

not appear that this money was received by the plaintiff while acting as agent of the Indians in Oregon. The admission made to that effect on the trial is no part of the record. The complaint alleges that the defendant received the money while acting as "agent for the Indians in Washington," and the answer denies it. The verdict is for the plaintiff, and there is nothing on the record to prevent a verdict being given accordingly.

The motion for a new trial is allowed. Notwithstanding the small amount of the verdict, the case does not come within the rule, *de minimis non curat lex*. This maxim seems to be confined to cases when the matter in controversy is trifling, and the motion is made on the ground that the verdict is against the evidence. *Macrow v. Hull*, 1 Burr. 11; *Burton v. Thompson*, 2 Burr. 664. But where the verdict is probably the result of an erroneous ruling or direction of the judge, a new trial will be granted, however small the amount in question. *Broom*, Leg. Max. 142, and cases there cited. Now, but for the ruling of the court, admitting the plaintiff's proof of deficiency, as contained in the "statement of differences" from the treasury department, after the admission that the money was received by the defendant while acting as agent at the Umatilla reservation, in Oregon, the verdict must have been for the defendant. I stated at the time that the objection was probably well taken, but it was better for all concerned that the opinion of the jury be had upon the facts first, and then, if necessary, the defendant could raise the question again on a motion for a new trial.

The motion for a new trial is allowed, with the costs, to abide the event of the action.

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### WASHBURNE *v.* PINTSCH and others.

(Circuit Court, S. D. New York. June 6, 1883.)

#### 1. AGENCY—PROMISE OF COMPENSATION—MORAL OBLIGATION.

Where the owner of property is induced to believe that another, who has been trying to sell such property on speculation for his own benefit alone, was clearly acting as his agent in the matter, and that he is under a moral obligation to compensate him for his trouble, promises to do so, such promise is without color of consideration and void.

#### 2. INSTRUCTION TO FIND FOR DEFENDANT.

Where, if the case had been left to the jury and a verdict had been found for the plaintiff, it would have been the duty of the court to set it aside as contrary to the evidence, it was correct to instruct them to find for the defendant.

At Law.

*Armstrong & Briggs*, for plaintiffs.

*Salomon & Dulon*, for defendants.

WALLACE, J. The correspondence between Schoenrock and Pichon shows conclusively that when the interviews between the former and

the defendants took place at Berlin, the defendants were under no legal or moral obligations to Schoenrock to compensate him for his services regarding the sale of their patents. He had been trying to make a profit as a speculator out of their property by selling the patents to a syndicate, and found failure at hand unless he could induce the defendants to recognize him as their agent. He induced the defendants to believe that his efforts had been prompted by the assurance of their agent at London, Mr. Pichon, that he should receive a commission for his services, and that, acting upon these assurances, he had interested the New York syndicate in the purchase of the patents. In the interviews at Berlin the defendants, according to his testimony, promised to allow him a commission in case the syndicate should buy the patents. This promise was made upon a misconception of the relations Schoenrock sustained to them in the transaction. The letter of the defendants to Mr. Blanchard, of June 3, 1879, is consistent with this theory. If he had really been acting for them the question would be presented whether their promise in recognition of his services could not be enforced, notwithstanding he had no legal claim against them for commissions at the time. But as he had been acting for himself instead, their promise, made upon the assumption that they were under a moral or equitable obligation to him, was without color of consideration.

If the case had been left to the jury and a verdict had been found for the plaintiff, it would have been the duty of the court to set it aside as contrary to the evidence. It was, therefore, correct to instruct them to find for the defendant.

The motion for a new trial is denied.

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### MELENTHIN v. KEITH.

(*Circuit Court, D. Minnesota. June Term, 1883.*)

#### EJECTMENT—TITLE OF PLAINTIFF—LAND CONTRACT.

A party who has paid part of the purchase money for land, and has made a contract with the owner that he may go into possession and cultivate the land and build thereon, and receive a deed therefor when the balance of the purchase money is paid, has sufficient title to maintain an action of ejectment.

MILLER, Justice. This is in the nature of an action of ejectment, brought to the United States circuit from the state court, by removal. The defendant makes a motion for judgment on the face of the papers, on the ground that the plaintiff's title is not a legal title, being simply a paper, or document, which the railroad company, who had the legal title, executed to him. The strict legal title—the full title—did not inure to the party who purchased the land of the railroad; and counsel for defendant relies upon the general proposition