chosen by him—to which they have not alluded—would have also been involved.

It is, however, unnecessary for them to go further than they have done in the discussion of the question for the reason that they have discussed it on principle and the propriety of the order of the learned Judge no longer effectively arises by reason of the conclusion reached by their Lordships on the other part of the case.

Returning accordingly to the opinion expressed by them as to the non-existence of any contract between the parties, their Lordships, for the reasons given in support of that opinion, will humbly advise His Majesty that this appeal should be dismissed and with costs.

Solicitors for appellant: Messrs. *Sanderson, Lee & Co.*

Solicitors for respondents: Messrs. *Rankin Ford & Chester.*

A. M. T.

ORIGINAL CIVIL.

Before Mr. Justice Crump.

VASANJI MOOLJI *v.* KARSONDAS TEJPAL.*

1927
February 7

Brokerage—Agent—Procuring loan on security of immoveable property—Agent procuring a lender—Principal subsequently obtaining loan from same lender through another broker—Agent who first introduced business entitled to commission.

The defendant employed the plaintiff to find a party willing to advance to him rupees four lacs on a mortgage of his three properties. The plaintiff negotiated with a bank, who were agreeable to lend up to forty per cent. of the value of the properties at nine per cent. interest. The plaintiff communicated the bank's proposal to the defendant, but negotiations did not materialise at the time. About three months later, the defendant borrowed through another broker, Rs. 1,10,000 from the same bank on a mortgage of one of his properties. The plaintiff having sued to recover the amount of his brokerage :—

*O. C. J. Suit No. 1493 of 1925.

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Held, that the plaintiff was entitled to recover the brokerage. The main office of a loan broker is to bring together the borrower and the lender who is willing to open negotiations on a reasonable basis and when he has done that, he has done all that is necessary for him to do and earn his commission. All that the plaintiff was employed to do was to find a party who was willing to advance money to the defendant, and when once he had put it in the defendant's power to obtain the loan, he had done all that his appointment necessitated.

The Municipal Corporation of Bombay v. *Cursetji Hirji*,[1] followed.

Green v. *Bartlett*[2]; *Green* v. *Lucas*[3] and *Fisher* v. *Drewett*,[4] relied on.

IN August 1924, the plaintiff was employed as a broker by one Karsondas (the defendant), to procure for him a loan of rupees four lacs on an equitable mortgage of three immoveable properties. The plaintiff saw the Manager of the Allahabad Bank Limited, who agreed to lend moneys up to forty per cent. of the value of the properties at nine per cent. interest. The plaintiff informed Karsondas accordingly who made a fresh proposal that rupees ten lacs should be raised, rupees four lacs on the security of the three properties and rupees six lacs on the security of goods.

The Bank did not accept the counter-proposal, and nothing further was done.

In October 1924, the defendant mortgaged one of the three properties for Rs. 2,65,000 to a third party; and raised a loan of Rs. 1,10,000 from the same bank through another broker named Popatlal on an equitable mortgage of another property of his.

The plaintiff sued the defendant to recover from him the sum of rupees four thousand, being the amount of his brokerage at the rate of two per cent. on the sum of rupees two lacs which the bank would have advanced, if the security had been sufficient. The defendant pleaded that the loan was secured through another broker, Popatlal, and was not the result of the plaintiff's

(1) (1895) 20 Bom. 124.
(2) (1863) 14 C. B. (N. S.) 681.
(3) (1875) 31 L. T. 731, on appeal, (1876) 33 L. T. 584.
(4) (1878) 39 L. T. 253.

negotiations and that he was, therefore, not entitled to any brokerage.

Munshi, for the plaintiff.

Coltman, for the defendant.

CRUMP, J. :—In the month of August 1924 the defendant desired to raise a loan on three properties, and he employed the plaintiff as a money broker to find a lender. There is some dispute as to what were the terms of employment, but it is really clear enough that the rate of commission payable to the plaintiff was to be two per cent. That this is so is apparent from the defendant's statement in the course of the evidence that he would have paid the plaintiff two per cent. had he succeeded in finding the loan. And the defendant also states that that is the customary rate of commission on loans on mortgages. What the defendant says about the contract is as follows :—

" I said to Mulraj that I wanted him to get me a loan of four lacs on an equitable mortgage of my three properties. There was no question of a legal mortgage. I gave him the names of the three properties. I did not tell him what they were worth, nor did he ask. Nothing was said as to the rate of interest. I would have accepted nine per cent."

The plaintiff says upon the same point :—

" About August 15 defendant told me he wanted a loan of four lacs on an equitable mortgage of three properties (the names of which are given). He said he wanted a loan at 12 as. (nine per cent.) to pay off a decree against him. He asked me to raise a loan of four lacs. I said I should take two per cent. commission according to the practice in the market."

Upon those statements there does not seem to be much room for doubt as to the nature of the contract. The plaintiff was to find a party willing to advance up to rupees four lacs on equitable mortgage of the defendant's three properties and the defendant was to pay to the plaintiff a commission at the rate of two per cent. on the amount of the loan so to be made.

Now there are certain facts in the case which are not in dispute, and I would clear them off before dealing

927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Crump J.

with the questions that arise for consideration. I may premise my remarks by saying that defendant admits that the plaintiff told him that he would endeavour to obtain a loan from the Allahabad Bank as he was on very good terms with the Manager, Mr. Forman. It is further established by the evidence of the plaintiff and Mr. Forman that the plaintiff approached Mr. Forman with reference to a loan on the defendant's three properties. Mr. Forman evidently has no very clear recollection of the details of the matter, and I prefer, in view of that fact, the plaintiff's statement that the three properties were mentioned at the first interview. The plaintiff had no reason to keep back any details, and he is much more likely to remember exactly what took place than Mr. Forman for whom this was one of many similar transactions. On the matter being broached, Mr. Forman suggested the bank would be willing to lend up to forty per cent. of the value of the property if they were satisfied as to the title, at nine per cent. interest. According to Mr. Forman whose evidence may be accepted subject to due allowance for the time that has elapsed, the plaintiff went away, and returned about two weeks later and made another proposal for a loan of ten lacs, four lacs on the mortgage and six lacs against certain goods. Mr. Forman refused to make any advance against the goods, but was willing to make an advance against the property to the extent he indicated.

At this point of the case there begins a direct conflict of evidence. The plaintiff's story is that he reported to the defendant the result of his first interview with Mr. Forman. The defendant then made a further suggestion as to the proposal to raise ten lacs, and the plaintiff, after seeing Mr. Forman, again told the defendant that the first proposal was accepted, but not the second. The defendant then said he would try and see

whether he could sell the property, as he had a number of other claims to meet, and if he could not do so, he would accept the bank's offer. The plaintiff says he had five or six interviews with the defendant upon this matter, but that nothing was actually done beyond what has already been stated. The matter remained then in abeyance until October, and some time in October the plaintiff chanced to be in the Allahabad Bank, and there found one Kanji Dwarkadas who was in the employ of the firm managed by the defendant, and learned from Kanji that the defendant was actually raising a loan from the bank upon some of these properties. The plaintiff thereupon told Kanji that he was entitled to his commission, and Kanji said that if he would get a letter from the bank that the business was first introduced by him he would see that his commission was paid. The plaintiff, therefore, wrote to the bank on November 5, and certain correspondence ensued between the parties which may be conveniently set out at this stage. The plaintiff's letter to the bank dated November 5 runs as follows:—

"We beg to draw your kind attention to our proposal for a loan to Mr. Karsondas Tejpal on his Thakoredwar properties and also for advance for him against colour purchasers' hundis.

As you have now agreed to accept a part of the proposal that was placed before you by us, we shall thank you to confirm our letter that we were the first to place the business before you as the same is required by Mr. Karsondas Tejpal before paying us our brokerage."

To that the bank replied:—

"We are in receipt of your letter of the 5th instant, and as requested beg to state that the proposal of advances to the abovenamed gentleman was placed before us in the first instance by your firm."

The plaintiffs thereupon sent to the defendants a copy of this letter from the bank with their letter of November 7, on the following terms:—

"As desired by your Mr. Kanji Dwarkadas, we are forwarding to you herewith the copy of the letter from the Allahabad Bank Ltd.

We shall thank you therefore to send us your cheque for the amount of our brokerage at two per cent. and oblige."

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Crump, J.

The defendant apparently sent no answer, and on November 14, the plaintiffs sent a reminder. On November 15 the defendant replied as follows:—

"I have received your letter dated November 7, 1924, and also a reminder dated November 14.

I am not liable to pay any brokerage to you. No doubt a proposal to advance rupees four lacs on my property was placed before the Allahabad Bank Ltd. through you some time in August last. The Allahabad Bank declined to entertain the proposal and the matter dropped.

After a considerable interval Mr. Popatlal Lallubhai, broker, approached me about the matter and a fresh proposal was made by Mr. Popatlal on my behalf to the Allahabad Bank and the same was ultimately accepted and the loan has been made as the result of that proposal. As the loan was secured through Mr. Popatlal as a broker, I have paid brokerage to Mr. Popatlal and regret, I cannot entertain your claim.

I have shown your letters to Mr. Kanji Dwarkadas as you refer to him. Mr. Kanji informs me that you sent to him through Mr. Ratilal Subhedar the letter from the Allahabad Bank to you and he merely stated that you might communicate with me. It is absolutely untrue that Mr. Kanji at any time promised payment to you or that you had a claim to payment."

I now come to the defendant's story, which is, shortly, that he had only one interview with the plaintiff and that some time after that interview plaintiff sent word through witness Tulsidas that he could not raise the money. Tulsidas says, "plaintiff said to me this arrangement about the loan is not possible." Kanji admits meeting the plaintiff at the bank, but denies that he promised to get the plaintiff his brokerage if he got a letter from the bank to say that the plaintiff first placed the proposal before them. The rest of the defendant's story is not in dispute. Briefly it is that he mortgaged one of the three properties for Rs. 2,65,000 to a third party, and raised a loan from the bank through a broker named Popatlal of Rs. 1,10,000 on an equitable mortgage of another property.

Now, it is necessary for me to state quite plainly which of these stories I believe to be true, and putting the matter as shortly as possible, I believe the plaintiff, and not the defendant and his witnesses. The plaintiff in my

estimation is a far better witness than the defendant or Kanji or Tulsidas. The story is probable. He was engaged to raise a loan, and it was in his interest to do so. The bank was willing to lend the money, and it is impossible to understand why in those circumstances he should send word to the defendant that it could not be done, or why he should never have gone to the defendant again after their first interview. Such conduct is hardly consistent with the ordinary ways of brokers, and the plaintiff's assertion that he had more than one interview with the defendant is consistent with the fact that he had two visits to the bank, and made two distinct proposals as deposed to by Mr. Forman. The defendant, Kanji, and Tulsidas, all to a greater or lesser degree, gave evidence in a manner which does not impress me favourably. Their story is unnatural. And the correspondence which I have set out, in my opinion, supports the plaintiff. It is not easy to believe that the plaintiff, after informing Tulsidas that he could not get a loan, a statement in itself inconsistent with the bank's attitude in the matter, should have written the letter which he did write, making his claim as a broker. The statement in the defendant's letter of November 15 that the Allahabad Bank declined to entertain his proposal appears to be contrary to the true facts. And it is difficult to read the plaintiff's letter of November 7 as being a step in a scheme to put forward a claim to brokerage to which the plaintiff is not entitled. My conclusion is that the story told by the plaintiff in this matter is substantially true.

That being so, and the contract being what it is, the question arises whether the plaintiff is entitled to the commission which he claims. A number of cases have been cited on either side, and it is not always easy to extract from them any consistent principle, but it appears to me that the real test in cases of this kind

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Crump, J.

where one party is employed by another to do a certain act must be whether the party so employed has done that act or not. Now whether we apply the test that appears to be suggested in *Green* v. *Bartlett*[1] "Did the agent find a purchaser"?, the case there being one of a house agent employed to sell a house, or whether we apply the principle underlying *Green* v. *Lucas*[2] which is, in the case of a loan broker "Whether the money was procured by the agent, in determining which question it must be considered whether the plaintiff did everything he could do by way of finding a lender and bringing him into touch with the defendants"—whichever, I say, of these tests is applied, the question seems to me to be much what I have indicated, was everything done by the agent which he was employed to do? The same principle we find expressed in *Fisher* v. *Drewett*,[3] viz., whether the agent had done all that he contracted to do. The answer to that question must be determined in each case to a very large extent by the terms of the contract. Here the contract is what I have already set out, and all the plaintiff undertook to do was to find a party to lend money to the defendant on the security of the defendant's property. Holding as I do that the Allahabad Bank were willing to do that, and that the plaintiff by informing the defendant brought the parties together, it seems to me that the plaintiff has done that which was required by the terms of his employment. The matter will be found discussed in *The Municipal Corporation of Bombay* v. *Cuverji Hirji*.[4] That was a case where the broker was employed to sell land, and Farran, C. J., there remarks (p. 127):—

"Now we take that law to be as laid down by Erle, C. J., in *Green* v. *Bartlett*.[5] His Lordship says: 'The question whether or not an agent is

(1) (1863) 14 C.B. (N. S.) 681.
(2) (1875) 31 L. T. 731, on appeal, (1876) 33 L. T. 584.
(3) (1878) 39 L. T. 253.
(4) (1895) 20 Bom. 124.
(5) (1863) 14 C. B. (N. S.) 681 at p. 685.

entitled to commission . . . has repeatedly been litigated, and it has usually been decided that, if the relation of buyer and seller is really brought about by the act of the agent, he is entitled to commission, although the actual sale has not been effected by him.' In that case the purchaser had been introduced to the vendor by the agent. In the present case, there is no question of introduction. That is often the main office of a broker in cases where an article of commerce is sold. The bringing together of a willing vendor and a willing purchaser is virtually bringing about the bargain, and the same is often the consequence, though in a less degree, of bringing a vendor and buyer of land into communication."

These remarks appear to me to be applicable to the present matter. The main office of a loan broker is to bring the borrower and the lender together, and when he has done that, he has, in my opinion, done all that is necessary for him to do and earn his commission. I must of course qualify that statement by saying that there must be in the lender the willingness to open negotiations upon a reasonable basis, which Farran, C. J., insisted upon in the case just cited. There is little doubt here that had the defendant followed up the work which the plaintiff had done, he would have obtained from the Allahabad Bank the loan which he eventually obtained through another broker. In this connection the case of *Wilkinson* v. *Alston*[1] is specially instructive. There an agent was employed to look out for the purchaser of a ship, and the agent found a party, but no bargain was struck, and everything, so to speak, fell to the ground, and it was not until after a long interval that the party came forward and concluded a purchase. In the judgment in that case Bramwell, L. J., says (p. 734) :—

"The defendant practically said to the plaintiff, 'If you or White can find me a purchaser, and the purchase is completed, I will pay you a commission.' And the expression, 'If you can find a purchaser,' may be expanded as meaning, if you can introduce a purchaser to myself, or can introduce a purchaser to the premises, or call the premises to the notice of a purchaser.

That being the meaning of the expression, the jury had to find whether the plaintiff was employed to find a purchaser, and they found that he was. Then the next thing they find is this, that the plaintiff or White did find a purchaser.

[1] (1879) 48 L. J. Q. B. 733.

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Crump, J.

That is, they did introduce a person who, in consequence of the introduction, became the purchaser on account of himself or some one else."

Brett, L. J., says (p. 735) :—

"We are to take it that the plaintiff was employed by the defendant to find a purchaser for the ship, on the terms that if he did he should be paid a commission. The plaintiff would, in point of law, fulfil the contract if he introduced the ship to the notice of the purchaser, and the latter purchased it in consequence of that introduction, though all proceedings subsequent to that introduction were carried on between the principals without any further intervention by the agent."

Upon the facts of this case it seems to me not unreasonable to presume that the defendant's final recourse to the Allahabad Bank is due to what was done by the plaintiff in pursuance of his employment, and therefore it would not be right to say that the loan which was finally taken from the bank was not due to the plaintiff's intervention; but even if it were not, I do not think that that would make any difference to the plaintiff's right to claim commission. The plaintiff was really employed to procure a loan for the defendant, and what is meant by that would be found explained in the case of *Green* v. *Reed*.[1] Here the defendant had applied to the plaintiff to obtain him a loan of £25,000 on real security. A certain Society agreed to advance £20,000 upon the property, but on investigation of title it was found that there was some difficulty. The Society offered £8,000, but the defendant declined to accept it, and went elsewhere. He eventually obtained a loan from another company who were satisfied with the security. The plaintiff claimed his commission on the amount of the loan as actually obtained, whereas the defendant denied that he was entitled to anything, the money never having in fact been actually obtained and received. Erle, C. J., charging the jury, made the following remarks (p. 227) :—

"The plaintiff claims for commission. Was there an express contract that nothing should be paid unless the money was actually *received*? Or was the

[1] (1862) 3 F. & F. 226.

contract that the plaintiff should be paid his commission whether the money were actually received or not, provided it were *procured?* The plaintiff says the contract was to pay the commission if the loan was *procured.* Was it so? Or was it to be paid only provided the money was *received?* It depends on the contract, for here an express contract is sworn to. As regards the cause of the loan going off, there was no fault or default on the part of the defendant, it was a mere defect of title, which he could not probably be aware of.

The jury asked whether, if a man professed to borrow money on property to which he had not a title, and the loan was *procured,* but failed through the want of title, he was liable to pay the commission?

ERLE, C. J.—It depends on the contract, and here an express contract is sworn to, that nothing was to be paid unless the money was *received.*"

That case turned, as will be seen, on the terms of the contract, and the distinction is drawn between the procuring the money and the actual receipt of it. And it will appear from the headnote that it was held that a loan for the purposes of that contract was equivalent to a power to obtain a loan. And that seems to be the case here. For all that the plaintiff was employed to do was to find a party who was willing to advance the money to the defendant. When once he had put it in defendant's power to obtain the loan, he had done all that his appointment necessitated. It was sought to be argued that unless the loan was actually procured by the plaintiff's intervention, he would not be entitled to any commission, but there is another answer to that argument, and that is, the circumstances of this case clearly go to show that the defendant in reality made it impossible for the plaintiff to earn his commission, by employing another broker and obtaining a loan from the same party which the plaintiff had already indicated. The cases on which the defendant's counsel has relied do not appear to me to in any way detract from the soundness of the principle which I have endeavoured to lay down. In *Millar, Son, and Co.* v. *Radford*[1] a house agent was employed to find a tenant or a purchaser. He found a tenant and received his

(1) (1903) 19 T. L. R. 575.

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Crump, J.

commission upon that basis. The tenant was in possession of the property, and subsequently purchased it, and it was held that the house agent was not entitled to commission upon the sale. The real reason appears to me to be that upon the facts of that case it could not be said that the plaintiff had brought about the sale. It was not necessary for the plaintiff to show that he brought about the sale. That was merely a test as to whether or not the plaintiff had found a purchaser. That case in no way lays down that an agent who finds a purchaser without actually bringing about a sale is not entitled to any commission. The question in that form did not arise in that case, or in the similar case in *Nightingale* v. *Parsons*.[1] This case rests upon a similar state of facts and is really outside the matter now before me. Again, in *Martin* v. *Tucker*[2] we have a case which turns upon the special terms of the contract. In *Taplin* v. *Barrett*[3] there was a sale of property which was not in contemplation of the parties when they entered into the contract, and that really was held to be an indication of the revocation of the plaintiff's agency, and upon that ground it was held that no commission had been earned. *Barnett* v. *Brown and Co.*[4] is a case, which, speaking with all respect, I find somewhat difficult to understand. There two brokers were simultaneously employed. One of them introduced a party, and subsequently the other introduced the same party, who in the event became the purchaser. It was held that the first broker was not entitled to commission apparently on the ground that the sale was not actually completed through his intervention. But if the test be really that which will be found laid down in *The Municipal Corporation of Bombay* v. *Cuverji Hirji*[5] it

(1) [1914] 2 K. B. 621.
(2) (1885) 1 T. L. R. 655.
(3) (1889) 6 T. L. R. 30.
(4) (1890) 6 T. L. R. 463.
(5) (1895) 20 Bom. 124.

is difficult to see upon what basis that decision rests. It may be that there was a special term in that contract that no commission was to be paid unless a sale was actually effected, which of course would entirely alter the matter. In *Brinson* v. *Davies*[1] the facts are entirely different to anything which we have here. There a man employed an agent to sell his property, but before the agent introduced the purchaser he sold it himself, and it was held that he was perfectly entitled by the terms of the contract to sell the property himself if he could. The subsequent introduction of the purchaser could not entitle the agent to commission.

These are the principal cases cited upon either side, and they seem to me to leave the matter much where I started at the outset, that is, if the plaintiff in the case has done all that he was employed to do, then he is entitled to the commission, and having regard to the terms of the contract between the parties here, I hold that he has. It follows that he is entitled to the commission which he claims. It is plain from the correspondence between the bank and the defendant that the bank would have advanced Rs. 2,00,000, if the security had not proved to be insufficient, and it would appear upon the principles laid in *Elias* v. *Govind Chunder Khatick*[2] and *Fisher* v. *Drewett*,[3] in those circumstances the plaintiff is entitled to commission upon the amount of two lacs. There must be a decree for the plaintiff for Rs. 4,000 with costs and interest on judgment at six per cent.

The defendant appealed.

The appeal Court (Marten, C. J., and Blackwell, J.), on January 30, 1928, passed the following order by consent.

(1) (1911) 27 T. L. R. 442. (2) (1902) 30 Cal. 202.
(3) (1878) 39 L. T. 253.

1927

VASANJI MOOLJI v. KARSONDAS TEJPAL

Per Curiam:—By consent decree varied by reducing the principal amount of decree from Rs. 4,000 to Rs. 2,200. Appellant to pay costs of appeal, and in Court below including costs of execution.

Attorneys for plaintiff: Messrs. *Motichand & Devidas.*

Attorneys for defendant: Messrs. *Kanga & Co.*

S. K. B.

ORIGINAL CIVIL

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Blackwell.

1928
February 15

SITARAM KRISHNA PADHYE (ALLEGED PARTNER IN THE 2ND DEFENDANT FIRM), APPELLANT *v.* CHIMANDAS FATEHCHAND (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hundi—Suit on—Signature of drawer describing him as "managing proprietor" of a firm—Personal liability of drawer—Firm not liable—Evidence inadmissible to show that drawer was acting for an undisclosed principal—Indian Negotiable Instruments Act, 1881, sections 26, 27, 28.

A suit was brought on three *hundis* running in the following form:—

"56 days after date I promise to pay Seth Chimandas Fatehchand or order the sum of rupees 600 only for value received in cash.

(Sd.) G. V. ATHALE,
Managing Proprietor,
Gangadhar and B. Friends,
Sandhurst Road, Bombay No. 4."

Held, that the only person liable on these *hundis* was Athale, who had signed them, and not any alleged firm passing under the name of "Gangadhar and B. Friends," and that the words, "Managing Proprietor, Gangadhar and B. Friends, Sandhurst Road, Bombay No. 4," were merely added as a description of his occupation and business address.

In an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is not open by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

Dutton v. *Marsh*[1] and *Sadasuk Janki Das* v. *Maharaja Kishan Pershad*,[2] followed.

THE plaintiffs, who were the payees, sued the defendants to recover Rs. 4,640 and interest due

*O. C. J. Appeal No. 46 of 1927: Summary Suit No. 2418 of 1926.

[1] (1871) L. R. 6 Q. B. 361. [2] (1918) L. R. 46 I. A. 33.