

compensated for the breach by the plaintiff of his agreement, by allowing them the money they have received for the truck, less the sum of Rs. 800. On points of fact the defendant-company have been successful in both Courts and the greater part of the cost of litigation should be borne by the plaintiff.

I set aside the decree of the trial Court and pass a decree for the payment by the defendants to the plaintiff of Rs. 800. The plaintiff will pay the defendants half their costs in both Courts.

1929  
 MAUNG  
 BA OH  
 v.  
 THE MOTOR  
 HOUSE  
 COMPANY,  
 LTD.  
 BROWN, J.

## APPELLATE CIVIL.

*Before Sir Guy Rutledge, Kt., K.C., Chief Justice and Mr. Justice Brown.*

AH KWE

v.

THE MUNICIPAL COMMITTEE OF THATON.\*

1929  
 Mar. 27.

*Municipal license—Sale by auction—Permission to carry on business for a term—Grant of license set aside by Commissioner on account of irregularities of auction—Repurchase by original licensee at a higher price—Suit for damages by licensee against Municipality for breach of contract—Cause of auction—No guarantee as to validity of license—No breach of conditions of license by Municipality.*

By a license document appellant was licensed by the Municipal Committee of Thaton to carry on business as a pawubroker for three years subject to certain conditions. Appellant purchased the license at an auction held by the Committee. Subsequently the Commissioner under the powers given him by the Burma Municipal Act set aside the grant of the license as fourteen days' notice of auction was not given according to the bye-laws. The Committee then resold the license which the appellant purchased for a much larger sum than before. He sued the Committee for damages for breach of contract in the District Court and obtained as damages the difference between the two bids.

*Held*, that the Committee never broke any terms of their contract. They could not and did not guarantee that the licensee would be secured in the quiet enjoyment of the license. The legal action of the Commissioner was no breach of contract on the part of the Committee. Hence the appellant was not entitled to any damages.

\* Civil First Appeal No. 195 of 1928 from the judgment of the District Court of Thaton in Civil Regular No. 13 of 1926.

1929

AH KWE  
v.  
THE  
MUNICIPAL  
COMMITTEE  
OF THATON.

*A. B. Banerji* for the appellant.

*A. Eggar* (Government Advocate) for the respondent.

RUTLEDGE, C.J., and BROWN, J.—On the 23rd December, 1925, the Thaton Municipality issued notices with regard to the issue of a license for the pawnshop at Thaton for the three years, 1st April, 1926, to the 31st March, 1929. Tenders were to be submitted before the 19th January, 1926. Tenders were to be opened at 3 p.m. before the said date, and if the President were not satisfied, the license would be sold by auction.

On the 19th January, the tenders received were opened by the Municipal Committee. The names on the two highest tenders appeared to be fictitious, and the Committee thereupon decided to auction the license. The license was auctioned forthwith, and bought on the same day by the present plaintiff-appellant, Ah Kwe.

A disappointed bidder then appealed to the Commissioner, who subsequently set aside the grant of the license by the Committee on the ground that the bye-laws on the matter required that fourteen days' notice should be given of a sale by auction, and fourteen days' notice had not been given. The Municipal Committee then re-sold the license by auction. Ah Kwe was again the highest bidder, but on this occasion he had to offer Rs. 14,550 per year as license fees. On the previous occasion the bid of his, which was accepted, was for Rs. 9,200 only.

Ah Kwe has now brought a suit against the Thaton Municipality for damages for breach of contract. He has been given a decree by the District Court for Rs. 5,350. Against this decree Ah Kwe has appealed on the ground that the

damages awarded are inadequate, and the Municipality have filed a cross-objection to the appeal that the suit should have been dismissed, or, in the alternative, that the damages awarded are excessive.

The damages claimed were based on the difference between the two bids.

The suit was in the first instance dismissed by trial Court on the ground that it was not maintainable. This order of the trial Court was set aside by this Court on appeal, and the case remanded for decision on the merits.

The first point for decision now is whether the appellant, Ah Kwe, has established any cause of action. The terms of the contract which it is alleged that the Municipal Committee have broken have been reduced to the form a document, Exhibit IV. That document first of all recites that Ah Kwe is licensed by the Municipal Committee of Thatôn to carry on business as a pawnbroker for three years, subject to the conditions stated, and that the license may be cancelled by the Committee for breach of any one or more of the conditions.

The conditions set forth are as to the terms of payment by Ah Kwe, and various rules which he has to observe. There is no promise at all by the Committee in this document as to their future conduct. By the document they give their permission to the licensee to sell in the pawnshop. They also say that that permission will remain good for three years, provided that the conditions set forth are observed. But there is no guarantee at all that the licensee will be secured in the quiet enjoyment of the license. The present suit has been filed under the provisions of section 73 of the Contract Act for damages for breach of contract. Such a suit would only lie if the Municipality had in fact broken their

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contract. It does not seem to us that there has been any breach on their part. In the document, Exhibit IV, the Municipality gave their permission to the licensee, and they never contracted to give anything more. The Municipality have never withdrawn this permission. The permission they gave has been set aside by the Commissioner acting under the powers given him by the Burma Municipal Act. It is not suggested on behalf of Ah Kwe that the action of the Commissioner in the matter was not perfectly legal. There is certainly no express guarantee as to the validity of their license in the document, Exhibit IV. Nor does it seem to us reasonable to import into the contract any implied guarantee of this nature. That the actions of the Committee were subject to the control of the Commissioner is a matter of law and procedure of which it must be presumed that Ah Kwe was aware.

It was quite clear that the Municipality were not in a position to guarantee what the action of the Commissioner would be, and it is quite impossible to presume that they ever intended to give any guarantee in the matter. There is thus no part of their contract which they have failed to perform, and they were not, therefore, liable in damages to Ah Kwe.

It is suggested on behalf of Ah Kwe that the Municipality induced him to believe that they had issued the notices required by law before the original auction sale was held. There seems to us to be very little ground for holding that there ever was such inducement. But, even if there were, that at most would entitle Ah Kwe to claim damages from the Municipality for any loss to which he was put by bidding at the auction sale. He clearly suffered no such loss. Subsequent events have shown that had the first sale to him been upheld he would

have made a very large profit indeed out of the Municipality. But had he not bid again at the second sale he would now be in exactly the same position as if he had never bid at all.

In our opinion Ah Kwe established no case for damages against the Municipality, and his suit should have been dismissed.

We dismiss the appeal, allow the cross-objection, and set aside the decree of the trial Court, and pass a decree dismissing the suit of the plaintiff-appellant, Ah Kwe, with costs in both Courts.

1929  
 AH KWE  
 v.  
 THE  
 MUNICIPAL  
 COMMITTEE  
 OF THATON.  
 RUTLEDGE,  
 C.J., AND  
 BROWN, J.

### APPELLATE CIVIL.

*Before Mr. Justice Heald and Mr. Justice Mya Bu.*

LI TONE KOKE AND OTHERS

v.

S.A.R.M. FIRM AND OTHERS.\*

1929  
 Mar. 28.

*Civil Procedure Code (Act V of 1908), O. 41, r. 10—Restoration of rejected appeal—No general discretion to restore appeal—Failure to furnish security in time—Court's refusal to extend time—Rejection of appeal.*

Where an appellant has been required to furnish security for costs under the provisions of O. 41, rule 10 (1) of the Civil Procedure Code, and where with knowledge of the order for security he has failed to give security within the time ordered by the Court, and where, he has subsequently applied for further time which has been refused for reasons given in the order, and where the appeal has been rejected as directed by the Code under sub-rule 2, and not merely struck off the file, the Court in such a case cannot restore the appeal.

*Badri Narain v. Sheo Koer*, 17 Cal. 512; *Balwant Singh v. Daulat Singh*, 8 All. 315 (P.C.); *Rajab Ali v. Amir Hossein*, 17 Cal. 1 (P.C.); *Sundar v. Habib Chik*, 42 All. 626—*distinguished*.

*Foucar* for the appellants.

HEALD, J.—On the 11th of December last an order under Order 41, rule 10 was made against applicants

\* Application arising out of Civil First Appeal No. 186 of 1928 from the judgment of the Original Side in Civil Regular No. 213 of 1927.