

Present: Mr. Justice Wood Renton and Mr. Justice Grenier. Mar. 15, 1910

PERERA v. SOYSA.

D. C., Colombo, 27,913.

ction by broker for commission — Negotiation for sale of land — Negotiations falling through owing to circumstances over which broker had no control.

A broker who introduces to his principal a person who is able and willing to enter into the contract is entitled to his commission, even if the negotiations should fall through owing to circumstances over which the broker has no control.

A PPEAL from a judgment of the District Judge of Colombo. In this case the plaintiff sued the defendant (Mr. J. W. C. de Soysa) for the recovery of a commission of Rs. 1,000 alleged to have been earned by him in connection with the proposed sale of a property called the "German Club" by the defendant Mr. Caffoor. Mr. Caffoor offered through the plaintiff to pay Rs. 50,000 for it, and Mr. J. W. C. de Soysa in a letter to the plaintiff accepted that offer, and said that he would pay plaintiff 2 per cent. commission. Subsequently Mr. Caffoor raised difficulties as to completing the purchase when he discovered that the extent of the property was only 2 acres 2 roods and 19 perches, whereas he had been told by the plaintiff, on the authority of Mr. A. J. R. de Soysa (who was acting as Mr. J. W. C. de Soysa's agent), that the property was 3 acres in extent. On September 25 Mr. Caffoor's proctor wrote to Mr. J. W. C. de Soysa stating that his client's offer had been based on the statement that the land was 3 acres in extent, and inquiring whether he would accept Rs. 5,000 less. On October 10 Mr. J. W. C. de Soysa's proctor wrote to Mr. Caffoor's proctor stating that Mr. de Soysa did not agree to the reduction of the price. On the same day Mr. Caffoor became acquainted with the fact that Mr. de Soysa had sold the property to others.

The District Judge gave judgment for the plaintiff.

The defendant appealed.

H. J. C. Pereira, for the appellant.

Van Langenberg, for the respondent.

March 15, 1910. WOOD RENTON J.—

His Lordship discussed the facts, and then continued:—

It has been argued by Mr. H. J. C. Pereira, on the strength of the decision of Chief Justice Bonser in the case of *Simpson & Co. v. Soysa*,¹ that a broker is not legally entitled to his commission

¹ (1900) 4 N. L. R. 90.

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until a complete binding contract has been made through his agency between the purchaser and his principal, and that there was no such contract here, inasmuch as under our local law a contract for the sale of land requires to be embodied in a notarial conveyance. I do not think that any exception can be taken to the first part of this argument. But the important question that has to be decided is, what the law means when it lays down that there must be, under such circumstances, a complete and binding contract for the purpose of making a principal liable. In my opinion the effect of the authorities is to show that whenever the agent who is employed to negotiate such a bargain has introduced to his principal a person who is able and willing to enter into the contract, so that nothing further remains for the agent to do, he is entitled to his commission, although the negotiations afterwards fall through in consequence of circumstances over which the agent had no control.

It has been held in a variety of English cases that where it is agreed that an agent shall be paid a certain commission in the event of his finding a purchaser for the property, it is sufficient, as a general rule, if he procures a complete and binding contract which is accepted by the principal, although the transaction is never completed. In support of that statement of the law I would refer to the cases of *Green v. Lucas*,¹ *Horford v. Wilson*,² and *Grogan v. Smith*.³ I do not understand Chief Justice Bonser, in the case to which Mr. Pereira referred, to have laid down any different rule. It would appear, both from the terms of the argument and from the judgment of His Lordship the Chief Justice himself, that there was considerable doubt on the evidence as to whether the proposed lender had made any offer, the acceptance of which could bind the lender within the meaning of the ordinary law of contract. It is stated, for instance, in the argument that Mr. Loos had said that he would lend the amount only if he was satisfied with the title deeds. It may fairly be argued that an undertaking of that kind was not an unconditional offer at all, inasmuch as it left the proposed lender to be the judge of the sufficiency of the title which the purchaser was in a position to set up, and Chief Justice Bonser in his judgment says that the difficulty in the case seemed to him to be that there was neither a binding contract entered into with the lender, in which case the condition of the title would be immaterial, nor any evidence that the title was in fact defective, and accordingly he sent the case back for the purpose of having those issues determined. I think that the language of the learned Chief Justice in that case ought to be interpreted in the light of the particular facts with which he had to deal, and I do not think that his decision comes into conflict in any way with the series of English judgments that I have already referred to. Here, on the uncontradicted facts as proved at the

¹ (1875) 33 *Law Times* 584.

² (1807) 1 *Taunton* 12.

³ (1890) 2 *Ruling Cases* 533.

trial and found by the learned District Judge, the respondent's connection with the case came to an end after he had brought the appellant into contact with a purchaser, who was ready and willing to pay the price which the appellant had expressed on his part his readiness to receive, and the respondent was in no way liable for the misstatements as to the extent of the property, on the strength of which Mr. Caffoor raised difficulties in regard to the completion of his bargain. [His Lordship then went on to discuss the facts.]

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GRENIER A.J.—I agree.

Appeal dismissed.

