

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Li Yue Bank v. The China Import and Export Lumber Company, Limited, from His Britannic Majesty's Supreme Court for China and Corea, at Shanghai; delivered the 14th June 1911.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

[DELIVERED BY LORD MERSEY.]

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This action was tried before the Acting Judge of His Majesty's Supreme Court for China and Corea sitting at Shanghai. It was brought to recover a sum of 31,574,537 taels, being the balance of a banking account "due as per pass book of the 20th day of the 12th moon of the "33rd year," (1907). The defence was "never indebted." At the trial the issue turned entirely upon one question of fact, namely, whether a man named Cheng, by whom the banking account had been opened, was acting in that connection as agent for the Defendants. The Plaintiffs alleged that he was so acting, either by virtue of an express authority in that behalf, or by virtue of an authority to be implied from the circumstances of the case. They further alleged that, if in fact Cheng was acting without authority, the Defendants were estopped by their conduct from so contending.

The suggestion of an express authority may  
[42.] J. 68. 100.—6/1911. E. & S. A.

be quite shortly disposed of. It was based entirely upon the evidence of Cheng himself, who being called as a witness, stated that he had received the authority from two persons connected with the Company, namely, a Mr. Sun and a Mr. Snethlage. Snethlage was dead, but Sun was called for the Defendants, and denied the story. The learned Judge did not believe Cheng, and did believe Sun, and thereupon he found for Defendants on that issue. Their Lordships are unable to differ from this finding.

The circumstances from which it is said that an implied authority should be inferred, and out of which the estoppel is said to arise, are as follows:—In 1901 a syndicate was formed consisting of Mr. Snethlage and some Chinese merchants for the purpose of acquiring a lumber business at Shanghai. Mr. Snethlage managed the business for a time, and was assisted by Sun. The business needed capital, and thereupon Sun opened accounts with a number of native banks and obtained advances from them. The money was drawn from these banks by means of cheques impressed with the syndicate's "chop," a carved piece of wood serving the purpose of a seal. The learned Judge has found that these accounts were opened on the personal credit of Sun, who, in turn, lent the money obtained from them to the syndicate. In 1902 the Defendant Company was formed for the purpose of taking over the business, and the business was then transferred to the Company. The Company obtained money from the same native banks in the way in which the syndicate had obtained money. Snethlage was the manager of the Company. In 1903 the Defendants took into their employment as an accountant or book-keeper a man named Cheng. This man had been in the service of the Appellant Bank. Part of Cheng's work consisted of drawing cheques on the native

banks which had been selected by Sun, and in order to enable him to draw these cheques he was entrusted by the Defendants with the old "chop," which had been in use in the business before the incorporation of the Company. Cheng's authority was limited to the drawing of cheques on these particular banks, but it appears that in 1904 he went to the Plaintiffs and opened an account with them in the name of the Defendants. The Plaintiffs handed him a pass-book, making no inquiry of the Defendants as to whether he had their authority to open the account. In fact he had no such authority, nor did the Defendants know of the opening of the account. Cheng then began to draw upon the account, using the old "chop" for the purpose. What became of the money which he so obtained does not clearly appear, but it seems that an English servant of the Defendants named Edwards, who kept the English books, knew of the existence of the account; for Cheng read out to him from time to time the entries, or some of the entries, in a Chinese book kept by Cheng which recorded transactions with the Plaintiffs, and Edwards entered them in an English book. This book was produced at the trial and marked Exhibit O. In the year 1904 a salesman in the employment of the Defendants, named Woo, was appointed by the Defendants to act jointly with Sun as their "compradore." This appointment gave to neither one nor the other any authority to pledge the Defendants' credit.

In the autumn of 1904 irregularities in connection with the Defendants' payments for lumber were discovered, with the result that the "chop" was withdrawn from Cheng for a time. It was, however, returned to him in a few weeks, and he continued to use it in connection with the Plaintiffs' account as before. Later on (in 1904) an investigation was held of the Defendants'

books, and an inspection of Exhibit O disclosed to the Defendants for the first time the existence of the account with the Plaintiffs. It showed a small balance to Defendants' debit. Instructions were given to Cheng to close it, and the amount standing to the debit was paid to the Plaintiffs and entered to the credit in Exhibit O, thus balancing that account. The payment did not, however, balance the account as it appeared in the Plaintiffs' books, for there, by reason of withdrawals not recorded in Exhibit O, and of which the Defendants had no knowledge, a large balance was shown against the Defendants. These moneys had been drawn out of the bank by Cheng by means of cheques stamped with the old "chop," and they appear to have been handed by Cheng to Woo, the salesman, for purposes unconnected with the Defendants' business. At the end of 1905 it was discovered that Woo had been misappropriating money of the Company with the knowledge of Cheng, and the "chop" was once more taken from Cheng, and this time finally.

It appears to be the practice of native banks to close all accounts at the end of each year. If the account is in debit, and the customer finds it inconvenient to pay, the bank takes his note of hand for the balance, and the bill so given is paid off in due course. If it is then desired to open a fresh account for the new year a new pass book is handed to the customer in which the note does not appear.

At the end of 1905 the account in the Plaintiffs' books was closed by Cheng in accordance with this practice. Having thus closed the account for 1905 he opened a new account for 1906, and in order to draw upon it he and Woo caused a new "chop" to be made. The existence of this chop was unknown to the Defendants.

There was some slight difference between the form of the new chop and the form of the old one, which the Plaintiffs asked Cheng to explain. He seems to have done so by saying that the old chop had been lost, and that the Company had procured the new one to be made with the alteration. The Plaintiffs were satisfied with this explanation and made no further enquiry. At the end of 1906 Cheng again closed the account by giving a bill, and opened a new account for 1907. In 1907 Woo died. He had been retained in the employment of the Defendants after the discovery of his frauds in consequence of his abilities as a salesman. After his death Cheng disclosed to the Defendants the existence of the account with the Plaintiff Bank. It was probably impossible to conceal its existence longer.

The transactions for the year 1907 showed a debit balance of 31,574,537 taels, and it is to recover this sum that the action is brought. Further investigation then led to the discovery by the Defendants of a book kept by Cheng in which the transactions with the Plaintiff Bank were entered (Exhibit T). This book was not one of the Defendants' books of account, nor was its existence known to the Defendants; the entries in it, therefore, do not affect the Defendants. But in the cash-book which was kept by Edwards there are many entries which do affect the Defendants. These are entries of payments of interest in respect of loans which had been made by the Plaintiff Bank. The explanation of these payments is that Woo, in his capacity of compradore, had a current account with the Defendants in connection with which he supplied them with money. This money he borrowed on his own credit from different native banks, including the Plaintiff Bank, and as between himself and the Defendants he was entitled to be

paid by the Defendants the interest for which he became liable to the native banks. When from time to time he obtained from Edwards the money due to him for interest, he seems to have named the bank from which he had borrowed, and the payment was ear-marked in the cash-book with that name. Thus it occurs that the name of the Plaintiff Bank is found in the Defendants' cash-book. This explanation was given to the learned Judge at the trial and was accepted by him as true. Having regard to the position held by a *compradore* in relation to the firm who employs him, their Lordships think the learned Judge was right. Those entries in the cash-book would not convey to the minds of the Defendants that their credit was being pledged to the Plaintiff Bank.

The foregoing are substantially the facts of the case. They do not in their Lordships' opinion afford any ground for saying that Cheng had an implied authority from the Respondents to open or to carry on the account with the Appellant Bank, or in any way to pledge the Respondents' credit in connection therewith, nor do they fix the Respondents with conduct which ought to estop them from denying that Cheng had such authority. The truth of the matter is that the Appellants have lost their money by honouring drafts which Cheng had no authority direct or implied or by estoppel to issue, and the loss must therefore rest where it lies.

A suggestion was made in argument that an account should be directed on the ground that the Appellants' money had found its way into the coffers of the Respondents and had been used for their benefit. Though probably some of the money did find its way to the Respondents, it came to them as the money of their *compradore* Woo in the course of their transactions

with him ; it had ceased to be the Appellants' money ; and, indeed, the learned Judge finds as a fact that the Appellants knew that when they were paying out to Cheng they were giving credit to him and not to the Respondents in whose name the account stood.

For these reasons their Lordships think that this Appeal should be dismissed, and they will so advise His Majesty. The Appellants will pay the costs.

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In the Privy Council.

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THE LI YUE BANK

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THE CHINA IMPORT AND EXPORT  
LUMBER COMPANY, LIMITED.

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LONDON:  
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

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1911.