1901.
July, 17.

LENORA *v.* SLEEMAN.

D. C., Colombo, 10,551.

Principal and agent—Promissory note granted to principal—Money due thereon paid to agent—Fraudulent endorsement of note by his agent to third party—Liability of principal for damage caused to maker.

A, having made a promissory note in favour of B, paid to his agent C the money due thereon. C, without returning the note to B, dishonestly endorsed it to D, who obtained judgment against A and recovered from him the amount of the note.

Held, that B was bound to make good to A the loss he had suffered.

THE plaint averred that the first defendant (A. F. Sleeman) was a merchant carrying on business in Colombo, and the second defendant (A. F. Anandappa) was the duly appointed agent and manager of the business of the first defendant; that on the 12th November, 1895, the plaintiff granted a promissory note to the first defendant for Rs. 3,000, payable on demand, for money borrowed and received from him through his agent, the second defendant; that on the 15th November, 1895, the plaintiff paid the second defendant the amount due on the note, but the second defendant failed to return the said note to the plaintiff, alleging that it had been mislaid; that on or about the 12th November, 1895, the second defendant, without the plaintiff's knowledge, endorsed the note and delivered it to one Cadirasen Chetty; that on or about the 1st July, 1897, the endorsee sued the plaintiff thereon and obtained

payment of Rs. 3,363 in satisfaction; and that by reason of the premises aforesaid, the defendants were jointly and severally liable to pay to the plaintiff the said Rs. 3,363.

The first defendant and second defendant, filing separate answers, admitted that the second defendant was agent of the first defendant, but they denied that the second defendant, as such agent, received from plaintiff the amount due on the note, or that he endorsed the note without plaintiff's knowledge.

The District Judge found that plaintiff did in fact pay to the second defendant the amount due on the note, and that the second defendant endorsed it over to Cadirasen Chetty without plaintiff's consent or knowledge. As regards the law of the case, the District Judge held as follows: "If a man puts another in his place "and gives him power to do things, in the course of which fraud "may be committed, and a fraud is in fact committed on an "innocent man, the man who let loose on society the fraudulent "man cannot complain if his agent has defrauded a man dealing "innocently with him as such agent." He entered judgment for plaintiff as against the first defendant, and as second defendant was an insolvent, he dismissed the action against him without costs.

The first defendant appealed.

Sampayo (with *Bawa*), for appellant.—The first defendant was not responsible for the act of the second defendant in this matter. In retaining the note and endorsing it, the second defendant did not act for the first defendant, who did not authorize him to do so, nor receive any benefit from the act. The money received from the Chetty was not brought to account in the first defendant's books. To make a principal liable for his agent's acts, it must be shown that such acts were for his benefit. (*British Mutual Banking Company v. Charnwood Forest Railway Company*, 18 *Q. B. D. 714 (1887); Evan's Principal and Agent, p. 565.*) There is no proof that the first defendant took any benefit. The second defendant denies having received any money from plaintiff in payment of the note, and plaintiff holds no receipt, nor did he get back the note after the alleged payment.

Wendt (with *Van Langenberg*), for plaintiff, respondent, argued on the facts of the case.

17th July, 1901. LAWRIE, A.C.J.—

I think the District Judge has found correctly for plaintiff on the facts and law. His judgment is affirmed.

BROWNE, A.J., concurred.