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upon which the suit is based expressly stated that the loan was to be secured on the first mortgage of the properties named, which clearly implies a guarantee that the properties were not encumbered, and if the principal failed to satisfy the intending lender on this point, it was no fault of the agent.

We are therefore of opinion that the plaintiff in this case has fully made out his title to the remuneration claimed. It was then argued—and this was the second ground upon which we were asked to interfere—that the mere circumstance of the attorney not being satisfied on the question of title was not enough to show that the transaction fell through by reason of any real defect in the title of the principal, and that the Court below [206] should not have decreed the claim without coming to an affirmative finding on that point. But it was very fairly conceded that the circumstances were enough to justify the attorney in advising the lender not to advance the loan, as it was not made out as between the borrower and the lender that the mortgage was to be the first mortgage on the property. Well, if that was so as between the lender and the borrower, there is no reason why the broker should be held bound to prove more, regard being had to the terms of the agreement between him and his principal.

The grounds urged before us must therefore fail, and this Rule must be discharged with costs.

*Rule discharged.*

30 C. 207 (=7 C. W. N. 126).

## [207] APPELLATE CIVIL.

ISWAR CHUNDER SANTRA *v.* SATISH CHUNDER GIRI.*
[2nd December, 1902.]

*Principal and agent—Tenant—Suit for Damages—Second appeal, ground of—Erroneous view of evidence.*

Because a person is the sole recorded tenant in the landlord's *sherista* he is not therefore alone entitled to sue third parties for damages done to the tenure, if other persons are also interested in and have a right to the same.

An erroneous view of evidence involves an error of law.

A master or principal is liable for wrong done to third parties by his servant or agent, provided that the act is done on his behalf and with the intention of serving his purposes.

[Dist 4 C. L. J. 198 ; Ref. 3. I. C. 101 ; 173 ; (Second appeal—Fraud) Ref. 6 Bom. L. R. 131, (Liability of master to strangers for agent's acts].

THE plaintiff, Iswar Chandra Santra, and on his death his legal representative, Bama Charan Santra, appealed to the High Court.

This appeal arose out of an action brought by the plaintiff to recover damages for injury done to his crops by the erection of a *bandh* by the defendants Nos. 1 and 2 and to obtain a perpetual injunction restraining them from constructing similar *bandhs* in future. The defence *inter alia*, was that the plaintiff, not being entitled to the entire 16 annas of the crops in dispute, could not sue alone, and that the defendant No. 1, the master of defendant No. 2, was not liable for any damages at all.

* Appeals from Appellate Decrees No. 511 of 1900 and No. 833 of 1900, against the decree of Babu Mohim Chunder Ghose, Subordinate Judge of Hooghly, dated the 19th of January 1900, modifying the decree of Babu A. C. Mitter, Munsif of Serampore, dated the 14th of June 1899.

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The Court of first instance gave the plaintiff a decree for the entire 16 annas against defendant No. 2 alone. On appeal the learned Subordinate Judge of Hooghly affirmed the decision of the first Court as regards the non-liability of defendant No. 1, and modified it by giving the plaintiff only one-seventh of the amount of damages proved, inasmuch as he had six other brothers, who had interest in the lands in suit.

[208] *Babu Mahendra Nath Ray* for the appellant. The plaintiff, as the registered tenant of the holding, was entitled to sue alone, especially as his alleged co-sharers disclaimed all interest in the holding either before or after suit. See *Jeo Lal Singh* v. *Gunga Pershad* (1) and *Nitayi Behari Saha* v. *Hari Govinda Saha* (2). Further, the Lower Appellate Court erred in holding that the defendant No. 1 was not liable. The reasons given for this finding, *viz.*, (1) that there was nothing to show that the defendant No. 1 gave the order to the defendant No. 2 to construct the *bandh*, or that he knowingly allowed the latter to do so; (2) that there was nothing to show that the defendant No. 2 had authority to construct the *bandh* on behalf of his master; and (3) that the principal is liable for his agent's acts only when they come within the scope of his agency, and that there was nothing to show that the acts complained of were of such a description—are erroneous. It is submitted that the true principal is that the master was liable even for wilful and deliberate wrongs committed by the servant, provided they were done on the master's account and for his purpose. See *Bombay-Burmah Trading Corporation* v. *Mirza Mahomed Ally* (3); *Simpus* v. *London General Omnibus Company* (4), and *Pollock on Torts*, pp. 82—91. Besides the defendant No. 1 in his written statement did not repudiate the acts of his agent.

*Babu Saroda Charan Mittra* for the respondents. The disclaimer of the co-sharers of the plaintiff was subsequent to the institution of the suit, and could not give him a title. Further, the question as to the liability of the defendant No. 1 was concluded by the findings of fact arrived at by the Lower Appellate Court. The *gomasta* was a merely collecting agent, and it was found that the act complained of did not come within the scope of his agency.

*Babu Mahendra Nath Ray* in reply.

BANERJEE AND GEIDT, JJ. These appeals, Nos. 541 and 833 of 1900, arise out of a suit brought by the plaintiff, appellant, to recover damages for injury done to his crops by the erection of a [209] *bandh* by the defendants Nos. 1 and 2 and to obtain an injunction restraining the defendants from constructing similar *bandhs* in future.

The defence, amongst other matters not necessary for us now to consider, raised these two questions, namely, *first*, whether the plaintiff was entitled to the entire 16 *annas* of the crops in dispute, and therefore to the entire amount of the damages claimed, and *secondly*, whether the defendant No. 1 was liable for any damages at all.

The first Court determined the first point in favour of the plaintiff and the second against him.

Against this decision of the first Court both the plaintiff and the defendant No. 2 preferred appeals; and the Lower Appellate Court, whilst affirming the decision of the first Court upon the question of the liability of the defendant No. 1, has modified that decision on the other

(1) (1884) I. L. R. 10 Cal. 996.
(2) (1899) I. L. R. 26 Cal. 677, 691.
(3) (1878) I. L. R. 4 Cal. 116, 121.
(4) (1862) 32 L. J. Ex. 34.

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point, and given the plaintiff a decree for only one-seventh of the amount of damages proved.

In second appeal it is contended on behalf of the plaintiff, appellant, *first*, that the Lower Appellate Court is wrong in decreeing damages only to the extent of one-seventh of the amount of damages proved, and, *secondly*, that it is wrong in exonerating the defendant No. 1 from liability.

Upon the first point the facts found by the Lower Appellate Court are thus stated in its judgment: * * "It is proved by evidence that the plaintiff had six other brothers, who had interest in the lands in suit, or, in other words, were tenants in common with the plaintiff, and that the widows and sons of such other brothers are living." And, after stating these facts, the Subordinate Judge says:—"The plaintiff hence has put a $\frac{1}{7}$ (one-seventh) share in the lands, and, as such, he is not entitled to recover the whole amount of damage claimed by him.' And then he observes that the Munsif has taken a wrong view of the case in thinking that the plaintiff had sued as *karta* of the family, and the learned Subordinate Judge adds: "The plaintiff has not produced any authority to sue on behalf of his other co-sharers, and the deposition of his two nephews disclaiming interest in the lands subsequent to the institution of the suit cannot confer full title to the plaintiff in such lands and crops."

[210] It is argued by the learned vakil for the appellant that the view taken by the Lower Appellate Court is wrong—*first*, because it ought to have held that the plaintiff as registered tenant in the landlord's *sherista* was the only person entitled to sue in respect of damages done to the tenure or holding, and, *secondly*, because the Lower Appellate Court is wrong in holding that the depositions of the two nephews amount only to a disclaimer of interest subsequent to the institution of the suit, when their statements are evidence of a pre-existing right in the plaintiff.

We are of opinion that the first branch of this contention is incorrect, because the mere fact of the plaintiff being the sole recorded tenant in the landlord's *sherista* does not entitle him alone to sue third parties for damages done to the tenure or holding, if other persons are also interested in and have a right to the same.

But we are of opinion that the second branch of the contention is correct, and that the depositions of the plaintiff's two nephews amount to a great deal more than a disclaimer of interest in the land subsequent to the institution of the suit. They are evidence bearing upon the question whether the plaintiff is or is not the person alone entitled to the lands and to the crops in dispute. As the Lower Appellate Court in coming to a finding on that point has taken a clearly erroneous view of the evidence, and that erroneous view involves an error of law—in other words, as the learned Subordinate Judge in the Court of appeal below has omitted to consider an important portion of the evidence bearing upon the question of the plaintiff's title, his decision upon this point must be set aside and the case remanded for a fresh decision upon the evidence taken as a whole.

Upon the second question raised in this appeal, namely, whether the defendant No. 1 is liable for the damages claimed, the Lower Appellate Court in its judgment observes: "True the defendant No. 2 is a *gomasta* under the defendant No. 1, but there is nothing to show that the defendant No. 1 gave the order to construct the *bandh* or that

knowingly he allowed his *karpurdazes* to do the same. Then there is no evidence to substantiate that the defendant No. 2 had authority to construct the *bandh* on behalf of his master, so as to bind him by his acts. A principal [211] is liable for his agent's acts only when such acts come within the scope of his agency, but in this case there is nothing to show that the acts of the defendant No. 2 were of such a description."

The learned vakil for the appellant contends that this is not a correct way of dealing with the question of a principal's or master's liability for the acts of his agent or servant. The judgment may be correct so far as it goes; but the contention is that it does not go far enough, and that it omits to consider all the grounds upon which a principal or master may be liable for the acts of his agent or servant. The general rule, as Mr. Justice Wills observes in the case of *Barwick* v. *English Joint Stock Bank* (1), is "that a master is answerable for every such wrong of his servant or agent as is committed in the course of the service and for his master's benefit." And the injury in respect of which a master becomes subject to this kind of vicarious liability has been well put by Pollock in his work on the Law of Torts, 6th edition, page 82. It may be caused in the following ways: "(*a*) It may be the natural consequence of something being done by a servant with ordinary care in execution of the master's specific orders. (*b*) It may be due to the servant's want of care in carrying on the work or business in which he is employed. (*c*) The servant's wrong may consist in excess or mistaken execution of a lawful authority. (*d*) It may even be a wilful wrong, such as assault, provided the act is done on the master's behalf and with the intention of serving his purposes."

Although the learned Subordinate Judge's judgment may be viewed as containing findings of fact, which will take the case out of head (*a*) and perhaps also out of (*b*), it is clear that he has not considered the case at all with respect to head (*d*). We reserve our opinion upon the somewhat broader proposition which the learned author considers later on, at page 95, in discussing head (*d*)—the proposition, namely, that the master will be liable, even though the act was done in contravention of his express prohibition, a question which does not arise in this case: but we think that a master or principal is clearly liable for any wrong done, provided the act is done on his behalf and with the intention [212] of serving his purposes. As the question has not been considered by the Court of appeal below from this point of view, its judgment on the question of the liability of the defendant No. 1 must also be set aside and the case remanded that it may determine the point upon the evidence on the record. We may observe in this connection that the defendant No. 1 in his written statement said nothing to repudiate his connection with the acts of the defendant No. 2 so far as the *bandh* in dispute is concerned, but on the other hand, alleged that the *bandh* had been in existence from before, and claimed the benefit of the existence of the *bandh*.

The Court of Appeal below, in dealing with the question of the liability of the defendant No. 1, will take this part of his written statement into consideration.

The costs will abide the result.

*Appeal allowed.*
*Case remanded.*

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(1) (1867) L. R. 2 Ex. 259.