

*Privy Council Appeal No. 152 of 1927.*

Wearne Brothers, Limited - - - - - *Appellants*

*v.*

The Russa Engineering Works, Limited, and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER, 1928.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD SHAW.

LORD BLANESBURGH.

SIR JOHN WALLIS.

[*Delivered by LORD SHAW.*]

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This is an appeal from a decree of the High Court of Judicature at Rangoon in its appellate jurisdiction, dated the 22nd March, 1926, allowing an appeal by the respondents from the decree of that Court on the original side dated the 13th February, 1925.

The point in the appeal is whether the first respondents are entitled to claim indemnity from the appellants against the burden of a certain agreement of lease dated the 20th April, 1920, between one Cowasjee and the first respondents, The Russa Engineering Works, Limited.

In the opinion of the Board the judgment of the Appeal Court is entirely correct.

The brief narrative will show how the matter stands. The agreement for lease was dated the 20th April, 1920. It was as stated from Cowasjee to The Russa Engineering Works, Limited, the first respondents to this Appeal. The form of the lease or proposed lease was in the schedule appended to the agreement. Briefly stated, it provided for a lease for 20 years from the 1st September, 1920, of certain blocks suitable for business premises in Rangoon. The rent was Rs. 1,000 during the first ten years and Rs. 1,500 during the remaining ten years. Part of the

premises was that which is the subject of this appeal, namely, the premises in Judah Ezekiel Street, Rangoon. Then, the agreement for lease having been, as stated, dated the 20th April, on the 10th July, 1920, a company called Ford Motors (Burma) was incorporated. This was done in pursuance of the Russa Engineering Company's desire to obtain the Ford agency for Burma. The Russa Company held all the shares of the Ford Motors (Burma), except one, and one of the conditions of the incorporation was that the Russa Company should make over the Judah Ezekiel Street premises to the Ford Motors. As the trial Judge observed, the Russa Company faithfully carried out its bargain and made over the premises to the Ford Company. So matters stood for about a year. During that time the Ford Motor Company developed the Judah Ezekiel Street property, making extensive alterations, paying the rent to the landlords, and acting just as possessors with full title would have acted, but no assignment of the agreement for lease of the property was ever in fact made to the Ford Motor Company.

Then on the 27th August, 1921, occurred the transaction of the following kind. The managing director of Wearne Brothers, the appellants, addressed a letter to the Ford Motors, Limited, stating that they "were prepared to take over the Ford Motor Company as a going concern on the following terms." There follows the enumeration of the assets taken over, including spare parts, machinery, tools, etc., and item 8 is as follows:—

"Judah Ezekiel Street property, lease for ten years, April 20th, 1920, at Rs. 1,000 per month, and a further ten years at Rs. 1,500 a month." There can be no reasonable doubt that this language was employed so as to take up all rights under the agreement for lease of the Judah Ezekiel Street property. It remains only to consider whether that bargain was complete.

It was argued for the appellants that it was not, the reason being the following sentences occurring in the letter to Mr. Chidsey aftermentioned, of date 2nd September, 1921, acknowledging receipt of the offer, going over the various items and *inter alia* expressly confirming Item 8 and adding:—"We are sending a copy of this letter to Messrs. Wearne Brothers, Limited, Singapore. Their letter will be placed before the company's directors at their meeting on Tuesday next for consideration and approval with or without modification or refusal, as the case may be. We will let you know their decision in due course." The state of Messrs. Wearne's information appears from a letter written by the Russa Engineering Company to Mr. Wearne on the 27th August, 1921, in which was enclosed a copy of the agreement for lease already mentioned. A further document bearing the same date, 27th August, 1921, was a power of attorney granted by Wearne in favour of Mr. John L. Chidsey, the first head of the power being "to negotiate for the purchase of and to purchase as a going concern the business now carried on in Rangoon under the name of The Ford Motors (Burma), Limited, or of any other business having the agency

in Burma for Ford Motor Cars and of all or any of the assets thereof."

These three documents would seem to demonstrate full knowledge of the circumstances of the purchase and in particular at least the intention when acquiring the shares of Ford Motors Limited to acquire the shares of a Company possessed not only of the business but the premises of Judah Ezekiel Street in which the business was for the time carried on and upon which the Russa Engineering Works and Ford Motors had made large expenditure.

The argument before the Board was, however, that the whole of this transaction was left in the air. It remained inchoate, so it is argued, for this reason, that a promise was given that the proposal as interpreted in the above letter of the 2nd September, 1921, was to be submitted for consideration and approval by the Russa Engineering Company's directors with an intimation "we will let you know our decision in due course." There, it was submitted, the matter was left, and no intimation was sent of the kind required.

This is an entire mistake in fact. On the 7th September, 1921, the following letter was written :—

" CALCUTTA, 7th September, 1921.

" MESSRS. WEARNE BROS., Ltd.,

" Singapore, F.M.S.

" DEAR SIRs.

" *Re Ford Motors (Burma), Ltd.*

" This serves to inform you that, at the meeting of the Directors of this Company held in this office on Tuesday, the 6th instant, the correspondence between ourselves was considered, and the following is entered in the minutes of the meeting :—

" 'Considered correspondence with Messrs. Wearne Brothers, Ltd., who have made an offer to purchase the shares of Ford Motors (Burma), Ltd., on certain terms contained in their representative's letter dated the 27th August, 1921. Considered draft of Managing Agents' reply dated 2nd September, which was approved and confirmed.'

" This information has been passed on to Mr. J. L. Chidsey for his information.

" Yours faithfully,

" THE RUSSA ENGINEERING WORKS, LTD.,

" (Signed) KILBURN,

" Managing Agents."

The argument is thus answered. The facts speak for themselves.

On the other points of detail their Lordships are in concurrence with the opinion expressed by Rutledge, C.J., in the High Court.

Their Lordships will humbly advise His Majesty that the appeal be refused with costs.

In the Privy Council.

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WEARNE BROTHERS, LIMITED

THE RUSSA ENGINEERING WORKS, LIMITED,  
AND OTHERS.

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DELIVERED BY LORD SHAW.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1929.