

39 1952

# In the Privy Council.

No. 6 of 1951.

## ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA IN THE HIGH COURT AT IPOH.

UNIVERSITY OF LONDON  
W.C.1.  
12 NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

31407

BETWEEN

NG SEE HEM ... .. *Appellant*

*v.*

LIM AH HOOI ... .. *Respondent.*

### RECORD OF PROCEEDINGS

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No. 6 of 1951.

## ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA IN THE HIGH COURT AT IPOH.

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BETWEEN

NG SEE HEM ... .. *Appellant*  
v.  
LIM AH HOOI ... .. *Respondent.*

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### RECORD OF PROCEEDINGS

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10

No. 1

Plaint.

Summary procedure.

(Sgd.) LIM AH HOOI *Plaintiff.*

In the  
High Court  
at Ipoh.

No. 1.  
Plaint,  
7th March,  
1949.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE HIGH COURT AT IPOH.

Civil Suit No. 22 of 1949.

LIM AH HOOI of 572 Immigration Road, Teluk Anson ... *Plaintiff*  
against

1. NG SEE HEM alias Ng See Han alias Ng See Ham of  
20 16½ mile, Bagan Datoh
2. TOH KOR YAN ... .. *Defendants.*

The above-named Plaintiff states as follows :—

That the Plaintiff is a contractor and land owner residing at 572 Immigration Road, Teluk Anson and the Defendants are landowners living at 16½ mile Bagan Datoh Road, Bagan Datoh.

In the  
High Court  
at Ipoh.

No. 1.  
Plaint,  
7th March,  
1949—  
*continued.*

That at Teluk Anson on the 27th day of October, 1946 the above-named Defendants by their promissory note now overdue promised to pay to the Plaintiff or order the sum of \$60,000/- (Dollars sixty thousand) for value received in cash repayable on demand *vide* copy of the said promissory note attached hereto and marked "A."

That the Defendants have failed and neglected to pay the said sum of \$60,000/- (dollars sixty thousand) in spite of repeated demands.

The Plaintiff prays judgment for the sum of \$60,000/- with interest thereon at the rate of 18% per annum from the date of plaint to date of judgment and thereafter at the rate of 8% per annum from the date of judgment to date of satisfaction and costs. 10

(Sgd.) LIM AH HOOI  
(In Chinese characters).

I, Lim Ah Hooi of Teluk Anson hereby declare that the above statement is true to my knowledge, except as to matters stated on information and belief, and as to those matters I believe it to be true.

Dated at Teluk Anson this 7th March, 1949.

(Sgd.) LIM AH HOOI  
(In Chinese characters).

Stamped with \$60/-  
\$60,000/-

27th October 1946. 20

ON DEMAND we the undersigned Ng See Hem and Toh Kor Yan of Teluk Anson promise to pay to Lim Ah Hooi of Teluk Anson or order the sum of Dollars (sixty thousands only) only for value received in cash with interest thereon at the rate of \$— per every hundred Dollars per mensem.

(Sgd.) NG SEE HEM (in Chinese).  
(Sgd.) TOH KOR YAN.

This is the copy marked "A" referred to in the plaint of Lim Ah Hooi dated the 7th day of March, 1949 in C.S. 22/49.

(Sgd.) J. W. D. AMBROSE,  
*Senior Asst. Registrar* 30  
Supreme Court, Ipoh.

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No. 2.

Statement of Defence of Ng See Hem, First Defendant.

In the High Court at Ipoh.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE HIGH COURT OF IPOH.

Civil Suit No. 22 of 1949.

No. 2.  
Statement of Defence of Ng See Hem, First Defendant, 26th April, 1949.

LIM AH HOOI of 572 Immigration Road, Teluk Anson ... *Plaintiff*  
*vs.*

1. NG SEE HEM alias Ng See Han alias Ng See Ham of  
16½ mile, Bagan Datoh Road, Bagan Datoh

10 2. TOH KOR YAN of Teluk Anson ... .. *Defendants.*

STATEMENT OF DEFENCE OF FIRST DEFENDANT.

NG SEE HEM alias Ng See Han alias Ng See Ham the first Defendant above named states as follows :—

1.—The first Defendant has no knowledge that the Plaintiff is a contractor and landowner but to the best of his knowledge the Plaintiff is a dealer in poultry in the market of Teluk Anson. The first Defendant admits that he is a landowner and resides at 16½ mile, Bagan Datoh Road, Bagan Datoh.

20 2.—The first Defendant denies the execution at Teluk Anson on the 27th day of October 1946 of the promissory note for the sum of \$60,000/- and further denies that he the first Defendant received from the Plaintiff the sum of \$60,000/- being the consideration of the said promissory note.

3.—The first Defendant further states that the signature on the said promissory note purporting and alleged to be the signature of the first Defendant on the said promissory note and marked Exhibit " A " and attached to the Plaint is a forgery.

4.—The first Defendant denies that the Plaintiff made repeated demands as alleged.

30 Wherefore the first Defendant prays that the Plaintiff's action may be dismissed with costs.

(Sgd.) M. S. MAHENDRAN,  
*Solicitor for 1st Defendant.*

(Sgd.) NG SEE HEM  
(In Chinese characters)  
*Signature of 1st Defendant.*

I, NG SEE HEM alias NG SEE HAN alias NG SEE HAM, declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I verily believe the same to be true.

Dated this 26th day of April, 1949.

(Sgd.) NG SEE HEM  
(In Chinese characters).

In the  
High Court  
at Ipoh.

## No. 3.

## Notes of Evidence taken by Hill, J.

No. 3.  
Notes of  
Evidence  
taken by  
Hill, J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE HIGH COURT AT IPOH. Civil Suit No. 22 of 1949.

LIM AH HOOI ... .. Plaintiff  
against

1. NG SEE HEM  
2. TOH KOR YAN ... .. Defendants.

For Plaintiff: S. M. SHARMA.

For Defendant No. 1: M. S. MAHENDRAN. B. K. DAS. C. N. LIM. 10

## NOTES OF EVIDENCE.

Mr. MAHENDRAN applies for adjournment. Notice for inspection on 24th March. On 5th April notice. On 6th April at 5 p.m. copies produced. No. 51 put in. No time to prepare defence. Time given unreasonable. Four Easter Holidays.

Mr. SHARMA: No inspection at any time asked for. Documents are Defendant's not Plaintiff's. Photos not taken when (51) sworn. All in possession of Land Office, Teluk Anson.

Mr. MAHENDRAN—How are we to know documents? Ruled case to proceed. 20

Mr. SHARMA: Only issue whether note forgery or not. Defendant deliberately changed signature when case pending. Photos will show original signatures.

## PLAINTIFF'S EVIDENCE.

## No. 4.

## Evidence of Pakir Mohamed.

Plaintiff's  
Evidence.  
No. 4.  
Pakir  
Mohamed,  
Examina-  
tion.

P.W. 1. PAKIR MOHAMED, *affirmed*.

I am Registration Clerk, Land Office, Teluk Anson. I produce five transfers:—

No. 16532	...	26.4.35	(P. 1)	
No. 28901	...	19.7.39	(P. 2)	30
No. 29655	...	16.9.39	(P. 3)	
No. 30946	...	15.2.40	(P. 4)	
No. 30964	...	49	(P. 5)	

These have been in possession of Collector's Office.

I was present when they were photographed about 6th April.

Commissioner's approval was received on 5th April. 40

Cross-exam-  
ination.

XXND. This is the photographer (Ho Koon Jiak identified). He came between 10 and noon.



## No. 5.

## Evidence of Lim Ah Hooi.

In the  
High Court  
at Ipoh.

Plaintiff's  
Evidence.  
No. 5.  
Lim Ah  
Hooi,  
Examina-  
tion.

P.W. 2. LIM AH HOOI, *affirmed*.

I am the Plaintiff. I claim \$60,000/- on this note. Defendant signed it in my presence. I saw him sign it.

P. 6 (*Note put in, P. 6*).

I also saw other man sign.

I have recovered judgment against other man, 2nd Defendant (identified).

10 No. 1 never denied his signature on the note until case filed.

XEND. I am 47 years old. I have been 20 to 30 years in Teluk Anson. Before Japanese Occupation I dealt in fowls in Teluk Anson. Not now. Licence was transferred to my son. He now does that business. I own land—five pieces. Four are in my name. They are in Immigrant Road, Teluk Anson. Three pieces in Rungkup. 12 acres rubber land. They are worth \$4,000—\$5,000/-.

Cross-exam-  
ination.

20 I acre 2 roods 32 poles is area of piece in Immigrant Road. There are six caveats against it. First entered in respect of agreement made on 31st July, 1946. I had received over \$1,000/-. I have already sold land to him.

I had previous dealings with No. 1 Defendant. Defendant asked me to pay the gift he had to pay to Japanese Government. I lent him \$5,000/-. Another loan from a syndicate of \$2,000/- \$5,000/- was repaid to me in 1943 or 1944. In 1942 he gave notice to the syndicate. I accepted on syndicate's behalf. I replied as instructed by syndicate. I have not got the notice now. I did not use Defendant's signature on notice to forge one on P. 6. When the amount was fully settled he asked for and received back the notice. This was in 1943.

30 I admit I received this letter and sent this reply.  
(*Exs. D. 1 and D. 2.*)

Defendant got back the original in 1943 or 1944. I am not sure.

I know No. 2 for 10 years. He and his wife have gold jewellery. When he signed P. 6 he was worth more than \$100,000/- I did not use him as an accomplice. He admitted the debt.

Formerly I know No. 1 was a rich man. We were good friends. Later he had no money and had to borrow. Because of my help his properties remained intact, but I do not know about that.

I applied for attachment. I got numbers from the office. Defendant told me lands were in his own name.

40 The \$60,000/- was left with Defendant for safe custody. I was afraid of the Ang Bin Hoay Society and left money with him for security.

The two Defendants brought the pro. note to me. I do not know their relationship. Nobody else was present but the three of us.

There is not a word in my plaint that money was given for safe custody,

In the  
High Court  
at Ipoh.

Plaintiff's  
Evidence.

No. 5.

Lim Ah  
Hooi,

Cross-exam-  
ination—  
*continued.*

nor in P. 6. I showed P. 6 to many friends in 1948. This was when No. 1 returned from China and I wanted to demand from him.

I have an account with the Chinese Banking Corporation in Teluk Anson. I think I opened account in 1946—early part. If I had put a big deposit in bank the society would have asked for a bigger contribution. They seemed to know whenever I put in money and made demands on me.

P. 6 got torn as I had it in and out of my pocket and it got wet by rain. One Sawall is a witness of mine. He is a petition writer. Very seldom I got documents prepared by him.

I trusted Defendant, a very good friend of mine and he swore an oath 10 of gratitude. He said even if the note was lost he would repay the money.

Chai Pak Kong is also a witness. He is a dentist. He does not know about this \$60,000/- Defendant told him that he wanted to settle the matter.

Defendant told Sawall he wanted to sell some land.

I saved up the \$60,000/- during the occupation. I used to get British notes. I gave as much as \$25,000/- Japanese for \$1,000/- British. I buried my money in the ground. The society knew I had money.

I have not forged P. 6.

One day I put \$1,000/- in the Bank and that same evening the society 20 asked for money. This was not the only time this happened. I could only dare to put small sums in the bank.

Defendant's conduct has made me very ill. I am worried and despondent. I have not looked at my bank Pass Book or slips since my illness.

Some time this year I had \$30/- odd credit. I can't remember when I paid in money last. I operate my account sometimes.

When I write a cheque I look up my balance.

I reported the Ang Bin Hoay Society to the police on 8th January, 1947. 30 The report was not to create corroborative evidence for the pro. note.

I made 3 or 4 demands on Defendant for payment. One Bong Kee was present. He is dead.

I never reported this matter to the police.

Re-examin-  
ation.

RE-EXAMINATION. I have had fever about two months. Before the war I imported fowls. Mine was a wholesale business. I also did contract work and advanced loans. I did Tongkang business during the occupation. I had to go to Siam and other places. I sold about 30 odd pieces of land just before and after the liberation.

The syndicate had taken over Defendant's coconut land as security 40 for the loan. An agreement was made. Yeow Chow Heng wrote it out.

Defendant and I became very, very friendly after he made the oath over the \$5,000/-. He has two homes, in Teluk Anson and 16½ miles.

Chai Pak Kong was a mutual friend of Defendant and me.

After liberation I became good friends with Sawall

We all knew each other. I had seen Sawall in their company. I would not have entrusted money to Defendant if he was a pauper.

I think he went to China in 1947. He left early part of year and returned at the end. In the High Court at Ipoh.

I understood from Sawall that Defendant wanted to sell all his land. Defendant himself did not tell me that. I became anxious about my money. Sawall and Chai Pak Kong took part in our negotiations. At first Defendant was all right, then he changed. He said he had already paid \$21,000. \$9,000/- in cash and \$12,000/- to the Ang Bin Hoay. Plaintiff's Evidence. No. 5. Lim Ah Hooi, Re-examination -

I refused to agree to \$21,000/- being deducted. I then consulted my solicitor. I tried still to settle. I agreed to settle continued.  
10 for \$39,000/- in cash. I found his land was valued at \$30,000/-—\$40,000/-. Defendant had changed his mind and would not pay. I then filed this action.

Chai Pak Kong gave me the number of his land.

Defendant sold 4 pieces of land.

No. 2 Defendant dealt in rice, sugar, etc. Imported from Sumatra, etc. Two of his big Tongkangs were pirated.

The Ang Bin Hoay was operating at the point of the gun all over Malaya.

I told Defendant No. 1 that I was very worried about the Ang Bin No. 6. Ho Koon Jiak, Examination.  
20 Hoay. He suggested that I should let him have it for safe keeping.

I had nothing to do with asking No. 2 to sign P. 6. No. 1 brought him to my house. They had pro. note ready and signed it in my presence.

None of my cheques has ever been returned by the Bank.

Last week I deposited \$110/- in Court. I did not draw a cheque. I don't keep all my money in the Bank.

There was no suggestion of forgery until after I had filed my suit.

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### No. 6.

#### Evidence of Ho Koon Jiak.

30 P.W. 3. HO KOON JIAK *affirmed*.

I am a photographer in Teluk Anson. On 6th April I went to the Land Office and photographed some documents. I took five photos. I also made enlargements of each of the signatures. I have brought the negatives. These are the negatives and prints (*Ex. P. 7*).

This is a photo enlargement of signatures on pro. note. (*Put in by consent of defence P. 8*).

I have had negatives in my possession till now.

40 XXND. I made enlargements on the 7th April. I did not actually make the enlargements. They were made in my studio by someone not in my pay. Cross-examination.

RE-EXAMINATION. I did not see the enlargements being made. They were the enlargements of what I took. I can say that. Re-examination.

(*Lunch adjournment taken.*)

In the  
High Court  
at Ipoh.

No. 7.

Evidence of Chong Wai Weng.

Plaintiff's  
Evidence.  
No. 7.  
Chong Wai  
Weng,  
Examina-  
tion.

*P.W. 4. CHONG WAI WENG affirmed.*

I am a Government Pensioner. I was Senior Chinese Translator of Labour Office, Ipoh. I served 28 years. I often had to compare handwriting and signatures. That was part of my duties during the whole 28 years. I have given evidence in Court as to handwriting and signatures. I retired a month ago.

I see P. 1 to P. 4 and the signatures thereon and the enlargements. I would say that the signatures on P. 1 to P. 4 are made by the same person 10 who signed P. 6. I add that there is no doubt about that.

The "Ng" is written quickly in "grass" hand, not in script. It is quickly written.

This is how "Ng" is written in script (P. 9). The first letter should *not* be a cross.

In the signatures the first letter is always a cross. The second is more like a "Y." These peculiarities are in all five signatures.

I see now Ex. P. 5 with its enlarged photo. There is a slight difference to the other signatures in one on P. 5. The difference is in the last character. On P. 5 it is a stroke. 20

Enclosures (22) and (50) in the file have same signatures as P. 5. Same change has occurred.

In spite of the difference I say the same person made all the signatures. I have no doubt of that.

Cross-exam-  
ination.

XXND. The signature on P. 8 is in grass script. It is not necessarily fast.

There is no hook to the first character on the others. There is on P. 8. The hook looks accidental.

There is no gap in the second character on P. 8. Three of the others have gaps. 30

In this enlargement (*Ex. D. 4*) there is a downward hook in the long stroke. In P. 8 it is upwards.

Signatures on P. 5 and P. 8 seem to have been written at much same speed.

I do not regard the differences as important: the hook and the gap. I still say they are the same.

Re-examin-  
ation.

RE-EXAMINATION. I do not consider they are of any significance. A slow copied signature can be detected in enlargements. No such indication here.

There are slight variations in every person's signature. 40  
I think the change in the last stroke of the later signatures is deliberate.

## No. 8.

## Evidence of Lim Ah Hooi (Plaintiff)—Recalled.

In the  
High Court  
at Ipoh.

Wednesday, 12th April, 1950.

C.S. 22/49 continued.

Mr. MAHENDRAN asks that Plaintiff be recalled.

*Plaintiff recalled.*

XXND. There is a stamping office at Teluk Anson. I had business in Penang and had P. 6 stamped at Ipoh. I don't know why there is a date under Toh's signature. That is his affair. His signature has faded. It is a long time. He and Ng used different pens.

RE-EXAMINATION. *Declined.*Plaintiff's  
Evidence.  
No. 8.  
Lim Ah  
Hooi,  
Recalled,  
Cross-  
Examina-  
tion.

## No. 9.

## Evidence of A. M. Sawall.

No. 9.  
A. M.  
Sawall,  
Examina-  
tion.P.W. 5. A. M. SAWALL *affirmed.*

I am a Petition Writer and land broker. I live in Teluk Anson since 1946. I know Defendant No. 1. I know Plaintiff. I also know No. 2 Defendant. Known Defendant No. 1 since 1944. I was in charge of a Japanese Kaisha. I met Plaintiff in 1946 and also No. 2 Defendant.

I know Chai Pak Kong. He is a dentist in Teluk Anson. I was friendly with all these people. I met them often.

In February 1949 No. 1 brought me a list of some land he had to sell, about 23 pieces. It was a typed list. He asked me to try and sell them for him quickly. He said he would give me double the normal commission, that is, 5 to 6%. I said I would do my best. I copied out the list.

I saw Chai Pak Kong about the sale. I told him the owner was Defendant No. 1. He said, "Oh, he is going to sell without paying Lim."

I did not then know of any transactions between the parties.

Chai Pak Kong took the list to go and see the Plaintiff. The next morning Plaintiff saw me. He was very cut up and rather annoyed. I told him I would try and settle his debt. I then learned it was \$60,000/-.

I arranged a meeting with No. 1 Defendant at Chai Pak Kong's house. He said he had paid out \$12,000/- to a Society and Plaintiff had taken \$9,000/- or \$10,000/- and that he owed about \$39,000/-.

I reported this to Plaintiff. Plaintiff said he had not authorised him to pay out and had not received any money. Plaintiff was very angry. He threatened to have Defendant arrested for cheating him.

In the  
High Court  
at Ipoh.

Plaintiff's  
Evidence.

No. 9.  
A. M.  
Sawall,  
Examina-  
tion—  
*continued.*

I anticipated trouble and I saw Defendant again 2 or 3 days later. Chai Pak Kong was present. Defendant refused to pay anything as he said Plaintiff had disgraced his name all over the town.

A day or two later I saw Plaintiff again. He said he had consulted a lawyer and that lawyer advised he could not arrest. He was willing to settle for \$39,000/-. I told Plaintiff a forced sale of Defendant's land would fetch \$30,000/- to \$35,000/-. Plaintiff was very depressed.

I again saw Defendant No. 1 with Chai Pak Kong. He then refused to consider anything. He said Plaintiff could do what he liked.

I was asked by Plaintiff to swear an affidavit when he applied for 10 attachment.

Cross-  
examina-  
tion.

XXND. I am 53 years old. I have been 30 years in Malaya. I have no letter from Defendant No. 1 with his signature. I am a good friend of the Plaintiff. There is no share of the \$60,000/- for me. I do not know what Toh's share is, if any, or Chai Pak Kong's.

I know nothing of the execution of P. 6. I did not type the plaint in this case. I have done a lot of work for the Plaintiff as a Petition Writer.

I know No. 1 Defendant owns over 200 acres of coconut land. I do not agree they are worth \$120,000/-. An acre is now worth \$1,200/-.

Defendant would not sign the list. Plaintiff never gave me any list 20 of Defendant's lands. Defendant came to me with one of his own men. I have done a lot of work for Chai Pak Kong. Defendant said he wanted to go to China. He said his father had property in Hongkong and he could live there. He wanted to go away quickly.

I had no written agreement with Defendant No. 1.

Chai Pak Kong is a very good friend of the Plaintiff. Plaintiff would settle for \$39,000/- to save trouble of going to Court.

Plaintiff gave me the affidavit in Ipoh.

I do not know who prepared it or gave the instructions. I did not. They were all given by Plaintiff. I was not asked to prepare my affidavit. 30 I read it before swearing. I cannot now recollect the exact wording. It said that Defendant had asked me to sell all his property. I don't remember if it mentioned the list Defendant gave me or had any reference to commission. It was done hurriedly.

This is the affidavit (D. 5).

Plaintiff did not tell me name of lawyer.

Chai Pak Kong and I saw Defendant in Chai's house. This was in February or March 1949. My evidence is *not* false.

Re-examin-  
ation

RE-EXAMINATION. I knew Defendant before I knew Plaintiff. I met 40 Plaintiff through Defendant.

It is a false suggestion that I have any share to get.

Price of land in 1946 lower than now. It was as low as \$100/- an acre. Small pieces are not as valuable as one big estate. Defendant owns a lot of small pieces, scattered. Defendant said his father had house property in Kowloon, I think.

## No. 10.

## Evidence of Chai Pak Kong

In the  
High Court  
at Ipoh.Plaintiff's  
Evidence.  
No. 10.  
Chai Pak  
Kong,  
Examina-  
tion.

P.W. 6. CHAI PAK KONG, *affirmed*.

I am a dentist and dealer in patent medicines. I live in Teluk Anson. I have been there 20 years.

I know Plaintiff. I know Defendant No. 1. Both about 10 years. I know Sawall for 3 or 4 years. His place is just behind my shop.

10 Early last year Sawall came to me about the sale of Defendant's land. He had a list. He asked if I wanted to buy. I told him that Defendant owed my friend some money. I referred to Plaintiff. The list was on 4 pieces of paper. I took them and gave them to Plaintiff and told him what I had heard. Plaintiff was angry. He said Defendant had not paid what he owed.

Later I saw the Defendant. I called him to my place. Sawall was present. I told Defendant he ought to pay his debt to Plaintiff. He said he did not owe so much, not \$60,000/-, and that if he had not taken the money the Ang Bin Hoay would. He said he had paid Ang Bin Hoay \$12,000/- and that Plaintiff received \$9,000/- to \$10,000/-.

20 I told this to Plaintiff. He said he had not asked him to pay out any money and had not taken \$9,000/-. He was angry. I told Plaintiff I would approach Defendant again with Sawall.

I saw Defendant and told him Plaintiff denied receiving any money. He said not to trouble in the matter, he would know what to do. He told me not to meddle.

Some time later I saw Plaintiff again. He said he would take up the matter with Government.

I saw Defendant three times with Sawall. More often when I was alone.

At one time the Plaintiff agreed to accept \$39,000/-. I advised him to do so.

30 When I saw Defendant again he would not agree to pay that sum.

XXND. I do not know Defendant's lands. I know his house in Javanese Road. It is worth \$10,000/- odd. I know he had about 20 odd lots of coconut land. Cross-examina-  
tion.

Plaintiff's son now deals in fowls.

I have stated the true facts.

I keep no diary.

I knew of the debt at end of 1948. The Plaintiff told me. He showed me a pro note for \$60,000/-. It was not torn. P. 6 is that note. I did not notice if it was pasted at the back.

40 I know Defendant No. 2. He ran Tongkangs in 1946 and was in black market. I don't think he had any property in 1949. He had been pirated. I don't think he is worth anything now.

I swore an affidavit in March 1949. This is it. (*Ex. D. 6*). I gave instructions to a European lawyer. I spoke to the lawyer's clerk. Sawall

In the  
High Court  
at Ipoh.

Plaintiff's  
Evidence.  
No. 10.  
Chai Pak  
Kong,  
Cross-exam-  
ination—  
*continued.*

No. 11.  
Yeow Lai  
Yin,  
Examina-  
tion.

Cross-exam-  
ination.

Re-examin-  
ation.

did the same. Clerk read affidavits over to us. Plaintiff was also there and gave instructions. His affidavit was prepared. We went to office and had them sworn. We were in no hurry.

I have no share in the case if successful.

There is no conspiracy.

My evidence is true.

RE-EXAMINATION. *Declined.*

---

No. 11.

Evidence of Yeow Lai Yin.

P.W. 7. YEOW LAI YIN, *affirmed.*

10

I am a teacher in Anglo-Chinese School at Teluk Anson. I know Plaintiff for 10 years or so and also Defendant.

I know of one deal they had during the occupation. That was in 1942 when the Japanese imposed the donation. Defendant had not got his share and he borrowed \$5,000/- from Plaintiff.

I was then a Petition Writer. Both of them came to me. Defendant gave as security a lease on some coconut lands. I drafted the agreement. Defendant signed it in my presence. The \$5,000/- was paid in front of me.

I did not know Plaintiff's business.

XXND. I was pressed into service by the Chinese Association. I received documents for assessment. Mr. K. C. Chan was President. I don't remember any deal over \$2,000/- I kept no copies. That was the only case I had.

RE-EXAMINATION. There is no possibility of my making a mistake in the amount.

*Case for Plaintiff.*

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DEFENDANTS' EVIDENCE.

No. 12.

Evidence of Ng See Hem.

Defendant's  
Evidence.  
No. 12.  
Ng. See  
Hem,  
Examina-  
tion.

D.W. 1. NG SEE HEM, *affirmed.*

30

I am Defendant No. 1. I live at 16½ mile Teluk Anson. I also have a house in Teluk Anson. I am 45 years old. I am a coconut planter. My father was Ng Ah Siew. I am his only son. He died in 1941. I inherited all his property.

I knew the Plaintiff.



The Japanese made a forced levy during the occupation. Coconut and rubber had dropped in value. I approached Leong Hak of Teluk Anson for a loan of \$2,000/-. He got hold of three persons. One was Plaintiff, one was Ah Chee and Hooi Song Yeng. The four of them put up \$500/- each. I executed 4 pro notes for \$500/- each. They got the benefit of the coconuts from my plantation. I have about 200 odd acres of coconut land.

I have houses in Teluk Anson. In 1946 my property was worth \$100,000/-. It is now worth very much more.

I also own property in Hongkong valued \$27,000/- (Hongkong). I went to Hongkong and was granted Letters of Administration in 1947. (L.A. tendered—D. 7).

I repaid the \$2,000/- and got my pro notes back.

I had to send the Plaintiff a notice about the coconut land (D. 1). I referred to Plaintiff as being evasive. From Plaintiff I received Ex. D. 3.

It was after this in 1943 that I repaid the loan.

Plaintiff and I severed our friendship after that. I never swore an oath of gratitude to him.

After this I had no more financial dealings with him.

The signature on P. 6 is not mine. I had nothing to do with P. 6. \$60,000/- was never given to me by Plaintiff for safe custody.

I first knew of existence of P. 6 on 23rd March, 1949, when I received the summons at Teluk Anson Court where I had gone about my last assessment. (Letter tendered—D. 8.) I was surprised to receive plaint. I then retained you in Ipoh. At no time had Plaintiff served any notice of demand. At no time was I approached by Plaintiff Chai Pak Kong or Sawall to pay \$60,000/-.

I do not know Sawall. He has done no work for me. I do not know English and I do not know what he said in evidence. I never gave him a list of properties I wanted to sell. I never promised him double commission for a quick sale.

I do not know Chai Pak Kong. I have never been to his house.

I do not know Defendant No. 2.

I did not sign P. 6 jointly with him.

I never told Sawall and Chai Pak Kong that I was selling my property and going to China.

I owe nobody any money.

I have never received any money for safe custody.

I had my business registered and this is the certificate (Ex. D. 9). That is my signature on it.

In 1943 I had an agreement with an oil mill. This is the agreement with my signature (Ex. D. 10). This is a photo of my signature (Ex. D. 11).

I filed an affidavit of documents on 5th April, 1949, and a Statement of Defence. My signature is on both. This is a photo of my signature on the Statement of Defence. (Ex. D. 12).

Those are my signatures on P. 1 to P. 4. They differ from the one on P. 6.

In the High Court at Ipoh.

Defendants Evidence.

No. 12.

Ng See Hem,

Examination—

continued.

In the High Court at Ipoh. In March, 1949, I sold a piece of land on the Bernam River. That transfer is P. 5. The land was 8 acres. I did not sell to defraud Plaintiff. I sold because land was being eroded. That is my signature on P. 5.

Defendant's Evidence. I have not purposely changed my signature on it or on my Statement of Defence.

No. 12. I did not get back from Plaintiff the original of D. 1.

Ng See Hem, Examination— I deny Plaintiff's claim and say P. 6 is a forgery.

tion—  
continued.

(Adjourned for lunch.)

Continued.

I paid \$2,000/- to the Japanese. This is the receipt (*Ex. D. 13*). 10

Cross-examination.

XEND. Some of the land I inherited from my father. I would get \$800-\$900 a month income. In 1948 I returned \$8,000/- as my income for the year, about. I have not yet received a demand.

I knew I had to prove that signature on P. 6 is not mine and to do so by comparison with signatures. I knew there were some on transfers. I did not get any of them out. I had no time.

I signed documents when I applied for Letters of Administration. I have not got those signatures out.

I have applied for licences to build house. I have not obtained those papers with my signatures. 20

In 1947 I went to China. I have a passport. I had to apply in writing. I did not think of getting it.

I obtained a ration card. I had to apply. I did not get that signature.

I have an identity card. I signed a receipt. Did not think I should get it.

I did not tell my counsel of the four \$500/- pro. notes. They are not an afterthought.

I thought Plaintiffs and others knew the numbers of my titles. They could have got them from the office. Not because I gave a list to Sawall.

On 24th March, 1949, I swore an affidavit for unconditional leave to defend. In it I said I did not know Sawall. My lawyer prepared it (12 in file). 30

I also see (10), (16) and my Statement of Defence (50), all signed by me. That is my signature on Ex. P. 5. All the signatures have a shortened form for the last character.

That shortened form does not appear on P. 1 to P. 4.

I did not tell people I had inherited a house in Hongkong.

Plaintiff and others have been plotting for several years. They are terrible people. But not the teacher. He has forgotten. The sum was \$500/- not \$5,000/-. 40

I did not tell my counsel they were sharing the spoils.

Re-examination.

RE-EXAMINATION. From time to time my signatures vary. I signed P. 5 before I got summons on 23rd March, 1949.

## No. 13.

## Evidence of Seah Chap.

In the  
High Court  
at Ipoh.*D.W. 2 SEAH CHAP, affirmed.*

I am Manager of Overseas Chinese Bank, Teluk Anson.  
I know Plaintiff. He opened an account on 6th October, 1945. He is down as a poultry seller. He had \$10/- credit at end of year. At end of 1946 he had \$30/-.

Defendant's  
Evidence.  
No. 13.  
Seah Chap,  
Examina-  
tion.

10 My ledgers were kept in the regular course of business.  
As far as I know my bank does not disclose client's accounts.  
These are the extracts from our ledgers (*Ex. D. 14*).  
Plaintiff did not pay in a sum of \$1,000/- in 1945 or 1946.

XXND. I often scrutinise handwriting on cheque.  
P. 1 to P. 4 and D. 6 and D. 4 are photo enlargements of signatures.  
P. 1 is totally different.  
P. 2, 3 and 4 appear the same.  
P. 6 and D. 4 are signed by the same person.

Cross-exam-  
ination.

RE-EXAMINATION. I am not a handwriting expert and was not summoned as such.

Re-examin-  
ation.

20 I have not seen these exhibits before.  
D. 4 and P. 8 seem to me to be identical.

## No. 14.

## Evidence of Ho Tong.

No. 14.  
Ho Tong,  
Examina-  
tion.*D.W. 3 HO TONG, affirmed.*

I am a photographer in Modern Studio. I took a photo of P. 6. I have the negative.

I also made an enlargement.

I took D. 4 and have the negative.

I took photos of D. 10 and D. 11 and have the negatives and the negative of D. 12.

30 XXND. P. 8 and D. 4 were taken by me.

Cross-  
examina-  
tion.*Adjourned to 11 a.m. on 17.4.50.*

In the  
High Court  
at Ipoh.

## No. 15.

## Evidence of Ng See Hem (Defendant)—Recalled.

Defendant's  
Evidence.

Monday, 17th April, 1950.

No. 15. C.S. 22/49 *continued*.

Ng See  
Hem,  
Recalled,  
Cross-  
examina-  
tion.

Mr. SHARMA asks for Defendant to be recalled.

Mr. B. K. DAS now appearing with others for No. 1 Defendant.

*Defendant No. 1 recalled—re-affirmed.*

XXND. I have an account with the Chinese Bank. They have my specimen signature.

Re-examin-  
ation.

RE-EXAMINATION. Transfer Presentation 1049 of 1948 is signed by 10 me. (*Put in for identification.*) It was signed on 7th April, 1948.

No. 16.  
To Wat Ah,  
Examina-  
tion.

## No. 16.

## Evidence of To Wat Ah

*D.W. 4 TO WAT AH, affirmed.*

I am Chief Clerk at Teluk Anson Land Office. I produce Transfer Presentation No. 1049/48. It was signed on 7th April, 1948, and presented on 8th April, 1948. It has been in Land Office since. (*Ex. D. 15.*)

XXND. *Declined.*

No. 17.  
Puran  
Singh  
Mamak,  
Examina-  
tion.

## No. 17.

## Evidence of Puran Singh Mamak.

20

*D.W. 5 PURAN SINGH MAMAK, affirmed.*

I live at Alor Star and am 40 years old. I came to Malaya in 1935. Since then I have been professional Government expert. I bought a course of instruction from International Criminalological School, Washington. I have been consulted regarding disputed documents by advocates, etc. I have appeared as an expert witness in Courts of Kedah and Penang, Ipoh and many District Courts.

I have had to deal with Chinese documents in 8 cases.

Osborne is considered an authority on handwriting.

A man's handwriting changes as years go by.

I have seen P. 1 to P. 6. I have seen enlarged photos D. 4 and signature on D. 9, D. 10 and D. 11.

30

I have made a comparative study of P. 6 with D. 9, D. 10 and D. 12.

I find similarities between D. 6 and others as follows :—

1. General appearance of the writing.
2. High and narrow sizing.

I have compared them in enlargements which I made on 10th March from the negatives.

I find differences. In my opinion person who wrote P. 6 did not write the others. My reasons are as follows :—

1. P. 6 is written slowly, carefully with a degree of legibility and gracefulness.

10 I produce a report which I have written (*Ex. D. 16*).

These are the enlarged photos on which my report is based.

XXND. I have not visited U.S.A. I have forgotten what fee I paid for the correspondence course. It was about \$50/-. Course was in English. I went to school in India. I matriculated.

I left my degree in Alor Star.

I do not know Chinese.

I was asked to give evidence on 8th April. I was in Court on 11th April. I was not subpoenaed.

I did not take photographs myself.

20 I last gave evidence in Penang in 1948 in a \$40,000/- Pro. Note case. Plaintiff called me. A Chinese Clerk gave evidence. My evidence was not accepted. In this case I am being paid \$150/- a day. Been here five days.

I have never heard of M. Gurin.

Since war I have given evidence twice in Supreme Court. This is one.

P. 1 is slow and careful, but not graceful. P. 8 is more graceful. I judge from general appearance.

RE-EXAMINATION. *Declined.*

*Case for defence.*

---

### No. 18.

30

### Addresses of Mr. Das and Mr. Sharma.

Mr. DAS addresses : Unusual case of Plaintiff's. Why no security ? Mutual trust. No. 2 Defendant—why ? Deposit, why note ? Rain on note ? Stamping in Ipoh. Consideration in issue. British currency \$80,000/- Bank account. Teacher may be mistaken. How did dentist know ? Affidavits. No. 2 not called. P. 268-328 *re* signature. Weng no expert. Mamak's shows reasoning and D. 17—signature. This is practised forgery. P. 282 Osborne.

Mr. SHARMA : Only issue signature. Adolph Beck. Woodroffe Supplement 55 p. 54. 1933 A.I.R. Patna 559. Defendant's documents in  
40 own possession. Bank.

Judgment reserved.

(Sgd.) R. D. R. HILL.

In the  
High Court  
at Ipoh.

Defendant's  
Evidence.

No. 17.

Puran  
Singh  
Mamak,  
Examina-  
tion—  
*continued.*

Cross-exam-  
ination.

No. 18.  
Addresses of  
Mr. Das and  
Mr. Sharma.

No. 19.

Judgment of Hill, J.

In the High Court at Ipoh.

No. 19. Judgment of Hill, J., 18th May, 1950.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA. IN THE HIGH COURT AT IPOH.

Civil Suit No. 22 of 1949.

LIM AH HOOI ... .. Plaintiff against

1. NG SEE HEM 2. TOH KOR YAN... .. Defendants. 10

JUDGMENT.

The Plaintiff's claim for \$60,000/- was based on an overdue promissory note dated 27th October, 1946. The 2nd Defendant submitted to judgment and took no further part in the proceedings, being called by neither side though he was in Court during part of the hearing.

The defence of the 1st Defendant was that the promissory note was a forgery and that he had not received \$60,000/- from the Plaintiff.

Realising the great importance of this case to the parties, for in the result it is likely that the loser will face ruin, I have given very full and careful consideration to the evidence and to the exhibits and I have spent many hours examining and comparing the signature on the promissory note with the numerous undisputed signatures of the Defendant produced by both parties. 20

It is probably convenient to deal first with this aspect of the case. Whether there has been evidence of handwriting experts or not, it is the duty of the Court in deciding an issue of this nature to use its own eyes. This I have done. Moreover, I am quite unable to regard any witness called in this case as an expert in handwriting, but the photographs and enlargements produced have, of course, been of great assistance.

In his report the defence witness Mamak points out certain peculiarities in the signature on the promissory note and because of them expresses the opinion that this signature is a forgery. 30

On a prolonged scrutiny of all the Defendant's signatures before me, I find reproduced all the above peculiarities and several others. All these signatures are spread over a period of years and it seems clear that while in the main, with just one or two exceptions, the form or flow of the Defendant's signature remained constant, there are numerous trifling variations in nearly all of them, some of which, as I have pointed out above, appear in the signature of the promissory note.

Some of these variations are no doubt accounted for by the mere passage of time, others by the use of a different type of nib, by the speed of the writing. by the position of the writer when signing and so on. But in my 40

opinion there are just as good grounds for saying that many of the Defendant's undisputed signatures are forgeries, as did the Bank Manager from Teluk Anson, as there are for saying that the promissory note signature is a forgery.

I do not propose to embark on a detailed survey of all the characteristics, peculiarities and differences I have observed in the numerous signatures examined. I think it is sufficient for me to say on the question as to whether the promissory note signature is a forgery or not that, though I cannot rule out the possibility of it being a forgery, I am quite unable to  
10 say that it is one from my detailed examination of all the signatures.

I have therefore very carefully to consider the Plaintiff's evidence and that of his witnesses. As described by Mr. Das, who appeared for the Defendant on the last morning of the hearing, the Plaintiff's story is an unusual one, so much so that in normal times and circumstances one would be inclined to reject it out of hand. But for too long now conditions in this country have been far from normal and it is in the light of the abnormal conditions prevailing at the time that the Plaintiff's case must be considered.

He tells of demands being made on him first by the Japanese and then  
20 by what was known as the Ang Bin Hoay Society to such an extent until he felt that to deposit his money in his bank was unwise and that the best thing to do was secretly to give the bulk of it, amounting to \$60,000/-, to the Defendant for safe keeping.

According to the Plaintiff it was the 1st Defendant who brought Toh Kor Yan, the 2nd Defendant, into the transaction as a signatory to the note. There were no witnesses to the note.

Both parties admit a previous transaction involving a loan by Plaintiff and three others of \$2,000/- to the Defendant. In addition to this loan the Plaintiff gave evidence of a further loan of \$5,000/- by him alone. This  
30 transaction was denied by the Defendant. Plaintiff's witness Yeow Lai Yin, who spoke in English, seemed in no doubt whatever that such a loan was made. He said it was the only case he had as a Petition Writer. If so he should certainly remember all about it. This witness impressed me favourably and I am inclined to believe him.

Early in 1949, before this plaint was filed, the Plaintiff's witnesses Sawall and Chai Pak Kong came into the picture. They claim mutual friendship with Plaintiff and Defendant and tell a story of meetings and discussions with the parties with a view to settlement.

Mr. Das stressed two apparent discrepancies in their evidence and the  
40 Plaintiff's which he urged indicated that the Plaintiff's case was a conspiracy.

The first related to Chai Pak Kong's knowledge of the \$60,000/- loan. The Plaintiff said that Chai Pak Kong did not know about this \$60,000/- yet when Sawall went to Chai Pak Kong with a list of Defendant's property for sale, Chai Pak Kong is stated to have said that Defendant owed the Plaintiff money and that he was going to sell without paying him.

I think this discrepancy is more apparent than real. I understood the Plaintiff to mean that Chai Pak Kong did not know of the \$60,000/- at the

In the  
High Court  
at Ipoh.

No. 19.  
Judgment  
of Hill, J.,  
18th May,  
1950—  
*continued.*

In the  
High Court  
at Ipoh.

No. 19.  
Judgment  
of Hill, J.,  
18th May,  
1950—  
*continued.*

time of the transaction. If Plaintiff's story was true the whole object was secrecy, but it would be entirely consistent with Plaintiff and Chai Pak Kong being on friendly terms for the former to tell his dentist friend that Defendant owed him money.

The second discrepancy stressed by Mr. Das concerned the affidavits sworn to by Sawall and Chai Pak Kong relating to Plaintiff's proceedings for attachment. Their recollection of the preparation of these affidavits is at variance. It would, I feel, be unfair and unsafe to place Mr. Das' construction on such a discrepancy. It can be argued with equal force that it demonstrates that Plaintiff's case is not a fabricated one. And, certainly, 10  
persons of the intelligence of the Plaintiff and his witnesses should have been able to make a better job of it if they had conspired together to defraud the Defendant.

After due consideration I have come to the decision to accept the evidence of the Plaintiff and his witnesses. I find as a fact that he did hand over \$60,000/- to the Defendant and that the Defendant did sign the promissory note for this sum.

There will therefore be judgment for the Plaintiff for \$60,000/- and costs.

(Sgd.) R. D. R. HILL,  
*Judge,*

*Federation of Malaya.*

20

Ipoh, 18th May, 1950.

No. 20.  
Decree,  
18th May,  
1950.

No. 20.

Decree.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE HIGH COURT AT IPOH.

Civil Suit No. 22 of 1949.

Between

LIM AH HOOL, of 572, Immigration Road, Teluk Anson ... *Plaintiff*  
and

NG SEE HEM, of 16½ mile, Bagan Datoh Road, Teluk Anson *Defendant.*

Before the Honourable Mr. Justice R. D. R. HILL.

This 18th day of May, 1950.

In Open Court. 30

ORDER.

This suit coming on for hearing before the Honourable Mr. Justice R. D. R. Hill, on the 11th, 12th and 17th days of April 1950, in the presence of Mr. S. M. Sharma of Counsel for the Plaintiff above-named and Messrs. M. S. Mahendran, B. K. Das, and C. N. Lim of Counsel for the Defendant and the Court having reserved Judgment :—



AND this suit coming on for delivery of judgment this day :  
 IT IS ORDERED THAT the Defendant pay to the Plaintiff the sum of dollars sixty thousand (\$60,000/-) only with interest thereon at 18 per cent. per annum from the 7th day of March 1949 up to the date hereof and thereafter at 8 per centum per annum on the decretal amount till satisfaction.

AND IT IS ORDERED that the Plaintiff's costs of this suit between party and party as taxed by the proper Officer of this Court be paid by the Defendant to the Plaintiff.

Given under my hand and seal of the Court this 18th day of May 1950.

10 (L.S.)

(Sgd.) S. S. GILL,  
*Ag. Assistant Registrar,  
 Supreme Court, Ipoh.*

In the High Court at Ipoh.  
 No. 20.  
 Decree,  
 18th May, 1950—  
*continued.*

No. 21.

Notice of Appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
 IN THE COURT OF APPEAL AT KUALA LUMPUR.

Civil Appeal No. of 1950.

Between

NG SEE HEM, of 16½ mile, Bagan Datoh Road, Teluk Anson *Appellant*

20 LIM AH HOOI, 572 Immigration Road, Teluk Anson... *Respondent.*

In the Court of Appeal at Kuala Lumpur.  
 No. 21.  
 Notice of Appeal,  
 18th May, 1950.

In the Matter of High Court at Ipoh Civil Suit No. 22 of 1949.

Between

LIM AH HOOI, 572 Immigration Road, Teluk Anson... *Plaintiff*

1. NG SEE HEM, of 16½ mile, Bagan Datoh Road, Teluk Anson  
 2. TOH KOR YAN, of Teluk Anson ... *Defendants.*

NOTICE OF APPEAL.

30 TAKE NOTICE that Ng. See Hem, the Appellant above-named, being dissatisfied with the decision of the Honourable Mr. Justice R. D. R. Hill, given at Ipoh on the 18th day of May, 1950, appeals to the Court of Appeal against the whole of the said decision.

Dated this 18th day of May, 1950.

(Sgd.) M. S. MAHENDRAN,  
*Solicitor for the Appellant.*

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 21.  
Notice of  
Appeal,  
18th May,  
1950—  
*continued.*

No. 22.  
Memo-  
randum of  
Appeal,  
5th June,  
1950.

To :

The Assistant Registrar, Supreme Court, Ipoh,  
and to :

Lim Ah Hoo or his Solicitor S. M. Sharma, Esq., Ipoh.

The address for service of the Appellant is c/o Mr. M. S. Mahendran of  
No. 11 Hale Street, Ipoh.

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No. 22.

Memorandum of Appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE COURT OF APPEAL AT KUALA LUMPUR.

10

Civil Appeal No. of 1950.

Between

Ng See Hem, of 16½ mile, Bagan Datoh Road, Teluk Anson  
*Defendant-Appellant*  
and  
LIM AH HOOI, 572 Immigration Road, Teluk Anson *Plaintiff-Respondent.*

(In the Matter of High Court at Ipoh Civil Suit No. 22 of 1949).

Between

LIM AH HOOI, 572 Immigration Road, Teluk Anson ... *Plaintiff*  
and

1. NG SEE HEM, of 16½ mile, Bagan Datoh Road, Teluk Anson  
2. TOH KOR YAN, of Teluk Anson ... *Defendants.* 20

MEMORANDUM OF APPEAL.

Ng See Hem, the Appellant above-named, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice R. D. R. Hill given at Ipoh on the 18th day of May, 1950, on the following grounds :

1.—The learned Trial Judge should have held that the Defendant-Appellant established that the signature on the Promissory Note (*Ex. P. 6*) alleged to be his was in fact a forgery.

2.—In the alternative, the learned Trial Judge should have found that the Plaintiff-Respondent did not establish that the signature on the said **30** Promissory Note (*Ex. P. 6*) was that of the Defendant-Appellant.

- 3.—The learned Trial Judge, having found that the story of the Plaintiff-Respondent was an unusual one and that in normal times and circumstances he would have been inclined to reject it out of hand, was in error in accepting the same.
4. (i) The evidence of the Plaintiff-Respondent as to the signing of the said Promissory Note (*Ex. P. 6*) by the Defendant-Appellant was not corroborated.
- 10 (ii) The learned Trial Judge failed to draw any inference unfavourable to the case of the Plaintiff-Respondent by reason of the fact that Toh Kor Yan the second Defendant was not called as a witness by the Plaintiff-Respondent and his absence from the witness box was not explained.
5. (i) The evidence of the Plaintiff-Respondent as to the alleged demands for money by the Society called the Ang Bin Hoay Society was vague and unsatisfactory and was in no way corroborated.
- (ii) The learned Trial Judge was in error in finding that the Plaintiff-Respondent had deposed that the Japanese had made demands from the Plaintiff-Respondent for money.
- 20 (iii) The evidence of the Plaintiff-Respondent as to his payment into the Bank of \$1,000/- in connection with the demand for money by the said society "that same evening" was vague and was not supported by the evidence of Seah Chap (*D.W. 2*).
- (iv) The alleged report to the Police by the Plaintiff-Respondent on the 8th January 1947 was not produced in evidence, and no explanation was given by the Plaintiff-Respondent why he made such a report after he had—as he alleged—parted with the possession of the notes he had previously kept buried.
- 30 6. (i) The evidence of the Plaintiff-Respondent that he had saved up and had \$60,000/- "in British notes" in October 1946 was improbable in the circumstances of the case, and should not have been accepted by the learned Trial Judge.
- (ii) The evidence of the Plaintiff-Respondent that he handed over these Notes to the Defendant-Appellant in return for the Promissory Note (*Ex. P. 6*) without security was improbable in the circumstances of the case, and should not have been accepted by the learned Trial Judge.
- 40 7. (i) No evidence was given by the Plaintiff-Respondent indicating any reason why the two Defendants should have brought the said Promissory Note (*Ex. P. 6*) to him in the circumstances of this case, and the evidence that they did so was improbable and was denied by the Defendant-Appellant, and should not have been accepted by the learned Trial Judge.

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In the  
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No. 22.  
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randum of  
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*continued.*

- (ii) The evidence of the Plaintiff-Respondent that the Defendant No. 2 signed the said Promissory Note (*Ex. P. 6*) without any approach to him by the Plaintiff-Respondent was improbable, and should not have been accepted by the learned Trial Judge.
- (iii) No reason was given by the Plaintiff-Respondent why the second Defendant should have made himself liable to him for the sum of \$60,000/-.
8. (i) The implication from the evidence of the Plaintiff-Respondent that he would not have entrusted money to the Defendant-Appellant if he were a pauper is that the Plaintiff-Respondent entrusted the money to him because he was considered by the Plaintiff-Respondent to be financially sound. The Learned Trial Judge failed to observe the inconsistency between this evidence of the Plaintiff-Respondent and his earlier evidence that formerly the Defendant-Appellant was a rich man but that it was only because of the help of the Plaintiff-Respondent that the Defendant-Appellant was able to keep his properties intact. 10
- (ii) In connection with the keeping intact the properties of the Defendant-Appellant the evidence of the Plaintiff-Respondent as regards financial assistance to the Defendant-Appellant confined itself to two loans, one alleged to be for the sum of \$5,000/- and the other alleged to be for the sum of \$2,000/-. 20
9. (i) The evidence of the Plaintiff-Respondent that the Defendant-Appellant asked for and received back the original of the Exhibit D. 1 was improbable and was denied by the Defendant-Appellant, and should not have been accepted by the learned Trial Judge.
- (ii) The learned Trial Judge should have drawn from the denial by the Plaintiff-Respondent of the possession of the document (*Ex. D. 1*) bearing the signature of the Defendant-Appellant an inference adverse to the case of the Plaintiff-Respondent. 30
10. The Plaintiff-Respondent deposed that he had shown the said Promissory Note (*Ex. P. 6*) to many friends in 1948, but the only witness called by the Plaintiff-Respondent who had seen the said Promissory Note was Chai Pak Kong (*P.W. 6*) who stated that he saw the Promissory Note at the end of the year 1948.
11. The stamping of the said Promissory Note (*Ex. P. 6*) in Ipoh is consistent with a desire by the Plaintiff-Respondent that the existence of the document should not be known at the date on which it was stamped, in Teluk Anson where he and the Defendant Appellant both resided. 40
12. (i) The witnesses called by the Plaintiff-Respondent namely A. M. Sawall (*P.W. 5*) and Chai Pak Kong (*P.W. 6*) gave evidence of a

nature which should have been subjected to critical examination by the learned Trial Judge.

(ii) The learned Trial Judge should have rejected the evidence of the said two witnesses.

(iii) The witness Sawall (*P.W. 5*) did not depose that he knew the witness Chai Pak Kong (*P.W. 6*) to be a man of substance or in any way to be a likely purchaser of the property of the Defendant-Appellant.

10

(iv) The witness Chai Pak Kong (*P.W. 6*) deposed that he gave to the Plaintiff-Respondent the list on 4 pieces of paper which he alleged he received from Sawall (*P.W. 5*): The Plaintiff-Respondent gives no evidence as to the receipt of this list and the same was never produced in evidence by any one.

(v) (a) The witnesses Sawall (*P.W. 5*) and Chai Pak Kong (*P.W. 6*) both depose that the Defendant-Appellant said he had paid out \$12,000/- to a Society and that the Plaintiff-Respondent had taken \$9—\$10,000/-.

(b) The witness Chai Pak Kong (*P.W. 6*) deposes that he so informed the Plaintiff-Respondent.

20

(c) The Plaintiff-Respondent deposes that the Defendant-Appellant said (either to Sawall or to Chai Pak Kong) that he had already paid \$21,000—\$9,000 in cash and \$12,000 to the Ang Bin Hoay.

(vi) (a) The witness Sawall (*P.W. 5*) deposed that upon his informing Chai Pak Kong (*P.W. 6*) that the Defendant-Appellant intended to sell certain properties the latter said “ Oh, “ he is going to sell without paying Lim ” which remark was improbable in the circumstances of the case.

30

(b) The witness Chai Pak Kong (*P.W. 6*) when giving evidence does not support the evidence in this respect of the witness Sawall (*P.W. 5*).

(c) The witness Chai Pak Kong (*P.W. 6*) deposes that the Plaintiff-Respondent, when he told him of the alleged intention of the Defendant-Appellant to sell his lands informed him that the Defendant-Appellant had not paid what he owed ; whereas according to the witness Sawall (*P.W. 5*) the said Chai Pak Kong (*P.W. 6*) was already aware of this fact.

40

(vii) (a) The learned Trial Judge did not give sufficient weight to the discrepancy between the evidence of the witness Sawall (*P.W. 5*) and Chai Pak Kong (*P.W. 6*) as to the preparation of the affidavits mentioned by them in their evidence.

(b) The learned Trial Judge should have held that the witness Sawall (*P.W. 5*) was giving evidence which he knew to be false when he stated that the Plaintiff-Respondent gave him the affidavit in Ipoh and that he did not know who prepared it

In the  
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*continued.*

or gave the instructions, or alternatively that the witness Chai Pak Kong (*P.W. 5*) was giving evidence which he knew to be false when he deposed that the witness Sawall (*P.W. 5*) gave instructions to a European lawyer through a lawyer's clerk and that the Plaintiff-Respondent was there also.

Dated this 5th day of June 1950.

(Sgd.) M. S. MAHENDRAN,  
*Solicitor for the Defendant-Appellant.*

To :  
The Assistant Registrar, Supreme Court, Ipoh, 10  
and to :  
Lim Ah Hooi or his Solicitor S. M. Sharma, Esq., Ipoh.  
The address for service of the Defendant-Appellant is c/o Mr. M. S. Mahendran of No. 11, Hale Street, Ipoh.

No. 23.  
Notes of  
Argument  
of Counsel  
taken by  
Pretheroe,  
Ag. C.J.,  
24th July,  
1950.

**No. 23.**

**Notes of Argument of Counsel taken by Pretheroe Ag. C.J.**

Federation of Malaya Civil Appeal No. 12 of 1950.

NG SEE HEM	...	...	...	...	...	...	...	<i>Appellant</i>
			against					
LIM AH HOOI	...	...	...	...	...	...	...	<i>Respondent.</i>

24th July, 1950 (at Ipoh). 20

COR. PRETHEROE Ag. C.J. ; THOMSON & RUSSELL, JJ.  
SHEARN (Mahendran with him) for Appellant.  
SHARMA for Respondent.

SHEARN.

No defence by second Defendant . . . . judgment by default in his case.

Onus was on Plaintiff to prove that 1st Defendant signed the promissory note. The trial Judge was perfectly correct at lines 2 to 7 of page 72 of the record. The story *was* so unusual that the Judge's interest was incorrect. The Judge had to decide—had Plaintiff proved the signature ? Did the Judge have this onus in mind ? What he said in the lines to which reference has just been made was that he “ did not reject ” the story out of hand. 30

The Judge made no reference to the demeanour of the witnesses. (*sic*—see line 26 page 72). Also other important matters were not considered

by the Judge. See page 16 of the record. The minimum of proof. No evidence regarding alleged forgery. No reason given why promissory note was given or why 2nd Defendant signed it. Nowhere in the record is any reason given for 2nd Defendant's signature of the note. I submit that Plaintiff was not frank with the Court.

I now turn to the 4th Ground of Appeal—paragraphs (i) and (ii). See lines 17 to 20 and lines 30 to 32 at page 17 of the record. Also lines 11 to 12 and lines 18 to 20 at page 20. That is all we know about 2nd Defendant. He was however in Court during the hearing. Why did Plaintiff not call him?  
 10 I suggest that the Court should draw the necessary inference in accordance with section 114(g) of the Evidence Ordinance.

On Defendant's story of a conspiracy he could not have been called by the Defendant.

Now consider the reason for the loan. See lines 27 to 29 at page 17 and lines 26 to 29 at page 18. As he was accused of producing a forgery one would imagine that he would have explained fully how he came into possession of the note.

At page 18 he said: "I showed P. 6 to many friends in 1948." Why then did he only call one of them? And that one only gave that evidence  
 20 in cross-examination (see page 26 at line 29).

Next examine Ex. P. 6—how very neat the signature is. There is not a word of the evidence that Plaintiff had even told anybody that he had been threatened by the Ang Bin Hoay Society.

The promissory note is dated 27th October, 1946—see page 9 of the record. He first reported to the Police on the 8th January, 1947—see lines 5 to 7 at page 19. This is the first evidence that he told anybody of the alleged threats. However, he did not report to the Police *before* the note: he buried his money. (See line 23 page 18.)

Now see lines 26 to 29 at page 18. This is flatly contradicted by his bank manager—last two lines at page 31. He was not cross-examined on  
 30 this point.

When Plaintiff opened his account he was a poultry dealer (i.e. in 1945). See line 24 at page 31. In the plaint he describes himself as a landowner.

At page 18 (line 21) Plaintiff said: "I saved up the \$60,000 during the "occupation." The following words seem to show this was in British currency. Then he must have had a vast sum of money at the admitted rate of exchange. Even so, would he have granted this big loan without interest?

Apparently Plaintiff handed over this large sum without any security (lines 15 to 17 at page 20). Yet security was required for a prior loan of \$2,000 (see lines 17 to 19 at page 19 as explained by the first paragraph at  
 40 page 17). And the parties were not "close friends" as recently as the 14th November, 1942 (see exhibit D. 1 at page 45) and at line 15 page 29 the 1st Defendant said he did not even know 2nd Defendant. Furthermore there is no evidence that the two Defendants were ever seen together. Is it likely that 2nd Defendant would have signed the note without any chance of gain? Now he has a judgment against him for \$60,000! On the other hand 1st Defendant was apparently a man of substance (see lines 27 and 28

In the Court of Appeal at Kuala Lumpur.

No. 23. Notes of Argument of Counsel taken by Pretheroe, Ag. C.J., 24th July, 1950—

*continued*

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Kuala  
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No. 23.  
Notes of  
Argument  
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*continued.*

at page 19). But can one believe a word of this in view of lines 21 to 23 a page 17 ?

2. *The whole case reeks with suspicion.*

See lines 3 to 12 at page 17. Why did he "ask for and receive back" the letter at page 45 ? It is flatly denied at line 7 page 30.

(*Note. D. 1 reproduced at page 45 is a copy—not the original.*)

Observe the Plaintiff did not say he had not got the original: he said: "he (i.e. defendant) received back the notice."

Now see Ground of Appeal No. 11. The promissory note was stamped in Ipoh and not in the obvious place viz. Telok Anson. I suggest that at that time Plaintiff had not built up his false story. Otherwise there was, on his own showing, no need to go to Ipoh for the purpose. As it is everything fits well together. 10

Now I will consider "the convenient witness." I refer to P.W. 5—Sawall—at pp. 23 to 25. Why approach the dentist Chai Pak Kong—had he any money ? No reason of any kind is given.

There is no corroboration of Sawall's story. There is nothing in writing and the list (see line 8 page 23) was not produced or accounted for. He admitted that defendant "would not sign the list" (line 22 page 24). "Chai Pak Kong took the list to go and see the Plaintiff" (lines 18 and 19 page 23) but the Plaintiff did not produce it. 20

The Plaintiff "understood from Sawall" (line 31 at page 19) that Defendant wanted to sell his land. All other witnesses affirmed that it was Chai Pak Kong who told him.

There are also other discrepancies. In this connection refer to Grounds of Appeal 12 (vii) (a) and (b).

See page 73 of the record (the judgment) then turn to page 24 (last line) and the first seven lines page 25. Compare this with lines 3 to 8 at page 27 of the record.

Was Sawall trying to show less knowledge than he really had ? 30

I suggest that there is so much requiring explanation it is impossible to accept the story.

I now turn to consider the photographic exhibits.

First see lines 7 to 11 at page 31.

Now please examine D. 12: P. 1 & P. 4:

P. 2 & P. 3.

P. 5 is also his signature.

P. 8 is the promissory note sued on.

Now see evidence in lines 19 and 20 at page 31 and also exhibit D. 16 at page 66. The last witness had D. 11, D. 4 & D. 12. 40

It will be observed that in exhibit P. 8 (the disputed signature) the up and down lines are of equal thickness—this is not true of any other exhibit.

I now leave this point as I now find the bundle marked D. 17 was never proved.

Regarding the exhibits which were proved I say that Plaintiff did not prove that the same hand traced the admitted and contested signatures.



See witness P.W. 4 at line 17 to line 20 at page 21.  
 This contradicts D.W. 5 at page 33 (last six lines).  
 See *Watt v. Thomas* (1947) 1 A.E.R. 582 at page 587.  
 See also the dissenting judgment of Simon L.C. therein.  
 I rely on Lord Thankerton's third rule as set out in that appeal.

*Adjourned to 2.15 p.m.*

(Sgd.) E. O. PRETHEROE.

*Court resumes 2.15 p.m.*

SHARMA :

10 Firstly, I submit that *Watt v. Thomas* is in my favour. The House of Lords held that original order should not have been reversed.

[For alternative report see (1947) A.C. 484].

I agree that for some reason or other, which I do not know, the promissory note was stamped in Ipoh. But the plaint was filed at Telok Anson.

With regard to the change in the signature I say that the signature changes from exhibit P. 5 onwards. That exhibit is dated the 17th March, 1949. Observe that the plaint was dated 7th March 1949. It is in exhibit P. 5 and onwards that the last symbol looks like an inverted "Y."

20 The signature on D. 15 dated 7th April, 1948, is identical with that on P. 8—the promissory note concerned. I say that if the signatures on documents prior to P. 8 are examined it will show that the submissions suggesting forgery are fantastic.

What was there against the Bank Manager (D.W. 2)? Was he not completely disinterested? He at least had practical experience regarding Chinese signatures.

No reply was filed regarding the allegation of forgery as there was no counterclaim. However, an affidavit was filed with the A. Registrar even if the trial Judge never saw it.

30 I say the Plaintiff was candid: 12 months before the case started our affidavit was filed with the A.R.

Regarding the evidence of Puran Singh Mamak (D.W. 5) at page 66 there is no evidence regarding the "specimen signatures" with which his comparisons are concerned.

With regard to the demeanour of the witnesses, the learned trial Judge saw and heard them all and formed his opinion. At line 11 page 70 he said he had "given careful consideration to the evidence."

I did not call 2nd Defendant because he was a friend of 1st Defendant I simply could not take the risk of calling him.

40 See Woodroffe p. 812.

Plaintiff was not cross-examined about the payment into the Bank of \$1,000 (exactly). In fact there was no such payment in but there were both greater and lesser payments in.

Why should I have called numerous witnesses to say they had seen the promissory note? What allegations are there against my witness Sawall (P.W. 5)?

In the  
 Court of  
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No. 23.  
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In the  
Court of  
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*continued.*

I submit that the record shows that the trial Judge considered all the evidence and that he should not be reversed.

**SHEARN :**

See comments of Lord du Parcq at the bottom of page 59 in *Watt v. Thomas.*

I ask this Court to draw the inference that Plaintiff never had \$60,000 in British currency notes at the end of the Japanese occupation.

This Court may draw an inference just as well as the lower Court.

With reference to calling 2nd Defendant—

See—

Woodroffe p. 812 :

S.194 Civil Procedure Code—calling other party : &

Order 16 rule 21 Sarkar 8th Edition page 1411.

Thus I maintain that 2nd Defendant should have been called as he had submitted to judgment on the 6th April, 1949. This point was mentioned in the lower Court—page 34 four lines from bottom. Plaintiff had to prove his case—not Defendant.

With reference to ground of appeal 5 (id)—if the report had been produced it might have shown why he made it.

Finally—examine the original promissory note again. One signature has not faded : the other has !

(Sgd.) E. O. PRETHEROE.

C.A.V.

10

No. 24.  
Notes of  
Argument  
of Counsel  
taken by  
Thomson,  
J., 24th  
July, 1950.

No. 24.

**Notes of Argument of Counsel taken by Thomson, J.**

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

IN THE COURT OF APPEAL AT IPOH.

F.M. Civil Appeal No. 12/50.

NG SEE HEM ... .. Defendant-Appellant.

v.

LIM AH HOOI ... .. Plaintiff-Respondent. 30

Coram : PRETHEROE, Ag. C.J., THOMSON, J., RUSSELL, J.

**NOTES OF THOMSON, J.**

For Appellant : SHEARN and MAHENDRAN.

For Respondent : SHARMA.

**SHEARN :**

Claim was on the P/N—not on the consideration. So onus on Plaintiff to prove that Defendant signed P/N.

Assuming Judge was right that Appellant did not prove the forgery by comparison of signatures, it was for Judge to decide whether Plaintiff had proved the signature. From his judgment he did not have particularly in mind where the onus lay. He reviewed the facts and then dealt with discrepancies referred to by Das. There is no reference to demeanour, etc.

Plaintiff's evidence in chief was the barest minimum. He gave no reason why Defendant should give him the P/N. Circumstances in which P/N came into existence were only shown by examination and re-examination. No reason ever advanced as to why 2nd Defendant signed P/N.

10 Plaintiff did not call 2nd Defendant as his witness and gave very scanty evidence as to what his connection with the matter was. If Plaintiff had called him there would have been direct corroboration of the signing of the P/N. See Evidence Ordinance sec. 114 Illustration (g). On Plaintiff's evidence it was available to Plaintiff but on Defendant's story it was not available to Defendant.

When Defendant raised forgery Plaintiff should have replied stating circumstances and particularly that money was paid over for safe keeping.

Plaintiff said he showed the P/N to many friends (p. 18) but he only called one and he only mentioned it in examination (p. 26).

20 The alleged signature on P. 6 is very neat and well executed.

Plaintiff told nobody of threats by Ang Bin Hoay society till after the alleged payment to Appellant for safe keeping.

P/N 27.10.46. He says he reported Ang Bin Hoay society to Police 8.1.47 (P. 19). Date of P/N is shown to be true by the stamp. He had previously kept money buried in ground (p. 18). He did not report to the Police till he got rid of the money.

Bank account does not reflect payment in of \$1,000 (see Bank Manager at p. 31).

30 He said he had not sold property since before Occupation but Bank Manager said that in 1945 he described himself as a property seller.

No evidence of demands by Japanese. Only evidence is of demands by Ang Bin Hoay society.

Plaintiff said (18) he had \$60,000 which he buried during occupation. Says he paid \$25,000 Jap for \$1,000 Straits. Unlikely he ever had anything like that sum. He said his land was worth \$4,000—\$5,000.

He took no security for the \$60,000 although the syndicate of which he was a member took security for \$2,000. There was 'terseness' between them over the business of the syndicate (see p. 42).

Appellant said he did not know 2nd Defendant.

40 Plaintiff must be held to say he entrusted the money to Appellant because he knew him as a man of substance (p. 19). But on p. 17 he said he had no money and had to borrow.

Whole case reeks of suspicion.

Respondent said Appellant asked for and got back the 'notice' which is at p. 45 (p. 17). Why? Appellant denied he got it back (p. 30). D. 1 is a copy. See Grounds of Appeal 9 (1). That Plaintiff said he gave it back shows a guilty mind on his part. Why should he give it back?

In the Court of Appeal at Kuala Lumpur.

No. 24. Notes of Argument of Counsel taken by Thomson, J., 24th July, 1950  
—continued.

In the  
Court of  
Appeal at  
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No. 24.  
Notes of  
Argument  
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The P/N was stamped at Ipoh— not at Teluk Anson (Ground of Appeal 11).

As to Sawall's evidence, is it likely that Appellant would have made an admission to him if he was going to deny his signature.

It is unlikely that Sawall went to Chin Pak Kong to sell land for there is nothing to show that Chin Pak Kong was able to buy land.

Sawall said he showed the list of Appellant's land to Chin Pak Kong who says he showed it to Respondent but Respondent does not mention this list. Anyhow Respondent says it was Sawall and Chin Pak Kong who told him about the sale of Appellant's land. 10

I now deal with Grounds of Appeal Nos. 12 VII (a) and (b) as to affidavit for attachment. Sawall said (24) Respondent gave him the affidavit in Ipoh. He said he did not know who prepared it or gave instructions. But Chin Pak Kong says (27) Sawall was present when instructions were given for the affidavit.

Respondent's reply says 'I saw Appellant sign.' He does not call 2nd Defendant. This is supported by two 'convenient' witnesses.

I deal with the expert evidence.

D. 12 and P. 5 have a shortened character at the end which differs from P. 1, P. 2, P. 3 and P. 4. Compare with P. 8 which is a photograph of P. 6. 20  
This has the long form of the character. But P. 5 with the short character was before the commencement of the proceedings —it is dated 17.3.49. so there is no ground for saying that he deliberately altered his signature.

The signature on P. 6 (see P. 8) is a very 'clear' one.

The report of Mamak (D.16) is supported by inspection of the photographs.

It has not been proved that the same hand must have written the two signatures. Judge did not 'rule out' possibility of forgery.

Agree all grounds of appeal are questions of fact. But I come within *Watt v. Thomas* (1947) A.E.R. 542 (1947) A.C. 484. 30

SHARMA :

*Watt v. Thomas (supra)* is in my favour.

Plaint served 23.3.49. But it was signed in Teluk Anson on 7.3.49 and filed that day. The signing of the Plaintiff would be common property in Teluk Anson. 17.3.49 Appellant found his land was being eroded by the sea and sold 4 pieces of land that day. That was the date of P. 5 and his signature changes from that day. Even the very signature has the characteristic of abbreviation of last character which did not exist before.

Peculiarity starts from P. 5.

(Shearn : D. 15 is the same as earlier ones). 40

The Bank Manager said " P. 4 and P. 6 are signed by the same person."

It is not usual here to file a reply unless there is a counterclaim. But Plaintiff filed an affidavit in reply to Defendant's affidavit when he was let in to defend (No. 15 on the File. Contents not before the Court).

Mamak's report does not purport to be made on any of the Exhibits except the P/N. He just says he compared it with the specimen signatures —we do not know where he got them.

Judge considered whole of the evidence with great care.

As to not calling No. 2 Defendant—on our case No. 2 was a friend of Appellant. He gave no statement to Respondent and it was a risk to call him—a friend of the other side who had given no statement to me.

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

SHARMA :

The other side could have called him. I refer to Woodroffe (9th) 812.

The question of the Police Report was elicited from Respondent in examination. Had it been part of a frame up he would have produced it.

No suggestion that Judge misdirected himself or drew false inferences.

No. 24.  
Notes of  
Argument  
of Counsel  
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Thomson,  
J., 24th  
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—continued.

10 SHEARN :

*Watt v. Thomas* shows it is not impossible to upset a finding of fact.

As far as the signing of the document was concerned it was a matter of bare assertion or denial.

It was impossible that Respondent should have \$60,000. So the inference should be drawn against Respondent that he did not execute P/N.

It is unlikely that 2nd Defendant came along and guaranteed \$60,000.

This Court can draw inferences as well as the trial Judge.

The presumption under s. 114 (g) arises if evidence is not produced. You can call the opposite party see Civ. Procedure Code s. 194 cf. O. XVI  
20 r. 21. Sarkar Civil Procedure Code I 1411. See whole chapter of Civil Procedure Code from 175.

Judgment against 2nd Defendant 6.4.49.

Not true that every document since the Plaintiff bears the altered signature—D. 15 was dated before the plaintiff.

D. 9 (D. 4) is the same as P. 6 (P. 8). That is what Bank Manager says. But he said P. 1 was totally different.

Mamak's evidence shows his report based on P. 6 and D. 9, 10, 11.

30 On Respondent's evidence P/N signed by both Defendants at some time in his presence. But second signature has faded more than the first.

The case is an extraordinary one and should have been regarded with much greater suspicion.

C.A.V.

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In the Court of Appeal at Kuala Lumpur.

Notes of Argument of Counsel taken by Russell, J.

No. 25. Notes of Argument of Counsel taken by Russell, J., 24th July, 1950.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

F.M. Civil Appeal No. 12 of 1950.

(Notes taken by RUSSELL, J.).

24th July, 1950.

NG SEE HEM ... .. Defendant-Appellant.
v.
LIM AH HOOI AND ANOTHER ... .. Plaintiff-Respondent.

SHEARN and MAHENDRAN for Appellant.
SHARMA for Respondent.

10

SHEARN : Plaintiff sued on Promissory Note.
Defence : Execution of Promissory Note denied and further denied consideration of \$60,000/-.
Note a forgery.
Judgment against second Defendant by default.
Onus on Plaintiff to prove Promissory Note signed by 1st Defendant.
If he fails judgment for Defendant.
Judgment at page 72—Judge’s first instinct correct.
Reads whole judgment.
Assume forgery not proved by looking at document and comparing 20 signatures.
On this basis it was for learned Judge to decide whether Plaintiff proved signature.
Not apparent particularly in mind of Judge where the onus lay, onus of proving signature.
No reference to demeanour of witnesses.
When one examines record and judgment there are certain important matters which have not been taken into consideration by learned Judge.
Examination in chief of Plaintiff—minimum of proof.
No reason given for Defendant giving Promissory Note or even why 30 second Defendant should sign it.
Promissory Note given for money deposited in peculiar circumstances.
No reason given why second Defendant signed it.
Plaintiff anything but frank with Courts.
Plaintiff never called second Defendant as witness.
No explanation by Plaintiff as to recalling of second Defendant.
Second Defendant had nothing to lose by going into the box.
His evidence would have been direct corroboration and Defendant failed to call him.
Presumption under section 114 of Evidence Ordinance.

40

That evidence on Plaintiff's story available to him but on Defendant's story not available to Defendant.

Reason why Promissory Note signed according to Plaintiff.

Page 17. Left for safe custody because of Ang Beng Hoay.

This reason could have been put in reply, failing this, in examination in chief.

Said showed Promissory Note to many friends in 1948.

Chai Pak Kong only person who said he saw it.

On page 26 he says it.

10 Signature on P. 6, Promissory Note, very neat and nice.

Plaintiff did give evidence of any threats by something which he mentioned to anyone else.

P. 6—27th October, 1946.

Page 19 first reference of reporting Ang Beng Hoay Society was made to Police on 8th January, 1947.

When in jeopardy no report to Police but when he had got rid of the money.

No evidence of payment into account of \$1,000/-.

Evidence of Bank Manager.

20 Account is on pages 63 and 64.

Described himself as poultry seller in October 1945.

Later described himself as land owner and denied dealing in poultry since war.

Plaintiff did not tell of demands by Japanese.

Extraordinary Plaintiff should have as much as \$60,000/-, and rate \$25,000/- Japanese for \$1,000/- British.

Most unlikely he had such a sum.

Unlikely to have left \$60,000/- from October 1946 to February 1948 with Defendant, and no interest.

30 Promissory Note, no security.

Said Defendant suggested he should have it for safe security.

P. 19 a relatively small transaction, took security.

Over syndicate matter, partners not friendly.

Certain terseness existed Exhibit "D."

This letter does not show close friendship in 1942.

Plaintiff said did not know 2nd Defendant, no evidence from anybody that the two Defendants were friends.

40 Not likely 2nd Defendant would sign without any approach made to him by Plaintiff, and without any chance of gain and now finds himself in position of judgment against him for \$60,000/-.

Reasons for dealings between Plaintiff and Defendant given by Plaintiff—page 19—would not have entrusted money to Defendant if he was a pauper.

This evidence already destroyed by page 17. A.

Loans were made before Promissory Note came into existence.

Whole case rests on suspicion.

Why should Defendant ask for and get back notice on page 45.

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

—  
No. 25.  
Notes of  
Argument  
of Counsel  
taken by  
Russell, J.,  
24th July,  
1950—  
*continued.*

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 25.  
Notes of  
Argument  
of Counsel  
taken by  
Russell, J.,  
24th July,  
1950—  
*continued.*

This was denied on page 30A.

As soon as he says it was given back reeks of suspicion.

“ I gave it back ” betrays a guilty mind.

Promissory Note never stamped in Teluk Anson, it was taken to Ipoh.

Different pens used.

At time of document coming into existence. it would be unreasonable for Defendant to get to know of it.

We now come to the fabricated evidence.

Evidence of Sawall petition writer page 23.

Alleged admissions are very convenient for one who is going to plead 10 forgery.

Why did he not see Chai Pak Pong about sale.

His evidence is on page 25/A “ He asked if I wanted to buy.”

All we know about Chai Pak Pong is on page 25/B.

Sawall goes to only man who had seen Promissory Note. The first man Sawall went to and no one else.

Sawall was to get corroboration but no corroboration and list not provided by Plaintiff or even anybody else.

Evidence of list of property is convenient but does not bear scrutiny.

Page 19/B Chai Pak Pong is line of communication not Sawall, 20 Plaintiff has got it wrong.

Evidence as to money page 23/A, page 26/A and page 20/A.

Affidavit grounds of appeal 12 (7) a & b Judgment 73 (A).

Evidence page 24/A. Page 25/C. Page 27/A.

Sawall was in a swindle and shows less knowledge than he really had. This is what the discrepancy shows.

Did Plaintiff indeed sign document.

His evidence limited, I saw him sign, did not call one man, would expect him to call.

Two witnesses gave convenient evidence made after the event. 30

So many matters require explanation from their evidence and that of plaintiff that it is impossible to accept it.

Defence complete denial.

Plaintiff's evidence is not more probable and should not have been believed.

Signatures—page 31 line 7/A.

Exhibit D. 12 page 60.

P. 5 signed on 17.3.49.

Evidence of Puran Singh D.W.5.

This evidence worthy of consideration. 40

His report is on page 66.

D. 4, D. 11 and D. 12.

Page 66 of record.

Compare P. 8 and P. 11 no difference between up and down.

There is in all other signatures para 4 of page 66.

I can't ask Your Lordships to look at D. 17 (not properly proved).

Not proved by Plaintiff same hand must have written both signatures.



- Judge right, can't rule out possibility of forgery from signatures but can't say that it is one.  
 Page 21/A evidence of P.W.4 but evidence of D.W.5.  
 Not in signature to restore confidence.  
 All grounds are question of fact.  
*Watt v. Thomas* 1947 1 All England Reports page 582 at page 583—  
 Lord Simon.  
*Yuill v. Yuill* 1945 1 All England Reports page 183.  
*Powell & Wife v. Streatham Manor Nursing Home* 1935 Appeal Cases  
 10 page 243.  
 Various considerations now put to Court not put to Judge.  
 Rule 3 in Watts case.  
*Adjourned until 2.15 p.m.*
- (It'd.) T. T. R.
- Resumed.*
- SHARMA—*Watts v. Thomas* very much in my favour.  
 1947 Appeal cases page 484.  
 Signature P. 1 to 4, P. 5.  
 Plaintiff served on 21st March 1949.  
 20 Plaintiff signed 7th March and filed same day.  
 Starting from P. 5 signatures undergo a change.  
 P. 5 dated 17th March 1949.  
 From that date there is peculiarity of last character.  
 Every signature is different after date of plaint.  
 SHEARN—(D. 15 dated 7.4.1948 is same as P. 8).
- SHARMA (*continues*)—Evidence of bank clerk D. 4 and P. 8 seen identical.  
 Full story in affidavits on leave to defend, nearly 12 months before.  
 D. 16 what are the specimen signatures referred to ?  
 30 A useless piece of paper.  
 Evidence not ignored by trial Judge.  
 Not calling Defendant No. 2.  
 According to case of Respondent, Defendant No. 2 is friend of No. 1.  
 Took no part in case.  
 I could not risk calling a man on opposite side.  
 Section 114 can't apply. Defendant No. 2 one of parties to suit.  
 9th edition Woodroffe page 812.  
 Not suggested learned Judge misdirected himself in that he found facts proved which he should not have done.
- 40 SHEARN (*in reply*): *Watt v. Thomas* shows it is not impossible to get a Judge upset on fact.  
 Judgment of Lord Du Parcq.  
 This case is within the 3 rules laid down by Thankerton.  
 Signing of document bare assertions and denials, page 585.
- In the Court of Appeal at Kuala Lumpur.  
 No. 25.  
 Notes of Argument of Counsel taken by Russell, J., 24th July. 1950—  
*continued.*

In the Court of Appeal at Kuala Lumpur.

No. 25. Notes of Argument of Counsel taken by Russell, J., 24th July, 1950—*continued.*

Here not a question of detail or how it happened.  
 Here, did it happen or not ? Lord Simon page 585.  
 Inference should be drawn that Respondent never had \$60,000/-.  
 Second Defendant himself liable for \$60,000/- for no apparent reason.  
 Inference should be drawn it never happened.  
 Only one man saw promissory note and he was convenient witness.  
 If 100 had seen it before trouble started. Did not show it to anybody  
 then.  
 Coincidence only man he showed it to was the man who Sawall went to.  
 This is so unlikely, it never happened. 10  
 The withholding or failing to produce evidence section 12.  
 Section 194 C.P.C. Same order 16 rule 61 Sakar C.P.C. 8th edition  
 page 1411.  
 (Defendant No. 2 did not ask for leave to defend.)  
 Judgment signed against No. 2—6.4.49.  
 Not true every document has the same signature before action.  
 D. 15 sign —7.4.48.  
 D. 4 is photo signature on D. 9.  
 Not for me to prove I did not sign the Promissory Note.  
 No explanation given by Plaintiff as to why he made report. 20  
 P. 6 : I ask Court to look at it ; personally signed by both Defendants  
 at same time.  
 One ink faded, other did not.

*Adjourned for judgment.*

(Sgd.) T. T. RUSSELL.  
 24.7.1950.

No. 26.

Judgment of Pretheroe, Ag. C.J.

FEDERATION CIVIL APPEAL NO. 12/50

(Perak Civil Suit No. 22/49). 30

No. 26. Judgment of Pretheroe, Ag. C.J., 26th September, 1950.

Between  
 NG SEE HEM ... .. *Appellant*  
 and  
 LIM AH HOOI ... .. *Respondent.*

Cor. : PRETHEROE AG. C.J., THOMSON J., RUSSELL J.

In this suit Plaintiff alleged that he handed \$60,000/- to the first Defendant for safe custody, as he was afraid that if the secret Ang Bin Hoay Society came to know he had this capital in hand it would have demanded a heavy contribution from him. He alleged that the Defendants went to him together : that he had known the second Defendant for ten 40

years but did not know the relationship between the two Defendants ; that the two Defendants signed the promissory note and that nobody else was present when the promissory note was signed. Second Defendant admitted the debt and Plaintiff obtained judgment against him. The first Defendant, however, denied that he had ever executed the promissory note and, in his statement of defence, pleaded that the promissory note attached to the plaint "is a forgery." He also denied that the Plaintiff had ever handed him the sum of \$60,000. When the case came on for trial, the second Defendant was present in Court but was not called as a witness  
 10 for either side.

There was only a single issue to be decided viz. was the promissory note genuine or a forgery ? Each side called a number of witnesses but, as the Plaintiff himself admitted, no person other than the parties to the suit was present when the promissory note was executed, the evidence was not of much assistance to the Court. Several admittedly genuine signatures of the first Defendant were put in evidence. All those, as well as that on the promissory note, were in Chinese characters, and it is evident that his signatures are not uniform. Mr. Sharma, counsel for the Plaintiff, alleged in his opening address that the Defendant had "deliberately changed his  
 20 "signature when the case was pending." Exhibits produced by the registration clerk in the Land Office at Teluk Anson, however, rendered this allegation untenable, as authentic signatures made in the years 1935 and 1939 had similar variations to those made after the institution of this suit. The Plaintiff called one witness as a handwriting expert. He was a Government pensioner, a Chinese, who had previously served for twenty-eight years as senior Chinese Translator in the Labour Office at Ipoh and who stated that he had frequently had to compare handwritings and signatures during his service. There is little doubt that this witness was entirely honest and trustworthy, but he fell into errors. For example he  
 30 distinguished the signatures on Exhibits P. 8 and D. 4. Exhibit P. 8 was the promissory note in the case and Exhibit D. 4 was an undisputed signature made by the first Defendant when registering a business name. On his side the first Defendant called two so-called handwriting experts. One was the Manager of the Overseas Chinese Bank at Teluk Anson and the other an Indian gentleman who had graduated from the International Criminalological School, Washington, by way of a correspondence course. Both of these witnesses likewise made errors and rejected admittedly genuine signatures of the first Defendant as forgeries. In this dilemma the learned trial Judge decided that he was unable to accept as experts any of  
 40 the witnesses called as "handwriting experts." He made a long detailed examination of all the exhibits himself, but in the end based his decision chiefly on the credibility of the witnesses as seen and heard by himself. He came to the conclusion that, although "the Plaintiff's story is an unusual "one" which "in normal times could be rejected out of hand," yet he believed the Plaintiff's witnesses rather than the Defendant's. He, therefore, gave judgment for the Plaintiff in the sum claimed, and from that decision the first Defendant appealed to this Court.

In the  
 Court of  
 Appeal at  
 Kuala  
 Lumpur.

—  
 No. 26.  
 Judgment  
 of  
 Pretheroe,  
 Ag. C.J.,  
 26th  
 September,  
 1950—  
*continued.*

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 26.  
Judgment  
of  
Pretheroe,  
Ag. C.J.,  
26th  
September,  
1950—  
*continued.*

The petition of appeal contained no less than thirty-two paragraphs and sub-paragraphs. Most of them were solely concerned with questions of fact, and when arguing the appeal Mr. Shearn did not deal with them separately. He admitted frankly that a heavy burden rested upon him when seeking to reverse the original decision on questions of fact. He submitted, however, that, even on questions of fact, a trial Judge must not be regarded as infallible. He cited the following opinion of Viscount Simon in *Watt (or Thomas) v. Thomas* (1947) 1 A.E.R. 582 at 583 : “ Before entering on an examination of the testimony at the trial, I desire to make some observations as to the circumstances in which an appellate court may be justified in taking a different view on fact from that of a trial judge. For convenience, I use English terms but the same principles apply to appeals in Scotland. Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law (e.g. on a Case Stated or on an appeal under the County Courts Acts) an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusions originally reached on that evidence should stand, but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is clearly a question of law), the appellate court will not hesitate so to decide, but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge for first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance when estimating the value of verbal testimony has the advantage (which is denied to courts of appeal) of having the witnesses before him and of observing the manner in which their evidence is given. What I have just said reproduces in effect the view previously expressed in this House, e.g. by Viscount Sankey in *Powell and Wife v. Stratham Manor Nursing Home* ((1935) A.C. 250), and in earlier cases there quoted.”

Next Mr. Shearn referred to the opinion of Lord Thankerton given in *Watt v. Thomas*. The noble Lord set out the principles adopted by the House of Lords when considering appeals based on questions of fact.

He said :—

“ I do not find it necessary to review the many decisions of this House, for it seems to me that the principle embodied therein is a simple one, and may be stated thus :—

“ 1. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is

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“ certified that any advantage enjoyed by the trial judge by reason  
 “ of having seen and heard the witnesses could not be sufficient to  
 “ explain or justify the trial judge’s conclusion.

“ 2. The appellate court may take the view that, without  
 “ having seen or heard the witnesses, it is not in a position to  
 “ come to any satisfactory conclusion on the printed evidence.

“ 3. The appellate court, either because the reasons given by  
 “ the trial judge are not satisfactory, or because it unmistakably  
 “ so appears from the evidence, may be satisfied that he has not  
 “ taken proper advantage of his having seen and heard the  
 “ witnesses, and the matter will then become at large for the  
 “ appellate court.”

10

Mr. Shearn then added that he based his submissions on Lord Thankerton’s third paragraph. He submitted the judgment of the learned trial Judge to a detailed and critical scrutiny, but in my opinion Lord Thankerton’s second paragraph is the one applicable to this appeal. The oral evidence in the case is completely contradictory ; the exhibits completely baffled three so-called experts ; and we did not find it possible, after long and careful comparison with other signatures, to pronounce definitely either that the  
 20 promissory note was a forgery or that it was genuine. The learned Trial Judge stated that the main reason for his decision was the opinion he had formed of comparative reliability of the witnesses. This is an advantage not possessed by this Court and in the circumstances I am of the opinion that this Court is “not in a position to come to any satisfactory  
 “ conclusion ” on the written evidence.

20

There remains one other point. It has already been stated that the second Defendant was in Court during the hearing but was not called as a witness. Mr. Shearn submitted that under section 114 of the Evidence Ordinance, 1950, the trial Judge should have presumed that his evidence  
 30 would have been unfavourable to the Plaintiff. At first I entertained some doubt as to whether the Plaintiff could call a Defendant as his own witness, but this doubt was unfounded *Price v. Manning*, 42 Ch. D. 372. However the facts of this case rebut any such presumption, as the second Defendant had already admitted his joint liability to pay the Plaintiff \$60,000/-.

In my opinion this appeal fails and should be dismissed. The Respondent should have his costs, and the sum of \$500 deposited in Court should be paid out to Respondent against his costs.

(Sgd.) E. O. PRETHEROE,

*Ag. Chief Justice,*

Federation of Malaya.

40 Kuala Lumpur,  
 14th September, 1950.

This Judgment was pronounced by me in open Court at 10.33 a.m.  
 on 26.9.50.

(Sgd.) V. R. T. RANGAM,

*Ag. Asst. Registrar,*

Supreme Court, Federation of Malaya.

In the  
 Court of  
 Appeal at  
 Kuala  
 Lumpur.

—  
 No. 26.

Judgment  
 of  
 Pretheroe,  
 Ag. C.J.,  
 26th  
 September,  
 1950—

*continued.*

No. 27.

**Judgment of Thomson, J.**

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 27.  
Judgment  
of  
Thomson,  
J., 26th  
September,  
1950.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE COURT OF APPEAL AT IPOH.

F.M. Civil Appeal No. 12/50.

Between

NG SEE HEM ... .. *Appellant*

and

LIM AH HOOI ... .. *Respondent.*

Cor : PRETHEROE AG C. J. THOMAS J. RUSSELL J. 10

I have had the advantage of reading the judgment of the Acting Chief Justice with which I agree. I do not wish to add anything.

(Sgd.) J. B. THOMSON,  
*Judge,*  
Court of Appeal.

Ipoh 20th September 1950.

This judgment was pronounced by me in Open Court at 10.33 a.m. on 26.9.50.

(Sgd.) V. R. T. RANGAM,  
*Ag. Asst. Registrar,* 20  
Supreme Court Federation of Malaya.

No. 28.  
Judgment  
of  
Russell, J.,  
26th  
September,  
1950.

No. 28.

**Judgment of Russell, J.**

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

Federation of Malaya Civil Appeal No. 12/50.  
(Perak Civil Suit No. 22/49.)

NG SEE HEM ... .. *Appellant*

*vs.*

LIM AH HOOI ... .. *Respondent.*

Cor : PRETHEROE AG. C. J., THOMSON J., RUSSELL J.

I have had the advantage of reading the judgment of the Acting Chief Justice with which I agree. I do not wish to add anything. 30

(Sgd.) T. T. RUSSELL,  
*Judge,*  
Court of Appeal Federation of Malaya.

Judge's Chambers,  
Supreme Court,  
Alor Star.  
16th September 1950.

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

This judgment was pronounced by me in open Court at 10.33 a.m.  
on 26.9.50.

(Sgd.) V. R. T. RANGAM,  
*Ag. Asst. Registrar,*  
Supreme Court Federation of Malaya.

No. 28.  
Judgment  
of  
Russell, J.,  
26th  
September,  
1950.  
*continued.*

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No. 29.  
Decree.

No. 29.  
Decree,  
26th  
September,  
1950—

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE COURT OF APPEAL AT IPOH.

Civil Appeal No. 12 of 1950.

Between

NG SEE HEM of 16½ mile, Bagan Datoh Road, Teluk  
Anson ... .. *Defendant-Appellant*

and

LIM AH HOOI 572 Immigration Road, Teluk Anson *Plaintiff-Respondent.*

20

(In the Matter of High Court at Ipoh Civil Suit No. 22 of 1949.)

Between

LIM AH HOOI 572 Immigration Road, Teluk Anson ... .. *Plaintiff*  
and

1. NG SEE HEM of 16½ mile, Bagan Datoh Road, Teluk Anson

2. TOH KOR YAN of Teluk Anson ... .. *Defendants.*

Before The Honourable Mr. Justice PRETHEROE, Ag. CHIEF JUSTICE. The  
Honourable Mr. Justice RUSSELL and The Honourable Mr. Justice THOMSON.

This 26th day of September, 1950, ... in open Court

ORDER.

30

This Appeal coming on for hearing before the full Court of Appeal  
on the 24th day of July 1950 and upon hearing Mr. E. D. Shearn of Counsel  
for the Defendant-Appellant and Mr. S. M. Sharma of Counsel for the  
Plaintiff-Respondent the same was adjourned *sine die* for judgment.

Now this appeal coming on for judgment this 26th day of September,  
1950.

IT IS ORDERED that this appeal be dismissed.

In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 29.  
Decree,  
26th  
September,  
1950—  
*continued.*

AND IT IS ORDERED that the costs of this appeal as taxed by the proper officer of the Court be paid by the Defendant-Appellant to the Plaintiff-Respondent.

AND IT IS FURTHER ORDERED that the sum of \$500/- deposited by the Defendant-Appellant be paid to the Plaintiff-Respondent towards such costs.

Given under my hand and the Seal of the Court this 26th day of September 1950.

(Sgd.) P. SAMUEL,  
*Asst. Registrar,* 10  
Court of Appeal, Kuala Lumpur.

No. 30.  
Order  
granting  
conditional  
leave to  
Appeal to  
His Majesty  
in Council,  
18th  
October,  
1950.

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No. 30.

Order granting Conditional Leave to Appeal to His Majesty in Council.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

IN THE COURT OF APPEAL AT IPOH.

Civil Appeal No. 12 of 1950.

Between

NG SEE HEM of 16½ mile Bagan Datoh Road, Teluk Anson ... .. *Defendant-Appellant*

and

LIM AH HOOI 572 Immigration Road, Teluk Anson *Plaintiff-Respondent.* 20

(In the Matter of High Court at Ipoh Civil Cuit No. 22 of 1949.)

Between

LIM AH HOOI 572 Immigration Road, Teluk Anson ... .. *Plaintiff*

and

1. NG SEE HEM of 16½ mile, Bagan Datoh Road, Teluk Anson  
2. TOH KOR YAN of Teluk Anson ... .. *Defendants.*

Before The Honourable Mr. Justice THOMSON, The Honourable Mr. Justice TAYLOR and The Honourable Mr. Justice BRIGGS.

This 18th day of October, 1950, in open Court 30

ORDER.

UPON MOTION being made by Mr. M. S. Mahendran of Counsel for the first Defendant-Appellant and upon hearing Mr. S. M. Sharma of Counsel for the Plaintiff-Respondent and upon reading the Notice of Motion dated the



4th day of October, 1950 for leave to appeal to His Majesty the King in Council and the affidavit of Ng See Hem sworn to on the 13th day of October, 1950 and filed herein :

IT IS ORDERED that leave be and is hereby granted to the Defendant-Appellant above-named to appeal to His Majesty in Council, subject to the following conditions :—

- 10 (a) That the Defendant-Appellant do deposit into Court the sum of \$5000/- for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal as the case may be.
- (b) That the Appellant within two months from date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England.

Given under my hand and the seal of the Court this 18th day of October, 1950.

20

(Sgd.) P. SAMUEL,  
Asst. Registrar,  
Court of Appeal Federation of Malaya.

(L. Seal)

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In the  
Court of  
Appeal at  
Kuala  
Lumpur.

No. 30.

Order  
granting  
conditional  
leave to  
Appeal to  
His Majesty  
in Council,  
18th  
October,  
1950—  
*continued.*

No. 31.

Order granting Final Leave to Appeal to His Majesty in Council

In the Court of Appeal at Kuala Lumpur.

No. 31. Order granting final leave to Appeal to His Majesty in Council, 22nd December, 1950.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE COURT OF APPEAL AT IPOH.

Civil Appeal No. 12 of 1950.

Between

NG SEE HEM, of 16½ mile Bagan Datoh Road, Teluk Anson  
and *Defendant-Appellant.*  
LIM AH HOOI, 572 Immigration Road, Teluk Anson *Plaintiff-Respondent.*

(In the Matter of High Court at Ipoh Civil Suit No. 22 of 1949). 10

Between

LIM AH HOOI, 572 Immigration Road, Teluk Anson... *Plaintiff*  
and  
1. NG SEE HEM of 16½ mile Bagan Datoh Road, Teluk Anson  
2. TOH KOR YAN of Teluk Anson ... *Defendants.*

Before the Honourable Mr. Justice THOMSON.

This 22nd day of December, 1950, in open Court.

ORDER.

This Motion coming on for hearing this 22nd day of December 1950 before the Honourable Mr. Justice Thomson and upon hearing Mr. M. S. Mahendran of Counsel for the Defendant-Appellant above-named and Mr. H. T. Ong on behalf of Mr. S. M. Sharma of Counsel for the Plaintiff-Respondent and upon reading the Notice of Motion dated 16th December 1950 and the affidavit of Mr. M. S. Mahendran sworn to on the 13th December 1950 and filed herein :

IT IS ORDERED that final leave to appeal to His Majesty the King in Council be and is hereby granted to the Defendant-Appellant.

Given under my hand and the Seal of the Court this 22nd day of December, 1950.

P. SANKEY,  
*Ag. Senior Assistant Registrar,*  
Supreme Ct. Ipoh.

EXHIBITS.

Exhibits.

D. 9.—Application for registration of Business by Ng See Hem.

D. 9.  
Application  
for Regis-  
tration of  
Business by  
Ng See  
Hem, 28th  
October,  
1942.

R.B.Pk. 2455/02.

Duplicate.

No. of Cert. B6934.

FORM A.

THE REGISTRATION OF BUSINESSES ENACTMENT, 1939

(Rule 2).

To the Registrar of Businesses, Ipoh.

I the undersigned submit for registration the following particulars  
10 regarding the under-mentioned business :

- 1. The business name ... .. Ng See Hem.
- 2. Constitution of business ... .. Sole proprietorship.
- 3. The general nature of the business... Estate owner and Copra dealer.
- 4. The principal place of the business... 16½ mile, Bagan Datoh Road,  
Teluk Anson.
- 5. The date of commencement ... 1st April, 1939.
- 6. Branches of the business ... .. Nil.
- 7. The terms of the partnership are  
contained in a written agreement  
a copy of which is annexed to this  
20 form verified on each page thereof  
by my signature  
or  
there is no written agreement as to Nil.  
the terms of the partnership

Dated this 28th day of October, 1942.

(Sgd). NG SEE HEM  
(In Chinese characters).

I hereby certify that the particulars entered on this form have been  
duly registered this 5th day of November, 2602.

30 Chop of  
Registrar of Businesses—  
Perak.

C.E.D.R.C. & B.  
Perak.  
No. 2329.  
31.5.2604.

Supreme Court, Ipoh.  
Exhibit D. 9.  
Case No. C.S.22/49  
Date 12.4.50.  
(Sgd.) M. IDRIS,  
for Asst .Registrar.

True Copy.  
(Sgd). CHIN SEN BOO,  
Secretary to Judge, Ipoh.

Exhibits.	Full name or names of associate or associates.	Here give all Chinese names in Chinese characters.	Here state any previous names, and any aliases, opposite each name in the first column.	Here give Chinese names in Chinese characters.	Age (if minor) Sex.	Nationality and race.	Date of entry into business.	Particular office held in or nature of association with business.	Usual residence.	
D. 9. Application for Registration of Business by Ng See Hem, 28th October, 1942— <i>continued.</i>	Ng See Hem	Ng See Hem (in Chinese characters)	Nil.	Nil.	Male 41	(Chinese) Cantonese	1st April 1939	Sole proprietor	16½ mile at Bagan Datoh Road, Teluk Anson.	10

Dated this 28th day of October, 2602.

(Sgd). NG SEE HEM.

#### VERIFICATION BY ASSOCIATE

I, NG SEE HEM, confirm the accuracy of all the statements made in this form and that I am an associate of the business the name of which is Ng See Hem.

Date 28th October, 2602.

(Sgd.) NG SEE HEM.

20

I confirm that the signature of Ng See Hem was affixed to the above certificate in my presence after I had satisfied myself that the person so affixing such signature was in fact the person named in such certificate and understood the purport of such certificate.

Dated at Teluk Anson this 28th day of October, 2602.

(Sgd.) A. T. SABAPATHY,  
Advocate & Solicitor, Ipoh.

D. 1.  
Letter from Ng See Hem to Lim Ah Oi and Others, 14th November, 2602 (1942).

#### D. 1.—Letter from Ng See Hem to Lim Ah Oi and Others.

Ng See Hem, 16½ mile, B. Datoh.

Messrs. Lim Ah Oi and others,  
c/o Fowl Seller Mr. Lim Ah Oi,  
Market, Teluk Anson.

14th November, 2602.

30

Dear Sirs,

I have to draw your attention with regards to my cocoanut lands leased to you and refer to you your undertaking to clean my lands from all lallangs and other overgrowths four times a year. Since you took up the lands in June 2602 you should have by this time cleaned the lands twice

but failed to do so and became evasive when I tried to approach you in the matter concerning the lands at H. Melintang. Exhibits.

That you not only have failed to comply to the terms as agreed upon but also in addition you have voluntarily demolished and removed the copra kiln on the land costing \$150/- without my knowledge and furthermore you have without my permission occupied the copra Kiln at Bagan Datoh which is not provided in the agreement and any damage occurs I am holding you responsible. D.1.  
Letter from  
Ng See  
Hem to  
Lim Ah Oi  
and Others,  
14th  
November,  
2602 (1942)  
—continued.

- 10 B. Datoh immediately and to make good the compensation reasonably towards the kiln at Hutan Melintang and also proceed immediately to clean the land which you have not cleaned, failing which within (3) weeks from date hereof, I shall be compelled to take such action as may be appropriate against you for same.

Yours faithfully,

Supreme Court, Ipoh.

Exhibit D. 1.

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**D. 3.—Letter from Lim Ah Oi and Others to Ng See Hem.**

- 20 From  
Lim Ah Oi & Others,  
c/o Fowl Seller Mr. Lim Ah Oi,  
Market, Teluk Anson.

D. 3.  
Letter from  
Lim Ah Oi  
and Others  
to Ng See  
Hem, 10th  
December,  
2602 (1942).

December 10, 2602.

Ng See Hem Eq.  
16½ Mile Bagan Datoh Road.

Dear Sir,

Yours of the 14th ult. to hand, and in reply I have the following for you :—

Utan Melintang :—

- 30 (1) That you will find if visited that all area concerned cleared of everything as you mentioned there.

(2) Regarding a Copra Kiln you speak about I have nothing to do with it nor did I cause anything to bring about a loss nor am I responsible for it. Bagan Datoh :—

That on 2.6.02 on my reporting to you of the unserviceable condition of the kiln you personally and verbally agreed with me and requested me

Exhibits. to repair same at my cost and use same till my period of occupation ceases,  
 D. 3. hence I spent money for the repairs and am using same and you have been  
 Letter from Lim Ah Oi and Others therefore reticent on the matter for all these 6 months.  
 to Ng See Hem, 10th December, 2602 (1942)  
 ---continued. Hope therefore under the existing circumstances you would reconsider  
 matters to your satisfaction.

Yours faithfully,  
 (Sgd.) LIM AH HOOI  
 (In Chinese characters).

Prepared by me.

(Sgd.) MOHAMED ABAS.

Fee 50 cts. received.

10

Supreme Court, Ipoh.

Exhibit D. 3.  
 Case No. C.S.22/49.  
 Date 11.4.49.

(Sgd.) M. IDRIS,  
 for *Asst. Registrar.*

---

**D. 10.—Agreement between Ng See Hem and Chen Fong.**

D. 10.  
 Agreement  
 between Ng  
 See Hem  
 and Chen  
 Fong, 5th  
 March, 2603  
 (1943).

Duplicate.

Perak Shu Seicho  
 Stamp Fee \$.50  
 Stamped in due time  
 Date 8.3.43.

20

(Sgd.)  
*Collector of Stamp Duties,*  
*Lower Perak.*

**AGREEMENT.**

This agreement made and entered into at Teluk Anson on this 5th day of March 2603, between Ng See Hem of Teluk Anson (hereinafter called the First Party) of the one part and Chen Fong of Chop Ban Foong Mee Oil Mill also of T. Anson (hereinafter called the Second Party) of the other part. 30

That the First Party is the registered owner that piece of land comprised and held under E.M.R. No. 678 lot No. 2345 in the mukim of Hutan Melintang on which he allows the Second Party to erect an Oil Mill presently occupying a site thereon about 60 feet by 80 feet length on a yearly rental of \$80/- a year.

Now this agreement witnesseth as follows :—

1.—That in consideration of the sum of \$80/- has to-day paid in advance to the First Party by the Second Party which sum the First Party

hereby acknowledges receipt being one full year's rent, do hereby permit the Second Party to erect a building namely an Oil Mill thereon the aforesaid land and that the said rent shall run from 10th March, 2603.

2.—It is hereby mutually agreed that the First Party shall not under any circumstances eject the tenancy of the Second Party so long the annual rent is regularly paid when it falls due each year.

3.—The Second Party hereby agrees with the First Party to keep the sites always clean and to comply to all Government requirements concerning only the leased area.

10 4.—That this agreement shall be binding between both the parties, their heirs, executors, administrators and assigns.

In witness whereof the parties have hereunto set their hands to this agreement on the day and year first above written.

Signed and delivered by the parties in the presence of:—

Witness : (Sgd.) NG SEE HEM  
(In Chinese characters).

Sgd. (Sgd.) CHEN FONG  
(In Chinese characters).

Supreme Court, Ipoh.

Exhibit D. 10.

20 Case No. C.S. 22/49.

Date 12.4.50.

(Sgd.) M. IDRIS for Asst. Registrar.

---

**P. 6.—Promissory Note.**

Stamped with \$60/-.  
\$60,000/-.

27th October, 1946.

P. 6.  
Promissory  
Note, 27th  
October,  
1946.

ON DEMAND we the undersigned Ng See Hem and Toh Kor Yan of Teluk Anson promise to pay to Lim Ah Hooi of Teluk Anson or order the sum of Dollars (Sixty thousands only) for value received in cash with interest thereon at the rate of \$—— per every hundred Dollars per mensem.

30

(Sgd.) NG SEE HEM (in Chinese).  
(Sgd.) TOH KOR YAN.

This is the copy marked " A " referred to in the plaint of Lim Ah Hooi dated the 7th day of March, 1949, in C.S. 22/49.

(Sgd.) J. W. D. AMBROSE,  
*Senior Asst. Registrar,*  
Supreme Court, Ipoh.

Exhibits.  
—  
D. 10.  
Agreement  
between Ng  
See Hem  
and Chen  
Fong, 5th  
March, 2603  
(1943)<sup>1</sup>  
*continued.*

Exhibits.

**D. 7.—Letters of Administration of the Estate of Ng Ah Siew.**

D. 7  
Letters of  
Administra-  
tion of the  
Estate of  
Ng Ah Siew,  
9th  
October,  
1947.

IN THE SUPREME COURT OF HONG KONG.  
PROBATE JURISDICTION.

No. 914 of 1947.

Estate Duty and Interest \$1,857.65.  
Sworn at \$27,000.00.

In the Goods of NG AH SIEW alias Ng Chew alias Ng Ah Shu alias Ng Ah Saw (or Sau) late of Sungei Sumun 16½ mile Bagan Datoh Road, and also of Teluk Anson in the District of Lower Perak and in the State of Perak, Federated Malay States, Gentleman, deceased.

10

BE IT KNOWN that this sealing of the accompanying Grant of Letters of Administration of the estate . . . . of the said deceased having been produced in and a copy thereof deposited with this Honourable Court is now sealed this 9th day of October 1947 pursuant to the “ Probates Ordinance 1897.”

A schedule of the property of the deceased in respect of which Estate Duty has been paid is annexed hereto.

(Sgd.)

*Acting Registrar.*

Extracted by Messrs. Lo and Lo.

20

True Copy.

(Sgd.) CHIN SEN BOO,  
*Secretary to Judge, Ipoh.*

Supreme Court, Ipoh.  
Exhibit D. 7—Case No. C.S. 22/49.  
Date 12.4.50.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

E.D. No. 625/1947.

SCHEDULE of the property disclosed on the death of NG AH SIEW alias NG CHEW alias NG AH SHU alias NG AH SAW, deceased, in respect of which estate duty has been paid on that death.

Land and Buildings :—

Section B of Inland Lot No. 20 (House No. 21, Wellington Street) ... ..	\$27,000.00
Total value of estate ...	\$27,000.00

(Sgd.)

*Estate duty commissioner.*

13th August, 1947.

The commissioner expressly warns all companies, banks, firms, shops and other persons to whom this Schedule may be presented against dealing with any property of the deceased not set out herein.

40



RA989361 \$4/-

Exhibits.

30.7.41.

D. 7.

Letters of  
Administra-  
tion of the  
Estate of  
Ng Ah Siew,  
9th  
October,  
1947—  
*continued.*

## FORM F.

FEDERATED MALAY STATES. STATE OF PERAK.

DISTRICT OF LOWER PERAK.

Application for Distribution of No. 81 of 1941.

In the Estate of NG AH SIEW alias Ng Chew alias Ng Ah Sau deceased.

NG AH GOK of Hutān Melintang, *Applicant*

- 10 The Probate and Administration Enactment (Cap. 8).  
Grant of Letters of Administration under Section 184.

Be it known that NG AH SIEW alias Ng Chew alias Ng Ah Sau of Teluk Anson died on the 30th day of March, 1941, intestate and

Be it further known that on the 30th day of July 1941 administration of the movable and immovable property in the Federated Malay States which property is set out in Schedules I and II hereof and excludes the property which has already been distributed and which is set out in Schedules III and IV hereof which by law devolves to and vests in the personal representative of the said intestate was granted to Ng Ah Gok of Hutān Melintang the son of the said intestate.

- 20 And be it further known that on the date hereunder written these Letters of Administration were issued to the said administrator, he having given the security required for the administration of the said property.

I hereby certify that the net value of the estate is \$2800/- and that the Estate Duty fee amounting to \$28/- has been paid.

Given under my hand and seal at Teluk Anson this 1st day of August 1941.

(L.S.)

(Sgd.)

*Collector.*


---

 Schedule I.

- 30 Movable Property included in this Grant.

Presentation No. 4910/30 Charge No. 472/30 against E.M.R. 655,  
Hutan Melintang.

## Schedule II.

Immovable Property included in this Grant.

E.M.R. 76 Hutan Melintang.

Exhibits.		Schedule III.	
D. 7.	Nil.	Movable property already distributed.	
Letters of Administration of the Estate of Ng Ah Siew, 9th October, 1947— <i>continued.</i>	Nil.	Schedule IV. Immovable Property already Distributed.	
	(L.S.)	(Sgd.)	<i>Collector.</i>

D. 5.  
Affidavit of A. H. Sawall,  
16th March, 1949.

**D. 5.—Affidavit of A. H. Sawall.**

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA. 10  
IN THE HIGH COURT AT IPOH.  
Civil Suit No. 22 of 1949.

LIM AH HOOI of 572 Immigration Road, Teluk Anson ... *Plaintiff*

- versus*
1. NG SEE HAM
  2. TOH KOR YAN of 16½ mile, Bagan Datoh Road, B. Datoh *Defendants.*

I, A. H. SAWALL, of full age residing at 31, Makota Road, Teluk Anson, in the above suit, do hereby make oath and say as follows—namely, that I know the Plaintiff and the Defendants for a long time.

2.—On behalf of the Plaintiff I have approached the Defendant No. 1 to settle the Plaintiff's claim amicably but he refused to do so saying that he is negotiating to sell and transfer all the properties and go away to China.

(Sgd.) A. H. SAWALL.

Sworn before me this 16th day of March, 1949, at Ipoh.

(Sgd.) C. MUTHUTHAMBY,

Commissioner for Oaths,  
Supreme Court,

(L.S.) Federation of Malaya, Ipoh.

I hereby certify that the above affidavit was read, translated and explained in my presence to the deponent, who seemed perfectly to understand it, declared to me that he did understand it, and made his signature in my presence. 30

(Sgd.) C. MUTHUTHAMBY,

*Commissioner of Oaths,*

Supreme Court,

(L.S.) Federation of Malaya, Ipoh.

Supreme Court, Ipoh.

Exhibit D. 5. Case No. C.S. 22/49.

Date 12/4/50.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

## D. 6.—Affidavit of Chai Pak Kong.

Exhibits.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
IN THE HIGH COURT AT IPOH.

Civil Suit No. 22 of 1949.

D. 6.  
Affidavit of  
Chai Pak  
Kong,  
sworn  
16th March,  
1949.

LIM AH HOOI of 572 Immigration Road, Teluk Anson ... *Plaintiff*

1. NG SEE HAM *versus*

2. TOH KOR YAN, of 16½ mile, Bagan Datoh Road, B. Datoh *Defendants.*

I, CHAI PAK KONG, of full age, residing at 22 Canal Road, Teluk Anson, in the above suit, do hereby make oath and say as follows, namely,  
10 that—

1.—I know the Plaintiff and the Defendants very intimately.

2.—The Plaintiff above-named has on the 7th day of March, 1949, filed a suit against the Defendants for the recovery of the sum of \$60,000/- and interest and costs.

3.—I had on more than three occasions approached the Defendant No. 1 on behalf of the Plaintiff to settle the matter amicably but the Defendant No. 1 told me that he is making arrangements to sell all his properties here and go back to China and refused to agree to any settlement.

(Sgd.) CHAI PAK KONG.

20 Explained by me

(Sgd.) CHOONG LEE GAN.

Sworn before me this 16th day of March, 1949, at Ipoh.

(Sgd) C. MUTHUTHAMBY,  
*Commissioner for Oaths,*  
Supreme Court,

(L.S.)

Federation of Malaya, Ipoh.

I hereby certify that the above affidavit was read, translated and explained in my presence to the deponent, who seemed perfectly to understand it, declared to me that he did understand it, and made his signature  
30 in my presence.

(Sgd.) C. MUTHUTHAMBY,  
*Commissioner for Oaths,*  
Supreme Court,

(L.S.)

Federation of Malaya, Ipoh.

Supreme Court, Ipoh.

Exhibit D. 6.

Case No. C.S. 22/49.

Date 12.4.50.

(Sgd.) M. IDRIS,

40 *for Asst. Registrar.*

Exhibits. D. 8.—Memos. from Collector of Land Revenue, Lumut, to Ng See Hem.

D. 8.

Memos.

from

Collector of No. 14 in Dgs. 242/47.

16.3.1949.

Land

Revenue,

Lumut, to

Ng See

Hem,

16th March,

1949,

5th April,

1949.

OFFICIAL MEMORANDUM.

From Collector of Land Revenue,  
Dindings.

To Mr. Ng See Hem,  
107, Main Road,  
Bagan Datoh.

Lekir Gt. 16627.

If rebate on rent for 1949 is required, your usual Statutory Declaration should reach this office before the 31st March, 1949, failing which, no rebate will be granted.

10

(Sgd.)

*for Collector of Land Revenue,  
Dindings.*

17 in Dgs. 242/47.

Land Office, Dindings,  
Lumut, 5.4.49.

Mr. Ng See Hem,  
107, Main Road,  
Bagan Datoh.

Lekir Gt. 16627.

20

With reference to your application for rebate of rent for 1949 on the above Grant, I have to inform you that your request has been approved.

2.—Please remit the rent \$95.50 for 1949 *early*.

(Sgd.)

*for Collector of Land Revenue,  
Dindings.*

True copy.

(Sgd.) CHIN SEN BOO,  
*Secretary to Judge,  
Ipoh.*

30

Supreme Court, Ipoh.

Exhibit D. 8.

Case No. C.S. 22/49.

Date 12.4.50.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

**D. 14.—Statement : Re Account of Lim Ah Hooi, from Bank Ledger Book.**

Exhibits.

D. 14.  
Statement  
Re Account  
of Lim Ah  
Hooi  
Plaintiff,  
from the  
Bank  
Ledger  
Book,  
6th April,  
1950.

OVERSEA-CHINESE BANKING CORPORATION LIMITED.

To  
Mr. Lim Ah Hooi,  
The Market (Poultry Sect.).

Teluk Anson, 6th April, 1950.

Dear Sir,

The following is a statement of the entries which have been made in your account since the last statement sent to you. We would ask you kindly to check it up carefully and to report to us at once should there be any irregularity.

Please preserve this statement for your own record.

Yours faithfully,  
for Oversea-Chinese Banking Corporation, Ltd.,  
(Sgd.) SEAH CHAP,  
*Sub-Accountant.*

	DATE	PARTICULARS	DR.	CR.
	1945			
	Oct. 6	By Cash		400.00
20	12	120251	250.00	
	Dec 20	252	140.00	
	31	Balance	10.—	
			<u>400.00</u>	<u>400.00</u>

Supreme Court, Ipoh.

True Copy.

Exhibit D. 14.

(yo.) CHIN SEN BOO,

Case No. C.S. 22/49.

*Secretary to Judge,*

Date 12/4/50.

Ipoh.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

30 OVERSEA-CHINESE BANKING CORPORATION LIMITED.

Teluk Anson, 6th April, 1950.

To  
Mr. Lim Ah Hooi,  
The Market (Poultry Sect.).

Dear Sir,

The following is a statement of the entries which have been made in your account since the last statement sent to you. We would ask you

Exhibits. kindly to check it up carefully and to report to us at once should there be any irregularity.

D. 14.  
Statement  
Re Account  
of Lim Ah  
Hooi  
Plaintiff,  
from the  
Bank  
Ledger  
Book,  
6th April,  
1950—  
*continued.*

Please preserve this statement for your own record.

Yours faithfully,  
for Oversea-Chinese Banking Corporation, Ltd.,  
(Sgd.) SEAH CHAP,  
*Sub-Accountant.*

DATE	PARTICULARS	DR.	CR.
1945			
Dec. 31	Balance B/F from last Statement		10.00
1946			
Mar. 13	By Cash		1100.00
19	K.L.D/D		770.00
20	To cash 253	370.00	
30	„ 254	200.00	
Apr. 2	„ 255	600.00	
May 14	By Cash		3000.00
June 30	To Balance	3710.00	
		<u>4880.00</u>	<u>4880.00</u>

10

Supreme Court, Ipoh.  
Exhibit D. 14.  
Case No. C.S. 22/49.  
Date 12/4/50.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

True Copy.  
(Sgd.)

CHIN SEN BOO,  
*Secretary to Judge,*  
Ipoh.

20

OVERSEA-CHINESE BANKING CORPORATION LIMITED.

Teluk Anson, 6th April, 1950.

To  
Mr. Lim Ah Hooi,  
Poultry Market,  
T. Anson.

30

Dear Sir,

The following is a statement of the entries which have been made in your account since the last statement sent to you. We would ask you kindly to check it up carefully and to report to us at once should there be any irregularity.

Please preserve this statement for your own record.

Yours faithfully,  
for Oversea-Chinese Banking Corporation, Ltd.,

(Sgd.) SEAH CHAP,  
*Sub-Accountant.*

Exhibits.

D. 14.  
Statement  
Re Account  
of Lim Ah  
Hooi  
Plaintiff,  
from the  
Bank  
Ledger  
Book,  
6th April,  
1950—  
*continued.*

DATE	PARTICULARS	DR.	CR.
1946			
June 30	Balance B/F from last Statement		3710.00
July 31	By Cash		800.00
10	"		500.00
Aug. 23	To Cash 120257	400.00	
26	" 258	500.00	
Sept. 3	" 259	150.00	
9	" 260	400.00	
11	" 261	1500.00	
23	" 262	500.00	
27	" 263	400.00	
Oct. 1	" 264	150.00	
2	" 265	500.00	
20	3	"	1450.00
	" 266	100.00	
	5	" 268	450.00
	9	" 269	300.00
	12	" 270	200.00
	21	" 271	200.00
	25	" 272	75.00
	" 273	200.00	
Nov. 9	" 274	200.00	
29	" 275	200.00	
30 Dec. 19	To Service charges	5.00	
	Balance	30.00	
		<u>6460.00</u>	<u>6460.00</u>

Supreme Court, Ipoh.

Exhibit D. 14.

Case No. C.S. 22/49.

Date 12/4/50.

(Sgd.) M. IDRIS,  
*for Asst. Registrar.*

Exhibits. **D.16.—Report prepared by Defendants' Witness No. 5.**

D. 16.  
Report prepared by Defendants' witness No. 5.

**PURAN SINGH MAMAK, Consulting Criminologist, M.I.A.I. (U.S.A.).**  
No. 41, Limbong Kapal, Alor Star, Malaya.

**REPORT ON CHINESE SIGNATURES OF "NG SAY HEM."**

I have examined and inspected Chinese signatures of "Ng Say Hem" fixed on Pronote dated 27th October 1946, and have compared it with those given to me for the purpose of comparison. After careful inspection and comparison I am of considered opinion that Signatures on Pronote dated 27th October 1946 are not written by the same hand who wrote the specimen signatures. My principal reasons to reach the conclusion are as follows: 10

1. That Signature on Pronote dated 27th October 1946, is written slowly carefully with degree of legibility and gracefulness while the Specimen signatures are written carelessly unconsciously with clumsy appearance.
2. When Characters of signature on Pronote and those of the specimen are placed side by side in the circle the position of the extremities of the strokes of the specimen signatures agree to one another but do not agree with the signatures on pronote.
3. The manner of holding pen in signature on Pronote is slightly inclined towards the paper surface while in specimen signatures 20 it is inclined towards the right.
4. Pen pressure on strokes in characters on signature in Pronote is Medium and the difference between the up and down strokes is not well clear while in the specimen signatures it is comparatively heavy and the difference between the up and down stroke is clearly visible.
5. Proportionate distance between the extremities of strokes in the specimen signatures is similar and dissimilar with the extremities of strokes on Pronote.
6. Size of Characters in specimen signatures do agree in proportion 30 to the width and height and dissimilar with those of the signature on Pronote.
7. Rate of speed of characters on Pronote with which they are written is comparatively slower than those of the specimen signatures.
8. Total length of signature in proportion to the length of strokes is similar in the specimen signatures and dissimilar with the signature on Pronote.

Besides these points of dissimilarities in the General Characteristics there are following points of dissimilarities in the minute detail of characters. 40 (See Juxtaposed Photograph).

(Sgd.) **PURAN SINGH MAMAK,**  
*Handwriting and Finger Print Expert,*  
Alor Star, Kedah.



## " JUXTAPOSED PHOTOGRAPHS."

Exhibits.

## CHARACTER NO. 1.

D. 16.

## Stroke No. 1.

Report  
prepared by  
Defendants'  
witness  
No. 5.

- |    |  |  |
|----|--|--|
| 10 | <ol style="list-style-type: none"> <li>1. Initial start thin and round gradually increasing in pressure towards the end.</li> <li>2. Initial start with a fine horizontal hook gradually increasing in pressure towards the end.</li> <li>3. Terminal straight and thin.</li> <li>4. Heavy end with pressure.</li> </ol> | <ol style="list-style-type: none"> <li>1. Initial start round gradually decreasing in pressure towards the centre and then a sudden pressure and hook at the end.</li> <li>2. Initial start with sudden opening of pen points with pressure.</li> <li>3. Terminal with round hook.</li> <li>4. Hook without pressure.</li> </ol> |
|----|--|--|

—continued.

## CHARACTERS NO. 2 AND 3.

- |    |   |  |
|----|---|--|
| 20 | <ol style="list-style-type: none"> <li>1. Initial start fine line without hook and without pen tilt.</li> <li>2. 2nd curve heavy with downstroke crump in centre.</li> <li>3. Upstroke slightly shaded.</li> <li>4. Stroke " X " total blind.</li> <li>5. Curve " Y " round and retraced fully.</li> <li>6. Terminal end retraced.</li> </ol> | <ol style="list-style-type: none"> <li>1. Slight initial roughness with pen tilt at top.</li> <li>2. 2nd curve formal and downstroke of normal speed.</li> <li>3. Upstroke without shading.</li> <li>4. Stroke " X " normally retraced with lift of pen.</li> <li>5. Curve " Y " with sudden pressure of opening pen points partially retraced.</li> <li>6. Terminal with pressure.</li> </ol> |
|----|---|--|

## CHARACTERS 4, 5 AND 6.

- |    |  |   |
|----|--|---|
| 30 | <ol style="list-style-type: none"> <li>1. Horizontal hooked start of initial vertical stroke.</li> <li>2. Slanting stroke initial start upward tendency.</li> <li>3. 2nd slanting horizontal stroke initial start indicating pen presentation of identical nature with its terminal.</li> <li>4. Main Curve smooth and sharp with tilt of pen at the end of downstroke curve.</li> </ol> | <ol style="list-style-type: none"> <li>1. Initial vertical stroke with sudden pressure of pen points.</li> <li>2. Slanting stroke initial start with downward tendency.</li> <li>3. Slanting horizontal stroke initial and terminal roughness of downward tendency.</li> <li>4. Main Curve irregular with pen tilt at a comparatively different place.</li> </ol> |
|----|--|---|

Supreme Court, Ipoh.

Exhibit D. 16.

Case No. C.S. 22/49.

40 Date 17.4.50.

(Sgd.) M. IDRIS,  
for Asst. Registrar.

In the Privy Council.

No. 6 of 1951.

ON APPEAL FROM THE SUPREME COURT OF  
THE FEDERATION OF MALAYA,  
IN THE HIGH COURT AT IPOH.

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BETWEEN

NG SEE HEM ... .. *Appellant*

*v.*

LIM AH HOOI ... .. *Respondent.*

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RECORD OF PROCEEDINGS

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BULL & BULL,  
11 Stone Buildings,  
Lincoln's Inn, W.C.2,  
*Appellant's Solicitors.*

SHELTON COB & CO.,  
3 New Court,  
Lincoln's Inn, W.C.2,  
*Respondent's Solicitors.*

SUPREME COURT

86

EXHIBIT

DATE

11-4-50

ASST. REGISTRAR.

27TH, OCTOBER, 1946. ~~XXXX~~

茲有借過

\$ [REDACTED]

ON DEMAND the undersigned NG SEE HEM

AND JOH KOR YAN OF TELUK ANSON promise to

pay to the order of TELUK ANSON or order, the sum of

DOLLARS (SIXTY THOUSANDS ONLY)

only for value received in cash with interest

thereon at the rate of \$ per every hundred Dollars

per mensum.

12月存款

Original produced to the Court  
In Case No. 1222/49

on 7.3.49

Lim Ah Hock

Ng Kor Yan

and marked

Twiss Asst. Registrar.

John J. Jordan 11.7.10.46



英銀 元

担保入 日立欠銀入

角正 角正 恐口無憑立字為據

S.K.M.P.I.

No. 6 of 1951

In the Privy Council

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Exhibit No. P. 6

