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Rangoon Series.

PRIVY COUNCIL.

BALTHAZAR & SON
v.
E. M. ABOWATH (A FIRM).†

J.C.*
1919

July 1.

(On Appeal from the Chief Court of Lower Burma.)

Contract—Offer and acceptance between parties, Effect of—Where documents show contract as between principals, oral evidence of no value to show relationship of principal and agent—Mention of commission in contract, Effect of.

Documentary evidence in this case showed that there was an offer to buy sugar on the part of the respondents and an acceptance of that offer by the appellants. An acceptence of an offer to buy must infer an obligation to sell. The appellants claimed to act only as agents but the respondents contended they sold as principals. All the documents in the case showed on the face of them a contract as between principals. Evidence that the appellants acted as agents was negligible.

Held, that the contract was between the parties as principals as the leading documents made out, and a mere statement of the appellants, contradicted by the respondents, that the appellants were only acting as agents and that it was made a condition that there was to be no liability on their part cannot be allowed to displace the ordinary results which a contract between principals entails. The mere mention of commission in the contract as signed is not in any way inconsistent with the relation being between principal and principal.

Appeal (No. 86 of 1918) from the decree of the Chief Court of Lower Burma in Civil First Appeal No. 25 of 1916, reversing the decree of the said

* PRESENT :—VISCOUNT HALDANE, LORD BUCKMASTER and LORD DUNEDIN.

† [This appeal was decided in 1919 but has not been published in the Lower Burma Rulings or elsewhere ; it is published now owing to its importance and its frequent citation.—*Ed.*]

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Court on the Original Side in Civil Regular No. 24 of 1915.

Plaintiffs (respondents) sued defendants (appellants) for damages for non-delivery of 300 tons of Java Sugar, under a contract of sale for 600 tons.

The defence was that the plaintiffs bought the sugar from a firm in Java through the defendants who acted as plaintiffs' agents without incurring any responsibility. The documents constituting the contract are set out in the judgment of their Lordships. The learned Judge on the Original Side thought that it was not clear from the documents as to the position of the defendants and admitted oral evidence on the point, and finding that the contract between the parties was not a contract of sale but one of employment, *viz.*, that the defendants were employed to buy sugar in their own name from the Java firm on behalf of the plaintiffs, dismissed the suit.

On appeal Ormond and Parlett, JJ., held that the documents showed that defendants were principals and had agreed to sell to the plaintiffs, and therefore oral evidence was not admissible to contradict the written contract, *i.e.* to show that the defendants were not principals. Even if the offer of the plaintiffs could be construed so as to have been accepted not by the defendants, but by someone else, still the plaintiffs' offer was to buy from the defendants—not through the defendants, and so in such a case as this the defendants could be held to have sold to the plaintiffs as agents for a foreign firm and therefore there would be a presumption that the defendants were liable as principals under section 230 (1) of the Contract Act.

Oral evidence to the effect that it was agreed between the parties that the defendants should incur no responsibility, was unreliable. The 'commission'

clause in the contract did not indicate agency; it was rather interest which was only to be charged if the plaintiffs required credit, the terms of the contract being for cash on delivery. If the defendants were acting as agents of the plaintiffs, then the terms of the contract between the defendants and the Java firm would have been the terms submitted by the plaintiffs to the defendants. But here plaintiffs had to pay cash on delivery; if they wanted credit for 30 or 60 days, they had to pay an additional ½ or 1 per cent. whilst the defendants were to accept bills at three months' sight and they obtained three months' credit.

Defendants preferred an appeal to His Majesty in Council.

The judgment of their Lordships was delivered by—

LORD DUNEDIN.—The plaintiffs (respondents) are merchants in Rangoon who deal in produce and have occasion to purchase sugar, which they were in the habit of getting from the defendants (appellants) who are also merchants in Rangoon. The appellants did not themselves grow sugar, but got sugar from a firm of Joakim & Company, in Sourabaya. Joakim & Company had offered a consignment to the appellants, and the appellants had approached the respondents as to whether they would take sugar at the price quoted. After consultation, the appellants, with the approval of the respondents, sent a telegram to Joakim & Company on the 22nd May, 1914. The telegram was in cipher, but decoded read as follows :—

" 3 27 91 65 49 6
" 3 = Cannot accept your offer but counter offer subject to reply within 24 hours.
" 27 = 100 tons sup. white T.M.O., G.W. and/or similar.
" 91 = July/December in equal monthly quantities.
" 65 = 11/8 per cwt. c.i.f.
" 49 = Option Rangoon/Calcutta.
" 6 = Check."

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This telegram having been despatched, the respondents on the 23rd May handed to the appellants a document in the following terms :—

"Buyers, Messrs. E. M. Abowath & Co.

"I/We hereby make the following firm offer to Messrs. Balthazar & Son, Rangoon.

"On Burma Chamber of Commerce Contract Terms.

Pkgs.	Goods.	Price.	Shipment.
600 tons (six-hundred tons).	Superior White T.M.O., G.W. &/or similar sugar Option Rangoon/Calcutta. Signature . . .	11*s.* 8*d.* per cwt. Eleven shillings and eight pence per cwt. (Signed in Native Character.)"	Monthly shipments of 100 tons each July to December.

On the 25th May the appellants received from Sourabaya a telegram as follows :—

"We confirm the sale of 100 tons superior White T.M.O., G.W. and/or similar. July/December in equal monthly quantities 11/8 per cwt. c.i.f. Option Rangoon/Calcutta.

On receipt of this telegram the appellants on the 26th May wrote to the respondents the following letter :—

"Messrs. E. M. Abowath & Co.,
"Rangoon.

"Dear Sirs,

"*Sugar.*

"We have pleasure in advising you that your offer of 11/8 for 600 tons Sup. White T.M.O., G.W. &/or similar, divided into equal shipments of 100 tons a month, from July to December, has been accepted. Kindly call over and sign the necessary contract.

"Yours faithfully,
"Balthazar & Son."

The respondents did call and signed an indent. The indent form was really printed on a form of offer not appropriate to a contract. The space for the names of the parties was left blank, but there was filled in in writing as follows :—

"Six hundred tons . . . . . Bales/Cases each containing
"Superior White T.M.O., G.W. and/or similar Java sugar
"at 11*s.* 8*d.* per cwt. c.i.f. Rangoon (Option Rangoon/Calcutta).

"Shipments July, August, September, October, November, December, monthly 100 tons.
"Delivery *ex* Wharf.
"Delivery of the Goods to be made on the necessary Security for the Goods being furnished.
"..... Stamps.
".....
"Half per cent. commission for 30 d/s. credit.
"One per cent. commission for 60 d/s. credit.
"....."

and it was signed by the respondents.

The sugar was duly shipped and instalments delivered. Under a separate arrangement the appellants helped the respondents in the financing necessary, but it is immaterial to the present question to go into these arrangements. Upon the War breaking out three hundred tons out of the six hundred had been delivered, but the other three hundred tons were not delivered owing to the presence of the "Emden" in these waters.

The present action is for damages for non-delivery. The defence was that the appellants had acted only as agents in the whole matter and on the distinct understanding that they themselves accepted no responsibility under the contract.

The learned Trial Judge, considering that the terms of the documents left the matter ambiguous, admitted parol evidence. The managing partner of the appellants and one of the partners of the respondents were examined. They gave the same history as to the execution of the various documents, but, as was to be expected, differed as to whether anything was said as to absence of responsibility on the appellants' part. The learned Trial Judge gave effect to the defence and dismissed the action. On appeal the judgment was reversed and judgment given in favour of the respondents. Appeal has now been taken to this Board.

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Their Lordships agree with the conclusion arrived at by the Appeal Court, and upon this very short ground. The contract was made by an offer to buy of the 23rd May on the part of the respondents and an acceptance of that offer by the appellants by the letter of the 26th May. An acceptance of an offer to buy must infer an obligation to sell. Now the appellants must either have sold as principals, in which case there is liability on their part to perform, or they must have sold as agents for Joakim & Company, but there is not a tittle of evidence to show that the appellants ever were agents for Joakim & Company. On the contrary, the evidence is all the other way. The communications between Joakim & Company and the appellants are all on the footing that the appellants were buying from Joakim & Company, and when there was a delay in the delivery by Joakim & Company the appellants sent a letter saying: "As written you before, our buyer will on no account agree to any part of the shipment being cancelled". It comes to this, that all the documents show on the face of them a contract as between principals. The mere mention of commission in the contract as signed is not in any way, as pointed out by the learned Judges of the Court of Appeal, inconsistent with the relation being between principal and principal. Then when you turn to the parol evidence, there is nothing except the statement of the appellants that the terms of their business with the respondents, which had been going on for six years, were the same as those which the appellants had had with one Oomerjee—terms which are in no way identified or even specified. In such circumstances the contract must remain as the leading documents make it, and a mere statement of the appellants, contradicted by the respondents, that it

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was made a condition that there was to be no liability on their part cannot be allowed to displace the ordinary results which a contract between principals entails.

Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal with costs.

PRIVY COUNCIL.

J.C.* 1926

Nov. 1.

MA MI AND ANOTHER *v.* KALLANDER AMMAL (No. 1).

(On Appeal from the High Court at Rangoon.)

*Mahomedan law—Gift—Delivery of possession—Gift to wife—Mutation—Acts of husband after Mutation—Power of Local Government—Power to adopt any part of Act—Section modified by later Section—*Wakf *or Gift on Trust—Mussalman Wakf Validating Act* (*VI of* 1913), *section* 2—*Transfer of Property Act* (*IV of* 1882), *sections* 1, 123, 129.

The Transfer of Property Act, 1882, provides in Chapter VII by section 123, that a gift of immovable property must be made by a registered instrument, and by section 129 that nothing in the chapter is to be deemed to affect any rule of Mohamedan law. By section 1 of the Act (as amended) the Local Government of Lower Burma might by notification extend "the Act or any part of it" to Lower Burma. In 1904 various sections of the Act including section 123, but not in terms section 129, were extended to the Pegu District. It is well established as a rule of Mahomedan law applying in India that a gift by a Mahomedan is not valid unless possession has been delivered and that that rule is preserved by section 129 of the above Act.

In 1914 a Mahomedan conveyed immovable property in the Pegu District to his wife by a registered deed, he effected mutation into her name, but continued to manage the property himself.

Held, (1) that the Local Government was not authorized by section 1, and did not appear to have intended, to extend section 123 apart from section 129; and consequently that the above rule of Mahomedan law applied in the Pegu District under the notification.

(2) that the acts of the husband after the mutation in reference to the property must be regarded as being on his wife's behalf, and that there had been delivery of possession within the rule; and that consequently the gift was valid under Mohamedan law.

Amina Bi Bi v. *Khatija Bi Bi* (1864), 1 Bom. H.C. 157 and *Emnabai* v. *Hajirabai*, (1888) I.L.R. 13 Bom. 352—*approved*.

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* PRESENT :—LORD ATKINSON, LORD CARSON and Sir JOHN WALLIS.