

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ah Shain Shoke and Others v. Moothia Chetty and Others, from the Court of the Recorder of Rangoon; delivered 9th December 1899.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit in this case was brought by the Respondents against the Appellants for a breach of contract in not taking delivery of a large quantity of paddy sold by the former to the latter on or about the 6th September 1897. The Defendants had taken delivery of part of the paddy sold and paid Rs. 14,664 on account of it being Rs. 432 less than the amount of the contract price for it and the Plaintiffs claim this sum and Rs. 17,448 15. 9 as damages for the not taking delivery of the remainder. The defence was that the contract was for the purchase of 35,000 to 40,000 baskets of paddy on the terms and conditions set out in the written contract embodied in bought and sold notes, that the quality of part of the paddy which was taken delivery of was objected to and a reduction of eight rupees per 100 baskets was agreed to by the Respondents and the quality of the remainder of the paddy which the Appellants refused to take delivery of was not according to the contract. The suit was tried before the Recorder of

Rangoon and the following facts were proved at the trial. The Appellants are a firm of Chinamen trading in Rangoon under the name of Shain Leong and the Respondents are traders and money lenders carrying on business there. The contract was made through a broker named Oothooman the price after some negotiation being fixed at Rs. 158 per 100 baskets. He had bought and sold notes written by one Moideen which were in English and were copied from another contract altering the names. The sold note was signed by Ramanathan and Patail two of the Respondents and was then taken away by Oothooman. He and Moideen then went to the Defendants' house and gave both the bought and sold notes to Ah Shain Shoke who called a clerk Lok Shain and asked him to read the contract. After he had read it Ah Shain Shoke refused to sign unless it was inserted that yellow and wet grain would not be taken. He wrote on the bought and sold notes in Chinese and signed the bought note and gave it to Oothooman who went with Moideen to Patail's house and gave it to him. It had on it in Chinese "Yellow rice will not be accepted" "will not accept if it is wet." The Respondent did not know Chinese and none of them noticed the writing till after the dispute. The paddy contained a sufficient quantity of yellow grains to make it not in accordance with the Chinese addition to the bought and sold notes and Rs. 8 per 100 baskets was a reasonable reduction to be made in the contract price on account of the yellow grains. Moothia Chetty one of the Respondents said in his evidence he did not consider the contract as concluded until bought and sold notes were signed. He was right in this. They were the only evidence of the contract. As signed by the Appellants the bought notes contained the term that there should be no yellow grains. If

the Respondents did not assent to this and insisted on the sold note signed by them being without that term the notes would not agree and a contract would not be proved by them. If the Respondents did assent they did not perform their part of the contract by offering paddy which was free from yellow grains. In either case the decree appealed from which gives to them the whole of their claim is erroneous and their Lordships will humbly advise Her Majesty to reverse it and order the suit to be dismissed with costs. The Respondents will pay the costs of the Appeal.

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