Privy Council Appeal No. 45 of 1921.

Joseph Thornes - - - - - - - - *Appellant*

v.

William Brown and another - - - - *Respondents*

FROM

THE SUPREME COURT OF NEW ZEALAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH FEBRUARY, 1922.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD DUNEDIN.
LORD SHAW.
LORD PHILLIMORE.

[*Delivered by* LORD DUNEDIN.]

The plaintiffs and respondents in this appeal are two brothers, and in the autumn of 1916 were farmers in possession of a farm called Opotiki. They were minded to change their farm for another of land of a different character, and with a view to procure what they wanted they put themselves into the hands of the appellant, who carries on business as a land agent at Auckland, but with a branch at Hamilton, where he had a district manager of the name of Cooper. The appellant brought to the notice of the respondents a farm, Gordonton, which was in the neighbourhood of Hamilton. Gordonton belonged to a Mrs. McDonald, who was wishful to sell, and the appellant acted as agent for her, a fact that was known to the respondents. The whole of the correspondence and negotiations were carried on by Cooper on behalf of the appellant. One of the respondents paid a visit of inspection to Gordonton; the other did not see it. To him, on the 22nd September, 1916, Cooper wrote a letter which contained various statements. This letter he showed to his brother. Following upon that letter an exchange of the two farms was effected, an extra monetary payment being made to the respondents.

The respondents having subsequently discovered, as they alleged, that the farm was worth much less than it had been represented by the appellant to be worth and that other statements in the said letter were untrue, raised the present action of damages against the appellant. The case was tried before Mr. Justice Cooper and a jury. The learned judge tabulated eight specific statements from the statement of claim, which specified them, as in the letter of the 22nd September, 1916, as follows :—

" (A) That half the said 500 acres was perfectly dry and ready for ploughing and turniping and then permanent grass.

" (B) That by spending £850 upon the said property the plaintiffs must do well.

" (C) That the price asked for the said property namely £16 per acre was a reasonable price.

" (D) That the defendant had offered £26 per acre for similar land two miles from the said property without a house or much fencing and practically no grass.

" (E) That the plaintiffs could easily knock the farm into shape without much trouble."

There were also three others (F), (G) and (H), which need not be referred to.

He then put certain questions to the jury. These questions, with the answers, are as follows :—

" (1) Did the Defendant make any of the statements set forth in the Statement of Claim ? If so, which of them ?

" Answer: Yes, all.

" (2) Were the plaintiffs thereby induced to enter into the contract of the 19th September, 1916, for the exchange of their Opotiki Farm for the Gordonton Farm ?

" Answer : Yes.

" (3) Were the said representations (if any) untrue ?

" Answer : A, B, C, E, H, yes. G, No.

" (4) If so were they made :—

" (A) ~~Fraudulently~~ ? or,

(B) Negligently ?

" Answer : Negligently.

" (5) If either to what damages are the Plaintiffs entitled ?

" Answer : £2,388 and £100 labour and material."

Upon that, judgment followed for the plaintiffs. The defendant moved for a new trial upon the ground that the verdict was against the weight of evidence, and that the damages were excessive. The motion was remitted to be argued before the Full Court, and was so argued. The learned Judges of the Full Court, by a majority, refused the motion and, with a slight modification of the damages, affirmed the judgment. From this judgment appeal has been taken, and the case is now before this Board.

Their Lordships would be very loath to interfere in such a case unless it could be most clearly shown that there had been an error in law involved in the result reached, or that there was no evidence on which a jury of ordinary reasonable men could

pronounce the verdict given on the facts. The appellant has, in their Lordships' judgment, failed to prove his case in both these respects.

As to the law no misdirection was alleged, but a point was sought to be made that as the appellant was a land agent by trade it was no part of his duty to give advice as to value, and that that being so he could not be made liable for the statements made by Cooper, who was his employee. Now duty is always a question of circumstance. It cannot be defined by ticketing a man as belonging to a certain profession or calling, and then going to authorities to show what the duties of that profession or calling are. In the circumstances of this case it is not difficult to state what was the duty of the appellant. He worked for and received a commission; he owed a duty in return. As he was acting as agent for both parties, and as the respondents knew that he was so acting, he could not be expected to attempt to get the best bargain possible as in the case of an agent acting for one party only. But he could be expected to give information as to value, and in giving that information he was bound to be straightforward and not be negligent in making himself accurately acquainted with the facts before he gave it. That and that alone is the only legal hypothesis which underlies the questions as put to the jury. As regards the position of Cooper, it is obvious that if a firm allows its business to be transacted in its name by a manager or employee, it assumes responsibility for what the manager or employee does. Indeed it becomes a question of fact, and that fact is determined by the answer of the jury to the first question as framed.

Turning to the evidence, there was ample evidence which, if believed, would show that the value of £16 an acre was such an exorbitant value for the land in question that no one could believe the statement that it was worth that sum, unless he had been negligent in finding out the truth. The argument which was most pressed before their Lordships was that there was no evidence to show that it was the appellant's representation rather than the respondents' own considered judgment which led to the transaction being effected. But the respondents testified to the effect of the letter in precise terms. T. Brown says: "I would never have considered the matter again but for the letter." W. Brown says: "Through the recommendation contained in that letter I sent Cooper a letter saying we would deal with the property." The jury believed these statements, and it is impossible in face of them to say that there was no evidence of inducement.

Their Lordships would only say in conclusion that they feel absolved from further discussing the points which may have been raised, as they think the whole matter most accurately and adequately discussed in the very lucid and convincing judgment of Mr. Justice Hosking.

They will, therefore, humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

JOSEPH THORNES

v.

WILLIAM BROWN AND ANOTHER.

DELIVERED BY LORD DUNEDIN.

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