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30 C. 155=6 C. W. N. 737.

There is, lastly, the point raised by the fifth question referred. Upon this question it is not very easy to generalize. But I should think that, when there are independent disputes relative to distinct parcels of land, they ought to be dealt with in separate proceedings. When, on the other hand, the dispute is one, the fact that it embraces several distinct parcels of land, is not, in my opinion, sufficient to necessitate an independent proceeding in respect of each. The matter is not, however, one which, as it appears to me, affects the jurisdiction of the Magistrate.

[201] For the foregoing reasons I would answer the questions submitted to us as follows:—

Question I. To the first branch of the question my answer is—No. To the second branch—I do not think that the Magistrate would be bound to stay the proceedings.

Question II. I think the Magistrate ought, before entering on his inquiry under clause (4) of the section (though not as a preliminary to the initiation of the proceeding, for which latter purpose all that is requisite is that the Magistrate should issue the orders provided for by clause (1) to the parties named in the information), to satisfy himself to the best of his ability on the information before him as to who are the persons claiming to be in present possession of the subject of dispute, but that he is not concerned to ascertain what persons have or claim to have mere rights to possession.

Question III. I am not quite clear as to the intention of this question. But assuming it to relate to the addition of a party after the initiation of the proceeding, I would say that there is no necessity for a fresh proceeding, in consequence of such addition, assuming the party added to have been concerned originally in the dispute which is the foundation of the proceedings. Up to the time when the inquiry begins I think parties may now be added. If they are added after it has begun, I think that that would be an irregularity. But I do not think it would be necessary, in consequence, to initiate a fresh proceeding, but evidence previously taken ought, if the parties so added require it, to be again taken in their presence.

Question IV. No.

Question V. No.

BRETT, J. I agree with Mr. Justice Hill and have nothing to add to what he has said in his judgment.

HENDERSON, J. I also agree with the judgment delivered by Mr. Justice Hill.

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30 C. 202 (=7 C. W. N. 297).

[202] CIVIL RULE.

ELIAS v. GOVIND CHUNDER KHATICK.* [22nd December, 1902.]

Contract—Principal and agent—Broker—Title—Brokerage.

A contracted with a broker to negotiate for a loan of money on the first mortgage of properties, and agreed to pay brokerage. The broker brought a creditor who was willing to advance the amount, and actually placed money in the hands of the attorney. The attorney found certain defects in A's title, and the transaction fell through.

Held, that, if a broker has negotiated a loan and found a lender willing to lend the amount, he is entitled to his brokerage, although the transaction

* Civil Rule No. 3106 of 1902.

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was not completed by reason of the inability of A to satisfy the attorney as to the title.

Held, further, that, regard being had to the terms of the agreement, a broker is not bound to prove some real defect in the title in order to recover the remuneration claimed.

RULE granted to the defendant, Govind Chunder Khatick.

This Rule arose out of an application by the defendant to set aside an order passed by the Small Cause Court Judge of Sealdah, decreeing the plaintiff's suit for commission. The petitioner, Govind Chunder Khatick, engaged one Elias as a broker on the 14th August 1899 to negotiate for a loan of a certain sum of money for him.

A contract was entered into between the parties, and the material portion of it ran as follows :—" I hereby authorise you to negotiate as broker for a loan of Rs. 18,000 only, on the first mortgage of three properties, namely, Nos. 31 and 40, Tangra Road, in the suburbs, and No. 27-3, Ram Kanto Mistry's Lane, in the Town of Calcutta, and I hereby agree to pay you brokerage at the rate of 4½ per cent. for negotiating such loan." Upon this contract Elias brought a suit for commission [203] against the petitioner in the Court of Small Causes at Sealdah. The learned Judge of the Small Cause Court decreed the plaintiff's suit, having found that the plaintiff was entrusted to negotiate for a loan and he had brought a creditor, who was willing and had actually placed money in the hands of the attorney, and that the defendant, who was bound to satisfy the lender as to his title, had failed to do so, as the attorney found out certain defects, in consequence of which the transaction fell through.

Dr. *Rash Behary Ghosh* and Babu *Hari Churn Sarkhel* for the petitioner.

Dr. *Ashutosh Mookerjee* and Babu *Jnanendra Nath Bose* for the opposite party.

BANERJEE AND GEIDT, JJ. This is a Rule calling upon the opposite party, who was the plaintiff in the Court below, to show cause why the decree of the Court below in his favour should not be set aside ; and the grounds upon which we are asked to set aside the decree of the Court below are as follows, namely, *first*, that the Court below was wrong in decreeing the plaintiff's claim for commission when the plaintiff failed to complete the loan transaction for the negotiation of which commission had been agreed to be paid, and, *secondly*, that the Court below was wrong in decreeing the plaintiff's claim without coming to any finding, as to whether there was any real defect in the defendant's title for which the transaction is said to have fallen through.

Now, the contract upon which the claim is based runs as follows :—"I hereby authorize you to negotiate as broker for a loan of Rs. 18,000 only on the first mortgage of three properties, namely, Nos. 31 and 40, Tangra Road, in the suburbs, and No. 27-3, Ram Kanto Mistry's Lane, in the town of Calcutta." And then the document goes on and adds :—" I hereby agree to pay you brokerage at the rate of 4½ per cent. for negotiating such loan."

It is argued by the learned vakil for the petitioner that the plaintiff was entitled to the commission agreed to be paid only, if he successfully negotiated the loan, that is, actually secured the [204] advance of it to the petitioner, and that, as he failed to do so, he is not entitled to succeed upon the contract.

Now, this is how the facts found stand. The learned Judge in the Court below says:—" The plaintiff was entrusted to negotiate a loan. He did bring a creditor, who was willing and actually placed money in the hands of the attorney. The defendant was bound to satisfy the lender as to his titles, but the attorney found out certain defects and the transaction fell through. The fault was not the plaintiff's. He performed his part when he brought in a creditor willing to lend on the terms stated in Exhibit I and earned his brokerage." And a little further on he adds:—" Whether the attorney was right in his opinion I am not called upon to say. But one title-deed was missing, and he was at least right in calling upon the defendants to make it good."

Upon these findings we think it is clear that the plaintiff has performed his part of the contract, and, if the transaction fell through, it was by reason of the defendant's inability to satisfy the intending lender as to his title to the property.

Reliance was placed in the argument for the petitioner upon the cases of *Prickett* v. *Badger* (1) and *Martyrose* v. *Courjon* (2), and paragraph 329 of Story's work on Agency was also relied upon as showing that an agent must complete the thing required of him before he is entitled to charge for it " and that an agent may be entitled to a remuneration for his services in proportion to what he has done, where the entire performance is prevented by the act or neglect of the principal himself." We are of opinion that the authority of *Prickett* v. *Badger* (1) is at least considerably shaken by the subsequent case of *Green* v. *Lucas* (3), in which in the Court of Appeal the Lord Chancellor said:— " It appears to me that the plaintiffs had done everything which agents of this kind of work are bound to do, and it would be forcing their liability, if they were to be held answerable for what happened afterwards. If the contract afterwards were to go off from the caprice of the lender or from the infirmity in the title, it would [205] be immaterial to the plaintiffs, and that appears to be the understanding of the persons themselves.

The case of *Martyrose* v. *Courjon* (2), in which *Prickett* v. *Badger* (1) was followed, is based upon the circumstances of that case, as the report in the short notes shows, but what those circumstances were the report does not set forth, and we do not think, therefore, that it would be a safe guide for us to follow in this case. As for the passage cited from Story on Agency, no exception can be taken to the rule therein laid down so far as it requires that an agent must complete the thing required of him before he is entitled to charge for it, but in the present case we are of opinion that the agent did complete what was required of him, that is to say, that he did fully perform his part of the contract, that being to negotiate for a loan for the required amount on the first mortgage of certain properties named. The plaintiff had found a lender, who was ready and willing to lend the required amount and was found to have placed the money in the hands of the common attorney of both parties; and if the transaction was not completed, it was by reason of the inability of the defendant to satisfy the attorney on the question of title, a certain document of title being found missing, by reason of which, as the evidence shows, the attorney was led to doubt whether the property had not been equitably mortgaged before. Now, the contract

(1) (1856) 1 C. B. (N. S.) 296.
(2) (1889) 3 C. W. N. CLXXVIII.
(3) (1875) 33 L. T. (N. S.) 584.

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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.