Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Montaignac and Cyprien Fabre and Company v. *Shitta, from the Supreme Court of the Colony of Lagos; delivered July 17th*, 1890.

Present:

LORD WATSON.
LORD HERSCHELL.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Herschell.*]

THIS is an Appeal from the Supreme Court of the Colony of Lagos, the sole question raised being whether the Respondent can enforce as against the Appellants a loan which he made through an agent purporting to be acting on their behalf.

On the 6th of November 1878 the Appellants, Cyprien Fabre & Co., gave a power of attorney to Mr. Settimio Carrena, who was then residing at Lagos, to manage and administer in the name of the house of Cyprien Fabre & Co. all the business of the house in the establishments which it possessed on the West Coast of Africa between the Cape St. Paul and the mouth of the River Benin. It is not necessary to read the other terms of the power, which was very wide in its scope. It enabled the mandatory to substitute another in his place for the purposes of the power. Accordingly, on the 4th of June 1879, Settimio Carrena transferred all the powers given him by Cyprien Fabre & Co. to Guiseppe del Grande in the same manner as if the power had been originally given to him direct. Under that authority del Grande for some years acted

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as agent for the house of Cyprien Fabre & Co. in the Colony of Lagos. Their business consisted in the working of certain factories, and also in the import and export of produce. The entire management of the business carried on appears to have rested with del Grande. It is not disputed that the power to manage and administer the business, conferred some authority to raise money, inasmuch as the raising of money was necessary for the proper carrying on of the business affairs which were to be administered by the agent. Their Lordships think it cannot be doubted upon the evidence that the agent had authority to raise the moneys that were necessary for the purpose of the business, and to employ for that purpose all ordinary means.

It is contended on the part of the Appellants that the power to borrow was restricted to the borrowing by certain means which have been suggested. It is admitted that he could borrow or raise money by selling drafts to persons desirous of remitting to Europe. It is clear that this was not the limit of his borrowing power according to the actual practice which prevailed, inasmuch as he borrowed the money needed from time to time from another merchant or merchants, repaying it either by cash or by handing over to them produce to the requisite amount. As far as appears in those mutual borrowing transactions which seem to have taken place from time to time between the merchants, the loan was made without requiring the payment of any interest. The Appellants contend that, conceding all this, the transaction which took place between the Respondent and del Grande was so far out of the ordinary course of business at Lagos that the loan made by the Respondent to del Grande cannot properly be charged against his principals. It appears that del Grande

communicated to the Respondent, who is a native merchant and apparently to some extent a financier, the fact that he would be wanting some 6,000*l.* for the purpose of his factories. The Respondent does not appear to have thoroughly understood the English language, or to have been able to read it. The 6,000*l.*, according to the evidence of the Respondent, was not all to be lent in the first instance, but he was told that it would be required from time to time, and accordingly on the 22nd January 1884, and at various dates down to the 14th October in that year, the Respondent made in all eight payments to del Grande in sums either of 1,000*l.* or 500*l.*, amounting in all by the 14th October to 4,500*l.* On the 20th July 1885 a further sum of 300*l.* appears to have been advanced. On all those prior occasions, as well as on this occasion of the 20th July 1885, a document forming an acknowledgment of the receipt of various sums advanced was given by del Grande to the Respondent. These documents were in the terms "good" for the particular amount 500*l.* or 1,000*l.*, as the case might be, and bore the name of Cyprien Fabre & Co., being signed by del Grande as agent for the firm. On the last occasion to which allusion has been made, the 20th July 1885, although 300*l.* only was paid in cash, a "Bon" was given for the sum of 1,500*l.*, the explanation being that down to that time, although the advances had commenced in January 1884, no interest had been paid, and 1,200*l.* of that sum of 1,500*l.* was advanced for the purpose of enabling the liability for interest, then accrued, to be discharged, and consequently the transaction was dealt with as if there had been a loan, which it is said there practically was of 1,500*l.* on that date, making in all 6,000*l.* On the 1st August 1887, a document was signed by the Respondent which

appears to have been prepared by del Grande. It stated that it had been agreed as follows:—
" Mr. Shitta gives to Mr. Del Grande agent
" of C. F. Fabre & Co., the sum of six thousand
" pounds sterling (6,000*l.*) with interest.
" Mr. Del Grande obliges himself to pay to
" Mr. Shitta the rent of 1,800*l.* per annum (one
" thousand eight hundred pounds) sterling.
" Mr. del Grande must liquidate this part, and
" render 6,000*l.* to Mr. Shitta before his depar-
" ture for Europe," and then underneath there is the statement of the various sums advanced, amounting in all to 6,000*l.*, followed by these words, "I, the undersigned, declare to have
" received of Mr. del Grande the rent of 1,800*l.*
" per annum from the 16th January 1884 until this
" day 31st July 1887, Lagos, 31st July 1887."
It would at first sight appear as though 1,800*l.* per annum had been paid year by year as from January 1884 down to July 1887, and if an arrangement had been in fact come to that 1,800*l.* per annum should be paid, whatever the amount advanced from time to time, and however far it might fall short at any time of 6,000*l.*, the case would have worn a very different aspect. But it appears on the evidence, that this document prepared by del Grande and submitted to the Respondent for his signature, if it is to be understood as representing that that sum had been paid annually during that term of years, did not represent the fact. Down apparently to the date of this agreement, Mr. Shitta the Respondent had received no interest except the 1,200*l.* which he received out of the 1,500*l.* advanced in July 1885. He had received an assurance that some payments which were about to be made by a Mr. Barth for sums approaching 2,000*l.*, were to be treated as being interest on this loan, and that he was, where he had received those payments, to treat all the interest down to 30th July 1887 as

wiped off, and the transaction standing between them as a loan then due of 6,000*l.*, which was to bear interest at the rate of 1,800*l.* per annum. It should be observed that the total amount received or treated as received, in respect of interest from January 1884, down to 31st July 1887, does not exceed, but is rather less than, interest at the rate of 1,800*l.* a year on 6,000*l.*, if applied to the various sums from time to time received by del Grande and paid by the Respondent.

The question to be considered is, whether the transaction to which allusion has been made was a borrowing so far outside the ordinary course of dealing in the Colony of Lagos, by a firm who were under the necessity of raising funds, as that it ought to be treated and ought to have been understood by a lender to be out of the course of business. It may be that if fuller inquiry and investigation had been made than was the case, it would have appeared that this was so. On the other hand, fuller investigation might have shown that the condition of the Colony of Lagos, the facilities for raising money, the interest which had to be paid where money was needed and parties were not wishful to remit bills to Europe, would have rendered a resort to these means of raising money not unusual or extraordinary. But in the absence of any such investigation, beyond that which is afforded by the evidence, their Lordships do not feel that it is possible for them to reverse the conclusion of fact at which both Courts below have arrived, for in truth the only question arising upon this Appeal is one of fact. If in the absence of the means of raising money needed for a business by the sale of bills, or by obtaining accommodation from some other merchant with whom the house had transactions, an agent who had to raise money for his firm must have had

recourse to one of these native financiers or money-lenders, then in the opinion of their Lordships the power which this agent possessed under his mandate from his principals, would authorise his borrowing from such a source under such circumstances, and if the occasion might have arisen on which his borrowing powers would have been properly interpreted as comprising the recourse to such means as these, then their Lordship's do not think it was incumbent upon the lender to inquire whether in the particular case the emergency had arisen or not; but if he, in good faith, and without any notice of the fact that the agent was not obeying or intending to obey the mandate of his employers, advanced money to him, the loan would be one by which, having regard to their authority to their agent, they would be bound, and he would be entitled to recover.

Under these circumstances their Lordships will humbly advise Her Majesty that the Judgment appealed from be upheld and the appeal dismissed. The Appellants must pay the costs of the Appeal.