

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Samuel Swire and others v. Robert Francis, from Her Britannic Majesty's Supreme Court for China and Japan, at Shanghai; delivered 23rd November 1877.

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE facts material to the decision of this case may be shortly stated. The Plaintiffs were general agents at Shanghai of the China Navigation Company, and employed local agents at various places in China, their local agent at Kiukiang being Mr. Robert Francis, the Defendant. In paragraph 4 of the case it is stated:—"It was part of the business of the " general agents," that is, the Plaintiffs, " (on their " own account as a firm, and not as agents for " the Company,) to make advances through the " Company's local agents to Chinese merchants " upon goods intended for shipment, or in course " of shipment, by the Company's steamers. Such " advances were from time to time made through " Messrs. R. Francis & Co. to merchants and " others shipping, or intending to ship, from the " port of Kiukiang. They were made either " with sycee remitted for the purpose by the " general agents, or with the proceeds of drafts " drawn in respect of them by Messrs. Francis & " Co. upon the general agents."

It may be here observed that no question

arises founded upon the actual remittance of sycee. The case goes on to state, in paragraph 9, "Early in April 1876, and while Mr. Francis was still in Kiukiang, the general agents received from Kiukiang a final cash account from Messrs. R. Francis & Co., under date of 31st March, and signed 'pr. pro. 'R. Francis & Co., W. Hy. Shaw, Agents, 'C. N. Co.' In this account Messrs. R. Francis & Co. credited themselves with the following items:—

'1876, March 26:	K. taels.
" 'By advances, Yocksing, on paper	2,600
" " " Loong-kee "	3,200
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" 'Kiukiang taels -	5,800'
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" This in effect was a representation that they had in the ordinary course of business advanced the sums named upon two parcels of paper which were awaiting shipment by one of the Company's steamers, and the general agents were entitled to assume that the goods were in the Company's hulk or godown, or were otherwise under the control of the Company. For the purposes of this case it is to be assumed that no such goods were ever received or stored in the aforesaid hulk, nor were the goods ever under the control of the said Company, or the said Messrs. Francis and Co. At the same time that the account mentioned in the last paragraph was rendered, Mr. W. H. Shaw, in the name of Messrs. R. Francis and Co., draw upon Messrs. Butterfield and Swire for the balance shown by it, and the draft was duly honoured."

Their Lordships have to observe that the draft is not set out in the case. It does not appear distinctly upon what day it was drawn, or when it became due, and was actually paid, or what was the amount of it. Only this

appears, that it was drawn for the balance of the account, and that balance was improperly increased as against the Plaintiffs by the sum of 5,800 taels.

The case goes on to say that the date of the payment must be taken to have been made on the 2nd April 1876, probably the date on which the bill was drawn. There follows this further statement:—"Upon investigation it appears that the sums said to have been advanced never were advanced, and the only inference is that Mr. Shaw appropriated them to his own use. Mr. Shaw left China in November last and has not yet returned."

Their Lordships are of opinion that it was within the scope of the authority of Mr. Shaw, as that expression has been defined in many cases, to make out the account which is spoken of in paragraph 9; to insert in it the advances made on goods on account of the Plaintiffs; and to draw the bill for the purpose of covering the balance of the account. All this was in the ordinary course of business. It is of course not to be assumed that he was authorised to commit a fraud by making the false entry of the advance of 5,800 taels; but it would have been within the scope of his authority to make an advance of that kind, and to enter it in the account when made, and the case, therefore, in their Lordships' opinion, falls within the principle which is well stated by Mr. Justice Willes in the case of *Barwick v. The English Joint Stock Bank*, 1 Law Reports, 2 Ex. 259, where he observes:—"In all these cases it may be said, as it was said here, that the master had not authorised the act. It is true he had not authorised the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has con-

“ ducted himself in doing the business which it
“ was the act of his master to place him in.”
This doctrine has been also laid down by this
Board, in the case of *Mackay v. The Commercial
Bank of New Brunswick*, 5 Law Reports, Privy
Council Appeals, 412.

Their Lordships are disposed to infer from
paragraph 14 that Shaw, instead of advancing
the 5,800 taels, which he pretended had been
advanced to merchants upon cargoes to be
shipped, in reality appropriated so much of his
master's money to his own use, and having so
misappropriated it, drew a bill in the name of
his master and in the course of business upon the
Plaintiffs for replacing that money, and that the
Plaintiffs have repaid to Mr. Francis the money
of his own, which had been misappropriated by his
agent. But even if it be assumed, as perhaps it was
in the Court below, that Shaw appropriated only
the proceeds of the bill which had been drawn
for the increased balance to the extent of 5,800
taels, still it appears to their Lordships that no
substantial difference would arise in the legal
bearings of the case. The bill was drawn by him
in pursuance of a general authority which he
had to draw on behalf of Francis and Co., whose
sole representative he was in the business which
Francis carried on at Kiukiang; it was paid by
the Defendants to the account of Francis and Co.;
for a general balance, which was improperly
increased by the amount of 5,800 taels. The
proceeds of this bill belonged to Francis and Co.,
and the case comes to this, that 5,800 taels were
paid to Francis and Co. by the Plaintiffs without
any consideration whatever, and that Shaw fraudu-
lently misappropriated that money. In either
aspect of the case it appears to their Lord-
ships to fall within the authority of the case
which has been referred to of *Barwick v. The
English Joint Stock Bank*, as well as within the

authority of *Mackay v. The Commercial Bank of New Brunswick*.

Their Lordships have only further to observe that it would appear to them that the Court below was somewhat misled by the assumption that the law concerning the relations of bailor and bailee applies to this case. If the question had arisen with respect to an actual transmission of bullion or coin which had been stolen by Shaw, the observations of the Court would have been applicable, but it appears to their Lordships that this case is governed by other considerations, to which they have referred.

Under these circumstances their Lordships will humbly advise Her Majesty that the judgment of the Court below be reversed, and that judgment be entered for the Plaintiffs for 6,073½ taels (Shanghai currency) in addition to the sum for which it is at present entered, together with interest to be fixed and calculated, in the manner provided by the special case, and that the record be remanded to the Supreme Court at Shanghai for this purpose. The Appellants will have the costs of the Appeal.

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