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April 6.

Original Civil Jurisdiction.

Suit No. 489 of 1865.

W. A. HURST *against* JOHN WATSON.

Agency—Revocation of Authority—Remuneration.

The defendant requested the plaintiff to sell for him a plot of ground on the Esplanade in Bombay, at any rate exceeding the price at which the defendant himself had purchased it ; and agreed to give him as remuneration half the net profit realised on the sale. The defendant subsequently revoked this authority ; and the plaintiff shortly afterwards found a purchaser, whose offer the defendant did not accept.

Held that the defendant could not recover on the agreement, which had not been performed on his part ; that there was no ground for holding that the plaintiff and the defendant were partners in the transaction as between themselves ; and that the plaintiff was not entitled to recover for work done as a broker, or for commission, the nature of the agreement being that the plaintiff took the risk of the authority being revoked.

THIS was a suit to recover for work done as a broker, and for commission ; and on a special agreement to allow the plaintiff to share in the profits of a resale of land.

The case was heard by COUCH, Acting C.J., in a Division Court, on the 10th and 12th of March 1866.

The Honourable J. S. White, Marriott, and McCulloch for the plaintiff.

Anstey for the defendant.

The following issues were raised :—(1) Whether the defendant agreed with the plaintiff as alleged in the plaint ; (2) Whether the plaintiff has entitled himself to be paid according to the agreement ; (3) Whether the plaintiff is entitled to recover any and what sum for work done as a broker, or for commission.

The facts (so far as material) and the cases cited are noticed by His Lordship.

Cur. adv. vult.

COUCH, C.J. :—The first issue in this case is, whether the defendant agreed with the plaintiff as alleged in the plaint.

In the fourth paragraph of the plaint it is stated that, in or about the month of January 1865, the defendant requested the plaintiff to endeavour to sell a plot of ground on the Esplanade in Bombay, which the defendant had purchased at the price of Rs. 110 per square yard, at any rate exceeding the price at which the defendant had so purchased ; and on the 5th of January the defendant wrote and gave to the plaintiff the letter of that date annexed to the plaint, and thereby placed the sale of the said plot of ground in the plaintiff's hands, and agreed to give him, as remuneration for selling, half the money realised as profit on the sale, after deducting the purchase-money paid by the defendant, with interest at nine per cent. per annum, and any other charges to which the defendant might have been or might be subjected.

As the terms of the letter are correctly stated, and the defendant admits that he signed it, the first issue must be found for the plaintiff.

The allegation in the sixth paragraph of the plaint, that the letter created a partnership between the plaintiff and defendant, in the net profits to arise from the resale of the land ; and that the defendant was bound to sell the same on the plaintiff finding a purchaser for it at the rate of Rs. 150 per square yard, is a distinct matter ; and the question, whether this was the legal effect of the letter, is not involved in the first issue. It forms part of the second issue, which is, whether the plaintiff had entitled himself to be paid according to the agreement.

The case of the plaintiff is that, subsequently to the signing of the letter, the defendant fixed Rs. 150 per square yard as the price, and that the plaintiff took steps with reference to selling the property, by addressing letters to one or two persons who were likely to purchase, and consulting with Mr. Hastings, a Civil Engineer, on the advisability of constructing a building for barristers' chambers and solicitors' offices : and that he obtained from Messrs. Passmore, Green, and F. Heycock, who were the promoters of that scheme, an offer of Rs. 150 per square yard, which he

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says he communicated to the defendant about the end of February; and he seeks to have it inferred, from the defendant's conduct, that he refused to accept this offer, because he had changed his plans, and had come to the determination to build upon the land himself.

On the other hand, the defendant's case is, that this land having been purchased by his manager during his absence from Bombay at a very much higher rate than he wished to purchase at, and the purchase-money having taken away the funds he intended to build with, he was anxious to sell the land; and, soon after his return to Bombay, took measures to get rid of it; that he was willing to take anything above what the land cost him, and did not say anything to the plaintiff about a minimum price: which seems to me more probable than what the plaintiff said as to this, namely, that being about to leave Bombay for England in March, it was necessary for him to bring the matter to a conclusion, and if the land was not sold, to get plans drawn up, before leaving, for building upon it.

It is alleged that a letter, dated the 13th of February, which is not forthcoming, was written by the defendant to the plaintiff, the contents of which were that the defendant would be obliged to take the matter out of the plaintiff's hands at the end of a week from that time; and that he had consulted with an architect, who informed him there would be very little time to prepare the plans, which he wanted to take with him to England. The defendant says he waited two or three more days, at the request of the plaintiff, who said he had been trying to get up a company; and, hearing nothing, he wrote a letter, dated the 23rd of February, which the plaintiff admitted having received. In this letter the defendant writes: "I beg to cancel my instructions to you for the sale of my piece of land in Rampart Row, as I have now decided to build upon it, and have settled with the party yesterday as I mentioned to you."

The plaintiff admits that it was not until after he had received this letter that he communicated to the defendant the offer of Rs. 150 per square yard, which both parties seem

to agree in saying was done on the 27th of February. They differ in their accounts of what passed at that interview. I am inclined to think that the account given by the defendant is the correct one ; but it is not necessary to decide that, as the authority given on the 5th of January was clearly revoked by the letter of the 23rd of February, and the evidence fails to show that this revocation was withdrawn, and the plaintiff restored to his former position. It is also undisputed that the offer was not accepted by the defendant ; and that the event named in the letter of the 5th of January, of the land being sold and a profit realised, never happened.

The plaintiff, therefore, cannot recover upon the agreement, which has not been performed on his part ; and the second issue must be found for the defendant, unless the plaintiff had, by obtaining the offer which the defendant refused to accept, put himself in the same position as if the agreement had been performed.

The plaintiff was made, by the letter of the 5th of January, the agent of the defendant to sell the land ; and there is no ground whatever for holding that they were thereby made partners as between themselves. In general the principal has a right to determine or revoke the authority given to his agent, at his own mere pleasure.

This is the general rule ; and it strictly applies in all cases where the authority has not been exercised at all by the agent, and also " if it has been in part put in the course of execution, but not to such an extent as to become obligatory between the parties, as if preliminary proceedings only have been instituted. Thus, for example, if a broker should enter into a verbal agreement to sell goods for his principal, and the sale is within the reach of the Statute of Frauds (which requires the agreement to be in writing), and before the broker signs the written agreement of sale, the principal should revoke his authority, the revocation will have full validity." (a) Where an authority or power is coupled with an interest, it is irrevocable, unless there is an express

(a) Story on Agency, Sec. 465.

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stipulation to the contrary; but the right of the agent to remuneration, although stipulated for in the form of part of the property to be produced by the exercise of the power, is not an interest in this sense. (b) In *Prickett v. Badger* (c), which was quoted and relied upon by the plaintiff's counsel in this case, it was never doubted that the agent's authority to sell might be revoked. The obtaining an offer after the revocation could not, therefore, put the plaintiff in the same position as if the agreement had been performed; and the second issue must be found for the defendant.

The third and remaining issue is, whether the plaintiff is entitled to recover any and what sum, for work done as a broker, or for commission. "Ordinarily an agent performing services for his principal is entitled to a compensation therefor, unless he is a mere gratuitous agent or mandatary, or unless the nature of the service or undertaking between the parties repel such a claim." The agent may, in order to obtain a special remuneration, in the event of the authority being exercised, be willing and agree to take the risk of its being revoked. Thus, in *Campanari v. Woodburn* (d), where it was agreed between the plaintiff and an intestate person, whose administratrix was sued, that the plaintiff should endeavour to sell a certain picture of the intestate, and that if the plaintiff succeeded in selling the same the intestate would pay him £100, *Jervis*, C. J., says: "It must be taken to have been part of the original compact between the plaintiff and the intestate, that whereas on the one hand he would receive a large sum if he succeeded in selling the picture, so on the other hand he would take the chance of his authority to sell being revoked by death or otherwise." So also in *Simpson v. Lamb* (e) the same learned Judge says the right of the agent to be reimbursed depends upon the terms of the agreement. A general employment may carry with it a power of revocation, on the payment only of a compensation for what may have been done under it, but there may be also a qualified employment

(b) Story on Agency, Sec. 477, Note. (c) 26 Law J., C. P., 33.

(d) 15 C. B. 400. (e) 25 Law J., C. P., 113; 17 C. B. 603.

under which no payment shall be demandable if countermanded.”

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In *Prickett v. Badger*, which was relied upon by the plaintiff's counsel, in support of his right to recover for the work done, the authority had not been revoked before the plaintiff had found a purchaser; and *Williams, J.*, in his judgment, says: “I am anxious that it should not be supposed that the Court means to lay down as a general proposition, that when an agent is employed to sell, and his authority is revoked, he may, according to *Planche v. Colburn*, resort to the common counts for remuneration for his endeavours to find a purchaser. The general understanding is that he is to find a purchaser in order to be entitled to his commission; and that if he does not do so before his authority is revoked, he is to recover nothing. Such a defence could not be set up as an answer to the present action, because in this case the plaintiff had actually found a purchaser before his authority was determined.” And *Crowder, J.*, said: “I agree with what my brother *Williams* has said as to the ordinary case of employing an agent to sell; but that does not apply to the present case.”

In *Prickett v. Badger* the agreement was to pay the usual commission, £1 10s. per cent., on the purchase-money. In the present case the plaintiff was to receive an extraordinary remuneration—half the money realised as profit. In his evidence the plaintiff said he thought in these cases the usual remuneration was two per cent. on the purchase-money, which would amount to Rs. 2,400. He also said that if the two months which were spent by him in endeavouring to find a purchaser, had been employed in his brokerage business, he might have made between Rs. 3,000 and Rs. 5,000 a month. If the land had been sold for Rs. 150 per square yard, half of the profits, after making the deductions mentioned in the letter of the 5th of January, would, he said, have amounted to Rs. 21,000. He had stipulated for receiving a very large sum for his services if the land were sold; and I think the fair construction of the agreement is, that the plaintiff took the risk of the authority being revoked.

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There is no expression in the letter of the 15th of January binding the defendant not to revoke the authority; and it would be unreasonable to hold that the defendant, by employing the plaintiff to sell the land on such terms, bound himself to allow it to remain on sale for an indefinite time, and until the plaintiff could find a purchaser, and was not to be at liberty to change his intention if it should afterwards appear to him to be more advantageous to keep the land. At the utmost he would only be bound to allow the plaintiff a reasonable time to find a purchaser, which had, I think, looking at the circumstances, elapsed when the letter of the 23rd of February was sent.

I, therefore, find the third issue also for the defendant; and give judgment for him with costs.

Judgment for defendant.

June 9.
 Dec. 13.

Original Suit No. 759 of 1865; Appeal No. 68.

DEVSI' GHELA' *Plaintiff (and Respondent).*
 JIVARA'J MUKUNDA'S *Defendant (and Appellant).*

Contract between Hindús for sale of land in Bombay—Title.

In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindú law; and in a contract between Hindús for the purchase and sale of land in Bombay, the intention of the parties must be ascertained from the terms of the agreement, without regard to any implication.

THIS was a suit for the specific performance of an agreement, in the Gujaráti language, bearing date the 1st of February 1865, and signed by the defendant, by which the plaintiff agreed to sell, and the defendant agreed to buy, three *cháli* or ranges of building, situated near the Falkland Road, in the island of Bombay, for the price of Rs. 20,400, on account of which the defendant had paid to the plaintiff Rs. 2,000 as earnest-money.

The original suit was tried by COUCH, Acting C.J., in a Division Court, on the 11th, 16th, and 18th of January 1866.