

~~Confidential.~~

Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of E. Meyer and Company, Limited, v. The Sze Hai Tong Banking and Insurance Company, Limited, from the Supreme Court of the Straits Settlements—Settlement of Singapore (P. C. Appeal No. 20 of 1913); delivered the 10th July 1913.

PRESENT AT THE HEARING:

THE LORD CHANCELLOR.

LORD SHAW.

LORD DE VILLIERS.

LORD MOULTON.

SIR SAMUEL GRIFFITH.

[DELIVERED BY LORD DE VILLIERS.]

This is an Appeal from a Judgment of the Supreme Court of the Straits Settlements affirming a Judgment of the Chief Justice in favour of the Defendants in the action. The Plaintiffs were dealers in opium and other goods, and the Defendants were bankers and the claim was for \$18,069, being the total amount of four cheques drawn on the Defendants in favour of the Plaintiffs or bearer and crossed generally. The Plaintiffs kept current accounts with the Netherlands Trading Society as well as with the Defendants and they had in their service as cashier and collector a man named Jacob Abed, who kept a current account on his own behalf with the Netherlands Trading Society. It appears that during the two years immediately preceding that in which the four cheques now

in question were drawn, it had been a frequent practice in the Plaintiffs' office for the Plaintiffs' cashier, instead of receiving cash for cheques drawn on the Defendants, to obtain from the Defendants cheques of corresponding amounts drawn by them on another bank in favour of the Plaintiffs or bearer and crossed generally. This was done because the Trading Society refused to collect for their customers cheques drawn upon the Defendants. It further appears that during the two years just mentioned a considerable number of the cheques thus drawn by the Defendants on other banks had been misappropriated by Jacob Abed, who paid the proceeds into his own current account with the Netherlands Trading Society. The four cheques now in question were dealt with in a similar way and the Plaintiffs in this action, relying upon the provisions of the 79th section of the Bills of Exchange Act, 1882, claimed the amount of these cheques as damages sustained owing to such cheques having been paid otherwise than to a banker.

The section enacts that "where the banker
" on whom a cheque is drawn . . . pays
" a cheque crossed generally otherwise than to
" a banker . . . he is liable to the true
" owner of the cheque for any loss he may
" sustain owing to the cheque having been so
" paid." It was suggested to their Lordships in argument that there had been a mere exchange of securities and not a payment of the cheques in question, but they are clearly of opinion that the handing over to Abed of fresh cheques drawn by the Defendants on another bank should in law be treated as payment to him.

In the view which their Lordships take of this case special circumstances exist which

disentitle the Plaintiffs to relief, not because the damages are too remote, as held by the learned Chief Justice, but because the Plaintiffs are estopped from denying Abed's authority to receive payment of the cheques from the Defendants. The point was distinctly raised by the Defendants' statement of defence, and there are passages in the Chief Justice's reasons from which it might be inferred that he really supported this defence. There has, however, been no direct finding on the point, and their Lordships have given anxious consideration to the question whether the case should not be remitted to the Court below to decide whether Abed had or had not ostensible authority to receive the proceeds of the cheques from the Defendants. It appears, however, that the chief witness who could throw further light on the matter has left the Colony, and as there is uncontradicted evidence on the record to support the existence of such ostensible authority, their Lordships feel justified in arriving at a decision without remitting the case for further evidence. The evidence of the witnesses for the defence clearly shows that the course of dealing between the Plaintiffs and Defendants before the presentation of any of the cheques in question was such as to justify the Defendants in treating Abed as if he had authority to receive the proceeds of such cheques. But the case may be decided upon the evidence of the Plaintiffs' own witness, Solomon Judah. He was assistant accountant and afterwards manager of the Plaintiffs' business, and when he entered the service Abed was already in the Plaintiffs' service as cashier and collector. In cross-examination Judah said: "Abed was " implicitly trusted by the firm, and so " far as I am aware no one checked his " cash book Abed was in sole charge

“ of the cash. No special check was kept
“ on the daily balance, but when it was too
“ large I spoke to him about it.” In ex-
amination-in-chief he said: “I did not know
“ that the Defendant Bank was in the habit of
“ exchanging crossed cheques drawn on itself
“ for crossed cheques drawn by itself on
“ other banks.” In his re-examination, how-
ever, he made the very important admission
that “Abed’s duty was to collect the amount
“ of our bills by cash, cheque, or in any other
“ way.” This last statement would go far to
prove express authority on Abed’s part to receive
payment of the cheques in question, although
crossed generally, but it is sufficient for the
purposes of the present case to say that the
evidence of the Plaintiffs’ own and only witness
shows that their trusted cashier had ostensible
authority to receive the Defendants’ cheques in
exchange for the cheques presented by him or
by his direction. This is essentially a case in
which, as between two innocent persons, one
of whom must suffer by the fraud of a third
person, he should suffer who by his conduct
has enabled such third person to occasion the
loss. The Plaintiffs must be presumed to have
known the manner in which the business of
their own office was conducted, they placed
Abed in sole charge of the cash, without exer-
cising any effectual control over him, and they
held him out to the world as their cashier and
collector, with authority to collect the amounts
of their bills by cheque, cash, or in any other
way. They cannot, therefore, now be heard,
as against the Defendants, to say that the
apparent authority with which they had clothed
him was not his real authority. For these
reasons their Lordships have humbly advised His
Majesty that the Appeal should be dismissed.
The Appellants will pay the costs of the
Appeal.

In the Privy Council.

E. MEYER AND COMPANY, LIMITED

v.

THE SZE HAI TONG BANKING AND
INSURANCE COMPANY, LIMITED.

DELIVERED BY LORD DE VILLIERS.

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