

PC  
31, 1954

No. 45 of 1953.  
No. 46 of 1953.

**In the Privy Council.**

**ON APPEAL**  
*FROM THE APPEAL COURT IN HONG KONG.*

LONDON  
23 MAR 1955  
INSTITUTION FOR THE ADVANCED  
LEGAL STUDIES

BETWEEN  
JUAN YSMAEL & COMPANY INCORPORATED *Appellants*  
AND  
THE GOVERNMENT OF THE REPUBLIC OF *First*  
INDONESIA *Respondents*

38087

AND  
~~ANTHONY LOH trading as A. W. KING~~ *Second*  
*Respondent*

AND BETWEEN  
JUAN YSMAEL & COMPANY INCORPORATED *Appellants*  
AND  
THE GOVERNMENT OF THE REPUBLIC OF  
INDONESIA and ANTHONY LOH (*trading as*  
*A. W. KING*) *Respondents.*  
(Consolidated by Order of the Judicial Committee dated  
the 4th February 1954.)

**Case**

FOR THE RESPONDENTS THE GOVERNMENT OF THE REPUBLIC OF INDONESIA.

1. These are appeals, pursuant to leave granted by the Appeal Court in Hong Kong, brought by the above-named Appellants against a judgment of the said Appeal Court (Sir Gerard Howe C.J. and Williams J.) on the 13th December, 1952. By the said judgment, the said Appeal Court allowed appeals brought by these Respondents; rescinded a judgment of Reece J. dated the 15th September, 1952, whereby he dismissed Notices of Motion filed on behalf of these Respondents on the 9th July, 1952, in Admiralty Jurisdiction Action Nos. 6 and 8 of 1952; ordered that the Writ and all subsequent proceedings and orders in the said actions be set aside on the grounds that the said actions impleaded these Respondents, a foreign sovereign State; declared that the judgment of Reece J. dated the 24th October, 1952, and delivered in Admiralty Jurisdiction Action No. 8 was null and void for want of jurisdiction; and ordered that the

RECORD.  
Vol. A, p. 418.  
Vol. B, p. 92.  
Vol. A, p. 367, l. 38.  
Vol. A, p. 123, l. 16.  
Vol. A, p. 22, l. 1.  
Vol. B, p. 4, l. 18.  
Vol. A, p. 138, l. 21.

Appellants and the Respondent Anthony Loh should pay to these Respondents their costs of the said Appeals and of the said Notice of Motion.

2. These appeals arise out of two actions brought in the Supreme Court of Hong Kong, Admiralty Jurisdiction, and relating to the steamship "Tasikmalaja." The question for decision is whether these actions impleaded these Respondents as an independent sovereign State. The first of these actions, Admiralty Jurisdiction Action No. 6 of 1952 (hereinafter sometimes referred to as Action No. 6), was commenced by the above-named Respondent Anthony Loh by a Writ of Summons dated the 24th June, 1952, and directed to "the owners and all others interested in the ship 'Tasikmalaja'." By his Statement of Claim indorsed on the said Writ the said Anthony Loh claimed from the said ship HK\$25,586 for ship's necessaries. On the 25th June, 1952, the ship was arrested in Action No. 6, pursuant to a warrant issued in the Supreme Court of Hong Kong. On the 27th June, 1952, an appearance in the said action was entered for the Appellants as sole owners of the said ship. On the 30th June, 1952, these Respondents entered an appearance under protest in the said action as owners of the said ship. On the 28th July, 1952, the Appellants applied for a caveat against the release of the ship in Action No. 6.

Vol. B, p. 1, l. 11.

Vol. B, p. 2, l. 1.

Vol. B, p. 2, l. 20.

Vol. B, p. 3, l. 12.

Vol. B, p. 4, l. 1.

Vol. B, p. 5, l. 10.

Vol. A, p. 1.

Vol. A, p. 2, l. 11.

Vol. A, p. 3, l. 29.

3. Admiralty Jurisdiction Action No. 8 of 1952 (hereinafter sometimes referred to as Action No. 8) was commenced by the Appellants by a Writ of Summons dated the 27th June, 1952, and directed to "All parties interested in the Steamship 'Tasikmalaja' (Ex the Steamship 'Christobal' and the Steamship 'Haleakala') of the Port of Panama in the Republic of Panama." By their Statement of Claim indorsed on the said Writ the Appellants claimed as sole owners of the said steamship to have legal possession thereof decreed to them. On the 27th June, 1952, the ship was arrested in Action No. 8. On the 30th June, 1952, these Respondents entered an appearance under protest in Action No. 8 as owners of the said ship.

Vol. A, p. 36, l. 27.

4. In support of the application for the arrest of the ship in Action No. 8 an affidavit sworn by one Khalil Khodr and dated the 27th June, 1952, was filed on behalf of the Appellants. In this affidavit the following paragraphs appear:—

Vol. A, p. 37, ll. 10-23.

"4. The late President of the Plaintiff Company gave instructions to one Frank C. Starr to negotiate a sale of the above-named vessel for the sum of U.S.\$600,000.00. The said Frank C. Starr, however, was never duly or legally authorised by the Plaintiff Company to complete any sale of the said vessel.

"5. On the 17th day of March, 1952, the said Frank C. Starr purported to sell the vessel to a Major Pamoe Rahardjo, who claimed to be acting on behalf of the Ministry of Defence of the Republic of Indonesia.

"6. I am in possession of evidence to show that the said sale was a fraudulent conspiracy between the said Frank C. Starr and the said Major Pamoe Rahardjo (and possibly others) in

“ fraud of the Plaintiff Company. Not one cent of the sale price  
 “ has been paid to the Plaintiff Company, and the said sale was  
 “ based on a photostatic copy of one of the documents of title.

“ 7. I say that the above-named vessel has never been legally  
 “ sold or otherwise transferred and is still the property of the  
 “ Plaintiff Company.”

This affidavit was subsequently incorporated in the evidence filed by  
 the Appellants in Action No. 6.

5. In these Respondents' submission, two matters are abundantly  
 10 clear from the very inception of Action No. 8. First, that the Appellants  
 were not in possession or control of the vessel, and secondly that these  
 Respondents were intended to be impleaded by the writ. The writ was  
 directed to all parties interested in the vessel and the Appellants knew,  
 as the above-mentioned affidavit of Khalil Khodr shows, that these  
 Respondents were claiming an interest by virtue of a sale to them. The  
 burden of the Appellants' case was that this admitted sale was invalid  
 and it is clear that the whole intendment of Action No. 8 was to obtain  
 a judicial decision as between the Appellants and these Respondents as  
 to the validity of the sale and consequently as to the title to the vessel.  
 20 Accordingly, it is submitted that the above-mentioned affidavit of Khalil  
 Khodr sufficiently establishes, without more, that these Respondents  
 were impleaded by the institution of Action No. 8.

Vol. A, p. 36, l. 27.

6. On the 9th July, 1952, these Respondents gave Notice of Motion  
 in both Actions for Orders that in each case the Writ and all subsequent  
 proceedings should be set aside on the grounds *inter alia* that the action  
 impleaded a foreign sovereign State, namely, these Respondents, which  
 was unwilling to submit to the jurisdiction of the Supreme Court of  
 Hong Kong.

Vol. A, p. 22, l. 1.  
 Vol. B, p. 4, l. 18.

7. Meanwhile, on the 8th July, 1952, the Appellants had commenced  
 30 proceedings in Action No. 8 against certain Indonesian members of the  
 crew of the steamship “ Tasikmalaja,” alleging that they had committed  
 contempt in interfering with the custody of the vessel by the Head Bailiff  
 of the Supreme Court of Hong Kong by excluding or attempting to exclude  
 Acting Captain Jose Maria Silos from boarding and remaining on board  
 the vessel. These proceedings were heard by Reece J. on the 11th July,  
 1952, and on the 14th July, 1952, he delivered a judgment therein in  
 which he held that the said members of the crew had committed a  
 contempt, but said that he felt that they had acted in obedience to the  
 instructions of the Indonesian Consul-General. He accordingly ordered  
 40 the said members of the crew to pay the costs of the contempt proceedings  
 and warned them against interfering with the custody of the vessel.

Vol. A, p. 4, l. 14.

Vol. A, p. 13, l. 20.

Vol. A, p. 18.

8. In support of their motions on the impleading issue these  
 Respondents filed evidence by, amongst others, one Grimsdale, the  
 Secretary of the Hong Kong & Whampoa Dock Co. Ltd., Mr. Kwee Djie Hoo,  
 the Consul-General for these Respondents in Hong Kong and Major Pamoe  
 Rahardjo, an officer attached to the Ministry of Defence of these

Vol. A, p. 24, l. 20.

Vol. A, p. 26.

Vol. A, p. 31.

Respondents. The evidence of Mr. Kwee may be summarised as follows. The vessel had been chartered continuously by the Respondents for troop-carrying purposes since the 1st January, 1951, under four consecutive charter-parties, the last of which was for a period of six months expiring on the 30th June, 1952. Each charter-party except the first had contained an option to purchase in favour of these Respondents, and on the 13th February, 1952, a contract for the sale of the vessel to these Respondents had been entered into. The contract price of U.S.\$70,000 had been duly paid by these Respondents on the 26th February, 1952, and the sale completed by the execution of a Bill of Sale on the 17th March, 1952. On the 17th April, 1952, the vessel had been transferred to the Indonesian Shipping Registry. In the transaction of sale the Appellants had been represented by one Starr acting under a Power of Attorney given by the Appellants and dated the 8th November, 1950, and a letter dated the 6th March, 1951, from the Appellants confirming his authority to sell. After the sale to them these Respondents had ordered the vessel to Hong Kong, where she arrived on the 13th March, 1952, for remodelling and repairs. On the instructions of these Respondents the vessel had in May, 1952, been delivered for repair to the Hong Kong and Whampoa Dock Co. Ltd., in whose dockyard premises she still was, and these Respondents had paid H.K.\$200,000 to that company on account of the repairs. At all times the Captain and crew of the vessel had taken orders from and obeyed the instructions of these Respondents and of Mr. Kwee on their behalf; and on the 16th April, 1952, at a ceremony on board the vessel at which the Panamanian flag had been lowered and the Indonesian flag substituted therefor in the presence of the crew and of officials of the Panamanian consulate, the Captain on behalf of the crew had undertaken in an address to Mr. Kwee that they would continue the loyal servants of these Respondents and obey their orders. Thereafter the crew were paid by these Respondents and all supplies of food for the vessel had been paid for by the Indonesian Consulate. Until the 27th June, 1952, the date of the Writ in Action No. 8, there had been no indication of disloyalty on the part of any members of the crew, who were mainly Indonesians, but on that date the Acting Captain had suddenly objected to the flying of the Indonesian flag and had afterwards, on the 30th June, 1952, refused to obey the orders of Mr. Kwee.

Vol. A, p. 472, l. 30.

Vol. A, p. 480, l. 35.

Vol. A, p. 475, l. 30.

Vol. A, p. 477, l. 20.

Vol. A, p. 480, l. 1.

Vol. A, p. 24, l. 31.

9. The affidavit of Mr. Grimsdale confirmed that the Hong Kong and Whampoa Dock Co. Ltd. had contracted with these Respondents for the repair of the vessel; that in May, 1952, the vessel had been brought to that Company's premises in pursuance of that contract; that the repairs were still being carried out when the vessel was arrested; and that these Respondents had made substantial payments on account in respect of the repairs. The evidence of Major Pamoe was directed mainly to denying allegations of fraud and conspiracy made by the Appellants, which allegations these Respondents were unwilling to leave unanswered although in their submission they were irrelevant to the issue of impleading.

Vol. A, p. 31, l. 30.

10. In reply to these Respondents' evidence numerous affidavits were filed on behalf of the Appellants. In these affidavits the facts relating to the sale of the vessels to these Respondents were not denied but it was sought to show that the sale was invalid. Thus it was alleged that the

Power of Attorney given by the Appellants to Starr was invalid under Philippine law ; that the second and third charter-parties contained no option for sale ; that the fourth charter-party never had the knowledge and approval of the Appellants and had, moreover, been prepared by Starr and Major Pamoe for the purposes of the case ; and that the sale of the vessel to these Respondents had been carried out in fraud of the Appellants in pursuance of a conspiracy to which Starr, Major Pamoe and the former Captain of the vessel were parties. So far as the control of the vessel was concerned the Appellants did not deny that she had been brought to  
10 Hong Kong on the instructions of these Respondents or that repairs to her had been carried out by the Hong Kong & Whampoa Dock Co. Ltd. in pursuance of a contract between these Respondents and this Company. But it was sought to show by the evidence of the Acting Captain, who had been appointed in May, 1952, that he had been thereafter in full physical control and possession of the vessel, holding the same for the Appellants only, and that after the sale of the vessel to these Respondents payments in respect of the wages of certain members of the crew had been made by the Appellants. Vol. A, p. 48, l. 14.

11. These Respondents' motions on the impleading issue first came  
20 on for hearing before Reece J. on the 10th July, 1952, and were then adjourned until the 28th July, 1952. On the 28th July, 1952, Reece J. decided that the motion in Action No. 6 and the similar motion in Action No. 8 should be heard together and the hearing was further adjourned until the 18th August, 1952. In the meanwhile the Appellants had given notice that they intended to cross-examine Mr. Kwee and all his informants, and both on the 28th July, 1952, and at the resumed hearing on the 18th August, 1952, the Appellants applied for all evidence to be given *viva voce*, alternatively, for leave to cross-examine all affirmants on behalf of these Respondents. It was objected by these Respondents that to  
30 permit such a course would be tantamount to trying on its merits the contested issue, which was the very issue in Action No. 8, as to the title to the vessel, and that it was not competent for the Court to do so on a motion to set aside the writ on the grounds of impleading. Reece J. decided to defer consideration of the Appellants' application until after he had heard the case for the Respondents upon their motions. At the close of the argument for these Respondents the Appellants renewed their application to cross-examine Mr. Kwee and Major Pamoe. On the 25th August, 1952, Reece J. delivered his decision allowing this application. He said that he was satisfied that there were certain questions of fact to be  
40 determined on the motions to set aside the writs before the orders sought could be granted, and that it seemed to him undesirable, when there was such evident conflict on the facts alleged, that the Court should be required to draw inferences from the affidavits alone. It is submitted that this decision of the learned Judge was wrong in that it clearly appeared from the affidavits that these Respondents had an interest in the vessel by virtue of the sale to them and that the terms of the writs compelled them either to come in and defend or to abandon that interest. The conflict of fact was solely as to the merits of the interest of these Respondents, a matter irrelevant to the consideration of the motions with which the  
50 learned Judge was dealing, and any cross-examination would therefore have been equally irrelevant. Vol. A, p. 62.  
Vol. A, p. 63.  
Vol. A, p. 62, l. 26.  
Vol. A, p. 86, l. 30.

Vol. A, p. 88, l. 11.  
 Vol. A, p. 88, l. 18.  
 Vol. A, p. 92, l. 20.  
 Vol. A, p. 98, l. 12.  
 Vol. A, p. 3, ll. 1-17.  
 Vol. D, p. 2, l. 1.

Vol. C, p. 2, l. 14.  
 Vol. D, p. 1, l. 22.

Vol. C, p. 1.  
 Vol. D, p. 1, l. 12.

Vol. C, p. 14, l. 14.  
 Vol. D, p. 6, l. 30.

Vol. C, p. 11, l. 1.

Vol. A, p. 111, l. 4.

12. After Reece J. had delivered his decision allowing the application for cross-examination, a claim of privilege was made on behalf of Mr. Kwee and Major Pamoe on the ground of diplomatic immunity. On the 27th August, 1952, Reece J. rejected the claim to diplomatic immunity in each case and directed the issue of a summons to Mr. Kwee and Major Pamoe to attend Court for cross-examination on the 2nd September, 1952. On the 28th August, 1952, these Respondents obtained leave from the Appeal Court in Hong Kong to file and serve short Notice of Motion for a stay of the orders of Reece J. allowing the application to cross-examine Mr. Kwee and Major Pamoe and refusing their claim to diplomatic immunity. Notice of Motion for this stay was accordingly given on the 29th August, 1952. On the same date these Respondents gave Notice of Appeal to the Appeal Court against the said orders. These Respondents' appeals in both actions against the said orders are still depending in the Appeal Court in Hong Kong, having been consolidated and adjourned *sine die* on the 13th December, 1952. 10

13. On the 1st September, 1952, the Appeal Court in Hong Kong granted a stay of three days upon the said orders, in courtesy to these Respondents and in view of steps which had been taken to address Her Majesty's Government. Reece J. subsequently extended the stay on the orders for cross-examination until the 8th September, 1952. Meanwhile the hearing of these Respondents' motions on the impleading issue continued before Reece J. on the 2nd, 3rd, 4th and 5th September, 1952. On the 5th September, 1952, Counsel for these Respondents stated upon instructions that a communication recognising the diplomatic immunity of Mr. Kwee had been received by these Respondents from Her Majesty's Government and that a copy of that communication had been despatched to the Government of Hong Kong. He therefore asked that Reece J. should communicate with the Government of Hong Kong in order to ascertain the position indicated by Her Majesty's Government and to stay meanwhile the order for cross-examination. At the same time he indicated that Mr. Kwee had been instructed to waive his immunity provided that the order for cross-examination was varied to permit him to be cross-examined in the precincts of his Consulate. 20 30

14. Neither Mr. Kwee nor Major Pamoe obeyed the summons to attend Court for cross-examination on the 8th September, 1952. On the 9th September, 1952, on behalf of the Government, the Acting Attorney-General of Hong Kong made a statement in open Court before Reece J. relating to the claims to privilege on the ground of diplomatic immunity. After this statement had been made it was submitted on behalf of these Respondents that it followed therefrom that neither Mr. Kwee nor Major Pamoe could be ordered to be cross-examined upon their affirmations; but that nevertheless both had been instructed to waive their immunity to the extent of offering themselves for cross-examination at the Indonesian Consulate. For the Appellants it was submitted that nothing in the statement of the Acting Attorney-General showed that either Mr. Kwee or Major Pamoe were immune from cross-examination in the circumstances of the case and that as they refused to attend Court for cross-examination their affidavits should be struck from the record. It was submitted for these Respondents that this course should not in any event be followed, 40 50

but that the affirmations should be retained on the file and given such weight as the Court might think fit. It was pointed out that the affirmations contained a number of undenied and salient facts to which full weight should be given and that where there was conflict it related to the merits of these Respondents' claim to which merits cross-examination could not properly be directed in the proceedings before the Court. Finally, it was submitted that, where a question of impleading a foreign sovereign State had been brought to the notice of the Court, it would not be right to take the course of striking out affidavits in support of the foreign State's  
10 contention that it was impleaded.

15. On the 15th September, 1952, Reece J. delivered a reserved judgment whereby he dismissed these Respondents' motions on the impleading issue and ordered these Respondents to pay the costs of the said motions. He held that on a question of impleading the foreign State claiming immunity from the jurisdiction of the Court is required to satisfy the Court that it has at least an interest in the property whose release is sought and that this could only be done by evidence found to be satisfactory and trustworthy. These Respondents had sought to establish  
20 their claim by affidavits filed by Mr. Kwee and Major Pamoe, which affidavits contained allegations which were disputed and alleged to be fraudulent. He was satisfied that justice could not be done unless the veracity of Mr. Kwee and Major Pamoe was tested in cross-examination and he had ordered accordingly. Since they had refused to submit to cross-examination and because of the sharp conflict of facts disclosed in the affidavits of Mr. Kwee and Major Pamoe and those filed on behalf of the Appellants, he refused to give any weight to the affidavits of Mr. Kwee and Major Pamoe and rejected them and ordered them to be removed from the files. That having been done, he held that there was no evidence  
30 before him in support of the motions of these Respondents on the impleading issue.

16. These Respondents submit upon the judgment of the learned Judge that he failed to appreciate that the question for his decision was whether the material before him disclosed an interest in the vessel in these Respondents and that the question whether such an interest was shown to have a valid origin was irrelevant. It is submitted that he was wrong in the circumstances in refusing to pay any heed to the evidence of Mr. Kwee, which contained a number of statements of fact not disputed by the Appellants, and in striking out the affirmations of Mr. Kwee and Major Pamoe. But even if he was justified in this course, there was  
40 clear evidence upon the affidavits filed on behalf of the Appellants that these Respondents were in fact impleaded by both actions, and the learned Judge erred in failing to bring his mind to bear upon this material. He would appear to have assumed that he could be satisfied that these Respondents were impleaded only by evidence given on their behalf and accepted by him. These Respondents submit that that was a wrong approach to the matter, and that the correct principle is that where there is more than a mere claim and there is evidence before the Court on which it can be shown that the question which is to be decided in the case is competing rights, the principle of immunity applies.

Vol. A, p. 131, ll. 1-10.

17. After Reece J. had delivered his judgment, the Appellants applied for a speedy trial of Action No. 8 and Reece J. then fixed the afternoon of the 16th September, 1952, the following day, for the trial thereof. Action No. 6 was adjourned *sine die*, the Appellants having offered to pay the amount of the claim therein when declared owners of the vessel. The Appellants subsequently paid to the Respondent Anthony Loh the amount of his claim in Action No. 6.

Vol. A, p. 146, l. 1.

18. On the 15th September, 1952, these Respondents gave notice of appeal to the Appeal Court against the judgment of Reece J. on the impleading issue and on the 16th September, 1952, applied to the Appeal Court for a stay of all proceedings in both actions. The Appeal Court

Vol. A, p. 158.

then offered to stay proceedings until the hearing of these Respondents' appeals upon terms which included an undertaking by these Respondents to pay compensation to the Appellants in the event of the appeals being unsuccessful, and granted a stay until the 24th September, 1952, in order to enable these Respondents to comply with the terms of the stay offered to them. On the 24th September, 1952, these Respondents informed the Appeal Court that they would not proceed with their application for a stay, and the 8th December, 1952, was fixed for the hearing of their appeals.

Vol. A, p. 159, l. 18.

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Vol. A, p. 132.  
Vol. B, p. 49, l. 27.

Vol. E, p. 1.

19. On the 26th September, 1952, the Hong Kong and Whampoa Dock Co. Ltd. entered appearances in both actions as a party interested, and subsequently on the 17th October, 1952, commenced an action against the owners and all others interested in the ship "Tasikmalaja" for the sum of H.K.\$172,760.52 for work and labour done, materials supplied and towage. The vessel was again arrested in this action. On the 23rd October, 1952, the Appellants and the Respondent Anthony Loh entered appearances in this action; and on the 24th October, 1952, these Respondents appeared under protest and subsequently gave Notice of Motion to set aside the writ on the ground that they were impleaded thereby. This action has since been discontinued.

Vol. E, p. 4.

Vol. E, p. 5, l. 1.

Vol. E, p. 7.

Vol. E, pp. 12-13.

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Vol. A, p. 135.

20. On the 2nd October, 1952, Reece J. proceeded to the trial of Action No. 8. Before the trial began, the Attorney-General of Hong Kong appeared before Reece J. as *amicus curiae* and drew his attention to the fact that if the proceedings in Action No. 8 terminated in favour of the Appellants the vessel might have left the jurisdiction before the appeals depending before the Appeal Court had been decided. He therefore asked that Reece J. should consider the possibility of staying the execution of his judgment on the trial of the action or of subjecting it to conditions which would avoid the possible consequence that a decision of the Appeal Court must be stultified. After this intervention, the trial of Action No. 8 proceeded, these Respondents taking no part therein.

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Vol. A, p. 138, l. 21.

21. On the 24th October, 1952, Reece J. gave judgment in Action No. 8 and decreed possession of the vessel to the Appellants, subject to the claim of the Hong Kong & Whampoa Dock Co. Ltd. He refused to accede to the suggestion of the Attorney-General that there should be a stay of execution. On the 30th October, 1952, the Appellants applied for an injunction to restrain 40 Indonesian members of the crew of the

Vol. A, p. 144, l. 1.



vessel from remaining on or going aboard her. These Respondents sought to be heard on this application but Reece J. ruled that they had no *locus standi* and on the 31st October, 1952, he granted the injunction as asked. Vol. A, p. 144, l. 32.

22. Meanwhile on the 22nd October, 1952, these Respondents had obtained leave from the Appeal Court to serve short Notice of Motion for an earlier date to be fixed for the hearing of the appeals against Reece J.'s judgment on the impleading issue. On the 29th October, 1952, the Appellants and the Respondent Anthony Loh served Notices of Motion for the dismissal of these Respondents' appeals for failure to pay the costs of the impleading motions as ordered by Reece J., and for security for costs. On the 30th October, 1952, these Respondents obtained leave to serve short Notice of Motion for an immediate stay of execution in Action No. 8. These three motions were heard together by the Appeal Court on the 31st October and 3rd November, 1952. On the latter date the Appeal Court granted a stay of all proceedings in Action No. 8, including a stay of the injunction granted by Reece J. on the 31st October, 1952, on terms that these Respondents should within four days give security for costs of their appeals pending to the Appeal Court in the sum of H.K.\$20,000. The other motions were dismissed. On the 7th November, 1952, these Respondents duly deposited the sum of H.K.\$20,000 as security for costs.

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Vol. A, p. 161, l. 25.  
Vol. A, p. 171, l. 25.  
Vol. B, p. 70, l. 38.  
Vol. A, p. 176, l. 1.  
Vol. A, pp. 199-200.  
Vol. A, p. 201, l. 1.

23. These Respondents' appeals against the judgment of Reece J. dismissing their motions on the impleading issue, and against his orders directing the cross-examination of Mr. Kwee and Major Pamoe and rejecting their claims to diplomatic immunity came on for hearing before the Appeal Court in Hong Kong on the 8th, 9th, 10th, 11th, and 13th December, 1952. With the consent of the Court, the appeals against the dismissal of the motions on the impleading issue were argued first and in consequence of the decision of the Appeal Court thereon these Respondents' other appeals were not argued and have been adjourned *sine die*.

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Vol. A, pp. 203-324,  
326-373.

24. It was submitted for these Respondents before the Appeal Court, first, that Reece J. should not have struck out the affirmations of Mr. Kwee and Major Pamoe, and secondly, that even after the striking out of these affirmations there was before the learned Judge ample material from which he should have concluded that these Respondents were impleaded by both actions, as having a proprietary interest in the vessel either under the admitted, although impugned, sale to them or as charterers, or as having possession or control of the vessel. The appeals were in fact argued only upon these Respondents' second contention and on the basis that the affirmations of Mr. Kwee and Major Pamoe had been struck out although these Respondents indicated to the Appeal Court that if their second contention were not to be accepted, leave would be sought to adduce fresh evidence. It was submitted for the Appellants that before these Respondents could be held to be impleaded by the two actions it was necessary that it should be proved or admitted that these Respondents had a right of property in the vessel, or proved or admitted that they had possession or control of the vessel. It was further submitted that these

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Respondents had failed to discharge the onus which lay upon them ; that none of the requisite facts had been proved or admitted ; that the purported sale to these Respondents was fraudulent and a nullity ; that by entering into the purported sale these Respondents had lost any rights they might have had as charterers ; and that the vessel had been brought into Hong Kong waters under the control of Starr as agent for the Appellants.

Vol. A, p. 367, l. 35.

Vol. A, p. 378, l. 10.

25. On the 13th December, 1952, the Appeal Court gave judgment allowing these Respondents' appeals on the impleading issue. Reasons for the judgment of the Appeal Court were delivered on the 8th January, 1953. In these reasons the Court held that these Respondents were directly impleaded by the issue of the writ in both actions, and that by the admitted purported sale these Respondents had acquired a proprietary right sufficient to maintain a plea of impleading. In this connection, the Court held that it was not for the Court to decide whether that sale was valid. The Court further held that the ship was brought into Hong Kong waters by these Respondents and was under their control until arrested. On these grounds the appeals were allowed. 10

26. The Respondents submit that these appeals should be dismissed with costs for the following among other 20

### REASONS

- (1) BECAUSE these Respondents were directly or indirectly impleaded by the issue of the writ in each action.
- (2) BECAUSE these Respondents have a proprietary interest in the vessel.
- (3) BECAUSE these Respondents had at the material times possession or control of the vessel.
- (4) BECAUSE the judgment of the Appeal Court in Hong Kong was right.

HARTLEY SHAWCROSS. 30

R. I. THRELFALL.

No. 45 of 1953.

No. 46 of 1953.

**In the Privy Council.**

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**ON APPEAL**

*from the Appeal Court of Hong Kong.*

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BETWEEN

**JUAN YSMAEL & COMPANY  
INCORPORATED . . . Appellants**

AND

**THE GOVERNMENT OF THE  
REPUBLIC OF INDONESIA**  
*First Respondents*

AND

**ANTHONY LOH . . . Second Respondent**

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**Case**

**FOR THE RESPONDENTS THE GOVERNMENT  
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