

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of David
Sassoon, Sons, and Company, and Wang-Gan-
Ying, from Her Britannic Majesty's Supreme
Court for China and Japan; delivered 12th
December 1885.*

Present:

LORD MONKSWELL.

LORD HOBHOUSE.

SIR RICHARD COUCH.

THIS is an appeal from the Judgement of the Supreme Court of China and Japan affirming the previous Judgement of a Consular Court at Tientsin.

The facts of the case are not very numerous or complicated. The Defendants, Messrs. Sassoon, a well-known firm, have a branch at Tientsin. They, together with a number of other English firms, for the purpose of enabling them to deal with the natives whose language they do not understand, are in the habit of employing persons called compradores for transacting business on their behalf. Messrs. Sassoon employed a compradore of the name of Hoo-Mei-Pin. Hoo-Mei-Pin had a shop in Shanghai, (the Sassoons living a few miles distant from it,) outside of which was a sign-board with the words "Lao-Sha-Sun," which is the Chinese for "Sassoon." He also acted for another firm of the name of Collins, and had a sign-board with their names outside his shop also. It appears that this compradore, (as according to the statement of the assessors in this case was not uncommon,) carried on an extensive business on his own account in a great measure in the name of his principals,

using their forms and their receipts, and the custom of compradores to do this, was, according to the statements of the assessors, who were merchants in the place, generally well known. The particular transaction out of which the suit originates is a sale of 300 ounces of gold upon the 18th November 1883, which are said to have been sold by the Plaintiffs, who are native dealers in gold, to this compradore, and the question is whether they were sold to the compradore on his own behalf or on behalf of the Sassoons.

The evidence of the Plaintiff may be stated, sufficiently for the present purpose, by saying that the Plaintiff spoke of this as a transaction with the Sassoons. He did not, indeed, distinctly speak of his being informed by the compradore that the transaction was with them, but he treated it as a transaction with them and relied mainly upon certain receipts which were put in which bear their name. That was his case, together with some evidence which it is not very necessary to go into at length, to the effect that it was asserted subsequently that the Sassoons were unable to pay him,—a story not very probable.

The case on the other side is that this was a sale to the compradore and the compradore only. The compradore was called and he distinctly swore that he again and again told the Plaintiff that the transaction was his and his alone, and that the Sassoons had nothing to do with it, and it is an admitted fact in the case that the Sassoons had in fact nothing to do with it, that they never received the gold nor had any knowledge of the transaction. There is further evidence in the case, which does not appear to be disputed or contradicted, that the Plaintiffs took from the compradore, who some time after had to make a composition with his creditors, certain boxes of needles, amounting to about 30 per cent. of

the composition, which was the same as that which he had agreed to with his other creditors; that those boxes of needles were his alone, and that the Sassoons were not interested in them; it further appeared that whereas the credit given to the comprador was three weeks, it was somewhere about three months before any application was made by the Plaintiff to the Sassoons for payment.

The case came in the first instance before the Consular Judge at Tientsin, who was assisted by the Assessors. He found in favour of the Plaintiff, the Assessors, in pursuance of an Act which gives them that power, expressing their dissent from his Judgement, and stating their views of the transaction and of the general relations of compradores to their principals in Tientsin.

The case went by appeal to Her Britannic Majesty's Supreme Court of China and Japan, and the Judgement of the Consul was there affirmed.

Their Lordships have considered an argument which might have been used if the Respondents had been here represented, namely, that upon a question of fact there are concurrent decisions of two Courts, but on examining these decisions it appears to their Lordships that this is not so. If the evidence on both sides had been thoroughly considered and dealt with by the learned Judges, their Lordships would have felt great difficulty in interfering with the decision. But it appears upon examining these Judgements that there is no finding on the part of either Judge as to the truth or falsehood of the main evidence in the case. Mr. Davenport, the Consular Judge, begins in this way :—“ In this case the evidence given by “ the Plaintiff, Wan-Gan-Ying, is of a decidedly “ unsatisfactory character, his statements being, “ for the most part, made with a view to his own

“ supposed advantage rather than to meet the
 “ requirements of truth.” Then he observes
 further on,—“ With regard to the contention of
 “ the Defendants that the Plaintiff knew perfectly
 “ well that he was only dealing with their
 “ Chinese compradore and not with themselves,
 “ they certainly brought forward some strong
 “ evidence in support of their position,” that
 strong evidence being, as their Lordships assume,
 the evidence of the compradore which has been
 before referred to, and probably the conduct of
 the Plaintiff. The learned Judge goes on to say—
 “ But I cannot for a moment believe that the
 “ Plaintiff would have trusted Hoo-Mei-Pin or
 “ any other man of straw unconnected with a
 “ well-known business firm, and I feel sure that
 “ he (the Plaintiff) at any rate originally gave him
 “ (Hoo-Mei-Pin) credit, relying on the wealth,
 “ character, and credit of the well-known British
 “ firm of ‘Lao-Sha-Sun.’” If by that the
 learned Judge means that the Plaintiffs originally
 gave credit to Hoo-Mei-Pin alone, it is by no
 means distinctly expressed; but as far as their
 Lordships are able to understand this passage,
 it seems to them that so far from expressing
 his disbelief of the evidence of the compradore,
 (with the manner of giving which he expresses
 no such dissatisfaction as he had expressed
 with respect to the evidence of the Plaintiff,)
 he disregards it upon the ground of its being
 improbable simply, and the improbability is that
 the Plaintiff should have trusted Hoo-Mei-Pin,
 who is described by the Judge as a man of
 straw. Hoo-Mei-Pin at this time carried on
 an extensive business and had establishments in
 a number of places all of which were perfectly
 well known to the traders at Tientsin, and
 although he subsequently failed, their Lordships
 are unable to subscribe to the view of the Judge
 that it is so improbable that he should have been

trusted as to make the evidence, which otherwise appears to have been trustworthy, incredible.

Their Lordships therefore regard this Judgement as dealing in an unsatisfactory manner with the case, and not pronouncing any definite opinion upon the evidence.

The case went on appeal to the Chief Justice, and the Judgement of the Chief Justice, their Lordships regret to say, does not appear to them more satisfactory. He, in the first place, recites the Judgement of the learned Judge below, and appears to approve of the learned Judge's rejection of testimony, otherwise strong and clear, and apparently unimpeached, on the ground of improbability, which has been before dealt with. He goes on to say—"If there was nothing further in the case than what I have already alluded to, I might have felt some doubt; but the Respondent produces two documents in the shape of receipts for the gold in question," and the learned Judge practically decides the question upon the production of these receipts. Now these receipts were in fact the only case on the part of the Plaintiff. Without them he would have had none. Their Lordships cannot disregard altogether what is said by the assessors, merchants in the place, that compradores frequently give receipts of this kind in transactions which are purely their own, and that this practice is generally known. But the learned Judge does not state that he disbelieves the evidence of the compradore, that he gave distinct notice again and again that the dealing was with him alone, nor that he disbelieves the evidence that the Plaintiffs took a composition from the compradore and that they abstained from applying to the Defendants until they found they could not get the debt from the compradore.

Under these circumstances it appears to their Lordships that the evidence in this case has not

been satisfactorily dealt with ; it is scarcely going too far to say that the main parts of it have not been dealt with at all by the two Courts. They therefore feel at liberty to give their own Judgement upon it, and in their judgment the case of the Defendants very much preponderates over that of the Plaintiff.

Their Lordships will therefore humbly advise Her Majesty to allow the Appeal, to reverse the Judgement appealed against, and to dismiss the suit; the Respondent must pay the costs in the Court below and here.