

SUPREME COURT.

V.E.R.M. KRISHNAN CHETTYAR (APPELLANT)

v.

M.M.K. SUBBIAH CHETTYAR (RESPONDENT).*

S.C. †
1949

April 4.

Meaning of the word "enemy"—Term used for two different purposes—Decree transferred to Burma for execution—Agent given the power to realize the decree and receive money—Whether such agency determined by occupation of Burma by the Japanese—Defence of Burma Rules, Rule 98 (1)—S. 13 (3) Burma Laws Act—Ss. 23 and 56 Contract Act.

Held: The word "enemy" is used for different purposes in different senses. For the purpose of commercial and other intercourse residence and not "alienage" determines the enemy character of the person affected. With such persons as are resident in territories occupied by the forces of the enemy, commercial and other intercourse are prohibited and for the purpose of such prohibition these persons irrespective of their political allegiance are to be deemed enemies, though they may not in fact be alien enemies for political purposes.

Under S. 13 (3) of Burma Laws Act question for decision in courts of Burma except in the case of personal law is to be decided in accordance with any enactment for the time being in force and in the absence of such enactment the decision shall be according to justice, equity and good conscience. A contract of agency in order to be void must be brought within the provisions of Ss. 23 and 56 of the Contract Act.

Rule 98 (1), Proviso (b) of the Defence of Burma Rules made under the Defence of Burma Act, 1940, has expressly exempted from prohibition against commercial or other dealings with the enemy, the receipt from an enemy of a sum of money due in respect of a transaction under which all obligation on the part of the person receiving payment has been performed before the commencement of the act. As in this case the decree was obtained before the Defence of Burma Act had been enacted and transferred to Burma the principal could have received the money even after Japanese occupation and therefore the agent also could receive the same.

Here the contract of agency was made in India and it was clearly to be performed in Burma where the debt was to be collected and therefore the principle of *lex loci solutionis* would apply.

Benorium & Co. v. Debono, (1924) A.C. 514; *Adelaide Electric Supply Company, Limited v. Prudential Assurance Company, Limited*, (1934) A.C. 122 followed.

The larger question of the effect in general of war on contracts of agency when the line of war divides the principal from the agent left open.

* Civil Appeal No. 5 of 1948.

† Before the Hon'ble SIR BA U, Chief Justice of the Union of Burma MR. JUSTICE E MAUNG and MR. JUSTICE KYAW MYINT.

Soufracht v. Gebr Van Udens Scheepvaart en Agentuur Maatschappij, 1943) A.C. 203 ; *Rodriguez v. Speyer Brothers*, (1919) A.C. 59 ; *Sylvester's case*, (1703) 7 Moo. 150, referred to.

P. K. Basu for the appellant.

P. B. Sen for the respondent.

Dr. Ba Han as *amicus curiæ*.

The judgment of the Court was delivered by

MR. JUSTICE E MAUNG.—The appellant obtained in the Chief Court of Pudukkottai a decree for Rs. 43,132-9-6 with costs and subsequent interest against the respondent's father. This decree was transferred for execution to the District Court of Bassein in 1937, and proceedings in execution were taken in Civil Execution Case No. 7 of 1937 of the District Court of Bassein. The appellant never at any time resided in Burma, and to facilitate the proceedings in execution he appointed one Annamalai Chettiar his agent for the single purpose of collecting the amount outstanding under the decree which had been transferred for execution to the District Court of Bassein in Civil Execution No. 7 of 1937 of that Court.

For one reason or another the execution proceedings dragged on, without the decree being satisfied in full, till the 7th February 1942, when it was agreed between the appellant's agent and the agent of the respondent's father that the respondent's father should pay a sum of Rs. 4,205-0-3 with interest on the said amount at Rs. 6 *per cent per annum* from the 29th August 1941 till the date of realization, together with the costs of the execution proceedings.

On the 14th September 1944, Chocklingam Chettiar, who to that date had been acting on behalf of the

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTYAR

M.M.K.
SUBBIAH
CHETTYAR.

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTIAR
v.
M.M.K.
SUBBIAH
CHETTIAR.

respondent's father, paid and Annamalai Chettiar on behalf of the appellant received a sum of Rs. 5,180-4-0 only, purporting to be in full satisfaction of the amount due on that date under the agreement of the 7th February 1942. It appears that the payment was made in Japanese military notes ; but nothing turns on the medium of payment, if otherwise, the payment was binding on the appellant. Section 4 of the Japanese Currency (Evaluation) Act, 1947 (Act XXXVI of 1947) operates to effect a full discharge as if the payment had been in lawful currency of the land.

Bassein, where the payment was made, remained in the occupation of the invading Japanese forces from some time in the early part of 1942 till some time in the early part of 1945. On the 4th November 1946, the appellant, through his present agent, who is other than Annamalai Chettiar who received payment in 1944, made an application for reconstruction of the proceedings in Civil Execution No. 7 of 1937 of the District Court of Bassein. His application was granted, and on the 13th February 1947 the respondent, his father being by then dead, made an application to record the adjustment of the decree in terms of the payment of the 14th November 1944 of the sum of Rs. 5,180-4-0 to Annamalai Chettiar.

To this application for adjustment of the decree the appellant raised two objections, of which we are only concerned in this appeal with the objection that, because of the line-of-war separating the appellant from Annamalai Chettiar, on Bassein being occupied by the invading Japanese forces, the authority of Annamalai Chettiar to act on behalf of the appellant and to bind the appellant by such acts terminated. The appellant's objection was rejected by the District Court of Bassein, and his appeal against the order of the District Court of Bassein was dismissed by the

High Court, and it is against the judgment of the High Court that this appeal is preferred to this Court under section 6 of the Union Judiciary Act.

In the High Court, as also before us, the appellant's case is that the relation of principal and agent between himself and Annamalai Chettiar came to an end the moment Bassein was occupied by the invading enemy forces. In support of this claim various authorities were canvassed before this Court, and these authorities have been discussed *in extenso* in the judgments of the Chief Justice of the High Court and San Maung J.

The larger question whether on the line-of-war dividing the principal from his agent the relation of principal and agent would normally come to an end by operation of law is no doubt one of great importance, but it does not arise in this case.

Section 13, sub-section (3), of the Burma Laws Act, provides that, where a question for decision before the Courts in Burma does not relate to succession, inheritance, marriage or caste, or any religious usage or institution in the case of Buddhists, Mohamedan and Hindus, or is not covered by any enactment for the time being in force, the decision shall be according to justice, equity and good conscience. Guidance, therefore, in the matter of contracts will have to be sought, in the first instance, in the Contract Act. The relevant provisions of the Contract Act are sections 23 and 56.

Section 56 of the Contract Act, leaving out matters not relevant to the present appeal, reads—

“ A contract to do an act which, after the contract is made, becomes by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes unlawful.”

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTYAR
D.
M.M.K.
SUBBIAH
CHETTYAR.

S.C.
1949

Section 23, again, reads—

V.E.R.M.
KRISHNAN
CHETTYAR
v.
M.M.K.
SUBBIAH
CHETTYAR.

“ The consideration or object of an agreement is lawful, unless—

it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law ; or is fraudulent ; or

involves or implies injury to the person or property of another ; or the Court regards it as immoral, or opposed to public policy.”

Much legal learning has been expended, both in the High Court and at the Bar before us, on the question of public policy. It has been strenuously contended on behalf of the appellant that any dealing across the line-of-war must be illegal. Reliance is placed on certain observations in *Sovfracht v. Gebr Van Udens Scheepvaart en Agentuur Maatschappij* (1) for the proposition that such communication would in all cases, and apart altogether from the facts in each case, fall within the interdiction of law. On the other hand, reliance was placed on the observations in the earlier case of *Rodriguez v. Speyer Brothers* (2) for the contrary view that the interdiction of intercourse across the line-of-war is not to be treated as a crystallised proposition which is so definite that it must be applied without reference to whether a particular case involves real mischief, to guard against which the rule of public policy was originally introduced. The question whether the rule against intercourse across the line-of-war is a rigid rule of law or a flexible rule of public policy is one, no doubt, of considerable but, as far as this case is concerned, academic interest.

Proviso (b) to Rule 98 (1) of the Defence of Burma Rules, made under the Defence of Burma Act, 1940, has expressly exempted from the prohibition against

(1) (1943) A.C. 203.

(2) (1919) A.C. 59.

commercial or other dealings with the enemy, the receipt of "payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the Act". Assuming, for the appellant cannot possibly put his case higher, that the agent in 1942 to 1945 of the respondent's father could, for the purposes of the Defence of Burma Act and the Rules thereunder, rightly be deemed an enemy, the proviso to Rule 98 (1) expressly permits the receipt of payment from such a person in the circumstances obtaining in this case. The obligations on the part of the appellant had been performed, and his claim under the transaction wherein he performed these obligations had crystallised into a decree before the Defence of Burma Act was enacted.

If, therefore, it would not be an illegal act for the appellant in person to receive payment under the decree, if such payment or receipt had been physically possible, in spite of the person making the payment becoming technically an enemy, it is difficult to see how the contract of agency would be adversely affected by war breaking out and the agent remaining in enemy occupied territory. The grant of authority as an agent in this case was, as has been said above, for the single purpose of realizing the dues under the decree of 1934. Section 23 of the Contract Act renders a contract illegal only if either the consideration or the object of the contract is against any provision of law or would defeat any provision of law. The nature of the consideration is not of any relevancy in this case, and the object of the contract of agency and the grant of authority under it is one which the law has expressly made exempt from the prohibition of intercourse with the enemy.

It is not necessary to examine closely the provisions of the Defence of India Act. It is enough to notice

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTYAR

v.
M.M.K.
SUBBIAH
CHETTYAR.

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTYAR

v.
M.M.K.
SUBBIAH
CHETTYAR.

that the Indian Act and the English Trading with the Enemy Act of 1939 have in them provisions similar to proviso (b) to Defence of Burma Rule 98 (1). This fact, however, is strictly not relevant. For though the contract of agency was made in India (and validly made at the time), it was clearly to be performed in Burma, where the debt was to be collected by the agent. In such circumstances, *Benorium & Co. v. Debono* (1) and *Adelaide Electric Supply Company, Limited v. Prudential Assurance Company, Limited* (2) are clear and sufficient authorities for the proposition that the law of Burma as the *lex loci solutionis* applies to the determination of the question whether the contract by supervening circumstances becomes abrogated.

With respect, it seems to us that much of the difficulties in this case, both in the High Court and at the Bar before us, had their origin in the confusion between different definitions for different purposes of the term "alien enemies". For the purpose of commercial and other intercourse, residence, and not alienage, determines the enemy character of the person affected. With such persons as are resident in territories occupied by the forces of the enemy, commercial and other intercourse are prohibited, and for the purpose of such prohibition these persons, irrespective of their political allegiance, are to be deemed enemies. They may not, in fact, be "alien enemies" in the strictly accurate sense of the term. The confusion arises from this new definition of "alien enemies" for the purpose of the rule against commercial and other intercourse being erroneously assumed to be a definition for all purposes.

An alien enemy not under protection, in these days, may or may not be a human wolf with no rights and

(1) (1924) A.C. 514.

(2) (1934) A.C. 122

whom anyone may wrong with impunity [cp. *Sylvester's* case (1)]. But the disabilities of an alien enemy, strictly so called, do not extend to the technical "alien enemy". Consequently, the payment made in 1944 on behalf of the respondent's father was not in law a mere nothing; it was expressly made lawful to receive payment from "an enemy"; and the contract of agency for the single purpose of obtaining such payment is not abrogated by the supervening prohibition of commercial and other intercourse in general with the enemy.

It is to be regretted that the facts in the present appeal are not such as would justify us in considering the larger question of the effect in general of war on contracts of agency when the line-of-war divides the principal from the agent; but we cannot depart from the salutary practice of confining the decision to such questions as are necessary for the determination of the matter before the Court.

The result is that the appeal fails and is dismissed with costs. Advocates' fees 30 gold mohurs.

S.C.
1949

V.E.R.M.
KRISHNAN
CHETTYAR

M.M.K.
SUBBIAH
CHETTYAR.