

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Russo-Chinese Bank v. Li Yau Sam;
from the Supreme Court of Hong Kong
(Appellate Jurisdiction); delivered the
2nd December, 1909.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

[*Delivered by Lord Atkinson.*]

This is an Appeal from a Judgment of the Supreme Court of Hong Kong, in its Appellate Jurisdiction, dated the 24th July, 1908, dismissing, with costs, the Appellants' motion that Judgment should be entered for them in an Action in which they were the Defendants, tried before the Chief Justice and a Special Jury on the 2nd June, 1908, or, in the alternative, that the verdict found by the jury in favour of the Plaintiff (the Respondent) should be set aside and a new trial granted.

The Plaintiff in the action is a native Chinese banker carrying on business in various parts of China, and having a branch at Hong Kong, which is managed on his behalf by one Lau Ch'ung Yu.

The Defendants (the Appellants) are a corporation established under Russian law. They carry on banking business at various places, and, like the Plaintiff, have a branch at Hong Kong, which, at the time the events happened out of which the action arose, was managed by one Ernest Freyvogel.

For the purpose of doing business with Chinese customers, there was established a department in the Defendants' Hong Kong Bank, managed by a Chinese official, styled a "Compradore," with the aid of two Chinese cashiers and an assistant, also officials of this Bank and in its employ.

The powers, duties, and obligations of the Compradore are enumerated and described in great detail in an Indenture dated the 17th January, 1904, entered into by him with the Bank for the purpose of giving security to his employers for the faithful discharge of his duties.

In this deed it is expressly provided that—

He is on no account to borrow or lend any money or security for money on account of the Bank, or in any way to pledge the credit thereof, without the written consent of the Manager, Agent, or Attorney for the time being in charge of the Bank in Hong Kong first had and obtained.

From the parol evidence given at the trial it is clear that the Compradore had not any authority to receive, on behalf of the Bank, from its customers any sums of money by way of deposits, or lodgement to the credit of their current account, or for the purpose of financing by anticipation contracts for what is styled in the case "telegraphic transfers" which might subsequently be entered into between the Bank and those customers. The authority of the Compradore as agent of the Bank was limited in all these respects.

The action arose out of negotiations which took place on the 3rd January, 1907, in respect of one of those so-called telegraphic transfers.

The nature of these transactions was this. A customer at Hong Kong, desiring that a certain sum of money should be paid to his nominee at Shanghai or other place at which the Bank (the Defendants) had an office, entered into a contract or arrangement with their Hong Kong branch that, in consideration of the payment by him to that branch of a sum which at the current terms of exchange at Hong Kong would represent the value there of the sum to be paid elsewhere, plus a certain profit to the Bank, the latter undertook to arrange by telegraph for the payment of the sum specified at the place named to the customer's nominee.

In the case of a native Chinese customer like the Plaintiff, the negotiations leading up to the making of such a contract as the above were carried on through the Compradore. The customer never came into contact with the manager, Mr. Freyvogel, and usually never saw the document which formed the basis of the contract, though it would be shown to him if he asked for it. It was admitted that, in all such transactions with the Hong Kong branch of the Bank, Mr. Freyvogel fixed the rate of exchange and the other terms upon which the matter was to be carried through, and that the Compradore had no authority to fix the rate of exchange, or any of these terms, himself, or to enter into any contract for a telegraphic transfer without first consulting the Manager. It was further admitted that the Plaintiff had had with the Defendants before the 3rd January, 1907, many transactions similar to the one he then desired to enter into, and was fully aware of the

before-mentioned limitations of the Compradore's authority.

The Chief Justice in his judgment states with accuracy and clearness what was the course of dealing between the Bank and a Chinese customer who applies through the Compradore to transmit money by "telegraphic transfer" substantially as follows:—

The Compradore has no authority to fix a contract with a Chinese customer unless it has been expressly agreed to by the Manager: when the details are so agreed by the Manager the Compradore is then authorised to fix the transaction, and a contract (A) has to be produced to the Manager. The Bank does not give the customer any writing in English to show that the contract is made, but it is open to them to ask to see it. . . . In the case of a "ready" contract the Bank does not insist on a contract signed by the customer; the contract (A) might therefore be written by the Compradore out of sight of the customer. Then, the contract having been signed, the customer would have to bring the money, and fill up "B" himself, or give the Compradore the materials for filling it up: it is more usual in the case of Chinese customers for the Compradore to fill up the form; he had in fact done so in all cases of transactions with the Plaintiff.

It was not customary before January, 1907, for the Bank to give, or the customer to ask for, any receipt or acknowledgment in English that the Bank have received his money. Then B having been filled in is given to one of the European staff. And on the Compradore notifying the European staff that he has received the money, the telegram is sent and the slip C is made out.

The documents indicated by the letters A, B, and C were those which had been used on a previous occasion when the Plaintiff remitted money through the Bank by telegraphic transfer, and were admitted to be in the usual form.

The first constitutes the contract with the Bank, is initialled by the Manager, Ernest Freyvogel, and is in the following form :

A. S. "A"
22.2.08.

CONTRACT

our a/c.
No. 10/292 for delivery ready
E. F.

Bought from the RUSSO-CHINESE BANK for account of
Messrs. Yee Sen Yuen.

Amount.	Usance.	On	Rate.	Remarks.
Tls. 20,000	t t	Shanghai	71 $\frac{1}{4}$	(E.F.)

Date 6th January, 1906.

(Signed) NG SAU GOOK,
Broker.

The second document, B, is a request to the Bank to transmit the money by telegram. It is signed by the Plaintiff on behalf of his principal, and contains a statement of the rate of exchange, and the arranged sum paid, and the document C is a mere book-keeping slip drawn up to enable the Bank officials to enter up the transaction in its books.

The Chief Justice then proceeds to state, in their Lordships' opinion quite accurately, what is the true position of the Compradore. The Compradore, he says, is the Bank's intermediary with Chinese customers. His duties are to make with them those contracts which the Manager authorizes him to make, and none others. As the Chinese customers are usually seen only by the Compradore, the Manager's only means of knowing whether the latter accurately carries out his instructions consist in the written documents handed to him by the Compradore.

The authority given to the Compradore only extends to arranging with the customers the details of the proposed transaction. When those details have been arranged, the contract embodying them must be submitted to the Manager for his approval. The Manager would not recognize any contract which did not bear his initials.

It appears to their Lordships that it would be difficult to devise any method of transacting business of this character more calculated than that above described to afford no real protection to the Chinese customers of the Bank, or to afford greater facilities to the Compradore, its officer, to commit frauds upon these customers. It is not surprising that he availed himself of his opportunities.

The Plaintiff's representative, Lau Chung Yu, whose testimony is uncontradicted, and whom there is no reason to disbelieve, described, according to the note of his evidence, the transaction of the 3rd January, 1907, out of which the claim in this action arose, as follows:—

I went to Russo-Chinese Bank, saw Ng Sau Gook, Compradore. I told him I had 20,000 to remit. He said Yes, Bank would remit. He wrote something in English on paper, then went to European Office. Then came back at once. Bank would remit T.T. I was to bring money next day. He gave me a verbal price 73.125. This was between 3 and 4 p.m. He said if you want to remit more to-morrow, bring it round. Next day 10 a.m., I went round with Taels 10,000 more. Compradore wrote something in English on paper and went to Taipan's office. He came back and told me 73.125. I agreed to buy at that rate. He told me to go home and get money and he would wire it. I went home and worked out the amount in \$41,002.30. Then returned to Bank with that money, went straight into Compradore's office and handed the money over to Compradore. Counted it out himself,

wrote down the price on a piece of paper in Chinese (Exhibit 3).

	41,002.30
Less Commission	41.00
	40,961.30

“Less commission,” means, commission returned to the firm by the Compradore. Compradores in all the Banks allow this; sometimes more or less. Then he took 2 and 3 (*i.e.*, Exhibits 2 and 3) and handed the bank notes to the cashier in Compradore’s Department. Entry in 2 had already been written out by me. Cashier compared the notes with the amount and chopped it in the presence of Compradore. I then went away with 2 and 3.

The document, Exhibit No. 2, upon which much reliance has been placed by the Respondent, is written in Chinese. Translated, it runs as follows :—

THE YEE SIN YUEN KEE.

Book for chopping payments of money.

19th day (Tung Moon) 3rd January 1907.

The Russo-Chinese Bank to receive Shanghai Telegraphic (remittance) of the exact sum of Taels 30,000.

(Chopped) The Accountant’s Department of the Russo-Chinese Bank of Hong Kong.

The Compradore’s visit to the manager was a mere pretence. In fact, he never communicated with him at all on the matter, but, having got possession of the Plaintiff’s money, applied it to his own purposes.

The Plaintiff sued the Bank to recover the money so paid to their agent, the Compradore. The precise form of the action is not a matter of substance.

The case was tried before the Chief Justice and a special jury of six. The learned Judge left to them the three following questions :—

(1) Did the Bank in fact instruct the Compradore to transact exchange business with Chinese customers

in any other way than by receiving special authority in each case to do so?

(2) Was there such authority given in this case?

(3) Did the Bank put the Compradore in such a position that he could pretend to the Plaintiff that he had the necessary authority to receive the money; and, if so, did the Plaintiff, believing he had that authority, hand over the money to the Compradore in that belief?

He instructed them that he would assume they would answer the first two questions in the negative; but that, if they answered the third question in the affirmative, they should find a verdict for the Plaintiff; if in the negative, for the Defendants.

The Jury found for the Plaintiff for the full amount claimed, and must therefore be taken to have answered the third question in the affirmative.

Judgment was accordingly entered for the Plaintiff upon this finding.

The Bank moved the Supreme Court to have this verdict and judgment set aside, and judgment in the Action entered for them, or in the alternative that a new trial should be directed on the grounds of misdirection by the learned Chief Justice, that the verdict was against the weight of evidence, and on other grounds not necessary to particularize. On the 24th July, 1908, the Supreme Court, in its Appellate Jurisdiction, delivered the Judgment appealed against, dismissing the Appellants' motion with costs.

There is no dispute in the case as to facts, and little, if any, controversy as to the law. It is undoubted that a person who deals with an agent, whose authority he knows to be limited, as the Plaintiff knew in this case, does so at his peril, in this sense, that, should the agent be found to have exceeded his authority, his principal

cannot be made responsible. While the several authorities cited by Mr. Scrutton, from *Grant v. Norway*, 10 C.B. 665, down to *Ruben v. The Great Fingall Consolidated*, A.C. (1906), p. 439, establish, in their Lordships' opinion, the proposition that, in order that the principle of "holding out" should, in any given case of agency, apply, the act done by the agent, and relied upon to bind the principal, must be an act of that particular class of acts, which the agent is held out as having a general authority on behalf of his principal to do; and, of course, the party prejudiced must have believed in the existence of that general authority and been thereby misled. In other words, if the agent be held out as having only a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorized. In their Lordships' view, there is no evidence that the fraudulent Compradore had, or was believed to have, or was held out as having, any authority beyond the strictly limited one already mentioned. He was authorized to arrange the details of the negotiations for the "telegraphic transfers" of money to be submitted to the Manager for approval; but he had no authority to receive money for the purpose of such transfers until those details had been so submitted and approved of, that is, until a binding contract had been entered into by the Manager on behalf of the Bank to transmit the money on the terms approved of when received. The Bank had not, by any negligent or improper act on their part, allowed the Compradore to be apparently invested with an authority beyond, or greater than, the

limited authority which the Plaintiff knew him to possess. Everything which he was by them permitted to do from the beginning to the end of the business was as consistent with the exercise of this limited authority as it was with the exercise of a wider or more general authority. There cannot therefore be any estoppel as against the Bank in respect of any of the steps in the transaction, since they have not done, or permitted, anything by which the Plaintiff was deceived.

It was contended by Mr. Duke on behalf of the Respondent that in dealings such as those which took place in this case with the Chinese customers of the Bank, the Compradore was the *alter ego* of the Manager, and that as the Plaintiff's money had admittedly been handed to him, and the receipt of it acknowledged on the face of Exhibit 3 by the proper Bank official in the Compradore Department, it must be taken, for the purposes of this case, to have been received by the Bank, is now held by them, and should be returned to the Plaintiff. Their Lordships think, for the reasons already stated, that this contention cannot be sustained. On the whole they are of opinion that there was no evidence to support the finding of the jury on the 3rd question left to them, that the Appellants were therefore entitled to have the judgment entered for the Plaintiff in the action set aside, and judgment entered for them with costs, and that this Appeal should be allowed. They will humbly advise His Majesty accordingly.

Having come to this conclusion, it is unnecessary for their Lordships to deal with the question of the alleged misdirection of the Chief Justice in his summing up. They think it right, however, to say that while he

summarized the evidence with the greatest clearness and accuracy, and directed their attention to most of the material points, he appears to have failed to appreciate how inapplicable the doctrine of "holding out" is to a Case in which the Agent's Authority is, to the knowledge of the person dealing with him, limited, and that by reason of this his observations to the Jury, at several portions of his charge, amount practically to misdirections, by which they might possibly have been misled, though it is by no means clear that they did not in fact fully understand the nature of the questions left to them.

The Respondent must pay the costs of the Appeal.

