

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Chartered Bank of India and Evans and another from the Supreme Court for China and Japan; delivered the 7th of July, 1869.*

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Present:

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

THEIR Lordships cannot entertain the slightest doubt in this case. As regards the 27 taels, the Respondents must have those, but this small sum cannot affect the question of costs, nor does it appear ever to have been a matter in dispute.

As regards the case itself, there obviously was but one contract, and one transaction, that is detailed in the letter to which Mr. Field referred. The letter, taken in connection with the evidence, shows distinctly that there was but one contract, on the 27th of June, and that that contract was an advance of 32,000 taels in this way: 22,000 taels was to be advanced, and 10,000 taels was to be held as margin to secure certain debts.

If those were the terms on which the advance of the 22,000 taels was made, and the 10,000 taels were to be retained, and if the whole was one transaction, as it clearly was, it necessarily follows that the 10,000 taels cannot be recovered so long as the state of circumstances is such as that consistently with the contract, the 10,000 taels ought to be in the hands of the Bank. It is clear that this was the state of things at the time when the Judgment was given, and that there was then no ground whatever for proceeding for the recovery of these 10,000 taels. Fraudulent preference therefore can have no application whatever, because the 10,000 taels formed no part of the Bankrupt's

estate, and there was not in any sense a dealing with that which belonged to the Bankrupt.

Upon these grounds, without going further, their Lordships think it sufficient to say that the Judgment of the Supreme Court was wrong, that the Judgment of the Court of first instance was right, and that the Appellants ought to have all their costs before the Court of first instance, before the Court of Appeal, and before this Court, deducting the 27 taels on the assumption that this sum has not been already paid.

With respect to the facts raising the question of fraudulent preference, it is unnecessary for their Lordships to express what their opinion would have been had the dealing been a dealing with the bankrupt's estate; suffice it to say that the learned Judge of the Supreme Court has laid down the law more widely than it ought to have been laid down; and in a way to which their Lordships cannot assent.

Their Lordships will, therefore, humbly report to her Majesty that the Judgment of the Supreme Court for China and Japan ought to be reversed with costs, and in lieu thereof that the Appeal from the Inferior Court to the Supreme Court ought to be dismissed with costs, and the Judgment of the Inferior Court confirmed, deducting the 27 taels if the same has not been paid.



