

## APPELLATE CIVIL.

*Before U Aung Tha Gyaw, J.*

J. M. CHAPIA (APPELLANT)

v.

M. HASSAN SHIRAZEE (RESPONDENT).\*

H.C.  
1948

July 14.

*Japanese Currency (Evaluation) Act, 1947, s. 3—House-rent incurred during Japanese occupation—Pre-war contract to pay monthly rent—Whether s. 3 applicable.*

An unregistered document was executed prior to the Japanese occupation providing for occupation for five years but on payment of monthly rent as it fell due. The document being unregistered could not affect the right of parties. The claim for rent due between July 1944 and February 1945 did not amount to a contractual obligation entered prior to Japanese occupation. The parties must be deemed to have agreed that each month's rent would become payable at the end of the month. It is a separate debt which for the period in suit, viz. July 1944 to February 1945 could have been satisfied by payment in Japanese Currency Notes. Accordingly the party is liable to pay only in terms of s. 3 of the Japanese Currency (Evaluation) Act, 1947.

R. K. Roy for the appellant.

N. R. Burjerjee for the respondent.

U AUNG THA GYAW, J.—The only question which arises for decision in this appeal is whether the debt sued for as being due for house-rent falls within the ambit of section 3 of the Japanese Currency (Evaluation) Act, 1947. Section 3 of this Act provides,

“Notwithstanding anything contained in any other law for the time being in force, where any debt had been incurred or contractual obligation entered into during the period of the Japanese occupation, which could have been discharged by payment in Japanese currency notes, and if any such debt or contractual obligation, or any part thereof remained unsatisfied or undischarged at the time of the British Military re-occupation

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\* Civil Second Appeal No. 36 of 1948 against the decree of the Resident's Court of Southern Shan States in Civil Appeal No. 3 of 1947-48, dated the 10th February 1948.

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of the area where such debt or contractual obligation was incurred or entered into, the said debt or obligation, or such part thereof, as shall have remained unsatisfied or undischarged as aforesaid, shall be satisfied or discharged by payment in legal currency notes or coins, etc."

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GYAW, J.

It is contended on the appellant's behalf that the debt sought to be recovered by the respondent as being due to him as house-rent had been incurred during the period of the Japanese occupation and that it was a debt which could have been discharged by payment in Japanese currency notes and that this debt had remained unsatisfied at the time of the British Military re-occupation of the area where it had been incurred. For the respondent, the plea is advanced that by reason of the existence of the document, Exhibit C, the payment of a monthly rent for the premises occupied by the appellant was in fact a contractual obligation entered into by him before the period of the Japanese occupation and that the provisions of section 3 of the Japanese Currency (Evaluation) Act, 1947, cannot be invoked in support of the appellant's contention. This unregistered agreement, Exhibit C, was entered into on the 28th of April 1940 between the respondent Shirazee and one Chunilal, described in the evidence as the father-in-law of the appellant. The agreement provides for the continuance of the occupation of the premises by the tenant Mr. Chunilal for a period of five years but the monthly rent was intended to be paid by the occupant every month as it fell due. Being unregistered, this agreement cannot affect the rights of the parties in this case in relation to the premises in question, and it cannot, therefore, be held that the debt now sued for, *viz.* arrears of house-rent due between July 1944 and February 1945, amounted to a contractual obligation incurred by the appellant previous to the Japanese occupation. In regard to the payment of

house-rent, the parties must be deemed to have agreed that the same would not accrue due until the expiry of each month's tenancy; each month's house-rent would be in the nature of a separate debt incurred by the appellant during each month of his tenancy. And between July 1944 and February 1945 these separate debts could have been satisfied by the appellant by payment in Japanese currency notes. These debts remained unsatisfied and for the purposes of this case, it does not appear to be necessary to enquire into the circumstances arising out of the war which had led to the accumulation of these debts. Accordingly, the amount sued for would appear to be covered by the provision of law contained in section 3 of the Act abovenamed and the respondent cannot therefore receive a sum more than what has been deposited in Court by the appellant, *i.e.* Rs. 312-8-0.

Accordingly, this appeal is allowed and the judgment and decree of the lower Courts will be modified to the extent indicated above with proportionate costs throughout.

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