

purchaser's title was perfected, and it would be impossible for us to cancel that deed. It is not suggested before us that the decree for specific performance was wrongly given. We hold that from September, 1893, Jivanlal was nothing more than a bare trustee and had no attachable interest.

Under these circumstances we must reverse the decision of the lower appellate Court and restore that of the Second Class Subordinate Judge, dismissing the suit with all costs throughout on plaintiff.

Decree reversed.

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

LAKHMICHAND RAMCHAND (ORIGINAL PLAINTIFF), APPELLANT,
v. CHOTOORAM MOTIRAM AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1900.

March 29, 30.

Principal and agent—Agent—Revocation of authority—Interest of agent in property—Exercise of authority so as to bind principal—Contract Act (IX of 1872), Secs. 201, 202, 203—Counter claim—Permission to extend—Practice.

The plaintiff received instructions by letter from the defendants to purchase cotton on their behalf. This letter was received by the plaintiff before a telegram sent by the defendants the next day revoking the order reached him. The plaintiff replied by letter stating that the telegram had arrived too late and that the purchase had already been made. In fact, the plaintiff had merely appropriated to the defendants a contract entered into by himself with a third party the day before the defendants' order reached him.

Held, that the telegram was a revocation of the order contained in the letter of the previous day.

Held, further, that the plaintiff had no such interest in the subject-matter of the agency as to prevent its termination; nor had he exercised his authority so as to bind his principal, no contractual relation with any third person having been created before the receipt of the telegram.

The defendants owing to their ignorance of the true facts did not include in their counter claim certain sums paid by them to the plaintiff in part payment of the alleged losses incurred in respect of the purchase and re-sale of the aforesaid cotton.

Held, that the lower Court (RUSSELL, J.) had rightly permitted the defendants to put in a supplemental written statement extending their counter claim so as to include these items.

* Suit No. 37 of 1899; Appeal No. 1952.

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THE plaintiff alleged in his plaint that the defendants in September, 1896, instructed the plaintiff's firm as their commission agents in Bombay to purchase on their account 100 bales of cotton for delivery between the 15th and 25th of March. The plaintiff alleged that in accordance with these instructions he purchased the cotton at the rate of Rs. 235 per khandi. On the approach of the due date the market rate having fallen, the plaintiff called on the defendants to give security for the due fulfilment of the contract, and the defendants accordingly deposited with the plaintiff 45 pullas of cotton and paid to the plaintiff a sum of Rs. 500 on account. The plaintiff alleged that he thereupon took delivery of the 100 bales on the defendants' account. Considerable correspondence passed between the plaintiff and defendants concerning the advisability of selling the cotton, which had greatly fallen in value. Finally the defendants gave definite instructions to the plaintiff to sell, and on the 17th December, 1897 the cotton was finally sold at Rs. 161-4-0 per khandi. The plaintiff sued defendants for the difference between Rs. 235 and Rs. 161-4-0 per khandi and for sundry costs and expenses. In their account annexed to the plaint the plaintiff gave the defendants credit for three sums of Rs. 800, Rs. 400 and Rs. 396 paid to him by them on account and in respect of this transaction. The defendants in their written statement admitted having instructed the plaintiff to purchase 100 bales of cotton on their account, but stated that they "are not aware as to whether the plaintiff's Bombay firm entered into a contract for the purchase thereof at the rate of Rs. 235 per khandi as alleged in the plaint, and put the plaintiff to the proof of the same." They also put the plaintiff to proof of his allegations that he had taken delivery of and sold the said cotton on their account. They counter-claimed in respect of the 45 pullas of cotton deposited as security on the defendants paying to the plaintiff what might be found due to him on the proper accounts being taken.

At the hearing before Mr. Justice Russell it appeared that the order to purchase was despatched from Jámner by the defendants on the 27th of September, 1896, and would in due course arrive in Bombay on the 28th September, and that on the morn-

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ing of the 28th September the defendants sent a telegram to the plaintiff countermanding the order. In a letter dated the 28th September the plaintiff informed the defendants that their telegram had been received at 2-30 P. M. on that day, but that the purchase had been effected before the receipt of the telegram.

The plaintiff put in a contract with one Govindas Lachmondas representing it to be the contract for the purchase of 100 bales, at Rs. 235 per khandi, in respect of which he sought to hold the defendants liable. This contract was dated the 27th of September. The plaintiff bought 200 bales more for other constituents from Govindas Lachmondas, and finally sold all the 300 bales to him. He stated that on the due date he had to receive 100 bales from one Naranji Dwarkadas and that he had appropriated these to the defendants. The contract with Naranji Dwarkadas was dated the 6th of July, 1896, and purported to be a sale by Naranji Dwarkadas of 100 bales of cotton at Rs. 205 per khandi.

On this state of facts Mr. Justice Russell held that the plaintiff had without any intimation to the defendants sold to and purchased from the defendants his own goods. That, in consequence, his duty and his interest were in direct conflict, as the greater the fall in the market the greater the profit accruing to the plaintiff, the lukewarmness observable in the advice given by him to the defendants to sell the cotton as shown by the correspondence being traceable to this circumstance. He accordingly dismissed the plaintiff's claim, but reserved judgment upon the defendants' counter-claim. At the resumed hearing the defendants asked for leave to amend their written statement by adding a counter claim in respect of the 45 pullas deposited as security and in respect of the sums paid by them to the plaintiff on account of the transaction sued on in the plaint, which under the Court's ruling were improperly demanded by the plaintiff. The learned Judge granted the leave applied for, and gave judgment for the defendants for the full amount of the counter claim as set out in the amended written statement.

The plaintiff appealed.

Shankling (with him *Davarr*) for the appellant.

Lang, Advocate General (with him *Robertson*) for the respondents.

1900.

The judgment of the Appeal Court was delivered by

JENKINS, C. J., (who after stating the facts, and holding that the telegram of the 28th September was clearly a revocation of the order contained in the letter of the previous day, proceeded :)

The further question arises, whether any of the circumstances indicated in sections 201, 202 and 203 of the Contract Act intervened.

The combined result of these sections is that the principal has power to revoke, unless the agent has an interest in the subject-matter of the agency, or unless the agent has exercised his authority so as to bind his principal. First, can the agent be said to have had an interest in the property in this case? Clearly not; the interest which the agent has in effecting a sale and the prospect of remuneration to arise therefrom are not such an interest as would prevent the termination of the agency. Is there, then, anything in section 203 which precluded the defendants from revoking the authority? I think not; for at no time was the authority so exercised as to bind the principal; no contractual relation with any third party was at any time created before receipt of the telegram revoking the agent's authority.

It is further contended that Russell, J., gave too much by way of counter claim. The defendants having only counterclaimed in their original written statement in respect of 45 burlas of cotton, that alone should have been awarded to them. But the plaintiff has himself to thank for the defects of the counter claim. If the plaintiff had placed the full facts before the defendants, the claim would have been made from the beginning. Russell, J., was, therefore, perfectly right in allowing the defendants to put in a supplemental written statement. It is not suggested that the extension of the counter claim has caused any damage to the plaintiff beyond compelling him to pay what he is bound to pay. We see no reason to interfere with the discretion exercised by Russell, J., which we do not think went beyond what the justice of the case required.

Appeal dismissed.

Attorneys for plaintiff:—Messrs. *Bicknell, Merwan and Motilal.*

Attorneys for defendants:—Messrs. *Dikshit and Dhunjish.*