235 was intended to apply to both classes of cases. There is no distinction in principle between the case of a man who represents that he has authority from another when he has no authority whatever, and the case of a man who represents that he has certain authority from another when he has authority of another description. In neither case can the man who makes the representation be said to be the authorized agent of the other with reference to the matter on which he has no authority. We agree also with the learned Judge of the court below that the appellants must be taken to have untruly represented themselves to be authorized by Munna Lal to sell his grain at the rate of 9 seers 6 chataks to a rupee. For, as it was said in the case of *Collen v. Wright*, if a man makes a contract as agent, he promises that he is what he represents himself to be, and he is liable for the breach of his contract, whether or not he is aware that he is acting beyond the scope of his authority. In our opinion the decision of the court below is perfectly right, and we dismiss the appeal.

Appeal dismissed.

(1) (1857) 7 E. & B., 301.