

less reason for doubt if C had kept the first bill until the second was paid. The case is not in all respects similar to the present, but *Pothier's* reasoning fully supports the conclusion at which we have arrived. The appeal must be allowed, with costs, against the estate, but certainly not against the Magistrate, who acted *bonâ fide* and in his judicial capacity, and ought not to have been called upon to show cause why he should not pay the applicant's costs.

Feb. 2.
 „ 12.
 —
 Ewers vs. R. M.
 of Oudtshoorn
 and Trustee
 in Insolvent
 Estate of
 Roberts.

DWYER and STOCKENSTRÖM, JJ., concurred.

[Applicant's Attorney, C. H. VAN ZYL.]

ZEEDERBERG & CO. vs. BOSMAN & CO.

Broker.—General Agent.

B. & Co. employed J. & Co., brokers, with whom they had previously had similar transactions, to sell meal for them, and instructed J. & Co. not to sell more than 1000 sacks, and not to take less than 27s. a sack. J. & Co. sold to Z. & Co. 1500 sacks at 26s. 6d. a sack. B. & Co. refused to recognise the sale. Held, in an action for damages for breach of contract, by Z. & Co. against B. & Co., that, as J. & Co. had exceeded their instructions, and as the fact that they had been employed by B. & Co. in several special transactions did not constitute them the general agents of the latter, B. & Co. were entitled to repudiate the agreement entered into by J. & Co. and Z. & Co.

The facts of the case were as follows :—Bosman & Co., of Stellenbosch, employed Jansen & Co., brokers in Cape Town, with whom they had previously had similar transactions, to sell meal for them. Jansen & Co. sold to Zeederberg & Co., of Cape Town, 1500 sacks of meal at 26s. 6d. per sack. Bosman & Co. refused to recognise the sale, alleging that they had instructed Jansen & Co. not to sell more than 1000 sacks, and not to take a less price than 27s. a sack. Thereupon Zeederberg sued Bosman & Co. for damages for non-delivery of the 1500 sacks. The points to be decided in the case were, what instructions were given by defendants to

1880.
 Feb. 3.
 „ 12.
 —
 Zeederberg &
 Co. vs. Bosma
 & Co.

1880.
Feb. 3
" 12.
Zeederberg &
Co. vs. Bosman
& Co.

Jansen & Co., and whether the latter were acting as general or special agents of defendants. The findings of the Court on the questions of fact will sufficiently appear from the judgment of DE VILLIERS, C.J.

Upington, A.G. (with him *Innes*), for plaintiffs. Jansen & Co. were clearly the general agents of defendants (*Chitty*, Contracts, 9th ed., p. 366, and pp. 195, 196, and 198).

Leonard (with him *Gregorowski*), for defendants. Jansen & Co. were only the special agents of defendant. *Pitts vs. Beckett and Another* (13 Meeson & Welsby, p. 743); *Fenn and Another vs. Harrison and Others* (4 Durnford & East, p. 177); *Stephen* (Comm. 9th ed., vol. ii., p. 77); *Hodgson vs. Davis* (2 Campbell, p. 530); *Story* (Agency, § 28, and note), all make in favour of defendants' contention.

Curr. adv. vult.

Postea (Feb. 12th),—

DE VILLIERS, C.J.:—This is an action brought by Mr. Zeederberg of Cape Town against Bosman & Co. of Stellenbosch for damages for non-delivery of 1500 sacks of meal, which were bought from the defendants through Jansen & Co., brokers, Cape Town. The defendants plead the general issue, and they further deny having given any authority to Jansen & Co. to sell 1500 sacks of meal at the price of 26s. 6d. The question of fact involved in this case is whether or not such authority was given by the defendants to Jansen & Co. So far as the documentary evidence is concerned, it is entirely in favour of such authority not having been given. There is the letter dated 13th of October, 1879, which instructs Jansen & Co. to sell not more than 1000 sacks at 27s., but Mr. Jansen swears that before he received this letter he had authority from the defendants to sell 1500 sacks at 26s. 6d., and that after this letter had been written, the defendants again gave him verbal authority to sell 1500 sacks at 26s. 6d. Mr. Bosman, on the contrary, swore positively that no such instructions had been given to Mr. Jansen after the 13th of October, 1879, and I think that the written evidence entirely supports the evidence given by

Mr. Bosman. It seems to me that Mr. Jansen has confused what happened after the 13th of October with the instructions he received before the 13th of October, and it seems to me extremely likely that at the time he received the letter of the 13th of October, he did not make himself fully acquainted with its contents, supposing it referred only to the samples, else it is impossible to reconcile the correspondence with Bosman with his correspondence with merchants in Port Elizabeth. The question now comes to this. The broker had received authority from his principal to sell 1000 sacks of meal at 27s., was he justified in selling 1500 sacks at 26s. 6d.; and if he so sold 1500 sacks at 26s. 6d., was his principal bound? According to the ordinary principles of the law relating to principal and agent, it is quite clear that the principal would not be bound, for he is bound only by the instructions he gave to his agent. It is no doubt true that if a principal hold out a broker as his general agent the principal will be bound. If a man living at Stellenbosch held out a broker in Cape Town as his general agent, entitled under all circumstances to act on his behalf, no doubt the principal would be liable, but in the present case there is no evidence that Jansen & Co. were the general agents or general brokers of Bosman & Co. It is no doubt true that there had been some previous transactions between them, but they would not be sufficient to constitute Jansen & Co. the general agents of Bosman & Co. in Cape Town. It is unnecessary for me to cite many authorities, because they all bear out what I have stated the law to be. It seems to me that *Pothier* has laid down the true rule very distinctly when he says in his "Obligations" (paragraph 79): "The contract made by my agent in my name would be obligatory upon me if he did not exceed the power with which he was ostensibly invested, and I could not avail myself of having given him any secret instructions which he had not pursued," and so on. The question here is whether Jansen & Co. were ostensibly invested by Bosman & Co. with the power of selling any quantity of meal at any price. Certainly not. Bosman & Co. had employed them as agents for one special transaction, but not to be their general agents. There is a case in point reported in 1 *Espinasse*, Reps. (p. 111), viz. *The East India Co. vs. Hensley*, an action brought to recover damages for loss arising from the resale

1880.
Feb. 3.
" 12.
Zeederberg &
Co. vs. Bosman
& Co.

1880.
Feb. 3.
„ 12.
Zeederberg &
Co. vs. Bosman
& Co.

of a quantity of raw silk. It may be that Jansen & Co. are liable at the suit of the plaintiff in this case, but I do not think the defendants are liable. They gave special authority to Jansen & Co. to sell 1000 sacks at 27s., and the latter had no authority to sell 1500 sacks at 26s. 6d. Judgment must therefore be for the defendants, with costs.

[Plaintiffs' Attorney, ISAAC HORAK DE VILLIERS.
Defendants' Attorney, PAUL DE VILLIERS.]

AHNELT vs. VISCOUNTESS DE MONTMORT.

Pleadings—Exceptions.

Exceptions can only be raised to a declaration upon the facts stated in the declaration, but no new facts can be introduced for the defendant to rely upon.

1880.
Feb. 20.
—
Ahnelt vs.
Viscountess de
Montmort.

This was an argument upon exceptions. The plaintiff's declaration set forth:—

That in 1861 one Jacob Letterstedt made his last will, by which he provided, *inter alia*, that the Cape Town branch of a business which he carried on should after his death be continued and managed by a manager, as would more fully appear from a copy of the said will to the declaration annexed. On a vacancy occurring in the office of manager, the executors were when requisite to appoint a fit person to such office, at a remuneration settled in the will.

That thereafter the said Jacob Letterstedt died without having on these points altered or revoked his will.

That the Board of Executors were duly appointed Executors of the said will, and were the sole surviving Executors thereof.

That in their capacity as executors aforesaid, they on the 1st of January, 1876, duly appointed the plaintiff as manager of the said branch, on the occurrence of a vacancy, and that plaintiff accepted the said office and remained in it, and performed the duties thereof until the 5th January, 1880.

That on the said 5th January, 1880, defendant, being the only child of the said Jacob Letterstedt, and vested with