

*Privy Council Appeal No. 82 of 1916.*

**M.A.R.R.M.R.M. Firm** - - - - - *Appellant,*

*v.*

**P.K.P.S. Kadersan Chetty and another** - - - *Respondents,*

FROM

**THE CHIEF COURT OF LOWER BURMA.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 21ST JUNE, 1917.

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*Present at the Hearing :*

LORD DUNEDIN.

LORD SHAW.

LORD SUMNER.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

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This is a case in which there is a contest between a legal mortgage and an equitable mortgage said to be constituted by the deposit of title deeds. It is obvious that the legal mortgage must stand unless the equitable mortgage is made out.

It is admitted that there is no writing recording the transaction. There is only the direct testimony of the evidence of one witness, who is obviously more or less bolstered up by another who is in the same camp. It is quite clear that in these circumstances such evidence will never make out a case unless it is in some way corroborated.

The learned Judges of the Chief Court have cited several circumstances which, so far from affording corroboration, may be described, if their Lordships may coin the word, as "anti-corroborative." They point out the improbability of a mortgage for such a sum being constituted by the deposit of one deed, and one deed alone; they also point out that, whereas their experience, confirmed by the evidence of the plaintiffs' chief witness, leads them to know that such transactions are usually entered in the books of money-lenders in Rangoon, the books of this money-lender are, as to this transaction, silent; and they further point out the improbability of the story of the

demand of such additional security on the mere ground that wooden buildings had been demolished.

It is quite evident that the weight of such inferences can be most satisfactorily appreciated by those who are, from their position and training, well acquainted with the habits and ways of the persons concerned, and the value of the thing in discussion. That is an advantage which is enjoyed by the learned Judges of the Court on the spot to a greater extent than it is by this Board. Their Lordships have not seen anything that would lead them to come to the conclusion, which they must come to in order to alter the judgment, that the Judges have erred in this matter.

Really the whole strength of the argument, such as it was, on the other side, was rested, not on what was the real point of the case, but upon criticisms of a story of the defendants, that for an intermediate period before the legal mortgage was granted they had an equitable mortgage. If that were the issue there might be some force in the appellants' criticisms; but that is not the issue. They have first to make out their case. The learned Judges of the Chief Court have thought that they have not made it out, and nothing has been shown to their Lordships which would make it safe for them to overrule the judgment of the Chief Court.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed, with costs.



In the Privy Council.

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M.A.R.R.M.R.M. FIRM

o.

P.K.P.S. KADERSAN CHETTY AND  
ANOTHER.

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DELIVERED BY LORD DUNEDIN.