

1888
OCT. 12.
ORIGINAL
CIVIL.
13 B. 463.

We are of opinion, therefore, that the income of the property (after deducting Rs. 500 to be given to Shivgar) should be paid to Jagdevgar, supposing him to be of age. The property, however, will remain with the Official Trustee as directed by the will—at any rate until Jagdevgar attains thirty years of age.

Other questions will probably arise on this will, but these are the only questions which the Court can properly dispose of at the present moment.

We must, therefore, reverse the decree of the Court below, and direct that accumulations of income since the plaintiff Jagdevgar attained eighteen years of age, and also the income to become henceforth due (subject to the pay of Rs. 500 a year to Shivgar), be paid by the Official Trustee to Jagdevgar.

The costs below and in this appeal of all parties to come out of the estate. The Administrator-General's costs to be taxed between attorney and client.

Attorneys for appellants:—Messrs. *Wadia and Ghandy*.

Attorneys for respondent:—Messrs. *Little, Smith, Frere and Nicholson*.

13 B. 470=Chitty's S. C. C. R. 216.

[470] ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

MAHOMEDALLY EBRAHIM PIRKHAN (*Plaintiff*) v. SCHILLER,
DOSOGNE & Co. (*Defendants*).* [3rd May and 21st June, 1889.]

Principal and agent—Goods ordered through commission agents—Contract of agency—Contract of sale—Form of action.

The defendants traded in Bombay as merchants and commission agents under the style of S. D. & Co., being a branch of a French firm trading in Paris under the same name, of which firm also the defendants were members. The Paris firm were agents for certain manufacturers of zinc. The plaintiff, a Bombay merchant, ordered out 48 casks of zinc sheets through the defendants' firm in Bombay by an indent in the following form:—"I hereby request you to instruct your agents to purchase for me (if possible) the under mentioned goods on my account and risk upon the terms stated below." Such terms, *inter alia*, limited the price of the goods and the time within which the shipments were to be made. Later the plaintiff consented to increase his limit of price. The defendants having communicated with their Paris firm wrote to the plaintiff as follows:—"We have the pleasure to inform you that our home firm has reported by wire concerning your esteemed order as follows:—'Placed at your increased limit.'" Subsequently the plaintiff was informed by the defendants that the manufacturers being full with orders, the zinc sheets would not be ready for shipment as soon as had been expected; and he was asked whether he agreed to give an extension of time, or desired to cancel the indent. Simultaneously the plaintiff wrote that the contract time had been exceeded, and that he would buy similar goods in Bombay on the defendants' account. This the plaintiff did, and brought this action to recover the difference in price as damages "on account of the defendants having failed to perform their contract for the delivery of 48 casks of zinc sheets."

Held that neither the defendants, nor their Paris firm, had entered into any contract of sale on which they were liable to the plaintiff. They had only substituted themselves his agents to 'place' his order—*i.e.* to effect a contract of purchase on his account with the manufacturers of zinc—and consequently the action as brought would not lie.

* Small Cause Court Suit, No. 32367 of 1887.

Ireland v. Livingston (1) *Cassaboglou v. Gibb* (2) discussed and considered.

[F.. 30 B. 1 (10) = 6 Bom. L.R. 948 ; 5 Bom. L.R. 519 (522).]

1889

JUNE 21.

ORIGINAL
CIVIL.13 B. 470 =
Chitty's
S. G. C. R.
216.

REFERENCE from the Court of Small Causes.

The facts sufficiently appear from the following case stated for the opinion of the High Court by W.E. Hart, Chief Judge:—

"1. This is a suit to recover the sum of Rs. 692 as damages which the particulars of claim annexed to the summons describe [471] as payable to the plaintiff on account of the defendants having failed to perform their contract, dated 27th June 1887, for the delivery of forty-eight casks of zinc sheets therein mentioned.' The defendants denied contract, breach, and damages.

"2. At the trial the following facts were admitted, or not disputed, by the plaintiff's attorneys and the defendants' pleader respectively.

"3. The defendants trade in Bombay as merchants and commission agents, and are a branch, in Bombay, of a Paris firm trading under the same name, who are the agents for the manufacturers of the zinc, the subject of the suit. The members of the Bombay firm are also members of the Paris firm. The Paris firm divides with the Bombay firm a commission of 2½ per cent. on the orders obtained by the Bombay firm for zinc to be procured from the manufacturers by the Paris firm. This commission is included in the price charged to the indenter when the price is calculated in rupees; but when the price is calculated in sterling the commission is separately charged, and shown separately under the head of 'commission' in the form of indent which the defendants require the indenter to fill up and sign before forwarding the order to the Paris firm, to be submitted by them to the manufacturers.

"4. On the 27th of June 1887, the plaintiff ordered out a quantity of zinc sheets through the defendants in Bombay by an indent in the following form:—

" Messrs. SCHILLER, DOSOGNE & Co.

" Dear Sirs,—I hereby request you to instruct your agents to purchase for me (if possible) the undermentioned goods on my account and risk upon the terms stated below.

" It shall be optional with your agents to execute the whole or any part of this order.

" In case of any dispute as to the inferiority of quality, time of delivery, or otherwise, Messrs. Schiller, Dosogne & Co. are always to have the option of either cancelling the order, or referring the matter to the arbitration of two European merchants or European [472] assistants in mercantile firms, these to nominate an umpire if they cannot agree, and their, or in the latter case his, decision as to an allowance or otherwise to be final and binding upon both parties; the fees to be paid by the party against whom the dispute will be decided.

" Terms of payment: I authorize your agents to draw upon me for the total amount of invoice at the sight mentioned below at current rate of exchange, and such bill or bills I hereby bind myself to accept on presentation and pay at maturity. In the event of the goods arriving before the bills become due, I agree to retire the same.

" Should I fail to accept or pay at maturity such bill or bills, I hereby authorize you to dispose of the documents or goods, either by private sale or public auction, on my account and risk; and I hereby bind

1889

JUNE 21.

ORIGINAL
CIVIL.

13 B. 470=

Chitty's

S. C. C. R.

216.

myself to make good any loss or deficiency that may arise from such sale, and all expenses, together with the usual brokerage and interest, waiving all claims to any advantage thereon.

"The goods ordered by this indent to be insured on the best terms obtainable; you to be free of all responsibilities as regards the insurance.

"All deficiency arising from packing, breakage, and shortage to be borne by me.

"The decisions of the Chamber of Commerce to be binding on me in all cases not provided for in the above clauses.

"Indent No. 586.

"27th June, 1887.

"Indentor: M. E. Pirkhan. Commission: nil.

"Mode of packing: in wooden casks, zinc-lined.

"Mode of payment: draft at 30 days' sight, with documents attached.

"Limit of time: shipment in four lots; first in four to six weeks from the date of acceptance, and the others to follow at about one month's interval.

"Forty-eight wooden casks, each 5 cwts. net, zinc sheets 8×3, assorted, as follows:—

[473] "No. of gauge: 5, 6, 7, 8, 9, 10, 11, 12, 14, to a cwt. 4, 4, 6, 8, 4, 8, 6, 8, = 48 casks at Rs. 13 per cwt. free Bombay Harbour.

"It is agreed that, in the event I will require the goods to be warehoused by you, you agree to take up the drafts for me and to put the goods in your godown, and I undertake to take delivery of the same within one month after the goods have been warehoused by you, on payment to you of the cost with landing charges and other expenses you have incurred, including interest at 9 per cent. No charge for godown rent.

(Signature) "MAHOMEDALLY EBRAHIM."

"5. The plaintiff, being subsequently informed by the defendants that the manufacturers could not undertake the above order at the price therein mentioned, signed the following:—

"Memorandum.

"Bombay, 2nd August 1887.

"To SCHILLER, DOSOGNE & Co.,

"55, Apollo Street, Fort.

"I hereby agree to increase my limit, from Rs. 13 to Rs. 13-2 per cwt., for the 48 casks, zinc sheets, ordered as per indent No. 586.

"Subject to reply by wire within eight days.

(Signed). "MAHOMEDALLY EBRAHIM."

"6. The acceptance of the plaintiff's order at this increased price was notified to him by the defendant by a letter in the following form:—

"Bombay, 4th August 1887.

"SCHILLER DOSOGNE & Co.,

"32, Rue de Hauteville, Paris.

"Telegrame.

"Hindustan; Paris.

"To M. E. PIRKHAN, Esquire,

"Bombay.

“ Dear Sir,—We have the pleasure to inform you that our [474] home firm has reported by wire of 3rd instant concerning your esteemed orders as follows :—

Indent No. 586.	Article. 48 casks zinc sheets.	Increased limit. Rs. 13-2 per cwt. at Bombay.	Our offer.
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1889
JUNE 21.
ORIGINAL
CIVIL.
13 B. 470=
Chitty's
S. C. C. R.
216.

“ *Remarks* :—Placed at your increased limit.
“ This information having been received by wire is subject to correct transmission, interpretation and confirmation by letter.
“ Awaiting your further commands,

“ We are, Dear Sirs,
“ Yours very faithfully,
“ SCHILLER, DOSOGNE & Co.

“ 7. No further communication passed between the parties.
“ 8. The defendants wrote to the plaintiff a letter in the following form :—

“ *Bombay, 29th October, 1887.*

“ SCHILLER, DOSOGNE & Co.,
“ 32, Rue de Hauteville, Paris.
“ *Telegrame.*
“ *Hindustan ; Paris.*

“ To M. E. PIRKHAN, Esquire,
“ *Bombay.*

“ Dear Sir,—We have the pleasure to inform you that our home firm has reported by the mail of the 7th instant concerning your esteemed orders as follows :—

Indent No. 586.	Article. 48 zinc sheets.	Your limit.	Our offer.
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“ *Remarks* :—Our home informs us that the maker being full with orders could not deliver the goods in due time, and will ship only as soon as he possibly can. Please let us know whether you agree to the extension of time, or want to cancel the indent.

“ Awaiting your further commands,

“ We are, Dear Sir,
“ Yours very faithfully,
“ SCHILLER, DOSOGNE & Co.’

[475] “ 9. Before receipt of the letter the plaintiff had already written on the same day to the defendants as follows :—

“ *29th October, 1887.*

“ Messrs. SCHILLER, DOSOGNE & Co.,
“ *Bombay.*

“ Dear Sirs,—Referring to my order No. 586, dated 27th June last, advised as accepted on the 4th August 1887, for zinc sheets, I beg to intimate that the shipment time of the first lot has been already exceeded, and no invoice has as yet been given to me for the same. Under the circumstances I hereby give you notice that I am causing local purchases to be made on your account, and will hold you responsible for all differences, and deficit, costs and charges.

“ Yours very faithfully,
“ M. E. PIRKHAN.’

1889

JUNE 21.

ORIGINAL
CIVIL.

13 B. 470=

Chitty's

S. C. C. R.

216.

" 10. To this letter the defendants replied as follows:—

" 'Bombay, 12th November, 1887,
" '55, Apollo Street, Fort.

" 'SCHILLER, DOSOGNE & Co.,
" '32, Rue de Hauteville, Paris.
" 'Telegrams.
" 'Hindustan; Paris.

" 'M. E. PIRKHAN,
" 'Bombay.

" 'Dear Sir,—Replying to your letter of the 7th instant, we are surprised to see the claim you make for non-delivery of goods. We beg to observe that, according to the terms of agreement signed by you, you have requested us to purchase 48 casks of zinc sheets for your account and risk, and that we are not in any way bound to deliver you the goods which our home friends have advised through us as placed.

" 'Besides, it is a simple matter for prior consideration that, if the manufacturers are unable to ship the goods within the time stipulated, you can only allow them to ship after the date fixed, [476] or instruct them through us to cancel the order, as is the system of trade everywhere.

" 'Yours truly,

" 'SCHILLER, DOSOGNE & Co.'

" 11. The plaintiff on the same day, 12th November; by his attorneys wrote to the defendants as follows:—

" 'Sirs,—We are instructed by our client Mr. Mahomedally Ebrahim Pirkhan that on the 27th June last he gave you an order for 48 casks of zinc sheets 8×3, assorted, at Rs. 13 *per* cwt. free Bombay Harbour. The said goods were to arrive in two lots, the first shipment within four to six weeks from the date of the acceptance, and the second shipment within a month after that. We are instructed that shortly afterwards you intimated to our client that your home firm would not accept his offer, and desired him to increase it a little. Accordingly the offer was increased to Rs. 13-2 *per* cwt., and subsequently you duly informed our client that his offer had been accepted, and the contract closed.

" 'The time to give delivery of the first shipment expired some time ago and although our client repeatedly required you, both verbally and by letters, to carry out the contract and deliver to him the goods, you have failed and neglected to do so. You have thus committed a breach of contract. The market rate of goods of this kind has gone up, and our client has sustained damages by your breach of contract. We are, therefore, instructed to demand from you the sum of Rs. 346, being the amount of difference between the contract price and the market rate; and we have to give you notice that, in default of your failing to pay the said sum within twenty-four hours from the service hereof upon you, an action will be filed against you to recover the same at your risk and peril as to costs and charges.

" 'Yours truly,

" 'THAKOREDAS, DEARAMSI AND CAMA.'

" 12. To this the defendants replied in the following form:—

" 'SCHILLER, DOSOGNE & Co.,
" '32, Rue de Hauteville, Paris,
" 'Telegrams.
" 'Hindustan; Paris.

[477] *Bombay, 14th November 1887.*" 55, *Apollo Street, Fort.*" Messrs THAKOREDAS, DHARAMSI and CAMA,
" Solicitors, High Court,

" Bombay.

1889

JUNE 21.

ORIGINAL
CIVIL.

13 B. 470=

Chitty's

S. C. C. R.

216.

" Sirs,—We duly received your letter of the 12th instant, and are sorry to see that your client is quite under a wrong impression regarding the indent for 48 casks of zinc sheets which he gave us some time ago. If you will please refer to our mail reports of 4th August and 29th October last, of which we enclose copies, you will see that this order was never definitively accepted by us.

" Yours faithfully,

" SCHILLER, DOSOGNE & Co.'

" 13. No evidence of the contract between the parties was offered other than the documants above set out. I was of opinion that they showed, as between the plaintiff and defendants, a contract of agency, not of sale, and that, consequently, the suit in its present form could not succeed.

" 14. As regards the relations between the plaintiff and defendants, it seemed to me that the indent of 27th June 1887, showed that the former employed the latter as his agent only to forward his order to the Paris firm, who were, in fact, the principals in the contract of agency to deal with the manufacturers who were to supply the zinc, and were disclosed as such by the form of the defendants' subsequent letters to the plaintiff. So that, even as agents, the Bombay firm would be liable to plaintiff for their misconduct only in the transmission of the order to, and of the replies received from, the Paris firm; and not for the misconduct of the latter firm in conducting the business of the agency with the manufacturers; while neither the Bombay firm nor the Paris firm seemed to me to have ever rendered themselves liable as vendors to the plaintiff upon a contract to sell and deliver. But the damages in the present suit are claimed as arising from a breach of a contract of sale, not of a contract of agency. Therefore, as no application was made to me to amend [478] the summons, or withdraw the suit, I dismissed the suit, with costs Rs. 34.

" 15. As the amount was above Rs. 500, the plaintiff's attorneys then claimed to have a case stated for the opinion of the High Court on points of law which he formulated in the following questions:—

" (I) Whether the defendants' letter to the plaintiff of 4th August, 1887, did not amount to an undertaking by the defendants to deliver to the plaintiff according to the indent?

" (II) Whether, consequently, the relation of vendor and purchaser was not thereby established between the defendants and the plaintiff?

" To which I think might be added—

" (III) Whether there was any consideration for such undertaking; and the consequent change in the relations subsisting between the plaintiff and the defendants?

" 16. I now beg respectfully to submit, for the opinion of their Lordships, the questions above set forth in the last preceding paragraph of this statement. If they are answered in the affirmative, the present order for dismissal with costs will be set aside, and the hearing be resumed, to

1889 take evidence for the purpose of assessing the damages; otherwise the present order will stand.”

JUNE 21.

ORIGINAL
CIVIL.

13 B. 470=
Chitty's
S. C. C. R.
216.

Jardine, for the plaintiff.—This is a case of an agent and a foreign principal; the presumption, therefore, is in favour of the agent's personal responsibility—Contract Act IX of 1872, s. 230; *Thomson v. Davenport* (1)—which the letters do not clearly contradict. He cited *The Bombay United Merchants' Company, Limited v. Doolubram Sakulchand* (2) and *Ireland v. Livingston* (3) per Blackburn, J.

Russell, for the defendant.—The decision in *Ireland v. Livingston* (3) is in my favour; and, moreover, in that case, the facts showing agency and not sale were not nearly so decisive as in the present.

[479] The letters between defendants and plaintiff in this case clearly negative any intention on the part of defendants to assume any personal responsibility as vendors, and it is entirely a question of intention, even when the principal is resident abroad—*Green v. Kopke* (4).

Jardine, in reply, cited *Armstrong v. Stokes* (5).

Cur. adv. vult.

JUDGMENT.

The judgment of the Court was delivered by

SARGENT, C.J.—This reference from the Small Cause Court is one of considerable importance, and arises out of a suit brought by the plaintiff, Mahomedally Ebrahim Pirkhan, against the defendants, who carry on trade in Bombay as merchants and commission agents under the style of Schiller, Dosogue and Company, and are a branch of a French firm, trading in Paris under the same name, who are agents for certain manufacturers of zinc, to recover damages “on account of the defendants having failed to perform their contract for the delivery of 48 casks of zinc sheets.” The facts of the case as found by the Judge of the Small Cause Court are, that plaintiff, on the 27th June 1887, ordered out a quantity of zinc sheets through the defendants' firm in Bombay by an indent in the following form:—“I hereby request you to instruct your agents to purchase for me (if possible) the undermentioned goods on my account and risk upon the terms stated below.” On 2nd August, 1887, the plaintiff consented to increase his limit of price from Rs. 13-2 *per cwt.*, subject to reply by wire within eight days. On 4th August the plaintiff received the following letter from the defendants' firm:—“We have the pleasure to inform you that our home firm has reported by wire of the 3rd inst. concerning your esteemed orders as follows—Indent No. 586; art. 48 casks zinc sheets; increased limit, Rs. 13-2 *per cwt.* *Remarks*:—Placed at your increased limit, This information having been received by wire, is subject to correct transmission, interpretation, and confirmation by letter. Awaiting your further commands.” On 29th October 1887, plaintiff was informed by the defendants that they had been informed by [480] their home firm that the maker being full with orders could not deliver the goods in due time, and would ship as soon as he possibly could. Plaintiff was asked to let them know whether he agreed to the extension of time, or wished to cancel the indent. This led to a correspondence, as to which it is unnecessary, for the purposes of this reference, to say more than that it closed with the plaintiff insisting on his right to be paid for the difference between the price of the first

(1) 9 B. & C. 78.

(2) 12 B. 50.

(3) L. R. 5 H. L. C. 395. (403).

(4) 18 C. B. 549.

(5) L. R. 7 Q. B. 598.

shipment, and what he would have to pay in the market, where the price had gone up to Rs. 16 *per cwt.* The Judge rejected the claim, on the ground that the plaintiff's contract with defendants was one of agency, and not of vendor and purchaser, and that the defendants could only be held liable for negligence in carrying out plaintiff's orders, which would be a different cause of action. The questions referred to us are, (1) whether the defendants' letter to plaintiff of 4th August, 1887, did not amount to an undertaking by the defendants to deliver to the plaintiff according to the indent; (2) whether, consequently, the relation of vendor and purchaser was not thereby established between the defendants and the plaintiff.

It was contended for the plaintiff that the indent, and the letter of 4th August, 1887, constituted a contract for sale by the defendants on behalf of the manufacturer of zinc in Paris, and that the case, therefore, fell within the ruling in *Thomson v. Davenport* (1) and *Paterson v. Grand-asequi* (2), that when an agent enters into a contract for a foreign principal, the agent is liable on the contract as the party to whom the other contracting party is supposed to give credit. But this indent is in form only a letter of instructions to the defendants to buy for the plaintiff, and in the letter of 4th August the defendants only inform the plaintiff that his instructions have been carried out by "placing" his order, by which must be understood that a contract of purchase had been entered into with some manufacturer of zinc. It would be straining language to hold that these documents amount to a contract of sale entered into by the plaintiff with the defendants, on account of a [481] foreign manufacturer. The indent contemplates the purchase by the defendants through their agents in Paris, and the transaction, so far as the indent by itself is concerned, is the same as if the plaintiff had written to the defendants at Paris instructing them to buy for them. The nature of such a dealing between a merchant in one country and a commission agent in another is discussed at great length in *Ireland v. Livingston* (3). That case came in succession before the Court of Queen's Bench, the Exchequer Chamber, and the House of Lords. The defendant was a merchant carrying on business in Liverpool, and instructed the plaintiffs, commission agents at the Mauritius, to purchase for him 500 tons of sugar, to cover cost, freight and insurance, "50 tons more or less of no moment, if it enables you to get a suitable vessel." The plaintiffs were unable to execute the orders at the maximum price fixed, except to the extent of about 393 tons, and, having shipped these to England, drew bills against the shipment, which were refused acceptance by the defendant, on the ground that a shipment of less than 400 was not a compliance with the order, and he was, therefore, not obliged to accept the sugar, or honour the draft. An examination of the judgments of the twelve Judges, who took part at some stage or other in the action, shows that, with the exception of Mr. Baron Martin, the transaction between the parties was regarded by the Judges as one between principal and agent, and was construed as such, and this was the view finally adopted by the House of Lords in deciding the case for the plaintiffs. Mr. Baron Martin, however, who had been a member of the Exchequer Chamber, and was also summoned to give his opinion in the House of Lords, held the relationship of the parties to be one of vendor and vendee, and construed the instructions, on that assumption, in favour of the defendant. Mr. Justice Blackburn, in delivering his opinion in the House of Lords, whilst agreeing with the majority

1889

JUNE 21.

ORIGINAL
CIVIL.13 B. 470—
Chitty's
S. C. C. R.
216.

(1) 9 B. & C. 78.

(2) 15 East. 62.

(3) L.R. 5 H.L. C. 395.

1889

JUNE 21.

ORIGINAL
CIVIL.13 B. 470=
Chitty's
S. C. C. R.
216.

of the Judges, made the following remarks, which were much relied on by counsel for the plaintiff. He says (1): "It is quite true that the agent who, in thus executing an order, ships goods to his principal, is in [482] contemplation of law, a vendor to him. The persons who supply goods to a commission merchant sell them to him, and not to his unknown foreign correspondent, and the commission merchant has no authority to pledge the credit of his correspondent for them. There is no more privity between the person supplying the goods to the commission agent, and the foreign correspondent, than there is between the brick-maker who supplies bricks to a person building a house, and the owner of that house. The property in the bricks passes from the brickmaker to the builder, and, when they are built into the wall, to the owner of that wall; and just so does the property in the goods pass from the country producer to the commission merchant; and then, when the goods are shipped, from the commission merchant to his consignee. And the legal effect of the transaction between the commission merchant, and the consignee who has given him the order, is a contract of sale passing the property from the one to the other; and, consequently, the commission merchant is a vendor, and has the right of one as to stoppage *in transitu*. I, therefore, perfectly agree with the opinion expressed by Baron Martin in the Court below, that the present is a contract between vendor and vendee; but I think he falls into a fallacy when he concludes therefrom that it is not a contract as between principal and agent. My opinion is, for the reasons I have indicated, that when the order was accepted by the plaintiffs there was a contract of agency, by which the plaintiffs undertook to use reasonable skill and diligence to procure the goods ordered at or below the limit given, to be followed up by a transfer of the property at the actual cost, with the addition of the commission; but that this superadded sale is not in any way inconsistent with the contract of agency existing between the parties, by virtue of which the plaintiffs were under the obligation to make reasonable exertions to procure the goods ordered as much below the limit as they could." These remarks of Mr. Justice Blackburn, which were doubtless open to misconstruction, were afterwards the subject of discussion in *Cassaboglou v. Gibb* (2), where the plaintiff, a merchant in London, sought to make the defendants, commission agents in Hongkong, liable as vendors for the difference between the market [483] value of the opium ordered by the plaintiff and that actually sent. But the Court held that the plaintiffs could not treat the defendants as vendors, but only as agents who would be liable only for the actual loss sustained by the plaintiffs through their negligence, and which was admittedly less than what the plaintiffs claimed. Brett, M.R., says (3): "Lord Blackburn has not said that as long as the contract of principal and agent is executory, the principal can sue the agent, and make him pay as though the contract were that of vendor and purchaser. He has considered the point with reference to two matters only—one with regard to the theory of passing the property in the goods, and the other as to the power of stopping the goods *in transitu*." The same view was taken by Lord Justice Fry. This must be regarded as a conclusive authority, that the relationship between the parties continues throughout, except for certain special purposes, to be one of principal and agent. There might, of course, be a practice of the trade, by which the commission agent is understood to guarantee the performance of the contract by the foreign manufacturer,

(1) L.R. 5 H.L.C. 408. (2) L. R. 11 Q. B. Div. 797. (3) L.R. 11 Q.B. Div. 803.

but no evidence was given of such custom. The clause in the indent by which the defendants are enabled in case of "dispute as to inferiority of quality, time of delivery, or otherwise to cancel the order or refer it to arbitration," would be inserted for the protection of the commission agent in either character, and, therefore, affords no reason for assuming the existence of any custom on the subject. We must, therefore, answer the questions referred to us in the negative. Plaintiff to pay costs of the reference.

Attorneys for the plaintiff:—Messrs. *Thakoredas, Dharamsi and Cama.*

Attorneys for the defendants:—Messrs. *Craigie, Lynch, and Owen.*

1889

JUNE 21.

ORIGINAL
CIVIL.13 B. 470=
Chitty's
S. C. R.
216.

13 B. 484.

[484] ORIGINAL CIVIL.

Before Mr. Justice Parsons.

JETHIBAI, WIDOW (*Plaintiff*) v. RAMACHANDRA NAROTTOM
(*Defendant*).^{*} [1st July, 1889.]

Stamp Act I of 1879, ss. 16 and 34—Inadmissibility of stamped document—Stamped after execution—Not duly stamped.

A receipt (dated 1887) stamped subsequently to execution, but before production in Court, was tendered in evidence.

Held, the document was inadmissible. Section 34 of Act I of 1879 requires instruments chargeable with duty to be 'duly stamped' which in this case meant 'stamped before or at the time of execution' as laid down by s. 16 of the Act.

Latham (Advocate General) and *Inverarity*, for the plaintiff.

Lang and *Jardine*, for the defendant.

During the examination of the plaintiff a book was produced containing a receipt, in Gujarati, dated 1887, with a one-anna receipt stamp attached. The plaintiff having proved the said receipt.

Inverarity tendered the same in evidence.

Jardine, for the defendant, desired to cross-examine the plaintiff as to the date when the stamp was affixed.

Inverarity, for the plaintiff:—Such questions are irrelevant. The document now bears the necessary stamp, and that is sufficient: it must be received in evidence. He cited *Bhauram Madan Gopal v. Ramnarayan Gopal* (1), *Kali Churn Das v. Nobo Kristo Pal* (2).

Jardine, contra.

JUDGMENT.

PARSONS, J.—Both of the cases cited are decisions under the Stamp Act of 1869. That Act (XVIII of 1869) by s. 18 provided only that the instrument should bear a stamp of a value not less than the amount of the proper duty, in order to be admissible. The present Act goes much further than this. It provides, by s. 34, that an instrument shall not be admitted in evidence, "unless such instrument is duly stamped." [485] Such a provision clearly imposes upon the Court the duty of seeing

* Suit No. 121 of 1889.

(1) 12 B.H.C.R. 209.

(2) 9 C.L.R. 272.