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his contention that a person holding under a tenure-holder can have the sale set aside. We think, however, that it is the case of a deposit being made by an under-raiyat, and that the reasons given in the case just cited are equally applicable in a case like the present. In the case of *Bepin Behary Sarnokar* v. *Kali Das Chatterjee* (1), which was a case in which the deposit had been made under s. 310A by an under-tenant of non-agricultural land, the learned Judges observed: "It would seem, to say the least, extremely doubtful whether the applicant would have any status to pay in the amount of the decree under s. 310A." That observation was not necessary for the purposes of that case, still we consider that the opinion so expressed is entitled to due weight. That opinion is in accord with what we think is a right construction of the law.

We accordingly make the rule absolute with costs, and direct that the order setting aside the sale be set aside.

S. C. G. *Rule made absolute.*

KONG YEE LONE & CO.
v.
LOWJEE NANJEE. (2)

P. C.*
1901
May 2,
June 13.

[On appeal from the Court of the Recorder of Rangoon.]

Contract—Wagering Contracts—Gambling transactions—Contract Act [(*IX of 1872*) *s. 30—Contracts for sale and purchase of goods without intention to complete them by delivery and payment—Agreement for "differences"—Suit on promissory note given for differences—English Gaming Act* (*8 & 9 Vict. c. 109*).

Where the circumstances as to contracts for sale, purchase and delivery of goods at a given time and place are such as to warrant the legal inference that the contracting parties never intended any actual transfer of goods at all, but only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time, the contract is not a commercial transaction, but a wager on the rise or fall of the market.

* *Present:* LORDS HOBHOUSE, MACNAGHTEN, ROBERTSON, SIR RICHARD COUCH, and SIR FORD NORTH.

(1) (1901) 6 C. W. N. 336.

(2) This case was duly reported and despatched to Calcutta in July 1901, but was not received.

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There is no distinction between the expression "gaming and wagering" in the English Gaming Act, 1845, and the earlier Indian Act, XXI of 1848, and the expression "by way of wager" used in s. 30 of the Indian Contract Act (IX of 1872).

Transactions for the purchase and sale of goods comprised two classes of contracts—the one class suitable to traders, such as the defendants were, and all duly fulfilled by delivery and payment, and the other class extravagantly large and left without any attempt at fulfilment.

Held that the inference was that in the latter class the parties never intended completion, but that the contracts were for differences only; and where such differences formed the consideration for which a promissory note was given, the plaintiffs could not recover in a suit on the note.

The Universal Stock Exchange v. *Strachan* (1) referred to.

APPEAL from a judgment and decree (30th March 1900) of the Recorder of Rangoon whereby the suit of the respondent was decreed with costs.

The defendants, Kong Yee Lone & Co., appealed to His Majesty in Council.

The suit was brought by the plaintiff, Lowjee Nanjee, trading as a broker under the name of Robert Sutherland & Co., against the defendants, who carried on business as rice-millers, on two promissory notes, dated 11th September 1899, alleged to be signed by the defendants' firm. The notes are set out in full in their Lordships' judgment. One of them was for Rs. 1,27, 820—"value received in difference on rice" and the other for Rs. 5,198-1, for value received in brokerage."

The defence was that the notes were not signed by anyone who was authorized to bind the firm, and that they were given for gambling transactions and therefore could not be enforced.

The material facts are stated in the judgment of the Recorder of Rangoon, which was as follows:—

"The plaintiff in this case is a broker and also a dealer in rice. During the year 1899 he had dealings with the defendants, who are rice-millers, and bought rice to a very large extent from them. Some of the rice he took delivery of and paid for. In other cases he resold the rice to the millers. According to his evidence these transactions were carried out on behalf of the defendants by one Kaim Chew, who has absconded. On the 11th September the defendants' firm owed the plaintiff a sum of Rs. 1,27,820 for 'differences,' and Kaim Chew

(1) (1896) A. C. 166.

gave the plaintiff a promissory note (exhibit A) for this amount 'for value received in difference on rice.' He also gave him another promissory note for Rs. 5,198-1 for value received in brokerage.' Subsequently the plaintiff received two bills from the defendants against one Molla Abdool Rahim for Rs. 10,500. He collected this sum, and after giving the defendants credit for it sues for the balance, Rs. 1,28,625-12.

"It is not disputed that the second word in the Chinese signature on the promissory note does not read 'Yee.' Some witnesses say that part of it reads 'ship,' others that it is unintelligible.

"The defendants' case is, first, that the business of the firm was carried on by one Puck Chan until he became ill towards the end of 1898, and that subsequently it was carried on by one Cheng Wa. I have no doubt, however, after Mr. Mack's evidence that the business was carried on by Kaim Chew, and there is one very significant fact in support of this, namely, that the defendants have not been able to call any independent evidence to show that at the time of the transactions between plaintiff and defendants' firm, the business was carried on by Cheng Wa. But it is not disputed that Kaim Chew was a member of the defendants' firm, and as a member of the firm he would be entitled to carry on business on its behalf, and no private arrangement between the partners not communicated to the plaintiff would bind him. I hold, then, that Kaim Chew did carry on the business of the defendants' firm, and had power to bind it by the notes in dispute.

"Then the defendants' case further is that the notes were not signed in such a manner as to bind the firm, and evidence has been given to show that when borrowing money from the firm of R. M. M. A., the promissory notes were signed by three of the partners and the 'chop' mark of the firm affixed. But Cheng Wa has to admit that he alone signed contracts in the name of the firm and did not use the 'chop' mark. It has also been argued on the authority of *Kirk* v. *Blurton* (1), where the signature 'John Blurton & Co., instead of 'John Blurton,' the true style of the partnership, was held not to bind the firm, that as the second word in the signature is not 'Yee,' the defendants are not bound. Other authorities were referred to to the same effect—*Stephens* v. *Reynolds* (2), *Faith* v. *Richmond* (3), *Leverson* v. *Lane* (4), and *Yorkshire Banking Co.* v. *Beatson* (5).

"I do not consider, however, that these authorities can apply in such a case as this, where the signature is in a language unknown to the person taking the document purporting to bind the firm. It is different in England where the signature is in a language known to both parties. It would be impossible to carry on business in such a town as Rangoon if it was necessary for a person taking a document purporting to be signed by a partner in the name of the firm to satisfy himself that the name was correctly signed. Documents may be and are signed every day in mercantile offices in Chinese, Burmese, Hindustani, Bengali, Tamil, Telugu, Gujerati, Hebrew, and other languages. No firm, or at all events very few firms, could possibly keep a collection of expert clerks who could inform them whether

(1) (1841) 9 M. & W. 284.
(2) (1860) 5 H. & N. 513.
(3) (1840) 11 A. & E. 339.
(4) (1862) 13 C. B. N. S. 278.
(5) (1879) L. R. 4 C. P. D. 204.

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the signatures were correct. The question in every case must be whether the person signing purported to sign the name of the firm. It would open the door to fraud of the gravest character to hold otherwise.

"Then it was argued on behalf of the defendants that the transactions were gambling transactions, and were to the knowledge of the plaintiff fraudulent as against their firm. As to this last charge there is no evidence whatever. The question as to gambling is settled by *The Universal Stock Exchange* v. *Strachan* (1). That was a case of bargain and sale of stock. Cave J. in summing up said: 'a man goes to a broker and directs him to buy and sell so much stock as the case may be. That may be in the eye of the purchaser a gambling transaction or it may not. If he means to invest his money in the purchase of the stock which he orders to be bought, that undoubtedly is a perfectly legitimate and real business transaction. If he does not mean to take up his stock, if he means to sell again before the settling day arrives, that may be a gambling transaction so far as he is concerned, but it is not necessarily a gambling transaction so far as the broker is concerned; and in order to be a gambling transaction such as the law points out, it must be a gambling transaction in the intention of both the parties to it.....notwithstanding these ostensible terms of business, was there a secret understanding that the stock should never be dealt with?' This summing up was held to be perfectly accurate.

"The question, then, is 'Was there a common intention to wager?' I do not see how I can so hold, having regard to the fact that rice was in certain instances delivered and paid for. In the case I have just referred to and in *In re Gieve* (2) there never was any transfer of stock at all. In my opinion the plaintiff is entitled to succeed, and there will be a decree for the amount claimed with interest from date of decree at 6 per cent. with costs."

Cohen K. C. and *James Fox* for the appellants. The evidence does not sufficiently show that Kaim Chew was the manager of the defendants' firm or that he had authority to sign promissory notes so as to bind the firm; the evidence showed that the usual signature of the firm on promissory notes was not similar to the signature on the notes now in suit. The defendants therefore are not bound by the promissory notes sued on. The notes too are not binding or enforceable in law. The consideration for the note for Rs. 1,27,820 is invalid. On the face of it, it is expressed to be for "difference on rice." The evidence shows that the contracts in respect of which the note was given were merely speculative contracts for differences only, it not being the intention of either party that the contracts should be completed by delivery and payment. The fact that either party might have required completion does not prevent a contract for differences only

(1) (1896) A. C. 166. (2) (1899) L. R. 1 Q. B. D. 794.

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being within s. 18 of the English Gaming Act, 1845, 8 and 9 Vict. c. 109.

Universal Stock Exchange v. *Strachan* (1) and *In re Gieve* (2). Such contracts are "agreements by way of wager" within s. 30 of the Contract Act (IX of 1872), and the note given in respect of such contracts is one for an illegal consideration, and cannot be enforced by suit. For the other note for Rs. 5,198 there was no consideration. It was given "for brokerage," but the contracts show the parties dealt as principals only. The suit therefore fails as to that note also.

Danckwerts K. C. and *Mayne* for the respondent. Kaim Chew had, as one of the partners of the defendants' firm, ample authority to bind the firm. Many other transactions had been entered into by him on behalf of the firm with the plaintiff, had been duly carried out by the defendants, and paid for by the plaintiff. As to the signature, the firm was sufficiently designated by it, and are therefore bound—*Forbes* v. *Marshall* (3).

As to the contracts being gambling transactions, there was nothing illegal in them: either party could have insisted on their being fulfilled. There is a difference between the language used in the English Gaming Act and that in s. 30 of the Contract Act, and this makes the cases of *The Universal Stock Exchange* v. *Strachan* (1) and *In re Gieve* (2) inapplicable. With regard to purchase of shares, the fact that the object was not investment but speculation was held not to make the transactions wagering contracts. *Forget* v. *Ostigny* (4).

Cohen K. C. in reply.

The judgment of their Lordships was delivered by

1901 *June* 30.

LORD HOBHOUSE. The respondent in this appeal, who is plaintiff in the original suit, sued the defendants, now appellants, in the Court of the Recorder of Rangoon for the recovery of money secured by two promissory notes. The plaintiff is a rice-trader carrying on business under the firm of Robert Sutherland & Co. in Rangoon. The defendants carry on business with other

(1) (1896) A. C. 166.
(2) (1899) L. R. 1. Q. B. D. 794.
(3) (1855) 11 Exch. 166, 176.
(4) (1895) A. C. 318, 323.

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persons under the firm of Kong Yee Lone as rice-millers, general merchants, and commission agents.

The notes sued on are in the form following :—

Rangoon, 11th September 1899.

Rs. 1,27,820.

On demand we, the undersigned Kong Yee Lone & Co., promise to pay to Messrs. Robert Sutherland & Co., or order, the sum of rupees one lac twenty-seven thousand and eight hundred and twenty only for value received in difference on rice.

(Signed in Chinese character.)

KONG YEE LONE & CO. (in English).

"NOTE.—The translation of the above Chinese character is—

'KWONG SHIP LOANG.'"

Rangoon, 11th September 1899.

Rs. 5,198-1.

On demand we, the undersigned Kong Yee Lone & Co., promise to pay to Messrs. Robert Sutherland & Co., or order, the sum of rupees five thousand one hundred and ninety-eight and anna one only for value received in brokerage.

(Signed in Chinese character.)

KONG YEE LONE & CO. (in English)

"NOTE.—The translation of the above Chinese character is—

'KWONG SHIP LOANG.'"

The defendants pleaded that the character signed to the notes indicates not their firm, but somebody or something else; and further that the dealings on which the notes are founded were effected between the plaintiffs and one Kaim Chew, who, though a partner, was not the manager of the firm and had no authority to bind it. A large part of the controversy in the Court below and at this Bar related to these two defences. Their Lordships will not discuss them further now. One turns on the niceties of Chinese handwriting; and the other on a variety of circumstances adduced to show the position of Kaim Chew in the defendants' firm. Both have been ruled by the learned Recorder in favour of the plaintiff, and at the close of the argument their Lordships were clear that the evidence fully justified his rulings.

A more serious objection to the plaintiff's suit is that the consideration for which the promissory notes were given was a

gambling transaction. The law applicable to the case is the Indian Contract Act, which enacts as follows:—

"30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made."

This is substantially a transfusion of English law into the Indian statute book. Mr. Danckwerts urged that there is a difference between the expression "gaming and wagering" used in the English statute and in the earlier Indian Act, XXI of 1848, and the expression "by way of wager" used in the present Indian Act. Their Lordships are unable to perceive the distinction. Two parties may enter into a formal contract for the sale and purchase of goods at a given price, and for their delivery at a given time. But, if the circumstances are such as to warrant the legal inference that they never intended any actual transfer of goods at all, but only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time, that is not a commercial transaction, but a wager on the rise or fall of the market. The question is, of which nature were the dealings which formed the consideration for the notes sued on? Were they for genuine purchases of rice or only for payment of money by one or the other according to the changes and chances of the market?

The contracts by which the plaintiff purports to buy rice from the defendants are broadly divisible into two classes. They are distinguishable on their face by what is called the option clause. In one class of contracts shown in Exhibits D. 12 to D. 20, the seller has an option to deliver rice from a number of specified mills, among which that of the defendants is not included. In the other class, shown in Exhibits D. to D. 11, the only mill specified is that of the defendants. In fact, this second class leaves no option to the seller, though the expression used in and appropriate to the first class is retained in the class where only the defendants' mill is specified.

The defendants' mill is a small one, capable, as the plaintiff states, of putting out 30,000 bags in a month. Their partnership capital too is small, being fixed by their deed at a trifle more than a lac of rupees.

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In the year 1899 by 14 contracts ranging in time from January to the end of August, the plaintiff bought from the defendants 22,250 bags of rice. All these contracts, which are set out in the record and are conveniently tabulated in the case lodged for this appeal, are contracts of the second class, viz., for rice from the defendants' mill. All were duly fulfilled by delivery and payment.

Contracts of the first class are very different both in their character and in the treatment of them by the parties. The plaintiff's clerk, Sitaram, produced an account (Exhibit I) showing the dealings which took place between the parties from January 1898 to August 1899. They are very large, considerably exceeding half a million of bags. The witness was asked to mark the items for which the rice had been delivered. The items so marked (see Exhibit I. 1) consist of the 22,250 bags which fell under the contracts mentioned as of the second class, and 5,000 more, which are the subject of other contracts made subsequently to the date of the promissory notes. It does not appear by the record whether those 5,000 bags were bought under the first or the second class of contract.

There is some difficulty in applying Sitaram's oral evidence to Exhibit I. because the exhibit relates to a wider range of dealings than those under discussion. The oral evidence is to the following effect:—

"Out of 193,250 bags sold to plaintiff 27,250 were delivered.

"Of the amount in Exhibit I put down as bought by defendants from plaintiff, *i.e.*, 258,000 bags, none at all were delivered. Those were re-sales for differences. On the 28th June whoever acted for defendants began a very heavy speculation. On that day defendants sold to the plaintiff 30,000 bags, on the 5th July 30,000, on the 10th July 10,000, on 16th 30,000, on 18th 15,000, on 24th 30,000 for delivery, August—October.

"On 5th August defendants bought 62,000 and 94,000 bags. On 7th August 20,000. On 21st August plaintiff purchased 20,000 bags.

"Exhibit A was given for differences on these sales."

Whether the differences were for the sales in August alone or for those in June and July also is not clear, and there is a slight discrepancy in the figures. But that does not substantially affect the result of the witness's accounts and statements which is clear enough. Out of the half-million or more bags represented

in Exhibit I, there were delivered prior to the date of the promissory notes 22,250 bags, every one of which was sold under the second class of contract. As to the other 5,000 delivered, it is not shown that they were under the first class. For all that appears there has not been delivery of a single bag under the first class. During seven weeks in June, July, and August 1889 were made the contracts on which the notes in suit are founded. They are the last seven items in Exhibit I. They appear to be for 199,000 bags at various prices, aggregating upwards of 5 crores of rupees. The latest delivery was to be on the 7th October.

Now the output of the firm itself would not be much over 60,000 bags during the currency of the contracts; and they had dealings with other persons besides the plaintiff. The capital of the firm as stated was a trifle more than a lac of rupees. The cost of the goods would be that amount multiplied five hundredfold. It is possible for traders to contemplate transactions so far beyond their basis of trade, but it is very unlikely. In point of fact they never completed nor were they called on to complete any one of the ostensible transactions. The rational inference is that neither party ever intended completion. When the two classes of contracts are compared—the one class suitable to traders, such as the defendants, and fulfilled by them, the other extravagantly large and left without any attempt at fulfilment, the rational inference is strengthened into a moral certainty. Their Lordships think that from these data it is unreasonable to draw any other conclusion than that the description which the larger promissory note gives of the consideration for it is the correct one. It is for "difference on rice"—not, as now contended, for the price of rice resold by the plaintiff to the defendants.

The judgment of the learned Recorder does not dwell on the above considerations. He quotes the judgment of Mr. Justice Cave in the case of *The Universal Stock Exchange* v. *Strachan* (1), which, as their Lordships agree, lays down the law very clearly. He then asks whether there was in this case a common intention to wager; and he adds: "I do not see how I can so

(1) (1896) A. C. 166.

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hold, having regard to the fact that the rice was in certain instances delivered and paid for." But he does not observe that the instances all belong to the class of contracts as to which it is reasonable to infer that they were genuine contracts for the sale and delivery of goods.

Their Lordships hold that the consideration of the notes sued on was a number of wagering contracts within the meaning of the Indian Contract Act. They will humbly advise His Majesty so to declare, and reversing the decree below to dismiss the suit with costs. The plaintiff must also pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants: *Hopgoods and Dawson.*

Solicitors for the respondents: *Bramall, White, and Sanders.*

J. V. W.

APPELLATE CIVIL.

Before Mr. Justice Stevens and Mr. Justice Harington.

1902
May 16.

SHOILOJANUND OJHA
v.
PEARY CHARAN DEY.*

Attachment—Idol—Offerings to an idol, attachment of—Civil Procedure Code (Act XIV of 1882) s. 266—'Saleable property'—Right to receive offerings to an idol—'Disposing power' over such offerings—Decree, execution of—

Offerings which may in future be made to a Hindu idol cannot be attached in execution of a decree against the idol, the right to receive such offerings not being a "saleable property" within the meaning of s. 266 of the Civil Procedure Code.

THE judgment-debtor Shoilojanund Ojha appealed to the High Court.

Peary Charan Dey and others obtained a decree in the Court of the Subordinate Judge of Deoghur for Rs. 1,170 against Shoilojanund Ojha, the High Priest of the Temple of

* Appeal from order No. 251 of 1901, against the order of D. H. Kingsford, Esq., Deputy Commissioner of Dumka, in the Sonthal Parganas, dated the 18th April 1900, affirming the order of T. E. Piffard, Esq., Subordinate Judge of Deoghur, dated the 9th of November 1899.