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Imperial Government of Japan.

BANCHI JIMUKIOKU.

TOKIO February 25 1875

In re Claim of Mason v. Japs. Govt.

To His Excellency

Okuma Shigenobu.

Pursuant to your instructions given to me in letter of 23^d January I have the honor to report as follows. The papers in the above matter were submitted to me by Mr Le Gendre on the 31st January.

From my examination of the papers submitted and considering the subject in the light of the principles of English law. I have arrived at the conclusion that there is no sufficient ground to support the claim of Mr Mason and that it ought not to be allowed.

If any relation whatever existed between this government and the claimant it was one of agency. The claimant may be said to have been the foreign factor of this government for the purchase of

Certain Supplies. The rules of the law as to the relation of Agency and as to the duties and rights of such a factor are reasonably clear and are carefully defined, and they may be summarized shortly as follows:

First: Such an agent or factor is entitled to a commission to be paid by the Principal usually calculated upon the amount or value of the business transacted.

Second He is also entitled to reimbursement for all advances made by him or expenses incurred by him in the course of his agency, and which are the natural and reasonable result of executing the duties of the agency.

Third If the agent without default has incurred loss and damage in doing the business and by following the instructions of his principal he will be entitled to compensation therefor; but only for such loss or

damage as flows from the Execution of his agency according to instructions.

Fourth It is the rule that the instructions of the Principal to the agent must be strictly observed, and the whole service performed before the right to a commission attaches; unless the performance is frustrated by the act or neglect of the Principal himself or by the intervention of inevitable force or overwhelming calamity.

Fifth If the agent be guilty of negligence or unskillfulness he forfeits his commission and is also liable to his principal in damages. Very slight negligence will not have that effect but in a case of doubt circumstances are construed against the agent. The character of that negligence or unskillfulness is a

Judicial question for court or jury.

Now in the case submitted to me the Claimant Manson has undoubtedly suffered loss. It also I have no doubt has this government by reason of the action of the Claimant in the premises. This loss however did not occur in the execution of his agency by the Claimant or by following the instructions of his principal in which case that principal would be bound to make it good; but it resulted on the other hand from just the opposite conduct on the part of the Claimant, that is to say by and through his abandonment of the agency and his unauthorised acts subsequently. Clearly he was guilty of default, negligence and unskillfulness of the most palpable sort, and forfeited thereby any claim to compensation or commission.

Written did the Claimant

conform strictly to his instructions as the law requires and he failed to perform the whole service required of and assumed by him, and thereby again forfeited his claim to compensation. What ^{was} the nature of the service required of him and which was assumed by him is shown by the telegrams shown me no 1-2-3 and 4. In fact he wholly failed to perform the service assumed and announced his immediate departure from China (Telegram no 5) whether that conduct caused any loss or inconvenience to this government I see nothing in the papers to show but if it did so it would be a proper matter for a claim against him for damage suffered.

The Claimant in one of his communications () refers to a certain "Order in Council" as a defence of his action but nothing which he urges appears to bring his

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case within the exception of
 "insistible force" or "overwhelming
 Colaninity". The "Order in Council"
 referred to is of a date long prior
 to the Claimant's acceptance of his
 agency and it received no new
 force after his doing so. There was
 no change in the public relations
 of this Empire towards either China
 when he resided or towards ^{the} power
 to which he was subject subsequent
 to his assumption of agency and
 its duties. Those relations remained
 precisely the same throughout from
 the date of his dispatch accepting
 the offered employment ^{to} and the
 date of his dispatch abandoning the
 same.

The duties of his agency did not
 therefore become unlawful by anything
 that occurred after his acceptance
 of even unlawful they were so when he
 first assumed them; and if they were
 so, whether prohibited by law or as
 being against morals, or public policy

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then, in that event by still another
rule of law which applies to such a
case he would have no claim for
Compensation or Commission whatsoever.

I have only reviewed his claim by the
principles of the Law of Agency - those of
the Common Law of England and of
America. The principles and authorities
governing in such cases if it is desired
may be found by referring to "Smith's
Mercantile Law" 7th Edⁿ Pages 112 to 124
and "Story on Agency" § 323 to § 350.

Respectfully Submitted

G. W. Hill
Legal adviser

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N^o 1.

Telegram

Yokohama, 24 March 1844.

Dr Manson,

Amoy.

Will you accompany me to
Pilaw? - Stay about four months
from April 15th - Salary about
\$500 per month - Confidential -
Reply by cable.

Le Centre,

Edinburgh.

Yedo.

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No 2.

Telegram No 180.

Given in at Amoy, the 26/3, 1874,
7 h. 35 m. a/m.

LeCendre, Gannisho,
Yedo.

Departure for England post-
poned. Your proposal
Accepted.

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No 3.

Telegram

Feds, 7 April, 1894.

Dr Manson, Amoy.

Buy through Ellis fifteen
good china ponies, twenty
fat bulls, fifty head of sheep,
ten days forage for these &
animals, eight Chinese sampans.
Will ship and pay for above
about 16th April - Strictly
confidential - Telegram pro-
bable cost as quickly as
possible.

Leguore,
Gaimusho.

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No 4.

Telegram no 24.

Given in at army, the 8th April,
1874, 8 h, 5 m, p.m.

From

Manson

to Lefevre,

Camusko, Yedo.

Estimated cost about \$
fifteen hundred Dollars.

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No 5.

Telegram No 220.

Received at Amoy, the 22/4,
1874, 6 h. 30 m. p.m.

Leandre,

Esimusho, Yedo.

Japan declaring war
British subjects cannot interfere
— Authorities threaten me —
Ordered sale purchases — Leave
China immediately.

Manton.

Received 22/4 74, 6.44 p.m., handed
the Japanese ^{telegraph} office at 6.46 p.m.

Received 29 May 1874.

Ch. de la Force

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No 6.

Station Nagasaki.

Telegram No. 13.

Evening at Amag, the 2/5, 1874, 12
h. 30 m p. m.

Have just arrived delayed by engines
breaking down. Dr Manson has
withdrawn under pressure & &
& & and has left for home.
The horses and bullocks bought
by Ellis & Co have been sold again.
& & & I shall endeavour
to procure Chinese or European
interpreter and sail at once for
No 1. Telegraph me further ins-
-tructions immediately
Cattel.

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Wth,

Nagasaki, May 4, 1854.

Cassel, Amoy,

Despatch received. Fleet,
delayed by storm, sailed last
night. Leave Amoy at once,
without bullocks, horses or
anything else x x x and
go to W^t. Tell x to accom-
pany you as interpreter
for my sake. Should he
refuse apply to x x x
Telegraph what accomplished
and departure.

Legendre.

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No 8.

Station Nagasaki.

Telegram No 32.

Given in at Amoy the 5/5,
1844, 10h. 25 am/pm.

Telegram received + +
+ + + . Have engaged
with much trouble Johnson
and one Malay. I shall sail
for No 1 at once. + +
+ + + + +
Cappel.

twenty eight Dollars and twenty
five cents, 30th May, 1874.

Randall H. Dyer.

W. B. Most of the forage was
used for the cattle while waiting
for orders and the remainder
was unwellable having got
mouldy.

R. H. D.

日本
銀行
支店
東京
支店
明治
二十
二年
五月
三十
日

坤
五
十
五
号