

## MOOLMAN v. COVERDALE.

1909. February 2, 3. MAASDORP, C.J., and FAWKES, J

*Principal and agent.—Appeal.—Surveyor's fees.*

An arrangement whereby a land surveyor pays an agent commission for obtaining clients and collecting fees does not deprive the surveyor of his right to sue a client thus obtained for fees in respect of work performed for that client.

This was an appeal from a decision of the Resident Magistrate of Vrede, in which the respondent had sued the appellant for £13, in respect of fees due for work performed by him as land surveyor in April, 1905. From the evidence it appeared that he had originally received instructions from one Richter, a law agent, to perform work for the appellant in connection with the division of a certain farm, of which the appellant was a part-owner. When the respondent upon his arrival on the farm met the appellant he told him that he had come at Richter's instructions to make a survey for him—the appellant. It further appeared that there was a general arrangement between Richter and the respondent that the former should receive 5 per cent. of the fees for work the latter obtained through Richter, and an additional  $2\frac{1}{2}$  per cent. for all fees Richter collected for the respondent. After the completion of the survey carried out by the respondent the diagrams were sent to Richter's office. On Richter's decease the appellant in October, 1905, paid the respondent's fees to Richter's executors, who appeared to have control of the office, and was given the diagrams. The respondent filed a claim against Richter's estate, but it proved to be insolvent and he obtained nothing. In October, 1908, he instituted the proceedings out of which the appeal arose, and obtained judgment.

*De Jager*, for the appellant: Richter's position may be that of agent of the respondent, in which case payment was validly made at his office.

[MAASDORP, C.J.: Did not the agency, if it ever existed, cease on Richter's death?]

Or Richter may be treated as a principal who engaged the surveyor and practically guaranteed him to the clients, as appears from his charges of 5 per cent. and  $2\frac{1}{2}$  per cent. But perhaps the facts show Richter rather in the light of the disclosed agent of Moolman, and, in that view, by his election to treat Richter as principal, he forfeited his right to claim from the appellant. See *Guardian Insurance and Trust Co. v. Love-more's Executors* (5 S.C. 205).

*Blaine, K.C.*, for the respondent, was not called upon.

MAASDORP, C.J.: As the evidence does not indicate that the respondent made Richter his debtor, or that he looked to him alone for payment, the appeal must be dismissed with costs.

FAWKES, J., concurred.

Appellant's Attorneys: *Botha & Goodrick*; Respondent's Attorney: *G. A. Hill*.

