

AC
6/14/57

7, 1957

No. 50 of 1954.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF SARAWAK,
NORTH BORNEO AND BRUNEI.

UNIVERSITY OF LONDON

25 FEB 1958

INSTITUTE OF ADVANCED
LEGAL STUDIES

48810

BETWEEN

THE CHARTERED BANK OF INDIA,
AUSTRALIA AND CHINA (Defendant) . Appellant

AND

10 WEE KHENG CHIANG (Plaintiff) . . . Respondent.

Case for the Respondent

1. This is an appeal from a Judgment of the Supreme Court of Sarawak, North Borneo and Brunei dated 30th January 1953 allowing after a hearing by way of re-trial an appeal by the present Respondent from a Judgment of Fletcher Rogers J. in the High Court of Sarawak, North Borneo and Brunei at Kuching dated 5th July 1952. The question for decision is whether the sum of \$72,792.44, being part of the moneys which before the occupation of Sarawak by the Japanese stood to the credit of an account in the name of the Bian Chiang Bank at the Kuching branch of the Appellant Bank, is still repayable or is to be deemed to have been repaid. The Respondent supports the decision appealed from that the said sum is repayable.

RECORD.
p. 50.
pp. 8-10.

2. Before the commencement on 24th December 1941 of the Japanese occupation of Sarawak the Respondent carried on a banking business in Kuching under the name of Bian Chiang Bank and the Appellant Bank was indebted to him in the sum of \$242,641.48 standing to the credit of an account in the name of Bian Chiang Bank with the Appellant Bank at its branch bank in Kuching.

p. 62, 1. 12.

3. By letter dated 16th October 1940 the Respondent informed the Appellant Bank that his son Wee Hian Teck had, in addition to the cashier Lim Thian Liang, authority to sign cheques drawn on the Appellant Bank on behalf of the Bian Chiang Bank.

p. 52, 1. 35.
p. 66.

p. 62, l. 20.

4. On 24th December 1941 the Bian Chiang Bank and the said branch bank were closed by the Japanese authorities and all customers' credit balances were "frozen." On that date the Respondent was in Singapore and he later fell into Japanese hands there.

p. 12, l. 17.

p. 62, l. 32.

5. Later the Japanese set up an organisation known as the Yokohama Specie Bank to act as liquidator of all banks in Sarawak. This organisation did not transact ordinary banking business but confined its activities to recovering debts owed to those banks. In respect of each bank it opened a liquidation account to which was credited the amount of the realised assets of the bank concerned. Immediately before the making of the 10 entries dated 10th October 1944 and hereinafter mentioned the balance standing to the credit of the Bian Chiang Bank liquidation account was \$273,386.47.

p. 63, l. 1.
p. 101.

p. 63, l. 7.

6. On 10th October 1944 the Japanese established a bank in Kuching known as the Kyoei Bank and under that date the following entries appear in the respective accounts mentioned :—

(A) The Appellant Bank's liquidation account was debited with the sum of \$72,792.44.

pp. 95-98.

(B) The Bian Chiang Bank's liquidation account was credited with the same sum making together with the sum of \$273,386.47 20 above mentioned a total credit of \$346,178.91.

(C) The Bian Chiang Bank's liquidation account was debited with the sum of \$346,178.91 and closed accordingly.

pp. 64-65.

(D) The Kyoei Bank was credited with the same sum of \$346,178.91.

p. 66, l. 17.

p. 67.

7. By this means the sum of \$72,792.44 (being 30 per cent. of the sum of \$242,641.48 formerly standing to the credit of the Bian Chiang Bank with the Appellant Bank) was transferred to the Kyoei Bank and in connexion with such transfer there were signed by the said Wee Hian Teck two documents each dated 10th October 1944 and purporting to be 30 signed by him "for Bian Chiang Bank" namely (A) a cheque for \$72,792.44 drawn on the Appellant Bank and expressed to be payable to "Bian Chiang Bank or Bearer" and (B) a form of receipt for the same sum addressed to the Yokohama Specie Bank.

p. 14, l. 25.
p. 25, l. 26.
p. 39, l. 5.
p. 52, l. 31.

8. The Kyoei Bank thereafter transacted ordinary Banking business until the end of the Japanese occupation on 11th September 1945 and many of the former customers of the Bian Chiang Bank transferred their accounts to it and operated those accounts during the occupation period. The Appellant himself was unable to and did not make any drawings, and derived no benefit from the said sum of \$72,792.44. 40

p. 15, l. 6.
p. 40, l. 12.
p. 52, l. 32.

9. At the end of the Japanese occupation on 11th September 1945 the assets of the Kyoei Bank consisted only of worthless Japanese paper money.

10. The Respondent returned to Kuching in October 1945 and resumed trading as the Bian Chiang Bank on 1st July 1946. Since then the Appellant Bank has paid to the Respondent the sum of \$169,849.04, being the difference between the said original credit of \$242,641.48 and the said sum of \$72,792.44.

p. 12, l. 12.
p. 23, l. 30.
p. 30, l. 31.
p. 63, l. 27.

11. By his Plaint in the High Court at Kuching the Respondent claimed payment of the said sum of \$72,792.44 with interest thereon from 7th March 1950 at 6 per cent. per annum and costs. In dismissing the action Fletcher Rogers J. held in a reserved judgment, first, on the authority of *Hangkam Kwingtong Woo v. Liu Lan Fong* [1951] 2 All E.R. 567, that the said Wee Hian Teck remained the agent of his father, the present Respondent, throughout the occupation period and that it was in that capacity that he signed the cheque dated 10th October 1944; secondly, that the payment made on the authority of that cheque was a valid discharge for the sum of \$72,792.44 within the meaning of Section 4 (1) of the Debtor and Creditor (Occupation Period) Ordinance (Sarawak Ordinances No. 18 of 1949) (hereinafter called "the Ordinance"); thirdly, that the responsibility of signing the cheque was undertaken by the said Wee Hian Teck voluntarily and not under duress; and fourthly, that neither subsection (1) nor subsection (2) of Section 7 of the Ordinance applied, making it unnecessary to decide whether subsection (3) had been complied with but that it did not appear that the Plaintiff, the present Respondent, had adequately proved either of the facts which that subsection enjoined.

pp. 1-2.
p. 9, l. 28.
p. 9, l. 38.
p. 9, l. 44.
p. 9, l. 48.
p. 10, l. 5.

12. With the Judge's leave given on 1st August 1952 the present Respondent appealed to the Supreme Court who on 21st January 1953 decided to re-hear the whole case pursuant to Section 30 of the Sarawak, North Borneo and Brunei Court of Appeal Rules 1951.

p. 10, l. 27.
pp. 11, 35.

13. The Supreme Court (Smith, acting C.J., Lascelles J. and Blagden, acting J.), after hearing evidence and argument on 21st, 22nd and 23rd January 1953, gave judgment on 30th January 1953 unanimously allowing the appeal, adjudging that the judgment of Fletcher Rogers J. be reversed and ordering that the present Respondent do recover against the present Appellant the sum of \$72,792.44.

p. 50.

14. Smith, acting C.J., delivered a judgment with which the other members of the Court concurred and in which, after reviewing the history of the case and the facts, he held :—

p. 51.

(A) that the transfer of the credit of \$72,792.44 from the Appellant Bank to the Kyoei Bank was made by the Japanese in pursuance of their policy to establish the latter Bank; that the cheque signed by the said Wee Hian Teck was no more than a supporting voucher to support the entries in the account books; and that the said Wee Hian Teck did not take the initiative and draw the cheque voluntarily;

p. 53, l. 42.

(B) that Section 7 (3) of the Ordinance applied and put the onus on the customer, the present Respondent, to prove that he did not draw the whole or any part of the amount so credited to

p. 54, l. 7.

him or that he obtained no benefit from such credit or part thereof ; that the word " or " as used in the subsection must be construed disjunctively ; and that, it being conceded that the present Respondent did not draw the whole or any portion of the credit, the case fell to be dealt with either under paragraph (a) or paragraph (b) of the subsection ;

p. 35, l. 14.

(c) that, assuming that the said Wee Hian Teck in signing the cheque was acting within the lawful scope of his authority as his father's agent, he did not " request " or " consent to " the credit with the Kyoei Bank within the meaning of the said paragraph (a) 10 and therefore the credit must be cancelled in pursuance of that paragraph and could not be regarded as payment to the customer ;

p. 56, l. 31.

(d) that although the said Wee Hian Teck's authority as agent was not determined by the Japanese occupation of Kuching on 24th December 1941 (*Hangkam Kwingtong Woo v. Liu Lan Fong, supra*), it was abrogated by the Japanese occupation of Singapore in February 1942 ; that the present Respondent thereupon ceased to be " absent " within the definition in Section 2 (1) of the Ordinance and therefore Section 2 (2) did not operate to preserve the authority ; and that the said Wee Hian Teck accordingly had no authority on 20 10th October 1944 to sign the cheque of that date on behalf of his father ; and

p. 56, l. 33.

(E) that the claim for interest was refused.

p. 57.

p. 57, l. 13.

15. Lascelles J., after expressing concurrence with the judgments of both of the other Judges, gave his opinion, first, that it was clear from the evidence that the transfer of the \$72,792.44 from the Appellant Bank was not made on the strength of the cheque signed by the said Wee Hian Teck, and that such cheque was a mere payment voucher to cover a transaction already effected by the Japanese authorities ; and secondly that subsection (3), rather than subsection (2), of Section 7 of the Ordinance 30 applied to the case, and that the word " or " in paragraph (a) of subsection (3) should be construed disjunctively and not conjunctively.

p. 57, l. 30.

p. 58.

p. 58, l. 35.

16. Blagden, acting J., delivered judgment in which after concurring in the judgment of Smith, acting C.J., he held, first, that the said Wee Hian Teck's authority as agent was abrogated, not by the Japanese occupation of Sarawak but by their subsequent occupation of Singapore, and that Section 2 (2) of the Ordinance would not operate to preserve that authority by reason of the present Appellant, after the latter occupation, being no longer " absent from territories under the sovereignty or in the occupation of the Occupying Power " within the definition of 40 " absent " in Section 2 (1) ; secondly, that Section 7, rather than Section 4, of the Ordinance applied to the case and, of Section 7, subsection (3) rather than subsection (2), and that he had nothing to add to the acting Chief Justice's judgment on the construction of the word " or " in subsection (3) ; and thirdly that it would be inequitable to award damages by way of interest on and in addition to the amount claimed.

p. 59, l. 9.

p. 59, l. 43.

17. The Respondent respectfully submits that this appeal should be dismissed for the following (among other)

REASONS

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- (1) BECAUSE the debit of the Bian Chiang Bank's account with the Appellant Bank in the sum of \$72,792.44 on 10th October 1944 was cancelled by virtue of paragraph (a) of subsection (3) of Section 7 of the Sarawak Debtor and Creditor (Occupation Period) Ordinance 1949.
- (2) BECAUSE the payment of the same sum on the same date by the Appellant Bank to the Yokohama Specie Bank is not (by virtue of subsection (2) of the same Section) to be deemed to be a payment to the Respondent.
- (3) BECAUSE the Respondent did not at any time either draw or obtain any benefit from the said sum or any part thereof.
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- (4) BECAUSE the Respondent did not at any time either by himself or his agent request or consent to the credit of the said sum or any part thereof with the Kyoei Bank.
- (5) BECAUSE the decision of the Supreme Court was right and the decision of Fletcher Rogers J. was wrong.

MILNER HOLLAND.

JOHN BRADBURN.

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AND

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Case for the Respondent

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