

EDLEY v. KOELMAN.

D. C., Colombo, 7,321.

1896.

November 17.

Broker—Negotiation of sale by him—When broker becomes entitled to commission.

Defendant, who was owner of an estate, requested plaintiff, a broker, to sell it for him, stating that he was willing to accept Rs. 35,000 for it. Plaintiff found a person who was willing to give that sum for the estate, and introduced him to defendant. The purchaser said that he would visit the estate, and if he was satisfied with it, he would give Rs. 35,000 for it. He visited the estate, was satisfied with it, and telegraphed to defendant that he confirmed his offer, and would take the property. On a survey of the estate being made it was found that the acreage was rather more than it was believed to be when the bargain was made. Defendant thereupon claimed something more on that account, and the estate was ultimately sold for Rs. 37,149 to the person introduced by plaintiff—

Held, following the dictum in *Green v. Bartlett* (32 L. J. C. P. 261), that the relation of buyer and seller was really caused and brought about by what plaintiff had done, and that he was entitled to commission on the price paid.

THE facts of the case appear in the judgment of BONSER, C.J.

Dornhorst, for appellant.

Wendt, for respondent.

17th November, 1896. BONSER, C.J.—

This was an action by a broker to recover a commission on a sale which was effected through his instrumentality.

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The defendant is the seller of the property. The plaintiff claimed commission at the rate of $2\frac{1}{2}$ per cent. on the purchase money. It appears that the defendant was the owner of an estate called Diya-gama, and that he requested the plaintiff, who was a broker in Colombo, to sell it for him, and stated that he was willing to sell it for Rs. 35,000. The plaintiff found a gentleman who was willing to give that sum for it, and introduced him to the defendant. The purchaser said that he would visit the estate, and if he was satisfied with it he would give Rs. 35,000 for it. He visited the estate, was satisfied with it, and telegraphed to the defendant that he confirmed his offer, and would take the property.

When the final arrangements came to be made, and for that purpose the property was surveyed, it turned out that the acreage was rather more than it was believed to be when the bargain was made. The defendant thereupon claimed something extra on that account. Ultimately, after a few weeks, the sale was carried through, and the price which was eventually given was Rs. 38,149.

This sum of Rs. 38,149 included a sum of Rs. 1,000 for furniture in the bungalow on the estate.

There is some dispute as to what was the rate of commission agreed to by the parties.

The plaintiff said that he had refused to negotiate the sale for less than $2\frac{1}{2}$ per cent., which he said was the usual rate charged by brokers in similar transactions in the absence of a special agreement. He said that the defendant had offered him $1\frac{1}{2}$ per cent., and that the matter was left open. The defendant, however, stated that what he agreed to was to sell for Rs. 35,000 net. The District Judge preferred to believe the plaintiff's version of what occurred, and ultimately gave judgment for the plaintiff for $1\frac{1}{2}$ per cent. on Rs. 37,149, being the purchase money less the Rs. 1,000 for furniture.

The defendant has appealed, and he says that the plaintiff did not sell the property; that he only introduced a purchaser, but the Court of Common Pleas in *Green v. Bartlett* (32 L. J. C. P. 261) stated the law applicable to such transactions thus:—"The question whether the agent is entitled to be paid commission on the sale has been often litigated, and the rule has been to hold that there has been a sale by an agent, which would entitle him to such commission, if the relation of buyer and seller has been really caused and brought about by what he has done, if in other words he was the *causa causans* by which the property was sold." Now it seems to me on the evidence in

this case that there can be no doubt that the plaintiff fulfilled that condition. It was due to him that the sale was effected, and that being so he is entitled to his commission.

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There is no appeal on the part of the plaintiff against the decree, and therefore it is unnecessary to decide whether he was not really entitled to commission at the rate of $2\frac{1}{2}$ per cent. instead of $1\frac{1}{2}$, which has been allowed. The result will be that the appeal is dismissed with costs.

LAWRIE, J.—I agree.
