

Gubboy Vs. Avetoom

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Court : Kolkata

Decided On : Jan-15-1890

Reported in : (1890)ILR17Cal450

Judge : W. Comer Petheram, Knight, C.J. and ;Pigot, J.

Appellant : Gubboy

Respondent : Avetoom

Judgement :

W. Comer Petheram, Knight, C.J.

1. The facts of this case sufficiently appear from the judgment of the learned Judge of the Small Cause Court in the reference which has been sent up to us, and it is not necessary to re-state them here, and the argument on the law is also very fully dealt with, so it is not necessary for us to say very much. The point which was most pressed before us by the learned Counsel for the defendant was that this contract on the face of it shows that the presumption which arises under the Contract Act is rebutted in this case, because it is said that from the words of the contract itself it was not intended that the broker should himself be liable. The case of Soopromonian Setty v. Hcilgers J.L.R. 5 Cal. 71, decided by Mr. Justice Wilson, shows that the presumption which arises under Section 230 of the Indian Contract Act may be rebutted, and with that view we entirely agree; but the question here is whether that presumption has been rebutted in this case. It is not contended that

there is any evidence outside the contract to rebut it, but it is contended that certain words in the contract itself do so. Now the words which are relied on are those at the top of the contract, which are 'A.T. Avetoom, for principal.' These words show that A. T. Avetoom was acting as agent for a real principal; but the presumption which arises under Section 230 only arises when an agent is acting for a principal, so that those words cannot be said to rebut the presumption. In addition to this the case of Fleet v. Mutton L.R. 7 Q.B. 126 is sufficient to show that the agent may be liable notwithstanding words of this kind in the contract. In the result, therefore, we think that the Chief Judge of the Small Cause Court was right in his view of this case, and we answer the question referred to us in the affirmative. With this expression of our opinion the case will be returned to him.

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