

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Tung Ta Bank and others v. The Chartered Bank of India, Australia, and China, from His Britannic Majesty's Supreme Court for China and Corea; delivered the 26th April 1907.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal by the Plaintiffs from a decree of the Chief Justice of His Britannic Majesty's Supreme Court for China and Corea at Shanghai.

The Appellants are Chinese banking companies carrying on business at Hankow. The Respondents, the Chartered Bank of India, Australia, and China, are a banking company incorporated in England by Royal Charter. And they have a branch at Hankow.

There were originally five suits. By arrangement they were heard together, and evidence taken in the first suit—the suit of the Tung Ta Bank—was accepted as applying in the other cases. One judgment only was delivered and only one decree was made.

The Plaintiffs claimed as holders for value of certain promissory notes in the Chinese language bearing a stamp, or “chop,” with the name “Makalee” in Chinese, upon it. “Makalee” is the Chinese name of the Chartered

Bank. These notes were issued by the Chinese department of the Hankow branch of the Chartered Bank.

There is no point of law involved in the Appeal. The question at issue is simply a jury question. Were the Appellants justified in assuming that these promissory notes were binding on the Bank? or, in other words, is it to be inferred from the circumstances of the case that the Chartered Bank held out the Chinese department of their branch at Hankow, or allowed that department to be held out, as their duly authorised agents for the issue of promissory notes stamped with the Makalce chop in exchange or in return for money paid in as a loan to the Bank?

The facts of the case are stated very fully in the able and exhaustive judgment of the Chief Justice, from which the following summary is mainly taken:—

The European staff of the Chartered Bank's branch at Hankow consisted of an agent and an accountant. At the time when the events occurred which gave rise to these suits the agent was a Mr. Livingstone: the accountant was a Mr. Robertson. They held a Power of Attorney under the seal of the Bank, and were invested with the usual powers conferred on bank agents. Neither Mr. Livingstone nor Mr. Robertson was familiar with Chinese characters, or able to converse in Chinese. Mr. Livingstone had been five years at Hankow, Mr. Robertson only two.

Like every other foreign house carrying on business in China, the branch at Hankow employed a "Compradore," who managed the native department of the Bank. The term "Compradore" is thus defined in the Century Dictionary:—

"In Hong Kong and the treaty ports of China, a native agent or manager employed by foreign business houses as

“an intermediary in dealing with the natives and as a general adviser and factotum. The Compradore engages, and is answerable for, all the native employees of the firm.”

The Compradore's office, the native department of the Bank, was within the Bank premises. The staff consisted of the Compradore, Tong Shou-Hsing, who had been in the service of the Bank for 22 years, an English speaking “shroff” or clerk, Yu Ching Yu, who had been 11 years in the office, and some five or six other subordinates—clerks or book-keepers.

All the business which the native bankers in Hankow did with the Chartered Bank was done in the Compradore's office, and done apparently with Yu Ching Yu. The Compradore was “Cantonese and spoke Canton” which the Hankow people do not understand. So Yu Ching Yu, who was called by the Chief Justice, stated in his evidence, and the Chief Justice accepted his statement. The learned Counsel for the Respondents questioned it on the ground that Yu Ching Yu was not a person on whom reliance could be placed. It is however to be observed that the Compradore who was recalled immediately after the statement was made did not contradict it and was not asked to contradict it, though it was a point of some importance and its importance must have been apparent at that stage of the case. However this may be, owing to the Compradore's ignorance of the vernacular, or it may be to, the Compradore's sense of his own importance, all negotiations between the representatives of the native banks, or “market shroffs,” as they are called, and the native department of the Chartered Bank seem to have been left to Yu Ching Yu, and he, and he alone, was authorised by the Compradore to use the Makalee chop. With the Compradore the market shroff of the Tung Ta Bank never got beyond a nodding acquaintance, and it may be presumed that the

market shroffs of the other native banks were not on more intimate terms with him.

The practice as regards the native banks in dealing with the Chartered Bank is described by witnesses in the employment of the Tung Ta Bank:—A market shroff from each native bank visits the European banks every day. Having ascertained before starting the condition of the funds in his own bank, the market shroff ascertains from the European bank to whom the visit is paid whether they have money to lend or whether they want to borrow. If his own bank wants to borrow and the European bank has money to lend, a loan is arranged. If his own bank has money to lend and the European bank wants to borrow, he arranges a loan to the European bank. When he has arranged terms with the European bank in the Compradore's office and has communicated the terms to the accountant of his own bank, his part of the transaction is completed. The money is sent by a messenger to the Compradore's office, and in return an acknowledgment is received, which in the case of the Chartered Bank seems to have been invariably in the form of a promissory note entirely in Chinese characters and bearing the Makalee chop.

It is not disputed that the promissory notes sued upon were issued from the Compradore's office, that the payments for them, or for the original notes of which they are renewals, were made in accordance with directions issued from that office, and that these notes bear the Makalee chop and on the face of them purport to be promissory notes of the Chartered Bank.

It appears that the promissory notes in question were not by any means the first notes of the sort issued from the Compradore's office. For years past such promissory notes had been

issued from time to time for money obtained from the native banks. All such notes up to the time of the issue of the notes in question had been duly honoured and paid in the Compradore's office of the Chartered Bank. In the cases with which these suits are concerned the money did not reach the coffers of the Bank. It was stolen by Yu Ching Yu who was supposed to be perfectly trustworthy.

Such being the course of business in the Compradore's office, very different views were presented to the Court on the one hand and on the other, though no want of good faith was imputed to either side. On the part of the native banks it was said: These loans were arranged in the native department of the Chartered Bank in the Compradore's office according to a practice which had prevailed for twenty years or so. The notes were taken as security for money on the faith of the Makalee chop. By the native banks the Makalee chop was recognised as the one thing which authenticates the Chartered Bank's notes. A Chinese note so chopped was as good as cash; until the present trouble arose every note with the Makalee chop had been duly honoured by payment. The arrangement for the loan in each of the cases now in question was made in the usual and accustomed manner in the Compradore's office where the Compradore was always to be found. It was no concern of theirs, they said, to see the chop stamped on the promissory notes. The money was paid into the office; the promissory note with the usual stamp was handed out in exchange. All they were concerned to do was to see that the chop was genuine.

Mr. Livingstone for the Chartered Bank presented a very different view. He maintained that the Bank never had a chop. The Makalee chop was not their chop, it was the Compradore's

private chop. On the rare occasions when they wanted money they borrowed it from the Compradore. Mr. Livingstone's "idea was that " it was put up by his relations, who were " very wealthy Chinese." " His guarantors, " connections, and relations," added Mr. Livingstone, " are among the wealthiest Chinese in " Hankow." Being confronted with the Bank's books, in which moneys advanced on other occasions through the Compradore's office were entered as loans, not by the Compradore or his relations, but by native banks named and specified in the entry, he expressed a doubt as to that being the proper book-keeping entry. But, after referring to the Bank's books, he admitted that it had always been so. He said it was " a relic of previous times," an admission not without significance. Mr. Livingstone apparently received no instructions on the subject when he was appointed agent at Hankow. He never issued any warning or notice to native banks to the effect that the Chartered Bank would only be bound by the signature of its European officials. He knew very little about the conduct of the business transacted in the Compradore's office, but it is impossible to suppose that all his predecessors were equally ignorant of a practice which had prevailed for at least 20 years.

The learned Chief Justice came to the conclusion that it must be taken that the Compradore had authority to bind the Bank by promissory notes in Chinese characters bearing the Makalee chop, but he thought that the Compradore had no authority to delegate the duty of affixing the chop to other hands, and so he held that as the Compradore had not himself stamped these particular notes with the Makalee chop, the Plaintiffs were without a remedy. He refused, however, to give costs to the Chartered Bank,

because he thought they had so conducted their business "as to lead Chinese relying on their " reputation to suffer a loss which " would have been avoided if they had taken " an ordinary business precaution." The difficulty of accepting the Chief Justice's view is (1) that, according to the case presented by the Respondents, neither the Compradore nor any other native official had any authority to bind the Bank by the Makalee chop; they did not set up the case that the Compradore's authority was limited; they disavowed his authority altogether; and (2) so far as the evidence goes, it does not appear that the Compradore ever affixed the Makalee chop with his own hands, nor apparently was any official of any native bank ever present when the chop was affixed. It was a ministerial act done in the office in order to carry out the bargain made in the office when the loan was arranged. So far as the evidence goes, it would appear that the Makalee chop when used was always affixed by the English speaking shroff. It may have been, to apply Mr. Livingstone's expression, "a relic of previous times" perfectly well known to some at least of Mr. Livingstone's predecessors. As the Compradore was responsible for the native employees of the Bank, and the Compradore's guarantors were among the wealthiest Chinese in Hankow, it would matter little whether the chop was impressed by the Compradore's own hands or by his trusted clerk.

The Chartered Bank called none of their former European employees in the Hankow branch of the Bank. In support of their case they relied on the officials of two other European banks in Hankow who seem to have conducted their business on much stricter and very different lines. Their evidence, as the learned Chief Justice observed, had no bearing on the question before him.

It appears to their Lordships that the proper inference is that the Chartered Bank allowed the Compradore's office, that is the native department of their Bank, to be held out as authorised to bind the Bank by promissory notes bearing the Makalee chop in exchange or in return for money paid in as a loan to the Bank.

Their Lordships will therefore humbly advise His Majesty that the decree under appeal ought to be reversed, and that judgment should be entered in favour of the Plaintiffs for the amounts claimed with interest at the rate of seven per cent. per annum and costs.

The Respondents will pay the costs of the Appeal.
