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31,1954

No. 45 of 1953

In the Privy Council.

ON APPEAL
FROM THE APPEAL COURT IN HONG KONG

BETWEEN

JUAN YSMAEL & COMPANY INCORPORATED (Plaintiffs) - - - - Appellants.

AND

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA (Defendants) Respondents.

RECORD OF PROCEEDINGS

MESSRS. REID SHARMAN & CO.,

36, Bedford Row, W. C. 1.

Solicitors for the Appellants.

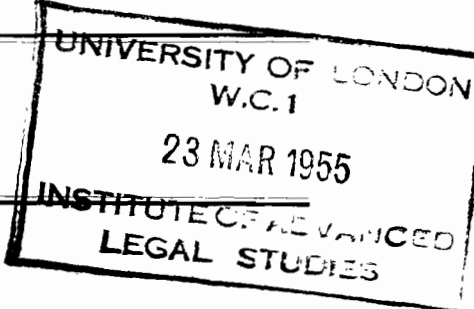
MESSRS. MARKBY, STEWART & WADESONS,

5 Bishopsgate, E.C. 2,

Solicitors for the Respondents.

In The Privy Council.

38085



ON APPEAL
 FROM THE APPEAL COURT OF HONG KONG

BETWEEN

JUAN YSMAEL & COMPANY INCORPORATED (Plaintiffs) - - - - - *Appellants*

AND

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
 (Defendants) *Respondents*

RECORD OF PROCEEDINGS

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| 58 | KK-G | 20 | Letter — K. H. Hemady to Frank C. Starr | 31st January, 1952 | 533 |
| 59 | KK-H | 20 | Letter — K. H. Hemady to Frank C. Starr | 23rd January, 1951 | 534 |
| 60 | KK-I1 | 20 | Cable — Juan Ysmael & Co. Inc. to Major Pamoe Rahardjo | 8th January, 1952 | 535 |
| 61 | KK-J | 20 | Letter — Juan Ysmael & Co. Inc. to Major Pamoe Rahardjo | 10th January, 1952 | 535 |
| 62 | KK-K1 | 20 | Letter — Pamoe Rahardjo to Mrs. & Mr. Hemady | 17th January, 1952 | 537 |
| 63 | KK-L1 | 20 | Cable — Frank C. Starr to Mrs. Magdalena Hemady | 29th January, 1952 | 538 |
| 64 | KK-M1 | 20 | Cable — Frank C. Starr to Juan Ysmael & Co. Inc. | 30th January, 1952 | 538 |
| 65 | KK-N1 | 20 | Letter — Frank C. Starr to Johnny Ysmael | — | 539 |
| 66 | KK-O1 | 20 | Letter — Frank C. Starr to Mrs. Hemady | 31st January, 1952 | 540 |

| EXHIBIT NO. FOR PURPOSE OF REFERENCE | EXHIBIT MARKED | REFERRED TO IN DOCUMENT NO. | DESCRIPTION OF EXHIBIT | DATE | PAGE |
|--------------------------------------|----------------|-----------------------------|--|---------------------|------|
| 67 | KK-P1 | 20 | Letter — Pamoe Rahardjo to Mrs. & Mr. Hemady | — | 541 |
| 68 | KK-PA | 20 | Letter — Juan Ysmael & Co. Inc. to Frank C. Starr | 6th March, 1951 | 542 |
| 69 | KK-Q1 | 20 | Cable — Captain Aguado to Mr. Hemady | 31st January, 1952 | 543 |
| 70 | KK-R1 | 20 | Cable — Frank C. Starr to Mrs. Hemady | 1st February, 1952 | 543 |
| 71 | KK-S | 20 | Cable — Juan Ysmael & Co. Inc. to Frank C. Starr | 2nd February, 1952 | 544 |
| 72 | KK-T1 | 20 | Letter — K. H. Hemady to Major Pamoe Rahardjo | 7th February, 1952 | 544 |
| 73 | KK-U1 | 20 | Letter — K. H. Hemady to Frank C. Starr | 7th February, 1952 | 547 |
| 74 | KK-V1 | 20 | Cable — Frank C. Starr to Briones | 7th February, 1952 | 549 |
| 75 | KK-W1 | 20 | Cable — Frank C. Starr to Briones | 24th February, 1952 | 549 |
| 76 | KK-X1 | 20 | Letter — Frank C. Starr to Mr. Hemady | 7th March, 1952 | 550 |
| 77 | KK-Y1 | 20 | Letter — Captain F. J. Aguado to Juan Ysmael & Co. Inc. | 5th March, 1952 | 550 |
| 78 | KK-Z1 | 20 | Letter — Juan Ysmael & Co. Inc. to Major Pamoe Rahardjo | 16th April, 1952 | 551 |
| 79 | KK-AA1 | 20 | Cable — Juan Ysmael & Co. Inc. to Major Pamoe Rahardjo | 15th April, 1952 | 552 |
| 80 | JMS-1A | 22 | Letter — Frank C. Starr to Captain Silos | 16th May, 1952 | 552 |
| 81 | JMS-2A | 22 | Cable — Frank C. Starr to Captain Silos | 9th June, 1952 | 553 |
| 82 | JMS-3 | 22 | Letter — Jose Ma. Silos to Jose Briones | 10th June, 1952 | 553 |
| 83 | JMS-4A | 22 | Payroll of Filipino crew of s.s. "Tasikmalaja" for May, 1952 | 21st June, 1952 | 554 |
| 84 | JMS-5A | 22 | 3 Statements of Account of salary advances to Steward, Deck and Engine Departments of s.s. "Tasikmalaja" for May, 1952 | 10th May, 1952 | 555 |
| 85 | JMS-6A | 22 | 3 Statements of Account of payments to crew of s.s. "Tasikmalaja" for period 15th March to 10th May, 1952 | 3rd June, 1952 | 558 |

| EXHIBIT NO. FOR PURPOSE OF REFERENCE | EXHIBIT MARKED | REFERRED TO IN DOCUMENT NO. | DESCRIPTION OF EXHIBIT | DATE | PAGE |
|---|----------------|-----------------------------|--|--------------------|------|
| 104 | JMS-17A | 27 | Translation of Letter — Captain Aguado to Captain Silos | 30th May, 1952 | 580 |
| 105 | FA-1 | 28 | Radiogram — Halmahera (Frank C. Starr) to American Trust Co. . . | 12th March, 1952 | 581 |
| 106 | AR-1 | 29 | Power of Attorney — Juan Ysmael & Co. Inc. to Frank C. Starr | 8th November, 1950 | 582 |
| 107 | JMS-18A | 31 | Letter — Kwee Djie Hoo to Captain s.s. "Tasikmalaja" | 9th May, 1952 | 584 |
| 108 | JMS-19 | 31 | Letter — Wilkinson & Grist to Commissioner of Police | 3rd July, 1952 | 584 |
| 109 | JMS-20A | 31 | Letter — Hong Kong & Whampoa Dock Co. Ltd. to Wilkinson & Grist . . | 5th July, 1952 | 586 |
| 110 | JMS-21A | 31 | Letter — Hong Kong & Whampoa Dock Co. Ltd. to M. A. da Silva | 8th July, 1952 | 587 |
| 111 | JMS-22 | 31 | Letter — M. A. da Silva to Hong Kong & Whampoa Dock Co. Ltd. | 10th July, 1952 | 587 |
| 112 | JMS-23A | 31 | Letter — Hong Kong & Whampoa Dock Co. Ltd. to M. A. da Silva | 12th July, 1952 | 588 |
| <i>The Exhibits marked with a † are Exhibits to Documents Included in Record of Proceedings on Insistence by the Government of the Republic of Indonesia but Objected to by Juan Ysmael & Company Incorporated.</i> | | | | | |
| † 113 | A | 61 | Letter — Hong Kong & Whampoa Dock Co. Ltd. to M. A. da Silva | 8th July, 1952 | 589 |
| † 114 | B | 61 | Letter — Juan Ysmael & Co. Inc. to Hong Kong & Whampoa Dock Co. Ltd. | 10th July, 1952 | 589 |
| 115 | KK-1 | 66 | Letter — M. A. da Silva to 40 named Indonesian members of crew of s.s. "Tasikmalaja" | 24th October, 1952 | 590 |
| 116 | KK-2A | 66 | Letter — Wilkinson & Grist to M. A. da Silva | 24th October, 1952 | 591 |
| 117 | KK-3 | 66 | Letter — M. A. da Silva to Wilkinson & Grist | 24th October, 1952 | 592 |
| 118 | AAN-1 | 67 | Letter — M. A. da Silva to Wilkinson & Grist | 28th October, 1952 | 592 |

Part "C"

EXHIBITS PRODUCED AT THE HEARING OF IMPLEADING MOTION IN
ADMIRALTY JURISDICTION ACTION NO. 8 OF 1952

| EXHIBIT NO. FOR PURPOSE OF REFERENCE | COURT EXHIBIT MARKED | REFERRED TO IN DOCUMENT NO. | DESCRIPTION OF EXHIBIT | DATE | PAGE |
|--------------------------------------|----------------------|-----------------------------|---|----------------------|------|
| 133 | 1 | 37 (p.69) | Second Charter Party. (See Exhibit KDH-A, Ref. No. 39) | 26th February, 1951. | 610 |
| 134 | 2 | 37 (p.69) | Third Charter Party. (See Exhibit KDH-B, Ref. No. 40) | 25th April, 1951. | 610 |

Part "C-1"

EXHIBITS PRODUCED AT THE HEARING OF ADMIRALTY
JURISDICTION ACTION NO. 8 OF 1952.

| EXHIBIT NO. FOR PURPOSE OF REFERENCE | COURT EXHIBIT MARKED | REFERRED TO IN DOCUMENT NO. | DESCRIPTION OF EXHIBIT | DATE | PAGE |
|--------------------------------------|----------------------|-----------------------------|--|-----------------------|------|
| 135 | A | 63 (p.138) | Decision of the Philippines Court . . . | 16th September, 1950. | 611 |
| 136 | B | 63 (p.138) | Bill of Sale—George Ho to Juan Ysmael & Co. Inc. (See Exhibit KK-C1, Ref. No. 52) | 16th September, 1950. | 613 |

Part "D"

EXHIBITS TO AFFIDAVITS FILED IN ADMIRALTY JURISDICTION
ACTION No. 8 OF 1952, OMITTED FROM RECORD.

| EXHIBIT NO. FOR PURPOSE OF REFERENCE | EXHIBIT MARKED | REFERRED TO IN DOCUMENT NO. | DESCRIPTION OF EXHIBIT | DATE | PAGE |
|--------------------------------------|----------------|-----------------------------|---|------------------|------|
| 137 | KK-BB | 20 | Bundle of Signed Vouchers | — | — |
| 138 | KK-CC | 20 | Bundle of Requisitions for Foodstuffs | — | — |
| 139 | JMS-12 | 27 | Telegram in Spanish — Captain F. J. Aguado to Mr. Hemady. | 23rd April, 1952 | — |
| 140 | JMS-15 | 27 | Telegram in Spanish — Captain F. J. Aguado to Captain Silos | 26th May, 1952 | — |
| 141 | JMS-16 | 27 | Letter in Spanish — Captain F. J. Aguado to Captain Silos | 23rd May, 1952 | — |
| 142 | JMS-17 | 27 | Letter in Spanish — Captain F. J. Aguado to Captain Silos | 30th May, 1952 | — |

**LIST OF DOCUMENTS NOT TRANSMITTED
TO THE PRIVY COUNCIL**

| REF. NO. | HONGKONG COURT FILE REF. NO. | DESCRIPTION OF DOCUMENT | DATE |
|-------------|---------------------------------------|--|-----------------|
| | | <i>IN THE SUPREME COURT OF HONG KONG ADMIRALTY JURISDICTION ACTION NO. 8 OF 1952</i> | |
| 1 | 1 | Minutes of Filing of Documents in Rem. | 27th June, 1952 |
| 2 | 3 | Minutes of Filing of Documents in Rem. | 27th June, 1952 |
| 3 | 2 | Minutes of Filing of Documents .. | 30th June, 1952 |
| 4 | 8 | Letter — M. A. da Silva to Registrar | 3rd July, 1952 |
| 5 | 9 | Letter — Wilkinson & Grist to Registrar | 4th July, 1952 |
| 6 | 10 | Registrar's Memo. | 5th July, 1952 |
| 7 | 11 | Minutes of Filing of Documents .. | 5th July, 1952 |
| 8 | 12 | Ex Parte Notice of Motion for Contempt Proceedings | 5th July, 1952 |
| 9 | 14 | Copy letter — Hong Kong & Whampoa Dock Co., Ltd. to Wilkinson & Grist | 5th July, 1952 |
| 10 | 17 | Order for Leave to serve Notice of Motion for Contempt Proceedings | 7th July, 1952 |
| 11 | 15 | Minutes of Filing of Documents in Rem. | 8th July, 1952 |
| 12 | 23 | Minutes of Filing of Documents in Rem. | 10th July, 1952 |
| 13 | 25 | Minutes of Filing of Documents in Rem. | 10th July, 1952 |
| 14 | — | Letter — Wilkinson & Grist to Registrar | 10th July, 1952 |
| 15 | — | Letter — M. A. da Silva to the Puisne Judge's Clerk | 14th July, 1952 |
| 16 | — | Letter — M. A. da Silva to Head Bailiff | 16th July, 1952 |

| REF. NO. | HONGKONG COURT FILE REF. NO. | DESCRIPTION OF DOCUMENT | DATE |
|----------|------------------------------|--|----------------------|
| 17 | 29 | Minutes of Filing of Documents .. | 24th July, 1952 |
| 18 | 30 | Minutes of Filing of Documents in Rem. | 25th July, 1952 |
| 19 | 37 | Letter — Wilkinson & Grist to Registrar | 25th July, 1952 |
| 20 | 31 | Minutes of Filing of Documents .. | 26th July, 1952 |
| 21 | 31 | Notice to Produce Documents .. | 26th July, 1952 |
| 22 | 32 | Minutes of Filing of Documents .. | 26th July, 1952 |
| 23 | 36 | Minutes of Filing of Documents .. | 28th July, 1952 |
| 24 | 39 | Letter — Registrar to Wilkinson & Grist | 28th July, 1952 |
| 25 | 38 | The Plaintiffs' Taxed Bill of Costs of and incidental to the Contempt Proceedings .. | 30th July, 1952 |
| 26 | 40 | Minutes of Filing of Documents .. | 31st July, 1952 |
| 27 | 44 | Minutes of Filing of Documents .. | 16th August, 1952 |
| 28 | 50 | Minutes of Filing of Documents .. | 18th August, 1952 |
| 29 | 51 | Minutes of Filing of Documents .. | 19th August, 1952 |
| 30 | — | Letter — M. A. da Silva to Registrar | 29th August, 1952 |
| 31 | 69 | Letter — Hong Kong & Whampoa Dock Co., Ltd. to Registrar .. | 5th September, 1952 |
| 32 | 64 | Minutes of Filing of Documents .. | 8th September, 1952 |
| 33 | — | Letter — M. A. da Silva to Registrar | 13th September, 1952 |
| 34 | 67 | Minutes of Filing of Documents .. | 15th September, 1952 |
| 35 | 71 | Minutes of Filing of Documents .. | 16th September, 1952 |
| 36 | 79 | Letter — Wilkinson & Grist to Clerk to Mr. Justice Reece .. | 16th September, 1952 |
| 37 | — | Letter — Wilkinson & Grist to Registrar | 17th September, 1952 |
| 38 | — | Letter — Wilkinson & Grist to Registrar | 17th September, 1952 |
| 39 | 73 | Letter — M. A. da Silva to Registrar | 18th September, 1952 |
| 40 | 74 | Letter — Wilkinson & Grist to Registrar | 18th September, 1952 |

| REF. NO. | HONGKONG COURT FILE REF. No. | DESCRIPTION OF DOCUMENT | DATE |
|----------|------------------------------|--|----------------------|
| 41 | — | Letter — Registrar to M. A. da Silva and to Wilkinson & Grist | 19th September, 1952 |
| 42 | — | Letter — Wilkinson & Grist to Registrar | 20th September, 1952 |
| 43 | — | Letter — Registrar to Wilkinson & Grist | 23rd September, 1952 |
| 44 | — | Letter — Wilkinson & Grist to Registrar | 24th September, 1952 |
| 45 | — | Letter — M. A. da Silva to Registrar | 26th September, 1952 |
| 46 | 75 | Minutes of Filing of Documents .. | 26th September, 1952 |
| 47 | 77 | The Plaintiffs' Taxed Bill of Costs on Motion filed on the 9th day of July, 1952 | 26th September, 1952 |
| 48 | 82 | Letter — M. A. da Silva to Registrar | 24th October, 1952 |
| 49 | — | Letter — Registrar to Superintendent, Marine Police .. | 25th October, 1952 |
| 50 | — | Letter — Registrar to M. A. da Silva | 25th October, 1952 |
| 51 | 81 | Minutes of Filing of Documents .. | 27th October, 1952 |
| 52 | — | Letter — M. A. da Silva to Registrar | 27th October, 1952 |
| 53 | 83 | Minutes of Filing of Documents .. | 28th October, 1952 |
| 54 | 84 | Minutes of Filing of Documents .. | 28th October, 1952 |
| 55 | 87 | Minutes of Filing of Documents .. | 1st November, 1952 |
| 56 | — | Letter — Wilkinson & Grist to Registrar | 6th December, 1952 |
| 57 | — | Letter — M. A. da Silva to Mr. Justice Reece's Clerk | 7th April, 1953 |
| 58 | — | Letter — Mr. Justice Reece's Clerk to M. A. Silva | 11th April, 1953 |

| REF. NO. | HONGKONG COURT FILE REF. No. | DESCRIPTION OF DOCUMENT | DATE |
|---|---------------------------------------|--|--------------------------------|
| <i>IN THE SUPREME COURT OF HONG KONG APPELLATE JURISDICTION APPEAL NO. 15 OF 1952</i> | | | |
| 59 | — | Minutes of Filing of Documents .. | 23rd October, 1952 |
| 60 | 12 | Notes taken and Decisions made by Registrar at Taxation of Costs of the Government of the Republic of Indonesia | 23rd April to 9th May, 1953 |
| 61 | 42 | Appellants' Taxed Bill of Costs on the Appeal | 11th May, 1953 |
| 62 | 43 | Respondents' Taxed Bill of Costs on Motion for Stay | 15th May, 1953 |

In The Privy Council.

ON APPEAL
FROM THE APPEAL COURT OF HONG KONG

BETWEEN

JUAN YSMAEL & COMPANY INCORPORATED
(Plaintiffs) - - - - *Appellants*

AND

10 THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
(Defendants) - - *Respondents*

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

(27th June, 1952)

IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 8 OF 1952

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 1
Writ of
Summons.
27th June,
1952.

BETWEEN JUAN YSMAEL & COMPANY INCORPORATED - - - *Plaintiffs*

and

20 THE STEAMSHIP "TASIKMALAJA" (EX THE
STEAMSHIP "CHRISTOBAL" AND THE STEAM-
SHIP "HALEAKALA") - - - - - *Defendant*

ACTION FOR POSSESSION

ELIZABETH II, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, QUEEN, Defender of the Faith.

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.

30 We command you that within one week after the service you do cause an appearance to be entered for you in our Supreme Court of Hong Kong in the abovenamed action instituted at the suit of Juan Ysmael & Company Incorporated,

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

a domestic Filipino corporation duly organised and existing under and by virtue of the laws of the Philippine Islands, with registered office and postal address at Rooms Nos. 217/221 Consolidated Investments Building, Plaza Goiti, in the City of Manila in the Philippine Islands.

No. 1
Writ of
Summons.
27th June,
1952.
continued.

And take notice that, in default of your so doing, the said action may proceed, and judgment may be given in your absence.

WITNESS The Honourable Sir Gerard Lewis Howe, Kt., Q.C., Chief Justice of Our said Court, this 27th day of June, 1952.

(L.S.)

(Sd.) R. WINTER,
Registrar.

10

STATEMENT OF CLAIM

The Plaintiffs as sole owners of the steamship "Tasikmalaja" (ex the steamship "Christobal" and the steamship "Haleakala") of the Port of Panama in the Republic of Panama, claim to have legal possession decreed to them of the said vessel.

(Sd.) M. A. da Silva,
Solicitor for the Plaintiffs.

This writ was issued by M. A. DA SILVA, Solicitor for the Plaintiffs whose address in Hong Kong is care of M. A. da Silva, Gloucester Building, First Floor, Hong Kong.

20

All documents required to be served upon the said Plaintiffs in the action may be left for them at the office of M. A. da Silva Solicitor, at Gloucester Building, First Floor, Victoria aforesaid.

(Sd.) M. A. da Silva.

No. 2

PRAECIPE FOR WARRANT FOR ARREST OF RES

(27th June, 1952)

I, MARCUS ALBERTO DA SILVA, Solicitor for the Plaintiffs, pray a warrant to arrest the steamship "Tasikmalaja" (Ex the steamship "Christobal" and the steamship "Haleakala"), now lying in the Harbour of Hong Kong.

30

Dated the 27th day of June, 1952.

(Sd.) MARCUS DA SILVA,
Solicitor for the Plaintiffs.

No. 2
Praecipe for
Warrant for
arrest of Res.
27th June
1952.

No. 3

WARRANT FOR ARREST OF RES

(27th June, 1952)

ELIZABETH THE II, by the Grace of God, of Great Britain, Ireland, and of the British Dominions beyond the Seas, QUEEN, Defender of the Faith.

In the Supreme Court of Hong Kong Admiralty Jurisdiction

No. 3 Warrant for arrest of Res. 27th June 1952.

To: The Bailiff of the Supreme Court of Hong Kong and to all and singular his substitutes.

We hereby command you to arrest the steamship "Tasikmalaja" (Ex the steamship "Christobal" and the steamship "Haleakala") of the port of Panama in the Republic of Panama, now lying at the Harbour of Hong Kong, and to keep the same under safe arrest until you shall receive further orders from us.

WITNESS THE HONOURABLE Sir Gerard Lewis Howe, Kt. Q.C., Chief Justice of Our said Court, this 27th day of June, 1952.

(L.S.)

(Sd.) R. WINTER, Registrar.

No. 4

MEMO FROM HEAD BAILIFF TO DIRECTOR OF MARINE

(27th June, 1952)

No. 4 Memo from Head Bailiff to Director of Marine. 27th June 1952.

FROM: Head Bailiff, Supreme Court. To Director of Marine
20 Ref. A.J. 8/52. Date 27th June, 1952.

ADMIRALTY JURISDICTION ACTION NO. 8 OF 1952.
THE STEAMSHIP "TASIKMALAJA" (EX THE STEAMSHIP "CHRISTOBAL"
AND THE STEAMSHIP "HALEAKALA")

Please note that the steamship "Tasikmalaja" has also been arrested by the Bailiff of the Supreme Court in the above action.

(Sd.) L. ALLTREE,
Head Bailiff, S.C.

No. 5

APPEARANCE UNDER PROTEST BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

(30th June, 1952)

No. 5 Appearance Under Protest by the Government of the Republic of Indonesia. 30th June 1952.

UNDER PROTEST

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 5
Appearance
Under Protest
by the
Government
of the
Republic of
Indonesia,
30th June 1952.
continued.

TAKE NOTICE that we appear for the Government of the Republic of Indonesia the owner of the abovenamed ship in this action, without prejudice to an application to the Court to dismiss the action.

THIS appearance is to stand as unconditional unless the Defendant applies within 10 days for such dismissal as aforesaid.

Dated the 30th day of June 1952.

(Sd.) WILKINSON & GRIST,

Solicitors for the owner of the above
named Defendant ship whose address for
service is No. 2 Queen's Road Central,
Victoria in the Colony of Hong Kong. 10

No. 6

**NOTICE OF MOTION FOR CONTEMPT PROCEEDINGS AGAINST
SIX MEMBERS OF THE CREW OF THE DEFENDANT
VESSEL**

(8th July, 1952)

IN THE MATTER OF:—

1. D. J. Mandagi
2. H. Sahabu
3. H. Lumisay
4. E. Tjong Sui
5. J. Lewiresa
6. V. Kaparang.

20

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Friday the 11th day of July 1952 at 2.30 o'clock in the afternoon or so soon thereafter as Counsel can be heard by Counsel for the abovenamed Plaintiffs that the abovenamed persons numbered 1 to 6 may be committed to the Hong Kong Prisons for a contempt of this Honourable Court in interfering with the custody of the ship by the Head Bailiff of this Honourable Court by excluding or attempting to exclude the Acting Captain Jose Maria Silos from boarding and remaining on board the s.s. "Tasikmalaja" (Ex the s.s. "Christobal" and the s.s. "Haleakala") or in the alternative that the abovenamed Plaintiffs may be at liberty to issue a writ or writs of attachment against the aforesaid persons for their contempt aforesaid and that the said persons may be ordered to pay to the Plaintiffs their costs of and incidental to this motion and the Order to be made thereon and the costs of and incidental to the issuing and execution of any such writ or writs of attachment as aforesaid. 30

No. 6
Notice of
Motion for
Contempt
Proceedings
against six
members of
the crew of
the Defendant
vessel.
8th July 1952.

AND TAKE NOTICE ALSO that special leave to serve you with this Notice by the 8th day of July 1952 and to give this Notice for the day (and hour and place) aforesaid and for you to appear and show cause why the order should not be made or the said writ or writs of attachment may not be so issued and executed had been on the 7th day of July 1952 obtained from The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge.

Dated this 8th day of July, 1952.

(Sd.) MARCUS DA SILVA,
Solicitor for the Plaintiffs.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 6
Notice of
Motion for
Contempt
Proceedings
against six
members of
the crew of
the Defendant
vessel.
8th July 1952.
continued.

10 To the abovenamed:—

1. D. J. Mandagi
2. H. Sahabu
3. H. Lumisay
4. E. Tjong Sui
5. J. Lewiresa
6. V. Kaparang.

No. 7

AFFIDAVIT OF JOSE MARIA SILOS

(5th July, 1952)

No. 7
Jose Maria
Silos' first
Affidavit.
5th July 1952.

20 I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows:—

1. I am authorised to make this affidavit on behalf of the Plaintiffs herein.
2. I am a Master Mariner holding a Masters' Certificate from the Republic of Philippines.
3. Seven and a half months before the 9th day of May, 1952 I had been serving the Plaintiffs as their servant on their ship the s.s. "Tasikmalaja" (otherwise s.s. "Christobal" and s.s. "Haleakala") as Chief Officer to one Captain F. J. Aguado.
- 30 4. On the 9th day of May, 1952 (when the said vessel was lying in the Harbour of Victoria in the Colony of Hong Kong) the said Captain Aguado left the Colony of Hong Kong for Manila in the Philippine Islands and I was appointed Acting Captain in his place and stead.
5. On the 27th day of June, 1952 when action was instituted herein and the Head Bailiff of the Supreme Court arrested the ship on a warrant issued by the Registrar, I was still Acting Captain in full charge and control of the

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 7

Jose Maria
Silos' first
Affidavit.
5th July 1952.
continued.

said vessel as the only certificated officer on board holding physical possession thereof on behalf of the Plaintiffs and I was on board the said vessel when the Head Bailiff took the ship under arrest.

6. On the 29th day of June 1952, Mr. L. Alltree, the said Head Bailiff, came on board ship and in my presence informed Mr. J. Walandaouw, the Indonesian Purser on board, that the ship was in his custody as Head Bailiff and that everything on board should be left as it was at the time of arrest and that no trouble should be created on board. Mr. J. Walandaouw replied that he understood what was being told to him and promised to give this information to the rest of the Indonesian crew on board. 10
7. I continued on board the said vessel as Acting Captain in full charge thereafter when on the 30th day of June 1952 I received a letter from the Consul-General in Hong Kong for the Republic of Indonesia purporting to dismiss me as Acting Captain of the vessel and requesting that I should leave the vessel immediately. The said letter is now produced to me marked "A" (with copy attached hereto marked "A1"). I replied on the same day as per copy letter attached hereto marked "B".
8. On the same day, after I had received the said letter of dismissal, an Indonesian Cadet Officer (an apprenticed Mate) by the name of D. J. Mandagi rushed up to me wildly whilst I was talking to a Chinese visitor friend of mine on the ship and in the presence of a European Detective Inspector of the Hong Kong Police, ordered my Chinese friend to get off the ship. On my remonstrating with him he went away to a group of all the Indonesian crew on board composed of:— 20

| | | |
|--------------------|-----------------|----|
| M. Sahabu | Quartermaster. | |
| H. Lumisay | Ordinary Seaman | |
| H. Sudjajos | — do — | |
| T. Lowel | — do — | |
| E. Tjong Sui | — do — | |
| S. Sudarman | — do — | 30 |
| A. Taubara | Watchman | |
| L. Tjung Jung | Watchman | |
| J. Lewiresa | Oiler | |
| Johanis Walandaouw | " | |
| Ahmmad | " | |
| M. Sigar | " | |
| D. Sumolang | " | |
| L. Nanlohy | Fireman | |
| T. Toba | " | |
| Ali | " | 40 |
| R. Walandaouw | " | |
| A. Gigil | " | |
| R. Sudarsono | " | |
| A. Karauwan | Wiper | |
| V. Pongilatan | " | |
| V. Kaparang | " | |

Exhibit A1 & B
Ref. No. 1 & 2

| | | |
|----|------------------|--------------------|
| | C. Lombogia | Wiper |
| | P. Kaparang | " |
| | J. Walandaouw | Purser |
| | Kaka | Chief Cook |
| | Sigama | Cook Helper |
| | Hassan | Saloon Boy 2 |
| | Tjolli | — do — 3 |
| | M. Boko | — do — 4 |
| 10 | Lamburi | Cabin Boy 1 |
| | Duhun | — do — 2 |
| | Ento Suminto | — do — 3 |
| | Rukdin Nosoi | Deck Officer Boy |
| | Jan Pieters | Chief Engineer Boy |
| | Idrus Ishak | Toilet Boy |
| | Jan Arie Mandang | Cabin Boy 4 |

20 who were then below in consultation with an Indonesian gentleman who claimed to be the representative of the said Indonesian Consul-General and a Mr. J. W. Kuitert, the Technical Adviser to the Indonesian Consul-General in Hong Kong and he returned from that group with several Indonesian sailors, namely, H. Lumisay, E. Tjong Sui, and one other whose name I cannot now recollect, and threatened to throw my Chinese visitor off the ship when I intervened and suggested to my friend that he should leave in order to avoid trouble. My friend thereupon left, but as the general attitude of the whole of the Indonesian crew towards me personally was so ominously threatening and hostile, I decided (partly on the advice of the said European Detective Inspector) to go on shore for that night. I left with him, staying at the Kimberley Hotel that night.

30 9. Later on in the day, I sent Chief Engineer Reyes and 3rd Officer Ricardo Aguado to board the said ship for the purpose of obtaining certain papers for me. I am informed by the said Chief Engineer Reyes and the said Ricardo Aguado and verily believe that on their approaching the gangplank leading up to the vessel's deck several members of the crew namely, E. Tjong Sui, V. Kaparang and J. Lewiresa were on guard on the gangplank together with the Indonesian Quartermaster M. Sahabu and these refused them entry onto the ship, the Quartermaster telling them that he was acting on the instructions of the said Indonesian Consul-General and that no one was to be admitted without a pass from the said Consul-General.

40 10. On the morning of the first day of July 1952 I saw Divisional Superintendent (Kowloon City) of Police D. B. Smith at Hunghom Police Station and he instructed a Police Inspector to board the said vessel with me. As I approached the gangplank several of the Indonesian crew led by D. Mandagi came towards the gangplank with the obvious intention of preventing me getting aboard, but as soon as they saw the Police Inspector these members of the crew retired from the gangplank to the starboard side. I went aboard with the said Police Inspector, obtained certain papers and left the ship.

*In the
Supreme
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No. 7

Jose Maria
Silos's first
Affidavit.
5th July 1952.
continued.

11. At 2.45 p.m. on the same day I went on board the ship with the said Chief Engineer Reyes and Ricardo Aguado. As I got to "C" Deck, the said Indonesian Quartermaster M. Sahabu accosted me and requested that we should leave the ship immediately claiming that he was instructed by the said Indonesian Consul-General to prevent us from coming aboard and that no one was to be admitted aboard without a pass from the said Consul-General. With the said Quartermaster was a large number of the crew comprising the majority of the Indonesian crew aboard. I then turned around and left the ship with the said Reyes and Aguado, when one of the crew made a remark in the Indonesian language which I did not understand and the rest of the Indonesians there burst out laughing. 10

12. On the 2nd of July, 1952 I approached the Kowloon Dock Gates (the vessel being moored alongside) with a view to going on board, when the Police Inspector at the said Gates advised me not to go on board as my doing so would only create trouble. I thereupon withdrew.

13. On my reporting these incidents to Mr. Khalil Khodr, the authorised attorney of the Plaintiffs in Hong Kong, he went with me to see the Plaintiffs' solicitor, Mr. M. A. da Silva, and instructed Mr. Silva to write letters as per copies attached and marked "C", "D", "E", "F" and "G" respectively to the Honourable the Commissioner of Police, the said Indonesian Consul-General, Messrs. Wilkinson & Grist, (Solicitors for the Government of the Republic of Indonesia), the Registrar and the Head Bailiff of the Supreme Court. 20

14. I am informed by the said Mr. M. A. da Silva and verily believe that appearance under protest was entered in this action on the 30th day of June, 1952 on behalf of the Government of the Republic of Indonesia by Messrs. Wilkinson & Grist on the 30th day of June, 1952.

15. I am further informed by the said Mr. M. A. da Silva and verily believe:—

That at about 5 p.m. on the 3rd day of July, 1952, as a result of a telephone call to Mr. M. A. da Silva from Mr. A. C. Maxwell the Deputy Commissioner of Police, Mr. Silva got in touch by telephone with Mr. P. J. Griffiths of Messrs. Wilkinson & Grist and was informed by Mr. Griffiths that he had advised his client (the said Indonesian Consul-General) that I should be allowed on board the vessel and that I should not be molested when on board and that Messrs. Wilkinson & Grist would be writing to Mr. Silva in this regard. 30

16. In view of this communication from Mr. Griffiths, Mr. Silva informed me that I could safely go on board the vessel, whereupon at 6.40 p.m. I approached the Kowloon Docks with a Mr. Briones with a view to going on board the said vessel. At the pontoon bridge of the Kowloon Docks we met the Indonesian Purser the said Mr. J. Walandaouw and the Dutch Electrician of the said vessel namely one Pierre Rosenberg and whilst Briones stayed behind to talk to these two I proceeded on to the s.s. "Tasikmalaja". Upon reaching the gangway I was met by an Indonesian sailor acting as watchman namely E. Tjong Sui and he said to me: "You cannot get on board". 40

Exhibit C, D,
E, F, G.
Ref. No. 3, 4, 5,
6, 7.

17. I made no reply but continued along the gangplank on to the ship followed by the said Indonesian watchman and the said Cadet Officer Mandagi and the last said to me: "You are not supposed to come on board. In any case the Consul has instructed me to ask you for the key to your (the Captain's cabin on board) room. Please let me have the key". I replied that if the Indonesian Consul-General wanted my keys he could only get it on a Court order. I also told him that I was going to my room to get a change of clothing. At this stage I called out to the Head Bailiff's watchman on board and asked him if everything was in order on board and on his reply in the affirmative I carried on to my cabin followed by the said Cadet Officer, the said Indonesian watchman and an Indonesian messboy of the ship.
18. Upon reaching my cabin two more of the Indonesian crew on board joined the group namely one J. Lewiresa and another whose name I have forgotten.
19. I unlocked my cabin door and went in and the said Indonesian watchman followed me into the cabin whilst the others stood in a hostile ring immediately outside my cabin door. I changed my trousers, walked out of my cabin with the said Indonesian watchman following me out, locked my cabin door and walked off the ship with these same persons following me on to the Kowloon Docks only a few feet behind me. As I got to the pontoon bridge the said J. Walandaouw saw what was happening and said to me: "You had better hurry away and I will stop these people from following you." I then left the Kowloon Docks.
20. I am informed by Mr. M. A. da Silva and verily believe that he received on Friday the 4th July, 1952, a letter and enclosure (produced and marked "H-1" and "H-2") from Messrs. Wilkinson & Grist (copies whereof are attached hereto and marked "H-1a" and "H-2a"). I am advised and verily believe that though many of the statements in the enclosure are untrue, it is not necessary for the purpose of this matter to detail these untruths. The copy of reply of Mr. M. A. da Silva of the 5th July, 1952 with copy of enclosure are attached hereto and marked "J-1" and "J-2".
21. I am informed by Mr. M. A. da Silva and verily believe that he received on Friday the 4th July, 1952 a letter (produced and marked "K") from The Honourable The Commissioner of Police (copy whereof is attached hereto and marked "K-1").
22. I verily say and believe that Mr. Kweedjehoo the Consul-General in Hong Kong for the Republic of Indonesia had acted or purported to act at all material periods for and on behalf of the Government of the Republic of Indonesia.
23. I verily believe that all Indonesians forming part of the crew on board the said vessel have been instructed by the said Indonesian Consul-General to forcibly exclude me from the said vessel and that any attempt on my part to go and remain on board would be forcibly prevented by the said Indonesian crew.

Exhibit H-1a &
H-2a
Ref. No. 8 & 9

Exhibit J-1 &
J-2
Ref. No. 10 & 11

Exhibit K-1
Ref. No. 12

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

AFFIDAVIT OF JOSE MARIA SILOS

(8th July, 1952)

No. 8
Jose Maria
Silos' second
Affidavit.
8th July 1952.

I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows :—

1. On the 5th day of July 1952 I went by motorboat alongside the s.s. "Tasikmalaja" (ex s.s. "Christobal" and the s.s. "Haleakala") with Mr. L. Alltree the Head Bailiff of this Honourable Court and one Captain Reginald H. W. Jackson (Master Mariner) who had been appointed by the said Head Bailiff to become Chief Officer temporarily on board the said s.s. "Tasikmalaja" in order to assist me in case of a possible typhoon (the No. 1 signal having been hoisted) and whose presence as a second certificated officer on board the said vessel was necessary for its safety. 10
2. On arrival alongside Mr. L. Alltree remained in the motorboat and instructed the said Captain Jackson and myself to board the vessel. He also told me that he was taking the Indonesian log book of the ship into his custody for safekeeping and instructed me to obtain the log book from my cabin and to bring the same to him.
3. The said Captain Jackson and myself proceeded on board and went to my cabin which I had locked. I took out the log book and walked out of my cabin with the view to handing the same to the Head Bailiff in the motorboat when I found my way blocked by Cadet Officer D. J. Mandagi, Purser Jules Walandaouw and the rest of the entire Indonesian crew. The said Cadet Officer D. J. Mandagi said to me that I was not to take the log book off the ship, whereupon I replied that I was not doing this personally but was handing the log book for safekeeping to the said Head Bailiff whose directions I was obeying and who had the custody of the entire ship and its contents. 20
4. Immediately as I said this the said Cadet Officer D. J. Mandagi suddenly put his arms around me in an attempt to wrest the log book from my hands, whereupon the said Captain Jackson caught hold of him by the shoulder and pushed him back. I called out to the said Head Bailiff in the motorboat and told him what had happened, whereupon he instructed me to call the said Purser Jules Walandaouw and the said Cadet Officer to the ship's rail. 30
5. At the ship's rail the said Head Bailiff explained to these two persons that he was taking that log book to his office at the Supreme Court for safekeeping, whereupon the said Purser Jules Walandaouw told the Head Bailiff that if he desired to take away the log book he would have to obtain the permission of the Indonesian Consul-General. At this stage the rest of the crew made their way towards me in a very threatening and hostile manner as if they were about to lay hands on me and to throw me off,

when the said Captain Jackson shouted at them and told them to get back and they fell back. The Head Bailiff then instructed me to avoid trouble and to take the log book back to my cabin and to lock it up, which I did. The Head Bailiff then left.

*In the
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Jurisdiction*

6. The crew continued to be very hostile and threatening and kept watch on me and Captain Jackson in my cabin, the following taking turns in the watch, viz. :—

No. 8
Jose Maria
Silos' second
Affidavit.
8th July 1952.
continued.

- 10 (a) E. Tjong Sui
(b) V. Kaparang, and
(c) Henry Tampi (whose name had been left out by an oversight from the list of the Indonesian crew contained in my previous affidavit of the 5th July, 1952).

AND LASTLY I do make oath and say that the contents of this my Affidavit are true.

Sworn etc.

No. 9

AFFIDAVIT OF LEONARD ALLTREE

No. 9
Leonard
Alltree's
Affidavit.
10th July 1952.

(10th July, 1952)

I, LEONARD ALLTREE of the Supreme Court of Hong Kong, Victoria
20 in the Colony of Hong Kong, Head Bailiff, do make oath and say as follows :—

1. I did on Tuesday, the 8th day of July, 1952 at 4.15 o'clock in the afternoon, serve each of the following persons, namely, D.J. Mandagi, H. Sahabu, H. Lumisay, E. Tjong Sui, J. Lewiresa and V. Kaparang with one set each of the following documents :—
- (a) Order dated the 7th day of July, 1952 made by The Honourable Mr. Justice C. W. Reece, Puisne Judge in Chambers in this action.
- (b) Notice of Motion dated the 8th day of July 1952 issued by M. A. da Silva, Solicitor for the Plaintiffs in this action.
- 30 (c) Affidavit of Jose Maria Silos filed on the 5th day of July, 1952 in this action.
- (d) Affidavit of Jose Maria Silos filed on the 8th day of July, 1952 in this action.

which appeared to me to have been regularly issued out of the Supreme Court of Hong Kong in its Admiralty Jurisdiction against the abovenamed defendants at the suit of the abovenamed plaintiffs by delivering a true copy of each of the aforesaid documents to each of the aforesaid persons

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No. 9
Leonard
Alltree's
Affidavit
10th July 1952.
continued.

and leaving the same with each of the said persons, D.J. Mandagi, H. Sahabu, H. Lumisay, E. Tjong Sui, J. Lewiresa and V. Kaparang personally on board the s.s. "Tasikmalaja" lying in the Harbour of Hong Kong.

2. At the time of the said service the said documents and each of the copies thereof were subscribed and indorsed in the manner and form prescribed by the Rules of the Supreme Court.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

10

No. 10
Jose Maria
Silos' third
Affidavit.
10th July 1952.

No. 10

AFFIDAVIT OF JOSE MARIA SILOS

(10th July, 1952)

I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows :—

1. This affidavit is further to my affidavit filed herein on the 8th day of July 1952.
2. I am informed by Mr. M. A. da Silva and verily believe that on the 8th day of July 1952 he received a letter from Messrs. Wilkinson & Grist which I now produce marked "A" (with copy attached marked "A1") and that a reply was given thereto as per copy letter dated the 10th day of July 1952 attached hereto and marked "B".
3. I am informed by the Filipino members of the crew (by signed statements in writing) namely :—

- (1) Nemesio Mortel
- (2) Alberto Aviles
- (3) Dionisio Cabil
- (4) Antonio Tonalgo
- (5) Cresencio Molo
- (6) Fermin Alimpia
- (7) Norberto Pavia
- (8) Jose Rubion,

30

and verily believe :—

- (a) That it is completely untrue that any of them had ever agreed to accept the orders of Captain Mandagi, though it is true that in the evening of the 9th of July 1952, the Indonesian Purser Jules Walandaouw had

Exhibit A1
Ref. No. 13

Exhibit B
Ref. No. 14

attempted to obtain a written statement from them to effect that they recognised the Indonesian Government as owners from whom they were allegedly receiving salaries, which they refused to give.

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(b) That instead every member of the Filipino crew had held themselves subservient to my orders and had reported to me daily through their representative Nemesio Mortel the Acting 2nd Engineer and the Radio Operator Fermin Alimpia.

—
No. 10
Jose Maria
Silos' third
Affidavit.
10th July 1952.
continued.

(c) That they had never had or accepted orders from Apprentice Mate D. J. Mandagi alleged in Exhibit "A" 'to be Captain Mandagi' (who, the said Captain Mandagi, was at all times only an Apprentice Mate without any certificate or qualifications at all).

10

(d) That the said Nemesio Mortel had throughout all material periods to date made entries only in the Panamanian Registry Engine Log-Book and not in the purported Indonesian one which has never been entered up at all.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 11

20 **NOTES OF CONTEMPT PROCEEDINGS TAKEN BY THE HONOURABLE THE
PUISNE JUDGE MR. JUSTICE COURTENAY WALTON REECE**

No. 11
Notes of
Contempt
Proceedings.
10th July 1952.

(11th July, 1952)

11.7.52 at 2.30 p.m.

Juan Ysmael & Co. Incorporated — Plaintiffs.
S.S. "Tasikmalaja" — Defendants.

Bernacchi (Silva) for plaintiffs.
Wright (Griffiths) for defendants.

30 Wright: Applies for an immediate adjournment as he and Mr. McNeill are engaged in another O.J. Action which is now continuing and their presence is imperative. No one more conscious that the laws of this country and orders of this Court must be obeyed than the Consul General of Indonesia. He has given strict instructions to the crew not to interfere in any way with the comings and goings of Captain Silos and his instructions are being obeyed and will be obeyed. These proceedings are a shabby attempt to fish out evidence to support case and it is our strong submission that this case must not be heard until after the impleading proceedings are heard. If these proceedings are to fish out evidence they are mischievous in the extreme. Rule 146 of the Supreme Court Admiralty Rules. On all these grounds I ask that the matter be adjourned.

Bernacchi: I oppose any adjournment. I am unable to understand why the matter should be adjourned. These gentlemen seem to have proceeded on the ground that the matter would be adjourned. Only yesterday Wright asked the Court to ignore the convenience of counsel when the matter suited his client. He is here and there are two counsel in the other proceedings and they are not being held up by his presence here. What is the value of assurances when it is clear, from the affidavits, that these gentlemen were either ignoring the instructions received from Consul General or else they had totally different instructions from those we were assured were given to them. It is our view that this is a deliberate attempt for the purpose of strengthening defendants' hands in the impleading 10 issue. It is admitted that at the time when the status quo was imposed viz. the arrest of the vessel, Silos was the undisputed Captain of this vessel. We now hear a young Cadet Officer called Captain of the vessel and an attempt being made to exclude Captain Silos from the control of the vessel. We have no desire to fish out evidence. My learned friend said his clients would not act in contempt provided the Captain behaved himself. If the Captain misbehaves himself the crew have their remedy. The status quo is preserved for the benefit of all sides. It amounts to saying that his clients will only not act in contempt if Silos misbehaves himself. I see nothing unnatural in the Head Bailiff wanting to take possession of what will be a vital document in case, if certain members of crew 20 to wit Mandagi has tried to get possession of the key of the place where this book is kept — the Captain's cabin. There are two occasions on which this occurred. I submit that the attitude which these men have adopted is utterly scandalous. They have not deigned to answer the affidavits filed. I submit that I am entitled to my order vice R.S.C. O.44 r.1 of 1949 (White Book) 847 under head — Ordinary Contempt. I ask Court for these reasons to refuse the adjournment.

Application for adjournment refused.

Bernacchi: Affidavits disclose a deliberate attempt to upset the status quo and to exclude Captain Silos from the ship and that after a letter from plaintiffs' solicitors addressed to the Consul General of Indonesia. This letter is a treatise 30 on the *Abodi Mendi* case which is an authority for the fact that an attempt to alter the status quo is a contempt of Court. Ref: *Abodi Mendi* case (1939) Probate Division 178 at 194 to first para. of p.195. The plaintiffs rely on the position of the Captain and a very serious attempt is being made to affect the position of the Captain. The persons primarily responsible for this are the 6 persons named in the affidavits, one of whom has now attempted to assume command of the vessel. I ask the Court to make the order asked for, being the only order which in our opinion will conserve the status quo.

Wright: I submit that when the bailiff went on board and arrested the ship, he himself was committing a contempt and through him the plaintiffs 40 whereby an invalid effort was made to arrest the ship a second time. By endeavouring to arrest a ship already under arrest, they were interfering with the status quo. If ship is under arrest and a 2nd action instituted against that ship, the proper procedure is that instead of trying to arrest a 2nd time, a caveat against release should be filed. In this case plaintiffs arrested the res a 2nd time and they have by so doing committed a contempt by interfering with a res already . . .

The complaint that by virtue of being plaintiffs in Adm. Action No. 8 of 1952 and by virtue of the fact alleged in para. 5 of Silos' 1st affidavit and by reason of the fact that this ship was arrested in this action on 22nd June which in my opinion is an entirely invalid arrest. The alleged contempt extends from this 2nd arrest, which I submit is invalid. They are in fact complaining of a contempt in relation of an arrest, and the consequences which flow from it, which never existed in the eyes of the law. In those circumstances they are out of Court. Any contempt proceedings should be instituted in A.J. No. 6/1952.

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No. 11
Notes of
Contempt
10th July 1952.
Proceedings.
continued.

Secondly: I ask the Court closely to scrutinise the notice of motion and order wherein is set out the alleged contempt complained of. The contempt complained of is that the defendants had excluded or attempted to exclude the acting Captain Silos from remaining on board. The affidavits do not support this. They show that the crew were extremely perturbed by 2 main incidents, neither of which had anything to do with excluding the Captain from remaining on board, but were, on the contrary, acts directly affecting the status quo. Please note that if the Court had made an order enjoining the bailiff to take custody of the log book, there might have been some excuse for what bailiff has done in this case. There is no more important document on board a ship than the log and nothing short of a Court order would entitle a person to interfere with the status quo by removing the log book. The Indonesian party finds the leader of the opposing party coming on board to remove the log: this is a direct interference with the status quo. Bailiff does not go on board, but it was in my submission his bounden duty to go on board and explain his authority and take with him an interpreter. It is all very well to say that they have their remedy, but they have no time to go to the police. Even when he saw the unwillingness to permit the log book be taken the bailiff did not go on board. The log book was under lock and key and there is no evidence of any attempt to interfere with it before and after. Look where you will in the affidavit of Silos and you will not find a hint of evidence that they prevented him from going on board. The affidavit only says they were keeping an eye on him. Each side watching the other side. And there is no evidence that the bailiff's watchmen were obstructed. The other incident complained of is the Captain's taking a friend on board. This is a storm in a tea pot. There is no evidence that the bailiff has been interfered with. The affidavits do not support the proposition that they are interfering with the Captain or the status quo. Bringing strangers on board in a situation like this is a direct interference with the status quo.

In the *Abodi Mendi* case there was a direct exclusion of the Captain. Gangway was pulled up and Captain not allowed on board. I draw attention to this fundamental principle viz., the Court must be satisfied that there is *wilful disobedience*. Unintentional disobedience is not sufficient. White Book 1949 at p.847. Contempt proceedings. Before Court is satisfied that there was wilful disobedience Court must be satisfied that Bailiff was present, had his authority and had an interpreter. Bailiff did not go on board and the inference is that he did not know what his position was.

Although bailiff has sworn an affidavit, there is no hint that the crew is incalcitrant. Black looks are no contempt of Court. There should be much stronger evidence than is before the Court before there should be an order for attachment or committal. Case is poles apart from *Abodi Mendi* case.

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Notes of
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continued.

Reverting to the first point, I desire to draw attention to the caveat release procedure. 0.29 r.8 (Admiralty Rules). By phrase — “if the Captain behaves himself”, I mean that the Captain is not entitled to take anyone on board a ship under arrest unless he has an order of Court. And if anything is to be taken off the ship, there should be a proper authority, properly communicated and served to the crew. We are prepared to give any unqualified undertaking to preserve the status quo, that we won't exclude or attempt to exclude Silos from coming on board the ship. All that is required is a stern and impartial warning to both sides that it is their responsibility and duty to preserve the status quo, and avoid incidents which should cause clashes.

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I ask that the motion be dismissed and that there be no order as to costs in view of Silos' behaviour as disclosed in the affidavits.

Bernacchi: Far from coming and admitting faults, these respondents through Counsel have attempted a justification. My learned friend has devoted time to a supplementary affidavit and to an incident described as bringing a friend on board.

What Wright has not dealt with are the main incidents. I refer to para.7 of Silos' affidavit which exhibits “A1.” I refer to para. 9. No let up of attitude after friend left. Why Captain cannot have a friend on board I cannot see. Para. 11, 13, 15. After this vital assurance that the Captain would not be molested, 20 we get the following incidents in para. 16. There is no denial of the affidavit. Paras. 17, 18, 19 and 23. All these have been unanswered. To show that this was a continuous plan of action and not a casual incident, we filed a further affidavit to show what happened on 8th July and it is only this affidavit that my friend has attempted to deal with. He suggests that his clients were provoked by some improper action on the part of the Captain. Ref: to docket 16.

Whatever cause they might have had for concern, this could not have existed after the Head Bailiff told them he was taking the log book to the Supreme Court. We have said in all the correspondence that this is a contempt of Court vide Ex.“D”. There has been a continuous plan to exclude Captain Silos from the 30 ship. There is no reason to believe that there has been any change of attitude. Not one of these affidavits has been denied. There is the clearest evidence of repeated exclusions. It would have been far more seemly if they had come to the Court and regretted their conduct.

As to technical objection, Wright cites no authority except 0.29 r.8. If it applies here, and presumably it does, it deals with a case where you have one action and you don't want one of the parties to that action to present you with a *fait accompli* by partly discontinuing. No authority that where you have a separate cause of action you cannot arrest the ship because it has already been arrested in another action already. But this point is no more an answer than to 40 say there is a motion on impleading pending. Until this arrest has been discharged the ship is in arrest in this action by order of this Court and if they say the Court should not have arrested it twice, they must take a motion to release it or set the Court's order aside. The real phantasy of my friend's position is that he is forced to admit that the ship is in arrest in Action 6 and

asks Court totally to disregard the orders of Court — a clear contempt brought to Court's notice by affidavit on the excuse that the Court has arrested the boat twice when it should only have done so once. Once or twice, the boat is in arrest and it is clear from the *Abodi Mendi* case that the contempt is the interference with the Court's custody. An exclusion or attempted exclusion of the Captain is clearly such a contempt. I think the criticism of Bailiff totally unjustified. Bailiff considered it his duty to remove log book and these gentlemen had no right to tell him he could not do so without Consul-General's orders. This is not my case. Our case is our desire to preserve the status quo. Far from saying that
 10 there should be no order as to costs, I ask for costs as between solicitor and client.

*In the
 Supreme
 Court of
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 Admiralty
 Jurisdiction*

—
 No. 11
 Notes of
 Contempt
 Proceedings.
 10th July 1952.
continued.

Decision to be delivered at 9.30 a.m. on Monday, 14th July.

Sd. C. W. REECE.
 11th July, 1952.

**JUDGMENT OF MR. JUSTICE REECE ON CONTEMPT
PROCEEDINGS**

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

(14th July, 1952)

No. 12
Judgment of
Mr. Justice
Reece on
Contempt
Proceedings.
14th July 1952.

On the 27th day of June, 1952, the plaintiffs issued a writ against the vessel "Tasikmalaja" claiming possession of the vessel. On the 27th June, the plaintiffs filed a praecipe for a warrant supported by the affidavit of Khalil Khodr and on the same day the vessel was arrested by the Head Bailiff. On the 30th June, the Government of the Republic of Indonesia through their Solicitor entered what I interpret to be a conditional appearance without prejudice to an application 10 to the Court to dismiss the action.

On the 7th July application on behalf of the plaintiffs was made for the issue of a summons requiring the following persons viz. D. J. Mandagi, M. Sahabu, H. Lumisay, E. Tjong Sui, J. Lewiresa and V. Kaparang to show cause why they should not be committed to the Hong Kong Prisons for a contempt of this Honourable Court in interfering with the custody of the ship by the Head Bailiff of this Honourable Court by excluding or attempting to exclude the Acting Captain Jose Maria Silos from boarding and remaining on board the s.s. "Tasikmalaja" or in the alternative why the plaintiffs may not be at liberty to issue a writ of attachment against the aforesaid persons for their contempt. The motion was 20 supported by the affidavits of Jose Maria Silos sworn to on the 5th day of July. Leave was granted to the plaintiffs to serve the motion on the persons named and the motion came before the Court on the 11th July.

The plaintiffs relied upon a lengthy affidavit of Jose Maria Silos dated the 5th July and a further affidavit by the said Jose Maria Silos dated the 8th July. To neither of those affidavits was there any affidavit filed in reply, and I am of the opinion that the allegations therein contained must be taken as true being unchallenged. To the affidavit of Jose Maria Silos of the 5th July, there are exhibited certain letters to some of which I shall refer specifically.

In his affidavit of 5th July Jose Maria Silos alleged that on the 27th June 30 when the ship was arrested he was performing the duties of Ag. Captain and was in full charge and control of the vessel, holding physical possession on behalf of the plaintiffs. It is further alleged that on the 30th June, he received a letter from the Consul General for the Republic of Indonesia purporting to dismiss him and requesting him to leave the vessel immediately. This letter is exhibited to the affidavit as Ex.A1 and reads as follows:

Exhibit A-1
Ref. No. 1

"Dear Sir,

As you have failed to obey my orders, I have to inform you that as from to-day you are dismissed and consequently you are requested to leave the S.S. "Tasikmalaja" at once.

I am, dear sir,
 Yours truly,
 KWEEDJIEHOO,
 Consul-General".

*In the
 Supreme
 Court of
 Hong Kong
 Admiralty
 Jurisdiction*

No. 12
 Judgment of
 Mr. Justice
 Reece on
 Contempt
 Proceedings.
 14th July 1952.
continued.

I consider this letter of the utmost importance, as the conduct complained of against the 7 persons in these proceedings seems to me to follow upon the receipt of this letter. For, on the same day on which the letter Ex.A1 was received, Mr. Silos alleges in paras. 8 & 9 of the said affidavit of 5th July, that one Mandagi and other members of the crew assumed a threatening and hostile
 10 manner even after his friend, whose appearance on the ship appeared to have been resented, left the ship, and so he decided to go on shore that night.

In para. 9 of the said affidavit Mr. Silos alleges that the Chief Engineer Reyes and 3rd Officer Ricardo Aguado were refused entry to the ship by the Quartermaster Sahabu who told them that he was acting on the instructions of the Consul-General and that no one was to be admitted without a pass from the Consul-General. A further allegation is to the effect that on the 1st July the said Quartermaster Sahabu accosted him and requested him to leave the ship stating that those were the Consul-General's instructions and that he left the ship.

As a result a letter, exhibited as "D", was written by the plaintiffs' Solicitors requesting the Consul-General immediately to countermand his orders to
 20 the Indonesian Crew on board to exclude Acting Captain Silos from the said vessel and further requesting an undertaking not to interfere with the status quo existing at the date of arrest and a withdrawal of his request contained in the letter of the 30th June that Capt. Silos was to leave the ship at once. Ex.H-1a is a letter from Messrs. Wilkinson & Grist dated 3rd July, 1952, addressed to M. A. da Silva, Esq., Solicitor to the plaintiffs, stating "our clients are allowing Captain Silos to go on board, and are confirming his present appointment as Master appointed by our clients."

Exhibit D
 Ref. No. 4

Exhibit H-1a
 Ref. No. 8

Acting on this assurance Capt. Silos alleges that he attempted to board
 30 the vessel and was met by an Indonesian sailor E. Tjong Sui who said to him, "You cannot get on board". He went on board and Cadet Officer Mandagi said to him, "You are not supposed to come on board. In any case the Consul has instructed me to ask you for the key to your (the Captain's cabin on board) room. Please let me have the key."

Following immediately after the letter Ex.H-1a the attitude and request of Cadet Officer Mandagi is surprising in the extreme and would seem to admit of one of two explanations. Either the Consul-General did not communicate to the crew the necessary instructions to give effect to the assurance in the letter Ex.A1 or Cadet Officer Mandagi was ignoring the instructions of the Consul-General.
 40 But whichever is the explanation the result is the same, viz. interference with the person whom the Consul-General himself recognised as master of the ship. In his affidavit of the 8th July, Capt. Silos complained that he was actually assaulted by Cadet Officer Mandagi who tried to take the log book from him.

Exhibit H-1a
 Ref. No. 8

Exhibit A-1
 Ref. No. 1

In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 12
Judgment of
Mr. Justice
Reece on
Contempt
Proceedings.
14th July 1952.
continued.

These are the principal grounds upon which the plaintiffs seek to support the motion and I repeat that none of the allegations of fact contained in the affidavit of Capt. Silos are challenged. Mr. Wright for the defendant submitted that the Bailiff (and through him the plaintiffs) by going on board and arresting the ship was himself committing a contempt and interfering with the status quo, inasmuch as the ship had already been arrested in Admiralty Action No. 8 of 1952. That since the ship was already in arrest the alleged contempt arising from this arrest and the consequences which flow from it never existed in the eyes of the law. I regret to say that I am not impressed by this argument. My attention was directed to the procedure outlined in 0.29 R.8 of the R.S.C. which 10 provides that "a party desiring to prevent the release of any property under arrest, shall file in the registry a notice, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the principal registry called the Caveat Release Book". I presume that "party" in the rule means a party to the action in which the property is arrested. But there is no rule or authority, that I know of, which says that a party in a different action cannot issue a warrant for the arrest of a ship that is already in arrest in an earlier action. It may not be necessary, but there is nothing which says that it cannot be done. In my opinion the arrest of the ship by the plaintiffs in this action is perfectly 20 valid and I can see nothing contemptuous in the bailiff's conduct. But even if this arrest was invalid, how could that make the bailiff's conduct contemptuous? On the contrary, if he had not executed the warrant, he would have been acting in contempt, for the bailiff is bound to execute the order of the Court and it seems to me that if any one is in contempt it would be the judge who ordered the warrant to issue — *quod est absurdum*. The argument is not convincing.

The second point taken for the defendants was that the affidavits in support of the motion did not contain allegations sufficient to justify the Court in guiding that there was a contempt. Repeated reference was made to the case of the *Abodi Mendi* (1939) L.R. P.D. 178 by both counsel for both parties. It is a very lengthy report and I desire to refer to one passage which I think contains 30 the principle by which this Court should be guided in determining in this motion. I cite from the judgment of Scott L.J. at p.194, which reads —

"The question which we think is of supreme importance here, namely, the conduct of the crew representing the plaintiffs on board the ship in excluding Captain Aguirre from the ship in its relation to the custody of the ship by the Court, was not considered by the learned President. In our view, once the ship, in an action for possession, was put into the charge of the Marshal of the Admiralty Court, all persons concerned in the litigation were under a duty to abstain from any interference with the custody of the ship by the marshal. The action being an action for 40 possession, and one of the persons on board the ship being the master appointed by the owners, a forcible exclusion of that master from the ship by persons representing the plaintiffs was an act by which the plaintiffs took the law into their own hands in a way which affected the custody of the ship which the Court was retaining on account of whom it might concern, impartially on behalf of all parties. That act, in my opinion, was a contempt of Court, and was a matter that it was the duty of the Court to take into account in considering the order that it would make."

The facts in *Abodi Mendi* are not quite the same as in this case. In the case before me the crew did not raise the gangway and thus make it physically impossible for Capt. Silos to get on to the ship. But from the allegations contained in the affidavit it seems to me very certain that he would have been courting disaster if he had tried to remain on the ship on the night of the 30th June in view of the incidents described in the affidavits to which I have already referred. I am satisfied that the allegations set out constitute a definite interference with the status quo on the ship at the time of her arrest and as such the conduct of the crew named in the summons is a contempt. But it appears

10 that this conduct is the result of instructions received from the Consul-General for the Government of Indonesia, whose conduct itself is, to say the least, difficult to follow, if not utterly incomprehensible. In his letter of the 30th June, Ex.A1, he dismisses Capt. Silos for disobedience of orders and requests him to leave the ship at once, but in the letter of 3rd July by Messrs. Wilkinson & Grist, Solicitors for the defendants to Mr. M. A. da Silva, Solicitor for plaintiff, we find that Capt. Silos is allowed to go on board and confirmed in his appointment as master appointed by the Government of the Republic of Indonesia. There seems to me to be no doubt that the trouble on board the ship started on the 30th June, the day when the letter Ex.A1 was received by Capt. Silos and since it is impossible

20 to denude myself of knowledge gained from the documents filed in the Admiralty Action No. 8 of 1952, I cannot refrain from observing that an apparent misconception by the Consul-General for the Government of Indonesia of the position of the Government of Indonesia in the actions is responsible for his attitude. But I feel satisfied from the assurance of Mr. Wright, Counsel for the defendants that it is not necessary for me to say more than that I trust that the Consul-General for the Government of Indonesia will be advised to refrain from issuing instructions to his country's nationalists, members of the crew of the ship "Tasikmalaja", or in any way doing anything which might imperil the status quo on the ship pending the determination of the actions. Whatever may be the final

30 position of the Indonesian Government in these actions it must be remembered by all the parties that this ship is in arrest and in the custody of the bailiff of this Court for the benefit impartially of all parties and there must be no interference with the bailiff's custody of the ship.

I find myself in some difficulty as to the nature of the order to make. I have said that I am satisfied that the conduct of the 7 men named in the crew is a contempt, but I feel that they have acted in obedience to the instructions of their Consul-General. I am not to be taken to imply that they have not acted wilfully, i.e. deliberately. I have decided to order them to pay the costs of this motion and I think it will be sufficient to warn them not to interfere with the

40 custody of the ship in the hands of the bailiff nor in any way with Capt. Silos while he is on the ship nor to hinder him from freely coming to and going from the ship and to obey any orders he may give in connection with the ship while on the ship. Should there be any interference or difficulty in carrying out this order the bailiff shall be at liberty to apply for directions.

Costs to Plaintiffs on the motion to be paid upon taxation by the 7 persons named in the motion.

(Sd.) C. W. REECE,
Puisne Judge.
14th July, 1952.

No. 13

**NOTICE OF MOTION BY THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA ON THE GROUNDS
OF IMPLEADING.**

(9th July, 1952)

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 13

Notice of
Motion by the
Government of
the Republic of
Indonesia on
the Grounds of
Impleading.
9th July 1952.

Take Notice that on Thursday the 10th day of July, 1952 at 12 noon in the forenoon or so soon thereafter as Counsel can be heard by Counsel The Government of the Republic of Indonesia will by Counsel move the Judge in Court for an Order that the Writ of Summons and all subsequent proceedings herein be set aside with costs on the following grounds:—

1. That this action impleads a Foreign Sovereign State namely the Government of the Republic of Indonesia. The said Government is unwilling to submit to the jurisdiction of this Honourable Court.
2. That the said Steamship is the property of the Government of the Republic of Indonesia.
3. Further or alternatively that the said Steamship is and at all material times was in the possession and effective control of the said Government by the duly authorised Agents.
4. That the said Government is and was at all material times entitled to possession of the said Steamship.
5. That the claim in this case is against a Foreign Sovereign State and the court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the same.
6. That a claim to the said Steamship is being made by a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the validity of the said claim.

Dated the 9th day of July, 1952.

(Sd.) WILKINSON & GRIST,
Solicitors for the Government of the
Republic of Indonesia.

To the Plaintiffs and to M. A. da Silva, their Solicitors.

No. 14
Peter John
Griffiths
Affidavit.
9th July 1952.

No. 14

AFFIDAVIT OF PETER JOHN GRIFFITHS

(9th July, 1952)

I, Peter John Griffiths of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong, Solicitor, hereby make oath and say as follows:

1. I have been instructed in this Action by the Government of the Republic of Indonesia through the Consul General in Hong Kong of the said Government.
2. I have been instructed by the Consul General to challenge the jurisdiction of the Court in this Action on the grounds set forth in the Notice of Motion.
3. A lengthy Affirmation by the Consul General setting forth facts and stating that his Government declines to sanction these proceedings is now in the course of preparation but owing to the necessity of obtaining certain documents from Djakarta it has been impossible to complete the same to date. The said Affirmation will be filed shortly when all documents are to hand.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 14
Peter John
Griffiths
Affidavit.
9th July 1952.
continued.

10

And lastly the contents of this my Affidavit are true.

Sworn, etc.,

No. 15

AFFIRMATION OF JOHNNY DIONYSIUS MANDAGI

(9th July, 1952)

No. 15
Johnny
Dionysius
Mandagi's
Affirmation.
9th July 1952.

I, Johnny Dionysius Mandagi do hereby solemnly sincerely and truly affirm and say as follows:—

- 20 1. I confirm that from the 30th day of June 1952 I as Captain appointed by the Consul General have been in command of the vessel and that all the forty-one Indonesian members of the crew and six of the seven Philipinos on board have been obeying my orders. I confirm that at all times I and the forty-one Indonesian members of the crew have been ready and willing to obey the orders of the Consul General and were at no material times prepared to obey nor did we ever obey any commands of Captain Silos in defiance of the authority of the said Government. I am authorised to make this statement with full knowledge and authority of all the Indonesian members of the crew and both on their and my behalf.
- 30 2. I am in possession of the vessel subject to the arrest by the Court holding for and on behalf of the Government of the Republic of Indonesia under the instructions of the Consul General.

And lastly the contents of this my Affirmation are true.

Affirmed, etc.,

AFFIRMATION OF JULES WALANDOUW

(9th July, 1952)

In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 16

Jules
Walandouw's
Affirmation.
9th July 1952.

I, Jules Walandouw do hereby solemnly sincerely and truly affirm and say as follows:—

1. I have read the Affirmation to be filed herein by Captain Mandagi. I am and have at all material times been Purser on the above-mentioned vessel.
2. I confirm the facts referred to in Affirmation of Captain Mandagi and say that the forty-one Indonesian members of the crew and six of the Filipinos have been obeying the orders of Captain Mandagi since the 30th day of 10 June 1952. I say that I and all the Indonesian members of the crew have been at all times and are completely loyal to our Government and that the control and possession of the vessel is in the hands of Captain Mandagi and the Indonesian members of the crew. We hold for and on behalf of our Government subject to the instructions of the Consul General in Hong Kong. We have never obeyed or been prepared to obey any orders given by Jose Maria Silos in defiance of the authority of our Government.

And lastly the contents of this my Affirmation are true.

Affirmed, etc.,

AFFIDAVIT OF WILLIAM THOMAS GRIMSDALE

(14th August, 1952)

No. 17
William
Thomas
Grimsdale's
Affidavit.
14th August
1952.

I, William Thomas Grimsdale hereby make oath and say as follows:—

1. I am the Secretary of the Hong Kong & Whampoa Dock Co., Ltd. and the facts herein deposed to are within my own knowledge.
2. On or about the 21st day of April 1952 my Company submitted an estimate for repairs to the S/S "Tasikmalaja". A copy of the estimate is now produced to me and marked Exhibit "WTG 1". Later as the result of instructions from the Indonesian Consul General the estimate was modified to the sum of \$280,000.00 approximately as the result of deletion of certain items of 30 repair. My company contracted to carry out repairs to the said vessel for the Indonesian Government on the basis of the estimate as subsequently revised by the Indonesian Consul General and on the 9th day of May 1952 the vessel was brought to the Dock Company's premises in pursuance of the contract.
3. With regard to payment for the repairs my Company required that the money should be brought to Hong Kong to be available for payment and on the 26th day of May 1952 the Indonesian Consul General paid to my Company the

Exhibit WTG 1
Ref. No. 15

sum of \$100,000.00. On the 4th day of June 1952 the said Indonesian Consul General gave instructions for the sum of \$180,000.00 to be placed on a joint account in the Hong Kong & Shanghai Banking Corporation in the joint names of the Hong Kong & Whampoa Dock Co., Ltd. and the Consulate General of the U.S. Republic of Indonesia and this was done on the 6th day of June 1952. On the 25th day of June 1952 I wrote to the Indonesian Consul General asking for a further \$100,000.00 to be paid to my Company. On the 26th day of June 1952 I received a copy of a letter addressed by the Indonesian Consul General to the Hong Kong & Shanghai Banking Corporation authorising my Company to draw \$100,000.00 from the joint account. A copy of the said letter is annexed hereto and marked Exhibit "WTG 2". On the 9th day of August 1952 instructions were given for a further sum of \$70,000.00 to be placed in the joint account by the Indonesian Consul General and this was done on the 11th day of August 1952.

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4. From the records of work done kept by my Company I have ascertained that the value of the actual work done on the vessel up to and including the 23rd day of June 1952 amounted to the figure of \$164,000.00 approximately and further that the value of the amount of work actually done up to and including the 26th day of June 1952 amounted to the sum of \$180,000.00 approximately. On the 27th day of June 1952 the Hong Kong & Whampoa Dock Co. Ltd. wrote to the Indonesian Consul General advising him that the vessel had been arrested and a copy of the letter is annexed hereto and marked Exhibit "WTG 3".

And lastly the contents of this my Affidavit are true.

Sworn, etc.,

No. 18

AFFIDAVIT OF PETER JOHN GRIFFITHS

(16th August, 1952)

I, Peter John Griffiths hereby make oath and say as follows:—

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1. I am a partner in the firm of Messrs. Wilkinson & Grist, No. 2 Queen's Road Central, Victoria in the Colony of Hong Kong, and have the conduct of this Action on behalf of the Government of the Republic of Indonesia.
2. On the 30th day of July 1952 I enquired by cable from my Agents in Manila, Messrs. Ross, Selph, Carrasco & Janda, the partners of which firm are duly qualified lawyers carrying on practice in Manila in the Philippines as to whether the Common Seal is required on a Power of Attorney granted by a Company. I am informed by my said Agents and verily believe that a Power of Attorney does not require that the private corporate seal should be affixed thereto and there is annexed hereto and marked "PJG 1" a copy of a cable received from my said Agents containing this information.

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And lastly the contents of this my Affidavit are true.

Sworn, etc.,

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 17
William
Thomas
Grimsdale's
Affidavit.
14th August
1952.
Continued.

Exhibit WTG 2
Ref. No. 16

Exhibit WTG 3
Ref. No. 17

No. 18
Peter John
Griffiths'
second
Affidavit.
16th August
1952.

Exhibit PJG 1
Ref. No. 18

No. 18A

In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 18A
Kwee Djie
Hoo's
Affirmation.
16th July 1952.

Evidence adduced on Behalf of the Government of the Republic of Indonesia Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

AFFIRMATION OF KWEE DJIE HOO

(16th July, 1952)

I, KWEE DJIE HOO do hereby solemnly sincerely and truly affirm and 10
say as follows :—

1. I am the Consul General for the Government of the Republic of Indonesia in Hong Kong.
2. The vessel against which the Writ has been issued in this Action was chartered by my Government from the Plaintiffs on the 1st day of January 1951 whilst she was lying in the Port of Djakarta in the Republic of Indonesia. This Charter Party was for three months expiring on the 31st day of March 1951. Fresh Charter Parties were entered into between the Plaintiffs and my Government as follows :—

(a) On the 1st day of April 1951 for three months.

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(b) On the 1st day of July 1951 for six months.

(c) On the 1st day of January 1952 for six months expiring on the 30th day of June 1952.

I am informed by Major Pamoeh Rahardjo and verily believe that each Charter Party included a clause providing an option for sale in favour of the Charterers. A copy of the last Charter Party is now produced and shown to me and marked Exhibit "KDH 1".

Exhibit KDH 1
Ref. No. 19

3. I refer to Article II of Exhibit "KDH 1". The said vessel was used during the charter period for troop carrying which was the object for which it was chartered. The vessel was entirely at the disposal of the Ministry of 30
Defence for State purposes and was not at any time used by my Government for commercial trading.
4. At the time of charter the said vessel then named S/S "Christobal" was under Panamanian Registry and flying the Panamanian flag.
5. On the 13th February 1952 the said vessel was sailing from Macassar to Djakarta when a contract for sale was entered into in favour of my Government. A copy of the Contract of Sale is now produced and shown to me and marked Exhibit "KDH 2". I refer to Article III thereof. In pursuance of that Article my Government ordered the vessel to Hong

Exhibit KDH 2
Ref. No. 20

Kong so that repairs and remodelling of the ship could be effected and in order that the transfer of the vessel to the Indonesian flag could be carried out there being no Panamanian Diplomatic or Consular representative in Indonesia.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 18A
Kwee Djie
Hoo's
Affirmation.
16th July 1952.
continued.

- 10 6. The vessel proceeded to Hong Kong under the orders of my Government and arrived in Hong Kong on the 13th day of March 1952 captained by Captain Aguado and having a crew of fifty-two Indonesians, one Dutchman, one American and nineteen Filipinos. The Captain and crew at all times took orders from and obeyed the instructions of my Government and whilst in Hong Kong from me as Consul General on behalf of my Government.
7. A representative of the Ministry of Defence of my Government Major Pamoe Rahardjo came to Hong Kong on or about the 11th day of March 1952 and called for estimates for the repairs and remodelling of the ship for troop carrying purposes.
8. I emphatically repudiate the allegation of fraudulent conspiracy in paragraph 6 of the Affirmation of Khalil Khodr filed herein.
- 20 9. A Bill of Sale was executed on the 17th day of March 1952 thereby completing the sale of the said vessel to my Government. A copy of the relevant Bill of Sale is now produced and shown to me and marked Exhibit "KDH 3". At no time from the 17th March 1952 to the 27th June 1952 the date of the issue of the Writ in this Action did I receive any intimation whatsoever that the Plaintiffs were in any way impugning or challenging the validity of the said sale. On the 9th day of April 1952 I wrote to the Director of Marine, Hong Kong, informing him that the vessel had been transferred to the Ministry of Defence of my Government and would be sailing under the Indonesian flag. Exhibit KDH 3
Ref. No. 21
- 30 10. There is produced and shown to me and marked Exhibit "KDH 4" a copy of a Power of Attorney dated 8th November 1950 made by the Plaintiffs in favour of Frank C. Starr empowering him to sell the said vessel. I am informed by Major Pamoe Rahardjo and verily believe that although the Power of Attorney states that the said vessel was under charter to my Government at the time of execution of the Power of Attorney this is not strictly correct, that the vessel was sent to Sourabaya by the Plaintiffs at the request of my Government with a view to charter or to buy and that on arrival in Sourabaya she had to go into Dock for repairs and for this reason the charter party negotiations were not finalised until the 1st day of January 1951 when the first Charter Party was entered into. There is also produced and shown to me and marked Exhibit "KDH 5" a copy of a letter dated the 6th day of March 1951 addressed by the Plaintiffs to the said Frank C. Starr confirming his authority to sell. I am informed by Mr. Peter Mo of Messrs. Wilkinson & Grist and verily believe that both these documents were produced by the said Frank C. Starr at the time of execution of the Bill of Sale referred to in Clause 9 hereof. On the 26th day of February 1952 by telegraphic transfer No. 124/DKT/1680 of the Java Bank Djakarta the sum of US\$70,000.00 was transferred to the American Trust Company, Sacramento, California, by the Ministry of Exhibit KDH 4
Ref. No. 22
- 40 Exhibit KDH 5
Ref. No. 23

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 18A

Kwee Djie
Hoo's
Affirmation.
16th July 1952.
continued.

Exhibit KDH 2
Ref. No. 20

Exhibit KDH 1
Ref. No. 19

Exhibit KDH 6
Ref. No. 24

Exhibit KDH 7
Ref. No. 25

Defence of my Government. This represented the balance due on purchase of the vessel under the Contract of Sale (Exhibit "KDH 2"). The transfer was made in favour of Frank C. Starr on his instructions and although under Article 2 the transfer was to be made to Singapore the said Frank C. Starr instructed the transfer to be made to the American Trust Company in Sacramento to avoid exchange difficulties and on the lines of Article III of the Charter Party. I refer to Article III of the Charter Party (Exh. "KDH 1"). A copy of the Telegraphic Transfer advice is now produced and shown to me and marked Exhibit "KDH 6".

11. The registration of the said vessel was changed from Panamanian Registry to Indonesian Registry on the 17th day of April 1952 and on the same day the vessel was officially registered at the Indonesian Consulate by me as Consul General acting on behalf of the Ministry of Communications of the Republic of Indonesia. Under the appropriate Indonesian Government regulations a vessel in foreign waters may be validly registered at the appropriate Indonesian Consulate General and such registration is to be renewed in Indonesia within six months. The registration of this vessel will be renewed at the Port of Djakarta. The transfer of registration was carried out with the knowledge and consent of the Panamanian Consul General. I personally made the necessary arrangements with the Panamanian Consul General. The Indonesian flag was raised on the vessel on the 16th day of April 1952 and has been flying during daylight hours since except as mentioned in paragraph 17 hereof. At a ceremony on board the vessel on the 16th day of April 1952 conducted by Captain Aguado the Indonesian flag raising took place in my presence and in the presence of officials of the Panamanian Consulate General and the crew including Mr. Silos their first mate. The Captain on behalf of the crew in an address to me undertook to continue to be loyal servants and to obey the orders of my Government. There is now produced to me and marked Exhibit "KDH 7" an extract from the South China Morning Post of the 17th day of April 1952 containing a short report of the ceremony. I confirm that the Panamanian flag was lowered by Mr. G. O. Castilho, Secretary of the Panamanian Consulate General.

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12. The repairs to the vessel referred to above are being carried out on my Government's orders and paid for by my Government. It was decided by my Government not to remodel the ship but only to repair in view of the expense. I have paid on behalf of my Government to the Hong Kong & Whampoa Dock Co., Ltd. HK\$200,000.00 as partial payment in respect of the said repairs and hold receipts therefor. The vessel was delivered to the Hong Kong & Whampoa Dock Co., Ltd. on the 12th day of May 1952 on the instructions of my Government for repairs as above mentioned and is still at the dockyard premises of the said Company.

40
13. I am informed by Major Pamoe Rahardjo and verily believe that on the 9th day of May 1952 Captain Aguado left the vessel and was repatriated to Manila at the expense of my Government and that he had left with the consent of Major Pamoe Rahardjo for the purpose of attending the marriage of his daughter and for holidays in his native country. The mate Mr. Silos was then appointed Acting Captain by Major Pamoe Rahardjo pending

the arrival of Captain J.A. Martens from Djakarta who had been instructed by my Government to come to Hong Kong and take over the vessel on completion of the repairs.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

14. The wages of Acting Captain Silos and the Filipino and Indonesian crew were paid through my Consulate by my Government for the months of April, May and June 1952. As and from the 16th day of April Captain Silos and the crew were servants of my Government and were paid and took instructions from me on behalf of my Government.
15. There is now produced and shown to me and marked Exhibit "KDH 8" a copy of the payroll for the month of April 1952. All the wages referred to in the payroll including those of J.M. Silos who signed for the same were paid through my Consulate. There is also produced and shown to me and marked Exhibit "KDH 9" a roll of advance payments made on the 3rd day of May 1952 against salary for the month of May 1952. These funds were similarly paid by my Government through the Consulate in Hong Kong. There is also produced and shown to me and marked Exhibit "KDH 10" a copy of the payroll for the month of May 1952. There is also produced and shown to me and marked Exhibit "KDH 11" a copy of a receipt for an advance against wages to Acting Captain Silos and dated the 21st day of June 1952.
16. I am informed by my daughter and verily believe that at about 7 p.m. on the 25th June 1952 Captain Silos telephoned to my private residence to report that the vessel had been arrested on the instructions of the Hong Kong Courts. On the same day Acting Captain Silos sent a written report dated the 25th day of June 1952. A copy of this report is now produced and shown to me and marked Exhibit "KDH 12". No notice from the Court or from any Solicitors or from the Plaintiffs had been received by me of any contemplated action against the vessel. I received a notice from Messrs. Stewart & Co. only after the arrest had been completed and a copy of such notice is now produced and shown to me and marked Exhibit "KDH 13". The person named J.W. Kuitert referred to in Exhibits "KDH 10" and "KDH 11" was a technical adviser in the employ of my Government who had been sent to Hong Kong to advise us on the repairs and remodelling of the said vessel and to supervise the same. I point out that the personnel alleged to have signed a declaration on the 27th June 1952 as stated in Exhibit "C" to the Affidavit of Jose Maria Silos dated 5th July 1952 are included in Exhibit "KDH 10" as paid employees of my Government.
17. On Saturday the 27th June 1952 Mr. Walandouw the Indonesian purser reported to me that Acting Captain Silos had suddenly objected to the Indonesian flag being permitted to fly on the vessel. Later that day I learned that this Action had been started. I was also informed by the said Mr. Walandouw and verily believe as follows: that in accordance with normal practice the flag was being lowered each evening and raised the following morning; that on the morning of the 28th June the Indonesian crew looked for the flag in order to raise it but were unable to find it as it had apparently been hidden; that the flag mast was put out of order by Jose Maria Silos by his cutting the rope by which the flag is raised. I immediately wrote

No. 18A
Kwee Djie
Hoo's
Affirmation.
16th July 1952.
continued.

Exhibit KDH 8
Ref. No. 26

Exhibit KDH 9
Ref. No. 27

Exhibit KDH 10
Ref. No. 28

Exhibit KDH 11
Ref. No. 29

Exhibit KDH 12
Ref. No. 30

Exhibit KDH 13
Ref. No. 31

Exhibit KDH 10
Ref. No. 28

Exhibit KDH 11
Ref. No. 29

Exhibit C
Ref. No. 3

Exhibit KDH 10
Ref. No. 28

In the
Supreme
Court of
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No. 18A
Kwee Djie
Hoo's
Affirmation.
16th July 1952.
continued.

to Captain Silos on receiving this information from Mr. Walandouw telling him the flag must be flown and I am informed by the said Mr. Walandouw and verily believe that on the 30th June 1952 Mr. Silos produced the flag which was immediately raised by the Indonesian crew who had replaced the rope and has been raised during day-light hours since. No notice of this action was given to me as Consul General of the Republic of Indonesia under whose registry the vessel was prior to and at the time of the commencement of these proceedings. On Monday I received a reply from Silos that I was not in a position to give him orders and he would not take any further orders from me. I immediately gave him notice of dismissal 10 and appointed Captain Mandagi as Captain of the vessel and whom the Indonesian members of the crew have obeyed ever since. The notice of dismissal given by me on the 30th day of June 1952 to Acting Captain Silos was not done for any purpose of changing the status quo on the vessel but was given by me to him on behalf of my Government as a servant who had wilfully disobeyed orders.

18. Prior to the 27th day of June 1952 there was to my knowledge no indication of disloyalty by Acting Captain Silos or any member of the crew. Both Acting Captain Silos and the crew had up to that date obeyed all instructions issued by me to them. 20

Exhibit KDH 14
Ref. No. 32

19. There is now produced to me and marked Exhibit "KDH 14" a copy of the Certificate of Nationality issued by me in respect of the said vessel.

Exhibit KDH 15
Ref. No. 33

20. There is now produced and shown to me and marked Exhibit "KDH 15" a statement which was interpreted on my instructions to all the Indonesian Members of the crew of the S/S "Tasikmalaja" on the 15th day of July 1952 and signed by them in the presence of a member of my Consular Staff. The Indonesian text is a true translation of the English and marked Exh. "KDH 15a".

Exhibit KDH
15a
Ref. No. 34

21. All supplies of food to the vessel since April have been paid for by my Consulate. Such supplies have been continued since these proceedings and 30 have been and will be paid for by me on behalf of my Government. The supplies are for the Filipino and Indonesian members of the crew and Acting Captain Silos and the Bailiffs' watchmen have been partaking thereof.

22. I am advised that according to the normal procedure notice is given to the Consul General before a ship under foreign flag is arrested by the Courts of this Colony and I protest that it was not done in this case.

23. I say that the S/S "Tasikmalaja" against which the present proceedings are directed is an Indonesian steamship registered in the Indonesian Consulate, Hong Kong; that the vessel is owned by the Government of the Republic of Indonesia and has been and is intended to be used for State 40 purposes; that my Government has the right to possession thereof; and that my Government is now and has been at all material times in possession and control of the said vessel through its servants. I further say that my Government declines to sanction the institution of these proceedings in this Court against the said vessel.

And lastly the contents of this my affirmation are true.

Affirmed, etc.,

No. 18B

Evidence adduced on Behalf of the Government of the Republic of Indonesia Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 18B
Pamoe
Rahardjo's
Affirmation.
15th August
1952.

AFFIRMATION OF PAMOE RAHARDJO

(15th August, 1952)

10 I, Pamoe Rahardjo now care of the Indonesian Consul General, Hong Kong, a Major in the Army of the Republic of Indonesia do solemnly sincerely and truly affirm and say as follows:—

1. I am an Officer attached to the Secretary General of the Ministry of Defence of the Government of the Republic of Indonesia. All matters relating to transportation for the Armed Forces are dealt with by the Ministry of Defence including the charter and purchase of ships.
- 20 2. I have read and have had explained to me the Affidavits of Khalil Khodr filed herein on the 26th day of July 1952, the Affidavit of Jose Briones filed herein on the 27th day of July 1952, the Affidavit of Yasmat Khodr filed herein on the 26th day of July 1952 and the Affidavit of Jose Maria Silos herein on the 26th day of July, 1952.
3. I have read the Charter Parties granted by the Plaintiffs to my Government in respect of the "Tasikmalaja". I refer to the second, third and fourth Charter Parties and to the option therein given to my Government to purchase the said vessel for the sum of U.S.\$450,000.00 and to the provisions in the said Charter Parties regarding the deduction of the Charter hire from the said purchase price. I say that it is evident from the second and subsequent Charter Parties that the allegations in the Affidavit of Khalil Khodr that the same contained no option to purchase are quite untrue.
- 30 4. I deny each and every allegation of fraud, conspiracy or dishonesty alleged against me in the said Affidavits and in this connection I say as follows:—
 - (i) It is untrue that the fourth Charter Party (Exhibit "KDH 1") was fraudulently prepared by Frank C. Starr and myself for the purposes of this case.
 - (ii) The conversation alleged to have taken place between Frank C. Starr and me in paragraph 5 of the Affidavit of Jose Briones and telephone conversation alleged in paragraph 16 of the Affidavit of Khalil Khodr are complete fabrications and neither conversation ever took place.
 - 40 (iii) The said Jose Briones never conveyed to me any such communications as are alleged in paragraphs 15 and 17 of the Affidavit of Khalil Khodr.

Exhibit KDH 1
Ref. No. 19

*In the
Supreme
Court of
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Admiralty
Jurisdiction*

No. 18B
Pamoe
Rahardjo's
Affirmation.
15th August
1952.
continued.

Exhibit KK-K1
Ref. No. 62

Exhibit KK-T1
Ref. No. 72

Exhibit KK-V1
Ref. No. 74

Exhibit KK-W1
Ref. No. 75

Exhibit KK-P1
Ref. No. 67

Exhibit PR 1
Ref. No. 35

Exhibit PR 2
Ref. No. 36
Exhibit PR 3
Ref. No. 37

- (iv) The interpretation sought to be put in paragraph 18 of the Affidavit of Khalil Khodr on my letter (Exhibit KK-K1) is incorrect and quite unjustifiable and I refer this Honourable Court to the terms of the said letter.
- (v) I dealt with Frank C. Starr as the duly appointed and authorised agent of Juan Ysmael & Company Incorporated to sell the "Tasikmalaja" and in the belief that he had full and lawful power and authority to sell the said vessel to my Government and I refer to the second paragraph of KK-T1.
- (vi) I deny instructing Jose Briones to keep the arrival of the said vessel 10 in Hong Kong a secret as alleged in paragraph 27 of the Affidavit of Khalil Khodr. With regard to Exhibits KK-V1 and KK-W1 attached to the said Affidavit I say that the purpose of these cables was to enable the said Frank C. Starr and Jose Briones to try to obtain commission from the Taikoo Dockyard for introducing the business of repairing the said vessel.
- (vii) With regard to the voluminous correspondence exhibited to the said Affidavit of Khalil Khodr I say that it shows that the said K.H. Hemady, despite the fact that he was well aware of the option binding upon Juan Ysmael & Co., Inc. to sell the vessel to my Government, was 20 throughout trying to obtain a higher purchase price in breach of the terms of the option. I drew attention to paragraph 12 of the said Affidavit of Khalil Khodr which shows that copies of the second Charter Party were seen and approved by the said K. H. Hemady and at all times thereafter he was well aware of the option clause and the price stipulated therein, namely U.S. \$450,000.00 and the provisions giving credit for payment of charter hire. I say that the said correspondence shows the efforts made by the said K. H. Hemady to evade the option clause and to put a higher purchase price on the vessel, despite the fact that Juan Ysmael & Co. Inc. well knew that they were bound by 30 the solemn contracts made by their duly authorised agent the said Frank C. Starr. I also refer to Exhibit "KK-P1" whereby I made it quite clear that the terms of purchase had already been settled and agreed by Mr. Starr as Attorney for Juan Ysmael & Co. Inc.
5. With regard to the payment of wages there is produced to me and marked Exhibit "PR 1" a copy of a letter from Capt. Aguado dated the 25th day of March 1952 together with the list of personnel therein referred to. On the 1st day of April 1952 I went back to Djakarta with the information at the request of the Consul General and I arranged for my Government to send the necessary funds to him to pay the crew members. I arranged this 40 with the Financial Department of the Ministry of Defence.
6. In reply to paragraphs 4, 5 and 8 of the Affidavit of Jose Maria Silos filed herein on the 26th day of July 1952 I produce two letters and marked Exhibits "PR 2" and "PR 3" from the former Captain of the said vessel Aguado which I was informed by Frank C. Starr and verily believe were

sent to him by the said Captain Aguado and which were handed to me by the said Frank C. Starr in Djakarta and I say that it is inconceivable that the said Jose Maria Silos did not know of the sale of the said vessel to my Government especially as he was first mate of the said vessel at the date of the flag-raising ceremony and I refer in this connection to paragraph 16 of the Affirmation of Kwee Djie Hoo filed herein on the 16th day of July 1952 I now produce and marked Exhibit "PR 4" a cable sent to me by (amongst others) the said Jose Maria Silos on the 21st day of April 1952 which is quite inconsistent with his allegations that he was a servant of Juan Ysmael & Co. Inc. and did not know of the said sale.

*In the
Supreme
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Hong Kong
Admiralty
Jurisdiction*

No. 18B
Pamoe
Rahardjo's
Affirmation.
15th August
1952.
continued.

Exhibit PR 4
Ref. No. 38

7. The above facts have been read over and explained to me. AND LASTLY the contents of this my Affirmation are true.

Affirmed, etc.,

No. 18C

Evidence adduced on Behalf of the Government of the Republic of Indonesia Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

No. 18C
Kwee Djie
Hoo's 2nd
Affirmation.
15th August
1952.

AFFIRMATION OF KWEE DJIE HOO

(15th August, 1952)

I, KWEE DJIE HOO do hereby solemnly sincerely and truly affirm and say as follows:—

1. I have read the Affidavit of Khalil Khodr filed herein on the 26th day of July, 1952.
2. With regard to paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the said Affidavit I am advised that it is not necessary for me to deal with the allegations therein contained for the purpose of the present proceedings and I make no admissions with regard thereto.
3. In so far as paragraph 9 of the said Affidavit states that the Plaintiff Company are the legal registered owners of the vessel and had not at any time transferred the same to my Government I deny each and every allegation.
4. With regard to paragraph 10 of the said Affidavit I admit that Exhibit "KK 3" therein referred to is an accurate copy of the Charter Party dated the 25th day of November 1950 which I have checked with the original received by me from the Ministry of Defence records and which arrived in Hong Kong subsequent to the date of my Affirmation of the 16th day of July, 1952. In so far as I stated in my former Affirmations that each Charter Party included a clause providing an option for sale in favour of the charterers, on checking the original I now find that it is not correct with regard to the first Charter Party but is correct as to the other three.

Exhibit KK 3
Ref. No. 55

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 18C
Kwee Djie
Hoo's 2nd
Affirmation.
15th August
1952.
continued.

Exhibit KDH-A
Ref. No. 39

Exhibit KDH-B
Ref. No. 40

5. With regard to paragraphs 11, 12 and 13 of the said Affidavit I produce the originals of the second and third Charter Parties obtained from the said files of the Ministry of Defence of my Government. The same are annexed hereto and marked Exhibits "KDH A" and "KDH B" respectively. I draw attention to the clauses in each of the Charter Parties conferring an option to purchase on my Government.
6. With further reference to Clause 12 of my former Affirmation, about one week after the vessel was delivered to the Hong Kong & Whampoa Dock Co., Ltd., on the 9th day of May 1952 I went to the Dock Company and saw amongst others Mr. Grimsdale and Mr. Storrar. We discussed the question of repairs to the S/S "Tasikmalaja". I explained to the representatives of the Dock Company that as Major Pamoe Rahardjo had left the Colony, I would be in charge of the financial arrangements for the repairs of the "Tasikmalaja."
7. I confirm the arrangements as to the estimate and payment referred to in the Affidavit of William Thomas Grimsdale to be filed herein and verify the correspondence therein referred to.
8. With regard to all payments made by me for wages I deny that any of them were made by my Government as Agents for Messrs. Juan Ysmael & Co., Inc. In fact my Government was obliged to make these payments because if we had not done so I verily believe the crew in Hong Kong would not have been paid at all and Captain Aguado requested me to pay the crew stating that they had received no payment for wages.
9. In answer to paragraph 8 of the Affidavit of Jose Maria Silos dated the 26th day of July 1952, there are appended hereto the following documents:—
 - (a) Letter from Captain Aguado dated 23rd April 1952.
 - (b) Letter from Captain Aguado dated 23rd April 1952.
 - (c) Letter from Captain Aguado dated 24th April 1952.
 - (d) Letter from Captain Aguado dated 27th April 1952.

Exhibit KDH-
C, C1 C2, C3.
Ref. No. 41, 42,
43, 44.

These documents are marked Exhibits "KDH-C", "KDH-C1", "KDH-C2" and "KDH-C3" respectively.

10. There are now produced to me advices of transfers of funds in respect of the "Tasikmalaja" made by my Government. These documents have been received by me from the official files of the Ministry of Defence:—
 - (i) Dated 6th November 1950 for U.S.\$ 90,000:00
 - (ii) Dated 14th March 1951 for U.S.\$105,000:00
 - (iii) Dated 29th June 1951 for U.S.\$165,000:00
 - (iv) Dated 10th December 1951 for U.S.\$210,000:00

Exhibit KDH-
D, D1, D2, D3.
Ref. No. 45, 46,
47, 48.

These documents are marked Exhibits "KDH-D", "KDH-D1", "KDH-D2" and "KDH-D3" respectively. With regard to Exhibit "KDH-D2" the equivalent of US\$45,000.00 had been sent to the Sourabaya Dry Dock by my Government for repairs so that this sum was deducted from the Charter hire.

Affirmed, etc.,

No. 18D

Evidence adduced on Behalf of the Government of the Republic of Indonesia Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 18D
Kwee Djie
Hoo's 3rd
Affirmation.
25th August
1952.

AFFIRMATION OF KWEE DJIE HOO

(25th August, 1952)

10 I, KWEE DJIE HOO do hereby solemnly and sincerely and truly affirm and say as follows:—

- 20 1. As Consul General for the Republic of Indonesia in Hong Kong I am the only direct channel of communication between my Government and the Government of Hong Kong and normally all communications between my Government and the Government of Hong Kong are conveyed through me. I have on many occasions communicated with the Hong Kong Government on behalf of my Government on matters of a diplomatic nature. For these reasons I have to perform in addition to the duties normally performed by a Consul General duties usually performed by diplomatic officers. One instance of such duties is the very fact that I have had to raise the claim for immunity on behalf of my Government in this case being the only representative of my Government in Hong Kong. Such a claim could not normally have to be made by a Consul General but would be made by an Ambassador, Minister, Charge D'Affairs or other Diplomatic Officer.
- 30 2. The position of a Consul General in Hong Kong is quite different for geographical reasons from a similar appointment within a country which has a diplomatic mission of the State to which the Consul General belongs. Because of this position I am in direct communication with the Minister for Foreign Affairs of my Government whereas normally a Consul General has no communication with his Government except through the diplomatic mission maintained by his Government.
3. I am obliged to make on behalf of my Government the claim to immunity raised in this case on orders received and in discharge of my official duties.
4. I maintain that for the foregoing reasons and in discharge of official duties the status of the Consul General for my Government in Hong Kong is such as to render the person holding that appointment immune from the process of the Supreme Court of Hong Kong.

AND lastly the contents of this my Affirmation are true.

Affirmed, etc.,

In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction

No. 18E
Pamoe
Rahardjo's 2nd
Affirmation.
25th August
1952.

No. 18E

Evidence adduced on Behalf of the Government of the Republic of Indonesia Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

AFFIRMATION OF PAMOE RAHARDJO

(25th August, 1952)

I, PAMOE RAHARDJO now care of the Indonesian Consul General, Hong Kong a Major in the Army of the Republic of Indonesia do solemnly sincerely and truly affirm and say as follows:—

1. I am a diplomatic courier of my Government and as such hold a diplomatic passport.
2. I came to Hong Kong bearing documents and communications from my Government to the Consul General in Hong Kong.
3. I am in Hong Kong for the purpose of being available to the Consul General as a means of communication for official purposes.
4. It is my duty as a diplomatic courier to hold myself in readiness to carry official communications for my Government at a moment's notice. 20
5. I maintain that for the foregoing reasons I am immune from the process of the Supreme Court of Hong Kong.
6. The contents of this Affirmation have been explained fully to me.

AND LASTLY the contents of this my Affirmation are true.

Affirmed, etc.,

No. 19
Khalil Khodr's
Affidavit.
27th June 1952.

No. 19

AFFIDAVIT OF KHALIL KHODR

(27th June, 1952)

I, KHALIL KHODR of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:— 30

1. I am the duly authorised attorney of the Plaintiff Company which is a domestic Filipino Corporation duly organised and existing under and by virtue of the laws of the Philippine Islands, with registered office and postal address at Rooms 217-221 Consolidated Investments Building, Plaza Goiti, in

the city of Manila in the Philippine Islands, and I produce my Power of Attorney under the Common Seal of the Plaintiff Company marked "A", with copy attached hereto marked "A1".

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No. 19
Khalil Khodr's
Affidavit.
27th June 1952.
continued.

Exhibit A1
Ref. No. 49

2. The abovenamed steamer is and at all material times has been the property of the Plaintiff Company as sole owners thereof. I hold the documents of title to the said vessel.
3. The said steamer is of Panamanian registry and at all material periods was registered with the Panamanian Consulate in this Colony with the Plaintiff Company as sole owners.
- 10 4. The late President of the Plaintiff Company gave instructions to one Frank C. Starr to negotiate a sale of the abovenamed vessel for the sum of US\$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
20 one cent of any 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 abovenamed vessel has never been legally sold or otherwise transferred and is still the property of the Plaintiff Company.
8. The vessel is still and has at all material times been in the physical custody control and possession of the Plaintiff Company through their servants, viz., the Master—Captain Francisco J. Aguado, or most of the time, the Acting Captain—Jose Ma. Silos, and the following members of the crew:—

Fermin Alimpia — Radio Operator
Jose Rubion — Boatswain
30 Cresenco Nlolo — Ordinary Seaman
Nemesio Mortel — 3rd Engineer
A. Aviles — 4th Engineer
Dionisio Cabil — Oiler
Antonio Tonalgo — Oiler,

9. I am informed by Captain Jose Ma. Silos and verily believe that the present representative of the Ministry of Defence of the Republic of Indonesia, one John W. Kuitert has been attempting to obtain possession of the abovenamed vessel from the said Captain Silos and I am very apprehensive that unless the said vessel is arrested and taken into the protective custody of this
40 Honourable Court, possession control and custody thereof may be forcibly

*In the
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No. 19
Khalil Khodr's
Affidavit.
27th June 1952.
continued.

and/or otherwise wrongfully taken away from the servants of the Plaintiff Company, and that the vessel may be taken out of the jurisdiction of this Honourable Court. I am advised by my solicitor that as a Sovereign Power the Government of Indonesia would not have to obtain clearance to take the said vessel from Hong Kong, even if necessary under tow, and I am further advised that if the said Government were to obtain possession of her they might be able to claim immunity from the processes of this Honourable Court.

10. I am informed by Captain Silos and verily believe that although the vessel is still registered on the Panamanian Registry, the Government of Indonesia 10 has purported to register her on the Indonesian Registry.
11. The aid of this Honourable Court is urgently required.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

No. 20

AFFIDAVIT OF KHALIL KHODR

(26th July, 1952)

I, KHALIL KHODR of Kimberley Hotel in the Dependence of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:— 20

1. I have read the Affirmation of Kwee Djie Hoo filed herein on the 16th day of July, 1952.
2. I crave leave to refer to my affidavit filed herein on the 27th day of June, 1952.
3. I am in the employ of the Plaintiff Company as a superior officer in charge of the department dealing with heavy equipment, scrap metals and shipping, and am authorised to make this affidavit on behalf of the Plaintiff Company herein.
4. The Plaintiff Company is, as set out in paragraph 1 of my said affidavit, a legal corporate entity being a private limited liability company, and I 30 produce a copy (marked "KK-A") of the By-Laws of the said Plaintiff Company certified to be a true and correct copy by the Administrative Officer of the Securities and Exchange Commission (that is to say the Registry for Corporations in the City of Manila in the Republic of the Philippines) which Registry is a public registry forming a department of the Government of the Republic of the Philippines required by law to be kept for public information or reference, such certified copy bearing the State Seal of Office of the said administrative officer, and I attach hereto copy relevant extracts from the said By-Laws marked "KK-A1."

5. The Plaintiff Company possesses and uses a Common Seal which is the Common Seal affixed to my Power of Attorney exhibited to my said Affidavit as "A."
6. On the 23rd day of July, 1952, together with a representative from Mr. M. A. da Silva's office, I called at Messrs. Wilkinson & Grist and inspected the originals of the exhibits to the said affirmation of Kwee Djie Hoo, and I noticed that though copy exhibit Exhibit "KDH-4" attached to the said affirmation has the word "Seal" in the left hand bottom corner thereof this was not the Common Seal of the Plaintiff Company, but was merely the notarial seal of the notary public who attested the execution by K. H. Hemady deceased. I am informed by B. G. Manalac, Secretary of the Plaintiff Company at all material periods and verily believe that he had at no time affixed the Common Seal of the Plaintiff Company to the said "KDH-4."
7. The Board of Directors of the Plaintiff Company consist to-day of the following:—

Mrs. Magdalena H. Hemady

Attorney Felipe Ysmael

Mr. Carlos Ysmael

Mr. Felipe Ysmael, Jr.

and on the 8th of November 1950 the composition of the said Board of Directors was the same save that K. H. Hemady was the President and General Manager whereas the said Mrs. Magdalena H. Hemady is to-day the President and General Manager (the said K. H. Hemady having died on the 30th day of May, 1952). I am informed by the members of the said Board of Directors (apart from the said K. H. Hemady deceased) and verily believe that at no material period were they ever aware of the existence of "KDH-4," or had authorised the execution of same on behalf of the Plaintiff Company; nor had they ever authorised the affixion of the Common Seal of the Plaintiff Company thereto, and that the existence of same only came to their knowledge when a few days after his death, a search amongst his private papers at his residence revealed the existence of a copy of the same; save for the said K. H. Hemady deceased the Board of Directors was at no time aware that the said Frank C. Starr had been authorised to put through a sale of the above-named Defendant vessel save that they were aware that from time to time the said Frank C. Starr was negotiating for a purported sale. In this connection I attach a resolution of the said Board of Directors under the Common Seal of the Plaintiff Company dated the 6th day of June, 1952 marked "KK-B."

8. The said vessel was purchased by the Plaintiff Company from one George Ho on 16th September, 1950 by way of title obtained through a Court case No. 211 (the original documents in respect of which are in my possession and can be produced for inspection and the said George Ho

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Jurisdiction*

No. 20
Khalil Khodr's
second
Affidavit.
26th July 1952.
continued.

Exhibit A
Ref. No. 49

Exhibit KDII 4
Ref. No. 22

Exhibit KDH 4
Ref. No. 22

Exhibit KDH 4
Ref. No. 22

Exhibit KK-B
Ref. No. 51

*In the
Supreme
Court of
Hong Kong
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Jurisdiction*

No. 20

Khalil Khodr's
second
Affidavit.
26th July 1952.
continued.

Exhibit KK-C1
Ref. No. 52

executed a Bill of Sale therefor) the original whereof I now produce marked "KK-C" with copy thereof attached and marked "KK-C1," both of which documents as original title deeds to the said vessel, I had in the month of June 1952 obtained from the files and records of the Plaintiff Company in Manila in the Philippines and brought with me to this Colony.

9. Thereafter the Plaintiff Company were, remained, and still are the legal registered owners of the said vessel with full beneficial ownership thereof, and had not at any time thereafter transferred the same to any person or persons, firm, company, corporation or Government. 10

10. Prior to the purchase of the said vessel one Frank C. Starr, an American, came to Manila in the Philippines as Agent for the Government of the Republic of Indonesia for the purpose of purchasing heavy equipment for the said Government, and dealt with our Company in this regard through me and the said K. H. Hemady deceased. Gradually, the said Frank C. Starr gained the confidence of the said late K. H. Hemady and sometime after the purchase of the said vessel the said Frank C. Starr proposed to the said late K. H. Hemady that they should charter this said vessel and in due course other vessels of the Plaintiff Company to the Indonesian Government for the transport of troops and the said Frank C. 20 Starr was appointed agent to look after and manage this vessel on a commission basis, whereupon the vessel was sent to Sourabaya and after repairs was chartered for a period of three months from the 1st day of January 1951 at a hire of U.S.\$30,000:00 per calendar month as per copy Charter Party and Appendix (together with letter from the Chartered Bank of India Australia and China dated 11th December, 1950, which I produce marked "KK-D") which I had obtained from the records of the Plaintiff Company in Manila and brought to this Colony in June this year (with copies attached hereto marked "KK-1," "KK-2" and "KK-3"). 30 The original of this Charter Party and Appendix was found by Captain Jose Maria Silos in the Captain's Cabin on board the said vessel and had been handed by him to the Head Bailiff on the 5th day of July 1952 and I crave leave to refer thereto.

11. At the time that the said Frank C. Starr was in Manila in the year 1950 one Jose Briones (a Filipino subject) was also there together with him as an employee also on commission basis of the Indonesian Government (later, i.e. to say in 1951 the said Frank C. Starr employed the said Jose Briones as his Secretary till May 1952. Before the said Frank C. Starr had left Manila for Indonesia in the year 1950, the said Jose Briones left first for Indonesia but before he left the said late K. H. 40 Hemady in my presence, interviewed the said Jose Briones confidentially and told him not to cause any offence to the said Frank C. Starr but asked him to speak confidentially to the representatives of the Indonesian Government and to inform them that before finalising any terms of any charter of the said vessel they should refer such terms to the said late K. H. Hemady for his final approval, and I am informed by the said Jose Briones and verily believe that he had given this information to one Major Soekardjo, Chief Officer of the Indonesian Army appointed by the

Exhibit KK-1,
2, 3,
Ref. No. 53, 54,
55.

Indonesian Government to act as its representative in matters and affairs of the said vessel and his second in command, Major Pamoe Rahardjo. Major P. Rahardjo took over from Major Soekardjo late in 1951.

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No. 20
Khalil Khodr's
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26th July 1952.
continued.

12. Wherefore, in respect of the first two charter parties immediately upon signature of same by the said Frank C. Starr, the said Major Soekardjo (as I am informed by the said Jose Briones and verily believe) sent copies thereof to the said late K. H. Hemady and obtained his final approval to the same (the first being sent by the said Frank C. Starr through the said Bank at the request of Major Soekardjo, and the second being sent by the said Major Soekardjo himself to the said late K. H. Hemady). I am informed by the said Jose Briones and verily believe that he had typed this Second Charter Party at the request of Major Soekardjo and that the same was identical in terms with the First Charter Party, (from which he typed this Second Charter Party) save that the period of the Charter was to be from the 1st April 1951 to 30th June 1951 and the Charter Hire was U.S.\$35,000:00 per calendar month, such second Charter Party being executed by the said Major Soekardjo and the said Frank C. Starr in the presence of the said Jose Briones on 26th day of February, 1951, he the said Jose Briones attesting as witness thereto: Such second Charter Party containing no option to purchase. As all files and records concerning shipping are under my direct supervision and charge. I remembered seeing a second Charter Party in such form mentioned by the said Jose Briones and the cable from Major Soekardjo asking for approval of the said late K. H. Hemady and the copy reply of the said late K. H. Hemady whereupon I searched these records and I was able to obtain therefrom the cable from the said Major Soekardjo (which is now produced to me marked "KK-E" with copy attached hereto and marked "KK-E1") and the copy reply of the said K. H. Hemady, copy whereof is attached hereto and marked "KK-F", but I was unable to find the copy of the said second Charter Party though I had made exhaustive search and enquiry therefor. Before the said Frank C. Starr left Manila in 1950 for Indonesia I was present at an interview with the said late K. H. Hemady when he suggested to the said late K. H. Hemady that he should negotiate for a sale of the said vessel to the Indonesian Government and he thereupon asked the late K. H. Hemady if he could negotiate such a sale and as to what was the minimum sale price and the said late K. H. Hemady gave him the figure of U.S.\$500,000:00. No deductions were mentioned or agreed upon.

Exhibit KK-E1
Ref. No. 56
Exhibit KK-F
Ref. No. 57

13. I verily say that exhibit "KDH.1" was fraudulently prepared by the said Frank C. Starr and Major Pamoe Rahardjo for the purposes of this case and that it is completely untrue that all the Charter Parties contained options for sale.

Exhibit KDH 1
Ref. No. 19

14. At my instigation the said late K. H. Hemady had asked for copies of this last Charter but as I am aware the same had never been received by the said late K. H. Hemady or the Plaintiff Company and attach hereto copy letter from my files of a letter written dated the 31st day of January 1952 written by the late K. H. Hemady to the said Frank C. Starr and attached hereto marked "KK-G."

Exhibit KK-G
Ref. No. 58

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No. 20
Khalil Khodr's
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26th July 1952.
continued.

Exhibit KK-H
Ref. No. 59

15. In the month of January 1951 the said Frank C. Starr made inquiry again from the late K. H. Hemady as to a possible sale of the said vessel to the Indonesian Government and the said late K. H. Hemady wrote to Frank C. Starr on the 23rd January 1951 informing him that the price was U.S.\$600,000:00 cash (as per copy letter attached hereto and marked "KK-H"). I am informed by the said Jose Briones and verily believe that he verbally conveyed the same message as is contained in the said letter to the said Major Pamoe in February 1951.
16. In the meantime another vessel belonging to the Plaintiff Company viz., the "Rante Pao" had also been chartered to the Indonesian Government and the charter hire for this vessel, received by the said Frank C. Starr, had not been paid over by the said Frank C. Starr to the Plaintiff Company in spite of repeated requests by the late K. H. Hemady whereupon the said late K. H. Hemady lost all confidence in the said Frank C. Starr. At the same time as I am informed by the said Jose Briones and verily believe to be true the same Major Pamoe had telephoned from Indonesia to the said late K. H. Hemady and had finally bargained the sale price of the said vessel from U.S.\$600,000:00 to U.S.\$450,000:00 (though this reduction was agreed to without the knowledge and consent of the other members of the Board of Directors of the Plaintiff Company as I am informed by these other members and verily believe to be true) but the said Major Pamoe had attempted to obtain certain further deductions to be made even from this price of U.S.\$450,000:00, which the said late K. H. Hemady had refused to permit: wherefore on the 8th of January 1952 the said late K. H. Hemady had a consultation with me as he was apprehensive of the Charter hire for the 6 months from the 1st of January 1952 totalling of U.S.\$210,000:00 being paid to or received by the said Frank C. Starr and instructed me to send a cable to the said Major Pamoe as per copy (certified by RCA Communications, Inc. being the public service Radiogram Communications of Manila in the Philippine Islands) now produced to me and marked "KK-I" copy attached hereto marked "KK-I1" and further on the 10th of January 1952 as per copy letter attached hereto and marked "KK-J."

Exhibit KK-I1
Ref. No. 60

Exhibit KK-J
Ref. No. 61

17. I am informed by the said Jose Briones and verily believe that towards the end of January 1952 (as requested by the said late K. H. Hemady) he had verbally given a communication to similar effect as in the said letter of the 10th January 1952 to the said Major Pamoe.
18. A reply to the said cable of the 8th of January 1952 and to the said letter of the 10th January 1952 was received from the said Major Pamoe by way of letter dated the 17th of January 1952 which is now produced to me and marked "KK-K" with copy attached hereto marked "KK-K1" and I ask this Honourable Court to note that the said Major Pamoe by this letter had agreed to the said purchase price of U.S.\$450,000:00 without deductions and to effect payment to Mrs. Hemady's account and not to the said Frank C. Starr and that this letter made no allegations of agreed deductions from the purchase price already purported to have been made in a previously executed Charter Party on an option to purchase.

Exhibit KK-K1
Ref. No. 62

19. The late K. H. Hemady's suspicions of Frank C. Starr's bona fides were heightened so considerably that on the 25th of January 1952 he cancelled the said Frank C. Starr's agency altogether and notified this to the said Frank C. Starr and the Indonesian Government through the said Major Pamoe and appointed one Mr. J. W. Kuitert in his place and stead (the same Mr. Kuitert who is in Hong Kong as technical adviser to the Indonesian Consul-General).

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No. 20
Khalil Khodr's
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26th July 1952.
continued.

20. Whereupon the said Frank C. Starr became alternatively pleading and threatening and the said Major Pamoe Rahardjo showed his teeth in a threateningly blackmailing manner thus:—

10

(a) the said Frank C. Starr on the 29th of January and 30th of January 1952 sent respective cable to Mr. Hemady, (original whereof is produced to me and marked "KK-L" with copy attached marked "KK-L1") and a cable to the Plaintiff Company (original whereof is marked "KK-M" with copy attached marked "KK-M1");

Exhibit KK-L1
Ref. No. 63
Exhibit KK-M1
Ref. No. 64

(b) the said Frank C. Starr wrote a letter to one Johnny Ysmael (a grandson, now deceased, of the said Mrs. Hemady) enclosing his letter to Mrs. Hemady and a letter from Major Pamoe to Mr. and Mrs. Hemady:—

20

Original of letter to the said Johnny Ysmael is produced to me marked "KK-N" (with copy attached hereto marked "KK-N1"); Original of letter to the said Mrs. Hemady from Frank C. Starr being produced to me marked "KK-O" (with copy attached hereto marked "KK-O1"); Original of letter from the said Major Pamoe to Mr. and Mrs. Hemady being now produced to me marked "KK-P" (with copy attached hereto marked "KK-P1").

Exhibit KK-N1
Ref. No. 65

Exhibit KK-O1
Ref. No. 66

Exhibit KK-P1
Ref. No. 67

(c) At the time when Major Pamoe Rahardjo wrote the said letter the said vessel was in Indonesia and therefore in the power of the Indonesian Government.

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(d) Exhibits Nos. "KK-N", "KK-O" and "KK-P" were found amongst the late K.H. Hemady's private papers in his residence shortly after his death, as well as copy of a letter dated 6th March 1951, attached hereto marked "KK-Pa" from the said late K.H. Hemady to the said Frank C. Starr, and I verily believe that for reasons best known to himself the said deceased had kept all papers and documents relevant to the personal Power of Attorney he had given in November 1950 to the said Frank C. Starr away from the office and amongst his private papers at his residence.

Exhibit KK-N,
O, P.
Ref. No. 65, 66,
67.

Exhibit KK-Pa
Ref. No. 68

21. I am informed by the then Captain of the said vessel namely Captain Aguado and verily believe that at the request in Indonesia of the said Major Pamoe Rahardjo and the said Frank C. Starr he radioed the late K.H. Hemady on the 31st of January 1952 as per original radiogram now produced to me and marked "KK-Q" (with copy attached hereto marked "KK-Q1").

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Exhibit KK-Q1
Ref. No. 69

22. Whereupon on the 1st of February 1952 cable was received by Mrs. Hemady from the said Frank C. Starr as per original radiogram now produced to me marked "KK-R" (with copy attached hereto marked "KK-R1").

Exhibit KK-R1
Ref. No. 70

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No. 20
Khalil Khodr's
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continued.

Exhibit KK-S
Ref. No. 71

23. The said late K. H. Hemady realizing the full import of the threat cabled a conciliatory radiogram to the said Frank C. Starr on the 2nd of February 1952 as per copy attached hereto marked "KK-S".
24. Several days later the said Frank C. Starr telephoned from Indonesia to the Philippines (and I verily believe this information to be true) and spoke to me personally and asked me to convey to the late K.H. Hemady the information that Major Pamoe Rahardjo was insisting upon deduction of the charter moneys for the 6 months ending December 1951 for the purchase price of US\$450,000.00 (the charter moneys for the 6 months ending 30th June 1952 not having then being paid) and the said Frank C. Starr 10 urged me to use my influence on the late K.H. Hemady to accept because of the delicate situation that he the said Frank C. Starr was in with the said vessel in the control of the Indonesian Government. I asked the said Frank C. Starr whether it was true that such deduction had been specified in the latest Charter Party and he replied in the negative referring me to his radiogram of the 1st of February 1952 but stated that Major Pamoe was not only asking for but insisting upon such deduction.
25. I communicated this to the said late K. H. Hemady who thereupon instructed me to and I sent a cable to Major Pamoe Rahardjo reading as follows :— 20

"We do not agree to deduct any Charter money from purchase price Tasikmalaja stop Starr inquired and we answered negatively."

On the 7th of February 1952 a letter was written to Major Pamoe by the said late K.H. Hemady as per copy (taken from the files of the Plaintiff Company by me) now produced marked "KK-T" with copy attached marked "KK-T1"). It is to be noted that the resumption of work and duties by the said Frank C. Starr had no reference to the Power of Attorney (K.D.H.4) which the said late K.H. Hemady had cancelled on the 25th January 1952.

26. A letter was also written on the same day (7th February 1952) to the said Frank C. Starr as per copy (taken from the files of the Plaintiff Company by me) now produced marked "KK-U" with copy attached marked "KK-U1"). 30
27. In the meantime as I am informed by the said Jose Briones (and verily believe to be true) the said Major Pamoe Rahardjo and the said Frank C. Starr sent the said Jose Briones to Hong Kong to make arrangements with the Taikoo Dockyards and a ship repairer A.W. King (the Plaintiff in Admiralty Jurisdiction Action No. 6 of 1952) to effect repairs to the said vessel on its arrival in Hong Kong, instructing the said Jose Briones to keep the ship's intended arrival in Hong Kong secret and not to divulge 40 it to the Plaintiff Company in Manila; Cables received by the said Jose Briones from the said Frank C. Starr on the 7th of February 1952 and 24th of February 1952 respectively being now produced to me now marked "KK-V" and "KK-W" (with copies attached marked respectively "KK-V1" and "KK-W1").

Exhibit KK-T1
Ref. No. 72

Exhibit KDH-4
Ref. No. 22

Exhibit KK-U1
Ref. No. 73

Exhibit KK-V1,
W1
Ref. No. 74, 75.

28. It would now appear from the said affirmation of Kwee Djie Hoo that, in spite of the cancellation of the said Frank C. Starr's agency and in spite of Major Pamoe Rahardjo's letter of the 17th of January 1952 (Exhibit "KK-K") the said Major Pamoe Rahardjo and the said Frank C. Starr on the 13th of February 1952 purported to enter into a sale contract being exhibit "K.D.H.2" to the said affirmation of Kwee Djie Hoo.
29. The Board of Directors as I have been informed by the various members thereof and verily believe it to be true was never at any material period aware of the sales contract and of the onerous terms thereof and of the onerous terms of the purported last Charter Party and of the purported execution of the Bill of Sale of the 17th March 1952 and would never in all sanity have agreed to such ruinous terms whereby the said vessel would be practically given away without payment to the Indonesian Government. In fact, the said Major Pamoe Rahardjo and the said Frank C. Starr (I verily say) had not only entered into a fraudulent conspiracy to put through the purported sale of the vessel in these circumstances but had at material periods fraudulently maintained a conspiracy of silence to keep the Plaintiff Company in ignorance of the purported sale, thus :—
- (a) On the 7th of March 1952 the said Frank C. Starr sent Chief Officer Jacinto Buendia of the said vessel back to Manila with a letter from himself (produced to me and marked "KK-X", with copy attached marked "KK-X1") recommending payment of March 1952 salary to the said Officer plus two weeks bonus with a covering letter dated 5th March 1952 from the then master of the vessel Captain Aguado (produced to me marked "KK-Y" copy attached marked "KK-Y1");
- (b) The said Major Pamoe Rahardjo permitted us to effect insurance on the said vessel as if the said vessel was still the unsold property of the Plaintiff Company and I produce in this regard copy letter dated 16th of April 1952 (taken from the Plaintiff Company files by me) to the said Major Pamoe Rahardjo marked "KK-Z" with copy attached marked "KK-Z1": I further produce copy cable of the 16th April 1952 certified as a true copy by the R.C.A. Communication, Inc. of Manila aforesaid and marked "KK-AA" with copy attached marked "KK-AA1".
- (c) The insurance premium was not paid on our behalf and for our account by the Indonesian Government or even for their own account and the said Major Pamoe Rahardjo did not nor did the said Frank C. Starr nor any one on behalf of the Indonesian Government notify the Plaintiff Company on behalf of the Plaintiff Company at any material stage of the purported sale of the said vessel: nor was any application made to the Plaintiff Company for an endorsement over of ownership of the insurance policy to the Indonesian Government which said insurance policy is still extent in the name of the Plaintiff Company as owners, no other insurance having been taken out on the said vessel.
- (d) The purported sale and completion took place without any original title deeds whatsoever save with a photostatic copy of the Bill of Sale of George Ho to the Plaintiff Company and neither the said Frank C. Starr nor the said Major Pamoe Rahardjo or any one on behalf of the Indonesian Government had ever applied to the Plaintiff Company for such title deeds alleging transfer of ownership.

*In the
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No. 20

Khalil Khodr's
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continued.

Exhibit KK-K
Ref. No. 62

Exhibit KDH-2
Ref. No. 20

Exhibit KK-X1
Ref. No. 76

Exhibit KK-Y1
Ref. No. 77

Exhibit KK-Z1
Ref. No. 78

Exhibit KK-
AA1
Ref. No. 79

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No. 20
Khalil Khodr's
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continued.

Exhibit KK-BB
Ref. No. 137

30. I verily say that it was the fraudulent intention of the said Frank C. Starr and the said Major Pamoe Rahardjo (arising out of the necessity to bring the said vessel to Hong Kong in order to change the flag and registry because there was no Panamanian Consulate in Indonesia) to bring the vessel to Hong Kong, effect a quick transfer of flag and a quick repair of the vessel to render it seaworthy and to bring the vessel back to Indonesia out of reach of the hands of the true owners namely the Plaintiff Company, but that such fraudulent purpose was frustrated by the delay in repairs. I ask this Honourable Court to note that it has been further misled into believing that the Indonesian Government had taken over as from 13th 10
February 1952 liability for and payment of the wages of the Filipino crew as well as the Indonesian crew on board (which Indonesian crew were also servants of and receiving wages from the Plaintiff Company) the payments purported to be classified as salaries were merely bonus allowances at all material times paid the crew on board by the Indonesian Government for and on behalf of the Plaintiff Company, thus the actual salaries of the Filipino crews had been throughout at all material stages up to this very date been paid by the Plaintiff Company to their families in the Philippines as per signed vouchers produced and marked "KK-BB" in a bundle. In this regard I crave leave to refer to the affidavit of Jose Maria Silos. 20
31. The Plaintiff Company only became aware of the purported sale and the fraud affected by a report made by the said Jose Briones in May 1952 a few days before the death of the said late K.H. Hemady whereupon I was immediately despatched to Hong Kong to investigate. On inquiry from both Mr. J. T. Prior and Mr. Peter Mo of Messrs. Wilkinson & Grist I was told that it was their belief that the purchase price was about US\$300,000.00 and I verily believe that this information was given to them by the said Frank C. Starr and Major Pamoe Rahardjo. The Plaintiff Company did not at any time receive the charter hire for the 6 months period from 1st January to the 30th of June 1952 nor did they receive payment of the sum 30
of US\$70,000:00 purported to have been paid to American Trust Company, for the account of the said Frank C. Starr.
32. I verily say that in any event the Indonesian Government was not only put on inquiry as to the lack of authority on the part of the said Frank C. Starr but at material dates were actually aware that he held no such authority to agree and to put through the sale of the said vessel on such onerous and ruinous terms, their representative Major Pamoe Rahardjo in his own words "daring" to do so in the face of his own belief that if such onerous terms were brought to the attention of the Plaintiff Company they would not agree because he was fraudulently prepared to take advantage 40
of what he alleged to be a full and valid Power of Attorney given to the said Frank C. Starr and I further verily say that the sale was agreed to and put through on these terms in fraud of the Plaintiff Company by the said Frank C. Starr and the said Major Pamoe Rahardjo.
33. As regards the food supplied, the payments situation is similar in that payments are made by Mr. Starr on behalf of the Plaintiff Company when he is in funds and is in the same place where the ship is, on behalf of the Plaintiff Company from funds in the hands of the Captain and on other occasions as advances made by the Indonesian Government on behalf of the

Plaintiff Company, and in fact requisitions for foodstuffs as late as May 1952 had been made by the Captain through the Chief Steward on the International Shipping Company as per some sample requisitions now produced to me and marked "KK-CC" in a bundle and which to my knowledge had been paid for by Captain Aguado from funds given to him by the said Frank C. Starr. It was only after the departure of the said Frank C. Starr when the funds with the master were exhausted, when the Indonesian Government commenced to pay for supplies.

*In the
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Jurisdiction*

No. 20
Khalil Khodr's
second
Affidavit.
26th July 1952.
continued.

Exhibit KK-CC
Ref. No. 138

AND LASTLY I do make oath and say that the contents of this my affidavit
10 are true.

Sworn, etc.

No. 21

AFFIDAVIT OF JOSE BRIONES

(27th July, 1952)

No. 21
Jose Briones
Affidavit.
27th July 1952.

I, JOSE BRIONES, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I am authorised to make this affidavit on behalf of the Plaintiff Company.
2. I have read the affirmation of Kwee Djie Hoo filed herein on the 16th day of July, 1952.
- 20 3. I have also read the affidavit of Khalil Khodr filed herein on even date and I verily say that the contents thereof are true.
4. I am familiar with the handwriting of the said Frank C. Starr, Major Soekardjo and the said Major Pamoe Rahardjo and I verily say that the handwriting and signatures of the respective particular exhibits to the said affidavit of Khalil Khodr are the handwriting and the signatures of these three respective persons.
- 30 5. I am aware that the said Major Pamoe Rahardjo had left Hong Kong for Indonesia by air (via Manila) on the 9th day of May 1952, and that the said Frank C. Starr on the 16th day of May 1952 had left for Singapore and is now in Indonesia. On the 14th day of March 1952 I was about to enter the hotel room of Major Pamoe Rahardjo in Sunning House when I overheard a conversation between the said Frank C. Starr and the said Pamoe Rahardjo thus:
 - (a) The said Frank C. Starr asked as to when he could receive payment of the balance of the purchase price of the said s.s. "Tasikmalaja";
 - (b) Whereupon the said Pamoe Rahardjo replied that he could only receive such balance upon completion, and he queried the said Frank C. Starr as to how he could put through such completion without the

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original documents and with a defective Power of Attorney, not containing the Common Seal of the Corporation and asked whether this last could be rectified by a request for a new Power of Attorney;

(c) Whereupon the said Frank C. Starr had replied that if he asked for a rectified Power of Attorney, the late K. H. Hemady might get suspicious.

6. On or about the 15th day of July 1952, I met the said Major Pamoe Rahardjo and he showed me a part of the cable received from the said Frank C. Starr with wording to effect that the said Frank C. Starr was in fear of losing his life, and was being detained in Indonesia.

10

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

No. 22

No. 22
Jose Maria
Silos's fourth
Affidavit.
26th July 1952.

AFFIDAVIT OF JOSE MARIA SILOS

(26th July, 1952)

I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows:—

1. I am duly authorised to make this affidavit on behalf of the Plaintiff Company herein. 20
2. I crave leave to refer to all previous affidavits filed by me herein. In respect of such affidavits I should like to add that my appointment as Acting Captain was made by the said Frank C. Starr as a servant of the Plaintiff Company. The said Frank C. Starr suddenly left Hong Kong without warning on the 16th day of May 1952 and sent me a letter of that date which I now produce marked "JMS-1" (with copy attached hereto marked "JMS-1a"). I am familiar with the handwriting and signature of the said Frank C. Starr and recognise same on exhibit "JMS-1".
3. The "Joe" mentioned in the said letter is one Jose Briones who had no explanation to give because he was not aware of the reason for the sudden 30 departure.
4. I was at most material periods the Acting Captain (in the absence of the Captain, namely, Captain Francisco J. Aguado) of the abovenamed vessel and throughout all material periods up to the date of commencement of these proceedings have been and am still in full physical possession and control of the abovenamed vessel.

Exhibit JMS-1a
Ref. No. 80

5. At no material period was I ever informed of the purported sale to the Indonesian Government of the defendant vessel and I understood that the change of flag ceremony was part and parcel of the chartering of the said vessel since I had previously heard the said Frank C. Starr and Major Pamoe Rahardjo discussing many months back that it was more convenient for the purpose of the charter to fly the Indonesian flag.
6. On the 3rd day of June, 1952, by reason of request of John W. Kuitert as representative in Hong Kong of the Ministry of Defence of the Republic of Indonesia for the handing over of possession or custody of the above-named vessel, I called on the 4th day of June 1952 on the Consul-General for the Republic of Indonesia in Hong Kong. I protested and refused to hand over possession and to assert my claim to continue in full possession on behalf of the Plaintiff Company only as Sole Owners.
7. On the 9th day of June 1952, I received a cable (produced and marked "JMS-2" with copy attached and marked "JMS-2a") purported to have been sent to me by the said Frank C. Starr which I transmitted to the Plaintiff Company by cable and in respect of which I wrote to Jose Briones as per copy letter attached hereto and marked "JMS-3".
8. At all material periods (inclusive of the whole of the month of June, 1952) up to the date of these proceedings, I have been and am still the servant of the Plaintiff Company and as such have remained and am in full physical possession and control of the abovenamed vessel holding the same for and on behalf of the Plaintiff Company only and for no other party.
9. The allegation that the crew on board the said vessel was being paid by the Indonesian Government for the month of April 1952 onwards is untrue and deliberately misleading by the production of the payroll sheets without the production of the adjustment account showing for example that the moneys being paid to the Filipino crew in Hong Kong was only a small part of the moneys to be drawn here the major part of the salaries to be payable to the families in the Philippines by the Plaintiff Company as per adjustment sheet signed by J. W. Kuitert, Technical Adviser to the Indonesian Consul-General, Mr. J. Walandaouw the Purser and myself which I now produce marked "JMS-4" (with copy attached hereto marked "JMS-4a"). Throughout all material periods most of these payments were being made by the Indonesian Government for and on behalf of the Plaintiff Company save some payments by Frank C. Starr when he should be in the same place where the ship was and should be in funds, thus as late as May 1952 advance salaries for May 1952 were still being paid on vouchers authorised and 'okeyed' by Starr with his signature, the signature of the said Purser and myself, as per three vouchers now produced to me and marked "JMS-5" in a bundle (with copies attached marked "JMS-5a"). Again accounts for payment made by the said Frank C. Starr for and on behalf of the Plaintiff Company for the period March 1952 to 10th May 1952 for all members of the crew were signed by the said J. W. Kuitert the said J. Walandaouw and myself as per three vouchers now produced to me and marked "JMS-6" in a bundle (with copies attached marked "JMS-6a").

*In the
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Court of
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Admiralty
Jurisdiction*

No. 22
Jose Maria
Silos's fourth
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26th July 1952
continued.

Exhibit JMS-2a
Ref. No. 81

Exhibit JMS-3
Ref. No. 82

Exhibit JMS-4a
Ref. No. 83

Exhibit JMS-5a
Ref. No. 84

Exhibit JMS-6a
Ref. No. 85

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No. 22
Jose Maria
Silos's fourth
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26th July 1952.
continued.

10. It may be that this was deliberately done in order to give us no inkling of the purported sale but at no time did any member of the crew or myself understand the payments to be made as payments from the Indonesian Government as new owners in lieu of payments from the Plaintiff Company, and it is completely untrue that I and the crew were the servants of the Indonesian Government and took instructions from the Indonesian Consul-General on behalf of the Indonesian Government.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

10

No. 23
Yssmat Khodr's
Affidavit.
26th July 1952.

No. 23

AFFIDAVIT OF YSSMAT KHODR

(26th July, 1952)

I, YSSMAT KHODR of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I am authorised to make this affidavit on behalf of the Plaintiff Company herein.
2. I am a nephew of Mrs. Magdalena H. Hemady of the Plaintiff Company.
3. On the 9th day of May 1952, Major Pamoe Rahardjo arrived by plane at Manila in the Philippines and dined that evening with Mr. & Mrs. K. H. Hemady and myself at the residence of the said K. H. Hemady (now deceased) at No. 20 Broadway, 5th Street, Quezon City, P.I.
4. During the dinner, in conversation, the said Major Pamoe Rahardjo not only did not inform the said K. H. Hemady of the purported sale of the defendant vessel but he actually pretended that the sale was in the negotiation stage and asked for a reduction off the said K. H. Hemady's asking price of US\$450,000.00, which was refused.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

30

No. 24
Jose Maria
Silos's fifth
Affidavit.
28th July 1952.

No. 24

AFFIDAVIT OF JOSE MARIA SILOS

(28th July, 1952)

I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, made oath and say as follows:—

1. I am duly authorised to make this affidavit on behalf of the Plaintiff Company herein.

2. Further to my affidavit filed herein on 26th July 1952, I say that throughout all material periods up to the 30th of June 1952, the Indonesian crew on board the Defendant vessel had been docile and obedient to my every order without insubordination or mutiny.

*In the
Supreme
Court of
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Admiralty
Jurisdiction*

3. Again, the true story as to the incident concerning the Indonesian flag was as follows:—

No. 24
Jose Maria
Silos's fifth
Affidavit.
28th July 1952.
continued.

(a). The Head Bailiff of the Supreme Court arrested the ship sometime in the afternoon of the 27th June 1952;

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(b). As is usually done every day, the Indonesian flag was lowered at sunset by an Indonesian member of the crew, namely one Tjong Sui (the Watchman) and the flag was brought to my cabin to be kept, when I then gave him the order that the flag was not to be flown at sunrise the next day or any other day thereafter: He did not demur or protest;

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(c). The allegation that the flag rope was cut by me is completely untrue. On the 28th of June 1952, the Indonesian crew, led by J. D. Mandagi and J. Walandaouw, approached me and asked for an explanation as to why the flag was not raised, whereupon I informed them that it was by order received from the owners, and I showed them the letter written by Khalil Khodr to me dated the 27th day of June 1952 which I now produce marked "JMS-7" with copy attached hereto marked "JMS-7a." They were apparently satisfied with my explanation and went away quietly and did not revolt or mutiny in any way against my order of the previous evening, and during the day every member of the Indonesian crew docilely obeyed all orders given by me. Also during the day, I received a letter from the Indonesian Consul-General which I now produce marked "JMS-8" (with copy attached hereto marked "JMS-8a") to which I replied as per copy letter marked "JMS-9" attached;

Exhibit JMS-7a
Ref. No. 86

Exhibit JMS-8a,
& 9.
Ref. No. 87, 88.

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(d). On the 29th day of June 1952 no member of the Indonesian crew raised the question of the flag at all, and they continued to obey all my orders docilely;

(e). On the 30th of June, 1952, I received a letter from the Indonesian Consul-General purporting to be a dismissal of me, as per my previous affidavit of 5th July 1952, and after receipt of this letter at about 12.30 p.m. several of the Indonesian crew made a sudden rush into my cabin, snatched the flag, and raised it;

(f). I crave leave to refer to my log book, at present in the custody of the Head Bailiff, in support of the above.

40

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

AFFIDAVIT OF KHALIL KHODR

(16th August, 1952)

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 25
Khalil Khodr's
third
Affidavit.
16th August
1952.

Exhibit KDH-A,
KDH-B.
Ref. No. 39, 40.

Exhibit KDH-R
Ref. No. 40

Exhibit KK-
EE1
Ref. No. 89

Exhibit KDH-
C, C1, C2, C3.
Ref. No. 41, 42,
43, 44.

I, KHALIL KHODR, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I have read the affirmation of Kwee Djie Hoo filed herein on the 15th day of August 1952 and I have on the same day inspected at Messrs. Wilkinson & Grist's office the originals of Exhibits "KDH-A" and "KDH-B" and I verily say, in reference to paragraph 12 of my affidavit of the 26th day of July 1952, that:

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(a) I had confused dates and charter parties;

(b) It is now clear to me that the Charter Party I had seen in the records of the Plaintiff Corporation was the third Charter Party of the s.s. "Tasikmalaja" which contained no such option to sell as is contained in the purported third Charter Party which I had inspected (Exhibit "KDH-B").

2. On the late K. H. Hemady deceased's request for the last Charter Party, Frank C. Starr instead of sending the same, sent a blank printed form of a Baltine Charter, with the words typed thereon:—

"THE SSTASIKMALAJA IS CHARTERED IN ACCORDANCE WITH 20
THIS TYPE OF CHARTER CONTRACT."

and had signed his name and his firm name in his own handwriting (which I recognise) on this form, which is produced to me marked "KK-EE", with copy attached hereto marked "KK-EE1".

3. I verily say that Captain Aguado was also in fraudulent conspiracy with the said Frank C. Starr and Major Pamoe Rahardjo to defraud the Plaintiff Company of the s.s. "Tasikmalaja" (as referred to by me without the mention of his name in paragraph 6 of my affidavit of the 27th June 1952) for the following reasons:—

(a) At no time during the months of March, April or May 1952 did the said Captain Aguado ever report the purported sale of the said vessel or brought to the Plaintiff Corporation or brought to our attention the exhibits to the said affirmation of Kwee Djie Hoo marked "KDH-C", "KDH-C1", "KDH-C2", and "KDH-C3".

(b) On the contrary, throughout that period he continued to dissemble and to make it appear that he had no knowledge of such sale and considered the Plaintiff Corporation to be still the true owners of the said vessel and in this regard I exhibit the following:—

- In the
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Court of
Hong Kong
Admiralty
Jurisdiction*
—
No. 25
Khalil Khodr's
third
Affidavit.
16th August
1952.
continued.
Exhibit KK-FF
Ref. No. 90
Exhibit KK-
GG1
Ref. No. 91
Exhibit KK-
HH1
Ref. No. 92
Exhibit KK-
JJ1
Ref. No. 93
Exhibit KK-
KK1
Ref. No. 94
Exhibit KK-LL
Ref. No. 95
Exhibit KK-
MM1
Ref. No. 96
Exhibit JMS-16
Ref. No. 103
- 10 (i) Copy of letter dated the 16th April, 1952 written by the said K. H. Hemady deceased to Captain Aguado attached and marked "KK-FF" evidencing the lack of knowledge of a sale and the intention of the Plaintiff Corporation to renew the insurance as owners of the said vessel to which no reply was received from Captain Aguado that the vessel had been sold and therefore need not be insured by the Plaintiff Corporation and I produce the reply of the said Captain Aguado of the 24th April 1952 with his signature thereon which I recognise (marked "KK-GG", with copy attached marked "KK-GG1").
- (ii) Letter with the same signature of the said Captain Aguado received from him of the 31st March, 1952 (marked "KK-HH", with copy attached marked "KK-HH1").
- (iii) Letter of the 7th of May 1952 requesting the Plaintiff Corporation to pay the wages up to date of the Chief Engineer then returning to Manila (marked "KK-JJ", with copy attached marked "KK-JJ1").
- 20 (iv) Letter of the 8th of May 1952 signed by the said Chief Engineer and brought with him to Manila (Marked "KK-KK", with copy attached marked "KK-KK1").
- (v) Copy of radiogram dated the 12th of March 1952 sent on the instructions of the said Frank C. Starr to the American Trust Co. at Sacramento, California, authorising the transfer by T.T. of US\$10,000.00 to the said Captain Aguado (and in this regard I refer to the affidavit of Fermin Alimpia, Radio Officer of the "Tasikmalaja"): I verily say that the said Captain Aguado had received besides this US\$10,000.00 his full wages and remuneration from the Plaintiff Corporation and that to my knowledge there is no justification for this further payment to him of this
- 30 US\$10,000.00 (Copy radiogram attached marked "KK-LL").
- (c) Letter signed by Frank C. Starr of the 8th May 1952 and sent to Mr. & Mrs. Hemady now produced to me and marked "KK-MM", with copy attached marked "KK-MM1".
4. On Captain Aguado's return to Manila on the 9th day of May 1952, and thereafter until much later in the same month he made no report whatsoever of the purported sale, when towards the latter part of May 1952 Jose Briones arrived and reported the purported sale to Mr. and Mrs. Hemady, whereupon Mr. and Mrs. Hemady and myself queried Captain Aguado as to whether he had any knowledge of the purported sale
- 40 and he denied all knowledge whatsoever.
5. I refer to the letter of the 23rd of May 1952 written by Captain Aguado to Captain Silos (Exhibit Number "JMS-16) to affidavit of Captain Silos of even date) and I assert that the said Captain Aguado had pursuant to such fraudulent conspiracy deliberately kept the Plaintiff Corporation in ignorance of the purported sale.

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No. 25
Khalil Khodr's
third
Affidavit.
16th August
1952.
continued.

Exhibit PR-2
Ref. No. 36
Exhibit PR-3
Ref. No. 37

6. I have also read the affirmation of Pamoe Rahardjo of the 15th of August 1952 and I say in reply that to my certain knowledge it is untrue that the late K.H. Hemady was aware of the option to sell and was attempting to obtain a higher purchase price in breach of the option, and I say in reply to paragraph 6 of the said affirmation that as regards exhibits "PR-2" and "PR-3" no notification was ever given by Captain Aguado to the Plaintiff Corporation.

AND LASTLY I make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 26
Jose Briones's
second
Affidavit.
16th August
1952.

No. 26
AFFIDAVIT OF JOSE BRIONES

(16th August, 1952)

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I, JOSE BRIONES, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I have read the affirmation of Kwee Djie Hoo filed herein on the 15th day of August, 1952, and on the same day, in the offices of Messrs. Wilkinson & Grist, I inspected the original of "KDH-A" being the Second Charter Party of the s.s. "Tasikmalaja".
2. I say in reference to this Exhibit and to paragraph 12 of the affidavit of Khalil Khodr of the 26th day of July, 1952 as follows:

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- (a) That the Second Charter Party so typed by me and after typing had been signed by the respective signatories was not Exhibit "KDH-A" as inspected save for the last page which bears my signature;
- (b) That the said Khalil Khodr had confused the date of execution of the Second Charter Party which was typed by me and signed in the month of February, 1951.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 27
Jose Maria
Silos's sixth
Affidavit.
16th August
1952.

NO. 27
AFFIDAVIT OF JOSE MARIA SILOS

(16th August, 1952)

30

I, JOSE MARIA SILOS of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows:—

1. I have read the affirmation of Pamoe Rahardjo filed herein on the 15th day of August, 1952, and I verily say that it is untrue that I did know at material dates of the purported sale of the "Tasikmalaja."

2. I was puzzled by the flag raising ceremony but was aware of a previous suggestion made by Frank C. Starr of a transfer to the Indonesian flag to facilitate the purposes of a charter of the vessel. However, by reason of my puzzlement I wrote on the 17th April, 1952 to the Plaintiff Corporation as per original copy with newspaper clipping now produced to me and marked "JMS-10" with copies attached hereto and marked "JMS-10a".

*In the
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Admiralty
Jurisdiction*

No. 27

Jose Maria
Silos's
Sixth Affidavit.
16th August
1952.

continued.

Exhibit JMS-
10a
Ref. No. 97

Exhibit JMS-
11a
Ref. No. 98

Exhibit JMS-
12a
Ref. No. 99

Exhibit JMS-
13a
Ref. No. 100

Exhibit JMS-
14a
Ref. No. 101

Exhibit JMS-
15a
Ref. No. 102

Exhibit PR-4
Ref. No. 38

Exhibit JMS-
16a, 17a
Ref. No. 103,
104.

3. By reason of an assault by Mr. Kuitert on Captain Aguado, the said Captain, the Chief Engineer, the 2nd Engineer and myself agreed to resign our respective positions but such resignation was from the employ of the Plaintiff Corporation as evidenced by the following:—

(a) Original taken from the files of the Plaintiff Corporation of our written resignation of the 21st of April 1952, now produced marked "JMS-11" with copy attached marked "JMS-11a."

(b) Original telegram of resignation of the 23rd April, 1952 sent in Spanish by Captain Aguado to Mr. Hemady now produced to me and marked "JMS-12" with copy translation attached hereto marked "JMS-12a."

(c) Original of telegram sent by myself, the Chief Engineer and the 2nd Engineer to the Plaintiff Corporation on the 8th day of May, 1952, now produced to me marked "JMS-13" with copy attached marked "JMS-13a."

(d) Original copy cable from the Plaintiff Corporation refusing acceptance of resignation of the 8th of May, 1952 with cable charges receipt now produced to me marked "JMS-14" with copy attached marked "JMS-14a."

(e) Copy of radiogram sent by Captain Aguado to myself from Manila on the 26th of May, 1952 with charges receipt therefor attached now produced to me and marked "JMS-15" with copy translation from the Spanish attached hereto and marked "JMS-15a."

4. The cable to Major Pamoe Rahardjo (Exhibit "PR-4" in the affidavit of Pamoe Rahardjo of the 15th day of August, 1952) was intended as notification of our resignation from the Plaintiff Corporation given to him as representative of the Charterers.

5. I produce two original letters of the 23rd of May, 1952 and the 30th of May, 1952 respectively received by me from Captain Aguado in Spanish and bearing his signatures which I recognise (marked "JMS-16" and "JMS-17" with copy translations marked "JMS-16a" and "JMS-17a" attached).

6. In or about the month of March 1952 I was present on board the s.s. "Tasikmalaja" when Major Pamoe Rahardjo handed over two presents to Captain Aguado consisting of:—

(a) A Rolex Watch to the Captain valued at H.K.\$2,000.00;

(b) A Silver Wrist Watch for Captain Aguado's son, Ricardo Aguado.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

AFFIDAVIT OF FERMIN ALIMPIA

(16th August, 1952)

In the
Supreme
Court of
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Admiralty
Jurisdiction

No. 28

Fermin
Alimpia's
Affidavit.
16th August
1952.

I, FERMIN ALIMPIA, of the s.s. "Tasikmalaja" now lying in the harbour of Hong Kong, Radio Operator, make oath and say as follows:—

1. I am the Radio Operator of the s.s. "Tasikmalaja."
2. On the 12th day of March 1952, Frank C. Starr instructed me to send a radiogram to the American Trust Co. at Sacramento, California, as per copy attached hereto marked "FA-1". As per his instructions, I transmitted such radiogram to the said bank per the ship's radio communication. 10

AND LASTLY I make oath and say that the contents of this my affidavit are true.

Sworn etc.

Exhibit FA-1
Ref. No. 105

No. 29

Augusto
Revilla's
Affidavit.
16th August
1952.

AFFIDAVIT OF AUGUSTO REVILLA

(16th August, 1952)

I, AUGUSTO REVILLA of 1118 Anacleto Street Sta. Cruz Manila in the Republic of Philippines, but at present temporarily residing at Room No. 601 Shamrock Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Attorney-at-law, do make oath and say as follows:— 20

1. I am an Attorney-at-law practising in the Republic of the Philippines, and have been practising as such Attorney-at-law for the last 15 years. I am a law graduate as of the year 1935 as Bachelor of Laws of the University of Sto. Thomas, Manila aforesaid.
2. I am well acquainted with the law of the Republic of the Philippines, which is based upon American law and upon the ancient common law of America derived from the English common law.
3. I know and am well acquainted with the constitution of the Plaintiff Company, which is a private corporation registered and duly organised and existing under and by virtue of the laws of the Philippine Islands, with 30 registered office and postal address at Rooms 217-221 Consolidated Investments Building, Plaza Goiti, in the city of Manila in the Philippine Islands, and I say that such private corporation is equivalent to a private company in the British law.
4. I have seen an exact copy of the Power of Attorney purported to have been given by K. H. Hemady deceased to one Frank C. Starr on the 8th day of November 1950 (being exhibit marked "KDH-4" to the affidavit of Kwee

Exhibit KDH-4
Ref. No. 22

Djie Hoo filed herein on the 16th day of July 1952 and as per exact copy thereof attached hereto and marked "AR-1") and I verily say that the same is invalid according to the law of the Philipines as a Power of Attorney or document of authorisation of the Plaintiff Company.

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Admiralty
Jurisdiction*

5. The strict rule of the ancient Common Law holding in the Republic of the Philippines was that a corporation could only act under its seal and therefore was not bound by any written document not under seal.

No. 29

Augusto
Revilla's
Affidavit.
16th August
1952.
continued.

Exhibit AR-1
Ref. No. 106

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6. (a) Though this rule was relaxed at an early date as regards contracts and such-like within the constitution and in the ordinary course of the business of the particular corporation, yet in the donation of authority by Power of Attorney or by document of authorisation, the law of the Republic of the Philippines (as at present extant and as extant in the year 1950) requires that the Power of Attorney must be authorised by the Board of Directors of a Corporation and must contain therein a reference to the authorisation conferred by the said Board of Directors by way of a Board Meeting Resolution giving its date and effect and must have attached to such Power of Attorney a copy of the Minute of the Resolution certified as correct under the Common Seal of the Corporation. Failing such reference in the body of the Power of Attorney and without such certified copy of Resolution, the Power of Attorney is invalid and cannot in Philippines law bind the said Corporation.

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(b) The Philippines Law is that it is strictly not necessary for the Common Seal of the Corporation to be affixed to the actual Power of Attorney itself so long as it is affixed in certification to the said copy of the Minute of the Board Resolution attached to and incorporated into and forming part of the Power of Attorney by actual reference in the body of the said Power of Attorney.

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(c) By the said Philippines Law, however, even if there is no reference to authorisation by a Board Resolution in the body of the Power of Attorney, the Power is valid if the Common Seal of the Corporation is affixed to the Power of Attorney itself and the same is signed and such affixion and signature is in accordance with the Articles or Constitution or By-Laws of the Corporation, in that the affixion of the Common Seal and such proper execution carry the implication that the Board of Directors had authorised the donation of the Power.

(Mead vs. McCullough 21 Phil. 95; Wait vs. Nasua Armory Assn., 66 N. H. 581; 14 L.R.Á. 356; Yu Chuck vs. Kong Li Po, 46 Phil. 608; Barretto vs. La Previsora Filipina, 57 Phil. 649, 650).

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7. For these reasons the said exhibit marked "AR-1" is clearly, on the face of the document, invalid according to the Philippines Law as a Power of Attorney of the Plaintiff Company and the fact that it purports to have been given by the President and General Manager of the Corporation in no way renders it a valid Power-of-Attorney of the Corporation in Philippines Law, inasmuch as the President of the Corporation has no implied or inherent authority, merely by virtue of his office or as incident thereto, to grant a valid Power of Attorney of the Corporation or to sell and convey

Exhibit AR-1
Ref. No. 106

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No. 29

Augusto
Revilla's
Affidavit.
16th August
1952.
continued.

or to contract to sell the real or personal property of the Corporation, even though he is both President and General Manager, and over a period of years is left with the entire management and control of the affairs of the Corporation. (Josephine Hospital Corp. vs. Modoc Realty Co., 307 Mo. 336, 270 SW 638; 2 Fletcher, Cyc. of Corp. 508/9; and Wait vs. Nasua Armory Assn. supra).

8. The Philippine Corporation Law expressly provides that the corporate powers of all corporations formed thereunder shall be exercised and all their business shall be conducted and all their property shall be controlled and held by the board of directors (Sec. 28, Act No. 1459). Where the charter 10 or the law vests the management of the affairs of a corporation in a board of directors, the corporation cannot by a by-law substitute an executive committee to act for it (Tempel v. Dodge, 89 Tex. 69, 32 S.W. 514). The directors, however, may delegate to particular officers or agents the power to perform purely ministerial acts (Fleckner vs. U.S. Bank, 8 Wheat. 338). But, certainly, they cannot delegate to others their own discretionary powers (Bliss vs. Kaweah Canal, etc., Co., 65 Cal. 502, 4 Pac. 507). The board of directors, however, may lawfully appoint and authorise a *committee of their number* to act for the corporation in a particular matter (Union Pacific Railroad Co. vs. Chicago etc. R. Co. 163 U.S. 564, 16 S. Ct. 1173, 41 U.S. 20 (L. Ed.) 265); and the board may clothe a committee in the intervals *between the sittings of the board*, with all their own authority to conduct the ordinary business of the corporation (Olcott v. Tioga R. Co., 27 N.Y. 546, 84 Am. Dec. 298). The committee thus appointed cannot, however, delegate their authority even to one of their number (Id.) and shall only have such power to bind the corporation as is conferred upon it by the board (Chemical Nat. Bank of N.Y. v. Wagner, 93 Ky. 525, 20 S.W. 535).

(See Guevara on the Philippine Corporation Law (New Edition, at pp. 117 and 118).

AND LASTLY I make oath and say that the contents of this my affidavit 30 are true.

Sworn etc.

No. 30

AFFIDAVIT OF JOSE MARIA SILOS

(18th August, 1952)

I, JOSE MARIA SILOS, of the s.s. "Tasikmalaja" now lying in the harbour of Hong Kong, Master Mariner, make oath and say as follows:—

1. I have seen Frank C. Starr in Hong Kong and I know that he is and has been in Hong Kong for several days.

AND LASTLY I make oath and say that the contents of this my affidavit 40 are true.

Sworn etc.

No. 30
Jose Maria
Silos's seventh
Affidavit.
18th August
1952.

AFFIDAVIT OF JOSE MARIA SILOS

(19th August, 1952)

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 31
Jose Maria
Silos's eighth
Affidavit.
19th August
1952.

I, JOSE MARIA SILOS, of the s.s. "Tasikmalaja" now lying in the Harbour of Hong Kong, Master Mariner, make oath and say as follows:—

1. I am duly authorised to make this affidavit on behalf of the Plaintiff Company herein.
2. The ship left Tanjong Priok Indonesia on the 6th of March 1952 when Frank C. Starr came on board and gave the order to Captain Aguado in my presence for the vessel to proceed to Hong Kong, and Frank C. Starr sailed with the boat to Hong Kong. Major Pamoe Rahardjo was not on board.
3. We arrived in Hong Kong on 13th March 1952, and the next day on Frank C. Starr's orders the boat was towed by tug to the wharf of the Taikoo Docks where it was moored by mooring lines to bollards.
4. We stayed there until approximately the end of March 1952 awaiting an estimate from the Taikoo Docks which was too high, whereupon on 1st April 1952, Frank C. Starr together with Major Pamoe Rahardjo left Hong Kong the next day, the boat was tugged to the wharf of the Taikoo Sugar Refinery.
5. About the beginning of April 1952 Capt. Aguado received a cable from Major Pamoe Rahardjo asking him to proceed back to Sourabaya (I saw the cable), whereupon Capt. Aguado cabled back that it was impossible to do so without repairs to the boilers and auxiliaries to the main engines.
6. On 21st April 1952 the ship was tugged to Buoy "A" opposite the Kowloon Docks.
7. On the 1st of May 1952 when Capt. Aguado was ashore, Mr. A. W. King (the Plaintiff in A. J. Action No. 6 of 1952) came and asked me for permission to come on board to do scaling and painting work. I asked him for a signed job sheet or a contract, but he could not produce one and he told me that Frank C. Starr and Capt. Aguado had given him verbal orders (which I verily believe to be true) particularly in that later, Capt. Aguado, Frank C. Starr and Major Pamoe Rahardjo came on board and I confirmed from Frank C. Starr that he had ordered the work. I permitted Mr. King and his workmen to commence and carry on work.
8. Mr. King received in my presence \$12,500.00 from Frank C. Starr by several instalments, one of which in the sum of \$3,000.00 was paid by me to Mr. King, Frank C. Starr handing me the money.
9. As the work on the hull was well done, Frank C. Starr in my presence ordered Mr. King to scale and paint the superstructure as well as to effect repairs to the boilers. Mr. King carried on this work for a few days until

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Jose Maria
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the 7th of May 1952, but when he was unable to obtain further monies from Frank C. Starr on account, he stopped work. When King first started the work on the boilers, Frank C. Starr anticipated that the work would be finished by 5th May, 1952 whereupon Frank C. Starr wrote on the blackboard on deck near the companion ladder a notice in chalk that the ship would be departing for Sourabaya on the 5th May 1952 after temporary repairs to the boilers had been completed. When Mr. King saw the notice he told Frank C. Starr in my presence that he could not finish the work by the 5th but would have to take 10 days i.e., up to the 10th of May 1952, whereupon Frank C. Starr wiped out the date of 5th May and changed it 10 to 10th May.

10. On the 9th of May 1952 when I was already Acting Captain, a Mr. Harveson of the Kowloon Dock Co. came by launch to my boat and handed me a note from Mr. Ramsay of his company asking me to move the vessel to the wharf of the Dock Co. to facilitate repairs. I told Mr. Harveson that I would not move the ship without a written order either from Frank C. Starr or the Indonesian Consul. Mr. Harveson then left: Later he returned and asked me to go to the telephone on shore, where I spoke to Kuitert by telephone and he confirmed that the Dock Co. were going to effect the repairs and he told me that he would come on board with a note in confirmation, whereupon I then allowed the boat to be towed by tug to the wharf of the Dock Co. where it remained afloat tied only by mooring lines to bollards. As soon as we came alongside the wharf, Mr. Kuitert came on board with a letter from the Indonesian Consul, which I now produce marked "JMS-18" with copy attached marked "JMS-18a". 20
11. On the 12th of May 1952, Mr. Kuitert came on board with Mr. Ramsay of the Dock Co. and introduced Mr. Ramsay to me. Mr. Ramsay in turn introduced me to a British foreman and he asked me to allow the foreman to bring the workmen on board to carry out the repairs. Later in the day, the foreman came on board with workmen and went to the Engine Room and carried on the repairs. These repairs were straight repairs and no remodeling and the ship always remained in my custody and control with workmen coming on board from the Dock to effect the repairs on board without any drydocking or the putting of the ship on the slipway. Throughout, the ship remained afloat with myself as captain and the crew on board moored by mooring-lines to bollards as aforesaid, the ship itself being moved on several occasions, twice because of possible typhoons and on several other occasions because of ships coming alongside. 30
12. I am informed by my solicitor, Mr. M. A. da Silva and verily believe that Mr. Grimsdale on behalf of the Dock Co. does not claim possession of the ship, stating only that the Dock Co. has only a maritime lien for any unpaid repairs and in this regard, I exhibit copy letter of 3rd July 1952 of Messrs. Wilkinson & Grist to the Honourable the Commissioner of Police attached hereto and marked "JMS-19" with letter from the Dock Co. produced to me and marked "JMS-20" with copy attached hereto and marked "JMS-20a". 40

Exhibit JMS-
18a
Ref. No. 107

Exhibit JMS-
19, 20a.
Ref. No. 108,
109.

13. I am further informed by Mr. M. A. da Silva and verily believe that the Dock Co. had required an undertaking from both the Indonesian Government and Juan Ysmael & Co. Inc., as per letter from the Dock Co. marked "JMS-21", with copy attached hereto and marked "JMS-21a"; copy of Mr. M. A. da Silva's letter in reply attached hereto marked "JMS-22"; letter from the Dock Co. of 12th July, 1952, produced and marked "JMS-23" with copy attached hereto and marked "JMS-23a".

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 32

AFFIDAVIT OF JOSE BRIONES

(19th August, 1952)

I, JOSE BRIONES of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. When Captain Aguado left on the 9th of May 1952 with his son Ricardo Aguado by plane for Manila, Frank C. Starr gave me the money for the 2 plane passages (round trip) and I paid the money to purchase the 2 passages from Cathay Pacific Airways as the Passage Department of that Company can confirm.
2. To my knowledge this was not paid by the Indonesian Government.
3. Sometime in the month of May 1952 one member of the Indonesian crew (Cadet Officer, Mr. Pilat) (who had been fighting with a Filipino Carpenter on board) requested Mr. Frank C. Starr to send him back to Indonesia and release him from the crew. This was done in my presence. Frank C. Starr agreed and gave me the money to buy one first class passage on the steamer "Tjiwangi" of Royal Interocean Lines and I went to the offices of Royal Interocean Lines and purchased this first class passage.
4. After the purchase of the passage it was ascertained that the said Cadet Officer did not have his permit to return to Indonesia and would have to delay his return until his permit was ready, whereupon the passage money was refunded to me by the Royal Interocean Lines as the Passage Department of that Company can confirm.
5. I am personally aware whilst Frank C. Starr was in Hong Kong that all disbursements for the ship and wages of and payments for the crew including food moneys were being paid by Frank C. Starr and not by the Indonesian Government, payments after Frank C. Starr's departure on the 16th of May, 1952 being made by the Indonesian Government.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

*In the
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No. 31
Jose Maria
Silos's eighth
Affidavit.
19th August
1952.
continued.

Exhibit JMS-
21a. 22.
Ref. No. 110,
111.

Exhibit JMS-
23a
Ref. No. 112

No. 32
Jose Briones's
third
Affidavit.
19th August
1952.

In the
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No. 33

NOTES OF PROCEEDINGS TAKEN BY THE HONOURABLE THE
PUISNE JUDGE MR. JUSTICE COURTENAY WALTON REECE
ON APPLICATION FOR EXTENSION OF TIME TO FILE
FURTHER AFFIDAVITS

(10th July, 1952)

No. 33
Notes of the
Proceedings
on Application
for extension
of time to file
further
Affidavits.
10th July 1952.

Loseby, Q.C. (Stewart) for Plaintiff.

Wright (Griffiths) for Indonesian Government., owner of defendant vessel.

Bernacchi (Silva) for Defendant vessel and for Juan Ysmael & Co. sole
owner of defendant vessel.

10

Wright: Appearance entered under protest on 30th June on behalf of
the Republic of Indonesia. In both cases appearance was under protest and
orders were made that the appearance was to stand unless Government of
Indonesia applied for withdrawal of action in 10 days. Notice of motion filed
yesterday. Rule 65 of the Supreme Court Admiralty Rules. We have filed a
Notice of motion and have filed some affidavits, but have not filed all the
affidavits we desire to file. Ref. to affidavit filed by Griffiths docket (13). I
want to satisfy the Court that it has power to enlarge time for filing the
affidavits. Ref. to sec., 169 of the Supreme Court Admiralty Rules. Ref. to
0 31 r 13.

20

Adjd. till 28th, 29th and 30th July for hearing. Time for filing affidavit
extended to Wednesday 16th July.

(Sd.) C. W. REECE.
10.7.52.

 No. 34

LETTER—M.A. DA SILVA TO WILKINSON & GRIST

(25th July, 1952)

No. 34
Letter, M.A.
da Silva to
Wilkinson &
& Grist.
25th July 1952.

346/52.

Messrs. Wilkinson & Grist.

25th July, 1952.

Dear Sirs,

30

Re: *ADMIRALTY JURISDICTION ACTION NO. 8 OF 1952.*

Please take notice that Counsel for Plaintiffs intend to cross-examine the
Affirmant Kwee Djie Hoo on his affirmation of 16th July, 1952 at the hearing
of your Motion, and that Counsel for the Plaintiffs will further cross-examine
all informants to the said Affirmant on information and belief evidence con-
tained in the said affirmation.

Yours faithfully,

(Sd.) MARCUS da SILVA.

No. 35

NOTES OF PROCEEDINGS TAKEN BY THE HONOURABLE THE
 PUISNE JUDGE MR. JUSTICE COURTENAY WALTON REECE
 ON HEARING OF IMPEADING MOTION

(28th July, 1952)

In the
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No. 35
 Notes of the
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 on hearing of
 Impeading
 Motion.
 28th July 1952.

Loseby instructed by Way for plaintiff in Action No. 6.

McNeill Q.C. & Wright instructed by Griffiths for the Govt. of Indonesia.

D'Almada Q.C. and Bernacchi.

McNeill: Motion by Govt. of Indonesia. Action No. 6 brought by Loh,
 10 trading as Anthony King.

In both Actions 6 & 8 D'Almada Q.C. and Bernacchi instructed by Silva
 for Juan Ysmael.

Loseby: Briefed in Action No. 6 only and reads motion, notice of motion
 in docket (10). I ask Court to proceed on this motion not confused with any
 other matter.

McNeill: Motion same in both actions. Motion in Actions 6 & 8. First
 thing to decide is whether the two motions can be conveniently heard together
 or whether it would be more convenient to hear the motion in Action 8 first.
 Motion same in both and to decide whether they can be heard together. Court
 20 must appreciate point in both actions. Motion read in 6. Will give Court two
 citations on underlying principle of impleading, vide *Parlement Belge* 5 Probate
 D. 197 at 217. :—"We are of opinion etc. Courts will not assume jurisdiction
 over vessels belonging to foreign states. (2) If you issue a writ in rem against
 a ship of a foreign state you are obliging that foreign state to come and defend
 its rights or lose them. Vide *Parlement Belge* at 219. The impleading is on
 the writ. If you issue a writ in rem you are commencing an action the re-
 sult of which is binding against all the world—c.f. the *Cristina* 1938 A.C. 485
 at 504.

Writ in both cases addressed in same way, so whether we are concerned
 30 in Action 6 or 8 a judgment in rem would be valid against the world. Vide
 the *Cristina* at 492. "In these days etc." When the object of Action No. 6 is
 considered it will be seen that it is an action for work done. Why action for
 \$25,000.00 brought in rem is not altogether apparent. Plaintiff in Action No. 6
 has sued in rem and if he gets judgment it is good against all the world
 including the parties interested. If we had not appeared judgment could be
 obtained and the ship sold to satisfy the judgment. We, the Government of
 Indonesia have appeared because we are interested. Besides our clients and
 their party has appeared as being interested in the res. We say that by the
 issue of the writ the defendants are impleaded. That does not decide the issue
 40 whether they are impleaded. Ysmael & Co. desire to say that the Republic of
 Indonesia is not impleaded and they must establish their interest in the res.
 The issues on the motion are whether my clients are impleaded and can set out

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28th July 1952.
continued.

their claim and stay all proceedings or whether my clients have to establish their interest and the action go forward. The question of impleading goes to jurisdiction. It is clear that whether Ysmael entered an appearance I would still be before the Court on a motion saying that the property belongs to the Government of Indonesia and the Court cannot go on. If Court turns to Action No. 8 Court will see that it is an action for possession vide endorsement on writ. Writ addressed to all persons interested and we have taken out a motion saying that Sovereign State impleaded. This question of impleading arises on the motion in either action. Court may well think it convenient that the motions should be heard together and I suggest that that should be done. 10
At moment fundamental issue is the same in each action. If Court in any doubt then motion in Action No. 8 should be heard first.

Bernacchi: My attitude is neutral.

Decision of Court is to hear the motion by Indonesian Government in Actions 6 & 8 at same time.

McNeill: Application for an adjournment. Motion came on for hearing on 10th. July. Court ordered affidavits to be filed. Time was granted and extended. On Saturday last five affidavits in 1 action 8 and 4 in 6 were filed. One affidavit by Khalil Khodr is lengthy. I have not had time to consider it. Point of considerable importance i.e. we have set out a claim to legal ownership in affidavit of Kwee. Khodr's affidavit shows that Ysmael's reply is that power is useless and (2) there is fraud. We do not ask leave to file any reply on the question of ownership of this ship. These two affidavits show that there is a contest between us and Ysmael and the question is whether Court can hear that contest. There may be in these affidavits facts which need to be refuted. Issue is not whether we are the owners, but whether we have been impleaded. We must consider whether we should allow documents alleging fraud to lie on the files unrefuted. If we do reply we do so not because we think it material to the issue. I refer to the affidavit by Khalil Khodr filed on 27/6/52 para. 5 (docket 4 in Action 8). I therefore ask for an adjournment. I want 30
to emphasize that the issue is one of impleading. I am aware that Court has power to hear witnesses Viva Voce. This contested interest is one which Court cannot consider.

Bernacchi: Admiralty procedure is essentially summary. Time for filing affidavits is 24 hour rule. I am going to ask Court to continue hearing till it is finished.

Adjd. till 2.30 p.m.

(Sd.) C. W. REECE.
28/7/52.

2.33 p.m. Resumed.

40

Bernacchi: Suppose Court decides to hear evidence Viva Voce. I submit there is more than enough to warrant Court to say so, then there is no necessity for a reply by affidavit.

Admiralty is so summary that even pleadings do not follow as a matter of course. An allegation of fraud was made at earliest moment (27/6/52). No details given. A foreign sovereign in actual possession is impleaded if you bring him into Court. If he cannot make out a possessory title, I will say that he must make out a legal title. Re. the *Cristina* — 1938, 1 A.E.R. at 737 para. C.

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The two principal grounds of sovereign immunity are (1) possession and (2) alternatively right to possession. In the 2nd case it will be my submission that that has to be proved in the ordinary way. By this affidavit the
10 Indonesian Government have set out a claim to be in possession and they have set out a claim that they have right to possession. Cross-examination on affidavits discretionary in Court in U.K. 0.38 R.1. I ask Court to look at our Admiralty Rules r.65, 67,169. As to form of procedure and admission of evidence Court referred back to Code. 0.14 r.22. Cause is given a wide interpretation. Even were it a matter of discretion that discretion is in U.K. very largely exercised. Vide 13 Probate 16 *the Parisian*. Major Pamoe is also within the jurisdiction and available. I submit this is essentially a case where the evidence should be taken viva voce. I ask Court to say that there is no necessity for an adjournment beyond to-morrow. I ask Court not to adjourn.

20 McNeill: One thing that is clear is that Bernacchi is trying to get this Court to try the issue. Vide 1952, 1 A.E.R. 588 the *Dollfus Mieg* case para. B. "Even to say that etc. etc." The Court is not here to decide the final issue as to who is the owner of the property. I am not taking any part in the evidence which involves trying the final issue or not.

Vide 0.11 rr.21,22. *La Trinidad vs. Browne*—36 W.R.138.

Adjd. till 18/8/52, with liberty.

(Sd.) C. W. REECE.

No. 36

NOTICE TO PRODUCE DOCUMENTS

No. 36
Notice to
Produce
Documents.
31st July 1952.

30

(31st July, 1952)

To: The Government of the
Republic of Indonesia, and
Messrs. Wilkinson & Grist,
their Solicitors.

40 TAKE NOTICE that you are hereby required to produce and show to the Court at the hearing of your Motion dated the 9th day of July, 1952 to set aside the Writ of Summons and all subsequent proceedings herein all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly the following:—

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No. 36
Notice to
Produce
Documents.
31st July 1952.
continued.

1. Charter Party of the abovenamed vessel for the period of three months from 1st April 1951 to 30th June 1951.
2. Charter Party of the abovenamed vessel for the period of six months from 1st July 1951 to 31st December 1951.
3. Telegram dated 10th May 1951 from Mr. K. H. Hemady to Major Soekardjo.
4. Letter dated 31st January 1952 from Mr. K. H. Hemady to Frank C. Starr.
5. Letter dated 23rd January 1951 from Mr. K. H. Hemady to Frank C. Starr. 10
6. Telegram dated 8th January 1952 from Ysmael to Major Pamoe Rahardjo.
7. Letter dated 10th January 1952 from Mr. K. H. Hemady to Major Pamoe Rahardjo.
8. Radiogram dated 2nd February 1952 from K. H. Hemady to Frank C. Starr.
9. Cable dated 6th February 1952 from K. H. Hemady to Major Pamoe Rahardjo.
10. Letter dated 7th February 1952 from K. H. Hemady to Major Pamoe Rahardjo.
11. Letter dated 7th February 1952 from K. H. Hemady to Frank C. Starr. 20
12. Letter dated 16th April, 1952 from K. H. Hemady to Major Pamoe Rahardjo.
13. Cable dated 16th April 1952 from Mr. K. H. Hemady to Major Pamoe Rahardjo.
14. Cable dated approximately 15th July, 1952 from Frank C. Starr to Major Pamoe Rahardjo.

Dated the 31st day of July, 1952

(Sd.) MARCUS DA SILVA,
Solicitor for the Plaintiffs.

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30

**NOTES OF FURTHER PROCEEDINGS TAKEN BY THE HONOURABLE THE
PUSNE JUDGE MR. JUSTICE COURTENAY WALTON REECE
ON HEARING OF IMPLEADING MOTION**

(18th, 19th, 20th and 21st August, 1952)

Adm. 6 & 8/52 (Ref: p.147-150).

Loseby Q.C. (Way) for plaintiff.

p. 198.
18/8/52 @
10 a.m.

McNeill Q.C. & Wright (Griffiths) for Indonesian Government.

D'Almada Q.C. (absent) and Bernacchi (Silva) for Ysmael & Co.

Bernacchi: Application to hear all the evidence viva voce.

Alternatively, I would apply for leave to cross-examine all the affirmants on behalf of the Indonesian Government. Vide 0.11 r.23.

Matter goes to the whole direction of the case.

McNeill: As to viva voce arguments see my previous argument. I submit that no order as to cross-examination should be made at this stage because it is vital that Court should understand clearly the issues. We do not raise the issue of title and any matters of title are the very matters which this motion seeks to exclude.

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10 McNeill: I propose to outline briefly our argument in the law to appreciate the significance of the affidavits.

Ref: to *Parlement Belge*. Principle on which we rest application is a principle whereby Courts of H.K. as Courts in U.K. will not compel a foreign sovereign to choose between losing a right he claims on the one hand and coming into Court and submitting to the jurisdiction if he chooses. This is cardinal principle. If in order to preserve his rights a foreign sovereign is compelled to come into Court in an action commenced by another that sovereign status is defeated. Courts will set aside the writ and stay all proceedings.

20 Writ in these two actions, Admiralty Actions No. 6 & 8 are slightly different. Writ in Action No. 8 read. Inference to be drawn is that they have not got the legal possession as owners. It will appear from affidavits that they have not got physical possession. Action No. 8 raises directly interests in the ship. Action No. 6 is a claim for \$25,586.00 for necessaries and to this action plaintiffs in Action No. 8 have appeared. My clients, Govt. of Republic of Indonesia, have entered a conditional appearance and the reason is that they do not wish to submit to jurisdiction of this Court. It is because of this they have filed a notice of Motion in No. 8 & 6 which is same. Notice places the issues before the Court. Motion read. We are asking Court to set aside the writ and not to try the issues in the writ.

30 The skeleton outline of my argument is:—we say that the writ in either action by its very terms obliges the Indonesian Govt. either to litigate question of its interest in the steamship, thereby submitting to the jurisdiction of the Court or to imperil or to lose the interest claimed. Ref. to writs. In No. 8 is addressed to all parties interested in the s.s. "Tasikmalaja". In No. 6 it is addressed to the owners and all persons interested in the steamship. I shall say that those very words implead the Govt. of Indonesia. In No. 8 the claim is for possession as owners. It obliges any person interested to come in or lose his interest. The writ in Action No. 6 is also plain and impleads the Govt. of Indonesia. It requires them to come in by reason of their interest in the ship.

40 Admiralty jurisdiction is discretionary and I shall say that the circumstances are such that Court should not exercise that discretion in favour of hearing the Actions. This applies more particularly to action in rem.

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Next branches concern — interest. I shall say — assume that at the material time we had no possession, even so it is enough if we show an interest. An assertion of a claim by a foreign sovereign is enough where the sovereign has brought chattels into the country. If that is held to be insufficient at most we have to show the basis of our claim. Whether the basis of that claim is good, bad or indifferent is irrelevant to the issue before the Court. The reason why is because if you went into the legality of the claim you would be deciding the very matter which we are asking you not to decide.

It is not necessary for us to base our claim on ownership, but we do make this claim. A lesser interest will do. The affidavits will show that at the date 10 of the writs in Actions Nos. 6 & 8 it is an admitted fact that the s.s. "Tasikmalaja" was under charter to our clients. We say that interest is enough, but the same documents disclose a larger interest at the relevant dates. They disclose an option granted to my clients to buy this ship. The option contained in that charter party was an irrevocable offer by Ysmael & Co. to sell to us. The affidavits will show that that irrevocable offer was accepted by my clients and they will further show that a contract of assignment of sale was entered into. Whether or not that contract of sale was valid or not the mere exercise of the irrevocable option to purchase immediately transferred property in ship to my clients. Even if the property were not transferred the option existed at the date 20 of the writs and constituted a proprietary right or interest. There are matters in the affidavits of the other side which speak about fraud. The circumstances in which the Court might conceivably say that fraud exclude impleading do not exist here. That will become quite clear from the authorities. We have denied fraud in our affidavit; firstly because a Govt. cannot leave allegations of fraud unchallenged and secondly because of what Mr. Justice Jenkins calls palpable. Even if we had the most shadowy or no interest it would be enough for us to show possession. The legal possession was in the H.K. & Whampoa Dock Co. as bailees; that we were bailors. We say that it is in the hands of the bailors and that is enough. An affidavit is filed by the Dock Co. which shows that they 30 received their contract from my clients and were paid by my clients. In this affidavit there is a letter which says that our clients instructed the dockyard.

Ref. to the *Dollfus Mieg* case.

Possession is of a particular kind i.e. the right to possession. The physical and legal possession was in the Dock Co.

We are in a position to argue that a bare statement of interest is enough, if not we show the basis of our interest.

A great deal of the matter in the documents filed by Ysmael & Co. attempts to bring before the Court the validity of our claim. In so far as they do so we shall not read them or make them part of our case, but if they are read I shall 40 take formal objection on the ground of irrelevance.

Ref. to affidavit filed by Griffiths exhibiting a telegram.

Affidavit by Ysmael hinted that a seal was necessary and we wanted to show that the hint sworn to was not necessary. Secondly, the affidavit is to show that the documents forming the base of our claim purport to be valid documents.

These affidavits show that there is a matter for contest between Ysmael & the Indonesian Govt. There is a contested interest of possession which is clearly shown and that is exactly what the Court cannot hear.

Wright: Refers to affidavits.

First: Affidavit of Kwee of 16th July, 1952 — No. 27. This affidavit sets out basis of claim.

10 Para. 2 First charter for 3 months. See charter attached to affidavit of Khalil Khodr. — Ex.KK-3. Document 32. Vide para. 10 of this affidavit of Khodr No. 32 in Action No. 8. Although signed on 25th Nov., 1950, the charter party was not to commence till January, 1951. Charter party read.

After termination of this charter successive charters were entered into and the vessel was chartered for whole of 1951 and 6 months of 1952.

20 Ref. to para. 2 of Kwee's affidavit — document 27. The period of the third charter (c) is subsequent to the writs in both actions. When this affidavit was sworn Mr. Kwee did not have copies of 1st 3 charter parties; he only had 4th which he exhibited. Since this affidavit Kwee has secured the other 3 charter parties from Minister of Defence. He had checked 1st which was exhibited by plaintiffs in the action. In his later affidavit, filed 15th August, he has exhibited the others. — Document No. 43. Vide 2nd charter party KDH-A. We have the original of charter party No. 2 and it is admitted by Jose Briones (affidavit doc. No. 32 para 12) that he signed it and it contained no option to purchase. Briones confirmed this in his affidavit filed on 27th July, 1952, (doc. No. 33). Kwee produces the original charter party and Briones produces another affidavit dated 16th August (doc. No. 45). Charter party produced, admitted and marked Ex.1.

30 Now we come to the next Charter party "KDH-B" document No. 32, signed on 25th April, commencing 1st July for 6 months. Vide article 4 — option to purchase. We have the original of the charter which we produce. Admitted and marked Ex.2. This charter party contains an option which the plaintiffs claim was never contained in the original. Mr. Khodr, having seen the documents, is forced to say that it is bogus. Ref. to doc. 32 affidavit of Khodr. "KK-F". On the face of this article the plaintiffs say this charter party has their full approval, but now they deny that the charter party had any option to purchase. Vide para. 12 of Khodr's affidavit — doc. 32. Later he said he saw a third charter party. Affidavit of Khalil Khodr, filed 16th Aug. (doc. No. 44). From para. 1 I assume that Khodr invites Court to find that the 3rd Charter Party is a bogus document made for the case, although he does not openly charge us.

Now we come to the fourth charter party exhibited in Kwee's affidavit doc. 27 Ex.KDH-1. Vide Article 1. All amounts sent by telegraphic transfer. Article 7 — option to buy. Re. article 9, I shall show figures later.

40 These charter parties are done in Kwee's affidavit for the purpose of putting before Court basis of Indonesian Govt.'s claim. This is not a palpable case of fraud as plaintiffs tend to indicate in their affidavits read by McNeill earlier. Ref. to Khalil Khodr's affidavit — doc. 43 para. 4.

Adjd. at 1 p.m. till 2 p.m.

(Sd.) C. W. REECE.

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Exhibit KK-3
Ref. No. 55

Exhibit KDH-A
Ref. No. 39

Court
Exhibit No. 1
(KDH-A)
Ref. No. (39)

Court
Exhibit No. 2
(KDH-B)
Ref. No. (40)

Exhibit KK-F
Ref. No. 57

Exhibit KDH-1
Ref. No. 19

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Court resumes. Wright continues on affidavit of Kwee Djee Hoo document 27. Ref. to affidavit Ex. "KDH-2" — contract for sale. Paras. 5 and 6 not denied by plaintiffs. Para. 8 Vide affidavit of Khalil Khodr dated 27th June, 1952, para. 6 (No. 4) Ref. to bill of sale Ex. "KDH-3". Para. 10 refers to power of attorney — "KDH-4". The power states that the vessel was at Soerabaya. Vide "KDH-5" confirming power of attorney. This letter is dated a month or so before the 3rd charter party which contained an option to purchase which had the free confirmation of Hemady "KK-F1" (No. 32). Balance sent by telegraphic transfer — Vide KDH-6. Para. 11 is a statement of sovereignty which has not been denied. Mr. Silos was present at that address. Repairs being carried out by Indonesian Govt. and at expense of said Govt. not denied. 10

Paras. 1-10 deal with the basis of claim — paras. 11-12 deal with possession by Indonesian Govt.

Exhibit KDH-2
Ref. No. 20

Exhibit KDH-3
4, 5.
Ref. No. 21, 22,
23.

Exhibit KK-F1.
KDH-6
Ref. No. 57, 24.

Exhibit KDH-8.
9, 10, 11.
Ref. No. 26, 27,
28, 29.

Contents of para. 14 disputed in subsequent affidavits by plaintiffs. Captain and crew took instructions from Consul General until dispute arose. Exs. KDH-8, 9, 10 & 11 are evidence of payments to the crew. KDH-11 is a receipt for advance of salary to Cpt. Silos which he signed. This receipt was on 21st June and Court will remember that Silos said he knew nothing about transfer of ship and owed no allegiance to Indonesian Govt. Proper procedure should be that Consul General should be notified before ship arrested—not observed in this case. 20

Affidavit C referred to in para. 16 of Kwee's affidavit (No. 27) is in doc. No. 13. Consul General points out that all these men mentioned in affidavit C of Silos had accepted pay from Indonesian Govt.

That is the affidavit filed in support of the Notice of Motion by the Indonesian Consul General and endeavours to set out the basis of our claim and the basis of the possession and control of the vessel. It challenges the fraud alleged and it sets out the Indonesian Govt's decision to decline to sanction the proceedings before the Court. I now come to the answering affidavits and will not read a large portion of them because in our view of the law a large portion of them irrelevant and inadmissible. Court, on our view of the law, must not try the issue, must not go into the validity of our claim because we decline to validate. 30

First, I refer to affidavit of Khalil Khodr — No. 32. Refer to the power of Attorney attached to affidavit of Khodr No. 4. Power of Attorney, signed 16th June, less than 2 weeks before these proceedings, admits that the s.s. "Tasikmalaja" was on that date under charter to the Indonesian Govt. We have shown that there was a charter party signed commencing on the 1st January, 1952, and ending on 30th June, 1952. So there can't be any denial that there was a charter contract in existence when the vessel was in H.K. Although they admit a charter they have produced no document. The same notary was used to authenticate both powers of attorney. I content myself by referring to paras. 6 & 8 only of affidavit — doc. No. 4. Again referring to Khodr's affidavit — doc. 32, I merely refer to paras. 5 & 6 as impinging on the allegation of fraud, which we have thought it necessary to answer formally. Para. 6 contained a hint that on the power itself the seal of the plaintiff Co. was necessary, otherwise it was invalid. Later we 40

shall see that on the power the seal of the Co. is not required. Portion of 10 marked read. Para. 12 read as directed because it deals with fraudulent conspiracy. It is interesting to note that first two charter parties approved and so the 3rd also. We concede that first charter party had no option to purchase, but we do not concede this in respect of other 3. To indicate that 2nd charter party bears imprint of genuineness look at signatures. The allegation is that we have fabricated the option and the Court must judge whether there is anything in that serious allegation.

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10 Para. 13 read. We have Briones saying that 2nd page on 2nd charter party
was never there and he says that neither the 1st nor 2nd pages were there when
he signed it, so we have fixed both pages. Khodr says in document 44 — para.
1(b) that 3rd charter party had no option to purchase. Plaintiffs have produced
no charter party to show that 2, 3 & 4 contained no option. If it is a fraud, it is
not a case of palpable fraud at all. All paras. up to and including 29 go into the
merits of our claim and I shall not read. Ref. to para. 30 it sets out fraudulent
intention to bring vessel in and out of H.K. Change of flag ceremony seems
utterly inconsistent with this. Silos was on board all the time. I will touch on
para. 30 so far as it deals with payments of salaries. He admits they were paid
by the Indonesian Govt. but on behalf of plaintiffs. Kwee later denies this. Under
20 the last charter party obligation was on plaintiffs to pay crew if they brought
vessel for repairs. Letter of Silos acknowledging receipt of salary "KDH-11" (Doc.
No. 27) para. 33 read. There is no denial that payments for food made by Consul
General but they said he made the payment in a different capacity than he says
he did. We maintain that the Consul General is in better position to say in what
capacity he made them than Khalil Khodr. I would refer Court on this question
of payments to Kwee's affidavit (doc. No. 43) para. 8.

Exhibit KDH-11
Ref. No. 29

Adjd. till 9.30 a.m. on 19th Aug.

(Sd.) C. W. REECE.

30 Appearances as before. (D'Almada present).

19/8/52 @
9.30 a.m.

Wright continues with the affidavit of Jose Maria Silos of 26th July, 1952
(document No. 34).

Para. 2 — c.f. with Kwee's as to appointment.

Para. 4 — Strange in view of writ asking for possession.

Para. 5 — No denial that he was present at flag raising ceremony Vide 11
of Kwee's affidavit.

Para. 6 — This is inconsistent with Kwee's affidavit, para. 18. No. 27.

Para. 7 — Reference to telegram and letter.

40 Para. 8 — 9 Payments to staff. This is quite consistent with position set
up by us in sale agreement. Vide appendix to "KDH-2" in document 27. Articles
3 & 5 of KDH-2.

Exhibit KDH-2
Ref. No. 20

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Para. 10 — Interesting to note that he does not deny that he took instructions in H.K. from Indonesian Consul General and reported to him.

Am not reading affidavit (Document No. 35).

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Am not reading affidavit No. 33, but would refer to para. 5 which we say is a scandalous fabrication especially designed to support that seal was necessary on the power of attorney. Ref. to para. 5(b) Pamoe Rahardjo is almost illiterate, yet we get this learned explanation.

Ref. to affidavit of Silos of 28th July, 1952 (No. 36) Para. 2 c.f. affidavits of Filipino members of crew. Up to 30th June he had not made his stand known and he now says he had mental reservation. In para. 3 we have Silos' version 10 of why the flag did not fly. From his own admission in this affidavit Silos was not in control of the ship.

These are the affidavits filed in reply to the affidavit of the Indonesian Consul-General in support of the notice of motion. We filed further affidavits in answer.

Affidavit of William Thomas Grimsdale of 14th August (No. 41) Para. 2. No attempt has been made to challenge these details — not denied that Indonesian Consul gave instructions to the Dock Co. for the repairs and no denial that the ship was brought to the Dock Co. consequent on these instructions. No word of denial anywhere that ship was brought from Indonesia to H.K. on the instructions 20 of the Indonesian Govt. Then captain obviously acting on instructions of Indonesian Govt. Para. 3. Arrangement as to terms of payment. Vide final paragraph of Ex. WTG-1 attached.

Exhibit WTG-1
Ref. No. 15

Para. 4. 23rd June is day before issue of writ in Action No. 6. 26th June is date of issue of writ in Action No. 8. Dock Co. had had authority from Indonesian Govt. to draw a sum more than sufficient to cover work done on the ship at that date.

Reference to affidavit (document No. 43) of Kwee.

Para. 9 refers to para. 8 of affidavit of Jose Maria Silos (No. 34) Reference to letters mentioned in para. 9. 30

These letters of 24th April indicate that the Consul-General was the person having full control and the person from whom instructions were being taken by the Dock Co. and from whom the captain should take instructions. Ref. to KDH-C3.

Exhibit KDH-C3
Ref. No. 44

Para. 10. By adding up these sums it will be seen that the Indonesian Govt. had sent by telegraphic transfer US\$570,000.00 & \$70,000.00. They have had to pay US\$45,000.00 to Sourabaya Co. We will maintain that all these payments show a continuous intention to own and possess this vessel.

Exhibit KDH-D,
D1, D2 & D3
Ref. No. 45, 46,
47 & 48

Vide telegraphic transfer. KDH-D. attached to document 43. "KDH-D1", "KDH-D2" & "KDH-D3". Final one is "KDH-6" in document No. 27. Next affidavit to which I refer is that of Pamoe Rahardjo of 15th August. (document No. 42). 40

Exhibit KDH-6
Ref. No. 24

Purpose of affidavit is to ensure a formal refutation of the charges of fraudulent conspiracy levelled against Pamoe Rahardjo which involves a denial of the allegations which plaintiffs no doubt maintain form a part of this conspiracy.

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We put all this information in so that we may then have a direct denial of the attempt to show that Mr. Pamoe Rahardjo was a party to the conspiracy.

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10 Para. 5 refers to a letter PR-1 attached to document 42. Para. 6 PR-2 is a most damaging letter against the plaintiffs. It sets out the position by Captain Aguado which Captain Silos says he knows nothing about. Silos, in order to justify his present position, is forced to say he knows nothing about the transfer when he was first mate on board the vessel. Is it conceivable that the first mate Silos did not know anything of this transfer?

Exhibit PR-1 &
PR-2
Ref. No. 35 & 36
Exhibit PR-3
Ref. No. 37

20 Ref. to PR-3. This was done with greatest publicity in open, whereas the allegation of plaintiff is to bring ship to H.K., get it repaired quickly and take it out secretly. These letters fatal to case of fraudulent conspiracy alleged by plaintiffs and so they say Aguado was up to his neck in the conspiracy. Ref. to PR-4. It is clear that the language of Rahardjo is not his own. Ref. to document 49, affidavit of Peter John Griffiths. It is conceded that the seal of a Co. need not be affixed to a power of attorney. McNeill interposes to enquire what limit is there to file affidavits in reply. I protest. D'Almada says this only shows the desirability of having Viva Voce.

Exhibit PR-4
Ref. No. 38

30 Wright continues: Griffiths' affidavit is filed to show the palpable falseness of the affidavit of Briones where he alleges he overheard a conversation (vide para. 5 of document 33) Ref. to affidavit of Khalil Khodr—document 44. No necessity to read this save 2 paras, because all of it, with exceptions mentioned impinges on question of title. Vide para. 1. Having seen the charter parties Khodr is forced to state that he confused the dates of the charter parties. Court will remember Briones' explanation with respect to 2nd charter party and so Khodr tries to explain re. the 3rd charter party. As to what allegation is going to be made for this 3rd charter party we are left to imagine. No allegation is contained in the affidavit. This 3rd charter party is the one which has the full accord and approval of the plaintiffs.

I need only briefly refer to document 45 Briones' affidavit. There he says the charter party did not have the option when he signed it—document 46. I need only read para. 2 of this affidavit by Silos, because rest is irrelevant for reasons already given. I suggest that this is a lot of nonsense. How this letter can be squared with Aguado's I don't know. Ref. to JMS-10A. Not a genuine letter and cannot be tested on affidavit. Document 47 not read.

Exhibit JMS-
10A
Ref. No. 97

40 Document 48 entirely directed to question of title to ownership and there is no necessity for us to read that. All these affidavits have been incorporated in A.J. Action No. 6 by express reference. Those are the affidavits of our clients and so much of the affidavits of the plaintiff as we desire to read at the present time.

McNeill: Application made for cross-examination and I submitted there was nothing pertinent that could be obtained by such cross-examination. Court has a discretion. Position is maintained. It may well be that the Consul-General and Mr. Pamoe Rahardjo may be immune from a summons, they are not liable.

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Their status would have to be ascertained from Govt. Accredited diplomatic representatives are immune from process of Court i.e. ambassador or minister and his staff. Oppenheim 7th Ed. Where there is a minister in a country, a consul is not the accredited representative in the country. Here in H.K. the only accredited representatives are Consuls-General. Mr. Kwee is accredited here as Consul-General. It will be found that Mr. Kwee is accepted by the H. K. Govt. as Consul-General. Vide case of *Engelke v. Musmann* (1928) AC 433 at 449. *Sayce v. Bahawalpur State* (1952) 2 A.E.R. 64 at 67. Pamoe Rahardjo would also claim immunity. I am instructed that he is a diplomatic courier. Oppenheim Sec 405. p.727. If it is found that they have no immunity and that they are required.

10

Court adjd. at 12 noon for 20 mins. Court resumes at 12.25 p.m.

McNeill: Court has now had a valuable and clear exposition of the relevant parts of the affidavits. Not going to cite more than 4 or 5 cases on this point of immunity and want to extract the principles applicable. As to general law I could say that sufficient diversity is to be found in *Le Parlement Belge*. *The Cristina* (1938) A.C. 485. *The Arantzazu Mendi* (1939) p.37. *The Dollfus Mieg* case (1949) Ch.D.369 on appeal to A.C. (1950) Ch.D.333 on appeal to H.L. (1952) 1 A.E.R. 572.

Through all these cases and through every case on subject of impleading there is one basic principle and one question which Court has to ask itself. The principle is that the Court will not place a foreign state or foreign sovereign in such a position that he has to choose between submitting to jurisdiction of Court on one hand and leaving his claim to rights undefended on the other hand. Question which is the basic? Which has to be asked in every case is this. Is the question or questions to be decided in the trial at the trial of the action a question of competing rights? If it is a question of competing rights the Court won't take jurisdiction to decide. I would like Court to bear this in mind—there is throughout a distinction between actions started by a person other than the state, to which the state must be a party to defend its rights and actions by the state. In the *Parlement Belge* the foreign state was actually in physical possession and the rightfulness of that possession was not in issue. In *the Cristina* the state was in wrongful possession. In *the Arharya Mendi* there was no possession in the foreign state, but there was a purported proprietary interest. There was a requisition which the other side attempted to impugn. The interest claimed was not that of owners, the proprietary interest was the right to direct the ship. Then we have the *Dollfus Mieg* case in which the foreign states had no interest or at best a shadowy interest. It was a kind of right to possession which a bailor has against his bailee. We have an interest and an interest and/or possession. It is on evidence that this ship was chartered and destined to be used for public purposes. As far as that may prove to be relevant it is undenied. *The Parlement Belge* at p.214—"The principle . . . subject to its jurisdiction." This statement repeated on p.217. p.219—*The Bold Buccleugh*. In *the Cristina* at p.490—Lord Atkins' well known summary "The foundation for the application—specific property or damages. The second is . . . applies to both." In the *Dollfus Mieg* it was said this principle not engraven on tablets of stone. *Christina* at foot of p.61 p.501 and 502. These are merely general principles. *Dollfus Mieg* case (1952) A.E.R.587—Radcliffe—quoting from Dicey. Court should pay particular attention to the words—"Where interest claimed, but not established . . . vide p.591. Vide p.580 H.

Are the foreign sovereigns' rights being imperilled by a proceeding? If they are imperilled by a proceeding started by a 3rd party they are in contest.

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I now come to our 1st contention. Order is a matter of convenience. There are 2 main classes of actions in rem and in personam. Action in personam and action in rem discussed in case *Louis Castrique vs. William Imrie* (1869) E. & I.A.R. 427. (4 House of Lords). "We think that some points are clear. . . ." A decision in an action in rem is conclusive against all the world." This is repeated in the *Dollfus Mieg* case in judgment of Jenkins at p.383.—"A judgment in rem. . . ." "No jurisdiction to pronounce." On that basis we say that this writ
10 by its very terms impleads i.e. forces to take part in it—our clients or any one claiming an interest. If any one claiming an interest does not come in the Court's judgment will be conclusive. On this point I refer Court to *the Jupiter*, 1924. p.236. judgment of Scrutton at 242. This shows the effect of an action in rem.

Ref. *the Cristina* at p.491. Lord Atkin: passages marked: and over to page 492. The words at end of para. fit this Action No. 8 precisely. I think it is clear that it was intended to make the Indonesian Govt. defend their rights or let them go by the board. At. p.504. "The history and effect of the writ. In document 4—affidavit of Khalil Khodr—Court will see in para. 5—purported sale to Govt. of Indonesia and again in para. 9 possession is referred to.

20 As far as writ is concerned it is clear that this is the kind of writ Lord Wright had in mind when he was discussing *the Cristina* and it is equally clear that the plaintiffs had in mind that there would be only one party claiming an interest in this ship and that is the Govt. of Indonesia. It is significant that in this very affidavit it is there stated that there has been a purported sale to Govt. of Indonesia.

Writ by its very terms impleads any one who claims an interest, it obliges any one who claims an interest to come before the Court and on that ground alone I submit that you are bound to set aside this writ.

30 Discretion: Admiralty Jurisdiction is discretionary and I submit that Court should not exercise that discretion and continue to hear that action. In earlier practice in admiralty it used to be held that Court had no jurisdiction to hear an action relating to title in rem when foreign sovereign were involved. That is no longer the law, but it still remains that the jurisdiction is discretionary — vide *the Annette* (1910) p. 105 at 155. This was mentioned in *the Jupiter*: (1925) p. 69 at 77. I suggest that "Ysmael and Co. have taken the opportunity to get a decision as to the title" — in the words of Lord Atkin. In the application leading to arrest they say they fear the vessel will leave H.K. and it looks very much as if these people are taking advantage of the vessel being here temporarily to get a decision on title. In contradistinction to *the Jupiter* we have in the cases before
40 the Court the following facts: (1) The *Tasikmalaja* was brought to H.K. for a temporary purpose only, repairs. (2) she had been in Indonesian waters for about 2 years prior to that and also in Philippine waters. (3) the contract in respect of which we claim our interest and which they say purported to give us an interest was made in Djakarta. Neither party to the contract is British. (4) there is provision for arbitration in Indonesia at Djakarta — vide the charter parties and in the sale contract KDH-2 article 6 — there is the same provision for arbitration.

Exhibit KDH-2
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(5) the plaintiffs in this action are not within the jurisdiction: they have no office here and have no residence within the jurisdiction. This is sufficient distinction, if there was no question of impleading there are ample materials in the points I have given for the Court to say it would not exercise its discretion to decide a question of title.

Interest: If I have no possession I am entitled to assert sufficient—some interest and if I do, I am impleaded. By “I” I mean the Govt. of Indonesia.

A mere assertion of interest is enough because it is not denied that this ship was destined to be used for public purposes. Further or alternatively we had possession at the material times. The cases do show that an assertion is enough 10 if we have an interest coupled with possession.

Facts not denied that Indonesian Govt. used this ship for public purposes and brought it into H. K. and have declared it is a public ship. We have brought this ship into H. K. and placed it in the hands of the 3rd party. In those circumstances we only have to declare our interest, a mere statement is enough. If a bare statement is not enough, the furtherest that we would be required to go would be the setting out the basis of our claim. As in the requisition cases the decree of requisition was proved. Neither in *the Cristina* nor *the Arantzazu* did the sovereign impleaded bring the vessel into the country and that may well be the reason why the decree of requisition was proved.

20

In *Luther v. Aksion Sayne* 1921, 3 K.B. 532 at 554 (Scrutton) and at 555—where a foreign state brings goods into a country and says they are mine the Courts will not question it.

This case is referred to in the *Jupiter No. 3*—1927 p.122 at p.140—rest of the judgment not relevant.

“A mere claim” is a mere statement.

Adjd. till 9.30 a.m. on 20th August.

(Sd.) C. W. REECE.

Court resumed at 9.33 a.m. Parties as before.

Bernacchi: As regards the nature of our argument re. diplomatic privilege 30 our view of the law is such that we do not think any enquiry should be made. But I shall have to address at some length on this subject.

McNeill continues his argument: Argument A was that in an action in rem the mere issue of the writ impleaded any one having an interest. Argument A-2 was to the effect that Court’s jurisdiction was discretionary and that Court would not exercise it. Argument B relates to Interest. I say that if we had some interest it did not matter if we had no possession. I said a bare assertion was enough coupled with public use and/or bringing the chattel into the country. *Luther v. Sagor Jupiter No. 3*, p.140 & p.137. Mr. Danlop’s contention etc” to p.138. Ref. to head note at 122. The point is that when the ships were 40 brought to England they were already nationalized by the U.S.S.R. Where, on

other hand, chattels are already in this country and are wrongly seized by a foreign sovereign you then come within those examples in *Cristina* to which I will refer.

The Cristina at p.508—vide also p.517. The principle is to be found in the *Haile Selassie* case. This is repeated in relation to public uses at p.520.

Public uses. Reference from *Dollfus Mieg.* (1949) 1 Ch. 386 at top of page. As soon as a ship is said to be for public purposes that is enough. B-2. If more than a bare assertion is required then we give the basis of our claim to interest: it is that set out in our affidavits and the documents, particularly
10 the charter party KDH-1 and the sale contract KDH-2.

Footnote. An interest is enough with or without possession. *Cristina* p.507 in middle of page. In the *Arantzazu Mendi* (1937) p.37 at 49 and end of 3rd para. p.51 p.53.

The basis of the judgment is not possession, it was some other interest. We in this case claim either (1) it is admitted that at the relevant times we were charterers. We say that that interest is enough. We can go further and say that we were the owners. With regard to our interest as charterers, it has been said again and again that it is not necessary to claim ownership. Vide *Cristina* at p.507 2nd para. In the *Dollfus Mieg* case the interest was of the
20 barest kind. Lord Wright's statement is a correct statement of the Law and is repeated in the *Dollfus Mieg* at p.579 F.

Both in *Cristina* and *Arantzazu Mendi* it was a matter of requisition and this requisition gave to the Govt. concerned a right to say the way in which the ships were to be employed. That was held to be a sufficient interest for the purpose of immunity with or without possession. A requisition by a Govt. of a ship is nothing more than a compulsory hiring. Vide *Broadmayne* (1916) p.64 at 70 2nd para. at p.73. Vide headnote at 64 repetition from *Parlement Belge*. If anything is clear in this matter it is that the chartering was to the vessel for public purposes.

30 Back to *Cristina* at p.507.

The charter party as such gave us rights of discretion and control. *Cristina* p.501 and 502. We say that the charter is an admitted interest in us by reason of the statement in the power of attorney which recites that the *Tasikmalaja* is under charter, the charter party is Ex. "KDH-1," and it purports to be in existence at the date of the writ. Under and by virtue of that charter party that ship was brought to H.K. by our direction.

That is enough interest, but it would seem that the document KDH-1 contains an option to buy. An option in a contract of hire is an irrevocable offer to sell by the party hiring. If that offer was accepted during the period of the
40 charter there was immediately a contract to sell.

Helby v. Matthews (1895) A.C. 471 at 477 and at 478—480. In English law immediate upon the acceptance of the offer the property would pass. Vide

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Felston Tile Co. Ltd. v. Winget Ltd. (1936) A.E.R. at 480. Vide Sec. 18 of Sale of Goods Act and Sec. 20 Sale of Goods Ordinance. In KDH-2 Article 2 contains a statement that property passes as soon as that contract is signed.

That the option contained in KDH-1 was exercised cannot be doubted. So at its very lowest, we have strong evidence that the property had passed on documents purporting to pass it. If the option had not been exercised it still remained an outstanding impasse up to the end of the charter. Without any doubt we had a proprietary interest as Charterers which entitled us to direct the movement of the ship and the purpose to which it was to be put.

A purported interest is enough. In affidavit of Khodr (doc. 4) para. 5, 10 there was a purported sale. This immediately raises an issue for contest, for if you require him to prove this title you are requiring him to do the very thing which the motion to set aside the writ says you cannot do. In any action in rem where there is contest on the claim and title is in issue an attempt is made to implead the sovereign state.

Vide the *Arantzazu Mendi*: passages which are parallel to present case. Vide p.46. No contest as to ownership and at p.47, p.50. Validity of requisition would not be considered. At p.51. Here the very interest of ownership is in dispute. At p.55. In *Cristina* and *Arantzazu* property not brought in by party claiming interest. In *Haile Selassie* not brought in by any one at all. 20 The judgment of Lord Goddard at p.55 sums up the basic principle. Question for the Court to ask itself is—are there documents which purport to give us a proprietary interest? If there are any adverse claim immediately creates a situation so clearly and precisely set out by Lord Goddard.

On this question of purported interest and validity. Vide *Cristina* 509 v. at p.517 at bottom of page.

There is before the Court evidence of a change of flag. Ceremony of raising Indonesian flag.

Argument C. Possession or Control. As the word possession is applied to immunity it includes that interest which a bailor relates after he has parted 30 with the chattel.

Possession or control is enough without any other claim. Whether that possession is rightly or wrongly obtained does not make any difference, the validity of the possession is a question with which the Court will not concern itself. *The Cristina* 509.

It would seem that the bare assertion of a possessory right is enough. The affidavits which we have read show the basis of our possession which is through the H.K. & Whampoa Dock Co. to whom we delivered the ship by directing it to go there and making a contract for repair with that Dock Co. We are bailors and the Dock Co. is the bailee. 40

Pollock & Wright on Possession. At p.26 and p.27 to give possession basis of *Dollfus Mieg* case. We claim that our right to possession is that which remained to us after delivery of the ship to the dockyard. This principle is not limited to a case where a bailor is the owner.

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The Amazone (1939) p.332. Master not a bailee. Vide p.325—bottom of page. Some legal process would be necessary to deprive us of that possession which we have as bailors.

Evidence before me in a document of registration under Indonesian flag. That, to my mind, constitutes a sufficient possession. Even if Ysmael & Co. paid some of the wages we paid most of the wages and Mr. Silos accepted them from us.

Dollfus Mieg. (1949) Ch.D. 369 at 388—389—390—393. A bailor, whether or not he be owner, can still on the bailment have possession within
10 the principle of immunity. Adjd. till 12.20 p.m.

McNeill continues: I would direct attention to the *Dollfus Mieg* on appeal (1950). Ch.D. 333. Case applies, *a fortiori*, to an action in rem. At p.334. Vide 357. Court not concerned with validity of the claims. At 358. De facto possession not physical possession.

In Action No. 8 the writ claims legal possession and this must admit that they had not physical possession. The physical possession might be in the Plaintiffs, but we could still have sufficient possession or control to satisfy immunity. Vide p.359—what could be nearer the present case? We have handed over the ship for repairs.

20 Now to turn to report in H. of L. (1952) 1 A.E.R. 572, 578 D, 579 F and 580. I repeat the words "We are not dealing with any such case." 582 C. 581 E. 583 C. 586 top—C.

In *the Jupiter 3* there may be some remarks which are pertinent in view of the remarks of Mr. Silos. Still on question of Bailment. At p.130. Another contest would be whether Silos was appointed master by us. On the basis of Silos' affidavit that would treat him in control of the ship, but Court would remember the incident of the changing of the flag. Silos was vastly outnumbered by the Indonesian members of crew. What is clear is that the Dock Co. were the bailees or we the bailor. In *the Cristina* (499) it was pointed
30 out that all on board accepted the requisition. In neither *the Cristina* nor the *Arantzazu Mendi* was there any question of bailment to a Dock Co. To sum up position: The summons contained in the writ *per se* impleads the Indonesian Govt., because the Govt. claimed a right or interest. It is clear that the claim before the Court is no frivolous claim, it is a real claim to a proprietary interest either as charterers and/or option holders or owners. That claim is made by mere assertion or alternatively by documents purporting to form the basis of the claim. It is impossible to say that these proprietary or possessory claims will not be the subject of a contest in this action. That being so, Court cannot at this stage consider whether they are valid or not. If the Court does
40 hear evidence and consider their validity you will be taking upon yourself the hearing of the very issue to be tried and I will have nothing to do with such evidence. While a proprietary interest is sufficient by itself and a possessory interest is by itself sufficient, we have shown both and have made out really a stronger case for impleading than any of those I have cited to the Court. The jurisdiction being discretionary (A2) the Court should use its discretion

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against hearing these proceedings. Whatever the technicality of impleading may be it rests upon high policy and the comity of nations. All the arguments addressed to the Court in Action No. 8 apply equally to Action No. 6 except the argument which depended on discretion. Mr. Loseby said in Action No. 6 that his clients had a lien. I say they have no lien and I ask the Court that the writ of summons in both actions and all further proceedings be set aside.

Bernacchi: A question of whether Kwee and Pamoe Rahardjo can be cross-examined:—I think I am right in saying 4 people have sworn affidavits on behalf of Indonesian Govt. We do not desire to examine Mr. Griffiths. Privilege has been raised on behalf of Consul-General and Mr. Pamoe Rahardjo. 10
As regards the suggestion that the Court should make some inquiry from Govt. of this Colony I suggest the only enquiry should make is whether the Governor's exequatur has been granted. We are quite prepared to agree that it has been granted. As regards Major Pamoe Rahardjo it is not a case where the Court should make any enquiry at all or at most whether or not he holds this courier's passport. I will admit that he has such a passport, though we may be forgiven for wondering how long he has had it.

Second limb is to this effect. Even if the Govt. of this Colony were to say that the Consul-General holds diplomatic status here, Court could not accept it, because there is no such thing as diplomatic representation by a sovereign 20
state to a Colonial Govt. McNeill referred to a case of a Consul-General attached to the embassy and suggested that as H.K. was far from Indonesian Embassy, therefore the normal rule did not apply and although holding consular office he was entitled to diplomatic recognition. He drew a distinction between a consul in a country where there was an embassy and a consul in a country where there was not an embassy. I can see only one corollary to that viz. since there was no ambassador from the Indonesian Govt. to the Govt. of H.K. the Consul-General could be in a position of an accredited diplomatic representative to H.K. There is nothing by way of verbal claim that this gentleman Mr. Kwee in anything but a Consul-General. There is no suggestion 30
that his name is on the list of accepted diplomats. A Consul-General to a Colony, it was suggested is in a different position from a Consul in a place where there is an embassy. The cases do not show that a consul has received diplomatic privilege because he is a consul, but because he is a diplomat.

3rd Aspect. This claim for immunity cannot be put forward unless the affidavits sworn by them are removed from the file. Court should only allow this claim on the basis that those affidavits are removed. If these affidavits are removed we are prepared not to contest the claim. We say that they cannot put these affidavits on the file as ordinary witnesses and then say that they are immune from cross-examination. They are not parties to the action. Vide 6 40
Hailsham 514 para. 637 — Recognition. The most the H.K. Govt. can say is whether Kwee has been granted an exequatur. Also vide para. 642 — "a consular officer . . ." Before Court makes enquiry we must be informed what privilege he claims. It is clear that as Consul-General he has no immunity — vide foot note (g). This note explains the office of a consular officer.

Vide Oppenheim — Vol. 1 p. 752. Sec. 434 and 435. Vide 727 — as to Major Pamoe Rahardjo: para. 405. It is suggested that he is entitled to claim diplomatic protection as a courier. There is nothing to suggest that Major

Pamoe Rahardjo is at present in H.K. exercising the office of a diplomatic courier. It would be difficult to say that he swore the affidavits in his office as a courier. Vide 11 Hailsham para. 16. Colonies. In the Letters Patent there is nothing to suggest that the Govt. of the Colony is empowered to be in diplomatic relationship with any foreign state. Vide clauses 2, 5, 7, 12, 14, 15, 16, 19. Governor is not empowered to recognise an accredited foreign diplomat.

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Vide Consular Privileges Ordinance (Cap. 189) c.f. this with Diplomatic Privileges Ordinance (Cap. 190).

10 It is quite impossible to say that Mr. Kwee could be an accredited diplomatic representative.

Vide case *Musmann v. Engelke* (1928) A.C. 433 at 436 and at 447.

Vide case absence of a statement that Mr. Kwee is on the ambassadorial staff the Court will not make enquiry as to his status. Vide *Phillimore* at 449. Claim of privilege is for the Court. I submit that there was a suggestion that because there was no embassy in H.K. he might be clothed with diplomatic privilege. I turn to the question of these men having sworn affidavits. In *Musmann v. Engelke* the person claiming immunity was a party to the action and for the purpose of the claim he filed an affidavit setting out the position.

20 Question arose whether it was a matter of fact in which the Court should hear evidence or one of those cases where Court should ask for information and abide by the answer. Court of appeal took the view that it should hear evidence.

If it was a question of fact for the Court to reach a decision on then it could only reach such decision by permitting the gentleman to be cross-examined on the facts he had disposed to. He filed this affidavit to place his claim to immunity before the Court and on this Court it was bound by the information supplied by Attorney-General.

Dunne v. English. L.R. 18 Eq. 524 at p. 529 — Jessel.

30 *The Parisian.* 13 p. 16 at p. 17. In this case if you were to consider the claim to diplomatic immunity you would only do so on the basis that without cross-examination you would give no weight to them.

Nothing has been said which would entitle the Court to say it must make enquiries from Govt. Kwee is not, I submit, entitled to diplomatic privileges as Consul-General. As regards Pamoe Rahardjo it is not even claimed that he is at present engaged in execution of his office.

2.40 p.m. Adjd. till 9.30 a.m.

(Sd.) C. W. REECE.

Appearances as before.

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McNeill and Wright with Wilkinson & Grist for Indonesian Govt. L.
D'Almada and Bernacchi with da Silva for Juan Ysmael & Co. Inc.

McNeill withdraws the suggestion that enquiry be made as to Mr. Kwee Djee Hoo's status and Pamoe Rahardjo.

Bernacchi: As to question whether Court should allow cross-examination on the facts deposed to by these gentlemen. O.11 r.22 and 23 of the Supreme Court, Code of Civil Procedure give Court a complete discretion. Once a party chooses to put an affidavit on the file then the Courts' discretion arises. Only exception is a case where Court is bound as to fact by some other evidence which therefore renders cross-examination unnecessary e.g. the *Musmann*.

There is considerable amount of cross-examination on the affidavits which have nothing to do with the title to the vessel. It is suggested that the 10 Indonesian Govt. have the possession or the right to possession regardless of title. The question of wages, the question of how far the Dock Co. come into it. In the original affidavits the possessory title was put up through Mandagi. This is a ground for cross-examination as to the veracity of the deponents. Delivery of possession of a bailor to a bailee is a question of intention and even desire to question Mr. Kwee as to why he alleged possession to be in his servants if he now alleges it is in the Dock Co. It was put to the Court in the alternative that the Indonesian Govt. is entitled to rely on the charter party. We are going to say that Court should find that Indonesian Govt. has abandoned the charter party at the material date. The Court was told that Major Pamoe Rahardjo exercised the 20 option under the alleged charter party. We are going to say that they did nothing of the sort, that they entered into a new kind of contract with Starr, different altogether from the charter party.

The fraud: Mr. McNeill says that if fraud is alleged it does not affect the position unless it is a palpable fraud. They read to the Court their answer to the allegations of fraud. Mr. Wright said Court could not say it was fraud, after it had heard their answer. Are we to be denied our right to cross-examine Major Pamoe Rahardjo on the fraud perpetrated by them. If Court cannot test their affidavits on fraud by cross-examination they shall be rejected and ours relied on.

This issue on fraud must affect Court's discretion when dealing with sub- 30 mission that admiralty jurisdiction as a whole is discretionary.

Mr. McNeill invites you to exercise your discretion in his favour on facts which he has placed before you and which he submits are not to be subject to cross-examination.

I submit that insofar as their affidavits have set out their alleged title we are entitled to cross-examine on it. I am going to say that although Mr. McNeill says he is relying on a bare assertion, he has chosen to call evidence of certain facts and that evidence we dispute and seek to cross examine his witnesses on it. Re. competing right, we wish to question the very evidence which he says gives him the right. 40

Court will not find a case where the right itself as opposed to the effect of the right is in dispute. We say that they have not a shadow of a right.

Jupiter (1924) p. 236 at 237. This is a typical case where the cross-examination was allowed. There is nothing inconsistent in asking Court to have the facts which the Indonesian Govt. have raised tested by cross-examination

without prejudice to any final conclusion which the Court may reach on the law. In all these impleading cases certain issues of fact have to be decided — vide the *Dollfus Mieg* (1950) Ch.D. 344.

Vide Somerwell at 358. *The Amazone* (1939) at p. 325 as marked. There again is a case where the Court found it necessary to reach a conclusion on fact. In this case all the facts are in dispute. *Jupiter No. 3* (1927) p. 122 at 131.

I submit that in this case Court cannot reach any conclusions unless the facts are tested in the normal way. Vide the *Haile Selassie vs. Cable & Wireless Ltd.* (1938) 3 A.E.R. 384 at 386 D to end of Judgment.

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10 The *Tasikmalaja* came to H.K. flying the Panamanian flag. This case is cited merely to show that there is a clear issue in this case and that if the Court decides at least one way the Court will have to hear the fact as to title. Mr. McNeill is asking the Court to hear the submission of law, decide how the Court will apply the law to the facts in the affidavits before you and then decide what issues of fact are necessary for you to decide and then come back and reopen the whole case on those affidavits. I submit that the Govt. of Indonesia through its witnesses has seen fit not only to make certain claims, but to place certain facts before this Court. So long as these facts are to remain on the record we are entitled to test them by cross-examination. The Indonesian Govt. could have relied
20 on the claim without alleging facts, but they have elected to allege facts and to read those facts. I ask to be allowed to test them by cross-examination. They may apply to withdraw those affidavits, but I ask the Court to say that it can give no weight to the facts deposed on affidavits unless they are tested by cross-examination. Apart from evidence of title, they have evidence on possession, rights, possession, bailment. They have asked the Court to come to conclusions of fact on these points.

McNeill: A vague application. My learned friend has given what he calls a few examples of what he wants to cross-examine on. Court has a discretion. I refer again to *La Trinidad v. Browne* application under O.38 r.1 our o.11 r.22. In
30 exercising discretion there are facts to be elicited which might be necessary to assist in arriving at a decision on the motion before me.

Abrahams & Co. v. Dunlop Pneumatic Co. (1905) 1 K.B. 46 at p. 52. In these few words the learned judge sets out our contention relating to our proprietary interest. When you come to the matter of the possessory title there is nothing which can be extracted from Mr. Kwee or Mr. Pamoe Rahardjo which would not bear directly on the issue to be tried at the trial of the action. These are entirely distinct matters and it is clear that there are issues to be tried in the action if it ever came to trial. The plaintiffs claim legal possession and they can only claim legal possession on the basis that they are entitled to it through some
40 over-riding basis. We say that we have a proprietary interest as charterers, or under option or as owners at the date of the writ. The issue to be tried at the trial of the action is the competition between those conflicting facts. If cross-examination were ordered for the purpose of displacing the claims of the Indonesian Govt. the Court would in fact be now directing the trial of the issue in the action. This is what we are asking the Court not to do, by the very terms

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of our motion. I have given the Court the passages from cases which show that the Court will not go into the validity of the interest claimed upon a motion of this kind.

Bernacchi has not made any attempt to answer one of the citations which I have given.

Haile Selassie Case (1938) Ch.D. 839. Here Bernacchi interposes to explain why he cited this case, as the whole basis of the cross-examination is to go into the validity of the case, which we say Court cannot do.

Facts of *Haile Selassie* read. Basis of case clearly set out in judgment. Vide p. 845. The 1st distinction is that the action with which we are dealing 10 does seek to bring the Indonesian Govt. before the Court. The *Haile Selassie* case is quite different. The citations show that the jewellery was in the hands of a person in this realm i.e. the U.K. This is nothing to do with the admiralty jurisdiction or actions in rem. Reference to *Dollfus Mieg* — Jenkins J. where he used the expression palpable fraud.

1927 p. 122 @.
131.

Re. *the Jupiter No. 3* cited by Bernacchi to show cross-examination allowed. The case was not concerned with impleading, they were going into the trial of the action. Vide headnote at p. 122.

The Amazone, (1939) p. 322 at 325. The learned Judge was there deciding that the possession by the bailee, Thorneycroft was sufficient with the registration 20 for immunity. The nature of the possession was all that mattered. The *Dollfus Mieg* (1950) Ch.D. 333. Court may say that the true relationship between Dock Co. and ourselves ought to be investigated farther.

Jupiter 1924 p. 236. All I need say is that the passage was disregarded by Mr. Justice Hill. Vide 239. The judge says that he cannot go into the validity of the basis of the claim. I say these questions cannot be entertained. On the question of possession. There are no facts which can be elicited by cross examination from Mr. Kwee which can help the Court. The facts are in the affidavits. Bernacchi says we rely on the charter party and they will say it is invalid. Ref. 30 to KDH-1. That is we say our document showing title. That is the equivalent of the requisition. Into the validity of the charter party the Court will not go. It is a root of title. Is that charter party valid or is it not. A contract based on fraud is voidable. Exercise of the option. Into the validity of that option Court cannot go, because that document contains the basis of our interest and Court cannot go into it because if you go into it you are trying action.

Exhibit KDH-1
Ref. No. 19

Fraud. What the value of the allegation of fraud is remains to be seen where chattels are brought in it does not matter whether there is fraud or not.

He said the affidavits are concerned with documents that are not title. I say that is not so. He says he seeks to dispute the basis of our claim, the requisition of the charter party which we say you cannot do. He spoke of the 40 right to cross-examine.

It is in Court's discretion to order cross-examination on the affidavits, but Court cannot do anything now to try the issue. We can rely on either the bare assertion or the documents: we can rely on either.

Court's discretion is limited by the question whether Court has jurisdiction to consider the validity of claim at this stage. *Cristina — Arantzazu*.

Mr. Loseby, states that he wishes to support the application of Mr. Bernacchi as if it were actually stated by him in Action No. 6.

Generally speaking the case of Ysmael & Co. goes to the point that at all material times the Indonesian Govt. were neither the owners of nor in possession of the relevant property. If the Court accepted that version then it would be plain that I have not impleaded at any time in Action No. 6. I intend to say that I adopt the argument of Mr. Leo D'Almada and the evidence called by him in so far as it goes to the point that I have not impleaded. The same evidence which Mr. Bernacchi wishes to cross-examine is directed also against me for showing that I have impleaded. That evidence, as I take it, is evidence on fact which Mr. McNeill wishes Court to read and believe. For purposes of his case he had put it in. None of us likes to be cross-examined. Mr. McNeill asks Court to read the evidence and accept it. Mr. McNeill cannot both approbate and reprobate. He cannot ask Court to take that evidence seriously and deny the Court the inherent right to have it checked in the way suggested. This is evidence put forward by Mr. McNeill.

Adjd. till 12.35 p.m.

Court resumes:—

Bernacchi: Mr. McNeill said that I had not answered any of his cases and I said that it was no intention of mine to enter upon the complicated aspects of the law.

We are going to argue that a sovereign state can only be impleaded without establishing its title in 1 of 3 cases. 1. Where it has *de facto* possession. 2. Where it has something equivalent to *de facto* possession e.g. possession through a bailee. 3. Where it has a right of disposition or control through the vessel's owner or master attorning to the foreign sovereign.

Without 1, or 2, or 3 then title must be established. It is our submission that all the cases cited can fall within 1 or 2 or 3 and if they do not, then the impleading point has failed. This case raises a number of points totally different from any of the decided cases on impleading.

Sultan of Johore v. Bendahara. (1952) 1 A.E.R. 1268. para. C. All this brings me to the point that merely because he submits in Court's final judgment that I should hold that the validity of the alleged title to this ship is irrelevant, that does not mean that at this stage of the proceedings, the very facts that he has chosen to place before the Court should not be clarified and tested by cross-examination. With one breath he says we can't leave allegations of fraud

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unanswered and in the next breath he says you cannot be heard to refute our answers by testing them in cross-examination. Refers to terms of Notice of Motion. Ground 2. This, I understand, clearly places their title before the Court.

Mr. McNeill quotes *Abraham v. Dunlop* (1905) 1 K.B 46. At p. 51. This is an affidavit under XLV111 r.2. We are dealing with an affidavit under o.11. r.21. The affidavit in the case cited was made under an order which made no provision for such affidavit. Consider Mathew's judgment at p. 52. Case has no similarity to case before Court.

I submit that at this stage Court will permit cross-examination even if it later determines not to consider it. Vide *Jupiter* p. 237, 239. McNeill interposes 10 to say case *Jupiter No. 3* not one of impleading. Bernacchi continues and say it is so in *Jupiter No. 1*. In this case we find witnesses cross-examined on their affidavits.

In *Jupiter No. 3* (1927) p. 122 — the point of impleading was raised but failed. In the *Jupiter No. 3* it was put up for the U.S.S.R. that the ship was sold by the U.S.S.R. and you cannot go behind the claim. In both cases the evidence was taken. These facts have in this case been put before Court and should be tested.

Cristina (1937) 4 A.E.R. 313.

There is not a single fact admitted except 1st charter party and that ship 20 was under charter until June. We say that the plaintiffs abandoned that charter.

A.J. 6 demonstrates the fallacy of the argument that the Indonesian Govt. can put affidavits on file and not be cross-examined on them. Only when Court has decided who has possession of this vessel can it decide the applicability of the law on the basis that A, or B, or C, has possession. Then there is the question of fraud. They say it is not a palpable fraud. They are inviting you to withhold the admiralty jurisdiction.

Adjd. till Monday at 10 a.m.

(Sd.) C. W. REECE.

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No. 38

30

**DECISION OF MR. JUSTICE REECE ON APPLICATION
BY JUAN YSMAEL & COMPANY INCORPORATED
FOR LEAVE TO CROSS-EXAMINE.**

(25th August, 1952)

When the motion filed on behalf of the Government of Indonesia to set aside the writ and stay all subsequent proceedings thereon came on for hearing Mr. Bernacchi, on behalf of the Plaintiffs, applied for leave to cross-examine the deponents to affidavits filed on behalf of the said Government. At the request of Mr. McNeill, Counsel for the Indonesian Government consideration of this

question was deferred until the case of the Government of Indonesia on the motion had been put before the Court. At the end of the case on the motion Mr. Bernacchi again applied for leave to cross-examine the deponents on behalf of the Indonesian Government. He directed attention to O11 RR. 22 & 23 of the Supreme Court Code of Civil Procedure. Rule 22 provides that "the Court may, on the application of any party, order the attendance before it for cross-examination of any person making an affidavit." Rule 23(3) provides that "the evidence of a witness on any such examination or on any cross-examination under rule 22 of this Order shall be taken in like manner, as nearly as may be, as at the trial of an action."

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10 It does not seem to me to be necessary to go fully into the reasons advanced by Mr. Bernacchi in support of his application for leave to cross-examine the deponents to the affidavits filed on behalf of the Government of Indonesia. It is sufficient to say that he urged that there was no agreement on the allegations of fact deposed to between the parties and that, in view of the allegations of fraud made by the Plaintiffs in the action and denied on behalf of the Government of Indonesia, the Plaintiffs should be permitted to cross-examine their deponents on the affidavits filed on behalf of the Government of Indonesia. Mr. Bernacchi urged that Counsel for the Government of Indonesia had read affidavits of facts on which he relied and which the plaintiffs disputed and submitted that he should be allowed
20 to cross-examine the deponents to test the value of that evidence. In support of his submission he read a short passage from the judgment of Hill J in the *Jupiter* (1924) P. at 237 to wit "A number of affidavits were filed, and on one of them, sworn by the Master, Captain Lepine, the plaintiffs cross-examined the master." This is the only passage to be found in the cases cited by Mr. Bernacchi, which has any direct bearing on the question of cross-examination of deponents.

Mr. McNeill for the Government of Indonesia admitted that the Court has a discretionary power to allow on interlocutory applications cross-examination of deponents, but urged the Court to exercise that discretion in favour of the Government of Indonesia and refuse leave to cross-examine. Even if O.11 R.22
30 which I have cited above, did not exist to give the Court the power, from the case of *La Trinidad v. Browne* (1887) W.R., cited by Mr. McNeill, there is no doubt that the Court has a discretionary power to make an order for the attendance for cross-examination of a person who has made an affidavit and is not bound to make such an order. But it is interesting to observe that in that very case the deponent was ordered to attend.

Mr. McNeill also directed my attention to the case *Abrahams & Co. v. Dunlop Pneumatic Tyre Co.* (1905) 1. K.B. 52, but, with due respect, I do not think that the case is an authority for refusal to cross-examine a deponent in the circumstances in which it is sought to use it. As I understand the case it relates to the obtaining
40 the names of partners where an action is brought by the partners in the firm name and it was expressly stated that under the provisions of the Order 48(a) there is no provision for cross-examination on the affidavit disclosing the names. Similar provisions are to be found in O.20 Rr. 1 & 2 of our Supreme Court Code of Civil Procedure which relates to actions brought by and against firms. This order is in no way concerned with the giving of evidence on motions.

It is common ground between the parties, and is very obvious on reading the affidavits filed in this case, that there is severe conflict of facts disclosed in the affidavits. Each party relies on its own affidavits and the Court has already

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been asked to accept those filed on behalf of the Government of Indonesia. It will assuredly be asked to accept those filed by the plaintiffs when they present their case.

I am satisfied that there are certain questions of fact to be determined on the motion to set aside the writ before the order sought can be granted, and it seems to me undesirable, where there is such evident conflict on the facts alleged, that the Court should be required to draw inferences from the affidavits alone. I have stated earlier in the hearing of this application that as a result of my experience in these Courts I dislike having to rely on affidavit evidence alone and in a matter of such obvious importance as is now before me I am of the opinion that the veracity of the deponents should be tested by cross-examination. I allow the application to cross-examine Mr. Kwee Djie Hoo and Major Pamoe Rahardjo and order that they do attend for that purpose. 10

MR. JUSTICE REECE,

Puisne Judge.

25.8.52.

No. 39

**NOTES OF FURTHER PROCEEDINGS TAKEN BY THE
HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE**

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Resumes. Appearances as before. Decision read.

Mr. McNeill states that he is instructed to claim privilege on behalf of Mr. Kwee and Mr. Pamoe Rahardjo. I have two affidavits sworn but not yet filed on behalf of these two gentlemen. No argument has yet been heard on the question of immunity.

Affidavits read on behalf of Kwee. Two bases upon which he can claim immunity—1 is as being the person who represents his Govt. in H. K. for all purposes and 2 in swearing the affidavits with which the Court is concerned he was doing an act on behalf of his Govt. 30

The general principles are set out in Oppenheim at 752. If they wish to approach the Govt. they can only do so through the diplomatic authority to whom they are subordinate. That position does not obtain here because he is the only representative of his Govt. here.

D'Almada interposes to take formal objection to Mr. McNeill's rearguing the position.

McNeill continues: I am now entitled to say that the Consul General does claim diplomatic immunity. That there are occasions on which a person holding the post of Consul-General has been held to have diplomatic immunity there can be no doubt. 40

6. *Hailsham 505 para. 624* I shall say that Mr. Kwee is a person accredited to the Govt. of H.K.

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In case of *Parkinson v. Potter* (1885) 16 Q.B.D. 152 at 159 the facts disclosed that the defendant was an attache I shall say that in H.K. by our Ordinance it is quite clear that the gentlemen who are accredited to the Govt. of H.K. do have other and diplomatic functions to perform. The parallel is that in Parkinson's case the basis was that he was an attache. Here the basis is what is contained in our ordinances. Reference to *Engelke v. Musmann* (1928) A.C. 433 at 499. Person may have diplomatic immunity attached at them and it is impossible to ignore a statement of Phillimore. A statement such as this cannot be disregarded, coming as it does from the highest authority. Oppenheim 753 Sec. 435.

Ref. to H.K. Ordinances—cap. 189. Consular Privileges. There is no intention by the Ordinance to define the question of privileges. Ordinances directed only to taxes, duties and reliefs. Ref. to diplomatic Privileges Ordinance Cap. 190. This Ordinance does not attempt to deal with diplomatic privileges other than those of certain international persons. Reads preamble. This entire Ordinance concerns international persons who are not accredited to the H.K. Govt. Reads Sec. 5 & Sec. 6. Vide Cap. 191. Statement in preamble of purposes of Ordinance. In U.K. it would be impossible to say that a Consul-General was not an accredited representative. It seems impossible to say having regard to Sec. 1 that the Consul-General is not the accredited representative. There are no legations, embassies in H.K. The only conceivable person who can be said to be the accredited representative of a foreign power in H.K. is the Consul-General. Sec. 2 "accredited representative" defined, "foreign state" defined. Sec. 3(a).

In this order we have a statement that there are persons who are accredited representatives. Ordinance passed on 4/11/49. There could be no reason for referring to "accredited representatives" unless there were in fact such persons already existing. Gazette of 18th Aug. 1950. Kwee Djie Hoo is recognized as Consul-General. On 6th Oct. 1950, a notice states that the exequatur of Mr. Kwee Djie Hoo has received H.M.'s signature. That notice is, I say, clearly the notice referred to in the Ordinance Cap. 191 Sec. 2 under head "accredited representative". This section means a person who for the purpose of this Colony is the "accredited representative" of a foreign state. Sec. 1 & 3 of Cap. 191 must be read in conjunction with Sec. 6 of Cap. 190 which speaks of representatives of foreign powers. Affidavit of Mr. Kwee clearly covers position.

Vide Oppenheim 753 again. Application is to set aside the writ and the affidavits sworn by Mr. Kwee are sworn for that purpose and as representing his Govt. Affidavits sworn by Mr. Kwee as an official Act for the purpose of maintaining his Govt. from process.

Major Pamoe Rahardjo: Affidavit read. Oppenheim 727. para. 405. A courier is at the back and call of his Govt. at a moments' notice. He is a diplomatic courier holding a special passport. I therefore ask for immunity on behalf of both these gentlemen.

Bernacchi: I gave Court 3 bases — I said the *exequatur* is only as regards Consul-General and I said that the H.K. Govt. could not recognize a gentleman of this sort as an "accredited representative". I said this claim could only be allowed on the ground that the affidavits were removed.

6 Hailsham 637. Mr. McNeill has read the *exequatur* recognizing Mr. Kwee as a Consul-General and it recognizes him in no other capacity. I then referred to para. 642 at p.518 footnote (g). Affairs between state would be affairs between Govt. of Indonesia and Whitehall.

Reference to *Parkinson v. Potter & Engelke v. Musmann*. There is not the slightest indication in the affidavit of Mr. Kwee that he holds any diplomatic appointment. The furthest he goes is to say that on many occasions he has communicated with H.K. on diplomatic matters, but he does not suggest that he has any diplomatic status nor does he suggest that he holds any appointment in H.K. other than that of Consul-General. Hailsham recognizes that a Consul-General does become involved in diplomatic matters. Vide page 505 at 624 para (4) *quasi* diplomatic character. Vide p.518 para. 642. It is a non sequitur to say that because a person partakes of quasi-diplomatic duties he is entitled to diplomatic privilege. Vide *Engelke v. Musmann* (1928) A.C. at 436. "27. Since". Vide Viscount Dunedin's judgment at 447. If Mr. Kwee had said that he does consular work but was a member of the Ambassador's staff he might be entitled to diplomatic privilege. Ref. to *Parkinson v. Potter* 16 Q.B.D.152 at p.159. Refers to passage read by McNeill and goes on to read the following paragraph. In P. & P. the diplomatic Privilege was accorded because he was a member of the diplomatic service. This takes us back to Lord Dunedin's judgment in *Engelke v. Musmann*. In the light of those words Court must read words of Lord Phillimore in *E. v. M.* at p.449. McNeill says that even though it is obiter it is stated by a member of H. of L. and must be regarded. Bernacchi reads from "For reasons which. . . .". This must be read in the light of the facts in that case and the earlier case which Lord Phillimore had in mind—"Clothed by appointing to a diplomatic appointment" I suggest is how it is to be read. Vide p.438 where *Parkinson & Potter* was cited. After his appointment to the diplomatic staff he enjoys diplomatic privilege because of his appointment. Kwee says in his affidavit no more than Hailsham viz "I have to do a certain amount of diplomatic work in H.K." Hailsham says—no privilege. To bring himself within the cases of P. & P. and E. & M. on which McNeill relates he would also have had to say that he was attached to the Indonesian Legation in London. The other limb of McNeill's argument is that even if Mr. Kwee is not entitled to diplomatic privilege he relies on a passage at p.753 of Oppenheim. para. 435.

If a Consul-General does an act for which he might ordinarily be civilly or criminally liable and he could establish that he was acting in his official capacity that would, in light of this passage, afford immunity. I see nothing in that passage that suggests that where a consul appears as a witness in a case merely because he was asked or even instructed to give evidence by his government that would entitle him to claim to be immune from having his evidence tested by cross-examination. I went into the position of a colony and showed that it only had such rights as are granted to it by the Letters Patent. I showed that there is nothing in the L.P. to be in official diplomatic relations with a foreign state. Even the *exequatur*, it is interesting to note was given by His Late Majesty. There is nothing in the Ordinance which affects this position and if there was I would say it was *ultra vires* the Letters Patent. The Consular Privilege Ordinance (Cap. 189) however McNeill may waive it aside, it is of very great importance. Sec. 3 of that Ordinance gives governor a discretion to remit certain taxes. I do not

think it can be agreed that Mr. Kwee is any different from any other Consul-General. If Mr. McNeill's argument means that Consul-General in H.K. enjoy diplomatic privileges, what is the legislature doing in giving the Governor a discretion to relieve of taxes etc. when the Consul-General would have a right to be exempted from taxes, duties, etc. If any deduction is to be drawn from this Ordinance it is that a Consular officer does not enjoy a consular privilege as of right, but that certain limited privileges may be conferred upon him at the absolute discretion of Governor. C.f. this with Cap. 192. The Diplomatic Privileges Ordinance does not seem to take the matter any further, except to make provision

10 for diplomats who may from time to time be in the Colony. Vide Sec. 6. Vide Cap. 191. Sec. 2 "accredited representative". The words relied on are "as the representative of a foreign state". A Consul-General is a representative of his country. I do not see that these words clothe with diplomatic immunity. It seems to me that we must look to the exequatur to see in what capacity Mr. Kwee is accredited and we find that he is empowered to act as a consular representative. Mr. Kwee sets forth nothing to claim diplomatic privilege and without holding diplomatic appointment he has no immunity.

Mr. Pamoe Rahardjo. No decided case seems available and the only passage on which Mr. McNeill can rely is para. 405 of Oppenheim. The vital words seems

20 to be "To ensure the safety and secrecy of the diplomatic despatches they bear" and "during the exercise of their office". There is nothing in Mr. Pamoe Rahardjo's affidavit which suggests that he is bearing despatches or acting in the exercise of his office. He says it is his duty to hold himself in readiness for his consul's call. There is other evidence that he has been in H.K. for 2 or 3 weeks and there is nothing which would conflict with his duty to hold himself in readiness by attending at this Court to give evidence. There is nothing in his affidavit which brings him within the passage quoted from Oppenheim. I submit that neither of these gentlemen is entitled to immunity.

McNeill. Pamoe Rahardjo. The whole object of the diplomatic passport is

30 to give diplomatic privilege to a courier. That is why, according to Oppenheim, they are given the passport. He is here for the purpose of carrying despatches when required. If Court issued a sub-poena then it would follow that he could be detained if required to carry despatches. If Major Pamoe Rahardjo had desired to evade cross-examination he could have left the Colony. He relies on the diplomatic immunity. When reading decisions one has to extract the principles of law on which they rest.

Re: *Potter v. Parkinson*. I agree that the ground for the decision was the fact that he was attached to a legation, but the passage which I have cited shows that Consuls General can have diplomatic duties to perform. And while

40 those duties may be small and rare they still have diplomatic immunity. Lord Phillimore's statement makes the position as clear as possible. Bernacchi tried to say that Lord Phillimore makes the point that he was confining his remarks to a case where a Consul-General was attached to a legation. Mr. Kwee has stated that he has got diplomatic functions to perform. If that is questioned the Court cannot order Mr. Kwee to be cross-examined on it (*Engelke v. Musmann*) but must take other steps to find out.

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Bernacchi took Ordinance 189 and dwelt upon Governor's discretion to remit taxes. Ordinance is cutting down Ordinance, vide sec. 3 Governor's action depends on a reciprocity of treatment. No answer re. remarks given to sec. 6 of Cap. 190. Mr Bernacchi says that the words to be emphasised are "for the time being in force in England". He says the words *mutatis mutandis* were put in because in H.K. we have our own laws. That is my point. To make sense of the section you have the words *mutatis mutandis*. He referred to letters patent and says that Governor's powers are circumscribed. These 2 ordinances have received H.M.'s approval.

I cannot follow the argument that Mr. Kwee should be attached to the 10 Embassy in London. It seems impossible to understand how he could be attached to embassy in London and perform his duties here. By his exequatur he is attached as sole representative of his Govt. and as such sole representative he states that he has diplomatic privileges to perform. When you apply law of England on this matter you must remember that there is in H.K. no embassy and that the sole accredited representative in H.K. is the Consul-General.

Adjd. till 10 a.m. on 26th August, 1952 provisionally.

(Sd.) C. W. REECE.

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DECISION OF MR. JUSTICE REECE ON CLAIM OF
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MR. KWEE DJIE HOO AND MAJOR PAMOE
RAHARDJO

20

(27th August, 1952)

Consequent on my order that Mr. Kwee Djie Hoo and Major Pamoe Rahardjo do present themselves for cross-examination on the affidavits filed by them on behalf of the Government of Indonesia in the above-named Action, Mr. McNeill, Counsel for the Government of Indonesia, informed the Court that he was instructed to claim diplomatic immunity on behalf of the Consul-General, Mr. Kwee Djie Hoo and Major Pamoe Rahardjo, a courier.

30

The basis of the claim were contained in two affidavits sworn, but then not filed, although now filed by Messrs. Kwee Djie Hoo and Major Pamoe Rahardjo. The substance of Mr. Kwee's claim as set out in his affidavit is that he is the only direct channel of communication between his Government and the Government of Hong Kong and that he has on many occasions communicated on matters of a diplomatic nature with the Government of Hong Kong on behalf of his Government, the Government of Indonesia. And he claimed that he had to perform duties usually performed by diplomatic officers, one such duty being the claim for immunity on behalf of the Government of Indonesia, in the action now before the Court.

It seems convenient to mention here that Mr. McNeill directed the Court's attention to two Gazette Notices published in the Hong Kong Government Gazette of 18th August, 1950 and 6th October, 1950, respectively, the former of which reads as follows:—

“H.E. the Officer Administering the Government, under instructions from the Secretary of State for the Colonies, has been pleased to recognise Mr. Kwee Djie Hoo, provisionally and pending the issue of His Majesty's Exequatur as Consul-General for Indonesia at Hong Kong.”

The latter notice, No. 1156, of the 6th October, 1950, reads thus:—

10 “It is hereby notified that the King's Exequatur empowering Mr. Kwee Djie Hoo to act as Consul-General for Indonesia at Hong Kong, has received His Majesty's signature.”

These two notices show clearly that Mr. Kwee Djie Hoo had been appointed to act as Consul-General for Indonesia in Hong Kong and that His Late Majesty had granted recognition to him in that capacity.

It is contended for Mr. Kwee Djie Hoo that he is entitled to diplomatic privileges. First I will consider the law regarding the status of consuls generally and then examine the cases which have been cited to support the contention that Mr. Kwee Djie Hoo is entitled to diplomatic privileges. It is of interest to note
20 that Counsel engaged have cited the same cases in presenting the arguments for and against the claim to immunity on behalf of Mr. Kwee.

In the 6th Volume of Halsbury Laws of England, 2nd Edition, para. 642, it is stated:—

“A consular officer is not a public minister, and is not, therefore, *eo nomine* entitled to the privileges accorded to persons of a diplomatic character. Where diplomatic and consular officers are united in the same person, as in the case of a consul-general appointed to act as attache to a legation, the diplomatic character will be recognised.”

30 In Volume 1 of Oppenheim's International Law, 6th Edition, at p. 752, section 434, in discussing the position and privileges of consuls the author writes:—

“Consuls do not enjoy the position of diplomatic envoys, since no state in practice grants to foreign consuls privileges of diplomatic agents.”

After stating that it would be incorrect to maintain that their position is in no way different from that of any other person living in the Consular district since they are appointed by foreign states and, on receipt of the exequatur, are publicly recognised by the admitting states as agents of the appointing State, the author continues:—

40 “Of course, consuls are not diplomatic representatives, for they do not represent the appointing States in the totality of their international relations, but for a limited number of tasks, and for local purposes only. Yet they bear a recognised public character, in contradistinction to mere private

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individuals, and consequently their position is different even though legally they may not be entitled to claim special privileges of any kind."

Both Mr. McNeill and Mr. Bernacchi have referred to section 435 of Oppenheim at p. 753, each counsel reading what seemed fit for the purpose of his argument, but I will set out the article incorporating both passages cited. It is:—

"From the undoubted official position of consuls no universally recognised privileges of importance have as yet been evolved. Apart from the special protection due to consuls according to International Law, there is neither a custom nor a universal agreement between the Powers to grant them ordinary diplomatic privileges. Such privileges of a diplomatic character as consuls actually enjoy are granted to them either by courtesy or in compliance with special stipulations in a commercial or consular treaty between the sending and the admitting State. However, consuls do in fact enjoy the jurisdictional immunities granted to diplomatic representatives in as much as, according to the generally accepted practice, they are not liable in civil and, perhaps, in criminal proceedings in respect of acts which they perform in their official capacity on behalf of their States and which fall within the scope of consular functions as recognised by International Law."

It seems to me to be crystal clear from the passage cited both from Halsbury and Oppenheim that while consuls are recognised as being different from private individuals, they do not enjoy as such any diplomatic privileges and that if any diplomatic privileges are accorded them, they are so accorded as an act of courtesy or at most by virtue of some special arrangement between the States concerned. That appears to me to be the position of a consul in the eyes of the law as well to-day as in earlier times. For in *Barbuit's* case, (1737) Cases T. *Talbot* 281 (25 English Reports 778) the Lord Chancellor said "It is the opinion of Barbeyrac, Winequefort and others, that a consul is not entitled to the *Ius Gentium* belonging to Ambassadors". By the *Ius Gentium* or law of nations is meant the privilege belonging to ambassadors or ministers who are accredited to a State.

Now, Mr. McNeill contended that Mr. Kwee has to perform functions of a diplomatic nature on behalf of his Government and that while those duties may be small and rare they carry diplomatic immunity. In support of this contention, he cited passages from the judgment of Wills J. in *Parkinson v. Potter* (1885) 16 Q.B.D. 152 at 159 and from the judgment of Lord Phillimore in *Musmann v. Engelke*, 1928 A.C. 433 at 449. In *Parkinson v. Potter* at p. 159, Wills J. said: — "But I can very well understand that, seeing the close connection between diplomatic business and some of the matters which it falls to a consul-general to transact, there may be a convenience in clothing the consul-general with the additional character of an attache, which may explain and justify his appointment in that capacity, although his services in a diplomatic character may be only slight and occasional. An attache is a well known term in the diplomatic service. He forms part of the regular suite of an ambassador."

It seems unnecessary to go into the facts in any detail. It will be sufficient to say that a lessor leased a dwelling house to a lessee who had covenanted to pay the sewers rates and all other rates and taxes. The lessee of the said dwelling

house assigned to an attache of a foreign embassy who occupied it as his residence. The assignee claimed to be exempt from liability to pay parochial rate and the parish authorities enforced payment against the lessor. In an action by the lessor against the lessee to recover the amount paid by him, the Court held that payment of the rate was not enforceable against an attache of a foreign embassy and it was in the course of his judgment that Wills J. stated the words quoted above. Matthew J. in his judgment at p. 157 said “. . . We can only say that on the evidence unanswered it appears to us that the county court judge was warranted in finding that De Basto was an attache of the Embassy.” After referring to a submission that De Basto was not entitled to privilege he continued:—“But it appears from the authorities that the privilege of the embassy is recognised by the common law of England as forming a part of international law, and according to that law it is clear that all persons associated in the performance of the duties of the embassy are privileged, and that an attache is within the privilege.”

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It seems to me to be beyond doubt that the *ratio decidendi* was the fact that De Basto was an attache, and not that he was a consul-general performing slight and occasional diplomatic services. Indeed, the passage quoted from Mr. Justice Wills' judgment and relied on by Mr. McNeill seem to indicate in no uncertain way that because the consul-general had to perform duties of a diplomatic nature he was appointed an attache, and it was in that capacity of an attache that he was entitled to diplomatic privilege, being a member of the diplomatic service.

The later case of *Musmann v. Engelke* cited above does not, in my opinion, do more than repeat the same principle as enunciated in *Parkinson v. Potter*. At p. 449 Lord Phillimore virtually repeats the passage quoted above from *Parkinson v. Potter*. He says:—“For reasons which will appear in the course of this opinion, it is not necessary to go very deeply into this point, but I may observe that the positions of diplomat and consular employee are not mutually exclusive, and that indeed it has been in the past not uncommon to clothe a consul or consul-general with certain diplomatic functions and thereby to give him a diplomatic status”. The learned Lord is here emphasizing the fact that in the past it was found not uncommon to give the consul or consul-general diplomatic status. That was precisely what had been done in *Parkinson v. Potter*. Had the Court not been satisfied that Engelke was an accredited member of the ambassador's staff, he would not have been held entitled to diplomatic privilege. At p. 447 Viscount Dunedin states:—“The respondent tried to convince us that, if this case was decided in favour of the appellant it was opening the door to the granting of diplomatic privilege to the Consular Service. It is nothing of the sort. Mr. Engelke will enjoy diplomatic privilege not because he is styled Consular Secretary but because he, as an accredited member of the Ambassador's household, has privilege as such and does not forfeit it because he does some consular work”.

It seems clear to me that the decision in *Musmann v. Engelke* reiterates the principle laid down in *Parkinson v. Potter* and the earlier authorities that diplomatic privilege is not enjoyed by consular officers as they are not diplomatic representatives. And the observation of Lord Phillimore in my opinion means no more nor less than that consular officers do not as such enjoy diplomatic privileges,

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but that if a consular employee is given a diplomatic status by being clothed with diplomatic functions then he secures the privileges accorded to members of the diplomatic service. It is not the performance of some diplomatic functions that is of importance in this matter, it is being a member of the diplomatic service that seems to me the determining factor.

Now, Mr. Kwee in his affidavit has stated that he has on many occasions communicated with the Hong Kong Government on matters of a diplomatic nature, and claims that the position of a consul-general is quite different for geographical reasons from a similar appointment within a country which has a diplomatic mission of the State to which the Consul-General belongs. That may be so, and indeed it is not unknown that small states at times send consuls who combine consular functions with those of a diplomatic envoy, instead of accrediting diplomatic envoys to another State, but consuls do not thereby become diplomatic envoys as we have already seen. Mr. Kwee does not claim that his appointment is anything more than that of Consul-General and, indeed, the Gazette Notices mentioned earlier state that recognition has been given to him as Consul-General. There is no suggestion and can be no suggestion that his appointment is anything but that of an officer of the consular service. And as such I am satisfied on the authorities to which I have referred that by international law he is not entitled to diplomatic privileges. 10

Mr. McNeill further submitted that under the provisions of the Consular Privileges Ordinance, the Diplomatic Privileges Ordinance and the Representation of Foreign Powers (Control) Ordinance, Mr. Kwee was entitled to diplomatic privilege. As I understand the argument presented to the Court, it is that Mr. Kwee is the person accredited to the Hong Kong Government and it is clear from the Ordinance mentioned above that the gentlemen so accredited to the Government of Hong Kong do have diplomatic functions to perform and are therefore entitled to diplomatic privileges. 20

With respect to the Consular Privileges Ordinance, I can see nothing in the Ordinance which would suggest or could be interpreted as giving a consul any diplomatic privilege. All the Ordinance does, in my opinion, is to empower the Governor to remit certain taxes, duties and fees payable or paid by consular officials by reason of the treatment accorded to Her Majesty's consular staff by the state representative which employs such consul or consular official. 30

This remission of taxes is one of the privileges usually accorded to consular officers and in this connection I would refer again to a passage which I have already read from Oppenheim. I refer to the passage at p. 753 which reads:—

I desire to emphasize particularly the passage — “Such privileges of a diplomatic character as consuls actually enjoy are granted to them either by courtesy or in compliance with special stipulations in a commercial or consular treaty between the sending and the admitting State”. 40

At p. 754 and 755 the author sets out a list of what he describes as some of the more important stipulations to be found in treaties between States in regard to consular privileges. I quote from p. 755 para. (5): — “Professional Consuls are often exempt from all kinds of rates and taxes, from the liability to have soldiers

quartered in their houses and from the duty of appearing in person as witnesses before the Courts. In the latter case, consuls have either to send in their evidence in writing, or their evidence may be taken by a commission on the premises of the Consulate”.

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I presume that there are no consular treaties in respect of consuls in Hong Kong, certainly none in respect of the Consul for Indonesia, and it seems to me that section 3 of the Consular Privileges Ordinance prescribes one of the privileges of a diplomatic character which by courtesy of Governments are accorded to consuls. In other words, the Ordinance is merely declaratory of the privileges usually granted to consuls by the courtesy of nations. It is of interest to notice that the Ordinance does not grant any exemption from the duty of appearing as witnesses before the Courts.

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Before leaving this question of consular privileges, I would like to refer to that part of the passage which I have read from Oppenheim relating to immunity from civil and criminal liability in respect of acts performed in their official capacity on behalf of their States and which fall within the scope of consular functions as recognised by International law. The basis of this immunity is not the same as that of diplomatic representatives, for consuls do not enjoy immunity in respect of acts of a private law nature.

With respect to the Diplomatic Privileges Ordinance to which Mr. McNeill directed attention, particularly to section 6 thereof, I confess myself unable to understand in what way it relates to consular officers and granting to them of diplomatic privileges. And so too with the Representation of Foreign Powers (Control) Ordinance. The Ordinance provides that no person shall function on behalf of any foreign power without the consent of the Governor and the proviso excludes from the application of the Ordinance the accredited representatives of any Foreign State. In so far as this applies to a consular officer, it seems to me that it confers no privileges other than that which he already enjoys. It would seem pointless to require a consular officer who has received recognition, by having the King's signed exequatur, to apply for a consent from the Governor to act for his State.

For the reasons which I have given, I am satisfied that Mr. Kwee Djie Hoo, as Consul-General for the Government of Indonesia, is not entitled to enjoy the diplomatic privilege which he has claimed, because, as he alleges, he has to perform duties which are usually performed by diplomatic officers. Mr. Kwee Djie Hoo's position is not in that respect unique; but I am satisfied from the authorities to which I have referred that by performing these diplomatic functions Mr. Kwee Djie Hoo, the recognised Consul-General of Indonesia, does not become thereby a diplomatic representative. I therefore order Mr. Kwee Djie Hoo to attend for cross-examination.

I now come to deal with the case of Mr. Pamoe Rahardjo. He claims immunity from the process of the Court on the ground that he is a diplomatic courier, holding a diplomatic passport, and that he must, as such diplomatic courier, hold himself in readiness to carry official communications for his Government at a moment's notice. A courier is in an altogether different position from that of a consul. He has no official recognition and is granted

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exemption from civil and criminal jurisdiction and afforded special protection only during the exercise of his office. I can see no reason why Mr. Pamoe Rahardjo should be exempted from attending to be cross-examined and I cannot anticipate any situation arising as a result of his attending the Court to be cross-examined which would possibly conflict with his duty as a courier. His application is refused and he is ordered to attend the Court for cross-examination.

(Sd.) C. W. REECE.

Puisne Judge.
27.8.1952.

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**NOTES OF FURTHER PROCEEDINGS TAKEN BY
THE HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE**

(27th August, 1952)
(1st September, 1952)

27/8/52.
@ 10 a.m.

Resumes. Appearances as before.

Decision on point re. diplomatic privileges delivered (verbal).

20

Summons to issue for Kwee Djie Hoo and Major Pamoe Rahardjo to attend Court to be cross-examined on 2/9/52. (Tuesday)

Admiralty Nos. 6 & 8 of 1952.

Bernacchi with Silva for plaintiffs.

McNeill with Griffiths for Govt. of Indonesia.

Mr. Bernacchi: Order for cross-examination stayed by Full Court till Thursday 4th September. We are quite prepared to carry on tomorrow. Are willing to go on in the morning.

Adjd. till 9 a.m. on 2/9/52.

(Sd.) C. W. REECE.

30

1/9/52.

No. 42

**APPLICATION BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
FOR LEAVE TO APPEAL AGAINST ORDERS FOR CROSS-EXAMINATION
AND REFUSING CLAIM TO DIPLOMATIC IMMUNITY**

(29th August, 1952)

Application on the part of the Government of the Republic of Indonesia for leave to appeal:—

- 10 (a) Against the Order of His Honour Mr. Justice Reece dated the 25th day of August 1952 allowing an application to cross-examine Mr. Kwee Djie Hoo and Major Pamoe Rahardjo.
- (b) Against the Order of His Honour Mr. Justice Reece dated the 27th day of August 1952 refusing applications on behalf of the said Kwee Djie Hoo and Major Pamoe Rahardjo claiming diplomatic immunity.

Dated the 29th day of August, 1952.

(Sd.) WILKINSON & GRIST,
Solicitors for the Defendant.

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No. 43

**JUDGE'S SUMMONS TO MR. KWEE DJIE HOO
TO ATTEND COURT TO BE CROSS-EXAMINED**

(1st September, 1952)

20 To Kwee Djie Hoo, Esq.,
Consul-General for the Republic of Indonesia,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
HONG KONG.

- You are hereby required by order of The Honourable Mr. Justice
Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice,
Victoria, Hong Kong, on Tuesday the 2nd day of September 1952 at 10 o'clock
30 herein and then and there to have and produce all relevant documents and
records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known to the Court, and allowed by it, the Court may by warrant cause you to be apprehended and brought up for examination.

Dated this 1st day of September, 1952.

(Sd.) R. WINTER,
Registrar.

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Hoo to attend
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No. 44

**JUDGE'S SUMMONS TO MAJOR PAMOE RAHARDJO
TO ATTEND COURT TO BE CROSS-EXAMINED**

(1st September, 1952)

No. 44
Judge's
Summons to
Major Pamoe
Rahardjo
to attend
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cross-
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To Major Pamoe Rahardjo, of the
Army of the Republic of Indonesia,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
HONG KONG.

You are hereby required by order of The Honourable Mr. Justice 10
Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice,
Victoria, Hong Kong, on Tuesday the 2nd day of September 1952 at 10 o'clock
in the forenoon and so from day to day to be cross-examined as an affirmant
herein and then and there to have and produce all relevant documents and
records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known
to the Court, and allowed by it, the Court may by warrant cause you to be
apprehended and brought up for examination.

Dated this 1st day of September, 1952.

(Sd.) R. WINTER, 20
Registrar.

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**NOTES OF FURTHER PROCEEDINGS TAKEN BY
THE HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE**

(2nd & 3rd September, 1952)

Adm. 6 & 8/52.

Resumes. Appearances as before.

Bernacchi: Reads affidavits.

Khalil Khodr. 27th. June, 1952.

30

Mr. McNeill: I will take my formal objection now and I would like the
Court to rule now upon this objection. I object to any evidence being tendered
which concerns the subject matter, on the point at issue in the trial. Court
is not trying the action. The issue in the action which will be contested is the
right and title to the ship. If action ever comes on it will be tried in the
ordinary way by evidence. What Court is now deciding is whether the
Indonesian Govt. is being impleaded in these proceedings. My learned junior

indicated when he read the affidavits and I now repeat that our affidavits are confined to placing before the Court the basis upon which the Indonesian Govt. claims to have had at the material time an interest in this ship, the interest being proprietary and for possessory. When I opened the law I drew attention to statements of Court in England to the effect that you cannot go into the validity of that basis because that is the very issue that would be tried if the action came for trial. If the Court does go into them Court will be trying the action and that the Court cannot do because the motion is to strike out the action at this stage. Court has as an admitted fact that a charter party existed

10 at a material date. They can argue that the charter party was not in existence at the date of the writ, but Court cannot go into title. We say that all these allegations of fraud are totally irrelevant—(1) because they raise the validity of title as to a ship brought in (2) because even if the charter party in question had been procured in a fraudulent manner it is voidable—not void. This is a very elementary principle of law. For these 2 reasons all these allegations of fraud are completely out of place. The only exception to our affidavits being confined to what is relevant to the basis of our claim are some paras. in the affidavit of Pamoe Rahardjo's which deny fraud. We felt it improper to allow allegations to stand in the Court's file undenied when those allegations

20 are made against the servant of a friendly power. I will ask the Court to rule whether Court is now entitled to hear evidence concerning the validity of the basis of our claim and interest proprietary and for possessory. I particularly drew attention to the case of the *Arantzazu Mendi*. Court said it was not going into the validity of this decree. We say that if you receive evidence on the validity of the basis of our interest you are trying the action.

Bernacchi: I object to the manner which this application is now framed. I clearly remember that Mr. McNeill intimated that he would take formal objection to certain passages of my affidavit as I read them. The expression "formal objection" cannot be read with the expression "I ask you to rule now." No

30 other ground has been put other than his substantive case. It is his case that these passages are irrelevant and Mr. McNeill now asks the Court to rule on his case at the very commencement of his reply. It is quite impossible for me to answer his case and for this purpose passages have to be read. We have to put our case in precisely the same way as Mr. McNeill did. Court cannot rule on the admissibility of passages until they have been read.

Bernacchi continues to read the affidavits on Court's indicating that it cannot rule against a passage not yet read and would prefer the objection to be taken against the passage as it comes up.

Bernacchi: Resumes with Khodr's affidavit—Document 4. Vide para. 4—

40 objection taken. Para. 6. The allegation of fraud was set out from the beginning. Para. 7—objections taken to 4, 6, & 7.

B. reads 8 & 9. This affidavit was sworn at the time when the proceedings were commenced and I cannot see the basis of a submission by Mr McNeill that by the terms of a writ of summons plaintiffs admit that they have not got possession. The sole reason for asking for the arrest of the vessel was because we feared the vessel would be taken out of possession.

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Affidavits of Silos of 5th July (document No. 13). Reads paras. 2,3,4,5,6,7,8. I have read these paras. because when we come to the affidavits on behalf of the Govt. of Indonesia we find that whereas in the Indonesian Govt. affidavits there is a suggestion that the Indonesian members of the crew would not have obeyed the orders of Capt. Silos had they known that he held the vessel on behalf of the plaintiffs and not the Indonesian Govt. But at least by 27th June, if not before the position of Capt. Silos was made abundantly clear. It is not until after the Indonesian Consul-General interfered on 30th June that we find any insubordination on the part of any of the Indonesian crew members. Since my friend chose to read an affidavit in the contempt proceedings it will be open to me to read an affidavit in the contempt proceedings it will be open to me to read any other affidavit in these proceedings. Reference to affidavit of Mandagi filed on 9th July, 1952 (doc.21). It is filed in these proceedings and I ask leave to read it. Read. Refers to passages "I am in possession of the vessel—under the instructions of Consul-General." 10

We are told that it is the Govt. of Indonesia's case that the Dock Co. is in possession of the vessel and that the *Dollfus Mieg* case is applicable because the Indonesian Govt. are the Dock Co's bailors. It is one thing to say that in pleadings alternative claims can be set up, but it is quite another thing to produce 2 sets of evidence completely conflicting and then ask Court to believe one or the other in preference to the evidence of Capt. Silos. Affidavit of Kwee Djie Hoo (doc.27). This is the principal affidavit which sets out their case—Refers to para. 23. Kwee seems to prefer Mandagi's evidence. There is no suggestion that the Indonesian Govt. is in possession through the Dock Co. though that is an issue of fact which Court is asked to decide favourably to the Indonesian Govt. Ref. to Ex. "KDH-4." Court's copy bears the word seal. This is a notarial seal. Power of attorney has not the Co's seal, nor is there appended to it any document bearing the Co's seal. This is important when we come to Mr. Revilla's evidence. Pay sheets attached on basis that payment was made by Indonesian Govt. and not by plaintiffs. When you come to decide whether it is more likely that this represents pay as such or whether it was only local advances and the bulk of the pay being met in the Phillipines the exhibits KDH-8 and 9 are instructive because all draw the same amounts i.e. Captain and cabin boy. Vide document 34, affidavit of Capt. Silos of 26th. July, where he attaches pay sheet "JMS-5A" We say a copy of this should be in their possession, but not produced. Heading is same as in "KDH-9." Starr was at that time our agent and at a time when they say they had already purchased the ship. Vide "JMS-6A." We also say the Indonesian Govt. has this in their possession and not produced. 30

Exhibit KDH-4
Ref. No. 22

Exhibit KDH-
8 & 9
Ref. No. 26 & 27

Exhibit JMS-5A
Ref. No. 84

Exhibit KDH-9
Ref. No. 27

Exhibit JMS-6A
Ref. No. 85

To support the suggestion that the Indonesian Govt. have been paying salary they produce certain documents which make no reference to Starr and which could in themselves give a certain colour to such an allegation and have not produced the other pay documents which we say they have. Return to document 27—ref. to "KDH-15." 40

Exhibit KDH-15
Ref. No. 33

Ref. to affidavit of Silos of 10th. July, 1952. (document 26).

Exhibit A1
Ref. No. 13

Ref. to Ex. A1. Passage bears out that trouble only arose when instructions were given.

3 (d). This is strong evidence to show that Capt. Silos never at any time acknowledged the Indonesian Govt. to be the owners of the vessel. He used the Panamanian Log Book.

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Ref. to affidavit of Jose Maria Silos of 26th July 1952 (doc.34). Why in July 1952 should Mr. Starr write to the Capt. of a vessel 4 months after the purported sale. Vide "JMS-1A." Vide telegram of 9th June from Starr "JMS-2A." "JMS-3." This is supposed to be from a man who is supposed to be obeying the Indonesian Govt. Affidavit of Khalil Khodr of 26th July, 1952. (doc.32). Para. 6 objected to.

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10 According to the bye-laws referred to in para. 4, Court will see that Manalac the only gentleman entitled to affix common seal. Para. 7 objected to. We say that both Starr and Major Pamoe Rahardjo knew that his authority was not sufficient these fraudulent deeds were resorted to. Objection to para. 8. Objection to para. 9. Objection to para. 10. Ref. to the words "Commission basis" on p. 4 Para. 11 objection taken by Wright. Para. 12. The charter party referred to as the second is actually the 3rd. We stand by the statement that the 3rd charter party contained no option to purchase. At a later stage we will deal with reasons at greater length. Para. 12. Turn back to "KDH-1" attached to affidavit of Kwee Djie Hoo attached to document 27. This was entered into shortly before the sale.

Exhibit JMS-
1A, 2A & 3
Ref. No. 80, 81
& 82

Exhibit KDH-1
Ref. No. 19

20 Wright objects to paras. 12-29 inclusive.

Para. 14, 15. In para. 30 Wright objects up to the words "frustrated by the delay in repairs". Paras. 31 and 32 objected to by Wright.

Adjd. at 11.32 until 11.55 a.m.

Resumed at 12 noon.

Bernacchi continues reading exhibits attached to affidavit of Khalil Khodr.

30 "KK-A1", "KK-B", "KK-C1", the document of title to this vessel. By this document the vessel is the property of the plaintiffs, it is and has at all material times been in the possession of my clients. It is inconceivable that anyone would purchase a vessel without this document being delivered up to them. Vide Ex. "KK-E1" refers to the 3rd. charter party which we say had no option to purchase and about which there is a conflict of evidence.

Exhibit KK-A1,
B & C1
Ref. No. 50, 51
& 52

Exhibit KK-E1
Ref. No. 56

40 "KK-F1". We say that both these documents show that the Indonesian Govt. was aware that Starr did not even have sufficient authority to bind the Co. by the charter party without final confirmation by the Co. of its terms. In effect what is being said by the Indonesian Govt. is, even supposing Starr did not have sufficient authority to sell us this vessel, nevertheless we rely on the option to purchase contained in the charter party. If this argument is good, it means that Starr could do indirectly what he could not do directly. He purports to enter into a charter party agreement containing an option to purchase and then a few weeks later the Indonesian Govt. purports to exercise the option and purchase the vessel. The evidence disclosed on the Indonesian Govt's own affidavits discloses a divergence of nearly 3 lakhs of HK\$ between the terms of the option and

Exhibit KK-F1.
Ref. No. 57

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Exhibit KDH-1
& 2
Ref. No. 19 & 20

Exhibit KK-1, 2
& 3
Ref. No. 52, 54
& 55

Exhibit KK-G
Ref. No. 58

the terms of the contract of sale. According to the option we should have a return of Insurance premium amounting to approximately U.S.\$20,000.00 No such return is provided for in the sale contract. Under the sale contract we are supposed to pay a sum of U.S.\$35,000.00 towards the cost of dry docking. No such provision is made under the terms of the option. So we are worse off to the tune of \$35,000.00 i.e. in their documents they disclose a discrepancy of \$55,000.00 between the sale price and the option. In view of those discrepancies it is our submission that in law you cannot begin to argue that the sale is an exercise of the option. Vide Article X of the alleged 4th. charter party. Exhibit "KDH-1" also vide "KDH-2" article 3. No mention of the reimbursing the sellers. 10

Return to affidavits attached to Khodr's affidavit (document 32). Vide exhibit "KK-1". This is the first charter party. I need only point out that it contains no option to sell. "KK-2". Original affidavit of Kwee Djie Hoo contains a clause stating he is informed by Major Pamoe Rahardjo that this affidavit contains an option to sell. Vide "KK-3" is only schedule to "KK-2". "KK-G". From this it appears that 2 months after the alleged signing of the charter party no copy of it had been sent to the plaintiffs.

I now ask Court to turn to document 44—affidavit of Khodr of 16th. August 1952. Vide para. 2. Objection taken by Wright. This links up with the KK-G, showing all we could get out of Mr. Starr. The Original produced. In this 20
Baltimè Charter Court will look in vain for any option to purchase. "KDH-1" is the 4th. charter alleged to have been signed by Starr and Pamoe Rahardjo. Two months later having sent no copy to the plaintiffs, Mr. Hemady writes pressing for a copy of this charter party. All that is sent to him is a printed "Baltimè Charter Party" with the typed statement signed by Starr that the ship had been chartered in accordance with this type of charter. Ref. to KK-G. By the terms of this letter it is obvious that far from knowing that the terms of this charter purported to give an option to sell on agreed terms Mr. Hemady was under the impression that quite independent negotiations for sale were going on. Our submission is that all the way through this case is one of the most typical instances 30
of fraud that has been before the courts and yet the Indonesian Govt. refuses to have this tested by their claim to protect Major Pamoe Rahardjo from cross-examination. I now come to the letter "KK-H" of 23/1/51 which is exhibited to show the price we were asking for the vessel at that time. "KK-I". This letter arose from failure to pay over some former charter hire vide para. 16 of affidavit. Letter "KK-J" explains cable "KK-I". In spite of this letter to Major Pamoe Rahardjo neither Mr. Starr nor Mr. Pamoe Rahardjo acquaint Mr. Hemady of a charter party in which they purported to agree to considerable reductions. The plaintiffs are U.S.\$10,000.00 worse off as a result of this alleged sale. With this clear letter "KK-J" Major Pamoe Rahardjo arranges for such money as was paid 40
on this alleged sale U.S.\$79,000.00 to be paid to Starr's personal account in America.

Exhibit KK-H,
I & J
Ref. No. 59, 60
& 61

Exhibit KK-K
Ref. No. 62

Vide Letter "KK-K" to Mr. & Mrs. Hemady from Major Pamoe Rahardjo. It is abundantly clear that this an answer to the letter "KK-J" and I draw Court's particular attention to paragraph 3 beginning "I have received your cable and letter". Having regard to the date of "KK-K" the 4th. charter party is already supposed to have been signed containing an option to purchase at a very much lower price than that contained in the said letter. By replying in this way Pamoe Rahardjo

was either deliberately deceiving Mr. Hemady or else the document KDH-1 i.e. the so-called 4th charter did not exist in its present terms on the 17th. January, 1952 i.e. the date of the letter.

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Exhibit KDH-1
Ref. No. 19
Exhibit KK-L1,
M1, O1 & P
Ref. No. 63, 64,
66 & 67

Exhibit KK-Q,
R, S & T
Ref. No. 69, 70,
71, 72

Exhibit KK-EE
Ref. No. 89

Exhibit KK-V
Ref. No. 74

“KK-LI” C.f para. 10 of affidavit (document No. 32) on 25th. January, 1952, Hemady cancelled Starr’s agency — this being in turn cancelled. Also vide para. 23. “KK-M1” “KK-01” letter to Mrs. Hemady from Starr. “KK-P” a letter from Major Pamoe Rahardjo to Mr. & Mrs. Hemady. This letter is undated, but was enclosed with the “Dear Johnny” letter. Mr. Hemady having dismissed Mr. Starr on 25th January, 1952, we have here Major Pamoe Rahardjo writing on 31st January 1952 saying “I wonder if Mr. Starr has told you that he had already signed this charter party with us giving an option to purchase”. I draw Court’s attention to last two lines “I advise you like a friend etc.” Refer to para. 20 of affidavit — document No. 32 also vide para. 21, 22, and 23. Vide Exs. “KK-Q”, “KK-R” and “KK-S”?

“KK-T” — letter from K. H. Hemady to Pamoe Rahardjo. Even putting the Indonesian Govt’s position at the very best they signed this contract of sale of the vessel in direct defiance of the express notice that the Co. would not sell on the basis of any deductions.

Court here refers to letter Ex. “KK-T”. S/S “Tasikmalaja” and enquiries whether a charter party is acknowledged by plaintiffs as being in force. The plaintiffs knew that the vessel was under a 4th charter party at the same charter rate as before. When this ship came to H.K. we were still under the impression that she was under charter to the Govt. of Indonesia, but having repudiated the charter to the plaintiffs before the writ by virtue of the alleged purchase we say that we . . . the charter. We approved of the 4th charter in the terms of Ex. “KK-EE”, but we never approved of a charter containing an option to sell. This reference is a ratification of the 4th charter which we say had no option to buy.

Adjd. at 2.08 p.m. till 9 a.m. on 3/9/52.

(Sd.) C. W. REECE.

J. McNeill Q.C., and L. Wright instructed by Wilkinson & Grist for intervenors.

Leo D’Almada Q.C., and B. Bernacchi instructed by M. A. da Silva for plaintiffs.

Bernacchi: We did know that this vessel was under charter and the power of attorney given to Mr. Khodr was that the vessel was under charter. Mr. D’Almada will say that the charter is immaterial. We did not agree to sell this vessel nor agreed to the charter party containing an option to purchase. Vide “KK-V” of 7th February, read up to “consider our position”. On 7th February, 1952, the direct and express instructions to Starr and Pamoe that they do not agree to any deductions from the contract price and yet deliberately purported to enter into the sale contract on the 13th Feb. 1952 containing those deductions.

“KK-V”. Court will recall that Indonesian Govt’s affidavits deny that the vessel was brought secretly to H.K. and here is this cable from Starr to Briones. This is the ship that Indonesian Govt. say was not brought secretly to H.K. Vide

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Exhibit KK-
W, X, Y & Z
Ref. No. 75, 76,
77 & 78

“KK-W”. Whatever was the need to keep it strictly confidential if there was an open sale of the vessel. And what is Starr sending cables about our agent if the ship had already been sold to the Indonesian Govt.

Vide “KK-X”. Letter to Hemady from Starr. If the vessel had been sold nearly 1 month before the date of this letter, what was the necessity of sending a report to Hemady on condition of vessel. And why should Buendia be paid his March salary by Hemady.

Vide “KK-Y”. In a later affidavit we say Aguado was hand in glove with Starr. The return of Mr. Buendia is in no way affecting the operation of the ship. KK-Z. April 16th, 1952 from Hemady to Pamoe Rahardjo. Why ever we 10 should write about insuring a vessel which had been sold 2 months earlier is past comprehension. Vide affidavit (document 32) Cl. 12(b) (c).

Affidavit of Briones (document 33) of 27th July 1952. Entire affidavit objected to by Wright. Here is a serious allegation of a conversation between Starr and Pamoe Rahardjo and one cannot but wonder at the Govt. of Indonesia's reluctance to have him cross-examined. Court will recall that in fact a bill of sale was executed in H.K. on a photostatic copy of the genuine article of title. This tallies with the conversation in Briones' affidavit.

Affidavit of Ysmael Yssmat Khodr dated 26th July, 1952 (document 35). This affidavit appears to be completely unanswered. Objection to entire affidavit 20 taken by Wright.

I will now give Court certain figures to show how fantastic this suggested sale is. Figures based on sale contract.

| | | |
|----------------------------|--------------|---|
| Nominal price | \$450,000.00 | |
| Deduct 1 yr. Charter hire. | \$420,000.00 | |
| Balance | \$ 30,000.00 | |
| Add | \$ 40,000.00 | Estimated operating costs January & February, 1952. |
| Total | \$ 70,000.00 | |
| Deduct | \$ 45,000.00 | Repairs executed in Indo. 30 |
| Deduct | \$ 35,000.00 | Agreement to pay for dry docking. |
| Debit | \$ 10,000.00 | |

of this \$420,000.00 charter hire deducted we have never received \$210,000.00. If it was ever paid it was paid to Starr contrary to our express instructions. Vide affidavit of Major Pamoe Rahardjo of the 15th August, 1952 (document No. 42) in which he answers these allegations of fraud. Para. 3. He says the 2nd, 3rd, and 4th charter parties all contained an option to purchase. Para. 4(1). The 4th charter party was executed on 1/12/51. Not a line or word in any of the correspondence to suggest that that charter party contained an option to purchase until after Frank Starr is dismissed on the 25th January. On 31st January, 1952 40 we have Pamoe Rahardjo writing to Hemady “I wonder if Mr. Starr told you the charter party contained an option to purchase”. What strange phraseology, if in fact that option to purchase had been in the charter parties for the last 18 months. Our case is that being caught by this sudden dismissal of Frank Starr it became

necessary to invent a pre-existing option to purchase. The Consul-General says that he is informed that all the charter parties contained an option which was found by Silos in his cabin and foolishly say that we had not got copies of the others they then produce copies of the other charter parties containing these alleged options. Vide para. 1(VI). Pamoe Rahardjo says that the purpose of the cables "KK-V" and "KK-W" were to enable Briones and Starr to obtain from the Dock Co. With a very elastic imagination such an interpretation is possible in the case of "KK-W", but not "KK-V". Taikoo was to repair the ship originally but on failing to reach agreement with Taikoo they gave the work to Whampoa. Para.

10 (4) This para. shows that on their own story they have no shadow of a title whatsoever. He admits that at the time he entered into the sale agreement for this vessel (13/2/52) he knew that Frank Starr had no authority to sell the vessel for the price in that contract. If that is the position, whatever rights the Indonesian Govt. may or may not have against the plaintiffs on the basis of this alleged option contained in the charter party they cannot claim title as owners on the basis of a sale contract signed by an agent whom they know at the time of the contract had no authority. It follows that they cannot claim on the bill of sale pursuant to the sale contract which was signed by the unauthorised agent. Vide "PR-1" attached. Para. 6. Vide "PR-2". I submit that, bearing in mind

20 that this letter is dated 15/4/52, every act and letter of the plaintiffs after this date shows that they never received this letter. For example, after this date they paid the insurance on the vessel. It was nearly a month after this date that the dinner party in Manila took place in which Mr. Hemady was asked by Major Pamoe Rahardjo to reduce the purchase price.

Vide affirmation of Kwee Djie Hoo of 15th August, 1952 (doc. 43) Paras. 4 & 5. Para. 6, 8, 9 and 10. Reference to exhibits — Letters of Aguado. Report from Chief Steward confirms that the vessel did go to Taikoo. Of the payments exhibited the important one is "KDH-D3". This payment was for U.S.\$210,000.00 to the account of Mr. Frank Starr.

30 Mr. Kwee Djie Hoo does not exactly go back on his earlier evidence that the alleged possession is in Mandagi, but he confirms Mr. Grimsdale and it is on Grimsdale's affidavit that it is now alleged as a question of fact that physical possession is now in the Dock Co. as bailees.

Affidavit of Grimsdale of 14th August, 1952 (doc. 41). Mr. Grimsdale nowhere says that his Co. is in possession of the vessel. I ask the Court to note the words at end of para. 2 "the vessel was brought to the Dock Co's premises in pursuance of the contract. We thought that this affidavit was intended to show that the Dock Co. had no rights as they have always been paid up to date. Vide Captain Silos' affidavit of 19th August (document 51). This was filed when it

40 was realized the purpose to which Mr. Grimsdale's affidavit was to be put.

Everything is Frank Starr although the boat is alleged to have been sold and I refer to the cable to Briones "KK-W". I ask Court to note para. 11 I ask the Court to look at the exhibits "JMS-18A". If the Dock Co. had possession the letter would have been written to the Dock Co. and not to the Capt. of the ship. "JMS-19". Vide para. 4 of this letter. Not only does Mr. Grimsdale not say that in his affidavit, but the way he puts it in his letter "JMS-20A", I would ask Court to look at "JMS-21A". The effect of this letter and the following is to show that even if the Dock Co. had some possessory rights over the ship they are not holding it for the

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Exhibit KK-V
& W

Ref. No. 74 & 75

Exhibit PR-1
& 2

Ref. No. 35 & 36

Exhibit KDH-D3
Ref. No. 48

Exhibit KK-W
Ref. No. 75

Exhibit JMS-
18A, 19, 20A
& 21A
Ref. No. 107,
108, 109 & 110

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Indonesian Govt. as against the plaintiffs, but are prepared to hold for whichever party is found to be entitled.

Adj'd. for 15 mins.

Resumed. Bernacchi: Vide affidavit of Anthony Loh trading as A. W. King of 26th July, 1952. (document No. 16 in A.J. No. 6/52) Affidavit of Jose Briones of 16th Aug. 1952. (doc. 45). Objection taken by Wright.

Affidavit of Fermin Alimpia of 16th Aug. 1952. This telegram shows that Aguado was hand in glove with Starr. Aguado left long before the ship was arrested. Objection taken to this affidavit. Affidavit of Capt. Silos of 16th Aug. 1952 (document No. 46). These documents showed their resignations to Juan Ysmael which were refused. Whereas Kwee Djie Hoo's affidavits left us in the air as to why these men still remained on the ship, this affidavit explains the positions. 10

Vide "JMS-10A". This shows that Capt. Silos was completely in the dark. Newspaper cutting gives no indication that the vessel had been sold to the Indonesian Govt. "JMS-11", "JMS-12", "JMS-13", "JMS-14", "JMS-15". The receipt for the radiogram dated 26th May shows the date of Aguado's telegram. "JMS-16". Letter from Aguado to Silos. "JMS-17" letter from Aguado to Silos.

Adj'd. till 9 a.m. on 4/9/52.

(Sd.) C. W. REECE
3/9/52.

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Exhibit JMS-
10A
Ref. No. 97
Exhibit JMS-11
to 17
Ref. No. 98
to 104

No. 46.
Judge's
Second
Summons to
Mr Kwee Djie
Hoo to attend
Court to be
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No. 46

**SECOND JUDGE'S SUMMONS TO MR. KWEE DJIE HOO TO
ATTEND COURT TO BE CROSS-EXAMINED.**

(3rd September, 1952)

To Kwee Djie Hoo, Esq.,
Consul-General for the Republic of Indonesia,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
Hong Kong.

30

You are hereby required by order of The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice, Victoria, Hong Kong, on Thursday the 4th day of September, 1952 at 9 o'clock in the forenoon and so from day to day to be cross-examined as an affirmant herein and then and there to have and produce all relevant documents and records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known to the Court, and allowed by it, the Court may by warrant cause you to be apprehended and brought up for examination.

Dated the 3rd day of September, 1952.

(Sd.) R. WINTER
Registrar.

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No. 47

**SECOND JUDGE'S SUMMONS TO MAJOR PAMOE RAHARDJO
TO ATTEND COURT TO BE CROSS-EXAMINED.**

(3rd September, 1952)

To Major Pamoe Rahardjo,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
Hong Kong.

10 You are hereby required by order of The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice, Victoria, Hong Kong, on Thursday, the 4th day of September 1952 at 9 o'clock in the forenoon and so from day to day to be cross-examined as an affirmant herein and then and there to have and produce all relevant documents and records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known to the Court, and allowed by it, the Court may by warrant cause you to be apprehended and brought up for examination.

Dated the 3rd day of September, 1952.

(Sd.) R. WINTERK
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attend Court to
be cross-
examined.
3rd September
1952.

20

No. 48

**NOTES OF FURTHER PROCEEDINGS TAKEN BY THE
HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE.**

(4th & 5th September, 1952)

D'Almada Q.C. and Bernacchi instructed by Silva for Plaintiffs.
McNeill Q.C. and Wright instructed by W. & G. for Govt. of Indonesia.

D'Almada says summonses were served for Kwee Djie Hoo and Pamoe Rahardjo and they are not present.

Court says it did not expect them to be present and will communicate later.

30 Bernacchi: Affidavit of Khalil Khodr (document 44) Wright objects to the affidavit. "KK-FF", "KK-GG". All this is supposed to be communications with persons whose ownership of the vessel terminated two days earlier, what would we be doing arranging for survey of a vessel no longer ours? Exhibit KK-FF & GG Ref. No. 90 & 91

"KK-HH" is for purpose of showing that plaintiffs were paying for food. Attention to "Djakarta office" clearly this means office opened by Starr and one would not refer to Govt. of Indonesia as "Djakarta office". Letter "KK-JJ". Here again on 7th May we are being asked to pay one of the crews' wages. Exhibit KK-HH & JJ Ref. No. 92 & 93

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Exhibit KK-KK,
LL & MM
Ref. No. 94, 95
& 96

“KK-KK”. This merely shows a report to us at this date on the condition of the vessel. “KK-LL”, “KK-MM” 8th May. Is this the sort of letter that a gentleman would write who had sold our vessel with our knowledge about 3 months earlier.

Vide affidavit of Briones of 19th. August (document No. 52). To refresh Court’s memory — Vide para.13 of document 27, an affidavit of Mr. Kwee Djie Hoo. It is their version that they had repatriated Capt. Aguado and that he was not to return because they were having Capt. Martens come to take charge of the vessel. Our version is that we repatriated Aguado, we paid his passage and intended him to return to the ship, meanwhile appointing Capt. Silos to take his 10 place temporarily.

I now ask Court to see Mr. Griffiths’ (49) affidavit Mr. Revilla’s (48) affidavit of 16th. Aug. A cable like this is inadmissible even on affidavit evidence.

Mr. Revilla states that the power of attorney upon which Starr purported to act is invalid according to the law of the Philippines.

Either you have a power of attorney bearing the seal of the corporation or you have an unsealed power with a seal copy of the minute of the resolution of the Corporation authorising the grant of the power attached there.

Wright objects to the entire affidavit.

If the board of directors agreed to sell a certain vessel at a certain 20 ascertained price to a certain ascertained person the board could give a power of attorney to a certain person to execute the necessary documents to put the sale through, but what they cannot do is to clothe an agent with their own discretionary powers to sell to a certain person at a certain price without reference to the price.

Wright objects to Bernacchi’s paraphrase of Mr. Revilla’s exposition of Philippine Law. The board cannot clothe him with their authority to sell to any one at any price.

That explains why even the charter parties were originally sent to Manila for confirmation. 30

That completes our evidence. It is strong evidence and I say that nothing even approaching a prima facie title has been made out by the Indonesian Govt. in the light of these affidavits. The affidavits clearly show that my clients have been in physical possession of the vessel at the material times. They show a completely new feature for this type of sale that any purported sale was the result of a fraudulent transaction which the prime movers were Messrs. Starr & Pamoe Rahardjo.

Mr. D’Almada asks to postpone his address till after the cross-examination of Messrs. Kwee Djie Hoo and Pamoe Rahardjo.

Adjd. till 9 a.m. on 5/9/52.

(Sd.) C. W. REECE.
4/9/52.

L. D'Almada Q.C. with Bernacchi instructed by M. da Silva for plaintiff.

J. McNeill Q.C. with Wright instructed by Griffiths of W. & G. for
Intervenors.

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Mr. McNeill says he is instructed to say that yesterday a communique was received by Mr. Kwee Djie Hoo from his Govt. advising him that a communique had been received by his Govt. from Her Majesty's Govt. indicating that the diplomatic immunity of Mr. Kwee Djie Hoo was recognised and that a copy of communique had been despatched to the Govt. of H.K. My instructing solicitor has informed me that he has made inquiries of the C.S. who confirmed the receipt
10 of that document.

I am instructed that his Govt. has instructed Mr. Kwee Djie Hoo to waive that immunity of the Court's order to this extent viz. that the Court should vary its original order. The variation should be that Mr. Kwee Djie Hoo should be cross-examined in the precincts of the Consulate.

Ref. to Oppenheim p.755. para.5.

I assume that there is immunity.

I was not in a position before to ask the Court to address the Govt. of H.K. I now ask Court formally to communicate with the Govt. of H.K. to ascertain the position indicated to the H.K. Govt. by Her Majesty through the Foreign Office.
20 There is no kind of dictation to the Court, but merely following out the usual procedure "that the Govt. should not speak with two voices". I ask Court to stay order of Mr. Kwee while Court ascertains what, if any communication, has been received from the Foreign Office, and when Court has ascertained that then will be the proper time to ask the Court to vary the cross-examination as to the mode in which the cross-examination ordered by the Court should be carried out. Cross-examination should be made to this Court and not to full Court by way of appeal.

Vide *Prestney v. Corporation of Colchester* (1883) 24 Ch.D 376 at 384. I shall ask the Court to vary the mode of carrying this order into effect. I cannot
30 assist the Court with regard to what the communique said about Major Pamoe Rahardjo.

Mr. D'Almada: There is no evidence before the Court of the communique referred to by Mr. McNeill and no evidence of what was referred to the F.O. I ask the Court to note that Major Pamoe Rahardjo was to have been cross-examined on Thursday last and on Friday it was on the insistence of Counsel for the Indonesian Govt. that that cross-examination was not begun. We have this extraordinary coincidence that the day after this matter was put over for cross-examination, Major Pamoe Rahardjo was called away by his Govt. for duty, he having been here from at least a day or 2 before the 15th. August when he
40 made an affidavit in these very proceedings and whose services are suddenly required when zero hour approaches. Court will have noticed that there is no

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similar attempt to bargain with the Court in the case of Mr. Pamoe Rahardjo as in the case of Mr. Kwee. There is no offer in his case to waive any immunity upon the terms that the cross-examination should not take place in the full light of a Court hearing, although both gentlemen must have known that the motion for which they made affidavits was one to be dealt with in Court. Court is aware that we have made allegations of forgery and fraud and I submit that it is of paramount interest and of the greatest importance that the cross-examination in these issues should take place before the Court so that the Court should be able to judge of the veracity of the witnesses from their demeanour. It is possible that there may come an offer that the Court should deal with 10 this cross-examination in the Chambers, but to this also I will object. I can see no reason for any variation of the Court's Order and I cannot see the applicability of the words of L.J. Cotton in *Prestney's* case. When he talks of the injury etc. if the order is not varied. Neither the gallant Major nor Mr. Kwee will suffer any inconvenience except of coming here instead of sitting in the Consulate. Neither of these gentlemen will suffer any injury by coming here. If the susceptibilities of a certain party is going to be hurt, that is no consideration for this Court, be he the humblest litigant or a foreign sovereign. So far as I know it is only in a very limited number of cases that Court of its own motion or accedes to a request that a case should be held in camera. This case is not 20 in that class. This is more than a hearing in camera. Mr. McNeill asks that the registrar or any other officer should attend at the Consulate to take these cross-examinations as in a dying deposition. *Prestney's* case is as different from this as chalk from cheese. That case had to do merely with the production of documents. It is no precedent for such an order as Mr. McNeill now seeks. What is the position re the alleged immunity of Mr. Kwee and Major Pamoe Rahardjo? Court has decided that they are not entitled to diplomatic immunity. That was a final decision in so far as this Court was concerned and the Court is now asked to reverse itself, because forsooth of some communique sent by F.O. to Secretariat H.K. And I agree with Mr. McNeill that as in *the Cristina* the . . . should not speak with 30 two voices on this question *de facto* or *de jure* and I deprecate the intervention of the F.O. in a matter like this, *sub-judice*, without the application of the Court on a matter which is for the decision of the Court, as is clear from *Engelke's* case (1928) A.C. at 436. It is not without interest that if such a communique has been received the Attorney-General has not seen fit to come to Court to tell Court of it. What these 2 gentlemen are saying is this:—"The Court has decided that we are to be cross-examined. In pursuance of that decision the Court has ordered our attention for cross-examination. Despite that order we still maintain we are immune, but we will strike a bargain and if you allow us to be cross-examined elsewhere we will submit to be cross-examined. I submit there is not a shadow 40 of a justification for the Court's accepting this bargain.

Mr. McNeill:

Adjd. till 10 a.m. on 9/9/52.

(Sd.) C. W. REECE.

5th September, 1952.

No. 49

**THIRD JUDGE'S SUMMONS TO MR. KWEE DJIE HOO TO
ATTEND COURT TO BE CROSS-EXAMINED.**

(6th September, 1952)

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 49
Judge's
Third
Summons to
Mr Kwee Djie
Hoo to attend
Court to be
cross-
examined.
6th September
1952.

10 To: Kwee Djie Hoo, Esq.,
Consul-General for the Republic
of Indonesia,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
HONG KONG.

You are hereby required by order of The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice, Victoria, Hong Kong, on Monday the 8th day of September, 1952, at 9 o'clock in the forenoon and so from day to day to be cross-examined as an affirmant herein and then and there to have and produce all relevant documents and records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known to the Court, and allowed by it, the Court may by warrant cause you to be apprehended and brought up for examination.

Dated the 6th day of September, 1952.

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(Sd.) R. WINTER
Registrar.

No. 50

**THIRD JUDGE'S SUMMONS TO MAJOR PAMOE RAHARDJO
TO ATTEND COURT TO BE CROSS-EXAMINED.**

(6th September, 1952)

No. 50
Judge's
Third
Summons to
Major Pamoe
Rahardjo
to attend Court
to be cross-
examined.
6th September
1952.

To: Major Pamoe Rahardjo,
c/o The Indonesian Consulate-General,
Whiteaway Building, Des Voeux Road Central,
HONG KONG.

30 You are hereby required by order of The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge, to attend at the Courts of Justice, Victoria, Hong Kong, on Monday the 8th day of September, 1952, at 9 o'clock in the forenoon and so from day to day to be cross-examined as an affirmant herein and then and there to have and produce all relevant documents and records of every kind.

Hereof, if you fail, having no lawful impediment to be then made known to the Court, and allowed by it, the Court may by warrant cause you to be apprehended and brought up for examination.

Dated this 6th day of September, 1952.

40

(Sd.) R. WINTER,
Registrar.

NOTICE TO PRODUCE DOCUMENTS.

(8th September, 1952)

*In the
Supreme
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No. 51
Notice to
produce
Documents.
8th September
1952.

To: The Government of the
Republic of Indonesia, and
Messrs. Wilkinson & Grist,
their Solicitors.

TAKE NOTICE that you are hereby required to produce and show to the Court at the hearing of your Motion dated the 9th day of July 1952 to set aside the Writ of Summons and all subsequent proceedings herein all books, papers, 10 letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly the following :—

1. Statement of Account: Payroll and Account Salary for the month of May 1952 of the Filipino Crew dated 21st June 1952.
2. Statement of Account: Against Advance Salary for the month of May 1952 of the Steward Department dated 10th May, 1952.
3. Statement of Account: Against Advance Salary for the month of May 1952 of the Deck Department dated 10th May 1952.
4. Statement of Account: Against Advance Salary for the month of May 20 1952 of the Engine Department dated 10th May 1952.
5. Statement of Account: Payment Salary and Draw from March 15th, 1952 to May 10th, 1952 of the Filipino and Indonesian Crew of the Steward Department of the s.s. "Tasikmalaja" by Frank C. Starr dated 3rd June, 1952.
6. Statement of Account: Payment Salary and Draw from March 15th, 1952 to May 10th, 1952 of the Filipino and Indonesian Crew of the Engine Department of the s.s. "Tasikmalaja" by Frank C. Starr dated 3rd June, 1952.
7. Statement of Account: Payment Salary and Draw from March 15th, 1952 30 to May 10th, 1952 of the Filipino and Indonesian Crew of the Deck Department of the s.s. "Tasikmalaja" by Frank C. Starr dated 3rd June, 1952.

Dated the 8th day of September, 1952.

(Sd.) MARCUS DA SILVA
Solicitor for the Plaintiffs.

No. 52

NOTES OF PROCEEDINGS IN CHAMBERS

(8th September, 1952)

Reece J.: (In Chambers)
 Griffiths (Indonesian Government)
 Silva (Juan Ysmael & Co.)

Reece J. read out the following memo received by him from the Chief Justice:—

“Reece J.

It is understood that this Government has received a copy of a despatch
 10 from H.M. Government to the British Ambassador in Indonesia. No doubt in the
 normal routine the British Ambassador has communicated the purport of the
 despatch to the Indonesian Government.

This Government has not directly received any instruction or opinion upon
 the status of the Consul General for Indonesia. The Acting Attorney General will
 attend Court tomorrow morning to state the position of this Government.

(Signed) G. L. HOWE,
 Chief Justice.
 8th September, 1952.”

No. 53

20 THE HONOURABLE THE ACTING ATTORNEY-GENERAL'S
 STATEMENT AS READ OUT IN COURT

(9th September, 1952)

The Hong Kong Government has received a copy of a telegram from the
 Foreign Office to Her Majesty's Ambassador in Djakarta instructing Her Majesty's
 Ambassador to explain to the Indonesian Government the attitude of Her
 Majesty's Government to the position taken up by Mr. Kwee and Major Pamoe
 Rahardjo in the proceedings before your Lordship. The Hong Kong Government
 has no reason to believe that Her Majesty's Ambassador has not acted upon his
 instructions. Be that as it may, your Lordship will appreciate that the Hong
 30 Kong Government is not in a position to communicate to the Court the contents
 of a communication not addressed to such Government and which it has not been
 authorised to disclose. I regret therefore that I am unable to elaborate what I
 have said except to state positively that the Hong Kong Government has not
 received a copy of any communique from Her Majesty's Government to the
 Government of Indonesia.

I am able to state that the Hong Kong Government follows Her Majesty's
 Government in the United Kingdom by recognising that Consuls and diplomatic
 couriers cannot be compelled to give evidence about matters within the scope of
 their official duties. The question, my Lord, how far this privilege is pertinent in
 40 the proceedings before your Lordship or what is the effect of its being put forward
 after evidence has been filed or any further question which might arise if the
 privilege is claimed are in my view questions for your Lordship and I do not
 therefore propose to say anything further in that connection. My Lord I have
 copies of the statement I have made which I am prepared to hand to your Lordship
 and to Counsel after which if your Lordship permits, I will withdraw.

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No. 52
 Notes of
 Proceedings
 in Chambers.
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No. 53
 The Honourable
 the Acting
 Attorney-
 General's
 Statement as
 Read Out in
 Court.
 9th September,
 1952.

NOTES OF FURTHER PROCEEDINGS TAKEN BY THE
HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE.

(9th & 15th September, 1952)

No. 54
Notes of
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Mr. Loseby Q.C. instructed by Mr. Way for A. Loh.
Mr. D'Almada Q.C. and Bernacchi instructed by Mr. Silva for Ysmael & Co.
Mr. McNeill Q.C. and Wright by Griffiths for Indonesian Govt.
Mr. Strickland Acting Attorney-General for H.K. Govt.

Mr. Strickland :— I appear on behalf

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I am informed that the statement — read — indicating that Kwee's immunity recognised.

Attorney-General reads statement. And, with leave of Court withdraws.

Adjd. for 10 mins on Mr. McNeill's application to study the Attorney-General's statement.

Court resumed at 10.23 a.m.

Mr. McNeill: The cross-examination of Mr. Kwee Djie Hoo and Pamoe Rahardjo was cross-examination upon affidavits filed and read in support of an application by Govt. of Indonesia to stay all proceedings in Adm. Actions Nos. 6 and 8 and to strike out the writs. They were filed to put on record basis of Indonesian Govt. claim to being impleaded. Claim as to impleading was made by Mr. Kwee as Consul-General carrying out certain diplomatic duties and upon the express instructions of his Govt. Mr. Kwee raised the claim of impleading upon his Govt's instructions in discharge of his official duties. Vide affidavit — doc — 53 Para.3. It is quite clear that the claim for immunity and the swearing of these affidavits were acts done within the scope of Mr. Kwee's official duties. Insofar as he does not speak from personal knowledge he produces files from his Govt. insofar as he speaks from personal knowledge of matters in H.K. e.g. flag raising ceremony, he spoke of matters for which he was also acting in scope of official duties. I submit it is quite obvious from the statement read to Court by Attorney General that Her Majesty's Govt. recognizes that neither Mr. Kwee nor Major Pamoe Rahardjo can be compelled to come before your lordship to come before the Court for cross-examination on the affidavits and in that respect the Govt. of H.K. follows Her Majesty's Govt. that is set out in the statement by the Attorney-General. Major Pamoe Rahardjo's statements go to show that his Govt. is being impleaded. If these actions were purely personal, not involving impleading Govt. of Indonesia, statement of Attorney General would not be applicable. But it is obvious that the statements of these gentlemen were made in course of official duties. I think it is quite clear that this immunity from Her Majesty's Govt. to her ambassador in Indonesia will have been conveyed to the Govt. of Indonesia. The fact remains that Court has been apprised to the attitude adopted by the Crown. When the Attorney General appeared before the Court in the *Engelke* case he made a statement and the C.A. by a majority held that they were not bound by that statement. That point was taken to the highest Court. Vide p.440. judgment of Lord Buckmaster, foot of 441. p.443, 445, 446, 447, 448, and 449. In

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modern times the tendency has been to clothe Consuls-General with immunity from cross-examination and it is not therefore strange to find that the Govt . . . p.447, 450. Court will remember that I said Mr. Kwee had received certain directions. p.457. Quite apart from the statement of Attorney General the Court has the statement of Mr. Kwee that he performs these duties on behalf of his Govt. But the statement of the Attorney General shows that neither Mr. Kwee nor Major Pamoe Rahardjo can be compelled to give evidence.

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Mr. Kwee claims absolute immunity from cross-examination on these affidavits and so does Major Pamoe Rahardjo. His Govt. has instructed him that
10 upon the establishment from being compelled to come into Court and being cross-examined he is to offer himself for cross-examination in his consulate. That would be a waiver of his immunity and if the Court were to make an order for his examination in his consulate his instructions are not to refuse to do so. It is not necessary for Mr. Kwee to be present. If the Court does not condescend to come to the consulate or to send an officer to the consulate for the purpose of cross-examining Mr. Kwee then Mr. Kwee adheres to his claim to immunity. My remarks apply equally to Major Pamoe Rahardjo.

Mr. D'Almada: When my friend says diplomatic immunity is established I join issue. Reads opening sentence of Attorney General's 2nd para. This means
20 that if Mr. Kwee had not filed any affidavit in these proceedings and it were desired to cross-examine him on something as regards his official duties Court would be constrained to say that having regard to the observations of Her Majesty's Govt. Court cannot issue a subpoena to bring Kwee to Court. It does not mean that if Mr. Kwee has given evidence he is immune from cross-examination because that is the very question left open by the Attorney General's Statement. Reads next sentence of Attorney General's statement.

What is affidavit evidence but evidence in chief. The fact that Mr. Kwee has sworn an affidavit is equivalent to his having come into witness box and given evidence and this claim from immunity is no different than if at the close
30 of his exam-in-chief my friend had got up and said no cross-examination in the consulate. It may well be that Mr. Kwee has made his cross-examination in course of official duties, but that does not excuse from cross-examination. As for Major Pamoe Rahardjo I do not think anything has fallen from my learned friend to show that his swearing these affidavits had anything to do with his employment as a courier by Indonesian Govt. There is not a shred of evidence to show that this alleged contract was entered into by him in the course of his duty as a courier. Nothing in his affidavits having anything to do with those duties. A courier is a messenger for his Govt. and I would not dream of cross-examining him as to the contents of a diplomatic bag he was carrying. One of the prime duties of a
40 courier is to keep mum as an oyster. He has come here as a courier and seen fit to file an affidavit and does not come within the scope of the Attorney General's observation. From my friend's statement it is clear that neither of these gentlemen will submit to cross-examination in this Court and the Court's course is clear. In the case of a private individual the Court may hail the person before the Court for a contempt. Mr. Kwee having status of a Consul-General Court should feel that that course should not be adopted in his case. With that view I would agree, but Court could take a step consonant with interests of justice and dignity of

Court. That step is open to Court here, i.e. to strike from the record the affidavits of both Mr. Kwee and Major Pamoe Rahardjo. *Dunne v. English* (1874) L.R. 18 Eq. at 529. I merely mention it to show that Sir Geo. Jessel rejected.

Mr. McNeill interposed to say that this was premature.

D'Almada returns to *Dunne v. English*.

Having a clear statement from my friend that these gentlemen are not going to submit to cross-examination I submit that it is clear that Court should strike out these affidavits. My friend is asking Court to reverse its own decision, which it cannot do.

McNeill: I think D'Almada agrees Court should not take those further 10 steps to bring Mr. Kwee before the Court. Court says it was not going to consulat. To refer to *Dunne v. English* p.529. The learned judge rejected because some other step could have been taken to procure the evidence and was not taken.

We have said Kwee will be available for cross-examination. Application for cross-examination was made by other side. Court has made an . . . Court has come to a conclusion about this witness being cross-examined. I maintain that this witness is available and the fact the Court refuses to make an order for cross-examination is no order for striking out the affidavits made by him. It will be the Court's refusal to make an order which will have been the cause of his not being cross-examined. That being so it does not afford any ground 20 whatever for striking out the affidavits.

Vide the *Parisian*. 13 p.16. What use is to be made of an affidavit on which there is no cross-examination is for Court to decide. Such a decision must be on judicial grounds, not upon a ground that immunity has been claimed and Court's order has been to some extent nullified. One course is to strike out the affidavits. Another course is to retain those affidavits and to give such weight to the various paras. in them as Court might think fit. I am going to show that in Mr. Kwee's affidavits there are a number of undenied facts. You cannot cross-examine on facts not denied. It is not denied that this ship was under charter from 1st January to 30th June 1952. No cross-examination could be made. I 30 shall give various paras. as to why there could be no cross-examination. Point of the *Parisian* is to take the affidavit and give such weight to it as Court thinks fit. I am inviting the Court to leave those affidavits on the file and give such weight to them as Court might think fit. The weight to be given to an undenied statement is full weight.

Ref. to my document No. 27, affidavit of Kwee of 16th July 1952. Vide paras. 1 & 2 to the words "expiring 31st March, 1952," not denied. From "fresh charter parties—30th June 1952" not denied. The facts of the charter not denied. Para. 3—from "the said vessel" to end. Para. 4 not denied. Para. 5 "my Govt." to the words "could be effected" not denied. Para. 6—to "19 Filipinos" not denied. 40 Para. 7 not denied. Para. 10. It is not denied that there was such a document (lines 1-3). "There is also produced" to "authority to sell". Not denied. The words "on the 26th Feb." — "of my Govt" not denied. Para. 11 — "The Indonesian flag" to "April 1952" not denied. "At a ceremony" to "first mate" not

denied. "There is now produced" to end of para. Para. 12 to "hold receipts therefor". Para. 19 not disputed. This goes with para. 11. The fact of registration is not denied, but the effect is.

Para. 23. "That the vessel.....has been and is intended to be used for state purposes" not denied and also last sentence of same para. Vide 2nd affidavit of Mr. Kwee (Doc. 43) of 15th August, 1952. Para. 4 to words "15th day of July, 1952" Para. 7 not disputed. Para. 10 not disputed.

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10 These paras. are admitted, they are not in dispute at all. These admitted paras. contain exceedingly important statements and they could not be cross-examined. They show that this ship was under charter to Indonesian Govt. from 1st Jan. 1952 to 30th June, 1952. This is a very important fact which is set out and which could not be impugned by cross-examination. In other parts in dispute, not read, there was an option to buy and that was exercised. Mr D'Almada has hinted that there would be some argument to show charter had come to an end. I go no further than to say that these are admitted facts which should not be rejected.

Second salient fact. The s.s. "Tasikmalaja" was brought or directed to H.K. by my clients.

20 Thirdly. Contract for repairs was made between my clients and H.K. & Whampoa Dock Co. Ltd. and that my clients undertook the responsibility for the costs of those repairs.

Fourthly, this ship was destined for public uses. That during those 4 charters she had never been used for trade, but always for public purposes, troop carrying.

30 Court will remember that I have submitted that we could not go into the question of the validity the interest claimed, whatever that was. That being so we should have objected to every question put to Mr. Kwee which aimed at impugning the validity of our claim. For these reasons I submit that these two affidavits should not be struck out. Court should say to itself that proper course is to receive the affidavits, giving to the statements in them such weight as Court thinks fit. Even were the affidavit struck out I would ask Court to state that they constitute a statement by the representative in H.K. of the Indonesian Govt. of the Govt's claim. I submit that that is sufficient. Lastly, it has been brought to Court's attention that there is a possibility that a foreign Govt. is being impleaded by these proceedings and that is a matter which the Court cannot ignore. For that reason alone that is enough ground upon which Court should not strike these affidavits from file, but should retain them and give such weight to them as Court thinks fit.

40 D'Almada: The fact must not be lost sight of that Mr. Kwee is in contempt and when my friend states that Mr. Kwee is available for cross-examination and it will be the Court's fault if he is not cross-examined because Court will not go to consulate. Whereas yesterday there was an attempt to strike a bargain with Court to-day position is even worse because my friend is attempting to lay upon Court's shoulders blame for fact that Mr. Kwee is not being cross-examined. It

looks like a vain attempt to intimidate Court into making an order for cross-examination in consulate. As to the *Parisian*: All that Mr. Justice Butt says is in effect what Sir Geo. Jessel says in *Dunne v. English*. Sir G. Jessel says the affidavits should be rejected and Butt says the registrar is right in refusing to give affidavit any weight until deponent is cross-examined. The case is merely authority for saying that if you don't strike out the affidavits, give them no weight. With ref. to these numerous undenied statements in his affidavits it is a novel proposition to me that a deponent cannot be cross-examined on statements not denied in opponents' affidavits. The circumstances attendant on these allegedly undenied statements may be very material and the proper view is surely that 10
whereas you might not be able to bring evidence to contradict a statement you are none the less entitled to cross-examine on it. As to the submission that the Court cannot go into the validity of the claim I submit it has no bearing on the point because Court has decided to allow cross-examination. My friend is constrained to say that Court may regard this as a statement not on oath by representative of another Govt. thereby raising on a pinnacle this argument, which I say is completely fallacious in any event, that a mere assertion by a foreign sovereign is enough. Finally he says that there is a possibility that a foreign sovereign is being impleaded and that is good reason for giving such weight to Mr. Kwee's affidavit as Court thinks fit. The suggestion seems to be that there is a friendly 20
foreign state involved and Court can stretch a point. That is the very issue to be tested and there can be no justification in treating my friend's statement in the way he suggests. There is nothing to prevent cross-examination on any para. in this affidavit, whether or not it has been denied by other side. Court will find no precedent for accepting parts while refusing to accept parts of an affidavit because the deponent refuses to be cross-examined. If *Dunne v. English* is an authority for what I have suggested this case before the Court is a *fortiori* one.

Bernacchi: Court is asked to give full weight despite the circumstances to paras. in Mr. Kwee's affidavits which are not denied. I am going through the paras. referred to. 30

Para. 2. My friend says that the chartering of the vessel is not disputed, blissfully overlooking that the charter parties as such are a matter of direct dispute, ignoring that the authority of Starr to sign the charter party which he said to have signed is directly in dispute. How can it be said that para. 2 should be allowed to stand simply because it omits to make reference to the facts about the chartering that are directly in dispute. Para. 3 is nothing but an interpretation, is so far as it is not denied, of the charter party which we have exhibited. Look at words "the vessel was entirely at the disposal of". If that intended to go beyond the terms of the charter party that we have exhibited then we would certainly like to ask Mr. Kwee what he meant by this expression. 40

Para. 5. "my Govt. etc. affected". Our evidence is that the orders given to the Captain to proceed to H.K. were given by Mr Starr, our agent. The same applies to para. 6. We say that the opening sentence of para. 6 is in dispute. Our evidence is of a surreptitious arrangement between Starr and Pamoe Rahardjo secretly to convey the vessel to H.K. without knowledge. If any legal point turns on who gave the orders our evidence is Starr who on all the evidence is our agent. Para. 7. Our evidence is that Major Pamoe Rahardjo came to H.K. for the

furtherance of the fraud he was perpetrating. Passages in para. 10 to which my friend says should be given full weight consist of a number of odd passages which deal with the title of Indonesian Govt. i.e., alleged power to Starr, letter of 6/3/51 and payment of US\$70,000.00. It is this very title which we say is a fraud from beginning to end. How can you put these passages *in vacuo* and say they are not denied when our case is that it is a complete fraud between Pamoe Rahardjo and Starr from beginning to end. Same applies to passages about the flag raising ceremony. It was this ceremony which was said was enough to apprise Capt. Silos of change of ownership. That is an allegation. Vide Silos' and Briones' affidavits on this point. The circumstances of the flag raising ceremony are directly in dispute. Reference to release by a consulate official. Our answer is an answer to the whole thing as such. This alleged title, flag raising ceremony was part and parcel of a clearly organised fraudulent transaction. Although the affirmant cannot be cross-examined about the alleged fraud the acts done for purpose of perpetrating the fraud should be left on the file as evidence of bona fide acts. Paras 10 and 11 would have been subject of very considerable cross-examination had the Court's order been obeyed.

Para. 12. Court will recall that there is an undertaking given by us to pay the balance of the money due for the repairs and a request to them to carry out the rest of the work.

Para. 23. You have what the charter party says. We don't intend to make admissions about the intentions of the Indonesian Govt. if they get control of this vessel. Ref. to document 43.

Para. 4. We are interested to see that Mr. Kwee says he has had checked with an original received after his affirmation in July. Court will recall that Mr. Wright said he wanted a certain time in which to file affirmation because documents were coming from Djakarta. Document not filed till 16th July. We would have cross-examined Mr. Kwee why all the documents weren't sent together and why a number what we frankly say are forged documents were suddenly produced by him on the 16th Aug. Para. 7. Nothing in it.

Para. 10. Here again we have these payments made to Starr and intended for no other purpose but to support the title they claimed through Starr. The whole of that title claimed through Starr is said by us to be a fraudulent transaction between Starr and Pamoe Rahardjo. It is firstly, quite impossible to separate these passages and put them *in vacuo*.

Secondly, there is no authority for doing so.

For these reasons we ask Court to strike out all these affirmations made by Mr. Kwee and Major Pamoe Rahardjo.

Mr. McNeill: Mr. Bernacchi has continuously confused facts and the inferences to be drawn from facts. I am only dealing with facts. Secondly, he spoke as if it were a question of striking out certain paras. and leaving certain paras. in. That is not the position I put to the Court. I ask the Court to leave these affidavits which have been read on the file and when the time comes to give such weight to various paras. as the Court thinks fit. Passages which I have read is not putting passages *in vacuo*. I say there is sufficient admitted fact in these affidavits to make it proper for Court to retain them.

Re. para. 3 of 1st affidavit of Mr. Kwee. If it is interpretation it can be argued later. Bernacchi has again admitted that there are charter parties.

Mr. D'Almada's reference to my statement and said that I said that a mere assertion of a claim by a foreign sovereign would be enough. I say I would argue that the mere assertion of the basis of a claim is enough—e.g.—a mere statement here is my document, be it charter or requisition.

Adj. sine die. Judgment, parties to be notified.

(Sd.) C. W. REECE,
9/9/52.

15/9/52 @ 10 a.m. 10

D'Almada Q.C. with Bernacchi instructed by Silva for Juan Ysmael & Co. Inc.

C. Loseby Q.C. instructed by Way for Anthony Loh.

McNeill with Wright instructed by Griffiths of Wilkinson & Grist for Govt. of the Republic of Indonesia.

Judgment read—McNeill objects to words "I dismiss such an argument as being little short of ridiculous and verging on the impertinent" and asks Court to delete same from judgment as being objectionable. Court refuses to delete.

McNeill withdraws and Wright associates himself with his leader and withdraws also. 20

At request of D'Almada Court adjourned to enable him to study position and discuss with McNeill.

Adjd. to 11.45 a.m.

(Sd.) C. W. REECE,
15/9/52.

D'Almada requested to be seen in chambers and consequent upon an interview Court decided to delete the words "little short of ridiculous and verging on the ridiculous" and substitute therefore "without any merit" occurring in the penultimate para. of the judgment.

(Sd.) C. W. REECE, 30
15/9/52.

Court resumed at 11.53 a.m.

Loseby Q.C.: Ysmael & Co. have said "We admit the amount of repairs paid by you on that vessel also. If and when we are declared owners of the vessel concerned by the lower Court we shall pay in full the amount of the repairs. The Co. also agreed that we would confer with them on all other matters.

D'Almada: Re Action No. 8 at p.276 of Admiralty Rules 78.80. Notice of trial having been filed, next step will be for Registrar under r.82 to notify parties of date of hearing of action. I am asking for early date. Would Court make time to-morrow at 2.30 p.m. Notice of setting down to be filed.

Action No. 6 adjd. sine die with liberty to apply.

Action No. 8. adjd. till 16/9/52 at 2.30 p.m.

(Sd.) C. W. REECE,
15/9/52.

Adm 8/52.

10 D'Almada Q.C. and Bernacchi (Silva) for plaintiffs.

D'Almada. Application made to full Court today and a stay has been order on terms. Instructed to ask Court to adjourn sine die with liberty to apply.

Adjd. sine die, with liberty to apply during vacation.

(Sd.) C. W. REECE,
16/9/52.

No. 55

**DECISION OF MR. JUSTICE REECE CONSEQUENT ON REFUSAL
OF MR. KWEE DJIE HOO AND MAJOR PAMOE RAHARDJO TO
SUBMIT TO THE ORDER OF THE COURT TO PRESENT
THEMSELVES FOR CROSS-EXAMINATION**

20

(15th September, 1952)

It will be recalled that on the 25th day of August, 1952, I read my decision in this Court allowing the application to cross-examine Mr. Kwee Djie Hoo, Consul-General for Indonesia and Major Pamoe Rahardjo.

Following upon this decision Mr. McNeill, Counsel for the Government of Indonesia, claimed diplomatic immunity on behalf of both Mr. Kwee Djie Hoo and Major Pamoe Rahardjo and on the 27th day of August I read my decision that neither Mr. Kwee Djie Hoo nor Major Pamoe Rahardjo was entitled to the diplomatic immunity claimed on their behalf, and ordered them to attend for cross-examination.

30

An appeal was lodged to the Full Court against my decision to grant the application to cross-examine Mr. Kwee and Major Pamoe Rahardjo and my refusal to grant diplomatic immunity to these gentlemen. I was informed on the morning of the 1st September when the hearing was resumed that the Full Court had, out of courtesy to the Consul-General of Indonesia, granted a stay until Thursday the 4th September, the Full Court having been informed by Mr. McNeill, Counsel for the Government of Indonesia, that representations had been made to H.M.'s Foreign Office by the Government of Indonesia in the matter.

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On the 4th September I granted a further stay of the order for cross-examination till Monday the 8th September.

When the hearing was resumed on Monday the 8th September Mr. McNeill informed the Court that he was instructed to say that yesterday, 7th September, a communique was received by Mr. Kwee Djie Hoo from his Government advising him that a communique had been received by his Government from Her Majesty's Government indicating that the diplomatic immunity of Mr Kwee Djie Hoo was recognised and that a copy of the communique had been despatched to the Government of Hong Kong. Mr. McNeill further stated that his instructing solicitor had informed him that he (the instructing solicitor) had made enquiries 10 of the Colonial Secretary who confirmed the receipt of the communique. Continuing Mr. McNeill said that he had been instructed that the Government of Indonesia had instructed Mr. Kwee to waive that immunity of the Court's order to the extent that the Court should vary its original order and direct that Mr. Kwee Djie Hoo be cross-examined in the precincts of the Consulate. Mr. McNeill then asked the Court to address the Hong Kong Government to ascertain the position indicated to the Hong Kong Government by Her Majesty through the Foreign Office. Mr. McNeill stated that he could not assist the Court with regard to what the communique said about Major Pamoe Rahardjo.

Mr. D'Almada, in replying to the observations made by Mr. McNeill, 20 reminded the Court that the Court had decided that neither Mr. Kwee nor Major Pamoe Rahardjo was entitled to diplomatic immunity, that that was a final decision and that the Court was not being asked to reverse itself. Mr. D'Almada remarked that he deprecated the intervention of the Foreign Office in a matter which was still *sub judice* without the application of the Court.

After the application by Mr. McNeill to the Full Court on behalf of the Government of Indonesia to stay the order for cross-examination I became aware, not without concern, of the representations which had been made to Her Majesty's Foreign Office. I say not without concern because it seemed to me that any such representations could only have been made for one purpose and one purpose only, 30 and that purpose was to undermine the authority not only of the Supreme Court, but also of the Full Court of Hong Kong. For when the application was made, irrespective of whether it was made on the advice of Counsel on behalf of the Government of Indonesia or not, and irrespective of whether it was made without the knowledge of such Counsel, the fact remains that there was a valid and subsisting order of the Supreme Court requiring that the Consul-General Mr. Kwee and the Courier Major Pamoe Rahardjo present themselves for cross-examination on the affidavits they had filed in the actions before the Court and that there was then pending before the Full Court of Hong Kong an appeal 40 against this order. There was also subsisting a valid order of the Supreme Court that neither Mr. Kwee nor Major Pamoe Rahardjo was entitled to diplomatic immunity.

The reason why Mr. McNeill informed the Court of the receipt of the communique was clear. If, indeed, it was a fact that Mr. Kwee's diplomatic immunity had been recognised, then Mr. Kwee was secure from the power of the law in Hong Kong and he could not be compelled to submit to the jurisdiction of the Court for cross-examination. And thus, by pressure brought to bear

through the Executive of Her Majesty's Government as a result of representations made by a Sovereign power who was seeking to have Her Sovereignty upheld in the Supreme Court of Hong Kong, the authority of both the Supreme Court and the Full Court, before which the appeals were pending, would have been swept aside. It is to be hoped that no member of the legal profession would condone any such proceeding.

In these circumstances, I requested His Lordship the Chief Justice to address His Excellency the Governor to ascertain the true facts. In due course, I received a reply to the effect that the Hong Kong Government had not directly
 10 received any instruction or opinion upon the status of the Consul-General for Indonesia and that the Honourable the Acting Attorney-General would attend Court next day to state the position of this Government.

On Tuesday the 9th September, the Honourable Acting Attorney-General attended Court and read a Statement which I deem it advisable to reproduce here. The statement is as follows:—

“The Hong Kong Government has received a copy of a telegram from the Foreign Office to Her Majesty's ambassador in Djakarta instructing Her Majesty's Ambassador to explain to the Indonesian Government the attitude of Her Majesty's Government to the position taken up by Mr. Kwee and
 20 Major Pamoe Rahardjo in the proceedings before your Lordship. The Hong Kong Government has no reason to believe that Her Majesty's Ambassador has not acted upon his instructions. Be that as it may, Your Lordship will appreciate that the Hong Kong Government is not in a position to communicate to the Court the contents of a communication not addressed to such Government and which it has not been authorised to disclose. I regret therefore that I am unable to elaborate what I have said except to state positively that the Hong Kong Government has not received a copy of any communique from Her Majesty's Government to the Government of Indonesia.

I am able to state that the Hong Kong Government follows Her Majesty's Government in the United Kingdom by recognising that Consuls and diplomatic couriers cannot be compelled to give evidence about matters within the scope of their official duties. The question, my Lord, how far this privilege is pertinent in the proceedings before your Lordship or what is the effect of its being put forward after evidence has been filed or any further question which might arise if the privilege is claimed are in my view questions for your Lordship and I do not therefore propose to say anything further in that connection. My Lord I have copies of the statement I have made which I am prepared to hand to your Lordship
 30 and to Counsel after which if your Lordship permits, I will withdraw”.

From this statement it becomes very clear that Her Majesty's Government had not recognized Mr. Kwee Djie Hoo's diplomatic immunity, as was stated by Mr. McNeill. Although the statement made it clear that Her Majesty's Government recognizes that consuls and diplomatic couriers cannot be compelled to give evidence about matters within the scope of their official duties, it seems to me that the statement of the learned Attorney-General added nothing about the status

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of consuls and couriers beyond what I have already stated in my decision on the claim to diplomatic immunity made on behalf of Mr. Kwee and Major Pamoe Rahardjo.

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After the statement by the learned Attorney-General, Mr. McNeill informed the Court that Mr. Kwee claimed absolute immunity from cross-examination on the affidavits filed by him, as also did Major Pamoe Rahardjo. He went on to say that the Indonesian Government had instructed Mr Kwee that, upon it being established that he was not compelled to come into Court and be cross-examined, he was to offer himself for cross-examination in the Consulate. In other words, the Government of Indonesia is prepared to waive what it calls Mr. Kwee's 10 immunity if the Court made an order for his cross-examination in the precincts of his Consulate, but if the Court did not condescend to come to the Consulate or send an officer of the Court to the Consulate for the purpose of cross-examining Mr. Kwee then adheres to his claim to immunity. Mr. McNeill said his remarks applied equally to Major Pamoe Rahardjo.

The effect of Mr. McNeill's remarks seems to me to be this. If the Court recognises that Mr. Kwee and Major Pamoe Rahardjo have immunity to the extent that they cannot be compelled to come to Court to be cross-examined on the affidavits they have filed in the actions before the Court, then the Indonesian 20 Government has instructed them to waive that immunity on condition that the Court sends an officer of the Court to cross-examine them in the Indonesian Consulate. I must firstly remark that it is incumbent on me to say that I do not recognise any such immunity, for I have so held in a decision already given in this action, which decision has not been set aside, that neither Mr. Kwee nor Major Pamoe Rahardjo is entitled to the immunity claimed. I have no intention of now going back upon that decision. Secondly, I will again repeat that my order for cross-examination of both these gentlemen, though the subject of an appeal before the Full Court, still stands. But, so far as Mr. Kwee is concerned, it is not my intention in the circumstances to compel him to attend before the 30 Court, although I deem him in contempt for refusing to obey the order of the Court. With respect to the directions, which Mr. McNeill states Mr Kwee has received from the Government of Indonesia, to waive his immunity partially and submit to cross-examination if the Court varies its original order and directs an officer to conduct the examination in the Indonesian Consulate, I will repeat what I have already said, viz., that this Court has no intention of bowing to the dictates of the Indonesian Government. If the Indonesian Government is directing Mr. Kwee to waive the alleged immunity which it claims he has, then Mr. Kwee must either waive that immunity and submit to the jurisdiction of this Court entirely or not at all. For, I have never before heard of such a thing as a partial 40 waiver of one's legal rights. It is indeed a novel proposition of law. But Mr. McNeill has informed the Court that Mr. Kwee will not waive that alleged immunity unless the Court directs the cross-examination in the Consulate. It is only too clear that Mr Kwee wants to make the best of two worlds. He cannot, for this Court has no intention of going to the Indonesian Consulate or of sending any of its officers to the Consulate to cross-examine Mr. Kwee. I have said that in the circumstances I have no intention of compelling Mr. Kwee to come to Court, and thus the position is that Mr. Kwee refuses to be cross-examined and his Government must abide by the consequences of such refusal.

As for Major Pamoe Rahardjo, I have been informed that he left the country on the morning of Saturday 6th September, being recalled by his Government. I do not propose to make any observations at this stage about this gentleman, except to say that if he remained in Hong Kong and continued to disobey the order of the Court to attend, he would not have received the same courteous treatment now being extended to Mr. Kwee as Consul-General, and that a warrant would have been issued to compel his attendance in obedience to the Court's order. He has, however, been removed from all possibility of being cross-examined.

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10 The result, therefore, is that neither Mr. Kwee nor Major Pamoe Rahardjo is available for cross-examination as ordered by this Court. What then is the effect of their failure to submit to cross-examination on the claim of the Indonesian Government for the release of the vessel, the Tasikmalaja?

On the 19th July, 1952, Messrs. Wilkinson & Grist, Solicitors for the Government of the Republic of Indonesia filed a notice of motion that the Court would be moved on the 10th day of July by Counsel on behalf of the Government of the Republic of Indonesia for an order that the writ of summons and all subsequent proceedings therein be set aside with costs on the following grounds:—

- 20 1. That this Action impleads a Foreign Sovereign State namely the Government of the Republic of Indonesia. The said Government is unwilling to submit to the jurisdiction of this Honourable Court.
2. That the said steamship is the property of the Government of the Republic of Indonesia.
3. Further or alternatively that the said Steamship is and at all material times was in the possession and effective control of the said Government by its duly authorised agents.
4. That the said Government is and was at all material times entitled to possession of the said Steamship.
- 30 5. That the claim in this case is against a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the same.
6. That a claim to the said Steamship is being made by a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the validity of the said claim.

In presenting the motion to the Court on behalf of the Government of the Republic of Indonesia, Mr. McNeill said that the issue on the motion was whether his clients had been impleaded by the proceedings in the two actions before the Court. At a late date Mr. McNeill informed the Court that he was not raising the issue of title and that any matters of title were the very matters which the
40 motion sought to exclude. The Government of the Republic of Indonesia, he said, had entered a conditional appearance because they did not wish to submit to the jurisdiction of the Court. In outlining his argument to the Court Mr. McNeill

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submitted that it was enough if the Government of the Republic of Indonesia showed they had an interest in the vessel at the material time. And he continued:—

“An assertion of a claim by a foreign Sovereign is enough where the Sovereign has brought chattels into the country. If that is held to be insufficient, at most we have to show the basis of our claim. Whether the basis of that claim is good or bad is irrelevant to the issue before the Court”.

Although he said it was not necessary, Mr. McNeill stated that the Indonesian Government based its claim, inter alia, on ownership of the vessel. 10

I have referred to these submissions made by Mr. McNeill merely to illustrate that while he states that the Court cannot investigate matters of title yet he advances certain grounds upon which he claims that the Government of Indonesia relies. And the evidence in support of these grounds is contained in the affidavits of Mr. Kwee and Major Pamoe Rahardjo. In sharp conflict with the allegations contained in the affidavits of these gentlemen are the allegations contained in the affidavits filed on behalf of the Plaintiffs. Furthermore, there are contained in the affidavits filed on behalf of the Plaintiffs allegations of fraud which, in my opinion, go to the very root of the basis of the claim on which the Government of the Republic of Indonesia seeks to obtain the 20 release of the vessel. And it is worthy of note that Mr. McNeill said that he could not leave these allegations of fraud unanswered on the file. Thus, with respect to the allegations of fraud alone, it is obvious that there is conflict between the deponents of the several parties. Nevertheless, the Government of the Republic of Indonesia is, against its own interest, unwilling to assist the Court in its search for the truth amongst these conflicting statements by directing its Consul-General and Courier to submit to cross-examination on the affirmations they have sworn to and filed in support of its claim to the release of this vessel.

It seems to me quite unnecessary at this stage to go fully or at any length into the complex and, in my opinion, still unsettled law relating to sovereign 30 immunity and I propose briefly to refer to a few authorities which appear to me to support the course of action which I have decided to take. In mentioning the *Parlement Belge* (1880) 5 p.197, where the principle of sovereign immunity is elaborately set out in a very lengthy judgment, I do so only for the purpose of showing that the ship was admitted to be the property of a foreign sovereign and that there was no conflict of fact. In *the Cristina* (1938) A.C. 485, at p.505 Lord Wright observed:—

“The crucial fact in this connection is simply that *de facto* possession was enjoyed by the Spanish Government. The position would obviously have been quite different if the respondent were seeking to obtain possession by 40 the process of this Court instead of resisting an attempt by the process of the Court to oust it from actual possession.

In the present case, the fact of possession was proved. It is unnecessary here to consider whether the court would act conclusively on a bare assertion by the Government that the vessel is in its possession, I should hesitate as at present advised so to hold, but the respondent here has established the necessary facts by evidence.”

His Lordship emphasized that the Government had possession at the time when the claim to immunity was made and that the necessary facts had been established by evidence.

In the *Dollfus Mieg* case, (1952) 1 A.E.R. 572, the principle enunciated in *The Cristina* was approved and at p.588 Lord Radcliffe said:—

10 “ But the principle recognised in the *Parlement Belge* has been carried much further since then. It has been applied even when the Sovereign had not claimed, let alone proved, that he was the owner of the property which was the subject of the action. It has been regarded as sufficient to stay the proceedings that he had *de facto* possession of the property (“*The Gagara, The Jupiter, the Cristina* cases), or such rights of direction and control, without possession, as arise from requisitioning (*The Broadmayne*,) and that the nature of the proceedings is such that, if successful, they would result in an order of the Court affecting that possession or those other rights”.

From the passages quoted above from *the Cristina* and the *Dollfus Mieg* cases, I am of the opinion that the State of the law on the question of the impleading of Sovereign States requires the foreign state claiming immunity from the jurisdiction of the Court to satisfy the court that it has at least an interest
20 in the property whose release is sought and this can only be done by evidence which has been found to be satisfactory and trustworthy.

In the case before this Court the Government of the Republic of Indonesia has in the notice of motion to which I have already referred asserted its claim to Sovereign immunity from the jurisdiction of the Court and to what is in effect the release of the ship. It has sought to establish its claim by affidavits filed by Mr. Kwee, its Consul-General, and Major Pamoe Rahardjo. I have said that these affidavits contain allegations which are disputed and alleged to be fraudulent. I am of the opinion that justice cannot be done in this matter unless the veracity
30 of Mr. Kwee and Mr. Pamoe Rahardjo be tested by cross-examination. I must satisfy myself that the claims of the Government of Indonesia are established. For this purpose I ordered the cross-examination of Mr. Kwee and Major Pamoe Rahardjo. They have refused to submit. I am satisfied that, when Major Pamoe Rahardjo, who had been recalled by his Government at a late hour, swore to the affidavits filed by him, he was acting as an agent for the Government of the Republic of Indonesia and was not discharging his official functions of a courier and consequently he was not entitled to a vestige of protection. It is against him and the man Starr that serious allegations of fraud have been made. His Government has seen fit to recall Major Pamoe Rahardjo and so has made it impossible for him to be cross-examined, and his veracity tested.

40 Now, it is conceded that the Court has the power, where a deponent does not appear for cross-examination when an order requiring him to appear has been made, to refuse to act on an affidavit and to strike out the affidavit. In *Shea v. Green* 2 Times Reports 533, Mr. Justice Field refused to act on an affidavit on the ground that it had been made by a person who, having absconded, could not be cross-examined. On appeal, the Court dismissed the appeal with costs. It seems to me that in the case of *Shea v. Green* there is a striking parallel to the case of Major Pamoe Rahardjo. In the *Parisian*, (1887), 13 p., Butt J. said that

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Hoo and Major
Pamoe
Rahardjo to
submit to the
order of the
Court to
present them-
selves for
cross-
examination.
15th September
1952.
continued.

the Registrar was perfectly within his right if he refused to give weight to statements in an affidavit unless and until the deponent has been cross-examined on his affidavit. In the case of *Dunne v. English* (1874) L.R. 18 Eq. 524 at 529, where the plaintiff, in support of his case, had filed an affidavit by a gentleman occupying an official position in the United States and defendant gave notice to cross-examine this witness, who had come for that purpose to the country, but was obliged to return before the cause came on to be heard, Sir G. Jessel, M.R. said:—

“The evidence must be rejected. The witness ought to have been here for cross-examination. It is not enough that he was here at one time; if he could not remain, the plaintiff ought to have taken the evidence by 10 commission and postponed the hearing.”

The position of Major Pamoe Rahardjo seems to me to be precisely the same as that of the witness in *Dunne v. English*. Major Pamoe Rahardjo had been in Hong Kong from at least the 15th August, 1952, when he swore to an affirmation before the Registrar of this Court and he left the Colony on the 6th September, said to have been recalled by his Government, presumably after the Consul-General for Indonesia had received the communique referred to above.

I am not at all impressed by the argument of Mr. McNeill that it is the Court's refusal to make an order for the cross-examination of Mr. Kwee in the consulate premises which is the cause of Mr. Kwee's not being cross-examined 20 and that in such circumstances there is no ground whatever for striking out the affidavits. I dismiss such an argument as being without any merit.

In the circumstances and having due regard to the sharp conflict of facts disclosed in the affidavits of Mr. Kwee and Major Pamoe Rahardjo filed on behalf of the Government of the Republic of Indonesia and those filed on behalf of the plaintiffs in the actions, I refuse to give any weight to the affidavits of Mr Kwee and Major Pamoe Rahardjo and reject them and order them to be removed from the files. That being so, there is no evidence before this Court to support the claims made in the Notice of Motion filed on behalf of the Government of Indonesia and I therefore dismiss the Motion with costs. 30

(Sd.) C. W. REECE,
Puisne Judge.
15/9/1952.

No. 56
Notice for
Hearing.
15th September
1952.

No. 56

NOTICE FOR HEARING

(15th September, 1952)

Take notice that I set down this action for hearing.
Dated the 15th day of September, 1952.

(Sd.) MARCUS DA SILVA,
Solicitor for the Plaintiffs. 40

To: The Registrar,
Supreme Court,
HONG KONG.

No. 57

NOTICE OF TRIAL

(15th September, 1952)

TAKE NOTICE that the case abovementioned will be tried before the Honourable Mr. Justice C. W. Reece, P.J., on Tuesday the 16th day of September, 1952, at 2.30 o'clock in the afternoon.

Dated this 15th day of September, 1952.

(L.S.)

(Sd.) W. C. LOW,
p. Registrar.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 57
Notice of Trial.
15th September
1952.

10

No. 58

NOTES OF FURTHER PROCEEDINGS TAKEN BY THE HONOURABLE
THE PUISNE JUDGE MR. JUSTICE COURTENAY WALTON REECE

(16th September, 1952)

D'Almada Q.C. and Bernacchi (Silva) for Plaintiffs.

D'Almada. Application made to Full Court today and a stay has been ordered on terms. Instructed to ask Court to adjourn sine die with liberty to apply.

Adj. sine die, with liberty to apply during vacation.

(Sd.) C. W. REECE,
16/9/52.

No. 58
Notes of
Further
Proceedings.

16/9/52

20

No. 59

LETTER—M. A. DA SILVA TO
WILKINSON & GRIST

18th September, 1952.

Messrs. Wilkinson & Grist,
PRESENT.

Dear Sirs,

Re: *A. J. Action Nos. 6 & 8 of 1952.*

30 I am agreeable to adjourning the taxation to the 25th instant at 9.30 a.m. (both Messrs. Stewart & Co. and the Registrar have confirmed that this is suitable) on the understanding arrived at between your Mr. P. J. Griffiths and myself that that the agreed amount to be paid to me under Order No. 1 of the Full Court is the sum of \$28,500.00.

Yours faithfully,
(Sd.) M. A. DA SILVA,

c.c. The Registrar, Supreme Court.
c.c. Messrs. Stewart & Co.

No. 59
Letter—M.A.
da Silva to
Wilkinson &
Grist.
18th September
1952.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 60
Appearance
by the
Hong Kong &
Whampoa
Dock Co. Ltd.
26th September
1952.

No 60

*Pleadings Included in Record of Proceedings on Insistence
by the Government of the Republic of Indonesia but
Objected to by Juan Ysmael & Company Incorporated.*

**APPEARANCE BY THE HONG KONG & WHAMPOA
DOCK COMPANY LIMITED**

(26th September, 1952)

TAKE NOTICE that we appear for The Hong Kong & Whampoa Dock Company Limited whose registered office is situate at Kowloon Dock, Kowloon in the Colony of Hong Kong a party interested in this action.

10

Dated this 26th day of September, 1952.

(Sd.) DEACONS,
Solicitors for the Hong Kong & Whampoa
Dock Company Limited.

Our place of business is at Prince's Building,
1, Des Voeux Road Central Victoria Hong Kong.

Our address for service is Prince's Building,
1, Des Voeux Road Central Victoria Hong Kong.

No. 61

No. 61
Thomas
William
Grimsdale's
Affidavit.
26th September
1952.

*Evidence Included in Record of Proceedings on Insistence
by the Government of the Republic of Indonesia but
Objected to by Juan Ysmael & Company Incorporated.*

20

AFFIDAVIT OF THOMAS WILLIAM GRIMSDALE

(26th September, 1952)

I, THOMAS WILLIAM GRIMSDALE of the Hong Kong & Whampoa Dock Company Limited Kowloon in the Colony of Hong Kong make oath and say as follows :—

1. I am the Secretary of the Hong Kong & Whampoa Dock Company Limited (hereinafter referred to as "the Company") and am authorised by the Company to make this affidavit on its behalf and the facts herein deposed to are within my own knowledge. 30
2. In the early part of the year 1952 one J. W. Kuitert who stated he was a representative of the Government of the Republic of the United States of Indonesia had a number of interviews with officials of the Company with

a view to the Company carrying out certain specified repairs to the S. S. "Tasikmalaja" and he asked the Company to submit a tender for that work to him on behalf of the Government of the Republic of the United States of Indonesia.

*In the
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- 10 3. Subsequently on or about the 20th May 1952 the said J. W. Kuitert accompanied by the Consul General in Hong Kong and one of the Vice-Consuls of the Government of the Republic of the United States of Indonesia had a further interview with officials of the Company at which the said Consul General informed the Company that the said J. W. Kuitert was the person who had full authority from the Government of the Republic of the United States of Indonesia to give instructions as to the work which was to be done to the said ship and also to supervise the work.
4. On the 21st April 1952 a tender for certain specified work to be done and materials to be supplied to and for the said S.S. "Tasikmalaja" was submitted to the said J. W. Kuitert which tender subject to certain modifications was accepted by him on behalf of the Government of the Republic of the United States of Indonesia on the 10th May 1952.
- 20 5. On the 9th May 1952 the S.S. "Tasikmalaja" was brought to the Company's premises and made fast to the sea-wall preparatory to the work being commenced and on the 25th June 1952 she was arrested in this action and placed in the custody of the Admiralty Marshall.
6. From the time when the ship first came into the possession of the Company on the 9th May 1952 and was made fast to the Company's premises up to about 5th September 1952 Mr. Kuitert as the representative of the Government of the Republic of the United States of Indonesia had constantly gone on and off board the vessel giving instructions as to the work to be done and supervising that work.
- 30 7. With the exception of certain short periods when she was moved by the Company's tugs to other places for the purpose of convenience in carrying out the work the S.S. "Tasikmalaja" remained made fast alongside the Company's premises from the 9th May 1952 until the date of her arrest by the Admiralty Marshall on the 25th June 1952 and was there made fast at that date and since the last mentioned date has also remained in the custody of the Admiralty Marshall made fast alongside the Company's premises except for certain movements made for the sake of necessity such as typhoon warnings or convenience and is now made fast to a Buoy belonging to the Company off the Company's premises and has incurred and is incurring expenses for wharfage towage and incidental accounts a bill for which will be subsequently rendered by the Company.
- 40 8. During the period from the 9th May 1952 to the 25th June 1952 in addition to the work tendered for the said J. W. Kuitert ordered on behalf of the Government of the Republic of the United States of Indonesia certain additional works and materials to be carried out on and supplied to the ship all of which have been done and supplied and which together with the work tendered for brings the full value of the work done and materials supplied to the said S.S. "Tasikmalaja" up to the sum of \$368,432.52 there

No. 61
Thomas
William
Grimsdale's
Affidavit.
26th September
1952.
continued.

*In the
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Court of
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No. 61

Thomas
William
Grimsdale's
Affidavit.
26th September
1952.
continued.

are also charges for towage when movement of the ship was necessary still due and these amount to \$4,328.00 making in all a total of \$372,760.52 and of that amount the Company has been paid the sum of \$200,000.00 by the Consul General in Hongkong of the Government of the Republic of the United States of Indonesia for and on behalf of that Government.

9. With a view to facilitating payment of the balance due to the Company for work done and materials supplied a further sum of \$150,000.00 was deposited by the Consul General in Hong Kong of the Republic of the United States of Indonesia with the Hong Kong & Shanghai Banking Corporation in Hongkong in the joint name of the Company and the Consulate General of the Republic of the United States of Indonesia. 10
10. I have been informed by Mr. J. W. Kuitert on behalf of the Consul General in Hongkong of the Government of the Republic of the United States of Indonesia that whatever is the result in this action or in Admiralty Jurisdiction Action No. 8 of 1952 his Government will be responsible for payment of the balance of the Company's account for the work done and materials supplied to the said S.S. "Tasikmalaja".
11. On the 4th July 1952 a man called on me at the Company's registered office and gave his name as Mr. Khodr; he said that he was the representative of the Plaintiffs in this action and that he was acting under a Power of Attorney given to him by the Plaintiffs; he produced a document to me which he stated was his Power of Attorney and it appeared to me to be a document of that nature. He further stated that he had instituted this action on behalf of the Plaintiffs for possession of the S.S. "Tasikmalaja" as owners of the ship; he said that he was particularly anxious that the repairs then in progress should be completed and that the Plaintiffs in this action would be responsible for payment of the balance of the Company's accounts in respect of the work and materials done and supplied to the said ship and that he had instructed Mr. M. A. da Silva Solicitor to act for the Plaintiffs in the matter and generally . 20 30
12. In consequence of that interview I wrote to Mr. M. A. da Silva a letter a copy of which is annexed hereto and marked "A" and I received from Mr. M. A. da Silva in reply a letter enclosing the undertaking a copy of which is annexed hereto and marked "B".
13. The Company claims that on the 25th June 1952 being the date of the first arrest of the ship by the Admiralty Marshall the Company had a possessory lien on the ship for work done and materials supplied to her prior to that date.
14. Since the said 25th day of June 1952 the Company has carried out work on and supplied materials to the said ship and she is still moored at a buoy belonging to the Company situate opposite to the Company's premises in the control of the Admiralty Marshall and has incurred and is incurring expenses as stated in the earlier part of this my affidavit. 40
15. As being the holders of a possessory lien on the ship the Company is a party interested in this action and intends to enter an appearance therein.

Sworn etc.

Exhibit A
Ref. No. 113
Exhibit B
Ref. No. 114

**NOTES OF PROCEEDINGS TAKEN BY THE
HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE
ON INTERVENTION BY THE ATTORNEY-GENERAL**

(2nd October, 1952)

D'Almada, Q.C., instructed by Mr. Silva for plaintiffs.
Cheong (absent) instructed by Wadeson for H.K. & Whampoa Dock Co.
Attorney-General with Reynolds.

*In the
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Admiralty
Jurisdiction*

No. 62
Notes of
Proceedings
on Intervention
by the
Attorney-
General.
2nd October
1952.

10 Attorney-General :

I appear with Mr. Reynolds as *amici curiae* on the instructions of Her Majesty's Government through H.E. the O.A.G. and am respectfully asking your Lordship's leave to be heard on one very short point, which is not connected with the merits of the proceedings now before Court, but it is connected with the possible consequences of the Judgment is these present proceedings becoming operative before the decision of the Full Court is given in the appeal on the question of jurisdiction pending before the Full Court. The position is that that appeal is set down for hearing on 8th December and the point to which I very respectfully invite attention is this, viz. if these present proceedings terminate
20 in favour of the plaintiffs (and Court will remember this is an action in rem), that rem the vessel may well have left the jurisdiction before the question before the Full Court is decided. In the event therefore of the Full Court deciding that the Supreme Court had no jurisdiction, my submission is that in the circumstances indicated to your Lordship the decision of the Full Court would be stultified. In my respectful submission, it is desirable that nothing should be done to have that effect. I am respectfully asking your Lordship to consider the possibility of staying execution of your Lordship's judgment or, if this be possible, subjecting it to conditions which will allow the question of jurisdiction to be determined before the vessel leaves the jurisdiction of this Court. I have been
30 instructed to make this one point — the stultification of the decision of a Court is undesirable. I ask for the possibility of the consideration of this point.

D'Almada: Whatever I say about the observations of the A.G. I say with greatest respect to him and to H.M. Government.

I would remind your Lordship that when in the course of the Indonesian Government's motion to dismiss this writ it was indicated that the F.O. had intervened without the request of the Court I deprecated such intervention. I now even more strongly deplore the intervention of my learned friend in the hearing of this action for these reasons. The motion to which I referred a little while ago was dismissed by your Lordship. Against your Lordship's decision,
40 a notice of appeal was filed and in pursuance of that notice of appeal the Full Court was moved for a stay of this present action. Upon the hearing of that motion the Full Court decreed that a stay would be granted upon certain terms. Those terms were laid down by the Court. Those terms, with great respect to the Full Court, were very fair terms indeed to any appellant seeking a discretionary order. Having laid down those terms the Full Court laid down

In the
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Notes of
Proceedings
on Intervention
by the
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continued.

a day when it could be informed whether those conditions would be complied with. That day was 24th last month. Appellants appeared by Counsel and informed Court through him that the appellants did not propose to comply with the conditions laid down by the Full Court, their counsel further stating that the application for a stay would not be further pursued. Next matter with which Full Court dealt was the question of a date of the hearing of the appeal, when Counsel for the appellants stated that there was no urgency in the matter of a date because he contemplated that the ship would have sailed long ere the appeal could be heard. Counsel for appellant went on to say that the appeal was being proceeded with only in order that his clients, the Indonesian Government, might vindicate the attitude it had adopted in this action. I was not present at the Full Court hearing on the 24th, but I have this from my junior Counsel and it is confirmed, if indeed confirmation is necessary, by my instructing solicitor and Mr. Way, who is instructing Mr. Charles Loseby in Action No. 6. It is clear therefore that the position re this ship was fully recognised by all parties on 24th September and the Indonesian Government at least evidently did not think then that possible success in the appeal might be stultified by the absence of the ship from Hong Kong at the relevant time. Everybody realized that this ship might well leave Hong Kong before the hearing of the appeal and it does not take a profound knowledge of the law and its workings that unless there has been a stay granted by some Court a plaintiff is entitled to the fruits of his judgment. My learned friend the A.G. is in the unhappy position of being instructed to come before your Lordship and to inform you of the obvious. Without even considering whether your Lordship would be acting in derogation of any order of the Full Court in this matter, is there any rhyme or reason why your Lordship should accede to the suggestion made by the A.G. who appears only as *amicus curiae*. With great respect to him, such an intervention by Counsel as *amicus curiae* is to me unheard of and I would say with confidence unprecedented. The fact that a foreign Sovereign is the appellant in this appeal that is to come off in December next makes not one whit of difference to the merits of my learned friend's suggestion. The fact that he appears on behalf of Her Majesty's Government, likewise, cannot affect the matter. If Your Lordship were even to entertain a suggestion such as my learned friend the A.G. has made, where are we going to stop? What would your Lordship say if in another case not involving litigants of such eminence, the A.G. or any other Counsel for that matter, were to address your Lordship in the terms employed by my learned friend to-day. In such a case, if your Lordship in this case were to accede in any measure to learned A.G.'s suggestion, this would be pointed out as a precedent and how would Court distinguish the one application from the other? Could your Lordship say to applicant in hypothetical case — "Ah, but in other case A.G. was instructed by H.M. Govt. or could Court say that one of the litigants involved was a foreign state?" I wish to emphasize this —our rules of procedure provide for a stay of execution. Those rules were invoked by the appellant in the application for a stay. In conformity with those rules the applicant was told that he could have a stay on certain terms. The applicant chooses not to abide by those terms. If Court is in any degree disposed to accede to the suggestion made by the A.G. then, with respect you would have reduced the rules of procedure and the practice of this Court to a farce. What would a foreign litigant coming to this Court for justice think of such an order made in such circumstances? An order would be in the teeth of the terms laid down by Full Court and ignored by appellant. Although

I have every sympathy with my learned friend's difficulty in his position, I respectfully share your Lordship's bewilderment at this intervention. Your Lordship should dismiss from your mind any possible thought of acceding to my learned friend's suggestion.

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Attorney-General: One of the points learned friend has made is the appearance of a law officer or some other Counsel as *amicus curiae* in the circumstances is unprecedented. I would invite your Lordship's attention to the fact that the proceedings to which my learned friend has referred and in which the appellant was concerned related to a stay of proceedings and in the result the appellants' motions were dismissed. There was no order as to stay of proceedings. The motion was dismissed. I would like to make it clear that I am not appearing on behalf of the Indo. Government nor am I here to justify or explain their conduct in these proceedings asking for a stay. My learned friend has said that the Indonesian Government did not think that the effect of the judgment would be stultified. That part of my friend's argument is irrelevant to my position here to-day. I entirely agree that if a foreign sovereign state appears before a domestic Court as a litigant, it receives treatment no different from that of any other person. My only concern in this matter is to bring to this Court's notice the question whether or not a decision of the Full Court might be stultified or not. In my respectful (submission) it is an accepted principle — the very basis of our judicial system of Courts of trial and Courts of appeal — that our Court will not act in such a way as to stultify the judgment of a superior Court. This is an action in rem. If stultification did result that would be an undesirable thing in itself. The stultification of the decision of the Full Court might cause redress to be sought elsewhere.

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Notes of
Proceedings
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by the
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General.
2nd October
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continued.

The Attorney General asks leave to withdraw.

No. 63

**THE PLAINTIFFS' EVIDENCE AT TRIAL
AS NOTED BY MR. JUSTICE REECE**

No. 63
Khalil Khodr-
Examination-
in-Chief.
2nd October,
1952.

30

(2nd October, 1952)

Khalil Khodr — Examination-in-Chief

D'Almada proceeds with the case:

KHALIL KHODR s.s.

I reside at the Kimberley Hotel, Kowloon, and hold a power of attorney from the plaintiff in this action. I produce the power. (Question of Stamps to be investigated). The plaintiffs' have their offices at Consolidated Investment Buildings, Manila. I know the ship the "Tasikmalaja". She was formerly known as the "Christobal" and before that as the "Haleakala". This ship is the property of Juan Ysmael & Co. I produce the documents of title to this ship. I produce an order of the Philippines Court giving title to this ship to Geo. Ho. Marked

40

In the
Supreme
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No. 63

Khalil Khodr-
Examination-
in-Chief.
2nd October,
1952.
continued.

Court
Exhibit A (-)
Ref. No. 135 (-)

Court
Exhibit B (KK-
C1)
Ref. No. 136 (52)

Ex. "A". The plaintiff Co. bought the ship from Geo. Ho on 16th September, 1950 and I produce the Original Bill of Sale. The plaintiff Co. has never sold this ship to anyone. Bill of Sale marked Ex. "B". The ship was at one time chartered to the Indonesian Government. The present Captain of the ship is Jose Silos and he is in the employ of the plaintiffs as master.

D'Almada: That is all the evidence I propose to call and it shows that we are entitled to legal possession of the ship in the terms of the writ in this action. One matter about which I must address Court. Owing to inadvertence on part of registry of this Court, Notice of Trial of this action was not served on the H.K. & Whampoa Dock Co. who had entered an appearance. 10

This fact was brought to the notice of my instructing solicitor. This morning. He contacted Messrs. Deacons who are solicitors of the Dock Co. Mr. Wadson was unable to contact his Counsel, but he has authorised me to say that the Dock Co. waives any question of absence of notice of trial upon the terms that the Court will make the decree sought in the writ subject to the ship not being released or until further order.

Judgment reserved, parties to be notified.

(Sd.) C. W. REECE.
2nd October, 1952.

Adm. 8/52.

20

No. 64

JUDGMENT OF MR. JUSTICE REECE

(24th October, 1952)

This action came on for trial on the 2nd October, 1952, and before the Counsel for the Plaintiffs opened his case the Honourable the Attorney General informed the Court that he appeared as *amicus curiae* on the instructions of Her Majesty's Government through his Excellency the Officer Administering the Government and asked leave to be heard on a point not connected with the merits of the proceedings before the Court, but connected with the possible consequences of the judgment in these present proceedings becoming operative before the 30 decision of the Full Court is given in the appeal on the question of jurisdiction pending before the Full Court. It is as well to state here that the present proceedings with which the Court was about to deal when the Honourable the Attorney General addressed it was the plaintiffs' claim in Admiralty Action No. 8 of 1952 wherein the plaintiffs, Juan Ysmael & Co., Inc., as sole owners of the S.S. "Tasikmalaja" of the port of Panama in the Republic of Panama, claim to have legal possession decreed to them of the said vessel.

The appeal pending before the Full Court to which the Honourable Attorney General referred is the appeal lodged on behalf of the Government of the Republic of Indonesia against a judgment delivered by me on the 15th day of September, 40 1952, dismissing a motion filed on behalf of the Government of the Republic of Indonesia and dated the 9th July, 1952. This appeal is set down for hearing on the 8th December, 1952, and the Honourable Attorney General directed attention

No. 64
Judgment of
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to the possibility that if the proceedings with which this Court was about to deal ended in favour of the plaintiffs, then the vessel, the subject matter of these proceedings, might well have left the jurisdiction before the question before the Full Court has been decided. In that event if the Full Court decided in favour of the Appellants, the Hon. Attorney General went on to say, the decision of the Full Court would be stultified and it was desirable that nothing should be done to have that effect. The Attorney General asked the Court to consider the possibility of staying execution of its judgment or, if it be possible, to subject it to conditions which will allow the question of jurisdiction to be determined before the vessel
10 left the jurisdiction of the Court.

I find myself bewildered by the intervention of the Hon. Attorney General at this stage of these proceedings. I will recall that this Action first came before this Court on the 28th July, 1952, on the hearing of a motion filed on behalf of the Government of the Republic of Indonesia objecting to the jurisdiction of this Court and claiming that as a foreign Sovereign power, it was impleaded. After a protracted hearing, judgment dismissing the motion was delivered by me on the 15th day of September, 1952, and on the same 15th day of September, the solicitors for the Government of the Republic of Indonesia filed a notice of motion for an Order that the aforesaid judgment dismissing the Notice of Motion filed on
20 behalf of the Government of the Republic of Indonesia be rescinded.

On the same 15th day of September, 1952, the solicitors for the Government of the Republic of Indonesia filed a notice of motion for a stay of all further proceedings in Admiralty Jurisdiction Action No. 6 of 1952 pending the hearing of the appeal from my judgment dismissing the motion aforesaid. The motion came before the Full Court on the 16th September and the Court stated that it was prepared to make an order to stay all further proceedings in the two Admiralty actions on certain terms and adjourned the motions until the 24th September at 10 a.m. with a stay of proceedings until that date. On the 24th September the Full Court dismissed the motion for a stay and by consent the
30 hearing of the appeal was fixed for the 8th, 9th, 10th, 11th and 12th December, 1952.

The Honourable Attorney General in his submission stressed that the vessel might be removed from the jurisdiction of the Court before the appeal is heard and so the decision of the Full Court may be stultified. That may well be so, but I am at a loss to understand why Her Majesty's Government should now deem it necessary to intervene as *amicus curiae* in this matter. When the Full Court imposed certain conditions for granting a stay of all further proceedings in the actions and gave the Government of Indonesia a week within which to comply with those conditions, compliance with those terms would have had the result of
40 keeping the vessel within the jurisdiction pending the hearing of the appeal, but the Government of Indonesia by its own voluntary action refused to comply with the terms of the Full Court and the motion for a stay was dismissed. Now this Court is being invited by Her Majesty's Government to grant stay of a judgment not yet delivered lest a decision of the Full Court to be delivered two months' hence may be stultified. Acceding to this request would be tantamount to granting the stay sought by the Government of Indonesia before the Full Court without the conditions imposed by the Court.

There seems to me to be several substantial reasons for not acceding to the Hon. Attorney General's invitation. In the first place, it appears to me that to

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do so would be to nullify, and act in defiance of the decision of the Full Court. The Full Court, the highest tribunal in the Colony, presided over by the Chief Justice and the Senior Puisne Judge, in its absolute and unfettered discretion, saw fit to impose certain terms for the granting of a stay of execution, for that very purpose on which the Hon. Attorney General now asks this Court to stay execution, viz., to preserve the res within the Jurisdiction pending the appeal before it. But the Government of the Republic of Indonesia the party applying for the stay of execution, the party in whose interest it is to preserve the res, the party best able to decide whether the decision of the Full Court would be stultified should the vessel leave the jurisdiction, did not deem it necessary to protect its own 10 interest by complying with the terms imposed.

Had the Government of the Republic of Indonesia deemed it advisable to do so, there was nothing to prevent it from asking the Full Court to modify the terms imposed by it for granting a stay of execution if it considered those terms onerous. The Government of the Republic of Indonesia might even have asked for an earlier date to be fixed by the Full Court for the hearing of the appeal. I am informed by Mr. D'Almada that on the 24th September Counsel for the Government of the Republic of Indonesia informed the Full Court that the appellants did not propose to comply with the conditions laid down by the Full Court and that the application for a stay would not be further pursued. Bearing 20 this in mind, it is indeed difficult to appreciate what interest Her Majesty's Government should have in endeavouring to keep the vessel in the jurisdiction while the appellants plainly displayed the utmost indifference in the matter. Nothing has been advanced by the Hon. Attorney General for his intervention which had not already received the most careful consideration by the Full Court and I do not consider that I can accede to the request to grant a stay. In view of what I have already said, what cogent reason can this Court advance to the successful plaintiffs for depriving them of the fruits of their judgment? Is it a sufficient reason to stay execution on the intervention of a third party, not a party to the proceedings and not having any apparent interest in the result of the pro- 30 ceedings. In my opinion it is not.

It seems to me therefore that were I to accede to the suggestion of the Hon. the Attorney General, I would be failing in the discharge of my duty as I conceive it. I regret that I cannot see my way to order a stay of execution of the judgment in this action.

I now pass to the consideration of the action before the Court, viz., the plaintiffs' claim to have legal possession decreed to them of the vessel the S.S. "Tasikmalaja". The plaintiffs have put before the Court the documents of title to the vessel and I am satisfied on the evidence before me that the plaintiffs are the owners of the said vessel and entitled to the legal possession thereof. 40 The H.K. & Whampoa Dock Co., Ltd., have entered an appearance to this action as an interested party, and I accordingly make an order for possession to the plaintiffs subject to the ship not being released from the claim of the Hong Kong & Whampoa Dock Company's claim or until further order.

(Sd.) C. W. REECE.
Puisne Judge.
24th October, 1952.

No. 65

**EX PARTE NOTICE OF MOTION BY JUAN YSMAEL &
COMPANY INCORPORATED FOR AN INJUNCTION
AGAINST 40 INDONESIAN MEMBERS OF CREW
OF THE RES.**

(28th October, 1952)

Counsel on behalf of the abovenamed Plaintiffs to move the Court in
Chambers ex parte for an injunction to forthwith restrain:

- | | | |
|----|--------------------|---------------------|
| 10 | 1. J. D. Mandagi | 21. R. Sudarsono |
| | 2. M. Sahabu | 22. A. Karauwan |
| | 3. H. Lumisay | 23. V. Pongilatan |
| | 4. Sudjajos | 24. V. Kaparang |
| | 5. Thomas Lowel | 25. C. Lombogia |
| | 6. E. Tjong Sui | 26. P. Kaparang |
| | 7. Sudarman | 27. J. Walandouw |
| | 8. A. Tuabara | 28. Kaka |
| | 9. L. Tjong Jung | 29. Sigama |
| | 10. J. Rozenberg | 30. Hassan 2 |
| | 11. J. Lewiresa | 31. Tjolli |
| 20 | 12. Joh. Walandouw | 32. Matheos Boko |
| | 13. Ahmad | 33. Jan. A. Mandang |
| | 14. M. Sigar | 34. Rukdin Mosoi |
| | 15. D. Sumolang | 35. Jan. Pieters |
| | 16. L. Nanlohy | 36. Idrus Ishag |
| | 17. Tjali Toba | 37. Hendrik. Tampi |
| | 18. Ali | 38. Lamburi |
| | 19. R. Walandouw | 39. Duhung |
| | 20. Ahmad Gigil | 40. Ento Suminto |

from remaining or going on board the abovenamed Defendant vessel and for an
order as to the costs of and incidental to this Notice of Motion.

Dated the 28th day of October, 1952.

(Sd.) MARCUS DA SILVA,
Solicitor for the Plaintiffs.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 65
Ex Parte
Notice of
Motion by
Juan Ysmael
& Co. Inc., for
an Injunction
against 40
Indonesian
members of
the crew of
the Res.
28th October
1952.

AFFIDAVIT OF KHALIL KHODR IN SUPPORT

(28th October, 1952)

No. 66
Khalil Khodr's
fourth
Affidavit.
28th October
1952.

I, KHALIL KHODR, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I am authorised to make this affidavit on behalf of the Plaintiff Company.
2. The Plaintiff Company are the sole owners of the abovenamed Defendant vessel, having been decreed legal possession of the said vessel by a judgment rendered herein on the 24th day of October, 1952.
3. On the same day thereafter, on my instructions, the Plaintiff Company's 10 solicitor Mr. M. A. da Silva gave written notice to the following members of the crew of the Defendant vessel, viz.:—

- | | | |
|--------------------|---------------------|----|
| 1. J. D. Mandagi | 21. R. Sudarsono | |
| 2. M. Sahabu | 22. A. Karauwan | |
| 3. H. Lumisay | 23. V. Pongilatan | |
| 4. Sudjajos | 24. V. Kaparang | |
| 5. Thomas Lowel | 25. C. Lombogia | |
| 6. E. Tjong Sui | 26. P. Kaparang | |
| 7. Sudarman | 27. J. Walandouw | |
| 8. A. Tuabara | 28. Ka Ka | 20 |
| 9. P. Tjong Jung | 29. Sigama | |
| 10. P. Rozenberg | 30. Hassan 2 | |
| 11. J. Lewiresa | 31. Tjolli | |
| 12. Joh. Walandouw | 32. Matheos Boko | |
| 13. Ahmad | 33. Jan. A. Mandang | |
| 14. M. Sigar | 34. Rukdin Mosoi | |
| 15. D. Sumolang | 35. Jan. Pieters | |
| 16. L. Nanlohy | 36. Idrus Ishag | |
| 17. Tjali Toba | 37. Hendrik. Tampi | |
| 18. Ali | 38. Lamburi | 30 |
| 19. R. Walandouw | 39. Duhung | |
| 20. Ahmad Gigil | 40. Ento Suminto. | |

Exhibit KK-1, to leave the said ship by 3 p.m., as per copy letter attached marked "KK-1" to 2A
Ref. No. 115 & which a reply was received from their solicitors, Messrs. Wilkinson & Grist as per
116 letter produced marked "KK-2" with copy attached marked "KK-2A".

Exhibit KK-3
Ref. No. 117

4. Again on my instructions Mr. M. A. da Silva wrote to Messrs. Wilkinson & Grist on the same day as per copy letter attached marked "KK-3" giving the said crew members final notice to quit the said vessel by 12 noon on the 25th October, 1952, with which notice they failed to comply as of date.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

No. 66
Khalil Khodr's
fourth
Affidavit.
28th October
1952.
continued.

- 10 5. The Plaintiff Company at Manila has instructed me that the said ship is to be sent back immediately to Manila for an intended charter, but I have sought instructions as to a possible pending sale (being negotiated) locally and my instructions are that the sale would have to be completed and fully paid for by Thursday next the 30th day of October, 1952, otherwise the ship (with all repairs obligation paid off) will have to be sent immediately to Manila. In either case it is urgent that the ship should be forthwith cleared of the said dissident members of the crew, comprising over 80% of the crew on board, as the previous conduct and behaviour of the said crew members, exemplified in the contempt proceedings instituted in this action to which I crave leave to refer, do not leave me free of apprehension of sabotage to the newly repaired engines, etc., or to the steering mechanism of the vessel, such sabotage being very difficult to guard against in view of the said dissident members of the crew constituting the large majority thereof on board: Neither, I firmly believe, will these dissident crew members obey any orders of our Acting Captain Jose Maria Silos.
6. I crave leave to refer to the previous affirmations filed herein, and I verily believe that the Indonesian Consul-General has paid all salary dues of these crew members to date.
- 20 7. I have arranged with the Sailors' Home & Seamen's Institute at No. 40 Gloucester Road, Hong Kong, for the accommodating and boarding of the defendants ashore.

Sworn etc.

No. 67

**AFFIDAVIT OF AUGUSTO ANTONIO NORONHA
IN SUPPORT.**

(28th October, 1952.)

No. 67
Augusto
Antonio
Noronha's
Affidavit in
support.
28th October
1952.

I, AUGUSTO ANTONIO NORONHA, of Gloucester Building, First Floor, Victoria in the Colony of Hong Kong, make oath and say as follows:—

- 30 1. I am Secretary to Mr. M. A. da Silva, the solicitor having the conduct of this matter on behalf of Juan Ysmael & Company Incorporated.
2. On the 28th of October, 1952, the attached copy letter marked "AAN-1" together with the enclosures therein mentioned were delivered by me to the offices of Messrs. Wilkinson & Grist at approximately 4.50 p.m.

Exhibit AAN-1
Ref. No. 118

AND LASTLY I say that the contents of this my affidavit are true.

Sworn etc.

**NOTES OF PROCEEDINGS IN CHAMBERS TAKEN BY THE
HONOURABLE THE PUISNE JUDGE MR.
JUSTICE COURTENAY WALTON REECE,
ON MOTION FOR INJUNCTION**

(30th October, 1952)

Bernacchi instructed by Silva for plaintiffs.
McNeill with Wright instructed by Griffiths.

McNeill: This is an ex parte summons, but late on Tuesday we were served with Notice. It is my submission that Summons should be *inter partes*. When 10 Court made its final order, Court said it was subject to the claim of the Dock Company in Action No. 13/52. My clients, the Government of Indonesia, have entered a conditional appearance and my instructing solicitor has received instructions to raise the impleading issue in that action. This summons should be made *inter partes* because if an injunction is granted removing the crew members, this injunction would alter the *status quo* in Action No. 13 of 1952 and therefore affect our argument upon impleading in that action. I refer Court to the *Abodi Mendi*, 1939 P. There is an application before Full Court this morning for leave to serve short notice for a stay of execution in Admiralty Jurisdiction Action No. 8.

McNeill, Wright and Griffiths with leave retired.

20

Bernacchi: Sole reason why we gave notice to other side is because we had in mind the terms of O.xxvii, r.3. I am going to say that the question is one of urgency. We are worried by question of sabotage and we want the people off the ship. We are in effect asking for ancillary relief consequent upon the judgment in our favour. I would refer to 0.17 r.8 (second part). These gentlemen (crew) are in contempt of Court, for they are refusing to accept the decree or order of this Court. Facts are set out in affidavit of Khalil Khodr. *Canadian Pacific Railway Co. V. Gaud*, (1949) 2 K.B. 239.

Decision on this application to be delivered later.

(Sd.) C. W. REECE.
30th Oct., 1952.

30

DECISION OF MR. JUSTICE REECE.

(31st October, 1952)

This is an ex parte application on behalf of the Plaintiffs Juan Ysmael & Company Incorporated for an injunction forthwith to restrain the forty persons, named in the Summons from remaining on or going on board the S.S. "Tasikmalaja".

On the 24th October, 1952, I gave judgment decreeing legal possession of the said vessel to the plaintiff Company.

*In the
Supreme
Court of
Hong Kong
Admiralty
Jurisdiction*

—
No. 69
Decision of
Mr. Justice
Reece.
31st October
1952.
continued.

When the application came on for hearing Mr. McNeill, who was present with Mr. Wright and Mr. Griffiths, Solicitor of Messrs. Wilkinson & Grist, stated that it was an ex parte application, but that he had been served with notice. Mr. McNeill added that his clients, the Government of Indonesia, had entered a conditional appearance in Action No. 13 of 1952 and that Mr. Griffiths had been instructed to raise the impleading issue in Admiralty Action No. 13 of 1952. Mr. McNeill suggested that the Summons before the Court should be made inter partes
10 and, with leave, he, Mr. Wright and Mr. Griffiths withdrew.

This application is being made in Action No. 8 of 1952 to which the Government of the Republic of Indonesia is no longer a party, in view of my judgment dated the 15th September, 1952, dismissing the motion filed on its behalf. Consequently the Government of the Republic of Indonesia is not entitled to appear in any application to the Court in this Action.

A letter was addressed to Messrs. Wilkinson & Grist, solicitor for the Indonesian members of the crew of the abovenamed vessel, a copy of which is exhibited to the affidavit of Augusto Antonio Noronha, stating that no objection would be made to their being present and being heard. In my view, this was an
20 unnecessary letter having regard to the fact that the motion is made ex parte. But in any event, it gives no right of attendance to the Government of Indonesia, the clients of Mr. McNeill.

The affidavit of Khalil Khodr, in support of the motion, alleges that on the 24th October, 1952, the date on which possession of the vessel was decreed to the plaintiffs, the plaintiffs' Solicitor gave written notice to the members of the crew, whose names are set out in the petition to leave the ship by 3 p.m. on that day. A second notice was given to Messrs. Wilkinson & Grist on behalf of the members of the crew requiring the crew to leave the ship by 12 noon on the 25th October, 1952. The crew have failed to leave the ship and the plaintiffs have applied to
30 the Court to restrain them from remaining on the ship.

It seems to me that having decreed possession of the ship to the plaintiffs, it is the duty of the Court to see that the decree becomes effective. The members of the crew have been notified of and, from the exhibits attached to the affidavit of Khalil Khodr dated the 28th day of October, 1952, I am satisfied that they have knowledge of the decree.

In the circumstances, I take the view that refusal to leave the ship is a contempt and I therefore order the member of the crew named in the Notice of Motion to leave the ship forthwith after service of this order on them and thereafter to refrain from returning to the said ship. And I further order the
40 said members of the crew to pay the costs of this application.

(Sd.) C. W. REECE.
Puisne Judge,
31st Oct., 1952.

NOTICE OF APPEAL

NOTICE OF MOTION BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA (APPELLANTS) ON APPEAL TO FULL COURT

(15th September, 1952)

No. 70
Notice of
Motion on
Appeal to
Full Court.
15th September,
1952.

TAKE NOTICE that the Full Court will be moved at 10.00 o'clock a.m. on Tuesday the 30th day of September 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C. and Mr. D. A. L. Wright, Counsel for the above-named Appellants for an Order that the Judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing the Notice of Motion filed 10 herein on behalf of the Government of Indonesia dated the 9th day of July 1952 be rescinded and that the costs of this Appeal may be paid by the Respondents to the Appellants.

Dated the 15th day of September, 1952.

(Sd.) WILKINSON & GRIST.

Solicitors for the Government of the
Republic of Indonesia.

To the Plaintiffs and to M. A. da Silva, their Solicitors.

No. 71
Ex. Parte
Notice of
Motion for leave
to file on
short notice
Notice of
Motion for
stay of all
further
proceedings
in A.J. Action
No. 8 of 1952.
15th September,
1952.

EX PARTE NOTICE OF MOTION BY THE GOVERNMENT OF THE REPUBLIC 20 OF INDONESIA (APPELLANTS) FOR LEAVE TO FILE ON SHORT NOTICE NOTICE OF MOTION FOR STAY OF ALL FURTHER PROCEEDINGS IN A.J. ACTION NO. 8 OF 1952.

(15th September, 1952)

TAKE NOTICE that the Full Court will be moved at 4 p.m. on Monday the 15th day of September 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C. and Mr. D. A. L. Wright, Counsel for the abovenamed Appellants for the following orders:—

1. That the abovenamed Appellants do have leave to file and serve short notice a Notice of Motion for a stay of all further proceedings in Admiralty 30 Jurisdiction No. 8 of 1952 pending the hearing of an Appeal from the judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing a motion filed on behalf of the Government of the Republic of Indonesia and dated the 9th day of July, 1952.
2. That the said notice of Motion for a stay as aforesaid shall be returnable for 11 a.m. the 16th day of September 1952.

Dated the 15th day of September, 1952.

(Sd.) WILKINSON & GRIST.

Solicitors for the Government of the
Republic of Indonesia.

No. 72

AFFIDAVIT OF PETER JOHN GRIFFITHS

(15th September, 1952)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong hereby make oath and say as follows:—

No. 72
Peter John
Griffiths third
Affidavit,
15th September,
1952.

1. I have the conduct of this action on behalf of the Government of the Republic of Indonesia.
- 10 2. I was present in the Supreme Court at 10 a.m. this 15th day of September, 1952 when judgment was delivered by the Honourable Mr. Justice Reece dismissing the Notice of Motion filed herein on behalf of the Government of the Republic of Indonesia and dated the 9th day of July, 1952.
3. After the dismissal of the said Motion an application was made by Counsel for the Plaintiffs for the hearing of the Action to be fixed. Counsel indicated that his Instructing Solicitors would file a Notice in accordance with Rule 78 of the Supreme Court (Admiralty Procedure) Rules. The learned judge fixed the hearing of the trial of this action for 2.30 p.m. to-morrow afternoon, the 16th day of September, 1952.
- 20 4. The Solicitors for the Government of Indonesia have as yet received no notice in accordance with Rule 78 of the Supreme Court (Admiralty Procedure) Rules, nor any notice in accordance with Rule 82 of the same.
5. I have been instructed by the Government of the Republic of Indonesia to appeal against a judgment of the Honourable Mr. Justice Reece of to-day's date dismissing the Motion.

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

No. 73

NOTES OF PROCEEDINGS IN CHAMBERS

(15th September, 1952)

No. 73
Notes of
Proceedings
in Chambers.
15th September,
1952.

Coram: Howe C. J. & Williams J.

McNeill, Q.C. & Wright (Griffiths)
ex parte for Appellants.

(In Chambers).
4.30 to 4.45 p.m.

Leave file and serve short notice returnable 16th September, 1952 at 11 a.m.

Motion of Appeal against Reece J's Judgment of 15th September, 1952 to be set down for hearing on a date 14 days from to-day — vacations days to count — for purpose of service at this point.

(Sd.) W. C. LOW.
Clerk of Court.
15.9.1952.

**ORDER FOR LEAVE TO FILE ON SHORT NOTICE NOTICE OF MOTION FOR
STAY OF ALL FURTHER PROCEEDINGS IN
IN A.J. ACTION NO. 8 OF 1952**

No. 74

Order for
leave to file on
short notice
Notice of
Motion for
stay of all
further
proceedings in
A.J. Action
No. 8 of 1952.
15th September,
1952.

(15th September, 1952)

Upon the application of the Appellants and upon hearing Counsel for the Appellants IT IS ORDERED as follows:—

1. That the above-named Appellants do have leave to file and move on short notice a Notice of Motion for a stay of all further proceedings in Admiralty Jurisdiction No. 8 of 1952 pending the hearing of an Appeal from the 10 Judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing a Motion filed on behalf of the Government of the Republic of Indonesia and dated the 9th day of July, 1952.
2. That the said Notice of Motion for a stay as aforesaid shall be returnable for 11 a.m. on the 16th day of September, 1952.

(L.S.)

(Sd.) R. WINTER
Registrar.

No. 75
Notice of
Motion for
stay of
further
proceedings in
A.J. Action
No. 8 of 1952.
15th September,
1952.

**NOTICE OF MOTION BY THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA (APPELLANTS) FOR STAY OF FURTHER PROCEEDINGS IN 20
A. J. ACTION NO. 8 OF 1952**

(15th September, 1952)

TAKE NOTICE that the Full Court will be moved at 11 a.m. on Tuesday the 16th day of September 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C., and Mr. D. A. L. Wright Counsel for the above-named Appellants for an Order that all further proceedings in Admiralty Jurisdiction No. 8 of 1952 be stayed pending the hearing of an Appeal from the Judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing a Motion filed on behalf of the Government of the Republic of Indonesia and dated the 9th day of July 1952 of which Appeal the Appellants have given 30 notice by Notice of Motion dated the 15th day of September 1952.

Dated the 15th day of September, 1952.

(Sd.) WILKINSON & GRIST.
Solicitors for the Government of the
Republic of Indonesia.

To the Plaintiffs and to Mr. M. A. da Silva, their Solicitors.

NOTES OF THE CHIEF JUSTICE ON HEARING OF MOTION FOR STAY
(16th September, 1952)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No 76
Notes of
Chief Justice
on hearing of
Motion for
Stay.
16th September,
1952.

McNeill Q.C. & Wright (Griffiths) for Appellants.
D'Almada Q.C. and Bernacchi (Silva) for Respondents in 15/52.
Loseby Q.C. (Stewart) for Respondents in 14/52.

McNeill: Motion is for a stay in both actions and will argue that at same time if pleases Court. Main grounds are:

- 10 (1) is a notice of motion appealing from judgment of Reece, J. dismissing applications by Indonesian Republic for a stay and a setting aside of writs on ground of impleading.
- (2) Important arguments to present to Court on these appeals and that the result of allowing the action to go on would be to allow ship to be removed from the jurisdiction of Supreme Court.

Substantial arguments on appeal. Judgment was unfortunate in its nature. Four affidavits left on file — no order made to strike them off and no order made for XXn. of deponents.

Impleading was on two legs: 1st — Indonesian Government had an interest possessive. 2nd — interest proprietary.

20 D'Almada: Object to reading the affidavits — only motion is for a stay.

McNeill: I only say that there are substantial grounds of appeal. If the action goes on — it is set down for this afternoon — Legal possession would be delivered to the other side and that would be the end of our claim.

Application made directly to Full Court under O. 58 r. 16
(1891) 1 Q.B. p.346 *Monk v. Bartram* — special circumstances
(1879) 12 Ch. D. p.438 — *Polini v. Grey* — p.443.
Judge omitted to look at the other affidavits —

30 D'Almada: In the course of submission, McNeill made certain remarks and he did tell me that he had certain remarks to make and I said that if I were questioned by the Court — I thought I had so given him to understand — I would make certain observations. My friend said that if anything fell from the Court he could say with my support what he did say. I made my position clear. I say that had I been in position of my learned friend, I might possibly have felt impelled to say what he did say but when McNeill says he had my approval in the sense in which it was conveyed, I can only say that statement arose from misunderstanding.

McNeill — I withdraw that remark then.

40 D'Almada: Some suggestion that my clients were attempting to pull a fast one by applying to have case heard this afternoon. The reason is that of the unusual intervention of the vacations. I suggested that Wednesday might do. No other reason except the present one that a plaintiff is entitled to bring on his action for trial so soon as possible. With respect to McNeill he has said nothing

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction
—
No 76
Notes of
Chief Justice
on hearing of
Motion for
Stay.
16th September,
1952.
continued.

which would justify staying the hearing of this action. The Appeal against the decision of Reece, J. and congested state of Court — may be a further appeal — then clients are deprived of the right to have the action heard and to have judgment which would be granted to them — may be even for two years. Remedy may be by application after judgment given. No reason to deny right to have case heard and concluded this afternoon. Necessary witnesses are here.

In *Polini v. Grey* headnote — p.438 — no question of staying the action but certain injunctions were continued.

No reason to stay the actions now because it is wished to affect the application. No special circumstances — Circumstances causing inconvenience and loss — demurrage.

I take objection to this application as not supported by an affidavit. Refers to Criminal Practice 1952, O.58 r. 16 p.1234 heading "Evidence."

Cites the *Arnot Lyle* Vol. 10-11 Probate Div. p. 115 Esher M.R. p.116 — Nothing here to show any ground for belief that if Indonesian Government succeeded fully in the appeal that clients would not abide by order of the Court.

Case of interest — the necessity for some affidavits — and on general grounds no evidence of any intention on part of the plaintiffs to ignore any judgment.

If found useless to take steps hereafter — after the case heard this afternoon — on assumption that prepared to grant the stay — then serious damage, if held up for an indefinite period. If prepared to grant stay then question of terms must arise. F. S. is here asking for a stay involving jurisdiction of Court.

Stay should have costs secured as awarded yesterday — as well as security for costs of appeal and adequate security for demurrage — unless so ordered justice will not be done. Crystal clear that unless the order be made a condition precedent to the stay there is no hope of recovering from a foreign sovereign.

- (a) No reason to stay the action and bring Indonesian Government to any remedy at any time thereafter.
- (b) No evidence by affidavit as to any possibility of loss of fruits of victory.
- (c) If stay granted only on the most stringent terms as to security.

Loseby Q.C.: I must make reference to the matter referred to by Mr. McNeill and D'Almada because if not there might be a misunderstanding. I may be in error.

Mr. McNeill: I withdrew the suggestion.

Loseby: I did not know — although he said the phrase "that the words used were an insult to the Bar" — I could not for a moment subscribe to that view. On the other hand, McNeill as I thought could have ... that certain words of censure of his conduct in Court that I deny completely. I was in Court at the time and if Judge thought any words used by McNeill were intended to be discourteous, then Judge in error. Judge under strain for many days and McNeill trying to make his points certain. I thought no more than that there had been a misunderstanding.

I call this application audacious and no other matter. My case is hard cash. Consideration has been given to the clients of mine. Undertaking given to pay if successful — costs of action taxed. Indonesian Government undertook to pay. Asks to consider how clients would be affected, that an attack upon his clients has been repelled. Application could have been brought by someone within the jurisdiction without that action by Indonesian Government. The effect of the stay in reality would be to deprive my clients of the security. McNeill demanding the fruits of victory. Application is audacious — not even an affidavit in support. McNeill should suggest the terms not demand as right. I advance argument of
10 D'Almada.

Principle behind stay is whether it deprives successful litigant of fruits of victory. My clients retain possession of the disputed vessel by reason of Judge's order. Within the jurisdiction nothing to prevent the fact of Indonesian Govt. coming in but not interested in the Indonesian Government. I have clients within the jurisdiction and the ship is within the jurisdiction. Secondly, I have had awarded costs. I can enforce the costs against a party within the jurisdiction fully. I can prove I have been properly vigorous in resisting the stay. I can only resist the stay. No evidence the litigant would be deprived of his redress. If stay allowed it will end up that my clients will be deprived of all redress for
20 about a year. Appeal difficulty of McNeill but he really has not got a case for appeal, he was placed in that position in which did not choose to have these witnesses cross-examined. He called witnesses. Where are they now? Terms — if stay allowed does he intend to pay the costs already awarded. If not — should be paid into Court within a period of time prior to appeal. Nothing can be lost by allowing the action to proceed. Nothing to lose other than the payment of an admitted debt and the payment by someone of costs for which I was not responsible. The guilty party is within the jurisdiction if the Indonesian Government were fully to win. No reality in McNeill's submission that without the stay it would not be worth while to appeal. Indonesian Government has had
30 a remarkable hearing but chose themselves to fight with hands behind their backs — party within the jurisdiction wishes to (sue) from someone else within the jurisdiction. Stay is hardship to litigant within the jurisdiction.

McNeill: Is an affidavit on file but not yet filed. Affidavit by Griffiths. This is a sufficient affidavit. Result of Action 8/52 is inevitable. If action allowed to go on Indonesian Government would have lost right to contest action on the grounds of we are not.

Arrest would be discharged — indefinite time would also go — only asking for a stay until appeal heard.

In 8/52 — Careful not to do anything to show submitting to the
40 jurisdiction. Offers to pay into Court security for costs in Admiralty Jurisdiction Action No. 8.

In A. J. 6/52, we will pay the costs to the plaintiffs — Pay into Court amount claimed in Loseby's case.

Asks for stay on terms.

(Sd.) G. L. HOWE.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No 76

Notes of
Chief Justice
on hearing of
Motion for
Stay.
16th September,
1952.
continued.

D'Almada: Affidavit referred to handed to my instructing solicitor by a clerk who came back and said he should not have been served — it was filed for application for short notice. Not a question whether inside or outside jurisdiction — Costs should be paid to solicitors in question with an undertaking to refund — C.P. U.S.\$35,000 p.m.

(Sd.) G. L. HOWE.

3:15 Resumed — Appearances as before.

In view of the exceptional circumstances of these cases, the Court is prepared to grant an order to stay all further proceedings in the two Admiralty Actions Nos. 6 & 8 of 1952 until the hearing of the appeals conditional on these terms:— 10

(As set out overleaf).

1. Payment by the Government of the Republic of Indonesia to the plaintiffs of an agreed sum to cover the taxed costs of the proceedings before Reece, J. and of these applications, their solicitors undertaking to refund the taxed costs, if the appeal proves successful, or any balance over.
2. Payment by the Government of the Republic of Indonesia to the plaintiffs in Admiralty Action No. 6 of 1952 of his claim, his solicitor giving an undertaking to refund the sum if the appeal proves unsuccessful.
3. In Admiralty Action No. 8 of 1952 the Government of the Republic of Indonesia undertaking to the Court to pay compensation, if ultimately 20 unsuccessful in their claim, to the plaintiffs for the loss of profits sustained by the plaintiffs from the date of the judgment of Reece, J.
4. Payment by the Government of the Republic of Indonesia into Court of expenses incurred so far in connection with the arrest of the ship by way of bailiffs' & watchmen's fees, etc.
5. Payment by the Government of the Republic of Indonesia into Court of the sum of H.K.\$10,000.00 as security for the costs of these appeals: liberty to apply for further security if necessary.

The above terms to be complied with within 7 days.

The motions are accordingly adjourned to 24th September, 1952 at 10 a.m. 30 with a Stay of proceedings until that date.

(Sd.) G. L. HOWE.

President.

(Chief Justice)

16th September, 1952.

NOTES OF THE SENIOR PUISNE JUDGE ON
HEARING OF MOTION FOR STAY

(16th September, 1952)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 76A
Notes of
the Senior
Puisne Judge
on hearing
of Motion
for Stay.
16th September,
1952.

McNeill Q.C. and Wright (Griffiths) for Appellants.

Loseby Q.C. (Stewart) for Respondents in 14/52.

D'Almada Q.C. and Bernacchi (Silva) for Respondents in 15/52.

McNeill: Motion to-day is for stay of proceedings in both actions. Main
10 grounds for application for stay — 1. Notice of Motion. Appealing from judgment
of Reece J. on 15th September in which judgment he dismissed motions by the
Indonesian Government for stay of proceedings and setting aside of writs.

We have important arguments, to present on both appeals — result of
allowing actions to go on will be that the ship will be removed from jurisdiction
of Court and any argument will be nugatory. We would never get in touch with
the ship again: if they came back we could not maintain action — we would be
submitting.

I feel impelled to say that the judgment delivered was unfortunate in its
disrespect of the studied arguments.

Court will see at end of judgment — Reece J. ordered removal of affidavits
20 from file. When affidavits have been removed, there are 4 on file which he has
omitted to mention. No order made by Reece J. for XXn. of deponents.

The impleading issue put on 2 grounds (1) Indonesian Government had an
interest — possessive; (2) proprietary interest. Either sufficient — there are *dicta*
that say so — even slight proprietary interest will do. We have affidavit of
Griffiths filed on 9th July — (19) — he states he is challenging jurisdiction of
Court — on instructions of Indonesian Government. Affidavit by Mandagi—(20).

D'Almada — Object formally. Nothing on record now.

McNeill — Am only showing we have substantial grounds for appeal — not
frivolous appeal.

30 There are other important points. Passing to next point. I said this — if
action goes on — it is set down for 2.30 this p.m. — issue won't be in doubt.
Legal Possession will be given to plaintiffs and that will be the end of the matter
as far as we are concerned.

We have come direct to Court of Appeal — 0.29 r.36 = 0.58 r.16 of Supreme
Court.

Monk v. Bartram (1891) 1 Q.B. 346 — “unless special circumstances are
shown to exist . . .” Have circumstances special are that appeal would be nugatory.

Polini v. Grey, 12 Ch.D 438 — principles — then find 4.

40 Subject matter of action would have gone — fund dissipated — here ship
would have gone.

p. 443 — Jessel M.R. “The Plaintiffs allege . . . final appeal”.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*
—
No. 76A
Notes of
the Senior
Puisne Judge
on hearing
of Motion
for Stay.
16th September,
1952.
continued.

In *Cristina* case action did not go until impleading issue had been dealt with by House of Lords.

p. 446 — Collins L.J. "In that case, as in this case . . . established his rights".

We want to anticipate this p.m.'s judgment.

Whole matter would be concluded in matter of 1 hr. this p.m.

On those grounds (1) Appeal would be nugatory; (2) error of judge that no evidence before him. We ask Court to stay proceedings until Court shall direct.

D'Almada: McNeill did tell me what he proposed to say in connection 10 with Reece J's judgment: I did tell him that — if requested by Court I would make certain observations.

Misunderstanding between self and McNeill — as to having my support. Had I been in position of McNeill I might feel also impelled to say what he did say. When he says he has my approval I can only say that this statement arose out of misunderstanding of my remarks to him.

McNeill — In that case I certainly withdraw remark.

D'Almada: First point is this: some suggestion this is attempt on part of plaintiffs in No. 8 to pull fast one by applying to have case heard this p.m.

Only reason we want early date is intervention of vacation. Yesterday 20 I suggested to judge that to-morrow would do. Judge had another case.

Plaintiff entitled to have his action brought on for trial as soon as he reasonably can. I say McNeill has said nothing which would justify a stay of the hearing. McNeill wishes to appeal against decision of Reece J. Cannot say when this appeal can be heard. There may be appeal to P.C. — What would position of my plaintiff be: would be deprived of fruits of judgment for 2 years perhaps. McNeill may have remedy after judgment given in our favour — but I say no reason to deprive our clients of having their case heard this p.m. — we have the necessary witnesses in Colony.

In the *Polini* case —

30

No question of staying actions — injunctions continued.

Is there any ground for Court now to say it will stay action — I say no special circumstances to warrant such an order: no reason why Court should say to plaintiffs — "You shall not go on with action until motion to strike out action is finally settled". Grave loss will be suffered by plaintiffs — demurrage heavy.

I would take this objection — motion not supported by affidavit. W.B. 1952 — p. 1284 evidence must be supported by affidavit and see *The Arnot Lyle* (1880) 11 P. 114.

p. 116 "We are asked to depart"

There is nothing in this case to show any foundation for belief that if McNeill should succeed the plaintiffs will not abide by order of Court.

Bown L.J. also stresses need for affidavit. Two points: (1) need for affidavit; (2) absence of evidence that plaintiffs would ignore any order Court of Appeal should make.

Let the action proceed. McNeill can take other action.

Should Court grant stay — I have mentioned serious damage to plaintiffs if ship held up in H.K. — question of terms arise — payment of all the costs of the motion awarded to plaintiffs by judgment yesterday plus security for costs of the appeal and adequate security for demurrage suffered by ship.

Unless Court so orders it will not be doing justice to parties — no evidence plaintiffs will not abide by order of Court; on other hand no hope of plaintiffs recovering anything from f.s. in end we should be successful.

I say (a) no reason why plaintiffs should not have their action heard and (b) McNeill pursuing his remedy — no evidence by affidavit as to loss of fruits of victory.

Finally if Court should make order it should be on stringent terms.

Loseby: Must make reference to this matter (as to what McNeill and D'Almada said) McNeill said "Words used by Judge insult to Bar".

McNeill — Have not said so.

Loseby:— As far as this application is concerned I say it is audacious — no other merit. Should say that I am indebted to McNeill and instructing Solicitor for consideration of my client during hearing.

McNeill has said "if motion decided in his favour whole cost of repairs and of action would be paid to us." I have no doubt that the Indonesian Government will carry out its undertaking to me.

Consider how present motion will affect my clients. Attack on my clients has been repelled. McNeill brought motion to strike out my clients' action. Effect of stay would be to deprive me of my only security.

McNeill comes now — he has failed — yet he demands fruits of the stay. I say suspicious — affidavit witness. *Sine qua non*. — Application to stay very serious.

At present I, as result of judgment, retain possession of vessel — with admitted debt. I can get judgment — not effects the Indonesian Government. I am satisfied with the ship and party within jurisdiction who has admitted debt.

I have been awarded costs — they have been momentary. I can enforce them against party within jurisdiction provided I can prove that I have been properly vigorous in resisting stay. What chance have I should I try to levy conditions against Indonesian Government. McNeill ought to have offered or suggested terms.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 76A
Notes of
the Senior
Puisne Judge
on hearing
of Motion
for Stay.
16th September,
1952.
continued.

If stay allowed it would result in this — I would be deprived of all redress for 1½ years. Present stay won't help him — unless he gets another stay I do suggest that — McNeill — has not got an applicable case; he must show that — hopeless appeal.

Terms:— McNeill should state whether he intends to pay costs already awarded — if not, then I say one term should be they should pay them into Court within time prior to appeal — 7 or 8 days. Nothing will be lost by allowing action to proceed. I am unable to see that there would be anything to lose — other than payment of admitted debt plus costs. No reality that without the stay it would not be worth while appealing. I ask Court to dismiss motion. 10
Facts unusual — no loss of dignity to Indonesian Government if case goes against them. They have thought fit to fight with hands behind back.

McNeill:— Affidavit on file — not served — it is headed in this appeal. I say that this is sufficient affidavit — action is to go on. If action proceeds result inevitable — in 8/52 — in 6/52 — under liberty to apply — result inevitable. If we win we undertake to pay Loseby — he is satisfied — he says — with that undertaking.

We shall have lost the right to contest the action if it goes on. If judgment is given to Defts. — ship goes and if they succeed inevitable arrest will be discharged; it will leave here. 20

As to stay — it will not be for indefinite time; we ask for stay until Court hears appeal; it will last 3-4 days. I am in hands of Court.

In Action No. 8 — our suggestions — have to be careful we do not submit: in anything we do ask that it be not taken as a submission. We would pay into Court security for costs in Action No. 8: plaintiffs are foreign Company therefore do not desire to pay it to them.

In Action No. 6 would agree to pay costs to plaintiffs (Loseby's clients).

Order should be:— Stay to be allowed if — the f.q. does this: (Stay conditional upon).

We will pay to Accountant of Supreme Court expenses to date of arrest 30 of ship. Don't follow argument of D'Almada for demurrage — but we would be willing to do whatever Court suggests on that point. Court should have information before it as to sum of \$200,000 paid by Indonesian Government to Dock Company.

Court will also have to mention number of days — we don't know what costs are — they have to be taxed — so many days allow costs taxed.

I repeat in *Pollini v. Gray* no application to stay proceedings — that is why action proceeded and heard. We here to seek to stay ad

As to Loseby's claim — we should be agreeable to paying into Court the sum he wants — perhaps on terms. 40

I say as soon as ship discharged from arrest impleading issue finished and can never be remedied.

D'Almada:— May I make few observations on the terms.

It matters not whether plaintiff in or out jurisdiction — Solicitor can give undertaking to refund.

As to money spent on it by Indonesian Government, I say necessitated by treatment of the Indonesian Government. Charter hire here US\$35,000. p.m.

Adj. to 3.00 p.m.

(Sd.) E. H. WILLIAMS.

3.15 p.m. Appeals Nos. 14 & 15 of 1952. — Resumed.

10 Appearances as before.

In view of the exceptional circumstances of these cases the Court is prepared to grant an Order to stay all further proceedings in the two Admiralty Actions, Nos. 6 & 8 of 1952, until the hearing of the Appeals conditional on these terms:—

1. Payment by the Government of the Republic of Indonesia to the plaintiffs of an agreed sum to cover the taxed costs of the proceedings before Reece J. and of these applications, their solicitors undertaking to refund the taxed costs, if the appeals prove successful, or any balance over.
- 20 2. Payment by the Government of the Republic of Indonesia to the plaintiffs in Admiralty Action No. 6 of 1952 of his claim, his solicitor giving an undertaking to refund the sum if the appeal proves unsuccessful.
3. In Admiralty Action No. 8 of 1952 the Government of the Republic of Indonesia undertaking to the Court to pay compensation, if ultimately unsuccessful in their claim, to the plaintiffs for the loss of profits sustained by the plaintiffs from the date of the judgment of Reece J.
4. Payment by the Government of the Republic of Indonesia into Court of expenses incurred so far in connection with the arrest of the ship by way of bailiffs' & watchmen's fees, etc.
- 30 5. Payment by the Government of the Republic of Indonesia into Court of the sum of HK\$10,000 as security for the costs of these appeals: liberty to apply for further security if necessary.

The above terms to be complied with within seven days.

The Motions are accordingly adjourned to 24th September, 1952 at 10 a.m. with a stay of proceedings until that date.

(Sd.) E. H. WILLIAMS.

Appeal Judge.

16th September, 1952.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 76A
Notes of
the Senior
Puisne Judge
on hearing
of Motion
for Stay.
16th September,
1952.
continued.

**DECISION OF FULL COURT INDICATING THAT FULL COURT
PREPARED TO GRANT STAY UPON COMPLIANCE
WITH CERTAIN TERMS STATED, ADJOURNING
IN THE MEANTIME APPLICATION, WITH
INTERIM STAY, UNTIL 24TH SEPTEMBER, 1952**

(16th September, 1952.)

No. 77
Decision of
Full Court
indicating that
Full Court
prepared to
grant Stay upon
compliance
with certain
terms stated,
adjourning in
the meantime
application,
with interim
Stay until
24th September
1952.
16th September,
1952.

Coram: Howe, C. J. & Williams, J.

In view of the exceptional circumstances of these cases, the Court is prepared to grant an order to stay all further proceedings in the two Admiralty 10 Actions, Nos. 6 & 8 of 1952, until the hearing of the appeals conditional on these terms :—

1. Payment by the Government of the Republic of Indonesia to the Plaintiffs of an agreed sum to cover the taxed costs of the proceedings before Reece J., and of these applications, their solicitors undertaking to refund the taxed costs, if the appeals prove successful, or any balance over.
2. Payment by the Government of the Republic of Indonesia to the Plaintiffs in Admiralty Action No. 6 of 1952 of his claim, his solicitor giving an undertaking to refund the sum if the appeal proves unsuccessful.
3. In Admiralty Action No. 8 of 1952 the Government of the Republic of 20 Indonesia undertaking to the Court to pay compensation, if ultimately unsuccessful in their claim, to the Plaintiffs for the loss of profits sustained by the Plaintiffs from the date of the judgment of Reece, J.
4. Payment by the Government of the Republic of Indonesia into Court of expenses incurred so far in connection with the arrest of the ship by way of bailiffs' & watchmen's fees etc.
5. Payment by the Government of the Republic of Indonesia into Court of the sum of HK\$10,000.00 as security for the costs of these appeals: liberty to apply for further security if necessary.

The above terms to be complied with within 7 days.

30

The motions are accordingly adjourned to 24th September 1952 at 10 a.m. with a stay of proceedings until that date.

16/9/52.

**FURTHER NOTES OF THE CHIEF JUSTICE
ON HEARING OF MOTION FOR STAY**

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

(24th September, 1952.)

No. 78
Further
Notes of
the Chief
Justice on
hearing of
Motion for
Stay.
24th September,
1952.

Wright (Griffiths) for Appellants.

Loseby Q.C. (Stewart) for Respondent in 14/52.

D'Almada Q.C. and Bernacchi (Silva) for Respondents in 15/52.

10 Wright: Instructed by Indonesian Government not to proceed with the application for a stay of these actions on the conditions indicated by the Court. We are instructed to proceed with the appeals or ask for a date to be fixed.

Bernacchi: Asks for costs of this motion and that these costs be payable forthwith on taxation.

Loseby, Q.C.: I make a similar submission.

Wright: 30th September was the provisional date — may take 3 days.

Bernacchi: I gave notice that we will apply for security for costs.

Wright: Asks for date after the vacations as otherwise deprived of services of leader McNeill.

By consent 8th-12th December fixed for hearing of the appeals.

(Sd.) G. L. HOWE.
Chief Justice.

20

Bernacchi: Asks for leave to move Court to hear this application for security for costs in the vacations.

Order: Willing to set down vacations. For Thursday of next week.

(Sd.) G. L. HOWE.
Chief Justice.
24th September, 1952.

Order: Motions for stay refused. Costs reserved.

(Sd.) G. L. HOWE.
Chief Justice.
24th September, 1952.

30

**FURTHER NOTES OF THE SENIOR PUISNE JUDGE
ON HEARING OF MOTION FOR STAY**

(24th September, 1952.)

No. 78A
Further
Notes of
the Senior
Puisne Judge
on hearing
of Motion
for Stay.
24th September,
1952.

Wright (Griffiths) for Appellants.

Loseby Q.C. (Stewart) for Respondent in 14/52.

D'Almada Q.C. and Bernacchi (Silva) for Respondent in 15/52.

Wright: Inst. from Indonesian Government not to proceed with application for stay on conditions ordered by Court at last motion. We have instructions to proceed with the 2 appeals and ask Court now to fix date for hearing. 10

Bernacchi: Ask for costs of this motion: also ask for taxed costs — to be payable forthwith.

Loseby: Ask for similar order.

Wright: Dates —

Appeals fixed for 8th December-12th December.

Wright: Ask for question of costs of this motion to be reserved. Other side will ask for question of security for costs of the appeals.

Question of the costs of this motion reserved.

Motion for stay is accordingly dismissed. Costs reserved.

(Sd.) E. H. WILLIAMS. 20
24th September, 1952.

No. 79
Ex Parte
Notice of
Motion for
Earlier Dates.
21st October,
1952.

**EX PARTE NOTICE OF MOTION BY THE GOVERNMENT
OF THE REPUBLIC OF INDONESIA (APPELLANTS)
FOR LEAVE TO FILE ON SHORT NOTICE NOTICE OF
MOTION FOR EARLIER DATES TO BE FIXED FOR
HEARING OF APPEAL.**

(21st October, 1952.)

TAKE NOTICE that the Full Court will be moved at 10 o'clock a.m. on Wednesday the 22nd day of October, 1952 or so soon thereafter as Counsel can be heard by Mr. D. A. L. Wright of Counsel for the abovenamed Appellants for an Order that the Appellants do have leave to file and serve on short notice a Notice of Motion herein for earlier dates to be fixed for the hearing of this Appeal. 30

Dated the 21st day of October, 1952.

(Sd.) WILKINSON & GRIST.
Solicitors for the Government
of the Republic of Indonesia.

No. 80

Evidence Included in Record of Proceedings on Insistence by the Government of the Republic of Indonesia but Objected to by Juan Ysmael & Company Incorporated.

AFFIDAVIT OF PETER JOHN GRIFFITHS.

(22nd October, 1952.)

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong, Solicitor, a partner in the firm of Messrs. Wilkinson & Grist of the same address hereby make oath and say as follows:—

- 10 1. I am instructed by the Government of the Republic of Indonesia in this case.
2. Since the dates were fixed for the hearing of this case certain further developments have occurred, namely:—
- (a) A fresh action has been instituted by the Hong Kong & Whampoa Dock Co., Ltd. who have issued a writ in rem against the S/S "Tasikmalaja" claiming certain moneys for repairs. I am advised that it will be necessary to enter a conditional Appearance on behalf of the Government of the Republic of Indonesia and raise the whole question of immunity in this case once more. An expedited hearing of this Appeal may render it unnecessary to contest Admiralty Jurisdiction Action No.
- 20 13 of 1952 in detail so reducing costs.
- (b) The hearing of Admiralty Jurisdiction No. 8 of 1952 has now been completed but from searches made in the records at the Supreme Court it appears that Judgment has not yet been given.

Sworn, etc.

No. 81

ORDER FOR LEAVE TO FILE ON SHORT NOTICE NOTICE OF MOTION FOR EARLIER DATES TO BE FIXED FOR HEARING OF APPEAL

(22nd October, 1952.)

30 Upon the application of the Appellants and upon hearing Counsel for the Appellants IT IS ORDERED as follows:—

1. That the abovenamed Appellants do have leave to file and serve on short notice a Notice of Motion for an Order that the hearing of this appeal be fixed for dates earlier than those now fixed for the hearing thereof the 8th to the 12th days of December, 1952 inclusive.
2. That the said Notice of Motion for earlier hearings as aforesaid shall be returnable for 10 a.m. on Friday the 24th day of October, 1952.
3. That costs be reserved.

(Sd.) C. D'ALMADA E CASTRO.
Registrar.

40 (L.S.)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 80
Affidavit of
Peter John
Griffiths.
22nd October,
1952.

No. 81
Order for leave
to file Notice
of Motion for
earlier dates
to be fixed for
hearing of
22nd October,
Appeal.
1952.

No. 82

**NOTICE OF MOTION BY THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA (APPELLANTS) FOR
EARLIER DATES TO BE FIXED FOR
HEARING OF APPEAL**

(21st October, 1952)

TAKE NOTICE that the Full Court will be moved at 10 o'clock a.m. on Friday the 24th day of October, 1952, or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C. and Mr. D. A. L. Wright of Counsel for the abovenamed Appellants for an Order that the hearing of this Appeal be fixed 10 for dates earlier than those now fixed for the hearing thereof the 8th to the 12th days of December, 1952 inclusive.

Dated the 21st day of October, 1952.

(Sd.) WILKINSON & GRIST.
Solicitors for the Government of
the Republic of Indonesia.

The abovenamed Respondents and to Mr. M. A. da Silva, their Solicitors.

No. 83

**EX PARTE NOTICE OF MOTION BY JUAN YSMAEL
& COMPANY INCORPORATED (RESPONDENTS)
FOR LEAVE TO FILE NOTICE OF MOTION
FOR SECURITY FOR COSTS**

20

(23rd October, 1952.)

Counsel on behalf of Juan Ysmael & Company Incorporated to move the Full Court in Chambers that Juan Ysmael & Company Incorporated may be at liberty to serve Notice of Motion for 10.00 o'clock in the forenoon on Saturday, the 1st day of November, 1952, before the Full Court for the Appellants to appear and show cause why orders should not be made that :—

- (1) By reason of the abovenamed Appellants being in default of an order of the Honourable Mr. Justice Courtenay Walton Reece made on the 15th day of September 1952 in Admiralty Jurisdiction Action No. 8 of 1952 to pay the costs of the abovenamed Respondents as taxed and allowed, this appeal be dismissed out of this Court without further order. 30
- (2) The abovenamed Appellants may be ordered on or before the 8th day of November 1952 to give security as follows :—
 - (a) In the sum of \$18,920.00, being costs ordered by the Court below and taxed and allowed in Admiralty Jurisdiction Action No. 8 of 1952, and in the sum of \$4,432.14, being costs ordered by the

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 82
Notice of
Motion by the
Appellants for
earlier dates
to be fixed
for hearing
of Appeal
21st October
1952.

No. 83
Ex. Parte
Notice of
Motion by
Respondents
for leave to
file Notice
of Motion
for security
for costs.
23rd October
1952.

Court below and taxed and allowed in Admiralty Jurisdiction Action No. 6 of 1952, by way of payment of same to the solicitor for the abovenamed Respondents on the undertaking of the said solicitor to refund the same or any part thereof if so ordered by the Full Court;

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 83

Ex. Parte
Notice of
Motion by
Respondents
for leave to
file Notice
of Motion
for security
for costs.
23rd October
1952.
continued.

- 10 (b) In the sum of \$16,500.00 for the costs of applications to stay in the various appeals concerned and for the further costs of these appeals by way of payment of this sum into Court to be held to the credit of these appeals and to be paid out on the order of the Full Court; and
- (c) For watchmen's fees and Bailiff's expenses in the sum of \$4,000.00 by way of payment of same into Court as per sub-paragraph (b) hereof.

And that until such security shall have been given or such lodgment made, and notice thereof given to the said solicitor for the abovenamed Respondents, all proceedings (on the part of the Appellants) in this appeal may be stayed.

20 And that in default of the abovenamed Appellants giving such security or making such lodgment as aforesaid within the time aforesaid, the said appeal may stand dismissed out of this Court without further order.

- (3) The costs of the hearing of the following Motions be awarded to the abovenamed Respondents payable forthwith :—
- (i) A motion to stay an order for cross-examination made in Appeals Nos. 11 & 12 of 1952; and
- (ii) A motion to stay further proceedings in Admiralty Jurisdiction Actions Nos. 6 & 8 of 1952.

And that in default of such payment the said Appeal may be stayed.

30 And that in default of such payment the said Appeal may stand dismissed out of this Court without further order.

- (4) The costs of this Motion may be costs in the appeal.

Dated the 23rd day of October, 1952.

(Sd.) MARCUS Da SILVA
Solicitor for the abovenamed Respondents.

AFFIDAVIT OF KHALIL KHODR

(23rd October, 1952.)

No. 84
Khalil Khodr's
fifth Affidavit.
23rd October
1952.

I, KHALIL KHODR, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

1. I am authorised to make this affidavit on behalf of the abovenamed Respondents.
2. The Appellants are a foreign State.
3. The relevant proceedings throughout in Admiralty Jurisdiction Action No. 6 of 1952 and in Admiralty Jurisdiction Action No. 8 of 1952 and the subsequent Appeals therefrom were heard together by consent. On the 15th day of September, 1952 the Honourable Mr. Justice Courtenay Walton Reece ordered costs in favour of Juan Ysmael & Company Incorporated against the Government of the Republic of Indonesia and such costs were taxed and allowed at in the sum of \$18,920.00. Again, on the 15th day of September, 1952 in Admiralty Jurisdiction Action No. 6 of 1952, the said the Honourable Mr. Justice Courtenay Walton Reece ordered costs in favour of Juan Ysmael & Company Incorporated against the Government of the Republic of Indonesia and such costs were taxed and allowed at in the sum of \$4,432.14. 10
20
4. Applications for payment of costs and security for costs were made by letters dated 24th September, 1952 and 25th September, 1952 respectively, as per respective copies attached and marked "KK-1" and "KK-2", and the reply thereto was by way of letter from Messrs. Wilkinson & Grist now produced and marked "KK-3" with copy attached marked "KK-3a". }
5. No payment has been made or security furnished to date of this affidavit.
6. I am informed by my Solicitor, Mr. M. A. da Silva and verily believe that the calculation of the cost of the appeals is on a conservative estimate of time involved and the full justification for the amounts demanded can be made in due course on taxation. 30

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

Exhibits
KK-1,2,3a
Ref. No. 119, 120
& 121

No. 85

FURTHER AFFIDAVIT OF KHALIL KHODR

(24th October, 1952.)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

I, KHALIL KHODR, of Kimberley Hotel in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

No. 85
Khalil Khodr's
sixth Affidavit.
24th October
1952.

1. I crave leave to refer to the respective Motions filed on the 23rd day of October, 1952 in Appeals Nos. 11, 12, 14 and 15 of 1952 and to my affidavit filed in support thereof.
2. I am informed by my said Solicitor and verily believe:—

10

That the said Motions had been contemplated a considerable time ago and had only been delayed in filing in that the first date obtainable for hearing was not a convenient date to Mr. D. A. L. Wright who requested that my said solicitor should try and obtain another date convenient to him:

That since then my said Solicitor had made various attempts to obtain a date convenient to all Counsel and to the Full Court, but without success.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 86

**ORDER FOR LEAVE TO FILE NOTICE OF MOTION
FOR SECURITY FOR COSTS**

(24th October, 1952.)

No. 86
Order for
leave to file
Notice of
Motion for
security for
costs.
24th October
1952.

20

UPON the application of the Respondents and upon hearing Counsel for the Respondents IT IS ORDERED that the Respondents be at liberty to serve Notice of Motion for (date and time having been altered on the application of the Appellants and by consent to) 10.00 o'clock in the forenoon on Friday, the 31st day of October, 1952, before the Full Court for the Appellants to appear and show cause why orders should not be made that:—

30

- (1) By reason of the abovenamed Appellants being in default of an order of the Honourable Mr. Justice Courtenay Walton Reece made on the 15th day of September, 1952 in Admiralty Jurisdiction Action No. 8 of 1952 to pay the costs of the abovenamed Respondents as taxed and allowed, this appeal be dismissed out of this Court without further order.
- (2) The abovenamed Appellants may be ordered on or before the 8th day of November, 1952 to give security as follows:—

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 86
Order for
leave to file
Notice of
Motion for
security for
costs.
24th October
1952.
continued.

- (a) In the sum of \$18,920.00, being costs ordered by the Court below and taxed and allowed in Admiralty Jurisdiction Action No. 8 of 1952, and in the sum of \$4,432.14, being costs ordered by the Court below and taxed and allowed in Admiralty Jurisdiction Action No. 6 of 1952, by way of payment of same to the solicitor for the abovenamed Respondents on the undertaking of the said solicitor to refund the same or any part thereof if so ordered by the Full Court;
- (b) In the sum of \$16,500.00 for the costs of applications to stay in the various appeals concerned and for the further costs of these 10 appeals by way of payment of this sum into Court to be held to the credit of these appeals and to be paid out on the order of the Full Court; and
- (c) For watchmen's fees and Bailiff's expenses in the sum of \$4,000.00 by way of payment of same into Court as per sub-paragraph (b) hereof.

And that until such security shall have been given or such lodgment made, and notice thereof given to the said solicitor for the abovenamed Respondents, all proceedings (on the part of the Appellants) in this appeal may be stayed. 20

And that in default of the abovenamed Appellants giving such security or making such lodgment as aforesaid within the time aforesaid, the said appeal may stand dismissed out of this Court without further order.

- (3) The costs of the hearing of the following Motions be awarded to the abovenamed Respondents payable forthwith:—
- (i) A motion to stay an order for cross-examination made in Appeals Nos. 11 & 12 of 1952; and
- (ii) A motion to stay further proceedings in Admiralty Jurisdiction Actions Nos. 6 & 8 of 1952 made in Appeals Nos. 14 & 15 of 1952. 30

And that in default of such payment the said Appeal may be stayed.

And that in default of such payment the said Appeal may stand dismissed out of this Court without further order.

- (4) The costs of this Motion may be costs in the appeal.

(Sd.) C. D'ALMADA E CASTRO.
Registrar.

(L.S.)

NOTES OF THE CHIEF JUSTICE ON HEARING
OF MOTION FOR EARLIER DATES

(24th October, 1952.)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 87
Notes of
the Chief
Justice on
hearing of
Motion for
earlier dates.
24th October,
1952.

10.20 a.m.

Cor: Self &
Williams J.

McNeill Q.C. (Griffiths) for Appellants.

D'Almada Q.C. & Bernacchi (Silva) for Respondents (15/52)

Loseby Q.C. (Way) for Respondent (14/52)

- 10 McNeill: Two motions — 12 & 14 are motions to reverse decision on appeal and two others relating to an order for cross-examination 11 and 12. Leave to serve short notice of motion for earlier dates to be fixed for the substantive appeals. When motions filed yesterday events moved rapidly — since the hearing of the impleading motions the Dock Company have appeared in action No. 8 claiming a possessory lien in respect of work done. A further writ has been issued in rem by the Dock Company on balance of payment for work done. No decision yet given in action 6 or 8. Action No. 8 has in fact been heard and action 6 adjourned *sine die* — judgment given this morning for Ysmael & Co. My friend informs me that he has allowed him to serve a notice for
- 20 security for costs — substantive notice served upon us yesterday. Seems apparent that the new action is one in which Government of Indonesia are interested in precisely the same way, i.e. impleading — i.e. conditional appearance followed by within ten days by a motion — inconvenient that the same matters should be gone over again. Already discussed in actions 6 and 8. Having regard to the substantive appeals — dates fixed is 8-12 December 1952. Anxious if possible to get substantive appeals heard sooner — ship probably not covered by the new action — important that substantive appeals be heard with utmost despatch to avoid further costs — circumstances might arise in which the result of the appeal would be nugatory. Asks for 11-14 November for hearing, dates
- 30 could be exchanged.

D'Almada: Preliminary observation that this application is brought under the wrong section, but I concede inherent jurisdiction in Court. Regarding merits I say first that in Chambers today I asked early date for hearing of motion on costs and security — submits this application should take priority — failure to comply should result in appeals being dismissed: other engagements for most of us next week — regarding 11-14 November my junior informs me these dates booked for action 352/50.

- On merits -- Juan Ysmael allowed judgment with an order fully protecting the Dock Company — As to nugatory — I repeat what I said in the Court
- 40 below. Counsel for Indonesia stated in Court concerned only with appeals in so far as to vindicate their position — nullify or nugatory no concern of this Court.

Conditions could have been complied with, but chose not to. To bring up stultification now again after refusal of terms cannot have merit. That is judgment now given — stultification the fault of Indonesian Government and regarding the action in rem, the same steps will have to be taken. The argument that this would effect a saving of costs — easiest way of doing that is to agree to hold hearing of that impleading motion after the judgment in these appeals.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 87
Notes of
the Chief
Justice on
hearing of
Motion for
earlier dates.
24th October,
1952.
continued.

Evidence would be the same, and if not the same then the decision on appeal would not apply — should not inconvenience either litigant. That hearing of appeal fixed originally for second week in December should not be accelerated.

Motion brought by my clients, if successful, may call for compliance with terms. This will affect the bringing on of the appeals.

No merits in the application.

Loseby Q.C.: Appears for Loh in appeal 14/52, and 11/52, and I oppose the application of McNeill on grounds that it could not be granted without embarrassment to my client. Represent a small contractor. Now other party with a debt of \$175,000 owed. Quite impossible to put forward appeal now 10 without embarrassing my client and the Dock Company. The dates fixed were at the request of the present applicants. D'Almada says he wants time to bring a motion to get security for costs. I wish to bring a motion on exactly the same lines. This would not have arisen had the Government of Indonesia complied with the terms of the stay. Everything based on the date of the appeal fixed for the convenience of McNeill. We want to be quite sure that we are protected against costly proceedings of past and those contemplated. We are compelled to be present — in action 6 — perfectly straightforward matter I undertook not to press until after judgment in 8. Proper time essential. I cannot see how 20 justice be done for a party outside jurisdiction which has taken on its own choice a certain course of conduct — cannot see how matter changed if date of appeals moved forward.

McNeill: An application to allow a speedy decision. — why

No arrangements between Government of Indonesia and the Dock Company — possibilities cannot come into the matter.

Order 12 Rule 30, White Book — Loseby's action 6/52 adjourned sine die.

Regarding D'Almada's motion for security — this could be put forward to next day if possible.

D'Almada: I suggest Friday — my motion.

McNeill. I ask for a very early date — all appeals to be heard. 30

The hearing of the action of Juan Ysmael to be heard on Friday, 31st Oct.

The date for the hearing of the appeal to be ascertained next Friday.

Motion to stand over to 31.10.52.

D'Almada: Costs?

Question to be taken next Friday.

(Sd). G. L. HOWE,

**NOTES OF THE SENIOR PUISNE JUDGE ON HEARING
OF MOTION FOR EARLIER DATES**

(24th October, 1952.)

McNeill Q.C. (Griffiths) for Appellants.
D'Almada Q.C. and Bernacchi (Silva) for Respondents 15th.
Loseby Q.C. (Way) for Respondent 14th.

McNeill: 2 motions — (Substantive Appeal).

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 87A
Notes of
the Senior
Puisne Judge
on hearing of
Motion for
earlier dates.
24th October,
1952.

10 Motions 14 and 15 — to reverse Reece J. in impleading — and other appeals relate to orders for xxn — yesterday my junior applied *ex parte* for order for leave to secure s.n. of motion for earlier dates to be fixed for substantive appeals — order was made and we secured them, therefore to-day motions for earlier dates for appeals.

Defence have moved rapidly. Since hearing of motion to set aside writs in Action 6 and 8 — the Hong Kong Dock Co. have entered appearance in Action 8 — they claim a possessory lien in respect of work done on the ship.

Again since that — further writ issued in rem — by the Dock Co. claiming balance of pay for work done.

20 No decision had been given at trial in Actions 6 & 8 but Action 8 had been heard — Action 6 had been adjourned s.d. by the judge: judgment had not then been given — believe it has been given this a.m. (confirmed by D'Almada).

Again, I am informed that D'Almada has been before you re security for costs and n. of m. served on us yesterday. Leave granted by Court for early hearing of that motion.

Apparent that new action by Dock Co. is one in which Indonesian Government are interested as they are interested in Actions 6 & 8. Practice is — if you wish to stay jurisdiction of Court, you enter conditional appearance — 10 days after motion comes before Court — affidavits have to be filed.

30 Submit incorrect and improper that the same or nearly the same matters should be gone over — as have been discussed in 6 & 8 — having regard to the substantive appeals which are to come before Court.

Dates fixed for substantive appeals at present are 8-12th December.

We are anxious to get the substantive appeals heard much sooner.

It is important that Court should hear substantive appeals with early despatch with view to diminishing costs which may have to be incurred in later action. If appeals resulted in our favour they might be nugatory.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 87A
Notes of
the Senior
Puisne Judge
on hearing of
Motion for
earlier dates.
24th October,
1952.
continued.

Therefore I ask for earliest possible dates — perhaps next week — that may not be possible. If not suggest 11th-14th November (case before Williams J. fixed for those dates; therefore to be put off until the 8th-12th December).

D'Almada: This application brought under wrong section — but inherent jurisdiction in Court to bring forward date of hearing.

As to merits — in Chambers this a.m. my notice of motion should take priority before hearing of the appeals — our motions are with regard to security for costs of appeals and dismissal of appeals. Suggest Court allots earlier dates for hearing of our motions.

Next week unsuitable.

10

With regard to 11-14th November — case fixed for these dates urgent — twice adjourned.

Judgment given by Reece J. this a.m. in our favour but fully preserving Dock's rights, therefore that ground of urgency given. I repeat what I said to Reece J. — when Attorney General appeared as *amicus curiae* — it is no concern of Court whether result is rendered nugatory — Court ordered certain terms — not obeyed by Indonesian Government. That disposes of second ground — as it is not proper ground for consideration by this Court.

Third ground — Dock Co. have sued the ship and Indonesian Government again will say *impleaded* — they will have to do what they have already done. 20 They say 'if appeals heard certain costs saved' — they ought to file their notice of motion — then Court could adjourn that hearing until hearing of appeal — if the evidence is the same. If not, it is different. In the circumstances and in order to accommodate McNeill, Court will have to inconvenience seriously other persons. Court ought not to accede to motions.

Should have mentioned this — notice of motion by Indonesian Government in Dock Co. action — (point dropped) — the motion can by agreement be put off for some time.

Our motion — if successful — might mean Court would impose terms — period with which terms to be complied with — this would all require to be done 30 before 11-14th November.

Loseby: I appear for Anthony Loh in appeal No. 14 — I am instructed to oppose this motion on ground that it could not be granted without embarrassment to my client. My client not paid sum of \$25,000 — now another party is claiming \$175,000: quite impossible for this appeal to be put forward without embarrassing us and Dock Co. — both within jurisdiction and anxious to fortify their position. The dates were fixed at request of present applicants.

Vital to my clients that we should have time to clarify matters being raised by D'Almada (security for costs of appeal).

At previous hearing of motions to stay execution, reasonable terms given to Indonesian Government — they have ignored them. All arrangements now made by my client for hearing on 8-12th December. We want to be sure that we are protected against very costly proceedings of past and of future — present costs incurred amount to nearly half my claim. The dates fixed — December — give me ample time to file motion for security for costs. I ask Court to say that it can do no more in this matter. I cannot be ready by earlier date. Court ought to adhere to December dates and refuse motion — I oppose motion.

McNeill: In Reply—

10 Surprised that my application for speedy trial should be opposed.

Judgment now given — argument for earlier date all the more forcible.

Loseby's action adjourned *sine die* as Court knows — surprised to hear him say he wishes to file motion for security — as up to this moment they have taken no action re security.

We are anxious to press forward the matter.

Suggest next Monday — for hearing of D'Almada's motions. Would also take the appeals which were adjourned *sine die* to be heard together with substantive appeals.

Order: D'Almada's motions to be heard on Friday, 31st October.

20 As to present motions, order to stand over until 31st October.

Question of costs of to-day's hearing adjourned until 31st October.

(Sd.) E. H. WILLIAMS,
Appeal Judge.
24th October, 1952.

No. 88

**NOTICE OF MOTION BY JUAN YSMAEL & COMPANY INCORPORATED
(RESPONDENTS) FOR SECURITY FOR COSTS**

(27th October, 1952.)

30 TAKE NOTICE that the Full Court will be moved at 10.00 o'clock in the forenoon on Friday, the 31st day of October 1952, or so soon as Counsel can be heard by the Hon. Leo D'Almada Q.C. and Mr Brook Bernacchi, Counsel for the abovenamed Respondents, that:—

- (1) By reason of the abovenamed Appellants being in default of an order of the Honourable Mr. Justice Courtenay Walton Reece made on the 15th day of September 1952 in Admiralty Jurisdiction Action No. 8 of 1952 to pay the costs of the abovenamed Respondents as taxed and allowed, this appeal be dismissed out of this Court without further order.
- (2) The abovenamed Appellants may be ordered on or before the 8th day of November 1952 to give security as follows:—

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 87A
Notes of
the Senior
Puisne Judge
on hearing of
Motion for
earlier dates.
24th October,
1952.
continued.

No. 88
Notice of
Motion by
Juan Ysmael
& Co. Inc.,
(Respondents)
for security
for costs.
27th October
1952.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 88
Notice of
Motion by
Juan Ysmael
& Co. Inc.,
(Respondents)
for security
for costs,
27th October
1952.
continued.

- (a) In the sum of \$18,920.00, being costs ordered by the Court below and taxed and allowed in Admiralty Jurisdiction Action No. 8 of 1952, and in the sum of \$4,432.14, being costs ordered by the Court below and taxed and allowed in Admiralty Jurisdiction Action No. 6 of 1952, by way of payment of same to the Solicitor for the abovenamed Respondents on the undertaking of the said solicitor to refund the same or any part thereof if so ordered by the Full Court;
- (b) In the sum of \$16,500.00 for the costs of applications to stay in the various appeals concerned and for the further costs of these appeals by way of payment of this sum into Court to be held to the credit of these appeals and to be paid out on the order of the Full Court; and 10
- (c) For watchmen's fees and Bailiff's expenses in the sum of \$4,000.00 by way of payment of same into Court as per sub-paragraph (b) hereof.

And that until such security shall have been given or such lodgment made, and notice thereof given to the said solicitor for the abovenamed Respondents, all proceedings (on the part of the Appellants) in this appeal may be stayed.

And that in default of the abovenamed Appellants giving such security or making such lodgment as aforesaid within the time aforesaid, the said appeal may stand dismissed out of this Court without further order. 20

- (3) The costs of the hearing of the following Motions be awarded to the abovenamed Respondents payable forthwith:—
- (i) A motion to stay an order for cross-examination made in Appeals Nos. 11 & 12 of 1952; and
- (ii) A motion to stay further proceedings in Admiralty Jurisdiction Actions Nos. 6 & 8 of 1952.

And that in default of such payment the said Appeal may be stayed.

And that in default of such payment the said appeal may stand dismissed out of this Court without further order. 30

- (4) The costs of this Motion may be costs in the appeal.

Dated the 27th day of October, 1952.

(Sd.) MARCUS DA SILVA
Solicitor for the abovenamed
Respondents.

To the Appellants and to Messrs. Wilkinson
& Grist, their solicitors;

To Anthony Loh trading as A. W. King, and
to Messrs. Stewart & Co., his solicitor; and

To the Hong Kong & Whampoa Dock Co. Ltd.,
and to Messrs. Deacons, their solicitors. 40

**EX PARTE NOTICE OF MOTION BY THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA (APPELLANTS) FOR LEAVE TO FILE
ON SHORT NOTICE NOTICE OF MOTION FOR IMMEDIATE STAY OF
EXECUTION AND ALL OTHER PROCEEDINGS IN A. J. ACTION
NO. 8 OF 1952**

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 89
Ex Parte
Notice of
Motion by the
Government of
the Republic
of Indonesia
(Appellants)
for leave to
file on short
notice. Notice
of Motion for
immediate stay
of execution
and all other
proceedings in
A.J. Action
No. 8 of 1952.
28th October,
1952.

(28th October, 1952.)

TAKE NOTICE that the Full Court will be moved at 9.30 o'clock a.m. on Thursday the 30th day of October 1952 or so soon thereafter as Counsel can be heard by Mr. D. A. L. Wright of Counsel for the abovenamed Appellants for an Order that:—

1. The abovenamed Appellants do have leave to file and serve on short notice a Notice of Motion returnable for Friday the 31st day of October, 1952 at 10 a.m. for an order that execution and all further steps and/or proceedings in Admiralty Jurisdiction Action No. 8 of 1952 or pursuant to the Judgment delivered therein, be stayed until further order and that the ship "Tasikmalaja" be maintained under the arrest of the Bailiff of this Honourable Court in Admiralty Jurisdiction Action No. 8 of 1952 until further Order and that the status quo on board the said vessel be maintained until further Order.
2. An immediate stay be granted as aforesaid and that the status quo be maintained until the hearing of the Notice of Motion referred to in paragraph 1 hereof.

Dated the 28th day of October, 1952.

(Sd.) WILKINSON & GRIST
Solicitors for the Government of
the Republic of Indonesia.

No. 90

**Evidence Included in Record of Proceedings on Insistence by the
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

No. 90
Peter John
Griffiths
Affidavit.
28th October,
1952

AFFIDAVIT OF PETER JOHN GRIFFITHS

(28th October, 1952.)

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong Solicitor hereby make oath and say as follows:—

1. I have the conduct of this Appeal on behalf of The Government of the Republic of Indonesia.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 90

Peter John
Griffiths
Affidavit.
28th October,
1952.
continued.

Exhibit PJG-1,
2 & 3
Ref. No. 122, 123
& 124

2. I am informed by searching the Court records that Judgment was delivered decreeing legal possession of the s.s. "Tasikmalaja" in Admiralty Jurisdiction Action No. 8 of 1952 to the Plaintiffs on the 24th day of October 1952. I crave leave to refer to the Judgment filed in Admiralty Jurisdiction Action No. 8 of 1952.
3. There is now produced to me and marked Exhibit "PJG-1" a copy of a letter dated 24th October 1952 from the Solicitor for the above-named Respondents which I received as Solicitor for the Indonesian members of the crew therein referred to.
4. There is produced to me and marked Exhibit "PJG-2" a copy of a letter 10 dated 24th October 1952 which was sent by me to the Solicitor for the abovenamed Respondents on the instructions of the said members of the crew.
5. There is produced to me and marked Exhibit "PJG-3" a copy of a letter received from the Solicitor for the abovenamed Respondents in reply and dated 24th October 1952.
6. I crave leave to refer to the File of Proceedings in Admiralty Jurisdiction Action No. 8 of 1952 filed in this Appeal.
7. I crave leave to refer to the Court file in Admiralty Jurisdiction Action No. 13 of 1952. 20
8. I verily believe that if a stay of execution is not ordered that the abovenamed Respondents will attempt to interfere with the status quo on board the said vessel pending the hearing of this Appeal.
9. I am advised by Counsel that if no stay is granted there is the danger that possession of the said vessel will be taken by the abovenamed Respondents despite the fact that if the Appellants obtain a successful decision in this Appeal it will be evident that the Court below had no jurisdiction to decree possession of the said vessel to the Respondents.
10. The Respondents are a foreign Corporation registered outside the Colony of Hong Kong and in the event of their getting possession of the said 30 vessel they may be in a position to remove the vessel out of the jurisdiction of this Court.
11. If the Respondents cause the Indonesian members of the crew to be removed I am advised that the status quo in Admiralty Jurisdiction Action No. 13 of 1952 will be affected.
12. I have received instructions from the Acting Consul for the Government of the Republic of Indonesia to file Notice of Motion in Admiralty Jurisdiction Action No. 13 or 1952 asking that the Writ and all subsequent proceedings be set aside on the grounds (*inter alia*) that the Government were at material times and are in possession and control through the 40 Indonesian crew.

And lastly the contents of this my Affidavit are true.

Sworn etc.

No. 91

**ORDER (AS ENDORSED ON BACK PAGE OF EX PARTE
NOTICE OF MOTION (DOCUMENT NO. 89)) FOR
IMMEDIATE STAY OF EXECUTION AND ALL
OTHER PROCEEDINGS IN A. J. ACTION
NO. 8 OF 1952**

(30th October, 1952)

Coram: C. J. and Williams J. (In Chambers).

McNeill Q.C. & Wright (Griffiths) Ex Parte for Appellants.

- 10 Order in terms — Leave to serve on short notice for 31.10.52 at 10 a.m. and Stay of Execution (in Admiralty No. 8 of 1952) until determination of motions fixed for hearing on 31.10.52 or until further order.

(Sd.) WM. C. LOW,
Clerk of the Court.
30.10.52.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 91
Order (as
endorsed on
back page of
Ex Parte
Notice of
Motion
(Document
No. 89)) for
immediate stay
of execution
and all other
proceedings in
A.J. Action
No. 8 of 1952.
30th October,
1952.

No. 92

**Evidence Included in Record of Proceedings on Insistence by the
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

No. 92
Peter John
Griffiths
Affidavit.
30th October,
1952.

20

AFFIDAVIT OF PETER JOHN GRIFFITHS

(30th October, 1952.)

I PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong Solicitor a Partner in the firm of Messrs. Wilkinson & Grist of the same address hereby make oath and say as follows:—

1. I have the conduct of this appeal on behalf of the Appellants.
2. There is now produced to me and marked Exhibit PJG-1 a copy of a letter dated 28th day of October 1952 which was received by my firm from the Solicitor of the above Respondents. Exhibit PJG-1
Ref. No. 125
3. There is also produced to me and marked Exhibit PJG-2 a copy of the Notice of Motion referred to in the said letter which has been filed in Admiralty Action No. 8 of 1952. Exhibit PJG-2
Ref. No. 126
- 30 4. There is also produced to me and marked Exhibit PJG-3 a copy of the affidavit in support of the said Motion referred to in the said letter and also filed in the said Action. Exhibit PJG-3
Ref. No. 127

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

**ORDER FOR LEAVE TO FILE ON SHORT NOTICE NOTICE OF MOTION FOR
IMMEDIATE STAY OF EXECUTION AND ALL OTHER PROCEEDINGS IN
A. J. ACTION NO. 8 OF 1952.**

(30th October, 1952.)

No. 93
Order for
leave to file
on short notice
Notice of
Motion for
immediate stay
of execution
and all other
proceedings
in A. J. Action
No. 8 of 1952.
30th October,
1952.

UPON the application of the Appellants and upon hearing Counsel for the Appellants IT IS ORDERED as follows:—

1. That the above-named Appellants do have leave to file and serve on short notice a Notice of Motion returnable for Friday, the 31st day of October, 1952 at 10 a.m. for an Order that execution and all further steps and/or proceedings in Admiralty Jurisdiction Action No. 8 of 1952 or pursuant to the Judgment delivered therein be stayed until further order and that the ship "Tasikmalaja" be maintained under the arrest of the Bailiff of this Honourable Court in Admiralty Jurisdiction Action No. 8 of 1952 until further order and that the status quo on board the said vessel be maintained until further order. 10
2. An immediate stay as aforesaid is hereby granted and it is ordered that the status quo be maintained until the determination of the Notice of Motion referred to in paragraph 1 hereof or until further order.

L. S.

(Sd.) C. D'ALMADA E CASTRO
Registrar.

20

No. 94
Peter John
Griffiths
further
Affidavit.
30th October,
1952.

**Evidence Included in Record of Proceedings on Insistence by the
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

FURTHER AFFIDAVIT OF PETER JOHN GRIFFITHS

(30th October, 1952.)

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong Solicitor hereby make oath and say as follows:—

1. I have the conduct of this Appeal on behalf of the Government of the Republic of Indonesia. 30
2. I crave leave to refer to the Affidavits sworn by me and filed herein on the 28th day of October, 1952 and on the 30th day of October 1952 respectively.

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

No. 95

**NOTICE OF MOTION BY THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA (APPELLANTS) FOR STAY OF EXECUTION AND ALL OTHER
PROCEEDINGS IN A. J. ACTION NO. 8 OF 1952**

(30th October, 1952.)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 95
Notice of
Motion by the
Appellants for
Stay of
Execution and
all other
proceedings
in A. J. Action
No. 8 of 1952.
30th October,
1952.

TAKE NOTICE that the Full Court will be moved at 10 o'clock a.m. on Friday the 31st day of October 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C. and Mr. D. A. L. Wright of Counsel for the above-named Appellants for an Order that execution and all further steps and/or proceedings in Admiralty Jurisdiction Action No. 8 of 1952 or pursuant to the Judgment delivered therein be stayed until further order and that the ship "Tasikmalaja" be maintained under the arrest of the Bailiff of this Honourable Court in Admiralty Jurisdiction Action No. 8 of 1952 until further order and that the status quo on board the said vessel be maintained until further order.

Dated the 30th day of October, 1952.

(Sd.) WILKINSON & GRIST.

Solicitors for the Government of the
Republic of Indonesia.

To the above-named Respondents and to M. A. da Silva, Esq., their Solicitor.

20

No. 96

**NOTES OF THE CHIEF JUSTICE ON HEARING OF MOTIONS
FOR SECURITY FOR COSTS, FOR STAY OF
EXECUTION, AND FOR EARLIER DATES**

(31st October, 1952.)

No. 96
Notes of
the Chief
Justice on
hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates.
31st October,
1952.

O. Cheung (Watson) watches for plaintiff in 13/52. Adm.
McNeill Q.C. and Wright (Griffiths) for Appellants.
D'Almada Q.C. and Bernacchi (Silva) for Respondents.
Loseby Q.C. (Way) for Respondent.

D'Almada: Will deal first with motion for security.

30 Opens the motion — Para. 1 asks for appeal to be dismissed, but would argue that the most proper course is to stay the appeal.

Reads affidavit of Khalil Khodr of 23rd October, 1952.

Reads affidavit of Khalil Khodr of 24th October, 1952.

Principle on which a stay is granted is clearly established — in considering whether a stay should be granted Court will take into account circumstances. Some time ago non-payment of costs was contempt, but not so now.

Morton v. Palmer 9 Q.B. p. 89-92 "ordinary remedies" not open to the respondents here.

Wickham 35 C.D. 272-279-280-2 “unreasonable”.

No question Government of Indonesia unable to pay, but being perfectly able to pay refuses for his own reasons.

Grahams case, 1897, 2 Ch. p. 367-368-371.

Wickhams case was approved last August by Denning L.J.

Hadkinson v. Hadkinson, 1952 A.E.R. p. 567, 574.

Case for part I of the motion. Reminds Court of application for stay by Government of Indonesia some time ago, which was granted upon terms which were not complied with — Counsel stating that not going to proceed with application to stay on those terms. Reasonable terms were therefore rejected, successful 10 litigant cannot get recovery of his costs.

Bernacchi: I deal with 2 (a) which is the same argument as in part 1, but we ask in the alternative, security be put up or proceedings stayed, i.e. complete discretion of the court.

2 (b) and (c). These deal with security for costs to be received in the appeals and for watchmen’s fees, etc.

Refers to Code Civil Procedure, Vol. 7. Order XXII Rule 12 (3). “Special circumstances” of the Full Court equals Order 58 No. 15 of Rules of Supreme Court in England.

Special Circumstances -

20

Grant vs. Franco Egyptian Bank, 2 C.P. p. 430. Here the respondents would be unable to recover costs at all.

The Constantine, 4 P.D. p. 586.

Can it be said that a foreign independent state is in any better position. Foreign government which is a plaintiff is liable for security.

Republic of Costa Rica v. Erlanger, 1876, 3 Ch. 62.

The Newbattle. 10 P.D. p. 33, 34, 35 ‘counter-claim’ — whenever the foreign government seeks the aid of the court — authority to impose security where there is otherwise authority to order security.

1924, 2 K.B. *The Bjornstad*. p. 673-682-3.

30

1952 White Book, p. 1281 “foreign sovereign”.

Kelantan v. Duff Development Co. (1923) A.C. 395-96. 402-407. “repudiate the jurisdiction yet seeks protection.”

Kelantan v. Duff Development Co. (1925). 41 T.L.R. p. 375-376,77.

De Gex and Smale, 516. Foreign Government has set the full court in motion, no intention voluntarily to pay these costs — every action shows this.

Form of application taken from form 1091 at p. 631 of Daniels Chancery Forms. Submits respondents entitled to protection of this Court.

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Loseby Q.C.: Representing Loh — in appeals 11 and 14. Appeals giving exactly the same points as made by D'Almada and Bernacchi — adopt their arguments *in pari periculo* — form upon which motion based a strong resemblance to my motions — in fact we adapted the motions and affidavits of the respondents Juan Ysmael: — only desire is that in due course my poor client gets his just dues
10 — important to realise that all this is based upon a claim by a poor contractor — action in rem, but not a sovereign power. Motions asking for the same protection is based upon action 6/52 Adm. Neither of the debts have been paid by either of the parties. The Indonesian Government intervened to strike out my action, the effect would have been that I would be left without remedy — basic justice — action took many days. Never has so much been said, all at my expense — Indonesian Government has no intention to pay anything. Applied to Indonesian Government for costs, but without result. Indonesian Government treated by the Courts with the utmost courtesy — costs now about half claim — no reply at all to the claim. If Counsel for Indonesia says that the costs will be paid or if the
20 undertaking is given, it will alter the position considerably. An undertaking will suffice — must look to reality. Indonesian Government have given no sign that these costs would be paid.

(Sd.) G. L. HOWE.

Williams J: No importance to paragraph 3 of the motion.

Bernacchi: Arguments on 2a and 2b relate to 3 as well.

(Sd.) G. L. HOWE.

S/O 15 minutes.

Resumed 12.05. As before.

McNeill: Cases cited show that mere non-payment of costs no ground for
30 staying proceedings. Counsel for respondents dealt with “vexatious manner” but did not proceed to say in what manner the proceedings were conducted vexatiously — claim not subject to the jurisdiction of the Court.

No case cited for the proposition that when a foreign government lays before the court its claim that it is impleaded, and that the court has no jurisdiction, that court will ever take steps such as these regarding security.

Re vexatiously —

Wickhams case 35 Chancery D. 272, 282, no vexatious conduct but special circumstances were that the beneficiaries who had nothing to do with proceedings, might have their interest in a fund reduced. P. 280-282 — Client always says
40 court no jurisdiction. Here no innocent parties who might be affected. If appeal succeeds — no way of recovering from the respondents, a foreign company — clients never been asked for costs “*in pari periculo*” on this point.

In judgment of learned judge reported by the court below — no single argument dealt with on the subject of impleading. Could only be one interested party.

Graham v. Sutton L.R. Ch.D. Vol. 11. 1897 368-9-370.

The Constantine — 4 Probate Division.

Position does not apply here — and at no time have we done other than maintain “no jurisdiction”. 24th June in A.J. 6/52, writ issued in rem calling upon all persons interested — on 27th June Juan Ysmael, knowing full well that Indonesian Government must come in some fashion, issued a writ in rem in 8/52 claiming legal possession. Proceedings here result of an action brought by Ysmael & Co. No step has been taken by Indonesian Government. 10

In all cases cited the government concerned submitted to the jurisdiction of the Court.

Hailsham V. 26. p. 66, footnote (f). Government in all the cases in the position of plaintiff — when foreign government refused to submit to jurisdiction no order for costs or security ever made.

Costa Rica v. Erlanger — 3 Ch.D. 1876. p. 62.

“In a suit by a foreign government”.

The Newbattle — 10 P.D. 1885 p. 33. p. 35 — again plaintiff.

The Bjornstad, 1924 L.R. K.B.D. II, p. 673-676-682. Application by foreign — comes in as a suitor. 20

The White Book passage relates only to those instances in which a foreign state is a suitor.

Kelantan Govt. v. Duff Development 1923, A.C. 397 p. 400. The Kelantan Government was the suitor in the case — a submission to the jurisdiction by seeking to enforce by court order. p. 475 — we in this case have throughout repudiated the jurisdiction — also House of Lords did not make any order in respect of past costs — only in respect of the costs of the appeal before it.

Kelantan Govt. v. Duff Development 1923, T.L.R. p. 378, 2nd paragraph. Government in position of plaintiff. 30

The Beatrice 1867 36 T.L.R. (Eq.P. etc.) P. 10.

All cases cited therefore relied on a submission to the jurisdiction.

Peruvian Government Cy. L.R. Ch.D. 23 1883 p. 225-231.

Ellis v. Allen. 1914 1 Ch. p. 904-909.

Writ in rem issued with the certainty that the Indonesian Government must claim.

Refers to affidavit by Khalil Khodr 27th June — followed by the writ to show the Indonesian Government specifically mentioned as grounds for the arrest. Indonesian Government brought into both actions in the position of defendant.

S/O 6.2.45.

2.45 resumed as before.

McNeill: Submits Court should take into account the following circumstances.

Jurisdiction: Where Government has not submitted: refers to 22 Hailsham p. 66, note f.

10 *Vavasasseur v. Krupp* 9. Ch.D. p. 351. C.A.

Here sovereign asks to be joined as a defendant and held as to costs and allowed to take goods away.

Said unfair since no one could get costs.

In action No. 8, position is precisely the same with regard to Ysmael firm.

Morton v. Palmer Q.B.D. 1881-82. 9. p.89.

Grant v. Banque Egyptienne. 2 C.P.

Position here the same for both parties in A.J. 8/52.

20 In connection with Action 8/52 — the prior application for the stay — we put these terms to our clients to obtain instructions. Loseby Q.C. suggested at no time did the Indonesian Government show any intention to pay costs — this offer in writing on 2nd September to his clients was to the effect that my clients would pay his costs and debit if successful.

Loseby: That is correct. I am grateful for the indemnity.

McNeill: No word from anyone that we have acted vexatiously.

Might be said that we are appellants — no more submitting to the jurisdiction when appealing than one is when one claims no jurisdiction in the first instance. In *the Cristina*, that went to the H.L. No suggestion of submission to the Court's jurisdiction.

Asks to dismiss the motion.

30 D'Almada: Ordinarily only one chance of reply, but McNeill has no objection to any wider reply, with consent of court (granted).

Regarding my showing that the conduct of appellants vexatious, is one entirely for the Court's discretion — in some cases action of withholding deemed vexatious (*Wickhams* case) the case here is the same. It is true we are outside the jurisdiction, but my friend could apply for security — the fact that one litigant does not apply for costs is no criterion.

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Wickhams case headnote is clear.

Graham v. Sutton L.R.C.D. Vol. II 1897 p. 369.

Chitty L.J. states immaterial from whose pocket. Surrounding circumstances must be considered.

Bernacchi: I cited these cases as growth of rules, and I quoted them as establishing a principle that where a foreign sovereign comes before the court as an applicant. Reference by McNeill to Hailsham Vol. 26, note f. This occurs in part of book dealing with plaintiff, not as appellants. The government in all these cases was always the respondent.

As to no authority that an appellate court can make an order for costs 10 against a foreign sovereign for security who is an appellant — if this court has no jurisdiction then full court has no jurisdiction to hear appeal. Really asking this Full Court as an appellate court to hold that the Court below has no jurisdiction to do what it has done — the jurisdiction of the appellate Court has been evoked to protect him against the jurisdiction of the court below. In that particular matter he has submitted to the jurisdiction of the appellate Court. On all fours with the 1923 *Kelantan* case.

1924 A.C. p. 798 *Kelantan v. Duff etc.*

McNeill: My submission was that application to the court was a submission.

Bernacchi: There is a submission to the jurisdiction of the appellate Court 20 to set aside the decision of court below.

Refers to Order XXIX Rule 12 — means I am submitting to the Court by invoking Order XXIX Rule 12 (1) and (2), but (3) cannot be invoked against me. *Vavasseur v. Krupp* supports respondents — whatever application is made to a Court by a foreign sovereign, then, if there is authority to make an order for security then the Court may impose terms: even an application to be joined as a defendant has this result.

In the 1925 *Kelantan* case same argument was put up — regard must be had to the case below to see what the position of the sovereign is. Cites T.L.R.

The Beatrice. L.J. Admiralty 1866, p.10.

30

Decided on *Watteau* principle — no jurisdiction in Court to order a defendant give security for costs — no authority for this. Position different in case of an appellate Court. No authority has been cited to show that appellant may invoke part of Order XXIX Rule 12 only — also invokes for stay of proceedings — for stay of execution, for an early trial, but says no jurisdiction to make an interlocutory order against him as he is a foreign state — all these other cases repudiate this suggestion. Must not confuse the appeals before the full Court with actions before a Court of First Instance.

The government is appealing for protection. At p. 141 Cave L.J. 1923 A.C. Distinguishes between *Watteau* and *the Beatrice*. Indonesian Government 40 applicants in the Court below, no authority to ask for security.

"*In pari periculo*" is not right. Clients are respondents within the jurisdiction. Refers to White Book 1281. McNeill agrees, but adds "provided the state is plaintiff in the court below."

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Loseby Q.C.: In Action 6/52 appellants in similar motion — McNeill has completely misconceived these applications. Court has the clearest jurisdiction in all matters following the motion to strike out the judgment in the Court below. Adopts arguments of D'Almada and Bernacchi. McNeill has not distinguished between two sets of facts. He is allowed to bring a motion to strike out and he is in Court affirmatively — he has submitted to the jurisdiction of the Court.
10 Exactly the same principle. Court has jurisdiction to grant costs. Without waiving his original plea he has come to the Court affirmatively. McNeill has admitted jurisdiction all along. Could have costs awarded against him in these motions, applies to 1st motion and to any other one subsequently. Procedure itself requires submission to the jurisdiction. In Court below held that these are unique facts, and in so far unique that a fundamental dispute as to ownership and possession — not possible to adopt part of an order. Submitted to jurisdiction to determine the impleading.

C.A.V.

(Sd.) G. L. HOWE.

McNeill: I would argue that terms such as these previously offered on a
20 stay of execution . . .

S/O Monday 3rd November at 10 a.m.

(Sd.) G. L. HOWE.

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FOR STAY OF EXECUTION, AND
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McNeill Q.C. and Wright (Griffiths) for Appellants.

30 D'Almada Q.C. and Bernacchi (Silva) for Respondents.

Loseby Q.C. (Way) for Respondents.

D'Almada: Various motions before Court: we have motion — filed 23/10/52 — McNeill also has motion. Ours — costs and security — (11).

If orders for appeal be dismissed on failure to pay costs — I shall argue this. Bernacchi will argue paragraphs (2) and (3) — I contend if costs not paid appeal should be *stayed* — rather than dismissed and shall so argue.

'Stay'
not
'dismissed'

Affidavit (9) of Khodr of 23/10/52: exhibited are letters — See KK-3a.

Exhibit KK-3A
Ref. No. 121

See further affidavit in (9) of Khodr.

Principle on which stay granted is this: mere non-payment of costs is not ground for stay but Court will take into account circumstances of each case: non-payment now not contempt:

Morton v. Palmer 9 Q.B. 89 — headnote.

Ordinary remedies for recovery of costs not open to us as Indonesian Government is foreign state — this factor is in our favour.

Wickham 35 Ch.Dn. 272 — headnote.

p. 279: Cotton L.J. — “In this case there was and over to p. 280 a proper case” — at bottom of p. 280 “I do not come”

Lindley L.J. — p. 282 “I agree that the non-payment”

10

Here Indonesian Government well able to pay costs but chooses not to do so — no question of us recovering the costs against a foreign sovereign.

Graham v. Sutton (1897) 2 Ch. 367 — headnote —

p. 368 — Lindley L.J.’s judgment — also

Lopes L.J. & Chitty at 371 “I think that at”

Recent case (1952) 2 A.E.R. at 574 — Denning L.J.

That is our case on part 1.

Remind Court of earlier application for stay — terms of Court not complied with. Counsel for Indonesian Government said “not going to proceed with application for stay on these terms.”

20

Bernacchi: 2 (a) — adopt argument of my leader — it is alternative to 1. We ask 2 (a) in alternative to it: order for security for costs. 2 (b) and 2 (c) — certain continuing costs.

Our Order 29, Rule 12 (3) — “Such deposit or other security” — authority to ask for deposit or other security = Order 58, Rule 15 of Supreme Court of England.

What is rule as regards these “special circumstances” — *Grant v. Banque Franco-Egyptienne* 2 C.P.D. 430 — headnote.

The Constantine 4 p. 156 — although there is complete discretion the Courts have formulated certain rules — here the foreign sovereign should have offered 30 security.

Can it be said because the applicants a foreign government, this makes any difference.

1876 *Republic of Costa Rica v. Erlanger* 3 Ch.Div. 62 — plaintiffs were foreign government — further security ordered under Rules of Court — 1876.

The Newbattle 10 P.D. 33.

I submit ample authority that whenever foreign government seeks aid of Court and there is *otherwise* jurisdiction to order security for costs, then the foreign government is liable to such an order.

The Bjornstad (1924) 2 K.B. 673.

p.682 — Scrutton. The Courts of this country”

p.683 — “In making an application”

White Book (1952) — 1281 “Foreign Sovereign”

The Kelantan cases —

10 *Government of Kelantan v. Duff Development Corp.* (1923) A.C. at 396 in headnote “The Government having appealed”

I say unless adequate security for costs of appeal given, Court will stay appeal.

p. 407 — Viscount Cave “My Lord, there was (to end of para. in p. 408).”

Duff Development Co. v. Government of Kelantan 41 T.L.R. 375 — Tomlin J. — p. 377 (halfway down) “The result of the litigation”

20 Immaterial what position in Court below was — Government is now appealing to this Court and is therefore liable to put up security. He has set this Court in motion.

Would mention that form of our application is taken from form 1091 at p. 631 and 632 of Daniels Chancery Forms (6th Edition).

Submit for these reasons that respondents are entitled to protection of Court.

Loseby: I have 2 motions — will adopt arguments of D’Almada and Bernacchi. I am in agreement with them. I have also adopted the forms on p. 631 and 632 of Daniels.

30 The Indonesian Government intervened in my action (6) for purpose of striking it out. I want only basic justice. I cannot remember how many days the action has taken—in which the Indonesian Government enjoyed itself at our expense—entirely at my expense—now so many appeals—they are in contempt—they have indicated it in several ways. Bernacchi now says hearing of the appeals in this Court will take 5 or 6 days. In lower Court we got judgment—including order for *costs*. We applied for costs—not paid. The order for costs—no reply came to letter in which we asked whether the Indonesian Government intended to pay the costs—they were half our original claim. I don’t know what McNeill will say in opposition to this—he may say he intends to pay the costs or costs of appeal if it goes against him. We ask only that Court should

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consider whether argument of D'Almada is correct — Indonesian Government in contempt and cannot be heard—until they have purged their contempt they cannot come here.

Bernacchi to Court: As to paragraph 3 of the motion (11) same arguments which I have submitted apply.

Court adjourned 5 minutes.

McNeill: Mere non-payment of costs no ground for staying—Court will consider all the circumstances.

If proceedings conducted in 'vexatious' manner that is a special circumstance. D'Almada did not show in what manner we had conducted 10 proceedings in vexatious manner.

No Counsel have cited a single authority for proof that while a foreign government lays before Court its claim that it is impleaded by the proceedings, security is ordered.

As to "acting vexatiously" — *Wickham* case 35 Ch.D. p.272 — there no "vexatious conduct" of proceedings but special circumstances there were that a burden might be thrown on the estate: see p.280 — "If the action went on....."

Lindley L.J. at p.282—"To hold that....."

I have not seen in any reported case that when foreign government comes 20 to Court and says "I am impleaded" is a vexatious proceeding. We have said "We are impleaded"—we have taken no step in the action.

In *Wickham's* case, it was feared additional burden might be thrown on beneficiaries—innocent parties affected. We have not asked for security for costs from Ysmael—if we win—they are foreign Corporation—we shall not get costs as we have no security. We have never asked for security for costs—we are '*in pari periculo*' — both in same position.

Lindley stresses "vexatious proceedings"—nothing like that here.

Reece J. did not deal with one *single* argument of mine on impleading.

Refer to *Graham v. Sutton* 2 Ch. 367 — at 368 per Lindley L. J. — "The 30 evidence then satisfied—" stress words "oppressive conduct in the suit"—cites Lopes L.J. at p.370 "Lindley L.J. says 'I am sorry'—"

We have maintained throughout the Court has no jurisdiction.

Bernacchi has cited *The Constantine* 4 P. — I submit position there does not arise here—we are foreign government and at no time have we done anything else but maintain that the Court has no jurisdiction to adjudicate in matters which they have been asked to deal with.

On 24th June writ in rem—No. 6—issued for work done—it called on all persons interested to appear. To that action Ysmael entered appearance: on 27th June Ysmael knowing full well we must come in, issued writ in Action No. 40

8—writ claimed legal possession. I say proceedings here are result of action brought by Ysmael & Co. to establish legal possession. We only followed usual procedure: entered conditional appearance — in cases cited by D'Almada and Bernacchi, in every case the Government concerned agreed to be a party — submitted to the jurisdiction.

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In 26 Hailsham p. 66, note (f), number of other cases cited—all to same effect, except one—Government concerned was party or in position of plaintiff and as such had submitted. Court then said “We won’t allow you to go in”—no single case where Government has refused to *submit* to jurisdiction—security
10 was ordered: we have not submitted. The one *case* was one—action v. ship for work done. I shall come to this case later.

First refer to cases D'Almada cited:

Republic of Costa Rica v. Erlanger 3 Ch. 62 — words in headnote “in suit by foreign government”—plaintiff a foreign government—we are not plaintiffs in other action—we issued no writ—we never submitted. See judgment of Malins V.C. at p.66—that case no application to present case.

Next case cited by Bernacchi—put my case as I would put it — *Newbattle* 10 p. 33—headnote—plaintiff was *foreign government*.

Butt J. p. 34—On Appeal Brett M.R. — p. 35 — 2nd paragraph — “It has
20 always — “also Cotton L.J. — “But when a government comes in as a suitor. . . .” This case very clear.

Next case — *Bjornstad* case (1924) 2 K.B. 673 — we are not seeking the aid of the Court—we are inviting the Court to say it has no jurisdiction—arbitration case—application.

Argument of Clement Davies at p. 676.

Bernacchi quoted Scrutton L.J. at p. 682—Words “*against whom they are minded to proceed.*” That is not case here. Also words “But a foreign sovereign suing *as a plaintiff. . . .*” and words of Cotton L.J. in *The Newbattle* “When a Government comes in. . . .” Only when you look at cases you see
30 that security ordered when foreign government has submitted to the jurisdiction —Bernacchi has cited passage in White Book.

Kelantan v. Duff Development Co (1923) A.C. 395—see facts of case: movers in that case Kelantan Government—p. 400—the Government served on the respondents a n. of m.—p. 402—“When however an application. . . .that did involve an *abdication of sovereignty*—p. 407—view of House set out with regard to Government which has sought the jurisdiction of Court and then seeks to repudiate it. We have from outset repudiated jurisdiction of Court—have never appealed to it for protection—the House of Lords decided to make an order ordering Government which had submitted to put up security for *costs* of action
40 —only in connection with *costs of appeal*.

Refer to the *Kelantan* case in 41 T.L.R.—see p. 378—left hand column—2nd paragraph—“It was no doubt true. . . .” clear if Government had been defendant, no security would have been ordered.

Next case I wish to cite — *The Beatrice* — (1867) 36 L.J.R. Admiralty p. 10—foreign government plaintiff must give security for costs — but foreign

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defendant is not bound to give s. for c.: 2 actions—in one U.S. Government had issued writ claiming possession: in other a person had brought action for necessities supplied. Judgment—Court order Government to give security in costs in case in which they were plaintiffs—the U.S. Government did not say they were impleaded there.

Ratio of all the cases cited was that the Government had submitted to the jurisdiction of the Court and though it was appreciated no evaluation for costs could be levied, yet the Court ordered security.

Absence of any authority for D'Almada's proposition is significant.

Peruvian Guana case 23 Ch. 225, 231 (bottom): Jessel M.R.—“Again the 10 fact.... stress words “*I think the absence of precedent is not immaterial.*”

In Cristina and other case no question of security for costs arose.

Ellis v. Allen (1914) 1 Ch. 904 at 909 — “I asked Mr”

The non production of such a case is eloquent—

The writ in A.J.8 issued with the full comprehension of Ysmael & Co. of the full possibility, even certainty that Government of Indonesia must come in to defend their rights or raise the impleading issue. Ysmael well knew we were concerned—affidavit of Khodr on 27/6/ — same day as writ—paragraph 9 and 10. Indonesian Government specifically mentioned possible action by the Indonesian Government mentioned by reason for arrest of ship. The — Ysmael 20 —knew right from start we were interested—secondly, we are brought in as defendants—in position of defendants—and we say ‘Court no jurisdiction.’ Another circumstance is that — A.J.6.

Adjourned to 2.45

(Sd.) E. H. WILLIAMS,

Appeal Judge.

2.45 p.m.

Continued.

McNeill: Circumstances Court should take into consideration — on subject of jurisdiction where Government has not submitted, I referred to 26 Hail 66 30 and cases cited—see paragraph 3 — note (f) — *Vavasseur v. Krupp* 9 Ch. 351 —

There Mikado applied for leave to be added as a defendant. Court said if he asked to be added as defendant he must put up security for costs—facts on p. 352 — “On the 11th of May etc. — these words to be stressed “and desiring to be made a defendant” — Court would not allow him to be made a party unless he submitted to the jurisdiction and put up security. p. 353 — Jessel M.R. “Then the M. came in and said”

I say no authority for proposition that Court can make foreign sovereign put up security for costs.

40

It was said by D'Almada unfair if we did not put up security as plaintiffs could not recover costs — but reverse holds good — we cannot recover against Ysmael —

Morton v. Palmer 9 Q.B.D. 89 cited by D'Almada — he said they had no remedy against us — put reverse applies: if we win on appeal we cannot recover costs.

Grant case — 2 C.P.D. 430 — here position in Action 8 is the same for both parties.

As to Action 8 — D'Almada indicated that in previous motion for stay Court had made an order — we said “if Court makes an order we will put that to our Government” — Court gave us 7 days — the Indonesian Government then did not accept that.

10 As to Loseby's motion, on 2nd September we gave undertaking in writing to Loseby's clients that we would pay his claim and costs if we succeeded in Court below.

(Loseby agrees this is correct).

We maintain we have acted correctly throughout — no word has fallen from D'Almada, Bernacchi, or Loseby that we have acted vexatiously — no facts suggested in this case. Only one point left — it might be said “You are appealing: submitting to jurisdiction of Court.” This is unarguable. I say you are not submitting if you come to Court of Appeal — you are only reasserting your claim that you are impleaded. No such suggestion in the *Arantzazu Mendi* 20 case, *Cristina* case, etc.

Ask Court to dismiss the motions before Court this a.m.

D'Almada: McNeill has told me he has no objection to self and Bernacchi splitting over reply.

McNeill — on *Wickman* and *Graham* case — he says we have not shown conduct of Government vexatious. In the *Wickman* case — “withholding payment of costs may be vexatious” (headnote). Fact that he has not asked Court for order for security of costs by us. Here ample ability to meet bill of costs — to refuse to do so is contumacious — see argument by Williams at p.368 of the *Graham* case.

30 Next point — see remark of Chitty at end of *Graham and Sutton* case at p.371 “I think that.....”

Bernacchi: As regards second link of argument — I mentioned the *Newbattle* case and *Erlanger* case. I referred to them as introductory case. As regards the comment that *Cristina* and other cases do not show precedent for requesting security, these Governments were respondents.

40 McNeill says no authority for denying Appellate Court can give order to foreign government for security for costs where that Government has objected to the jurisdiction — he also said the *Kelantan* case supported him as the arbitration was a submission to jurisdiction in the first instance — he said ‘We say Court no jurisdiction’ — fallacy is — if this Court no jurisdiction then how can Court hear appeal. What McNeill means is this — this Court as Appellate Court should hold that the lower Court has no jurisdiction, to do what, in fact, it

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has held it had jurisdiction to do so. I say he has involved the jurisdiction of this Court — in that particular matter he has submitted to the jurisdiction of the Court. It is on all fours with the 1923 *Kelantan* case — *Duff Development Co v. Government of Kelantan* (1924) A.C. 797. Held (2) that Government of Kelantan had not submitted etc. . . .

Here there is submission to jurisdiction of Appellate Court to set aside decision of Reece J.

Order 29 Rule 12 — McNeill says “I am invoking jurisdiction of Court so far as Rules 1 & 2 apply but Rule 3 cannot be invoked against me.”

Vavasour case completely supports my proposition — application to Court 10 for leave to be joined as a defendant — as a result of this application Court can impose terms: it did — imposed order for security for costs. It did not affect his right to argue sovereign immunity in the action itself.

McNeill argument similar to that put forward and *rejected* in the 1925 *Kelantan* case (41 T.L.R.).

Beatrice case — 36 L.J.N.S. (Admiralty) 10 — onus of proof lay on defendant — Court said “exceedingly inconvenient to introduce such a distinction”.

In appeals 11, 12, 14, and 15 Indonesian Government is submitting to the jurisdiction of the Court by these motions. 20

Costs — “*in pari periculo*” — here respondents are Company of considerable interests — if they were in contempt of Court by evading order for costs, they would never bring any ships goods or money into this Court.

McNeill agrees with quotation from White Book at p.1281 — “Foreign Sovereign” — provided words ‘if the foreign sovereign is plaintiff’ — no such qualification hinted as in White Book.

Loseby: McNeill has misconceived the position with regard to the application. I adopt whole of final argument of Bernacchi — say it is well founded. It is same as in principle of arbitration. Suppose in a contract a person submits to arbitration, but writ is issued against him — if he takes a step in the action 30 he is submitting to the jurisdiction of the Court.

If Court decided against McNeill, has it power to order costs — I say McNeill cannot deny it has. I say McNeill is acceding to the jurisdiction of the Court all the way through — he is approbating and reprobating all the way through.

I say McNeill in coming to this Court is submitting to the jurisdiction of this Court.

Adjourned to 10 a.m. on Monday.

(Sd.) E. H. WILLIAMS
Appeal Judge.
31 Oct. 1952.

40

No. 97

AFFIDAVIT OF PETER JOHN GRIFFITHS

(3rd November, 1952.)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 97

Peter John
Griffiths fifth
Affidavit.
3rd November,
1952.

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong Solicitor hereby make oath and say as follows:—

1. There is now produced to me and marked Exhibit "PJG-1" a decision of the Honourable Mr. Justice Reece in Admiralty Jurisdiction Action No. 8 of 1952 which was served upon me this morning.

Exhibit PJG-1
Ref. No. 128

10 I refer to the stay granted by this Honourable Court in its Appellate Jurisdiction of the 30th day of October 1952 and immediately the Order had been pronounced by the Full Court in Chambers I informed the Clerk to the Honourable Mr. Justice Reece of the stay which had been granted by the Full Court.

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

No. 98

FURTHER NOTES OF THE CHIEF JUSTICE ON HEARING OF
MOTIONS FOR SECURITY FOR COSTS, FOR STAY OF
EXECUTION, AND FOR EARLIER DATES

No. 98
Further
Notes of
the Chief
Justice on
hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates.
3rd November,
1952.

20 3rd Nov., 1952, 10 a.m.
Cor: Self & Williams J.

(3rd November, 1952.)

Resumed from 31.10.52.

Appearances as before.

(Loseby Q.C. and Cheung absent in criminal case).

McNeill: Motion to stay in action 8/52 and 6/52 and to maintain status quo. Importance of matter cannot be overestimated — impleading a government is of public importance, therefore until appeals heard *status quo* should be maintained — if not, appeals nugatory. Asks that Wright reads affidavits.

30 Wright: Reads notice of motion — of 30th October, 1952: affidavit of Griffiths 31st October. reads affidavits of 28th October and 31st October: letters PJG-1 and PJG-2 and PJG-3.

Exhibit PJG-1,
2 & 3.
Ref. No. 122, 123
& 124

30th October (19) read: PJG-1 therein. PJG-3. (Khodr of 28th Oct.) Clear that ship is to go to Manila at once and that crew members in majority adhere to Indonesian Government. This is a reversal of the procedure before, in which the respondents stated the majority crew members adhere to them. KK-1 KK-2A KK-3 read.

Exhibit PJG-1
& 3.
Ref. No. 125 &
127.

Exhibit KK-1,
2A & 3.
Ref. No. 115, 116
& 117

Reads affidavit of Griffiths, filed 3.11.52. — with exhibit PJG-1.

McNeill: That is not the decision: in A.J.13 ship arrested by Dock Company — my clients cannot make any application in A.J.13, as it would only be inviting the learned judge to make a similar order. New circumstances have arisen now — we are to defend in A.J.13/52. Previous application made upon inferences which are now actualities. Actions heard and judgments given in 8/52. Respondents will try to secure possession and control while under arrest, and will then proceed to try to get the release of the ship — In judgment in 8/52 the plaintiff is subject to claim of the Dock Company. Regarding control a claim of impleading can be based on either or both or control of interest.

10

1939 Probate, p. 178 *Abodi Mendi* — *status quo* must be maintained. Will Court allow something to be done which entirely changes the *status quo*.

Williams P.J.: We wish something from you as to what reasonable terms as to a stay.

McNeill: *Government of Kelantan v. Duff Development Co.* 1923 A.C. p. 402-407.

(a) case of exceptional importance in which order for stay and maintenance of *status quo* should be granted without terms.

(b) highest public importance.

Nothing should be asked.

20

(To Williams J.): I say we should not be asked to give terms — we have never submitted to the jurisdiction.

Cannot order execution against a foreign government.

(To Williams J.): Established costs in notice of motion para. 2 (b) for security by respondents, I say about \$10,000 for costs of appeal.

D'Almada: Does not object to stay — objects to extent of stay, i.e. should be the minimum possible that a successful appeal should not be rendered nugatory. Limited to prevent mischief and not beyond. Keep things as they are at the moment — regarding injunctions against the crew which need not be stayed, because so long as ship remains under arrest of Court and custody of bailiff, appellant is protected. To allow crew to remain on board might result in serious consequences without affecting the object of a stay, i.e. availability of the *res*.

30

Here is a judgment — no need to do more than ensure that appeals shall not be nugatory — *status quo* not affected or look back to date of writ.

A.J. 13/52. Has nothing to do with this application.

As to terms:—

McNeill stresses this is a matter of great moment — He says Court has discretion whether or not to make a stay — He is here on a begging expedition, but I am not going to accede to any terms which may be imposed. *Mens rea* suggested, and quite properly suggested, but not complied with — not only the interests of the Government of Indonesia, but of another litigant the Filipino Co. Unseemly and not becoming to recede from terms suggested six weeks ago. True indeed that the further expenses have been incurred and further delay and this Court should construe the term of undertaking to pay demurrage — the *Duff* case nothing to do with this case — see footnote at p. 396 — objection here not

40

made too late — Order 1281 White Book. Nothing to induce the Court to change its order, asks that no time limit be given as in that case: 24-hour period. *Newbattle* p. 34 10 Probate Division p. 34 judgment of Butt J. re security for damages — also undertaking for interest.

Terms should not be less than best conditions offered.

McNeill: In *Newbattle* foreign government plaintiff — defendants counter claimed, White Book 1282 — decision solely when foreign government plaintiff — notice of motion dated after decision in action for security. Demurrage equals an undertaking to pay damages.

10 D'Almada: In a previous case one of the terms of a stay pending appeal to Privy Council was a sum for damages (*Far Eastern Motors*, H.K.L.R.).

McNeill: Regarding crew, it would make a great difference if crew were turned off, a change of *status quo*. If proceedings finished, another writ could be issued. If the crew is put off now and we put it back, how can we get the Ysmael crew off.

S/O to 3 p.m.

G. L. HOWE.

3 p.m. as before.

3rd November, 1952.

Decision read by Williams J.:—

20 The Court feels that it is unable to accept the proposition of the respondents that nothing has been changed by the filing of Admiralty Action No. 13 of 1952 in rem against the *Tasikmalaja* and that, therefore, the terms suggested by the Court on the 16th September should not be varied. It appears to us that, even if the Whampoa Dock Company wish to discontinue that action, the Court would not order the release of the ship without the consent of the appellants. The present application for a stay is more "*ex abundanti cautela*" and we think that terms less onerous than previously suggested may safely be imposed. In all the circumstances, we are of opinion that an order for security of costs of and incidental to the appeals including costs already incurred, is not one which we should make but that the proper order is for a stay of all proceedings on the 30 appellants giving security for costs of the appeals now pending in the sum of \$20,000; the terms to be complied with within four days. Liberty to any party to apply.

We are not in agreement with the submission of the respondents that there should be no interference with the order of Reece J. against the 40 members of the crew: in our opinion, the *status quo* should be maintained and our order, therefore, includes the stay of that order.

We dismiss the respondents' motions dealing with costs and security and the appellants motions for earlier dates for the hearing of the appeals.

The costs of all the motions are reserved.

40 McNeill: Asks for six days instead of four, or even one day more.

D'Almada: Leave it at four, parties at liberty to apply.

Order to stay unchanged.

G. L. HOWE.
3rd November, 1952.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 98
Further
Notes of
the Chief
Justice on
hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates.
3rd November,
1952.
continued.

**FURTHER NOTES OF THE SENIOR PUISNE JUDGE ON
HEARING OF MOTIONS FOR SECURITY FOR
COSTS, FOR STAY OF EXECUTION, AND
FOR EARLIER DATES**

(3rd November, 1952)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 98A

Further
Notes of
the Senior
Puisne Judge
on hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates.
3rd November,
1952.

3rd November, 1952. 10 a.m.

Coram: Chief Justice and Self.

Resumed from above.

Appearances as before.

Loseby & O. V. Cheung absent (engaged before Wicks J.).

10

McNeill: Motion to stay all proceedings in Action 8 and to maintain *status quo* on vessel until 2 appeals in that action are heard. Importance of matter in issue in the appeal cannot be overestimated — question whether Government is impleaded one of great public importance. Submit until appeals heard on this point of impleading heard *status quo* should be maintained.

Shall ask Wright to read n. of m.

Unless *status quo* of ship maintained, if we succeed, appeals will be nugatory.

Court: We have not said stay should not be given.

McNeill: If that is so, perhaps no need to read affidavits.
(Affidavit and notices, however, read with Court's approval).

20

Wright [reads (25) and (22)].

(Continues):

Exhibit PJG-1,
2 & 3.
Ref. No. 122, 123
& 124

Griffith's affidavit of 28th October (18) — PJG-1 — letter from Silva (reads) paragraph 4 of (18) — PJG-2 from Messrs. Wilkinson & Grist dated 24/10 para. 5 of (18) — PJG-3 from Silva para. 8 of (18): paras. 9, 10.

Exhibit PJG-1,
2 & 3.
Ref. No. 125, 126
& 127

(19) — PJG-1 — letter from Silva — of 30/10 — copy n. of m. PJG-2 — PJG-3 vital — clear that those who adhered to the plaintiffs had not got control of the vessel: this is complete reversal of plaintiffs previous allegation that they were in possession of the vessel their crew who adhered. KK-1 already read — also KK-2, KK-3 — read already.

30

Exhibit KK-1, 2
& 3.
Ref. No. 115, 116
& 117

Exhibit PJG-1
Ref. No. 128

Final affidavit filed this a.m. by Griffiths — paragraph 1: reads PJG-1 — part of judgment "Consequently the Government . . . in this action" — we find difficult to understand.

McNeill: Position now is therefore seen. Cannot understand how it is said we are no longer a party.

We could not make any application in A. Action 13 — ship arrested by Dock Co.

In *Abodi Mendi P.* (1939) — summons made to Court to reinstall member of crew: we cannot make any application in A.A. 13 — we should then be inviting Judge to make different orders to those made by him in Actions 6 and 8. New circumstances have arisen since previous application for stay. Dock Co. entered appearance in Actions 6 and 8. In Action 13 they have sued in rem — we have entered conditional appearance — are raising same issues.

*In the
Supreme
Court of
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No. 98A
Further
Notes of
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Puisne Judge
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Motions for
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continued.

Our previous application made to this Court on certain inferences — then Actions 6 and 8 would rapidly come on for hearing: we anticipated that plaintiffs, Ysmael & Co., would take the vessel away. Such fears have crystallised — decision
10 in Action 8 (decision in 6 adjourned) given — decision adverse — steps to get release of ship — abundantly clear Ysmael & Co. will try to obtain by any means control and possession of ship whilst under arrest: they will then proceed to try and get release of ship. Reece J. gave possession to Ysmael — “subject to claim of Dock Co. as shown in their affidavits in Actions 6 and 8 — subject to Dock Co. issued writ. Ysmael will try and get order for release of ship. This Court might refuse such order but Reece J. might not: all the inferences we sought Court to draw previously are now facts.

As to ‘control’ — claim of impleading foreign sovereign can be based on two matters (1) interest; (2) possession or control: this latter very important. We
20 claimed ship (a) under our control or (b) in possession of Dock Co. as bailees. Now appears from Khodr’s affidavit that he is no longer in control of ship.

2 *Abodi Mendi* (1939) P. 178.
(reads headnote).

NOTE: P. ordered arrest to continue pending appeal in another case — not case of this vessel. *Status quo* — it was held — must be held pending determination of hearing of other case on appeal to Lords.

See p. 189 — “The Nat. Govt. however”

Will Court order something to be done which will entirely alter *status quo* — we say that is effect of Reece J. You must maintain *status quo* — otherwise
30 grave injustice will be caused. *Status quo* — importance of maintaining it fully gone into in judgment of Scott L.J. — p. 191 — “When the action”

See (1923) A.C. 395 — terms ordered there.

p. 407 — There is order of Reece J. against us — appellants — p. 400 — “Adequate security had been given for the costs of this appeal” — by the foreign government *who had submitted* to the jurisdiction. Our position different — we have said Courts have no jurisdiction.

p. 402 — sum paid out £700.

Furthest House of Lords went was to order security of costs of appeal to
40 H of L — in case where the foreign government had submitted to the jurisdiction of the Courts.

Court: Reece struck out affidavits in Court below.

If you persuade us affidavits should not have been struck off, what order can this Court make.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

McNeill: I shall submit that the Court did not consider any arguments about impleading.

I shall argue that even what was open to Reece J. there was strongest evidence that that was impleading any way.

No. 98A
Further
Notes of
the Senior
Puisne Judge
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Motions for
Security for
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Earlier Dates.
3rd November,
1952.
continued.

I say this is case of *exceptional circumstances* where order for maintenance of *status quo* should be ordered without any terms: action deliberately started by Ysmael & Co. In these circumstances, point of issue of highest *public* importance — relation between states — which is basis of impleading appeal should not be stayed where Supreme Court had not heard any of the arguments. Court is hearing *de novo*. Even where Government had submitted to jurisdiction, House 10 of Lords said “we will make no order about costs incurred up to coming to us — we won’t stay legal proceedings *in limine*.”

I say “please hear me on appeal and see *that my steps are not abortive*.”

You cannot order execution against foreign government. Therefore House of Lords may have said “we cannot do anything about costs of actions heard — we cannot levy execution — we can do something about costs of appeal to us.”

My position is I am brought into Court against my will — it should not then be said the Government is under obligation to put up security.

D’Almada: Will not therefore object to stay in view of Court’s views expressed — but stay should be minimum consistent with proposition that appeal 20 should not be nugatory.

Principle dealt with interlocutory injunction — submit that insofar as injunction against crew ordered by Reece — that need not be stayed because so long as ship remains under arrest of Court and custody of bailiff, McNeill is protected. To allow crew to remain on board may result in serious consequences without assisting real object of stay — to preserve ‘*res*’. No question of them remaining on ship affecting ‘*status quo*’—*status quo* altered by decision of Reece J. — In *Abodi Mendi* no declaration made — here you have judgment — and order properly made to render it effective — no need to stop order if all McNeill seeks is that his appeal should not be nugatory. 30

Question of crew does not affect question of control. You must look back to date of writ. Fact A.J. Action 13 — nothing to do with this appeal. Dock Co. will doubtless wait result of judgment.

As to terms, McNeill has said ‘question of great importance’. Fact that foreign state concerned should not prevent Court from making proper terms.

Court has discretion to make order staying execution — McNeill admits this. He carries on begging expedition but says 'won't accept any terms you make to hear my application.' Court suggested certain terms — the Indonesian Government saw fit not to comply with the terms.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 98A

Further
Notes of
the Senior
Puisne Judge
on hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates.
3rd November,
1952.
continued.

Court is concerned also with another side — a foreign Co. — it would be unseemly and unbecoming for Court to recede from terms Court thought proper to impose. I would say this — since then my clients have incurred further expenses in these proceedings — further delay: every reason Court should say 'Government should pay for demurrage — and term should be enlarged'. The
10 *Duff* case — no more to do with this case than man in moon. There only reason House disallowed objection — see p. 396 — grounds 2 — first ground not applicable here: Bernacchi drew to your attention passage in White Book as to costs of foreign sovereign: p. 1281. I say if execution to be stayed, I say it should be on same terms — here time limit should be shorter — if it is to be stayed it should be on terms to be complied with in 24 hrs.

McNeill has suggested — look at *Newbattle* case — p. 34 (10 PD) — "By purity of reasoning . . . damages." I see nothing unreasonable in terms I suggest.

If party is deprived of a fixed undertaking to pay, interest on it is required: analogous position here re ship — great losses incurred by us.

20 McNeill: Writ in rem issued by *foreign government* only for damages for collision. Defendants came in and counterclaimed. Decisions to require foreign government to give security depend on *Duff* case and similar cases.

Important point: D'Almada says "you should order demurrage". This raises large question — undertaking to pay damages — not a word about that in the writ — claim is for possession of ship. Court would not in any circumstances order damages — unheard of that such an order would be made.

30 Again — question of crew. D'Almada says order of Reece J. re crew should remain — no change of *status quo*. I have cited *Abodi Mendi* — if crew got off — another action started — how we would be involved — we would have to issue another writ as ship would then be in possession of Ysmael through their men.

In *Abodi Mendi* President said "*Master has control.*"

C.A.V. — to 3 p.m.

(Sd.) E. H. WILLIAMS,

Appeal Judge.

3rd November, 1952.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

3.15 p.m.
Resumed.

McNeill Q.C. and Wright (Griffiths) for Appellants.

D'Almada Q.C. (Silva) for Respondents.

(Loseby Q.C. and Bernacchi absent with leave).

No. 98A
Further
Notes of
the Senior
Puisne Judge
on hearing of
Motions for
Security for
Costs, for Stay
of Execution,
and for
Earlier Dates,
3rd November,
1952.
continued.

Court's decision read:—

“The Court feels that it is unable to accept the proposition of the respondents that nothing has been changed by the filing of Admiralty Action No. 13 of 1952 in rem against the Tasikmalaja and that, therefore, the terms suggested by the Court on the 16th September should not be varied. It appears to us that, even if the Whampoa Dock Company wish to discontinue that action, the Court would not order the release of the ship without the consent of the appellants. The present application for a stay is more “*ex abundanti cautela*” and we think that terms less onerous than previously suggested may safely be imposed. 10

“In all the circumstances we are of opinion that an order for security of costs of and incidental to the appeals including costs already incurred, is not one which we should make but that the proper order is for a stay of all proceedings on the appellants giving security for costs of the appeals now pending in the sum of \$20,000: the terms to be complied with within four days. Liberty to any party to apply. 20

“We are not in agreement with the submission of the respondents that there should be no interference with the order of Reece J. against the 40 members of the crew: in our opinion, the *status quo* should be maintained and our order, therefore, includes the stay of that order.

“We dismiss the respondents' motions dealing with costs and security and the appellants motions for earlier dates for the hearing of the appeals.

“The costs of all the motions are reserved.”

McNeill asks for six days instead of four or even one day more.

D'Almada objects, asks that period stand at four days — there is liberty to apply. 30

Period of four days to stand.

(Sd.) E. H. WILLIAMS, S.P.J.,

Appeal Judge.

3rd November, 1952.

**JUDGMENT OF FULL COURT ON MOTIONS FOR SECURITY
FOR COSTS, FOR STAY OF EXECUTION, AND FOR
EARLIER DATES**

(3rd November, 1952.)

**IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION**

Appeals Nos. 11, 12, 14 and 15, 1952.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 99
Judgment of
Full Court on
Motions for
Security for
Costs, for Stay
of Execution,
and for Earlier
Dates.
3rd November,
1952.

(On Appeal from Admiralty Jurisdiction Actions Nos. 6 & 8 of 1952)

10 BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA

Appellants

— and —

ANTHONY LOH TRADING AS A.W. KING

Respondent

— A N D —

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA

Appellants

— and —

20

JUAN YSMAEL & COMPANY INCORPORATED

Respondents

— A N D —

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA

Appellants

— and —

ANTHONY LOH TRADING AS A.W. KING

Respondent

— A N D —

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF
INDONESIA

Appellants

— and —

JUAN YSMAEL & COMPANY INCORPORATED

Respondents

No. 99
Judgment of
Full Court on
Motions for
Security for
Costs, for Stay
of Execution,
and for Earlier
Dates.
3rd November,
1952.
continued.

CORAM: HOWE, C. J.
& WILLIAMS J.

J U D G M E N T

The Court feels that it is unable to accept the proposition of the respondents that nothing has been changed by the filing of Admiralty Action No. 13 of 1952 10 in rem against the Tasikmalaja and that, therefore, the terms suggested by the Court on the 16th September should not be varied. It appears to us that, even if the Whampoa Dock Company wish to discontinue that action, the Court would not order the release of the ship without the consent of the Appellants. The present application for a stay is more "*ex abundanti cautela*" and we think that terms less onerous than previously suggested may safely be imposed. In all the circumstances, we are of opinion that an order for security of costs of and incidental to the appeals including costs already incurred, is not one we should make but that the proper order is for a stay of all proceedings on the appellants giving security for costs of the appeals now pending in the sum of \$20,000.00: 20 the terms to be complied with within four days. Liberty to any party to apply.

We are not in agreement with the submission of the respondents that there should be no interference with the order of Reece J. against the 40 members of the crew: in our opinion, the *status quo* should be maintained and our order, therefore, includes the stay of that order.

We dismiss the respondents' motions dealing with costs and security and the appellants motions for earlier dates for the hearing of the appeals.

The costs of all the motions are reserved.

(Sd.) GERARD HOWE.

PRESIDENT.
3.11.52.

30

(Sd.) E. H. WILLIAMS.

APPEAL JUDGE.
3.11.52.

No. 100

**LETTER — WILKINSON & GRIST TO REGISTRAR
DEPOSITING \$20,000.00 SECURITY AS ORDERED**

(7th November, 1952)

The Registrar,
Supreme Court,
HONG KONG.

7th November, 1952

Sir,

Re: Appeals Nos. 11, 12, 14 & 15 of 1952.

10 In accordance with the terms for a conditional stay pronounced in the Full Court herein, we enclose herewith our cheque for \$20,000.00 being the security for costs of the Appeals ordered as a condition of the stay.

Please acknowledge receipt.

We are, Sir,

Your obedient servants,

(Sd.) WILKINSON & GRIST.

Encl: Cheque for \$20,000:00.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 100
Letter—
Wilkinson &
Grist to
Registrar
depositing
\$20,000.00
security as
ordered.
7th November
1952.

No. 101

20 Evidence Included in Record of Proceedings on Insistence by the
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.

AFFIDAVIT OF PETER JOHN GRIFFITHS

(26th November, 1952.)

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong, Solicitor, a partner in the firm of Messrs. Wilkinson & Grist of the same address hereby make oath and say as follows:—

No. 101
Peter John
Griffiths
Affidavit.
26th
November,
1952.

- 30
1. I have the conduct of this Appeal on behalf of the Appellants.
 2. I crave leave to refer to paragraphs 2, 3 and 4 of my Affidavit and the documents exhibited thereto sworn herein on the 30th day of October 1952 in support of a Notice of Motion dated and filed the 28th day of October 1952 wherein the Appellants applied for a stay of execution and order that the *status quo* be maintained.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 101
Peter John
Griffiths
Affidavit,
26th
November,
1952.
continued

3. I also crave leave to refer to the Appearance entered on the 26th day of September 1952 for the Hong Kong & Whampoa Dock Co., Ltd. by Messrs. Deacons, their Solicitors, and to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Affidavit of Thomas William Grimsdale sworn the 26th day of September 1952 and filed in Admiralty Jurisdiction Action No. 8 of 1952. Both the said Appearance and the Affidavit were filed after the Judgment which is the subject matter of this Appeal.
4. The Appearance referred to above appears as Document No. 63 (1) in the Record of Proceedings of Admiralty Jurisdiction Action No. 8 of 1952 filed herein and the said Affidavit of Thomas William Grimsdale appears as 10 Document No. 63 (2) in the same Record.

Sworn etc.

No. 102
Peter John
Griffiths
Affidavit,
28th
November,
1952.

No. 102

Evidence Included in Record of Proceedings on Insistence by the Government of the Republic of Indonesia but Objected to by Juan Ysmael & Company Incorporated.

AFFIDAVIT OF PETER JOHN GRIFFITHS

(28th November, 1952.)

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong Solicitor a Partner in the firm of Messrs. Wilkinson & 20 Grist of the same address hereby make oath and say as follows:—

1. I have the conduct of this Appeal on behalf of the Government of the Republic of Indonesia.
2. I crave leave to refer to an Affirmation filed in Admiralty Jurisdiction Action No. 13 of 1952 dated the 20th day of November, 1952 and affirmed by Mr. Marjoenani the duly authorised Charge d'Affairs of the said Government in London. The said Affirmation was received by me on the 27th day of November, 1952, a copy thereof is exhibited hereto marked Exhibit "PJK-1".

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

30

TRANSCRIPT OF PROCEEDINGS ON APPEAL.

8th, 9th & 10th December, 1952.

(Transcript of the Shorthand Notes of the Court Reporters of the
Supreme Court, Hong Kong)Present: Sir Gerard Lewis Howe, Kt. Q.C. *President.*
Mr. Justice Ernest Hillas Williams *Appeal Judge.*Mr. John McNeill, Q.C. and Mr. D. A. L. Wright, instructed by Messrs.
Wilkinson & Grist, for the appellants in both appeals.10 Mr. Charles Loseby, Q.C., instructed by Messrs. Stewart & Co., for
Anthony Loh, Respondent.Hon. Leo D'Almada, Q.C. and Mr. B. A. Bernacchi, instructed by Mr.
M. A. da Silva for the respondents, Juan Ysmael & Co. Inc.

First Day

Mr. McNeill: I am for the appellants, the Government of the Republic of
Indonesia, with my learned junior, Mr. Wright.My learned friends Mr. D'Almada and Mr. Bernacchi are for the respon-
dents, Juan Ysmael & Co.20 There were originally two actions, Admiralty Jurisdiction Action No. 8 and
Admiralty Jurisdiction Action No. 6 and there are before your Lordships in each
of those actions, in either action, two motions of appeal.30 My Lords, Action No. 8 was a writ, the formal writ was an action for
possession brought by Ysmael & Co. Action No. 6 was an action claiming some
\$25,000 for work done on the steamship Tasikmalaja, brought by a Mr. Anthony
Loh. Now, my Lords, I see beside me my learned friend Mr. Loseby, who
appears, I think, in those appeals which concern Action No. 6 for Mr. Loh. Now,
the reason for my learned friend's presence is not altogether apparent. He has
been paid the amount of his claim, \$25,000, therefore his presence can only
concern costs. I am not going to deal with that point now, my Lords, I will
mention it in an hour or two.Mr. Loseby: May I interrupt my learned friend. My Lords, my friend
has not given you, with very great respect, the position. I am here because my
friend brought a motion to strike out Action No. 6, which was an action brought
by me. The learned judge in the Court below dismissed that motion — my
learned friend knows the circumstances perfectly well, and has not put them
plainly before your Lordships. In Action No. 6, my Lords, I arrested a vessel,
and under Action No. 6, if I am successful, that vessel cannot be released until
I have been paid for my just claim against that ship and the costs involved in

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the process of holding that ship. My Lords, I have previously explained to my friend in a rather painstaking manner that, not only have I not been paid, nor has any undertaking been given by anybody to pay me, but that it is a very considerable sum of money, considerably in excess of the sum of \$25,000, unpaid, and which, as far as I know, never will be paid, my learned friend's own clients being one of the main debtors still. My Lords, that is all. My learned friend knows perfectly well that this is an action brought for the purpose of reversing the decision of the judge in the Court below in which my rights were upheld, and I don't think it is necessary for me to say any more. It is quite true, and it was in the Judge's notes, that there was a gentleman's agreement, which I have no doubt would have been kept by both sides, that, in the event only of them winning the action, they would pay the cost of repairs and no more. Both parties gave that gentleman's agreement for their own purpose, mainly because they were claiming to be the owners of the vessel and it looked rather bad if the owners of the vessel did not pay that amount. Well, my Lords, that agreement was kept, my Lords, honourably kept, as it would have been kept by both sides. At the time that that agreement was made, my learned friend Mr. D'Almada made it plain to me that he disputed part of my right, that part of my right which he disputed was whether under action in rem I was also entitled to costs, and it was always understood by me that my learned friend disputed that, and he disputes it still, and I want to hold Action No. 6 because I have a claim, not against the Indonesian Government, because I cannot hold any claim against them, but because I contend that the undisputed owners of the vessel, in possession of it, are within the jurisdiction. Action No. 6 is put down for hearing, my Lords, I have not fixed the date for one reason, and one reason only, namely out of courtesy to the Indonesian Government and out of courtesy to this Court, because the judgment of Mr. Justice Reece has been appealed against, and, my Lords, I did not want it to be said or thought, if Mr. Justice Reece was wrong, and his decision is reversed by this Court, then, of course the action is dismissed, but not otherwise, and I am here, my Lords, for the purpose of arguing, if I can, that Mr. Justice Reece was totally right in his judgment. If he was wrong, that is a very unfortunate thing for me.

That, my Lords, is my position. I do not think that my learned friend should have put the matter, with his knowledge of the facts, as he did put it, with very great respect.

President: Mr. D'Almada, can you tell us, what is the appeal from?

Mr. D'Almada: I hope my learned friend will tell us that.

Mr. McNeill: I can now proceed to tell your Lordships what the appeal is from. My Lords, there is a motion appealing from a judgment of Mr. Justice Reece. This motion of appeal is dated the 15th September, and it is against an order for judgment, the same day, dismissing a notice of motion filed on behalf of my clients, a motion to set aside the writ and stay all further proceedings.

Appeal Judge: In Action No. 8?

Mr. McNeill: In Action No. 8, my Lord, that is Appeal No. 15, and also appeal before your Lordships in Action No. 8, where the impleading motion was also . . .

President: Reece J. heard the impleading motion and Action No. 8 at the same time?

Mr. McNeill: Yes, he heard them together, my Lord, and your Lordships will see that the judgment, which I think is document No. 54, is headed with the names of both actions. That is the substantive appeal before your Lordships.

Now, my Lords, prior to that, his Lordship had made an order for cross-
 10 examination of two gentlemen, Mr. Kwee Djie Hoo and Major Pamoe Rahardjo. He made an order for cross-examination, and against that order we appeal. The question of immunity of these two gentlemen was then argued, and he dismissed our arguments on that, and your Lordships will find that there is a motion with two branches in both actions in which we appeal against those two decisions. That motion is dated the 29th August 1952, and it has, as your Lordships see, two branches. (Document No. 1, Appeal No. 12). Your Lordships will see that the learned judge gave a decision on the 25th August, but, by an application for cross-examination, for cross-examining these two people, an order was made. The second limb of that, my Lords, is an appeal against his order of the 27th
 20 August against the decision.

Now, by your Lordships' leave, I thought I would take the substantive appeal first. It is really the substantive point first, which is this, that, leaving aside the question whether the learned judge was right or wrong in ordering cross-examination of these two gentlemen, whether he was right or wrong in, as you will find, striking out their affidavits, there is nevertheless left upon the file ample material upon which your Lordships can come to a conclusion that my clients are impleaded in both actions.

President: I think that is a very reasonable course.

Mr. McNeill: Of course, if your Lordships are with me on the first point,
 30 the second point would not really arise.

President: But how do you seek to exclude Mr. Loseby then?

Mr. McNeill: No, my Lord, I am not trying to exclude Mr. Loseby. When I come to mention my reasons, which, of course, I have not done yet, I am going to suggest that there is really nothing for my learned friend Mr. Loseby to argue about.

President: Except that he is for the plaintiff in a suit, suit No. 6, and the ultimate success of that action in rem depends upon the success of your appeal.

Mr. McNeill: He may be perfectly entitled to appear, but it struck me as
 40 rather strange. We filed this motion asking for stay in this action, and that motion was dismissed by the learned judge. Now, if we succeed on appeal, then my learned friend cannot seek to detain the ship, except, of course, for such

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costs as have been incurred in the Court. That is if we win, because he will then not be entitled to any costs against us. Now, suppose we lose, my Lords, there is no order against Ysmael & Co., no order for costs of this impleading motion against Ysmael & Co., the order is for costs against my clients. It is a curious position, because my learned friend Mr. Loseby, although he has now moved himself to this side of the table, maintains the same position as before. My learned friend Mr. Loseby argued on behalf of and on the same lines as Ysmael & Co. in the Court below, so it is a little difficult to see how he could obtain costs against Ysmael & Co.

President: I think he has a right to be here.

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Mr. McNeill: I will not pursue that.

Mr. Loseby: And if my learned friend had not omitted material facts, it would be more clear still.

Mr. McNeill: I think my learned friend Mr. D'Almada wanted to mention something.

Mr. D'Almada: Your Lordships, the only point is this, that the substantive argument on the point which he is now going to deal with, if your Lordships decide that, on such material that he has, there is no question of any impleading, and then, of course, my friend would have to argue the appeal against the judgment of Mr. Justice Reece that the affidavits should be struck out, because the persons who made them would not submit to cross-examination, and it might be necessary, further, to argue the same point whether or not the evidence shows an impleading, etc. It may necessitate, if not two bites at the cherry, certainly a bite and a nibble later, but, subject to that, I have no objection at all. What I did wish to mention to your Lordships, that this is in effect an appeal against the decision in both cases, 6 and 8, and I ask, your Lordships to note now that in 6 we have entered a caveat. That is all I wish your Lordships to hear from me at this stage. It would seem, therefore, my Lords, that both appeals being heard together would be preferable.

Mr. Loseby: It is convenient that it should be cleared up right at the outset, otherwise there will be confusion. My Lords, the two motions for hearing were put down for the same day, that is Action No. 6 and Action No. 8. I wished, and asked, and made a preliminary application to the Court that those two matters should be heard separately, but my two learned friends went into an unholy alliance on this point, the result of which was—I protesting with as much vehemence as I could muster—the result was that Mr. Justice Reece ordered that the two motions should be heard at the same time. Now, my Lords, in the matter of the hearing of those two motions, my learned friends Mr. D'Almada, who had entered a caveat in Action No. 6, had submitted a series of affidavits in Action No. 8, the whole of which, my Lords, tended to show, if they were believed, that the Government of Indonesia had not any right or interest, however slight, in that vessel, and therefore, my Lords, I should have called every single one of those witnesses in Action No. 6, but my Lords, for the purpose of convenience it was agreed and understood throughout that I was adopting, for the purpose of my action, every affidavit produced by my learned friend, Mr. D'Almada which tended

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to show that I, in my Action No. 6 had not impleaded, and therefore, my Lords, I took part in every attack made upon those witnesses, and in the cross-examination also of any witnesses called by my Learned friend Mr. John McNeill, impugning that evidence, and that, my Lords, was my locus standi in those matters. My Lords, with very great respect, I should have thought that a convenient method in view of same would be for my learned friend to take the whole of this appeal and everything else comes in it. It would be convenient and enable us to get at grips with him. He appeals to strike out two motions.

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10 Mr. McNeill: I hope that both my learned friends will remain glued to their seats while I am addressing your Lordships.

Now, your Lordships appreciate that there are before you two actions, one for possession and one for repairs, and there was a motion in both those actions on the part of my clients to stay the proceedings and set aside the writ, the ground being that they, a recognised foreign state, are impleaded. My Lords, impleading means that by your proceedings you compel someone else to come in and defend his rights. Now, my Lords, in the Court below before Mr. Justice Reece, I dealt with the matter in this way, I gave him a very, very brief skeleton of my outline, just headings really, with a background of what impleading is, and then my learned junior dealt with portions of the affidavits, and then I went into
20 the law, so his Lordship was in a position to say 'I know what the general position is, and now I see how they apply to the law'. With your Lordships' permission, I will now take the same course.

My Lords, the general group is this, that our Courts will not oblige a foreign sovereign or state to come before the Court in order to maintain his rights when, if he did not do so, he would be running the risk of losing.

Appeal Judge: Of losing his rights?

Mr. McNeill: Yes. From remarks at the outset your Lordships will see that there is a vast distinction between a foreign state which comes in as a plaintiff in an action, and a foreign state which is drawn into proceedings, drawn into them,
30 as a defendant. They are two quite different things. As your Lordships know, the general rule was set out in its earliest stages in the *Parlement Belge*, which was reported in 5 P.D. at page 197. My Lords, that from the well-known judgment of Lord Justice Brett, at page 214:

40 "The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its Court any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction."

That is repeated again, my Lords, at page 217, and that is the first exposition by the Court of Appeal on this subject.

Now, my Lords, of course the doctrine has gone a great deal further since then, and although the words 'public property' are used in the *Parlement Belge*, your Lordships will find that that aspect does not necessarily come before your Lordships. My Lords, I am citing only a few cases to your Lordships, and then I come to the Law in detail.

My Lords, that being the basic principle, the question in all these cases before every Court is this: is there a contest of rights between a party commencing an action, between that party and a foreign sovereign state, because, as soon as the Court comes to the conclusion that a right is claimed by the foreign state and is contested, as soon as the Court comes to that conclusion, that there is a contest, it must hold that the foreign state is impleaded and it will not assume jurisdiction over the property in question—in this case, of course, the steamship *Tasikmalaja*. Now, that is the general principle, my Lords, and my arguments will be divided up this way: 10

My first argument is this: I will assume that the learned judge was correct in striking out the several affidavits which he did, I will assume that he is correct, and I will then say there is ample intimation left upon the documents on the file, intimation to your Lordships that my clients are impleaded. Now I hope that under several headings, my Lords, that main branch of my argument, I have stated first that the issuance of a writ in rem by its very form impleads anyone who has an interest in the res. Then I shall say that we brought this ship into Hong Kong, within your Lordships' jurisdiction, and have encountered a claim to an interest. On the first branch of the interest, my Lords, we say that there was at the date of this writ a charter party, which is admitted. It is admitted that there was a charter party to my clients on the date of the action. My Lords, if that is not the position, we say that we were at that time the owners. Now, with the actual law on all these points, my Lords, I propose to deal later. My Lords, the second main branch, the second sub-branch, is this, that at the material time we had possession or control. 20 30

Appeal Judge: "Or" or "and"?

Mr. McNeill: Your Lordship will see when you come to the case that the words that are used are free. I don't think that there is anything in it. I would use, myself, the word "control". A charterer has a right to direct the ship.

Appeal Judge: It is an easier understandable word, Mr McNeill, 'control'.

Mr. McNeill: I think Mr. Justice Jenkins leaned in favour of that word.

President: It might mean less than possession, though.

Mr. McNeill: It might mean less, it is a broader term.

That is the motion outlined, my Lords, of that part of the argument, and I am going to ask my learned junior to show to your Lordships what is left of the affidavits on the documents, as being agreed or omitted, and which we say is ample. 40

My Lords, before I ask him to do so, I would like to refer your Lordships to the judgment, document No. 55 in Appeal No. 15, dismissing the motion. It is the last page I want your Lordships to look at. The bulk of the twelve pages of the judgment are concerned with the question, what is to happen on the non-appearance of the two gentlemen who were brought here for cross-examination, and in the last paragraph his Lordship says this:—

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10 “In the circumstances and having due regard to the sharp conflict of facts disclosed in the affidavits of Mr. Kwee and Major Pamoe Rahardjo filed on behalf of the Government of the Republic of Indonesia and those filed on behalf of the plaintiffs in the actions, I refuse to give any weight to the affidavits of Mr. Kwee and Major Pamoe Rahardjo and reject them and order them to be removed from the files. That being so, there is no evidence before this Court to support the claims made in the Notice of Motion filed on behalf of the Government of Indonesia and I therefore dismiss the Motion with costs.”

Your Lordships will see that the ground of the decision is that simple statement that, having struck out the affidavits, there is nothing left, and it was earlier that I drew your Lordships' attention to the fact that this is not entirely correct, because there are a very large number of documents on the file. Now, 20 an earlier passage in the judgment, page 9 to be exact, in the middle of page 9 the judgment, your Lordships will see a paragraph stating:—

“It seems to me quite unnecessary at this stage to go fully or at any length into the complex and, in my opinion, still unsettled law relating to sovereign immunity and I propose briefly to refer to a few authorities . . .”

Well, my Lords, his Lordship did refer to a few authorities — I won't mention them now — but he did not in fact deal at all with the serious and important, and I say cogent, arguments presented to him on impleading. He did not do that because he had come to the conclusion that there was nothing left on the file, so he need not deal with them.

30 Now, my Lords, I have only given your Lordships the absolutely bare skeleton of these branches of the argument. In the passage that I have just read from the judgment of Mr. Justice Reece, and on the first page you will see that passage about cross-examination, and that is the second branch of my argument, and it will be devoted to questions of whether the learned judge ought in the circumstances to have made any order for cross-examination, and we say, I shall say, that he ought not to have done so.

40 Secondly, he, having made the order, and the persons concerned not having appeared for cross-examination, to be cross-examined, I should say that he ought not to have struck out, struck out from the files, their paragraphs but should have kept them there and given to them and to the paragraphs in them such weight as he thought fit, which is a very different thing, of course, from striking them out, because there are statements in these affidavits that have not been disputed, and could not have been disputed, and therefore to these statements the learned Judge should have given some weight. That is the second branch.

Now, my Lords, I am going to ask my learned Junior to give your Lordships indications on the different points as to what is left before your Lordships, on the assumption that the affidavits of these two gentlemen were struck out.

Mr. Wright: My Lords, I should take the file, for convenience, seen in Appeal No. 15 of 1952 — I think that is file No. 3 — that is the file in both actions. It is Appeal No. 15 of 1952, and it is file No. 3. It starts off with an affidavit by Mr. Griffiths.

The first document that I have to refer your Lordships to in connection with the points made out by my learned leader is, of course, the writ, because the first argument is that the writ issued impleaded the Indonesian Government. My Lords, that is in Action No. 8 of 1952, and it is document (2) and that writ, as your Lordships will see, is dated 27th June, 1952, and it is important to note that that date, as I shall hereafter show your Lordships from the affidavits filed by the plaintiffs, is a date prior to the expiration of the admitted charter — the charter admitted by the plaintiffs in their affidavits which still remain on the file and which have not been struck out, is dated the 30th June, 1952, so that the writ, my Lords, was issued before the expiration of the admitted charter party. 10

Now, my Lords, this particular writ, in accordance with the normal form of a writ in rem, calls upon, by its express words, all parties interested in the steamship *Tasikmalaja* of the Port of Panama in the Republic of Panama, commands all those parties to cause an appearance to be entered and, my Lords, I will show you from an affidavit filed in support of their action by the plaintiffs that the plaintiffs were perfectly well aware that the only other party interested in this ship was the Government of the Republic of Indonesia. 20

Now there is only one other point I need draw your Lordships' attention to in regard to this writ and that is the form of the claim. Of course my learned leader will refer to the form later. It reads as follows:

“The Plaintiffs as sole owners of the steamship ‘*Tasikmalaja*’ of the port of Panama in the Republic of Panama, claim to have legal possession decreed to them of the said vessel.” 30

My learned leader will comment on the fact that although they swore they were in full possession and control of this vessel, nevertheless the writ was issued claiming legal possession to be decreed to them.

Now I desire to refer your Lordships to document (6), which is an affidavit from a gentleman, Khalil Khodr, in support of the arrest, and I refer to this affidavit to show your Lordships that the plaintiffs were well aware that one of the persons interested in the res was the Government of the Republic of Indonesia. It is an affidavit of Khalil Khodr and filed on the 27th June and, from this affidavit will be seen that the plaintiffs well knew that the Government of the Republic of Indonesia were interested in this ship, and if they did not enter an appearance they would relinquish any right they claimed in it. 40

In paragraph 4 it reads as follows:—

“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 US\$600,000. The said Frank C. Starr, however, was never duly or legally authorised by the Plaintiff Company to complete any sale of the said vessel.”

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10 “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 any sale price has been paid to the Plaintiff Company, and the said sale was based on a photo-static copy of one of the documents of title.”

Paragraph 7:—

“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.”

Then paragraph 9, my Lords:—

20 “I am informed by Captain Jose Ma. Silos and verily believe that the present representative of the Ministry of Defence of the Republic of Indonesia, one John W. Kuitert, has been attempting to obtain possession of the above named vessel from the said Captain Silos and I am very apprehensive that unless the said vessel is arrested and taken into the protective custody of this Honourable Court, possession control and custody thereof may be forcibly and/or otherwise wrongfully taken away from the servants of the Plaintiff Company, and that the vessel may be taken out of the jurisdiction of this Honourable Court. I am advised by my solicitor that as a Sovereign Power the Government of Indonesia would not have to obtain clearance to take the said vessel from Hongkong, even if necessary under tow, and I am further advised that if the said Government were to obtain possession of her they might be able to claim immunity from the processes of this Honourable Court.”

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Now, my Lords, those paragraphs clearly show not only that the plaintiffs recognised that there was a contest as to the ownership of this vessel, but they full well knew that there was or that a sale had taken place, the validity of which they disputed. My Lords, they recognised that there was a purported sale and they recognised that there was a contest as to the title, right to possession of this vessel and, in our submission, they knew that when they issued this writ, automatically the Government of the Republic of Indonesia had to come in or relinquish any right to claim the vessel.

40 Now, I desire to refer you to Mr. Griffiths' affidavit, document (17) filed in support of the notice of motion, and it is dated the 9th July, and there, in this affidavit my Lords, you will see that the Indonesian Government claimed to be impleaded as set out. This affidavit was before the Court despite the order striking out the affidavits of the Consul General and Major Pamoe Rahardjo. Mr. Griffiths states in paragraphs 2 and 3:—

"2. I have been instructed by the Consul General to challenge the jurisdiction of the Court in this Action on the grounds set forth in the Notice of Motion.

3. A lengthy Affirmation by the Consul General setting forth facts and stating that his Government declines to sanction these proceedings is now in the course of preparation but owing to the necessity of obtaining certain documents from Djakarta it has been impossible to complete the same to date. The said Affirmation will be filed shortly when all documents are to hand."

Paragraph 3 indicates that the Consul General will later swear to an affidavit and indicates that the Consul General will state that his Government declines to sanction these proceedings. 10

Now, my Lords, the Notice of Motion which is before the lower Court, sets forth that this action impleads a foreign sovereign in paragraph 1, namely, the Government of Indonesia. I am reading out the Notice of Motion:—

- "1. That this Action impleads a Foreign Sovereign State, namely, the Government of the Republic of Indonesia. The said Government is unwilling to submit to the jurisdiction of this Honourable Court.
2. That the said Steamship is the property of the Government of the Republic of Indonesia. 20
3. Further or alternatively that the said Steamship is and at all material times was in the possession and effective control of the said Government by its duly authorised agents.
4. That the said Government is and was at all material times entitled to possession of the said Steamship.
5. That the claim in this case is against a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the same.
6. That a claim to the said steamship is being made by a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise 30 its jurisdiction to decide the validity of the said claim."

Mr. D'Almada: My Lords, this affidavit, document (17) to which my learned friend Mr. Wright has just referred is, I am instructed, not filed in support of the notice of motion and it has something to do with an application for an adjournment and it was not used at the hearing of the motion before Mr. Justice Reece — it was not read.

Mr. McNeill: It was filed. It is filed in support of the notice of motion together with two other affidavits which were filed sometime on the 9th July to which my learned Junior was just about to refer.

Mr. D'Almada: In any event, it was an affidavit not read at the hearing of the motion. I ask your Lordships to note that. You will have to refer to the records.

Mr. Wright: You will have to refer to that.

Now, my Lords, the next point made by my learned leader was this, that we brought the ship in and in order to show that there is some evidence in support of that point, I refer your Lordships to the affidavit of Mr. Khodr, which is document 36 (1) on the file. That is an affidavit dated 16th August, 1952. In paragraph 3 (b), sub-paragraph 2, a letter is exhibited. At the foot of page 10 2 of that affidavit there is exhibited a letter signed by Captain Aguado who was the Captain of this vessel when she came to Hong Kong. This was received by the plaintiffs from him on the 31st March, and that is KK-HH1 my Lords. It is a short letter, my Lords, dated 31st March, 1952, from Captain Aguado to the plaintiffs, and he attaches a letter which he himself wrote on the same day to the Philippine Embassy in Djakarta:—

“Dear Sirs:

Attached please find copy of letter sent to Dr. Imperial of the Philippine Embassy in Djakarta, regarding the supplier who furnished fresh food supplies for the S.S. “TASIKMALAJA” for the trip from Djakarta to Hong Kong, which letter is self explanatory.

As Dr. Imperial's letter speaks of a letter sent to you by the Supplier, I am sending this copy of my letter to Dr. Imperial as an explanation of the case.

Trusting that the above meets with your approval and awaiting your further news and orders, I remain,

F. J. AGUADO.”

This particular letter, my Lords, deals with the supply of provisions for the voyage of the ship from Djakarta to Hong Kong. The letter reads, my Lords:—

30 “I have your kind letter of the 19th instant in connection with an unpaid bill for food supplies to W. H. King & Sons, who supplies our provisions before we left for this port.

The delay in the settlement of this bill has been due to the supplier not following my instructions when Mr. Pavia my chief Steward, introduced me to them. The instructions were to accompany the delivery with the invoice in order to approve same preparatory to its payment. When the delivery was made I personally inquired about the bill and same did not accompany the delivery.

40 As the movements of the vessel were under the orders of the Ministry of Defence and my departure from Djakarta was ordered in a very rapid manner, the bill covering the deliveries has not been signed by the undersigned, and consequently will not be paid by the Djakarta office.

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Exhibit KK-HH1
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I believe the suppliers could have sent their bill to this port the next day of our sailing, addressed to the Indonesian Consul at this port and by this time am sure could have been all settled without having to bother you.

As according to my Chief Steward, there is a small error on the bill, please instruct Supplier to forward same to this port in care of the Indonesian Consulate or care Taikoo Dock Hong Kong, when I shall approve same and return for payment.

Thanking you for having intervened in this matter and assuring you that I shall do my part for the payment of same as soon as possible, I 10 remain,

F. J. AGUADO."

This letter is addressed from Hong Kong, my Lords.

So you see, my Lords, on the documents exhibited by the plaintiffs themselves, it is perfectly clear that this voyage of the *Tasikmalaja* from Djakarta to Hong Kong was under the orders of the Ministry of Defence, namely, my Lords, that the Government of the Republic of Indonesia brought this vessel from their country to Hong Kong. This is the captain of the vessel speaking, Captain Aguado.

Exhibit KK-GG1
Ref. No. 91

Now, my Lords, link that up with another letter which is exhibited to the 20 previous sub-paragraph to which I have referred your Lordships, sub-paragraph (1). There is exhibited a letter KK-GG1, a letter dated 24th April from Captain Aguado, again to the plaintiffs:—

"Dear Sirs:

I have today received your letter dated 16th April, 1952 and in reply wish to inform you that although the SS *Tasikmalaja* arrived at this port on the 13th March last, no repairs have been done on the vessel and in accordance with the latest instructions from Djakarta, the vessel is to return to Indonesia to have the repairs executed at the Navy Yard in Surabaya." 30

Then the writer goes on to deal with a Survey of the vessel for reclassification.

Now, my Lords, you will see from an affidavit filed by Mr. Grimsdale that when this vessel arrived in Hong Kong, the contract for the repair of the vessel was concluded between the Hong Kong, and Whampoa Dock Co., Ltd. and the Government of the Republic of Indonesia. That is apparent from document (33) which is an affidavit of Mr. Grimsdale, Secretary of the Hong Kong & Whampoa Dock Co., Ltd., dated 14th August. In paragraph 2, there, my Lords:—

"2. On or about the 21st day of April, 1952, my Company submitted an estimate for repairs to the S/S "*Tasikmalaja*". A copy of the estimate is 40 now produced to me and marked Exhibit "WTG-1". Later as the result

Exhibit WTG-1
Ref. No. 15

of instructions from the Indonesian Consul General the estimate was modified to the sum of \$280,000.00 approximately as the result of deletion of certain items of repairs. My Company contracted to carry out repairs to the said vessel for the Indonesian Government on the basis of the estimate as subsequently revised by the Indonesian Consul General and on the 9th day of May, 1952 the vessel was brought to the Dock Company's premises in pursuance of the contract."

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And then, my Lords, the affidavit goes on to deal with arrangements for payment of the repairs and so, my Lords, you will clearly see from these documents which still remain on the file, despite the fact that five affidavits were stricken from the record, the plainest possible evidence and material indicating that the Government of Indonesia not only brought this vessel in, but paid for the provisioning and in fact did have the vessel repaired with the Hong Kong & Whampoa Dock Co., Ltd.

Appeal Judge: They paid . . . ?

Mr. Wright: They paid \$100,000 and arrangements were made that the balance was to be available in Hong Kong Bank and the amount was made available under the names of the Dock Company and the Indonesian Consul General. That is sufficient material from the affidavits which remain on the file in support of this point made by my learned leader, namely, that the Indonesian Government brought the ship in. The fact that the Government concluded this contract with the Dock Company is further clarified and set out in more detail (there is no necessity for me to deal with it now) in a further affidavit of Mr. Grimsdale, document 63 (2), dated 26th September.

Mr. D'Almada: This is an affidavit filed after the dismissal of the motion by Mr. Justice Reece. I take objection to its admissibility now unless my learned friend will make a formal application. We are dealing with the position as before Mr. Justice Reece and therefore there is no question of any evidence adduced after the hearing of that motion being heard.

Mr. Wright: There is no necessity for me to refer to this affidavit now.

Mr. McNeill: I will apply for your Lordships to allow that affidavit to be used.

President: You are applying now?

Mr. McNeill: Yes. If your Lordships will look at the affidavit by Mr. Griffiths, you will find that he says that it was sworn for certain purposes, my Lords, and he makes reference to it which is sufficient notice.

Mr. D'Almada: My friend's case is this, that on such material as was before Mr. Justice Reece, there was still ample material for my learned friend to argue successfully that this action impleaded his client.

Mr. McNeill: If your Lordship wishes to go back to that point afterwards, I am quite ready to do so.

Court: Our feeling at the moment is that under this particular head of argument it is not admissible.

Court adjourns at 11.25 and resumes at 11.45.

Mr. Wright: Now, the next point was that there was an admitted charter, charter admitted by the plaintiffs in their affidavits. I refer your Lordships to the affidavit of Khodr, dated 27th June, that is document (6) in Bundle 7. I have already referred your Lordships to other paragraphs of that affidavit.

Now, my Lords, in that particular affidavit, paragraph 1, Mr. Khodr says that he is a duly authorised attorney of the plaintiffs and he produces and exhibits his Power of Attorney which is Exhibit A1. If your Lordships would turn to Exhibit A1, various documents under which is Exhibit A1, the third one is headed "Special Power of Attorney", and, in the second paragraph of that special power of attorney, you will see that the plaintiff company authorised Mr. Khodr to:

"to bargain, sell, lease, transfer and convey, to any person or persons, entity or entities, and for any sum of money, or other consideration as to him may seem most advantageous and beneficial to the company, the vessels exclusively owned by it, at present known as S/S "TASIKMALAJA", ex "Christobal", ex "Haleakala", and the M/V "FS-148", both vessels under charter to the Indonesian Government, the first at present in Hongkong waters undergoing repairs and the latter in Indonesian waters;"

That is a Power of Attorney given to Mr. Khodr on the 16th June and in that power of attorney it recites the fact that that vessel, the Tasikmalaja, at that time was under charter to the Indonesian Government and was at that time in Hong Kong waters undergoing repairs. So, my Lords, in their own documents the plaintiffs admit a charter and I will draw your Lordships' attention to certain other passages in another affidavit of Mr. Khodr, where they quite clearly knew what the terms in this charter are, namely, that it is a charter for six months from the 1st January this year to the 30th June this year (1952), and that the charter hire was to be US\$210,000.

Now, my Lords, the subsequent affidavit of Mr. Khodr is 28 (1) in this bundle, and it is dated 26th July, 1952.

Now, my Lords, in paragraphs 13 and 14 of that affidavit, you will find the plaintiffs' allegation that the charter party was, or a resale was drawn up governing this period was fraudulently prepared. That was their attitude to the charter.

Paragraph 13:—

"13. I verily say that Exhibit K.D.H.1" was fraudulently prepared by the said Frank C. Starr and Major Pamoe Rahardjo for the purposes of this case and that it is completely untrue that all the Charter Parties contained options for sale."

Paragraph 14:—

“At my instigation the said late K.H. Hemady had asked for copies of this last Charter but as I am aware the same had never been received by the said late K.H. Hemady or the Plaintiff Company and attach hereto copy letter from my files of a letter written dated the 31st day of January, 1952 written by the late K.H. Hemady to the said Frank C. Starr and attached hereto marked ‘KK-G.’”

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Paragraph 16. You will find, second sentence:—

Exhibit KK-G
Ref. No. 58

10 “At the same time as I am informed by the said Jose Briones and verily believe to be true the same Major Pamoe had telephoned from Indonesia to the said late K. H. Hemady and had finally bargained the sale price of the said vessel from US\$600,000 to US\$450,000 (though this reduction was agreed to without the knowledge and consent of the other members of the Board of Directors of the Plaintiff Company as I am informed by these other members and verily believe to be true) but the said Major Pamoe had attempted to obtain certain further deductions to be made even from this price of US\$450,000, which the said late K. H. Hemady had refused to permit: wherefore on the 8th of January, 1952 the said late K. H. Hemady . . . ” — that is the then managing director of the plaintiff firm
20 — “ . . . had a consultation with me as he was apprehensive of the Charter hire for the 6 months from the 1st of January, 1952 totalling of US\$210,000 being paid to or received by the said Frank C. Starr and instructed me to send a cable . . . ”

So there you are, my Lords, that the plaintiff corporation, through Mr. Hemady, were well aware that there was a charter for six months from the 1st January, and they well knew what the charter hire was, and it is obvious that the deponent knew it.

Now, in paragraph 24 there is yet another reference:—

30 “Several days later the said Frank C. Starr telephoned from Indonesia to the Philippines (and I verily believe this information to be true) and spoke to me personally and asked me to convey to the late K.H. Hemady the information that Major Pamoe Rahardjo was insisting upon deduction of the charter moneys for the 6 months ending December 1951 for the purchase price of US\$450,000 (*the charter moneys for the 6 months ending 30th June, 1952, not having then been paid*) . . . ”

There is still another reference to the charter ending 30th June, 1952, that charter money not having been paid,” and again, my Lords, in paragraph 31:—

40 “31. The Plaintiff Company only became aware of the purported sale and the fraud affected by a report made by the said Jose Briones in May 1952 a few days before the death of the said late K.H. Hemady whereupon I was immediately despatched to Hong Kong to investigate. On inquiry from both Mr. J.T. Prior and Mr. Peter Mo of Messrs. Wilkinson & Grist I was told that it was their belief that the purchase price was about US\$300,000

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and I verily believe that this information was given to them by the said Frank C. Starr and Major Pamoe Rahardjo. The Plaintiff Company did not at any time receive the charter hire for the 6 months period from 1st January to the 30th June, 1952 . . . ”

Another reference, my Lords to this charter, and, while I am on it, my Lords, you will see from that paragraph that the plaintiffs were perfectly well aware of a claim by the Indonesian Government to the order of this ship on a basis of purported sale.

Appeal Judge: They were well aware, you say, of the claim?

Mr. Wright: Not only do these documents contain an admission that there was a charter to the 30th June, the Indonesian Government claim they were owning the vessel . . . 10

Appeal Judge: I realise that. In the last sentence you said “the plaintiffs were well aware”?

Mr. Wright: On the basis of the purported sale. I will come back to that point later. The plaintiffs well knew that there was a sale, which they called a purported sale. At the moment I am merely making the point that there is an admitted charter. There is further reference to this charter in the Exhibit KK-T1. This is a letter, my Lords, sent by Mr. Hemady of the plaintiff firm to Major Pamoe at the Ministry of Defence, and it is dated February 7th. I draw your Lordships’ attention to the fact that this date falls during this charter period to which I am referring, because the previous charter had expired on the 31st December. Here Mr. Hemady says, on page 2 of this letter, under the heading of ‘Tasikmalaja’:— 20

“ We asked Mr. Starr whether the Indonesian Government will purchase this vessel, and if so, to renew the insurance at that end. He cabled us that he will advise us in due time. However, since the insurance was about to expire, and not hearing from Mr. Starr definitely, we decided to renew the insurance on this vessel for which there is due the underwriters, in London, the amount of \$33,934.28. We have agreed with the local agents of the Underwriters that this amount will be remitted from Djakarta to London. Therefore, may we request you to please remit, and *deduct from the charter price of the S.S. Tasikmalaja*, the amount of \$33,934.28 . . . ” 30

My Lords, they are again recognising the charter of this vessel and asking them to deduct from the charter price of the vessel the current insurance premium. Perhaps it is even plainer, my Lords, the admittance of the existence of the charter in a letter from Mr. Hemady, in a letter which is the next Exhibit, KK-U1.

Appeal Judge: That is from Mr. Hemady to Mr. Starr?

Mr. Wright: To Mr. Starr.

Appeal Judge: On the same date? 40

Mr. Wright: The same date. 3rd paragraph:—

Exhibit KK-T1
Ref. No. 72

Exhibit KK-U1
Ref. No. 73

“The 105 . . . ” — these figures apparently form the manner in which each side refer to the charter, they quote 105 for US\$105,000 — “. . . which was received on December 12, 1951, was for the charter ending December 31, 1951, but the charter for the next six months beginning January 1, 1952, and ending June 30, 1952, which is 210 . . . ” — there we have the reference to US\$210,000 — “. . . as mentioned by Major Pamoe should be credited to our account and should not be deducted from the selling price of the boats. In your cable of the 6th instant, you said that this will be remitted to ‘Emmy about 21st this month for certain’.”

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- 10 Emily is his wife. So, my Lords, there is a reference, there is Mr. Hemady who knew of a charter for six months and knew the charter for hire. Next to this affidavit is another Exhibit, KK-P1. This is a letter, my Lords, sent by Major Pamoe to Mr. and Mrs. Hemady, and it was sent in or around the end of January 1952, and you will see that Major Pamoe distinctly tells Mr. and Mrs. Hemady, halfway down paragraph 2 of this letter:—

Exhibit KK-P1
Ref. No. 67

“I wondered that Mr. Starr has not told you yet, about the last contract of the Tasik. We have chartered the Tasik for 6 months more until June this year with option to buy the vessel.”

- 20 My Lords, all these references from the correspondence and the affidavits which still remain on the file conclusively show the admission of the charter for that period.

Appeal Judge: Of course Mrs. Hemady did not hold any position in the company.

Mr. Wright: The letter is addressed to both. She is a very important personage, my Lord, it is through her that the charter monies were not paid. In any event that is irrelevant.

- 30 Now, my Lords, that is clear evidence on affidavits, but, further, my Lords, in regard to the plaintiffs’ knowledge of the Indonesian Government’s claim to ownership of this vessel, you have reference to the fact that Mr. Khodr full well knew about the sale in Hong Kong before the issue of the writ, because, if you see this affidavit again, the same affidavit, document 28 (1), dated the 26th July, paragraph 28:—

“28. It would now appear from the said affirmation of Kwee Djie Hoo that, in spite of the cancellation of the said Frank C. Starr’s agency and in spite of Major Pamoe Rahardjo’s letter of the 17th January, 1952 (Exhibit “KK-K”) the said Major Pamoe Rahardjo and the said Frank C. Starr on the 13th of February, 1952 purported to enter into a sale contract being Exhibit “K.D.H.2” to the said affirmation of Kwee Djie Hoo.”

Exhibit KK-K
Ref. No. 62

Exhibit KDH-2
Ref. No. 20

Paragraph 29, my Lords:—

- 40 “29. The Board of Directors as I have been informed by the various members thereof and verily believe it to be true was never at any material period aware of the sales contract and of the onerous terms thereof and of the

onerous terms of the purported last Charter Party..." —which is the one I have just referred your Lordships to— "...and of the purported execution of the Bill of Sale of the 17th March 1952..." —which is the bill of sale which the Indonesian Government maintain transferred the ownership to them.

Paragraph 29 (d) also contains a reference to it:—

" (d) The purported sale and completion took place without any original title deeds whatsoever save with a photostatic copy of the Bill of Sale of George Ho to the Plaintiff Company and neither the said Frank C. Starr nor the said Major Pamoe Rahardjo or any one on behalf of the Indonesian Govern- 10
ment had ever applied to the Plaintiff Company for such title deeds alleging transfer of ownership."

Your Lordships will recall, of course, that before they issued the writ, Khalil Khodr had been despatched from Manila to Hong Kong to make investigations.

In paragraph 31 there is another reference to the sale:—

"The Plaintiff Company only became aware of the purported sale and the fraud affected by a report made by the said Jose Briones in May 1952, a few days before the death of the said late K. H. Hemady, whereupon I was immediately despatched to Hong Kong to investigate." 20

Paragraph 32:—

"32. I verily say that in any event the Indonesian Government was not only put on inquiry as to the lack of authority on the part of the said Frank C. Starr, but at material dates were actually aware that he held no such authority to agree and to put through the sale of the said vessel..."

So, my Lords, it is clear beyond all doubt that at the date of the issue of this writ the plaintiffs were well aware that by issuing the writ in the way they did, they were forcing the Indonesian Government to come in and defend their rights. They knowingly issued this writ. They issued it with the knowledge that the Indonesian Government were the only other persons who 30
could possibly claim to have any interest in the ship apart from the plaintiffs themselves. My Lords, and the position, of course, is that their knowledge only strengthens my learned leader's argument on the impleading on the issue of the writ, because in the other action the argument will be that by issuing a writ in rem, you take a risk that the foreign government will be impleaded, and by issuance of the writ in rem, the government is automatically impleaded whether there is any knowledge on the part of the plaintiff or not, but in this Action 8, it is stronger, because the plaintiffs knew that by issuing this writ they were going to drag the Indonesian Government before the Court. Now, my Lords, those excerpts which still remain on the file have all the following point of interest, 40
which is one of my learned leader's arguments. You will recall his second argument, which was that the Indonesian Government had brought the ship in. There is an admitted charter, on the date of the writ the Indonesian Government

said they are owners, and all the arguments bear on this particular aspect of the case, so it cannot be said that there is no evidence at all to support the Indonesian Government's case once the five affidavits filed by the Consul General for Indonesia in Hong Kong have been expunged.

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Now, my Lords, the next point which I want to deal with insofar as these affidavits are concerned, is the point relating to possession and/or control. I have reminded your Lordships that the writ, of course, claims possession, which is a strong claim to make if, as they claim, they were in full and effective control and possession of the ship at all material times.

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10 On this aspect of the case, my Lords, again the affidavit of Khalil Khodr, document 6 in 7, dated 22nd June, in paragraph 8 of that affidavit there is an assertion by Mr Khodr that the vessel is still and has at all material times been, in physical custody, control and possession of the plaintiffs, and, therefore, their servants, Captain Aguado or the Acting Captain, Silos. Captain Aguado, having brought the vessel into Hong Kong, went to Manila some time later, and Silos was appointed Acting Captain in his place. So Silos and seven named members of the crew in Mr. Khodr's assertion held physical control, custody and possession of the vessel. But in paragraph 9 he says:—

20 “9. I am informed by Captain Jose Ma. Silos and verily believe that the present representative of the Ministry of Defence of the Republic of Indonesia, one John W. Kuitert, has been attempting to obtain possession of the above named vessel from the said Captain Silos and I am very apprehensive that unless the said vessel is arrested and taken into the protective custody of this Honourable Court, possession control and custody thereof may be forcibly and/or otherwise wrongfully taken away from the servants of the Plaintiff Company, and that the vessel may be taken out of the jurisdiction of this Honourable Court.”

30 My Lords, there is a broad hint that they had not got that physical control, custody and possession of the vessel, that they assert they have in this affidavit. What Mr. Khodr conveniently omits from his affidavit, of course, my Lords, is the fact that, apart from this Acting Captain and seven members of the crew, 80% of the crew are Indonesian. They are in the vast majority. That, my Lords, appears from two affidavits sworn by two members of the Indonesian crew, which affidavits still stand on the file, the affidavit of Mr. Mandagi, document 18, dated 9th July, 1952, sworn by the Captain appointed by the Indonesian Consul General:—

40 “I confirm that from the 30th day of June 1952, I, as Captain appointed by the Consul General, have been in command of the vessel and that all the forty-one Indonesian members of the crew and six of the seven Filipinos on board have been obeying my orders. I confirm that at all times I and the forty-one Indonesian members of the crew have been ready and willing to obey the orders of the Consul General and were at no material times prepared to obey nor did we ever obey any commands of Captain Silos in defiance of the authority of the said Government. I am authorised to make this statement with full knowledge and authority of all the Indonesian members of the crew and both on their and my behalf”.

And he says he is in possession of the vessel, subject to the arrest of the Court.

Appeal Judge: He only became captain on the 30th, that is some days after.

Mr. Wright: That is because the acting captain Silos did not make known his allegiance until that late stage. My Lords, that affidavit is supported by similar affidavits sworn by a Mr. Walandouw, and he confirms in paragraph 2 that forty-one members of the crew....

Mr. D'Almada: Document 19 was not read before Mr. Justice Reece.

Mr. Wright: My Lords, I will confirm, it is my recollection that both these 10 affidavits were referred to.

Mr. Bernacchi: I personally read Mandagi's on behalf of the respondents, but I did not read Walandouw's, and neither of these two were read originally on behalf of the applicants.

Appeal Judge: The one by Mandagi was read?

Mr. Bernacchi: By me, my Lord, but I did not read 19, and neither 18 or 19 were read by the applicants and as part of their case, but Mandagi was before the Court because I read it myself.

Appeal Judge: It was before the Court.

Mr. Bernacchi: I read it myself, 19 I did not read. 20

Mr. Wright: I need not read it again, because it is practically identical...

Mr. D'Almada: I object to its being referred to at all. It was not read.

Mr. Wright: Now, my Lords, you will see from Mr. Mandagi's affidavit, the great majority of the crew were Indonesian. Forty-one Indonesian members were not going to act in conflict with their Government, and it is no wonder in those circumstances that a writ was issued claiming possession of the vessel and Mr. Khodr was apprehensive on the score of possession and control being taken away from those persons who he said had control and possession, either taken away or otherwise obtained.

Perhaps it is convenient now to refer to one or two aspects of public user 30 of this vessel. The Indonesian Government maintain that it was used for Government purposes, namely for the transport of troops, and I want to refer your Lordships to paragraph 10 of Mr. Khodr's affidavit of the 26th July, document 28 (1):—

“Prior to the purchase of the said vessel one Frank C. Starr, an American, came to Manila in the Philippines as agent for the Government of the Republic of Indonesia for the purpose of purchasing heavy equipment for the said Government, and dealt with our Company in this regard through

me and the said K. H. Hemady deceased. Gradually, the said Frank C. Starr gained the confidence of the said late K. H. Hemady and sometime after the purchase of the said vessel the said Frank C. Starr proposed to the said late K. H. Hemady that they should charter this said vessel and in due course other vessels of the Plaintiff Company to the Indonesian Government for the transport of troops and the said Frank C. Starr was appointed agent to look after and manage this vessel on a commission basis, whereupon the vessel was sent to Sourabaya and after repairs was chartered for a period of three months from the 1st day of January 1951....".

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That was the first charter of the vessel, my Lords. Now, KK-3, an exhibit to this affidavit, sets out a copy of that first charter, my Lords, and there is the following provision:—

Exhibit KK-3
Ref. No. 55

“2. Steamer to be employed by the Indonesian Army for the transports of troops and equipment to any part in the world except those which are under communist authority....”.

Paragraph 5 you will see there is a stipulation that there should be a commanding officer in charge of the troops, and you will see there is an appendix to that charter party (KK-2), dealing with the feeding of the troops. Provision was made that the plaintiffs were to provide the meals and the terms for such provisions were laid down in the appendix.

Exhibit KK-2
Ref. No. 54

You will find in paragraph 12 of the same affidavit that the second charter party, which followed on, was in identical terms, and the third charter party, which was for six months up to the 31st December last year, in the same form. That is all set out in paragraph 12 of Mr. Khodr's affidavit, as amended by a later affidavit of his. I need not refer to that, but that is the effect of those affidavits.

Mr. McNeill: My Lords, I repeat again the principle which is the basis of impleading. My Lords, the principle is based upon the Comity of Nations and is therefore one of substantial public importance. We will not in our Courts discuss the rightness or wrongness of a claim by a foreign state to have an interest in property, and as soon as your Lordships have before you a purported interest, a claim of a purported interest, that is enough. My Lords, that is why, on the first point, that is why the Courts say that a writ in rem impleads, it is because it calls upon anybody who claims to have an interest, not anybody who establishes an interest, all you have got to do is claim to have an interest, and you are immediately made a party to the proceedings.

My Lords, in this connection, of course, it is very important to distinguish between an action in personam and an action in rem. An action in personam must be addressed to someone. The defendant must be named and, of course, if anybody else appeals that they want to be made a party to the action, they can come in, but in an action in personam, the judgment is only binding to the parties in the proceedings. By contrast, in an action in rem, judgment is binding against all the world. It is binding upon persons who are not named as parties and who do not take part in the proceedings.

40

If your Lordships will look at *Castrique*, reported before the House of Lords, page 414, Vol IV,—a very well known case dealing with proceedings in rem. I don't think, my Lords, it is necessary for me in my argument to take time to give your Lordships the facts. I will only refer your Lordships to page 427, the judgment of Mr. Justice Blackburn at page 427:—

“We think that some points are clear. When a tribunal, no matter whether in England or a foreign country, has to determine between two parties, and between them only, the decision of that tribunal, though in general binding between the parties and privies, does not affect the rights of third parties, and if in execution of the judgment of such a tribunal process issues against the property of one of the litigants, and some particular thing is sold as being his property, there is nothing to prevent any third person setting up his claim to that thing, for the tribunal neither had jurisdiction to determine, nor did determine anything more than that the litigant's property should be sold, and did not do more than sell the litigant's interest, if any, in the thing. All proceedings in the Court's of Common Law in England are of this nature , , , ” 10

Now, my Lords, further down the page, after citing the case of *Stringer v. English*, he goes on:—

“We apprehend that it is clear that in all such cases Courts sitting under the same authority must recognise the title of the purchaser as valid. In *Story on the Conflict of Laws* (3), it is said that the principle that the judgment is conclusive 'is applied to all proceedings in rem as to moveable property within the jurisdiction of the Court pronouncing the judgment. Whatever it settles as to the right or title, or whatever disposition it makes of the property by sale, revendication, transfer, or other act, will be held valid in every other country where the question comes directly or indirectly in judgment before any other foreign tribunal. This is very familiarly known in the cases of proceedings in rem in foreign Courts of Admiralty, whether they be causes of prize or bottomry, or salvage or forfeiture, of which such Courts have a rightful jurisdiction founded in the actual or constructive possession of the subject matter.” 20 30

We may observe that the words as to an action being in rem or in personam, and the common statement that the one is binding on third persons and the other not, are apt to be used by English lawyers without attaching any very definite meaning to those phrases. We apprehend the true principle to be that indicated in the last few words quoted from *Story*. We think the inquiry is, first, whether the subject matter was so situated as to be within the lawful control of the state under the authority of which the Court sits; and secondly, whether the sovereign authority of that State has conferred on the Court jurisdiction to decide as to the disposition of the thing, and the Court has acted within its jurisdiction. If these conditions are fulfilled, the adjudication is conclusive against all the world.” 40

My Lords, that is restated in the recent case of *Dollfus Mieg*, and restated by Mr. Justice Jenkins, in order to show the different approach which a Court should make to an action in personam and an action in rem, and I am going to

recite to your Lordships from 1949 Chancery Division, page 369. Now, my Lords, in his very important judgment, Mr. Justice Jenkins, now Lord Justice Jenkins, page 383, deals with this distinction, in the middle of the page, my Lords, the paragraph starting with "With I think only two exceptions . . ." Now, my Lords, before I read this passage, I think your Lordships are probably fully aware, this action was not an action in rem, it was an action in personam against a Bank. Now, my Lords, he says here:—

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10 "With I think only two exceptions, namely *Twycross v. Dreyfus* (6) and
Vavasasseur v. Krupp (7), all the cases cited to me in which the principle
of immunity has been held to apply . . ." — I omit the brackets — ". . .
have been Admiralty cases involving judgments in rem . . ." — that is
sometimes referred to in those matters, one must remember it was not an
action in rem, it was an action against an agent who held goods — ". . .
judgments in rem. A judgment in rem, of course, differed from an
ordinary judgment in personam in the important respect that the latter is
binding only as between the parties to the suit, while the former affects
20 the status of the property in respect of which it is made and binds all
persons claiming an interest in the property inconsistent with the judgment
even though pronounced in their absence." "Thus a judgment in rem
against property in which a foreign sovereign is interested, whether as
owner or as having possession or control of it . . ." — he uses the word
owner there loosely, because I will show your Lordships, the lesser interest
is ample — ". . . must clearly have the effect of ousting the foreign
sovereign's interest whether he is a party to the proceedings or not, and
is therefore manifestly one which the municipal court has no jurisdiction to
pronounce."

Now, my Lords, that sentence is of importance, my Lords, in connection
with Admiralty Jurisdiction Action 6, rather than No. 8, because this shows, even
if we were not a party to my friend Mr. Loseby's action, we should still be
30 impleaded because, had we not come in and judgment had been given against the
shipper and no-one had come forward, of course in due course the ship would
have been sold and the judgment in his favour would have bound my clients, the
Indonesian Government.

Adjourned until 2.30 p.m.

2.30 p.m. 8.12.52.

Court Resumes, Appearances as before.

Mr. D'Almada: Before my learned friend resumes his argument, there is
just one point I would like to draw your Lordships' attention to. You may re-
call that this morning I objected to the reading of a certain affidavit because it
40 had not been read before Mr. Justice Reece, and of course the question would
have to be checked from the records of proceedings. I ask your Lordships to
look at 0.29, R.23 of our Code, Chapter 4. You will find at p.193 it reads:—

"Not less than five days before the day fixed for the hearing of the appeal
the appellant shall deliver to each of the judges a complete transcript of
the proceedings in the case."

Mr. McNeill: Have your Lordships got a copy in the Judges' notes? My instructing solicitor informs me that the transcript of the proceedings is before your Lordships.

Appeal Judge: I have read it somewhere in one of the files.

Mr. McNeill: If it is not in one file, it must be in another, because I have it in a separate bundle. I was going to refer to it actually. My instructing solicitor informs me that he has complied with that rule. I think you will find it in bundle 7, document (8) I am advised.

President: It is in 14.

Mr. D'Almada: We were informed that your Lordships were not supplied with it and hence I had to take the point. 10

Mr. McNeill: I must agree that there is a faint atom of truth in what my learned friend has said because I think your Lordships have not got the very first day of the hearing of the motion.

President: What was the first day?

Mr. McNeill: The first day was the 10th of July.

President: We have the 28th.

Mr. McNeill: But the motion was returnable to the 10th—the impleading motion.

President: There is nothing of importance there, Mr McNeill. 20

Mr. McNeill: A trifling circumstance occurred and that was the affidavit of Mr Griffiths which has been objected to was read. If you look at bundle 7, document 16, that is the impleading motion. You will see, my Lords, that it is returnable on the 10th July. My Lords, I understand the practice is that the solicitor concerned applies to the Court for a copy of the Judge's notes, and I think, by a not unnatural oversight, that the notes of the day on which that motion first came before the Court were omitted. They are very short, and having discovered this during the luncheon adjournment, we have asked for copies of the transcripts of the learned Judge's notes and your Lordships will find that Mr. Griffiths' affidavit was read, where he says he was instructed to file the motion, and so on. We will complete your Lordships' files as soon as we have that copy, and I shall ask your Lordships to rule, if the point comes out, that in fact the rule referred to by my learned friend, Mr. D'Almada, 0.20, r.23, has been complied with, and, if there has not been any compliance, it has not been due to any fault of ours. 30

Mr. D'Almada: I took the point because we were informed that in fact the record did not contain a transcript.

Court: We keep it open to you, Mr. D'Almada.

Mr. McNeill: I was on this point of the writ of impleading and there were two more citations I wanted to give your Lordships on that. The first is *the Cristina*, which is reported in 1938 A.C., p.485. Now, my Lords, I don't wish to deal at this stage with the question of what kind of interest was claimed there. The claim was actually based on interest, plus de facto possession or control, but that doesn't affect the point that I am making now. My Lords, at p.491, in the judgment of Lord Atkin, your Lordships will remember that this concerned a ship and the question of impleading was dealt with. Page 491 in the judgment of Lord Atkin, he says at the bottom of the page:—

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10 “We have had an interesting exposition of the history of Admiralty practice and the evolution of the writ in rem. It is plain that it began with the arrest of a named defendant; in his absence any of his property in the jurisdiction including his ship or ships could be arrested: eventually the ship over which some maritime claim was asserted could alone be arrested. But in all cases, as in the present practice when a defendant has appeared the claim is against him personally.”

20 When you wish to raise an impleading point, you must not enter an unconditional appearance, your appearance must be conditional, that is to say, from the outset you say ‘I am not prepared to accept the jurisdiction of the Court’. “But in all cases as in the present practice when a defendant has appeared the claim is against him personally, and though it is enforced in the first instance by sale of the ship or enforcement of the bail, a damage claim is not in our jurisprudence limited to the value of the ship. In these days it is unusual to name defendants: when the defendants are described as “the owners of a vessel” they can be at once identified. When persons are not entitled the defendants but in the body of the writ are cited to appear as persons claiming an interest, there is said to be some uncertainty whether they appear under leave to intervene or without such leave. In any case when they do appear they appear as defendants, and as such I conceive that they are impleaded . . . “and of course your Lordships will find that we finally appear as defendants, although we are only conditionally so — ” . . . And when they cannot be heard to protect their interest unless they appear as defendants, I incline to hold that, if they are persons claiming an interest, they are by the very terms of the writ impleaded.”

30

If you will turn to page 503.

Mr. Loseby: My learned friend did not read the lines immediately following.

Mr. McNeill: My learned friend is anxious that you should not overlook
40 the argument which he will adduce later to your Lordships that possibly these grounds were obiter. I have said it doesn't matter.

Mr. Loseby: I think it is very necessary, my Lords.

Mr. McNeill: At the bottom of page 503 — towards the bottom — citing the *Parlement Belge*, Lord Sumner said:—

“ The principle is well settled, that a foreign sovereign is not liable to be impleaded in the municipal Courts of this country but is subject to their jurisdiction only when he submits to it, whether by invoking it as a plaintiff or by appearing as a defendant without objection.”

That is the same as entering an unconditional appearance.

“ The principle is stated without any special reference to reciprocity, but The *Parlement Belge* shows clearly that a sovereign may be impleaded as much by an action in rem as by an action in personam. As was said by the Privy Council in *Young v. S.S. Scotia*: ‘Where you are dealing with an action in rem for salvage, the particular form of procedure which is adopted in the seizure of the vessel is only one mode of impleading the owner’ .” 10

I draw your Lordships’ attention to that aspect of the case because in the case of Action No. 6, there was not a claim for possession, but it was a claim for work done, just as you might have a claim for salvage. The action is an action in rem and, as the learned Judge says here, it is only one mode of impleading. My learned friend, for example, his clients might have sued the party who gave the order, but they took the course of an action in rem, and thereby undertook that risk which that action involves.

Then the learned Judge goes on :—

“ In the *Parlement Belge*, the action in rem was brought under a claim for collision damage done by a Belgian State mail packet. It was contended that the sovereign was not impleaded (sc. personally) but only the res. Brett L.J. in delivering the judgment of the Court of Appeal said that *The Bold Buccleugh* decides that an action in rem is a different ‘action from one in personam and has a different result. But it does not decide that a Court which seizes and sells a man’s property does not assume to make that man subject to its jurisdiction . . . ’ — that is what would have happened had we not entered a conditional appearance in Action No. 6 — “ . . . To implead an independent sovereign in such a way is to call upon him to sacrifice either his property or his independence. To place him in that position is a breach of the principle upon which his immunity from jurisdiction rests. We think that he cannot be so indirectly impleaded any more than he could be directly impleaded. The case is, upon this consideration of it, brought within the general rule that a sovereign authority cannot be personally impleaded in any Court.’ I think the substantial soundness of this ruling is corroborated by considering the nature of the modern writ in rem. The history and effect of that writ have been fully explored by Jeune J. in *The Dictator*, approved and followed by the Court of Appeal in *The Gemma*. It seems that originally the warrant was issued for the purpose of compelling the defendant to appear and submit to the Court, and was directed not merely against the property said to be the instrument of injury but any property of the defendant or even himself personally. But the modern writ in rem has become a machinery directed against the ship charged to have been the instrument of the wrongdoing in 30 40

cases where it is sought to enforce a maritime or statutory lien . . . ” — of course that doesn't arise in Action 6, but it is in the same nature as the collision or salvage action — ” . . . To take the present case the writ names as defendants the *Cristina* and all persons claiming an interest therein, and claims possession.”

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At this moment I am going to refer your Lordships for a moment to page 492, and I am going to mention a passage to which my learned friend Mr. Loseby would like you to refer. The sentence at the end of the first paragraph on that page :—

- 10 “ But in the present case where persons claiming an interest are the only persons entitled defendants, and the Spanish Government are the only persons claiming an interest adverse to the plaintiffs, I have no doubt not only that the Government were in fact impleaded but were intended by the plaintiffs to be impleaded.”

Now those words “intended to be impleaded” have perhaps special reference to Action No. 8 in that it is significant that in the affidavits in support of arrest in Action No. 6 should be referred to as an Indonesian ship. That is Mr. Loh's affidavit in support of arrest. It is clear that in *the Cristina* the writ names the *Cristina*; it did not put anybody's name in the writ.

- 20 “ The writ commands an appearance to be entered by the defendants (presumably other than the vessel) and gives notice that in default of so doing the plaintiffs may proceed and judgment be given by default, adjudging possession to the plaintiffs.”

And there would have been a judgment for the amount claimed and if nobody appeared, there would have been an order for the sale of the ship:

- 30 “ A judgment in rem is a judgment against all the world, and if given in favour of the plaintiffs would conclusively oust the defendants from the possession which on the facts I have stated they beyond question de facto enjoy. The writ by its express terms commands the defendants to appear or let judgment go by default. They are given the clear alternative of either submitting to the jurisdiction or losing possession. In the words of Brett L. J. the independent sovereign is thus called upon to sacrifice either its property or its independence.”

There was no such writ, my Lords, and in my submission it doesn't matter in the least whether the writ is for possession or whether it is a writ in rem for any other claim, collision, salvage, work done; they are all the same because if you don't, if as a sovereign government you do not come in, your ship is liable to be sold by the Court and, in that case, my Lords, you are to be in the position we are in Action No. 6, of submitting to the jurisdiction or losing our rights.

- 40 He goes on:—

“ It is, I think, clear that no such writ can be upheld against the sovereign State unless it consents. It is therefore given the right, if it desires neither to appear nor to submit to judgment, to appear under protest and

apply to set aside the writ or take other appropriate procedure with the same object. It may be said that it is indirectly impleaded, but I incline to think that it is more correct to say that it is directly impleaded. The defendants cited are 'all persons claiming an interest in the Cristina' a description which precisely covers on the facts of the case the Spanish Government and, to judge by the affidavits filed by the appellants in applying to obtain the warrant to arrest, no one else;" — In this case, there is another contestant in the case before your Lordships. There are two contestants, and I use the word 'contestant' because the fact that two parties have entered, there is only one inference to be drawn that there is a contest as to interest — "under the modern and statutory form of a writ in rem, a defendant who appears becomes subject to liability in personam. Thus the writ in rem becomes in effect also a writ in personam. This emphasizes the view that the writ directly impleads the Spanish Government. 10

Mr. Loseby: Whilst my friend pauses there, if I can save him any trouble by saying that as far as I am concerned an action in rem would be unimpleaded if ownership and/or possession is conceded. I say only that if it helps my friend to that extent. I concede that if ownership and/or possession are conceded.

Mr. McNeill: I am much obliged to my learned friend. I assume by the word 'ownership', that he means any lesser interest. 20

Mr. Loseby: Well, I mean the issue exactly as put by the learned Judge in his judgment.

Mr. McNeill: When I come to read *the Arantzazu Mendi*, you will find that the last I have been reading from Lord Wright was cited there. I will come to that case later on. One more case on this particular point, that is *the Jupiter*, which is reported in 24 Probate at p.236, and I am going to deal with the case where:—

"The plaintiffs, a foreign company, issued a writ in rem claiming possession of the steamship Jupiter. The writ was directed against 'the steamship Jupiter and all persons claiming any right or interest in the said steamship.'. The Union of Socialist Soviet Republics entered an appearance under protest and moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State:—". 30

At page 242, my Lords, in the judgment of Lord Justice Scrutton, near the bottom of the page in the last paragraph:—

"There used to be some obscurity as to the nature of a writ in rem in Admiralty, but since the judgment of Sir Francis Jeune in *the Dictator*, which was affirmed by this Court in *The Gemma*, that obscurity has been cleared up. By the old practice of the Admiralty Court the appearance of a person interested in property used to be enforced either by seizing him to make him appear, or by seizing his ship, or by seizing his property other than his ship; but the object of all the processes of seizing was to make the man appear so that he might be a personal defendant to the 40

action. If he did appear, he at once became personally liable to the judgment of the Court. If he did not appear, the Court, having given him the opportunity of appearing, might take away his property."

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Now, my Lords, I am sure that my learned friend Mr. Loseby is going to say 'Now both in *the Cristina* and in *the Jupiter* (from which I am now citing) and in the *Parlement Belge* where writs in rem were spoken of, in all those cases there was a claim for possession and therefore your argument does not apply to my claim, that is to say in A.J.A.6.' My reply to that is this: Quite true. Those actions were actions for possession, but the facts of issuing a writ in rem as set out in the various judgments which I have cited is perfectly clear. There are various modes about which my learned friend's clients could have proceeded with their claim; they chose a writ in rem and they called, by that writ, upon everyone claiming an interest in this ship to come forward and defend the claim and I repeat, had no-one appeared to that writ, conditionally or unconditionally, the result would have been a foregone conclusion: judgment would have been given against the ship and, had no one still come forward, the ship would inevitably have been sold. And it is unarguable, my Lords, that the writ calls upon anybody interested to defend their rights or lose it.

This judgment goes on:—

20 "This writ being addressed to the steamship *Jupiter* and all persons claiming any right or interest in the steamship, the foreign Government which does claim a right or interest in the ship must do one of three things. First, it may appear to defend, but it cannot be compelled to appear; secondly, if it were not to appear and let the action go on, the Court, might feel able to forfeit the property of a foreign sovereign; thirdly, it can come to the Court and say, 'I am not going to discuss what my title is; I say I am a foreign sovereign; I claim a right in this property, and you cannot compel me to come to your Court to show you that I have good cause for saying that it is my property'."

30 My Lords, that is my argument upon the writ in both actions and the basis of the rulings of the various judges as to the effect of an action in rem, the clear basis is either that a proprietary interest is claimed or that there is possession or control in the foreign government concerned.

Now, my Lords, that is bringing me to the next point upon the evidence which is that we have brought this ship in into Hong Kong, into the jurisdiction, and we claim a proprietary interest in her. My Lords, in all these cases a distinction is drawn on this point I am on, between goods which are brought in and goods which are already in the country. There is a passage, my Lords, in *the Cristina*, a very well-known passage of Lord Maugham, and I give this as an
40 example. There are two citations from Lord Maugham's judgment. I give you first page 515. It is reported in 38 A.C. I am afraid that it is inevitable that I shall have to go backwards and forwards to pick out passages that deal with points I am dealing with. There, he starts off with this sentence about ten lines down:—

"It seems to me that the claim by the Spanish Government for immunity from any form of process in this country may extend to cases where possession of ships or other chattels had been seized in this country without

any shadow of right, and also to cases where maritime liens were sought to be enforced by actions in rem against vessels belonging to a foreign Government and employed in the ordinary operations of commerce. For my part I think such a claim ought to be scrutinized with the greatest care."

And then, on the following page 517, about twelve lines down he is speaking of:—

"An independent sovereign sued for breach of promise of marriage in our Courts can indeed claim to be outside of our jurisdiction; but there is no authority for the view that if he wrongfully obtained possession of valuable jewellery in this country, and it was in the hands of a third person, he could claim to stay proceedings by the rightful owner against that person to recover possession of the jewellery merely by stating that he claimed it." 10

So that there is a very substantial difference immediately indicated, my Lords, between goods already in this country.

President: In this country at what date?

Mr. McNeill: Assume today there is some article in Hong Kong which is seized by a foreign government and placed in the hands of a third party. That is what Lord Maugham had in mind. He says if you do that, then if somebody attacks the third party and claims the goods, then you will have to come in and prove your title — that is, in this country. Perhaps, your Lordships, speaking of dates, that would be the date of the writ if the goods had been wrongfully seized when they were in this country. But if a foreign sovereign brings goods into the country himself or by his agents, and says "These are mine" that is the end of it; he merely makes a claim. My Lords, that is repeated at page 508, by Lord Wright of the same case. He is dealing with the question of licence, my Lords, at the middle of the page:— 20

"The Court of Appeal rightly, as I think, treated the case as concluded in substance by *The Jupiter*. It has, however, been strenuously contended that the decision in *The Jupiter* does not govern this case because the requisition was there effected within the jurisdiction of the requisitioning State whereas in the present case the Spanish Government seized the *Cristina* in British territorial waters." 30

Now, my Lords, the basis on which the *Cristina* was seized was that a requisition had been made.

"The famous judgment of Marshall C. J. in *The Exchange* was also relied on as resting the immunity on a licence in favour of the sovereign State which brings its own property within the alien jurisdiction on the footing of the licence, whereas no such licence can be implied when the vessel has entered the jurisdiction in the owner's possession and has then been wrongfully seized. It was also said that the judgment of the Courts below, if upheld, would enable a foreign sovereign State to effect unlawful seizures in this realm of chattels or property without either the State itself or its agents being under any liability civil or criminal. But in my judgment these objections are ill conceived." 40

Now, my Lords, that is the opposite point of view, I would say, to that of Lord Maugham. I have cited Lord Maugham's statement because it has been from time to time referred to in various cases and I suppose it is possible to conceive a position where, as Lord Maugham says, a foreign sovereign seized goods, puts it in the hands of his agents and says "Well, that is mine and you can do no more about it'.

My Lords, that expression of opinion is repeated in another case, *Luther and Sagor*, reported in 1921, 3 K.B., 532. Have your Lordships got it?

President: Yes, we have got it.

10 Mr. McNeill: At page 555, my Lords, from the judgment of Lord Justice Scrutton, about twelve lines down. He is speaking, my Lords, of *Vavasour v. Krupp*, where, your Lordships may remember, the Mikado had purchased some shells in Germany, and they were brought into 'this country', in the course of shipment to Japan. The Mikado was made a defendant, and he said that he was impleaded, and it was said that he was so.

20 "If M. Krassin had brought these goods with him into England, and declared on behalf of his Government that they were the property of the Russian Government, in my view no English Court could investigate the truth of that statement. To do so would not be consistent with the comity of nations as between independent sovereign states."

There you get a perfectly plain statement by the Lord Justice, that, if a foreign sovereign brings goods into this country, all he has to do is to say "These goods are mine'. He may ask, my Lords, what is the basis? That is to say, is it a requisition? Do they belong to you? But he has not got to go further than to say 'I have requisitioned this ship', as was the case in *the Cristina* and the *Arantzazu Mendi*, which I am going to cite later to your Lordships. That is all he has got to do. Of course, the *Luther and Sagor* case was not an action in rem, but that makes no difference, my Lords, because the same view was expressed in *the Cristina*.

30 Now, my Lords, in the Court below I referred to *Haile Selassie*, but I don't think I am going to do that here, my Lords, because my learned friend's Junior immediately said 'Well, there you are. You see the Italian Government in that case merely said 'These belong to us' and the Court said 'You cannot do that'. So, I am not going to cite that case.

40 Now, my Lords, the interest which we have claimed here — I am dealing now with proprietary interests. My learned Junior has shown your Lordships upon the affidavits that from what is left in the affidavits, it is quite apparent that we brought this ship into Hong Kong. My Lords, that is where the admitted charter comes in. The fact that the charter party was admitted, and a charterer, of course, has the right to control the movements of a ship, and, in this case, they controlled the movements of the ship by bringing her into Hong Kong. When I come to cite the further passages from *the Cristina*, my Lords, I will show the Judges there say "Here, this Government has requisitioned a ship, and that is in effect a compulsory charter".

If your Lordships will look at *the Broadmayne* case, 1916 Probate at page 64. Oh, would your Lordships forgive me if I give your Lordships one more citation from *the Jupiter* before you pass on to this. It is 1927 Probate, *Jupiter* No. 3 at page 122. I must ask your Lordships' indulgence for going back to this. At page 140, the judgment of the Appeal Judge. He is speaking of *Luther and Sagor* and, in the middle of the page, you will see where Scrutton L. J. points out

"That if the Russian Government had itself brought the goods into this country, and by its representative declared that they were the property of the Russian Government, the Courts here could not investigate the truth of the allegation." 10

That is all I wanted to mention to your Lordships.

Now, my Lords, I will come then back to *the Broadmayne*, reported in 1916 Probate at page 64, and I am going to refer your Lordships to page 70 first. Page 70, second paragraph:—

"It was urged by counsel for the plaintiffs that the effect of requisitioning a ship is not to change the ownership, and the ship requisitioned remains the property of the owners notwithstanding the requisitioning, and that when the use of the ship by the Crown ceases the ship is restored to her owners. That is so, but it does not prevent a ship so long as she remains under requisition being in the service of the Crown, and as such exempt from process of arrest." 20

It is only showing what the nature of a requisition is. At page 73, my Lords, the judgment of Pickford L.J., speaking of this ship, about two-thirds of the way down the page, you will see the words:—

"It must be taken that she was requisitioned for the service of the Crown at a rate of remuneration which had not then been settled, but which would be settled in the future, or, if not settled, at a reasonable rate of remuneration. That is really nothing more than a hiring of the ship."

That is really all I wanted to cite. A requisition is nothing more than a compulsory hire. 30

If your Lordships wouldn't mind turning back to *the Cristina* — I must go backwards and forwards to pick out these points. It is 38 A.C., page 501, the judgment of Lord Wright, last paragraph of the page. I am going to read from the words 'Respondent Government does not contend'. My Lords, this is a final stage, because your Lordships will find here that the claim in *the Cristina* upon the impleading motion was on two grounds (1) possession; (2) a proprietary interest. There were two quite distinct grounds.

"The respondent Government does not contend that it is the owner of the *Cristina*, but says that it is and was at all material times in de facto possession of the *Cristina* and was therefore without its consent impleaded by the writ in rem claiming possession adversely to its actual possession." 40

Such a proceeding, it contends, is inconsistent with its position as an independent sovereign State recognized by His Majesty's Government. It further contends that the action involved a claim to interfere with its right of direction and control coupled with actual possession acquired by reason of the requisition. This, though not ownership, is, it is said, a right in the ship in the nature of property and was, as being the property of an independent sovereign State, immune from the interference of the Court either by the arrest or by an order annulling the requisition and giving possession to the appellants and ousting the respondents from possession. The word 'requisition', while not a term of art, is familiar and has been constantly used to describe the compulsory taking by Government, invariably or at least generally, for public purposes of the user, direction and control of the ship with or without possession. In my judgment both contentions are well founded and the order of the Courts below may be sustained on either ground."

10

Again I say the ground on which I am speaking now is proprietary interest or, going one step further, as owners, and I am not saying that on this branch of my argument it matters in the least whether the charter party — or rather we say there was a charter party and we say we were owners and we give the basis of our claim as shown on the affidavits.

20

Then, if you turn to page 507, the judgment of Lord Wright, the second paragraph beginning:—

30

"The appellants, while not contesting the general principle, have denied that it applies to the facts of the present case, for various reasons. In the first place they have relied on the fact that the Spanish Government had no property (in the sense of ownership) in *the Cristina*, whereas in *The Parlement Belge*, the Belgian Government was the owner of the mail packet. But the rule is not limited to ownership. It applies to cases where what the Government has is a lesser interest, which may be not merely not proprietary but not even possessory."

It goes a very long way, my Lords.

40

"Thus it has been applied to vessels requisitioned by a Government, where in consequence of the requisition, the vessel, whether or not it is in the possession of the foreign State, is subject to its direction and employed under its orders. That was a separate ground in *The Porto Alexandre*, apart from the question whether, or fact that, the vessel had actually become the property of the Portuguese Government, which was possessing and employing her. A similar immunity from arrest was upheld in favour of the British Crown in *The Broadmayne*, a vessel requisitioned by the British Government under what was in fact a compulsory charter party and hiring."

If your Lordships will look over the page, at page 508, last sentence of the first paragraph, Lord Wright says:—

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“In my judgment on the facts of the present case the requisitioning of the *Cristina* under the decree of June 28, 1937, gave the Spanish Government a right or interest in the *Cristina* whether called property or not, which was immune from interference by the Courts of this country.”

So, my Lords, you see that as far as proprietary interest is concerned, a requisition which was the basis of the proprietary interest in *the Cristina* and *the Arantzazu Mendi*, which I am going to recite to your Lordships, the requisitioning was nothing more than a compulsory charter and, under the charter of course, this ship has to do what the charterers wish it to do; it is under the charterers' direction and control.

10

So, my Lords, under that heading we have brought the ship in, bringing goods into the country, plus a claim of a proprietary interest which can be less than ownership; that is sufficient upon the issuing of a writ in rem to implead a foreign sovereign.

Your Lordships will appreciate that I have not dealt with, so far, the possession, because I am just going to cite now to you *the Arantzazu Mendi*, which is reported in 1939 Probate, at page 37.

President: That case is called a 'high water mark'.

Mr. McNeill: But it has not been in any way impugned. It remains a high water mark. I don't know that I have read a single judgment impugning. 20

Court: I don't suggest any such thing at all, Mr. McNeill.

Mr. McNeill: It comes in a line, if I might recapitulate these four cases. In *the Parlement Belge*, the actual possession was in the foreign government—that is the early case of 1880. Then you get *the Cristina*, in which your Lordships will remember that the consul, I think, got possession of the ship by sending a captain on board, whether rightly or wrongly according to municipal law and then said 'We have requisitioned this ship', there was a decree long ago requisitioning all the ships.

Then you get the case of *the Dollfus Mieg*. In that case it could hardly be said that the Governments concerned had any interest, proprietary interest, 30 whatever. The facts, your Lordships will remember, that there was certain gold which, by an arrangement between the U.S., France and His Majesty's Government, had been brought over into England and lodged with the Bank of England. The actual owner of the gold brought an action against the Bank of England. It wasn't contested that he owned the gold, and it wasn't contested that the Governments had any interest in the gold, but it was shown that there was never possession or control.

Then you get the case of *the Arantzazu Mendi* where no possession was found in the Government which said it was impleaded, and the judgments, your Lordships will find when I read them, were based on that, and that is why I am 40 introducing this case now, because I have not come to possession, I am simply saying we brought the ship in, we claim a proprietary interest. Now, at page 37, the headnote:—

10 “In pursuance of a decree dated June 28, 1937, a Spanish ship registered at Bilbao, after that port had been captured by General Franco’s forces, was requisitioned by the Republican Government. The vessel was not then in Spanish territorial waters. On her arrival in the Thames her owners issued a writ in rem for possession; she was arrested by the Admiralty marshal, and at all material times remained under arrest. On April 5, 1938 . . .

“ — Now these two dates are important — ” . . . she was requisitioned by the Nationalist Government, and the master and managing director of the owners made declarations that they held the vessel at the disposal of the Nationalist Government. Thereupon the Republican Government . . .

“ — which had issued the prior requisition — ” . . . issued a writ in rem claiming possession of the vessel and served a warrant of arrest on her. The Nationalist Government entered an appearance under protest and moved to set aside the writ and arrest on the ground that the action impleaded a foreign sovereign state, namely, the Nationalist Government of Spain.”

20 Now, my Lords, it is important in this case to bear in mind that there was before the Court documents showing, or evidence claiming, two requisitions, one by the party issuing the writ, one by the party claiming to be impleaded, and your Lordships will find that the Court said, you cannot go into the question of whether they would requisition or not, you cannot say the one is good and the other not, because the Nationalist Government said ‘this is my claim and the action must stop’. Here is the answer by the Court:—

“Assuming that it was right to say that the legal possession was in the Admiralty marshal, the Nationalist Government had nevertheless shown sufficient interest in the ship to compel them to come before the Court to defend that interest, and, therefore, that they were impleaded by the action, and, as they were a government of a sovereign state, that the writ and warrant of arrest must be set aside.”

30 Now, my Lords, the headnote there is not quite accurate, because the judges said ‘I assume the possession is in someone else’. Your Lordships will see that at the bottom of page 39, Slessor L. J. interposes a remark:—

“Are you not interfering with the owners’ proprietary right to hold the ship, as they and the master state they are, at the disposal of the Nationalist Government?”

and Counsel goes on:—

40 “No one has interfered with their proprietary rights except possibly the marshal. Neither proprietary nor possessory rights are acquired by the requisition . . . “ (this was Counsel for the Republican Government) ” . . . on behalf of the Nationalist Government (see *The Broadmayne*), and further the assertion as to requisition is disputed, for the Republican Government undoubtedly requisitioned the vessel first.”

Your Lordships will see that the very document, or the very proprietary interest was immediately in dispute, and that Counsel for the Republican Govern-

ment argued that the Nationalist Government requisition is a valueless document because the ship is already requisitioned, and that argument was turned down. In the middle of page 46, my Lords, there is a small part of the facts:-

“The *Arantzazu Mendi* was a ship the property of a private company registered at Bilbao, and on June 28, 1937, she, then not being in Spanish waters, was requisitioned by the Republican Government, and the effect of that requisition was normally to require that the owners should, so far as the control and destination and disposition of the affairs of the ship are concerned — I am speaking generally — hold the ship under the disposition of that Government.”

10

And that, as your Lordships have heard, is really a charter — a compulsory charter. Now, my Lords, at page 49, near the bottom of the page, the penultimate paragraph, last sentence, Lord Justice Slessor says:—

“I am prepared, at any rate, to assume for the purposes of this case that at all material times it is right to say that the Nationalist Government were never able to say that they were in possession of this ship.”

Now, page 50, my Lords, after dealing with the interest, the admitted interest, he goes on:—

“Those are, I agree, not powers of ownership, but powers of disposition and control of the ship. For this purpose, it seems to me not material to inquire whether that requisition was or was not of legal effect in Spain. It is enough to say that the powers mentioned in that requisition, namely, the powers short of ownership, of disposition and control, are conceded by the owners and the master now to be held by them as agents for the Nationalist Government. The question then arises on that, whether, in order to resist the claim of the Republican Government — which, if it succeeded, would exclude even these powers — it is necessary for the Nationalist Government to intervene, to appear as defendants and be impleaded; that is to say, to sacrifice their independence in order to maintain their proprietary interest in these rights.”

30

And then, lower down, my Lords, he repeats that passage which I have already cited from *the Cristina*. Now, page 51, in the middle of the page:—

“I, therefore, am of opinion, first, that the Nationalist Government have not shown that they are in possession of this ship; secondly, that they have failed to show that they have any ownership in this ship. Nevertheless, I think, following Lord Wright, they have shown that they have a lesser interest imposed by the requisition, which interest, on the uncontradicted evidence, is held for their benefit by the master and the owners.”

Your Lordships will find that it doesn't matter whether there is an admission or not, in this case of course there is, there is an admitted charter. Although, of course, that sentence really puts the position rather as it is here, there is an admitted charter. He goes on to say:—

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“and that they have shown a sufficient interest for the Nationalist Government to be compelled, unless they wish to see that interest destroyed, to come before the Court and defend that interest. They are therefore put to the election of sacrificing, as it has been paid, either their independence or their property, for this interest is a proprietary interest, albeit it does not go to the fullest extent of ownership.”

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Page 53, my Lords, judgment of Finlay L.J., the end of the first paragraph:

10 “A claim has been put forward, and they will therefore inevitably lose rights which they claim if judgment is given in accordance with the prayer of the writ.”

Now, my Lords, that applies equally to A.J.A.6. If we don't intervene in A.J.A.6, we lose the ship, and in A.J.A.8, of course, I remind your Lordships that, even if on the issue of the writ we did not become impleaded, we immediately became impleaded on someone saying they owned the ship. He goes on:—

20 “The ground, as I understood it, on which Mr. Pilcher rested this part of his case appeared to me throughout to be a technicality, though, of course, a technicality which had to be dealt with. He said: ‘But the marshal here is in possession.’ Assuming that the sole possession is in the marshal — which is a matter which might require some further discussion—but assuming that, I do not think that it carries Mr. Pilcher's point, and for this reason: the rights to be considered are not rights of possession, they are proprietary rights, as was pointed out by Lord Wright in the passage just read by my Lord. And, assuming that the true view is that possession is so exclusively in the marshal that there can be no other possession, than his, I find it quite impossible to see why, taking that view, it should be said that a right — a very important right — is not here being claimed by the Nationalist Government; nor why, if the ship was adjudged as claimed in the writ, the Nationalist Government would not be deprived of that right.”

30 Now I turn, my Lords, to page 55, which is perhaps the most important and clearest exposition that there is on the question of impleading, the judgment of Lord Justice Goddard, last paragraph:—

“On the second point I also agree with my Lords. The speeches of the noble and learned Lords who decided *The Cristina* and the recent case in this Court, *Haile Selassie v. Cable and Wireless Ltd.*, I think show this: that where a claim for immunity is made by a foreign sovereign, it is not enough that this claim should be ‘a bare assertion of right’ as Lord Wright called it, or ‘a mere claim’ as Lord Maugham called it.”

40 Now, my Lords, he is not dealing there with the case of property being brought in by a Government, he is dealing with *the Arantzazu Mendi*, with the case of a ship which is in the country when the claims are established.

“But if the Court can see that the question that arises is a question of competing rights, as in this case here, where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign

who is claiming immunity rights over the ship—it may be that those rights are good or it may be they are bad, that is just what we cannot try — but if they purport to give rights over their ship and therefore 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, then it appears to me the principle of immunity applies.”

Now, my Lords, there is clear evidence before your Lordships, as shown by my learned junior — and I am only dealing with what is there on the files — there is clear evidence of a proprietary charter party, and, further than that, of a purported sale. Your Lordships will remember that in one of the affidavits cited 10 by my learned junior, Mr. Khalil Khodr speaks of a purported sale. That is all you have to do. That is as far as we have to go. Khalil Khodr uses the exact and important words used by Lord Justice Goddard.

Then, my Lords, once you have got a purported interest, your Lordships ask yourselves the question ‘is there a contest or is there not?’, and, if one thing is plainer than another from the parts which my learned junior has read, the parts that have not been struck out, it is that there is a contest. There is a question here of impleading rights, and what I tried to stress in the Court below is that there is an issue to be tried; once you have got an issue to be tried, as to whether there is an interest in the ship or not, a proprietary interest, that is the end of 20 the matter, and if the foreign government who claims the proprietary right says ‘I don’t wish to be subject to the jurisdiction of the Court’, that is the end of it, your Lordships cannot try the issue. My Lords, from the beginning to the end of my addresses in the Court below, I always maintained that position. I said “we will not . . . the writ, we will not discuss any paragraphs of anybody’s affidavit on the other side which concerns this contest.

Now, my Lords, I don’t think we are concerned now with the affidavit of Khodr, but I give it to your Lordships as an illustration of what I said in the Court below. Now we say the charges of fraud are absolutely irrelevant to the issue now before the Court on impleading, because they show the contest of 30 competing rights, and you cannot go into the matter. It doesn’t matter that a fraud is alleged or not, my Lords, because this ship was brought into the country by us. My Lords, I said to the learned judge in the Court below ‘it is unnecessary for me to contest these allegations of fraud’, and maybe the learned judge misunderstood me, because I said I did not think it is proper, when there are allegations against a foreign state, it is improper that they should be left without a denial. Not because it is irrelevant, but because it seemed to me improper to leave them without an answer. But, my Lords, fraud is irrelevant. Whatever occurred in connection with the Tasikmalaja in the way of this alleged fraud, occurred before the ship came into the Colony, and we brought this ship in 40 ourselves. It makes no difference to the substantive point, but it does not seem right to leave a statement of allegation of fraud unchallenged, but it is clearly not relevant.

My Lords, on the same point on which I am, about proprietary interest, the refusal of our Courts to go into the question of whether a proprietary interest is valid or not, I should like to refer your Lordships again to the case of *Dollfus Mieg*, 1949, 1 C.D., page 384, at the bottom of the page:—

“Suppose a foreign sovereign brings to this country in his possession chattels seized by him in his own country by some act of expropriation..” (and that is an extreme case, my Lords) “. . . the validity of which is questioned by the person who owned them at the date of the seizure. Suppose further that the foreign sovereign deposits the chattels in this country for safe custody with an agent not in his own person entitled to diplomatic immunity and the claimant then sues the agent for an injunction restraining him from parting with the chattels otherwise than to the plaintiff and an order for their delivery up. If in these hypothetical circumstances the injunction and order for delivery up were granted against the agent, the foreign sovereign would not be bound, but the agent undoubtedly would be bound. The injunction would entitle and bind the agent to refuse to deliver the chattels to the foreign sovereign without an order of the court, and the foreign sovereign would therefore be compelled to elect between submitting to the jurisdiction of the court, by applying to have the injunction dissolved in order to regain the custody of the chattels and acquiescence in being permanently deprived of their custody. The order for delivery up, with which the agent would be bound to comply, would transfer the chattels from the custody of the agent holding them on the foreign sovereign’s behalf to the possession of the claimant, and although it would leave the foreign sovereign free to assert his right to the chattels he would again be compelled to elect between submitting to the jurisdiction of the court as plaintiff in an action in which he would have to prove his title, and acquiescence in losing the chattels to the claimant.

In the Parlement Belge, Brett L. J. said: ‘To implead an independent sovereign in such a way is to call upon him to sacrifice his property or his independence. To place upon him in that position is a breach of the principle upon which his immunity from jurisdiction rests.’ It is true that this observation was made in relation to an Admiralty action in rem, but I think it applies with equal force to an action in personam of the type postulated above.”

And, of course, what he is saying there is that it applies in personam a fortiori, where the action is in rem. One has, of course, to read *the Dollfus Mieg* case with this in mind, that the action was not an action in rem, but an action in personam.

My Lords, that part of my argument is about complete now, the question of proprietary interest. Your Lordships will see that we claim upon a charter, and the affidavits show that such a claim is recognised as being in existence at the date of the writ, it is recognised by the other side. Now, my Lords, not only is it recognised—and that is all that is necessary for us to show, that there is a claim—but we can go one step further and say that it is an admitted interest. My Lords, on this question of admitted interest, we have not only those portions of the affidavits referred to by my learned junior, we also have expressed quite categorically, in a statement by Counsel for Ysmael & Co. that the ship was under charter until the end of June. We have a categorical statement by Counsel, we have statements by me, various statements by me to the same effect, to none of which was any exception or objection taken by Counsel for Ysmael

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& Co. I stated it, my Lords, on several occasions, and no objection was taken by Counsel, my Lords, you have the learned judge's notes before you, page 199, at the end of the page:—

“It is not necessary for us to base our claim on ownership, but we do make this claim. A lesser interest will do. The affidavits will show that at the date of the writs in Action Nos. 6 and 7, it is an admitted fact that the s. s. ‘Tasikmalaja’ was under charter to our clients. We say that interest is enough.”

You would think, if there was any dispute upon that point, one of my learned friends would have jumped to his feet at once. Page 214 of the learned judge's notes:— 10

“A purported interest is enough. In affidavit of Khodr (doc. 4) paragraph 5, there was a purported sale. This immediately raises an issue for contest.”

At page 226, this is in the speech of my learned friend's junior:

“There is not a single fact admitted except first charter party and that ship was under charter until June. We say that the plaintiffs abandoned that charter.”

That may be an argument, but the fact that she was under charter is an admitted fact. Then, again, my Lords, at page 235:— 20

“The Court has an admitted fact that a charter party existed at a material date.”

and then, again, page 240, what was really admitted was that there were series of charter parties, starting January 1950, and going on to June 1952. This is my learned friend's junior, Mr. Bernacchi:—

“The plaintiffs knew that the vessel was under a fourth charter party at the same charter rate as before. When this ship came to Hong Kong we were still under the impression that she was under charter to the Government of Indonesia, but having repudiated the charter to the plaintiffs before the writ by virtue of the alleged purchase we say that we...the charter. We approved of the fourth charter in the terms of Ex. ‘KK-EE,’ but we never approved of a charter containing an option to sell.” 30

Exhibit KK-EE
Ref. No. 89

My Lords, I don't care what the terms were, but the ship was under charter, and that is an admitted fact. Page 241:—

“We did know that this vessel was under charter and the power of attorney given to Mr. Khodr was that the vessel was under charter. Mr. D'Almada will say that the charter is immaterial.”

Well, my Lords, he never had an opportunity, unfortunately, but he will say so, I dare say.

Now, if one thing is clearer than another, it is that there was an admitted charter at the date of the writ, and that is the interest we claim. Now, there is one further reference I want to give, and that is in the *Dollfus Mieg* case, in the House of Lords, 1952, A.E.R., page 572 at 588, half-way down, before he had dealt with an action where a sovereign is named, now he goes on:—

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“But certainly a special difficulty begins when he is not actually named, but the suit is one which may result in a judgment or order that will affect his interest in some piece of property. Even to say that much begs one important question, for it assumes that he has a valid interest in that property, whereas a stay of proceedings on the ground of immunity has normally to be granted or refused at a stage in the action when interests are claimed but not established, and, indeed, to require him to establish his interest before the court (which may involve the court’s denial of his claim) is to do the very thing which the general principle requires that our courts should not do.”

And then he goes on to mention *Parlement Belge*, in which it was common ground that the ship was public property. That does not affect the issue that the impleading must be raised where the claim can merely be stated.

20 Now, my Lords, there is authority for the proposition that where a ship is brought into a country by a foreign sovereign, that that, coupled with public user, is in itself sufficient for showing any proprietary interest at all, and that is the only reason why we have mentioned public user. My Lords, I am not stressing this point, I am saying there is public user in case that point comes up before your Lordships. I am not stressing it, because the learned judge in the *Dollfus Mieg* case set out various points, which he was dealing with, which was, of course, in personam. Page 385, right at the bottom, he puts to himself various questions in relation to the gold bars, and at the top of 386, my Lords, the third question, he asks: (1949 C.D.)

“If so, is such possession or control for public purposes.”

30 He is dealing there with possession or control, then he interposes:—

“ (It is not entirely clear on the authorities whether this element is still to be regarded as an essential condition of immunity.) ”

40 My Lords, I don’t think there is authority which says it is an essential condition. In the *Parlement Belge* your Lordships will remember that the broad statement refers to property devoted to public user, but that, undoubtedly, has not been carried on in any very clear way, and it is my submission that it is not essentially correct where property of a foreign state has been brought into this country. My Lords, if it were regarded as necessary, then we say that upon the affidavits there is evidence that this ship was being used, or was intended to be used, by my clients, for public purposes, that is, the carriage of troops. I would just remind your Lordships of that evidence.

Appeal Judge: It is in the charter party, isn’t it?

Mr. McNeill: In the first affidavit brought by Khalil Khodr, document 28 (1).

President: KK-3 and KK-2.

Mr. McNeill: It is really a common ground that there was a charter party, and the inference was that the ship be used for the same use, the only dispute was the charge.

Mr. D'Almada: I don't think there was a similar term in the later charter party.

Mr. McNeill: In the same affidavit, document 28 (1), I read from paragraph 12, the second sentence:—

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"I am informed by the said Jose Briones and verily believe that he had typed this Second Charter Party at the request of Major Soekardjo and that the same was identical in terms with the First Charter Party, (from which he typed this Second Charter Party) save that the period of the Charter was to be from the 1st April 1951 to 30th June 1951."

Then, further down, my Lords:—

"As all files and records concerning shipping are under my direct supervision and charge, I remembered seeing a second Charter Party in such form mentioned by the said Jose Briones."

Now, my Lords, they all are alleged by the other side to be in the same form so far as troop carriage is concerned, and they admit that the ship was under charter in a fourth charter, and I invite your Lordships to say that only one inference can be drawn, and that is that it was for public use. 20

Appeal Judge: In the very beginning there was a dispute, I think your clients called the relevant charter party the third instead of the fourth.

Mr. McNeill: There were four charter parties, three of which upon this affidavit are on the same terms, and that is all we have before us on this particular argument. My learned junior has just pointed out a similar passage on the same lines, paragraph 10:—

"That they should charter this said vessel and in due course other vessels of the Plaintiff Company to the Indonesian Government for the transport of troops." 30

So, my Lords, it is perfectly evident that this ship was chartered for the purpose of carrying troops. Insofar as public purpose is a point to be considered by the Court, this is evidence that she was to be used, and was in fact used, for public purposes.

Now, my Lords, we say that that is quite enough, and each point, we say, is enough, your Lordships need not go further than the writ, quite apart from that we have established a claim to a proprietary interest, and quite apart from that, and going further, we say that we had sufficient control or possession, whichever way you like to put it, to cover our claim. 40

Adjourned until 11 a.m., 9th December 1952.

Second Day

(9th December, 1952, at 11.15 a.m. Court Resumes. Appearances as before)

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Mr. McNeill: May it please your Lordships, yesterday I was in the main dealing with the argument that the writ in both actions impleads by its terms and then I proceeded to deal with the question of a proprietary interest and I was rather emphasizing the basis where it should be brought in. It is a substantial subject, this question of impleading, and I thought it might be convenient to your Lordships if, before passing on to the proprietary interest, I give you what I submit is the law as found in these various cases I have cited to your Lordships
10 and the others where goods or ship in this case are brought in; where they are already in. I was submitting to your Lordships that there was ample evidence to show that in fact we had brought this ship in.

Now these are the two circumstances. (1) if shown that it was brought in. If we show that the ship was brought in then (a)—this is what would be sufficient to show the impleading, a claim to a proprietary interest and, on that point, I cited to your Lordships several cases including *Luther and Sagor* and the decision of Lord Justice Scrutton and then there was a dictum by Mr. Justice Jenkins and one by Lord Maugham. If they are brought in, a claim to interest is enough. (b)—these items are “and/or”, that is, they are both alternative and
20 cumulative of course; either is enough—(b)—this is the minimum requirement—no interest claimed whatever but some kind of possessory interest shown. Now, that being the minimum, my Lords, you could tack on to that the *Parlement Belge*. In that case the ship was in the possession of the government and the kind of interest that was claimed was public user. That was the very earliest exposition and that has been much expanded.

Another sample of 1(b) is the *Dollfus Mieg* case. There, and I am going to give your Lordships a few suggestions, you get a case where, to all intents and purposes, the governments who were said to be impleaded had no interest in the property at all. The Lord Chancellor’s judgment starts off by saying “Dollfus
30 Mieg is the owner of this gold” and nobody else claimed any kind of interest in it and the burden of the case is that there being no interest whatever, proprietary, is there any kind of possessory interest. Then (b): it seems to me, my Lords, that public user comes into these cases as a form of interest claimed. I have been re-reading them again yesterday evening and this morning and that is what I submit. It is a kind of interest claimed. These all come under 1(b) of course. I will, with respect to him, take the view of Lord Justice Jenkins who says that it is not at all clear that public user is necessary and what he had in mind is that it is a form of interest claimed. That is the position, in my submission, if the ship is shown to have been brought in. I am not going to repeat the argument. We say
40 she was brought in by us.

Then you come to (2). Suppose it is not shown that she was brought in by us then (a)—that is what would be sufficient my Lords, a proprietary interest, whether it is disputed or not, with or without possession. Now, I am using the word possession for short because you will see possession means a possessory interest or some kind of interest or control of possession. So I am

going to say possession for the time being. Samples of that are contained in the *Arantzazu Mendi* where your Lordships will remember that the whole basis of the judgments was that there was no possession at all, no possessory interest. The proprietary interest which was the compulsory charter was disputed. Your Lordships will remember the *Arantzazu Mendi*, there were the parties who issued the writ and requisitioned the ship in 1937, the Nationalist Government who claimed to be impleaded in 1938 and so you have a disputed proprietary interest.

The Cristina is another sample of 2(a). For clarity's sake, I will give your Lordships again the page in *the Cristina*, 1938 Appeal Cases p 501 — that is merely for clarity. pp. 501-2 where your Lordships will remember that there were 10 two claims. The impleading was argued on two grounds. The second one starting off with the words "It further contends that the action involved a claim to interfere with its right of direction and control". That was a proprietary interest claimed and before that, at p. 501, you will see there was another interest claimed and possession. At the moment, I am just on 2(a) and *the Cristina* case, the impleading case in *the Cristina* was based upon a claim to proprietary interest. Of course the facts, whatever facts there were before the Court, provided the basis upon which the two claims were made. It was said: here is this requisition, this compulsory charter, which the owners admit. That gives rise to a position in law of either a proprietary interest or possessory interest. You can take it 20 either way upon the same set of facts. Of course proprietary interest is disputed but a fortiori it is admitted. (b) this is also alternative or cumulative. Assume there is no proprietary interest but a possessory interest is shown; that is sufficient whether it is possessory, whether it is right or wrong. In other words, you cannot discuss the question whether it is right or wrong. An example of that is *the Cristina*. Your Lordships will recollect that in *the Cristina* the consul concerned put a captain on board contrary to municipal law and the Court said "We cannot go into the question whether it is right or wrong. There is the possessory interest". You will find in *the Cristina* there is a discussion of public user but it all arose out of the compulsory charter and, as it seems to me, it really 30 is a form of interest.

My Lords, that is the position in law, in my submission, and I say that upon anyone of these appearing before the Court your Lordships must immediately say that a foreign sovereign is impleading. Of course we must argue a case and one must attach as many of these points as one can, but there is such an accumulation here of points in our favour that almost anyone of these can be taken and your Lordships can say "I won't go further than that" because it is plain that a contest must arise as to interest. I am going to cite some passages to your Lordships. I have dealt at length with proprietary interest and I am going to deal with what is called possession or control and, possession 40 or control is a very wide term. I am going to refer your Lordships to the *Dollfus Mieg* case reported in 1952, 1 A.E.R. p.572. My Lords, the *Dollfus Mieg* case, as I say, was not concerned with interest at all. Again your Lordships will see in the judgments it was admitted by all sides that the governments concerned really had no interest in the gold whatever, no proprietary interest, and so the whole question revolved around the discussion as to what was sufficient for the purposes of immunity in the way of possession or control. If your Lordships will look at p. 579, or rather, my Lords, p. 576. Viscount Jowitt starts off "My

Lords, Dollfus Mieg et Compagnie S.A., the respondent to this appeal, is a French company which before the outbreak of war in 1939 had acquired as its property sixty-four bars of gold” and that property and gold was never disputed for an instant. At p. 579, the third line of para. F “My Lords, I think that the question for our decision is whether the foreign governments, notwithstanding the delivery of the sixty-four bars to the Bank of England, still retained such an interest in the bars as to entitle them to have the action stayed”. I think we must bear in mind, my Lords, that in *the Dollfus Mieg* case these bars were brought in at the instance of the governments concerned—a fortiori of course,

10 from my point of view. (Quotes): “The decided cases which illustrate the way in which the principle of immunity has been applied by our courts are largely concerned with ships and actions in rem. In *Compania Naviera Vascongado v. Cristina* S.S. Lord Wright refers with approval to the observation of Sir H. S. Giffard, S.-G., in his argument in *The Parlement Belge*: “The privilege depends on the immunity of the sovereign, not on anything peculiar to a ship of war, though it seldom arises as to anything else, because hardly anything belonging to a sovereign in his public capacity, except a ship of war, ever goes wandering into the jurisdiction of foreign courts’. Delivering the judgment of the court in *The*

20 *Parlement Belge*, Brett, L.J., deduces the following principle from the decisions of the English and United States cases: “The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign State to respect the independence and dignity of every other sovereign State, each and every one declines to exercise by means of its courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other State, or over the public property of any State’” and so on. In that case, the Belgian Government was the owner of the ship. In *the Cristina* case, Lord Wright says “The rule is not limited to ownership, however. It applies to cases where what the government has is a lesser interest, which may be not merely

30 not proprietary but also not even possessory”. Your Lordships will see the extent to which these principles of immunity is applied by our courts. Lord Atkin set out the principle in the following terms:

“The foundation for the application to set aside the writ and arrest of the ship is to be found in two propositions of international law engrafted on to our domestic law which seem to me to be well established and to be beyond dispute. The first is that the courts of a country will not implead a foreign sovereign. That is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his person or seek to recover from him specific property or damages.

40 The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his, or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle, as to whether it extends to property used only for the commercial purposes of the sovereign or to personal private property. In this country, it is, in my opinion, well settled that it applies to both.”

Now, my Lords, those two statements of the law by Lord Atkin were at one time held really, as one learned judge says, to have a false statute but it is maintained throughout these judgments that this is not so and Lord Atkin's proposition had to be interpreted in the widest possible way.

Mr. Loseby: Whilst my friend pauses there, I want to be allowed to interrupt him for one second. I have been waiting for him to pause. My learned friend used the phrase that he was going to ask your Lordships to do something that, in my submission, is not before your Lordships at all. My Lords, he said he was going to ask your Lordships to say and to rule that there had been an impleading. In my friend's notice of motion, he doesn't ask your Lordships 10 anything of the kind, and I think it only fair and right to do this now because my friend may wish to amend his notice. As I agree, the notice which seems to be to me most important, he appeals against the dismissing of the notice of motion filed herein on behalf of the Government of Indonesia to be rescinded, with such consequences as that may carry. I presume that if this order were dismissed, then the motion will still stand—that and no more—and he asks for the costs of this appeal. It doesn't carry with it that he is giving notice of appeal in which he is asking your Lordships to do something quite different, to go much beyond that. So, my Lords, my objection is that my learned friend is asking your Lordships to do something he is not empowered to do under his 20 notice of motion. And I say now that my friend may be quite clear that he is not entitled, under the notice of motion, to ask your Lordships to do anything of the kind.

Mr. McNeill: I would myself have read this notice of motion as meaning that the judgment dismissing the motion of impleading should be reversed. I don't think that my learned friend, or, I don't think anybody else sees the motion in the way he is reading it. I don't think he could say at this stage if the appeal is proceeded with in that way, that he is taken by surprise in any way when I argue that this notice of motion is an invitation to your Lordships to reverse the judgment of Mr. Justice Reece. 30

If that is in any doubt whatever, then I will ask your Lordships to make such ruling as necessary to show that we are asking that we are appealing against a decision upon which our impleading motion was dismissed and we are asking your Lordships to say that we are impleaded. I think that must be the way. I have never looked at it in any other way.

Mr. Loseby: If he had followed the ordinary course, if he was going to ask your Lordships to set aside the whole effect of a hearing, my Lords, a little consideration will show that there is all the difference in the world between what my friend says he is going to read into it and which he is not entitled to read into it. The point, my Lords, is this, that it is a very considerable amendment 40 though your Lordships may or may not allow my friend to make it at this stage. I shall certainly make it totally plain that he cannot go beyond his notice of appeal.

Mr. McNeill: This point should have been raised yesterday morning when I opened. I am advised that this was taken direct from Chitty's King's Bench Forms.

Mr. Loseby: I don't want to make too much out of this. I am saying that at this stage before Mr. D'Almada gets up because I want to make it plain that I shall hold my friend Mr. McNeill to his own notice whatever it may be. I presumed that he was really appealing for a re-hearing. It is a question of fact.

Mr. McNeill: Every appeal is by way of re-hearing.

Mr. Loseby: The usual form is to go on to say with complete precision what he intends to ask your Lordships to order and, for my own part, for the purpose of my own argument, I want to be clear on that point.

President: What would be the position if we made a bare order
10 rescinding the judgment of the dismissal by Mr. Justice Reece?

Mr. McNeill: I would have thought that this being a rehearing that the result would have been that your Lordships would have held that we were impleaded. With respect to my friend, I think that point he is now taking is in the nature of a quibble and if he intended to take it, he should have done so at the beginning and I ask your Lordships to say whether we were impleaded. I think that this statement of my learned friend should have been made yesterday. The form which, as I am instructed, is taken direct from Chitty's King's Bench Forms would be better worded by using the word "reverse" instead of rescind. I am quite aware of that being so. I doubt if your Lordships will agree that my
20 learned friend is taken by surprise.

Mr. Loseby: I am completely content and indeed shall be very happy if he does. If I had heard him yesterday, I would have interrupted him yesterday and I only interrupt him now out of fairness. I am going to argue on this notice of appeal but if I am given further notice then, my Lords, I shall do my utmost at a later stage to argue on this notice and I hope my learned friend . . . in all fairness I thought I must tell him if he wished to do so.

Mr. McNeill: This appeal is directed to show that the learned judge was wrong in saying that we were not impleaded and I am going to ask your Lordships to say that being wrong, he ought to have found that we are impleaded.

30 Mr. D'Almada: I must get up on my feet at this stage because, with respect to my friend, those two things are entirely different. If your Lordships found that Mr. Justice Reece was wrong in dismissing the action, it doesn't by any means necessarily follow that in fact my friend's clients had made out a case that they are impleaded. They are two totally different matters.

Mr. McNeill: If Mr. Justice Reece was wrong in saying as he did, then the right thing is that we are impleaded. It is to me a complete quibble. But this point, my Lords, is going to be settled now, if your Lordships please, because I am not going to go any further on what appears to be a quibble. My learned friend is most fully aware, I think my learned friend Mr. D'Almada's point has
40 not even occurred to him (Mr. Loseby) before (laughter). Anyway, the point must be settled now because this being a rehearing, as every appeal is, I am going to ask your Lordships to say that Mr. Justice Reece was wrong in holding that we were not impleaded and that he ought to have said that we were impleaded. I leave it like that. I cannot proceed unless it is cleared up.

Mr. Loseby: The courteous way for my friend to put it is, that he applies to the court for leave to amend and, as far as I am concerned, I shall oppose it.

Mr. McNeill: If I might answer my learned friend, our position is this, that upon this notice of motion it is open to your Lordships to say that our impleading motion ought to have been allowed. Upon this as it stands, if your Lordships hold that it is not so, if it does not follow upon a rescission of a judgment, the impleading motion must be allowed, then of course we shall be obliged to ask your Lordships for leave to amend.

President: My brother and I thought that it might be cleared up if you 10
apply for leave to amend.

Mr. McNeill: I might take it that your Lordships were not going to decide that after my argument yesterday. My Lords, if my learned friend Mr. Loseby had been good enough to give me a little notice of this argument I might have prepared my authorities. I did not want to be in a position of being obliged to amend if it were not necessary but I cannot continue my argument of course unless it is quite clearly before the Court.

President: Yes, you could consider. . . .

Mr. McNeill: It is only a matter of enlightening my learned friend. Your Lordships were with me that we were all under the impression that we. . . 20

Mr. Loseby interposes: I assure your Lordships that I think the point is a serious and real one and I don't want to do any more than call my friend's attention to it because I thought he was entitled to have his attention called to it in order that he might, if he thinks fit, apply and I don't really want to go further.

President to Mr. McNeill: You could perhaps continue now and consider the position later.

Mr. McNeill: I should like my Lords, before I leave the point, to read to your Lordships 0.29 rule 1 of the Code: "Every motion for a new trial"—this is not a motion for a new trial—"or to set aside a verdict, finding or judgment, in 30
any cause or matter in which there has been a trial thereof or any issue therein with a jury, shall be heard and determined by the Full Court."

Rule 13: "(1) Every appeal to the full Court from a decision of the court shall be by way of re-hearing and shall be brought by notice of motion in a summary way, and no petition, case or other formal proceeding, other than such notice of motion, shall be necessary.

(2) The appellant may by the notice of motion appeal from the whole or any part of any decision, and the notice of motion shall state whether the whole or part only of such decision is complained of, and in the latter case shall specify such part."

My Lords, if instead of the word "rescind," we had used the words "set aside," which are the words used in Rule 1, if our motion had been set aside, the motion would have been one of re-hearing. Your Lordships, a re-hearing matter. I confess that at the moment. . . .

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Appeal Judge: I apprehend that Mr. Loseby's point is whilst this motion is asking this Court to rescind the judgment of Mr. Justice Reece, you are not asking us to go any further to make any positive declaration.

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Mr McNeill: I must confess that I have never heard this point raised before and I have seen many motions of appeal to set aside a judgment.

10 Mr. Loseby: It is a very unusual case.

Mr. McNeill: My Lords, to proceed now, I am not sure because I don't want to argue before your Lordships on any other basis except that I am, as your Lordships are aware asking your Lordships to say that we are impleaded. My Lords, when I opened my argument, I said that my argument was that there was sufficient evidence on the file to show that we were impleaded and I don't, with respect to my learned friend Mr. Loseby, think it is right for him to raise the point at all.

Mr. Loseby: Then go on.

20 President: I think it is best that you (Mr. McNeill) continue on your argument on the basis of what this motion means and, if necessary, you may apply to amend it.

Mr. McNeill: As your Lordship pleases. I want to go on with my argument if I may. If there are any further points that my learned friend has in mind, perhaps he would be good enough to mention them now and not at a later stage of the argument.

30 My Lords, I think that at that moment of intervention, I was just about to read to your Lordships a passage setting out the principles of impleading from the *Dollfus Mieg* case at p.580. I have got to paragraph E and I was just going (this proposition of Lord Atkin) to refer your Lordships to a passage at p.591 in the judgment of Lord Tucker in the 5th line where he makes a comment on Lord Atkin's proposition:

40 "There has, I think, been a tendency in argument on this appeal to approach Lord Atkin's second proposition in *the Cristina* case, which was not necessary to the actual decision of that case, as if it was a statutory definition limiting the circumstances in which the courts of this country would refuse jurisdiction in cases where a foreign sovereign is not directly or indirectly impleaded. I think that Lord Atkin's language must be considered and interpreted in the light of previous authorities and of the speeches of the other members of your Lordships' House in *the Cristina* case and of Lord Atkin himself, in *The Arantzazu Mendi*. The principle being based on the avoidance of the exercise of a jurisdiction which would offend the dignity or impinge on the independence of a foreign sovereign I cannot think it would be right to place on the word 'possession'

as used by Lord Atkin any specially narrow or restricted meaning or to confine it to actual physical possession by the sovereign himself or his servants."

So, Lord Atkin's second proposition, the view is that it has a very extensive meaning and if your Lordships go back to p.580 in para. E, you will find this, "My Lords, I think it probable that Lord Atkin inserted the words 'or control' in his second proposition so as to make it wide enough to cover those cases which had been cited to him in argument in which the foreign government had requisitioned or directed a ship without depriving the owners of their possession."

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That, my Lords, is a proprietary interest he is speaking of, a proprietary interest without possession, which was my item 2(a), because those cases to which he is referring are cases in which the ship in question was already in the country. (quotes) "This is, I think, merely an illustration of one of those interests 'lesser than a proprietary interest or even than a possessory interest' to which Lord Wright referred", and I argued at some length yesterday on the question of charter, which gives the right to direct the ship, one might say it is a lesser matter of proprietary interest. Now, my Lords, it was possessory interest and a proprietary interest are distinguished, clearly distinguished, in the same case, as reported in the Court of First Instance, 1949 Chancery, page 388, about the middle of the page, the learned judge says:

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"It was suggested that even if the statement of the law in *Ancona v. Rogers* should be accepted as correct, it is limited in its application to cases in which the bailor is the owner of the goods delivered to the bailee, and therefore does not apply in the present case because the three governments had at most no more than bare possession or control of the gold, the owner of it being the plaintiff company. I think this argument (besides prejudging in favour of the plaintiff company the very matter in dispute in the action) involves a confusion between possession and title."

And when your Lordships remember the circumstances of the case, that this gold was in the possession of a third party in this country, with that in mind, I ask you to look at page 389 where the learned judge says, six lines down,

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"I therefore hold that the gold, notwithstanding its delivery to the Bank may (in the words of Mellish L.J. in *Ancona v. Rogers* 'in a popular as well as in a legal sense' be said to be still in the possession of the three governments. I hold further that accordingly the gold must be regarded as still in the possession of the three governments for the purposes of the doctrine of immunity. I see no ground for the view that the term 'possession' when used in that connexion in the authorities is used in any specially narrow or restricted sense or to be understood as confined to actual physical possession. A foreign sovereign state (unless embodied in a personal sovereign visiting this country) cannot, so far as I can see, be in actual physical possession of property here otherwise than by its servants. Accordingly, if actual physical possession by a foreign sovereign state were essential to immunity on the score of possession by such state, immunity on that ground could only be claimed in respect of property in

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10 the country in the actual physical possession either of some personal sovereign or of a person who could be shown to be in the strict sense a servant of a foreign sovereign state (so as to make his possession that of his master) or else to be himself entitled to diplomatic immunity. The application or exclusion of the principle of immunity would thus be made to depend on nice distinctions respecting the particular mode in which a foreign sovereign state might happen to exercise dominion over property brought by it to this country in its possession or control. For instance, if gold was brought to this country by a foreign sovereign state to be applied in the purchase of goods for the public purposes of that state and placed in the hands of a servant of the state concerned to be applied in making such purchases in accordance with its directions, the gold would be protected by the principle of immunity on the score of possession by the foreign sovereign state, irrespective of any immunity from process the servant might be entitled to claim in his own person. If on the other hand gold brought to this country by a foreign sovereign state for similar purposes was deposited by it with a banker or other agent for safe custody and disposal in accordance with its directions, the gold would at once become exposed in the hands of the banker or other agent to any adverse claims there might be, and the principle of immunity would afford no protection against actions brought by third parties against the banker or other agent for the purpose of establishing such claims. I cannot think it would be right to make the application or exclusion of the principle of immunity (based as it is on substantial reasons of policy) turn upon nice distinctions of this kind. Moreover, I think the contention that 'possession' for the purpose of the principle of immunity means actual physical possession is really impossible to reconcile with the decision of the House of Lords in *The Arantzazu Mendi*, . . . " and the last sentence of that paragraph, my Lords, "That seems to me clearly to involve the view that legal or constructive, as opposed to actual or physical, possession is possession for the purposes of the principle of immunity."

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Now, my Lords, the first point I want to make on that, so far as Action No. 8 is concerned, your Lordships will see that legal possession is sufficient for the principle of immunity. You will remember that the writ in Action No. 8 claims legal possession, from which there is only one deduction to be made, and that is that legal possession is not in the parties claiming it, that legal possession at the date of the writ was not, in fact, in Ysmael & Co., and that, my Lords, is an admission so far as we are concerned for the purposes of our appeal in that action. My Lords, in *Abodi Mendi*, which is reported in 1939 Probate, at page 40 178, your Lordships will see the President held at the bottom of the page, I am reading from the headnote:

"The President held that as the right to arrest in an action in rem for possession was based upon an allegation that the ship was in the possession, or at least under the control, of someone else, the claim for possession and the warrant of arrest (having regard to the plaintiffs' later affidavits) were wholly misconceived and perilously like an abuse of the process of the Court."

I will mention that, my Lords, in passing merely to show the inference from a writ of that kind is that the possession which you are claiming is not in you.

The President's decision, my Lords, was overruled, but his proposition was not. My Lords, I have got here *Pollock & Wright on Possession*, pages 26 and 27. I will cite this to your Lordships to show there are different kinds of possession, that is all. This textbook refers, on page 26, to physical control or de facto possession, then to legal possession, and, on page 27, to right to possess or for legal possession, and when you combine that, my Lords, with the wide interpretation of control, your Lordships can only come to one conclusion, and that is that a charterer has a possessory interest in the chartered ship, as was stated in *the Cristina* and *Dollfus Mieg* cases, he has possessory interest of some kind, because he has the right of charterer to direct the movements of the ship. The two bases of the claim on the *Cristina* was of a compulsory hire which was admitted by the owners; the Government claiming to be impleaded said "We have either got a proprietary interest by reason of this compulsory charter, or we have got a possessory interest", and I think you will remember that the Court said they had both. The page on which that is said, my Lords, I have already recited to your Lordships, that is at page 502 in the judgment of Lord Wright. I have already mentioned that in the way of requisition. He says: "In my judgment both contentions are well founded, and the order of the Courts below may be sustained on either ground", that is to say, the grounds are both alternative and accumulative. My Lords, in the Court below, I argued in this way, I said "Upon a certain set of facts, which consisted of our having placed this ship in the hands of a dock company as bailee for repairs" I said "upon that set of facts, either the dock company are bailees for us and we are the bailors" and I cited at length the *Dollfus Mieg* case, "or we are still in control because we can still direct the ship under the charter." My Lords, the first branch of that I am not going to argue before your Lordships on this particular point of evidence remaining, so I am only going to say that there is evidence that we brought this ship in, and we were still in control. On the evidence remaining, I am not going to say that there was evidence that the dock company was bailee and in possession.

Appeal Judge: On the evidence left?

Mr. McNeill: That is all I am dealing with. I am not going to argue that the dock company had de facto possession. My Lords, if I were doing that, it would be on the *Dollfus Mieg* case. But I do say this, that on the evidence which has been read out to your Lordships, we have shown that we, by the remaining members of the crew, did have physical control. I won't repeat, my Lords, the reference in the affidavits which my learned Junior has already given. Secondly, on the point of what the Judges have said is less than a proprietary or possessory interest, I say that by an admitted charter we had that interest, and that brings us precisely into the same position as the *Cristina*, where the requisition was attorned to by the owners, that is to say, they admitted the compulsory charter in the *Cristina*, they have here admitted that the ship was under charter at the date of the writ. If my learned friend says that the Master and the crew in the case of the *Cristina* and the *Arantzazu Mendi* also

attorned, I say that is not the position here, the owners attorned, and if you couple that with the control, it is the same position. The man acting as master of the ship and servant of the owners did something contrary to their obligations.

My Lords, all these arguments apply with equal force to Action No. 6. I am just going to look at the judgment and see what the judge did say. Before going through the judgment, what we said in the Court below was this, and this is what we have said here: "We claim to be the owners". Now, my Lords, when the evidence came on the file, the respondent company, Ysmael & Co. said, in so many words. 1. You had a purported sale, which we dispute; and I have
 10 argued to your Lordships that that is sufficient anyway, but they also said: "We admit the ship was under charter". Now, my Lords, it was suggested that you could not take it both ways, but the answer to that, which I think I gave then, and which I give now, is that there is a clear — quite apart from any other argument — there is a clear contest between the parties as to the nature of the interest claimed, and that would be sufficient for your Lordships alone. If your
 20 Lordships will turn to the judgment . . .

President: Mr. McNeill, before you enter into this, there is one point that is troubling my brother and myself. It is this: supposing we were to find in effect that you were impleaded on your notice, here, of motion, what are you
 20 going to do with the judgment already given in Action No. 8?

Mr. McNeill: Is your Lordship speaking of the motion as . . .

President: What would you do in Action No. 8. It is giving us some concern.

Mr. McNeill: If you were to find that we were impleaded, your Lordships would say so.

President: And then what would you do in Action No. 8; judgment has already been given for Ysmael & Co.

Mr. McNeill: I see what your Lordship means. The effect of your judgment that we were impleaded, would be that the — shall I put the substantive
 30 position — the decision in the action could have no effect because the Court had no jurisdiction.

President: But you were not a party to No. 8 in a substantive form.

Mr. McNeill: Only under protest.

President: You did not appear at the hearing of the action itself.

Mr. McNeill: I would have thought, my Lord, that that would go by the board.

President: It is a judgment in favour of Juan Ysmael, but somebody would have to do something about it.

Mr. McNeill: But the Court had no jurisdiction to give judgment.

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President: But who is going to set it aside?

Mr. McNeill: My Lord, I cannot appeal against that judgment, obviously, because I say that you have no jurisdiction to give it and if your Lordships find we were impleaded, your Lordships would have to make a consequential order that that judgment would be void.

President: But we haven't been asked to make a consequential order.

Mr. McNeill: I cannot apply, even to set aside the substantive judgment, because I am not submitting to the jurisdiction.

President: But you could ask to be held to nullity.

Mr. McNeill: I would have thought that if you were to find that we are impleaded, it would mean that the Court had no jurisdiction, and that judgment would be a nullity. 10

Appeal Judge: I have your original writ, when you entered the conditional appearance under protest, you asked that the writ and all proceedings under it be set aside.

Mr. McNeill: That is our motion, which I am asking your Lordships to say we are entitled to.

Appeal Judge: If you get that, it would mean that all proceedings under that would be set aside?

Mr. McNeill: I think I am right in saying that a judgment thus pronounced, without jurisdiction, is a nullity. 20

President: But some superior Court would have to hold it . . .

Mr. McNeill: But it must follow from a statement that the Court has no jurisdiction, that is what an impleading motion is, it is saying the Court has no jurisdiction. If your Lordships say we are impleaded, it follows that the Court had no jurisdiction.

President: But the judgment of the Court below would be wrong.

Mr. McNeill: No, it would be a nullity.

President: But somebody would have to do something.

Mr. McNeill: I don't think so. I will investigate it in the luncheon hour, but I believe if it is a nullity, you don't have to apply. 30

President: Who is going to pursue the copies of the judgment and say they are now a nullity?

Mr. McNeill: I don't see how I can appeal against that judgment, my Lord, can I?

President: I don't know, Mr. McNeill, I am asking you.

Mr. McNeill: I can't take any step in the action.

President: I was wondering whether you were asking for an amendment, you would contemplate asking . . .

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Mr. McNeill: I appreciate the difficulty your Lordship has in mind, but my impression is this, that the judgment would be a nullity of no force and effect at all. That, of course, is unfortunate, and I don't wish to say anything one should not say, but it is unfortunate that the hearing of this action was hurried through, when it was known perfectly well to everybody that there was an appeal on this.

10 It seemed to me to be rather a pity that that occurred.

President: You will address your mind to it, I feel we cannot leave it, if you were to win, we cannot leave a judgment on record . . .

Mr. McNeill: I don't think your Lordships will find yourselves in any difficulty. If I were impleaded, your Lordships would have power to make all orders necessary.

Appeal Judge: In your original motion I have before me now, before Mr. Justice Reece, the motion was that the "Government of the Republic of Indonesia would move . . . be set aside". It seems to me then that if our effect is to reverse the proceedings, it would be a consequential effect . . .

20 Mr. McNeill: I should have thought so.

President: I think you want something more.

Mr. McNeill: Well, my Lord, I will go into that, if your Lordships will allow me, during the luncheon adjournment, to consider the amendment, if any, which is necessary. I confess I should have thought it was a consequential matter.

President: Supposing you were to win and therefore this appeal was successful, then the judgment of Reece J. is hereby rescinded, and stop there.

Mr. McNeill: If your Lordships will allow me to consider the matter during the luncheon adjournment . . .

President: I don't see any urgency about considering it.

30 Mr. Loseby: It may help my learned friend when he does that, that the pleas have not yet been heard.

(Adjourned Until 2.30 p.m.).

(9th Dec., 1952 at 2.30 p.m.) Court Resumes. Appearances as before.

Mr. McNeill: May it please your Lordships, there is only one other matter that I was going to deal with and that is the actual judgment. My Lords, that is document 54 in your Lordships' file. My Lords, it appears both in 54 and 55 too. My Lords, I draw your Lordships' attention at the beginning to the statement of

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the learned judge at p.9 in the middle where he says: "It seems to me quite unnecessary at this stage to go fully or at any length into the complex and, in my opinion, still unsettled law relating to sovereign immunity". And then he refers to a few authorities because the fact of the matter is that, having come to the conclusion that there was no evidence left in the file at all about anything, he felt of course that he need not discuss the position and he did not discuss all these issues except very shortly. My Lords, at the bottom of p.8 in my submission contains a statement which is incorrect in law. He says — he has set out one or two statements — "I have referred to these submissions made by Mr. McNeill merely to illustrate that while he states that the Court cannot investigate matters of title yet he advances certain grounds upon which he claims that the Government of Indonesia relies." 10

Now my Lords, having regard to the arguments which I put forward in a summarised form this morning to your Lordships, you will see that where certain matters are relied on, prima facie evidence is on occasions required; on other occasions a mere claim is enough. To illustrate as an example of the wrongness of the learned judge's view as contained in these sectors, I merely have to point to the two requisitions as in the *Arantzazu Mendi* case. There, the requisition of 1938, of the impleaded government, was produced and they say "We rely on this requisition" but it was not the part of the Court to investigate whether that requisition was a valid one having regard to the previous decree in 1937 made by the Republican Government. Those are two different matters. One is to put forward the basis and one is to investigate. The Court cannot do the latter. In certain cases, you must state what your claim is. At the bottom of p.9, the learned judge cites from the judgment of Lord Wright who, in this passage which he cites, distinguishes the case of a government which is drawn into conflict as a defendant and the case of a government which seeks assistance of the Court to obtain possession as a plaintiff. And over the page — this is from *the Cristina* — the citation goes on: 20

"In the present case, the fact of possession was proved. It is unnecessary here to consider whether the Court would act conclusively on a bare assertion by the Government that the vessel is in its possession. I should hesitate as at present advised so to hold." 30

Your Lordships will remember that in *the Cristina*, the possession was not physical possession and I think that the learned judge was under the impression that it was; but in *the Cristina* it was not physical possession, it was an interest lesser than proprietary interest or possessory interest. Your Lordships will remember that citation that I gave you. It was, my Lords, right to direct the ship to move to certain places and so on. It was that kind of possession or control. His Lordship goes on: 40

"His Lordship (Lord Wright) emphasized that the Government had possession at the time when the claim to immunity was made and that the necessary facts had been established by evidence."

Then, having cited from *Dollfus Mieg's* case about possession, the kind of possession the House of Lords was speaking of in the passages he cites, which arises from compulsory operation of the ship, he goes on:

“I am of the opinion that the state of the law on the question of the impleading of Sovereign States requires the foreign State claiming immunity from the jurisdiction of the Court to satisfy the Court that it has at least an interest in the property whose release is sought and this can only be done by evidence which has been found to be satisfactory and trustworthy.”

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Now, my Lords, in those last words he (Reece J.) is, with respect to him, entirely wrong. It is quite apparent that he is again — as he did on page 8 which I cited to you — the learned judge is quite wrong because he is confusing the putting forward of the basis of a claim to interest with the investigation of the
10 validity of that interest. It is not a question of satisfactory or trustworthy evidence at all, and, of course, this attitude of mind, with respect to him, led him to say what he did on the last page of the judgment in the last paragraph:

“In the circumstances and having due regard to the sharp conflict of facts disclosed in the affidavits of Mr. Kwee and Major Pamoe Rahardjo filed on behalf of the Government of the Republic of Indonesia and those filed on behalf of the plaintiffs in the actions, I refuse to give any weight to the affidavits of Mr. Kwee and Major Pamoe Rahardjo and reject them and order them to be removed from the files. That being so, there is no evidence before this Court to support the claim.”

20 Taking his brief comment on the matter of immunity, his basis for it together with these remarks that he made, it is clear that he was entirely confusing the statement of an interest with the investigation of it. And that becomes clear from his use of the words “conflict of facts.” That is exactly what Lord Goddard in the *Arantzazu Mendi* said you cannot go into. As soon as you are satisfied there is a conflict, you must immediately say “The Government is impleaded.”

My Lords, that is really all I have to say about the judgment because the arguments which I adduced were not seriously considered. That is all I have to say on this point, my Lords.

30 There is the question of the notice of motion, my Lords. I might mention that now. While we feel that, as it stands, it is sufficient to enable the Court to make all consequential orders under o.29 r.16(iv), nevertheless, in order to make, to keep the record quite plain, we will ask your Lordships’ leave under o.29 r.14(2) to amend the notice of motion which says that:

“O.29, r.14(2) The notice of motion may be amended at any time as the Full Court may think fit.”

We have drawn up an amendment my Lords. If your Lordships like it in that form, we will file an amended notice of Motion in the usual way. We have drawn up an amendment at the moment for which we ask. (Hands in document).

40 Now, my Lords, you will see that we ask to amend that the writ and all subsequent proceedings be set aside. It is again my view that if you set aside the writ and all subsequent proceedings, the judgment made in those proceedings falls

to the ground with the rest of them but, in order to make the position even more clear, we say that in consequence it may be clearer that the judgment, of which particulars are given, that really is merely a clarification and I would say that it is unnecessary to put it in. If the writ be set aside and all subsequent proceedings, it is impossible for me to see how a judgment given in pursuance of that writ could possibly be of any validity. If the writ and all subsequent proceedings be set aside, the judgment made in those proceedings falls to the ground and everything is gone, and we shall omit that passage relating to the judgment in Action No. 6 finally. My Lords, you will see from the words in Appeal 14 "and, in consequence that the S/S "Tasikmalaja" be released from arrest in the said Action . . ." appear. It slipped my mind that no judgment had been given in Action No. 6. 10

My Lords, I just want to draw your attention to the fact that the record is now complete, it contains a complete copy of the judge's notes. You have extracts on the first hearing of these impleading motions. That was the first hearing, the day on which the motion was returnable and that, my Lords, at that hearing, an affidavit was read of Griffiths' to which I have made reference.

President: Have you any objections Mr. D'Almada?

Mr. D'Almada: I think, my Lords, that I cannot raise any objection to-day. May I let your Lordships know to-morrow because, in any event if there is any objection, it must date back to to-day at the earliest opportunity. 20

Mr. Loseby: If your Lordships thought fit, I say that I don't think that we could take objection to anything — my friend having been out of order at any rate. I don't know whether my friend is entitled to ask for anything he likes, with due respect.

President: Yes, Mr. D'Almada.

Mr. D'Almada: May it please your Lordships, before I begin my submissions to your Lordships, there is one point I want to have made clear because on it may depend the length of my argument and that is a point dealt with by my learned friend Mr. McNeill this morning shortly before we rose, because I have him recorded as having said "On the evidence left, I am not saying that the Dock Company had de facto possession" and what I wish to have perfectly clear is this, whether or not my friend is now saying, as he said in the court below, that his clients have possession through the Dock Company because, your Lordships will appreciate, that if he says that is not his case now, I shall not have to address your Lordships on this matter but I would like it confirmed because he did say something about bailors and bailees and I am not sure what he meant. 30

Mr. McNeill: I mentioned bailor and bailees because that was the substance of the Dollfus Mieg case and I cited that case at very considerable length in the court below in order to show that the delivery of the vessel by my clients, upon those facts I could argue that they were bailees within the meaning of *Dollfus Mieg*. Our argument there was supported by certain paragraphs in the affidavit of Mr. Kwee together with the affidavit there on the file by the Dock Company; 40

as I am only working on the question of what evidence is left, I cannot argue that point upon the evidence left because the statements made by Mr. Kwee are at present out. So, on this point, working on the documents left, I am not arguing that the Dock Company had possession as bailee.

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10 Mr. D'Almada: May it please your Lordships. My Lords, a little while ago my learned friend Mr. Loseby addressed this remark to your Lordships. He said "My friend Mr. McNeill is entitled to ask this Court for anything he likes". I am sure he didn't mean that Mr. McNeill will get anything he likes from this Court and in so far as he has asked your Lordships in this case to reverse the decision of Mr. Justice Reece and to find that in fact his clients are impleaded in this case, I would say my Lords, that that statement of his has not any merit and that will become abundantly clear when you examine not only the facts of the case but the law as it should be examined, that is to say, with reference to the facts of each particular case.

20 Now, my Lords, I would remind your Lordships that this is a matter arising in this way: My clients issued a writ in rem claiming possession of this ship, legal possession, and upon the very threshold of this action you have the motion by the Indonesian Government attempting to stay these proceedings in limine at their very inception and I would say, my Lords, that whatever my learned friend might have submitted to your Lordships with regard to all that a foreign sovereign need do in order to establish the fact that he is impleaded, the onus is on him so to establish it, and that if there be any matter left in doubt at the end of his case, it is wrong to resolve that doubt in favour of the applicant, that is, the party who seeks to set aside the writ. My Lords, that view was taken in the *Dolfus Mieg* case in the Court of Appeal by Sir Raymond Evershed, M.R., reported in 1950 Chancery, beginning at p. 333 and the passage to which I refer your Lordships is at p. 344. He is dealing, my Lords, with the position with regard to certain affidavit evidence and he has this to say in the paragraph beginning the third line of that page:

30 "Even before the filing of the second affidavit of Mr. Menzies I should have felt doubt whether it would have been right for the court, on such an application as is now before us, to proceed on the basis which had been assumed before Jenkins J., that is, on the basis that at all material times and as part of the contract of bailment between the commission and the bank, the sixty-four bars in suit were held by the bank, segregated from all other customers' gold and specifically allocated to that contract. For this is, after all, an application to stay proceedings in limine; and on such an application it is not common or proper to assume matters of fact, which may be in any doubt, favourably to the applicant".

40 I would ask your Lordships to bear in mind what Sir Raymond Evershed says there in your examination of the law in this case, and of the facts, because it is my submission, my Lords, that there is no question in this case of the appellants beginning to establish that they are impleaded in this action. My Lords, in his opening yesterday, my learned friend Mr. McNeill gave you points which I number 5. He said, first, my Lords, "If Mr. Justice Reece was right in striking out certain affidavits, nonetheless in the remaining documents there was

ample intimation that the government is impleaded". My observation on that first point of his is this, that throughout the authorities cited by him, you will not find any to support the proposition in any circumstances that a mere intimation or a mere claim is enough. Certainly you will not find anything like that in the cases dated from the Spanish Civil War, although possibly that might have been the position or might have been argued to be the position in some of the earlier cases. There is not one single case, whatever the circumstances, that is, whatever the facts, in which it has been held that a mere claim of a foreign sovereign to a piece of property, to goods, is sufficient for the Courts to say "(Latin) Hands Off", set aside the writ.

10

His second point was this: "A writ in rem is one which by its very form impleads anyone who has an interest in the res."

Read in that way and without any other qualification, I would not disagree with it at all because if you have an interest in the res, then the writ in rem against the res impleads you; but you must show that you have that interest before it can be said that that writ, although a writ in rem and not directed against you personally, is a writ by which you are impleaded. Your Lordships will recall that in the course of my friend's dealing with this point of the writ in rem, he read to you passages from *the Cristina*, 38 A.C. at p. 491 and p. 492 and, my Lords, in my submission that passage means no more than this. It shows that although a writ in rem is a document which is not directed against any particular person, it is one which nonetheless may in certain circumstances implead a foreign sovereign just as, of course, it may implead anybody who has an interest in the res. In other words, it points only to this fact, that you cannot say that merely because a writ in rem does not mention the foreign sovereign as a party, you cannot say that by absence of the foreign sovereign's name that he is not impleaded; but it carries my friend no further than that. That is why I say that you will have to be particularly attentive to the words he used when he headed this second point "A writ in rem by its very form impleads anyone who has an interest in the res" and if my learned friend so claims, I say of course that that is not enough and I shall say so again and again in the course of my argument, I am afraid.

My learned friend's third point was this, "The Government—his clients—brought this ship into the jurisdiction of this Court and has indicated a claim to an interest".

My Lords, that is very early on when he gave your Lordships headings to his arguments. He went on to say after that, to make reference to the charter party and the possession or control, but this is what I shall deal with later; but it was under this head that having brought the ship into this jurisdiction, he went on to sub-heads (a) and (b). Before I deal with those sub-heads on his main head 3, I say this, my Lords, the mere fact of bringing the ship into the jurisdiction plus a mere claim is not enough if the foreign sovereign seeks to show that he is being impleaded. There must be, in addition to the bringing in of this property into the jurisdiction, this res into the jurisdiction, some evidence of property or other interest or possession or control and, in truth and in fact, it makes not one whit of difference to the position whether the goods, in this case

the ship, was or was not brought into the jurisdiction by the foreign sovereign. The basis every time and in every case is property or some lesser interest or possession or control. My Lords, upon this aspect of the bringing of goods within the jurisdiction, my friend gave your Lordships illustrations from *the Cristina* again and from the judgment of Lord Maugham in that case at p.515 of the report, that was one of the illustrations I think. Certainly, my Lords, at p.517 —if I may return to p.515 later, I think possibly I got that reference wrong. My Lords, if I may, I will refer to these particular illustrations later because I seem to have a wrong note of the pages.

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10 President: I think it is p.515 beginning "If we are successful.." I think that is the reference.

Mr. D'Almada: Yes. I think I have read it to your Lordships. My friend was inferring from what was stated here. I am very grateful to your Lordships for pointing that out. This is what Lord Maugham says at p.515:

20 "But it seems to me that the claim by the Spanish Government for immunity from any form of process in this country may extend to cases where possession of ships or other chattels had been seized in this country without any shadow of right, and also to cases where maritime liens were sought to be enforced by actions in rem against vessels belonging to a foreign Government and employed in the ordinary operations of commerce. For my part I think such a claim ought to be scrutinized with the greatest care".

In any event, it makes no matter because what I say to your Lordships is this in the passages concerned, as indeed in the passage from *Luther and Sagor* to which your Lordships were referred to by my friend in the judgment of Lord Justice Scrutton, some certain consequences would have followed. That, my Lords, you will find at p.555 of the report (1921) 3 K.B. That was one of the passages to which my friend referred. You will see this passage in the judgment of Lord Justice Scrutton:

30 "If M. Krassin had brought these goods with him into England, and declared on behalf of his Government that they were the property of the Russian Government, in my view no English Court could investigate the truth of that statement".

40 That I submit must be read in this light. Monsieur Krassin, having brought those goods in and retained possession so that in fact and in truth the bringing of them in by M. Krassin would not have made one whit of difference. If he had possession of them, that would be the complete answer. If he had brought them in and then after that they were in the possession of somebody else, every assertion of M. Krassin would have carried him no further on any question of impleading. Possession, as I say, is the essential.

President: That is one of the essentials.

Mr. D'Almada: Of course, you might have two or three essentials. And, my Lords, still on this head 3 my friend went on to refer to the charter party and

said this "A charter existing at the date of the writ of summons, is admitted". Now, my Lords, it is important to note this in connection with what my friend is submitting on this point.

President: My note is this, that the date of the charter party is admitted.

Mr. McNeill: I have said on several occasions we did not say that the charter party in that form was admitted. We said, my Lords, "a charter". I tried to say that the ship was chartered, because I think that the terms of the charter were disputed.

Mr. D'Almada: At the date of the writ the ship was under charter to his clients and he says that that was admitted by us. I ask your Lordships to 10
note this in connection with that point, that this question, my Lords, never has been argued before Mr. Justice Reece—I was never given an opportunity to place my arguments before him. Mr. Justice Reece found it unnecessary in the circumstances of the case to hear me on the point. The whole argument before Mr. Justice Reece turned upon the question whether or not certain deponents to affidavits should be cross-examined, whether or not they were entitled to diplomatic immunity, and insofar as the evidence goes, my Lords, it does indeed show that there was a charter party from the 1st January to the 30th June, 1952, but, had I had to argue this matter before Mr. Justice Reece, my Lords, just as I am now going to argue it before your Lordships, I would have said this, and I 20
will say this before your Lordships, that the Indonesian Government by their conduct, that is to say, alleging that the ship had been sold to them and treating it thereafter as their own, did in fact repudiate this charter party long before the 30th June, had torn it up,—so that they cannot now be heard to say that at the date of the writ they were impleaded because they had certain rights under the charter, because, on their own showing, my Lords, after the 13th February, when there was an agreement for the sale of this ship, or the 17th March, when there was a bill of exchange in Hong Kong—and this I am obtaining, not from their evidence but from our affidavits—there was no longer a charter party; and my alternative argument on this question of the charter is this: assuming that this 30
charter was alive at the date of the writ, the material date for your Lordships to consider in this matter is, in fact, not the date of the writ, but the date of the notice of Motion to set aside the writ, which was, my Lords, some days after the termination of the charter party on the 30th June, and, my Lords, that argument I will develop more fully later, but I will give your Lordships an illustration of what I mean. Suppose, my Lords, at the date when a ship was arrested by someone for repairs or for wages, it is in fact the property of a foreign sovereign. The sovereign, between the date of the writ and any motion to set aside the writ on the ground that he is impleaded, sells the ship to somebody else. The only matter left here for the consideration of the Court, my Lords, if that motion is then 40
proceeded with by the foreign sovereign, is perhaps the question of costs, but there would be no possibility of the Court moving, or rather setting aside the writ, because at the time the motion is heard the foreign sovereign has no longer any property, possessory right or possession of the ship. If he chose, in those circumstances, to pursue his notice of motion, the only matter left would be some academic question, and the question of costs, perhaps.

President: *The Haile Selassie*.

Mr. D'Almada: *The Haile Selassie and the Jupiter*. (Reciting facts of Jupiter case).

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On his second sub-head, under head 3, my Lords, my friend says "If the charter did not exist at the date of the writ, then we say at that time we were the owners of the ship". That again, my Lords, is something with which I will, if I may, deal later, but I will say this now, my Lords, that there is no evidence whatsoever before the Court to show a sale, and when my friend makes a reference to those words "purported sale" which appear in the affidavit of Mr. Khodr, they do not begin to be sufficient for his purpose. His fourth point, my Lords, at the material time his clients had possession or control of the ship. My Lords, I deny that upon the evidence, and I shall examine it later, and in fact the examination of the evidence is a matter upon which I shall have to address your Lordships. Perhaps now would be the most convenient time. My Lords, the evidence will be examined by Mr Bernacchi, and, much as I should like to deal with my argument in the same convenient fashion as was adopted by Mr. McNeill, this may not be possible, as Mr. Bernacchi is engaged in another Court, and I will stop this afternoon, and Mr. Bernacchi will examine the evidence first thing to-morrow morning.

That was my learned friend's fourth point, and the fifth is this. He calls it a subsidiary point, but I would go further than that and say it was no point at all, with respect to him, I would say that the evidence of public user should not weigh at all with your Lordships. My Lords, what is public user in connection with all the facts? This ship was a Filipino ship, belonging to a Filipino Company, flying the Panamanian flag, and used, in the course of its charter to the Indonesian Government, at some time for the purpose of carrying troops. Does that, my Lords, the fact that it might have been used for that purpose, as a trooper, make it a notoriously public vessel, that is a vessel belonging to the Indonesian state? My Lords, with respect to my friend, the fact that a ship is used for public purposes may, in certain cases, be evidence of property in that ship, or some other interest in it, lies in the state which used it for that purpose. But, when the circumstances are as I have narrated them, that is to say, the ship, flying the Panamanian flag, belonging to a Filipino Company, how can it be said that the fact that a foreign state is said to have used it for carrying troops, attempt to establish a possessory or proprietary interest. My Lords, supposing, as in this case, there was no question of any purported sale of the ship. Suppose the ship had been brought here in the ordinary course by the Indonesian Government, and while here and undergoing repairs in the Kowloon docks, the charter expired and that after that somebody arrested the ship for anything you like. Do your Lordships think, in those circumstances the Indonesian Government could come into this Court and say "We used this ship for public purposes for a certain time, we had it under charter until the 30th June, that is our interest, we are impleaded, let us take it away." A public vessel, there would be no question whatsoever, my Lords, that a notice of motion based on those facts would be laughed out of Court, and, with great respect, when you examine the evidence, such as it is in this case, upon which my friend's clients

base their claim that they are impleaded, you will see that it is little better, if indeed it is at all better, than the illustration I have given. I would ask your Lordships to note this also, that whereas in the Court below great stress was laid upon the sale, the alleged sale, of this ship, and its property having passed to the Indonesian Government, while the alternative basis of charter was, as it were, soft-pedalled, now, my Lords, we have a reversal of the position, and my friend is seeking to say "Ah, this charter existed on the 30th June, despite our allegations that we bought the ship, and therefore we are impleaded". And on the issue of possession, my Lords, again in the Court below stress was laid upon the possession through the dock company, and now my friend is not relying upon that. My Lords, in the course of his submission, I think it was his opening, in the Court below, my friend, after having cited a number of authorities, including all those which he cited to-day, he said "our case is a stronger case than all those cited". My Lords, a stranger case, yes, a stronger case by no means. Because, my Lords, when you come to examine every one of the passages cited by my learned friend from the various cases to which he has referred your Lordships during the last two days, in the light of the cases in which they appear, you will find, my Lords, that the true position is very different indeed, I say with great respect to him, from what he alleges it to be. An outline of the salient facts, my Lord, I don't pretend to cover them all, but it may be that Mr. Bernacchi will add to them. This ship, my Lords, is owned by a Philippine company, was at one time under charter to the Indonesian Government flew the Panamanian flag, and the wages of the Captain and crew were paid by the company. It is common ground that the company owned the ship until the 13th February, and on the 13th February, as your Lordships know from the passages of the affidavit of Mr. Khodr, as recited to you yesterday by Mr. Wright, there occurred what we called, in the affidavit, a purported sale, that is there was an agreement to sell, and, on the 17th March there was executed a bill of sale, both of which documents, my Lords, were executed under a void power of attorney, as the evidence of Mr. Revilla, the legal expert from Manila quite clearly shows. Your Lordships will recall that at the date of the execution of the bill of sale the evidence is that the deeds of the ship were not asked for, the purchasers' representative—I should say the alleged purchasers' representative, I am afraid of having more charges that I have made admissions—being satisfied with a photostat, and my friend, upon those words "purported sale" in Mr. Khodr's affidavits, says "There you are, that is enough, that shows straightaway competing rights, and that shows straightaway that the Court must say to itself 'We cannot touch this ship because a foreign sovereign is shown to have purported to buy it' ". My Lords, a passage in the judgment of Lord Justice Goddard in the *Arantzazu Mendi*, 1939 Probate, was strongly relied upon by my friend in spite of this particular point, that passage occurs at the bottom of page 55 and the top of page 56. Your Lordships see the last paragraph beginning on page 55:

"On the second point I also agree with my Lords. The speeches of the noble and learned Lords who decided *The Cristina* and the recent case in this Court, *Haile Selassie v. Cable and Wireless, Ltd.*, I think show this: that where a claim for immunity is made by a foreign sovereign, it is not enough that his claim should be 'a bare assertion of rights,' as Lord Wright called it, or 'a mere claim,' as Lord Maugham called it. But if the Court

can see that the question that arises is a question of competing rights, as in this case here, where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign who is claiming immunity rights over the ship—it may be that those rights are good or it may be they are bad, that is just what we cannot try—but if they purport to give rights over their ship and therefore 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, then it appears to me the principle of immunity applies.”

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10 My Lords, the important words to notice are those appearing at the very end of page 55, because he is dealing with the facts of the case before him, which were these, my Lords, the owners of the ship admittedly purported to give to the foreign sovereign who was claiming immunity, rights over the ship, and that is just what we are not doing here. There is no suggestion in this case that the owners admittedly purported to give anything to the foreign sovereign. You can see that in the circumstances of that case the question of competitive rights arises immediately, because of this giving of certain things. In our case there is no question of any such concessions by the owners of the ship, in fact it is the very opposite, and on this point I say this right away, that no
20 question of competing rights can possibly be said to arise until some right of competition is established. It was established in Lord Goddard’s illustration by the admission of the owners of the ship. Here, so far from having any such admission, you have an emphatic denial that such a sale was ever put through, and in the case of the *Arantzazu Mendi*, there was quite clearly that possession in the Nationalist Government, I think it was, it does not matter, and it was on the fact that that Government had possession that the House of Lords later confirmed the judgment of the Court of Appeal. The position really is best illustrated, I think, by looking at this as a fight, a claim, a dispute between two individuals. The plaintiff comes along and says ‘this ship is mine’. The
30 defendant says this ‘true, it was yours at one time, but you sold it to me’. In those circumstances, my Lords, if there were no evidence laid by the defendant to establish the fact that the ship had in fact been sold to him, judgment for the plaintiff, because the onus would be upon the defendant to show that he had bought the ship, and the circumstances are no different in this case, no question of any prima facie case at all, no question of any evidence. We have here, my Lords, in so far as this sale is concerned, a mere assertion and no more, nothing approaching the facts Lord Goddard was dealing with in *Arantzazu Mendi*, and no question, therefore, of any evidence upon which this Court can say that the foreign sovereign was impleaded. He would have to go very much further
40 indeed, my Lords, before he could be said to have established, to have shown to your Lordships some right which brings him within the principles of competitive rights or competing rights. My Lords, that a mere claim is not sufficient is, I should have thought, abundantly clear from the judgments of the noble lords in the *Cristina* case, but if anything further were required to establish that proposition, you will find it, my Lords, in the *Haile Selassie* case, reported in 1938 Chancery, beginning at p. 839. I won’t trouble your Lordships with the facts in

the case, they had to do with a sum of money due by an Englishman, but, my Lords, if your Lordships will look at the judgment, you will see, at page 844, beginning some twelve lines from the top of the page, he says this:

“It is unquestionably true that the Courts of this country are not competent to entertain an action which directly or indirectly impleads a foreign sovereign state. Thus, if property locally situate in this country is shown” (I ask your Lordships to note the words ‘is shown’) “to belong to, or to be in the possession of, an independent foreign sovereign, or his agent, the Courts cannot listen to a claim which seeks to interfere with his title to that property, or to deprive him of possession of it. The rule applies in the case both of actions in personam and of actions in rem. But it has never extended to cover the case where the proceedings do not involve either bringing the foreign sovereign before the Court in his own person or in that of his agent or interfering with his proprietary or possessory rights in the event of judgment being obtained.” 10

“Where it is either admitted or proved that property to which a claim is made either belongs to, or is in the possession of, a foreign sovereign, or his agent, the principle will apply. But where property which is not proved or admitted to belong to, or to be in the possession of, a foreign sovereign or his agent is in the possession of a third party, and the plaintiff claims it from that third party, and the issue in the action is whether or not the property belongs to the plaintiff or to the foreign sovereign, the very question to be decided is one which requires to be answered in favour of the sovereign’s title before it can be asserted that that title is being questioned.” 20

And, my Lords, over the page at p. 845:

“But it was held by Bennett J. that where a foreign sovereign has made a claim the proceedings in effect amount to impleading that sovereign.”

You see, Mr. Justice Bennett took the view that a mere claim was sufficient, and that is what this judgment is dealing with: 30

“In our opinion not only is that view incorrect in principle, but it is contrary to certain weighty expressions of judicial opinion to which we will later refer. So far as principle is concerned, the present action does not seek to bring His Majesty the King of Italy before the Court, nor does it seek to interfere with any proved or admitted proprietary or possessory right belonging to him. The fact that His Majesty the King of Italy has put forward a claim to these moneys by asserting that the chose in action consisting of a debt owed by the defendants has become vested in him does not, in our opinion, add anything.

That is mere claim. 40

Appeal Judge: That was not an action in rem.

Mr. D’Almada: I don’t think it makes any difference, because you will see, your Lordship, it applies to an action in personam or an action in rem. It makes no difference. Take this illustration: A star ferry launch, call it the Northern Star, is

sent to a dockyard here for repairs. The bill is not paid, the dock company arrests that ferry launch in rem because of its unpaid bill. Along comes, well foreign sovereigns are so touchy these days, I will say the King of Ruritania, my Lords, and he says 'Hands off, the ship is mine'. There is your claim. Does your Lordship think for a moment that if the King of Ruritania applied to a firm of solicitors in Hong Kong, and asked them to take his case; that firm of solicitors would be very ill-advised if they did not say "That is a bit too much." There is your writ in rem, my Lords, not one whit of difference from the position dealt with by Sir Wilfred Green here. It is true this was an action in personam, but
10 the result is just the same. Page 844: "The rule applies in the case both of actions in personam and of actions in rem." There cannot be any question of any difference of an action in personam or an action in rem. The sovereign in each case must show proprietary interest, possessory interest or possession and control. The judgment, my Lords, goes on:

20 "The fact that His Majesty the King of Italy has put forward a claim to these moneys by asserting that the chose in action consisting of a debt owed by the defendants has become vested in him does not, in our opinion, add anything. It would be a strange result if a person claiming property in the hands of, or a debt alleged to be due by, a private individual in this country were to be deprived of his right to have his claim adjudicated upon by the Courts merely because a claim to the property, or the debt, had been put forward on behalf of a foreign sovereign."

You have exactly the position set out there, my Lords. It isn't limited here, my Lords, to anything other than the ship, the fact that the ship is the subject matter of an action in rem does not take it out of the class:

30 "Such a claim can be adjudicated upon without impleading the foreign sovereign either directly or indirectly. The phrase 'impleading indirectly' does not, in our opinion, mean adjudicating upon such a claim as is made by the Italian Government in the present case. It refers to such proceedings as Admiralty proceedings in rem where the action in form is an action against the ship."

Of course that is so, but you come back to this proposition that your King of Ruritania by saying "I own this launch" doesn't bring himself within the requisites. The judgment goes on further, my Lords, and makes it clear: what Lord Justice Scrutton was saying: (and this is how Sir Wilfred Green deals with it):

40 "But with all respect to the learned judge he has, in our opinion, attributed to those observations a meaning which in the context they do not bear. Scrutton L.J. was considering a case where a foreign sovereign is in possession of property, but if his words were intended to go beyond such a case, and to apply to a case where property is in the hands of a third person, and the foreign sovereign has merely made a claim to it, we respectfully dissent from the view which he expresses."

I ask your Lordships to pay particular attention to this judgment of the Court of Appeal in *Haile Selassie*, beginning on page 844, and ending at the top of page 846, and, my Lords, this case, of course, is post-Cristina, just as indeed

was the *Arantzazu Mendi*, where the observations of Lord Justice Goddard at page 55 are equally emphatic that a bare or mere claim is not enough. He indeed refers to the judgment of the Court of Appeal of *Haile Selassie*, it is the passage I read to your Lordships just now, upon which my friend is relying for the purpose of saying, because we have stated in our affidavit there was a purported sale. Lord Justice Goddard has this to say, a bare assertion of right or a mere claim is not enough, something more is necessary. My Lords, in every one of the cases cited by my learned friend both here and in the Court below, you will find that whether a ship is the subject matter in dispute, or if it was property, that ship or property was either admittedly owned by the foreign sovereign or proved to be, or else it was proved or conceded to have been requisitioned, whereby the foreign sovereign acquired the power of disposal or control over the ship, and in that regard your Lordships will note that in some of the cases the Courts held they would not enquire into the validity of the requisition because that was the act of a foreign state, or else, my Lords, if there was neither property proved or admitted, or requisition proved or admitted, there was de facto possession in the foreign sovereign. So my propositions are these, and they are necessary for the purpose of my submission to your Lordships: 10

1. If the foreign sovereign is proved or is admitted to have ownership or some form of property or a proprietary right or interest, e.g. by requisition, then whether the ship is in his possession or not, he is impleaded. There must be either that admission, my Lords, or some evidence, because a mere assertion or claim is not enough. 20

2. If the ship is in the possession of the foreign sovereign, then where possession was lawfully or wrongfully obtained and retained, the foreign sovereign is impleaded.

3. If the ship is not in the possession of the foreign sovereign, and property or proprietary right or interest is neither admitted nor proved, then no impleading.

And there is a subsidiary part, you can call it 4. The action of the bringing in of the ship by the foreign sovereign makes not one whit of difference. 30

To repeat what I said earlier, my Lords, there cannot be any question of competing rights until a right competitive is shown to exist. My Lords, considerable reference was made in my friend's argument to *the Cristina*, and I in turn must ask your Lordships to look at it also, because I submit it does not assist my friend in any way at all, as a careful examination of the facts and the judgment will show. 1938 A.C. There have been so many cases, my Lords, with facts very like one another, so that properly to appreciate this one, we should look at the facts set out in the headnote:

"A ship, called the *Cristina*, belonging to the appellants, a Spanish company, and registered at the port of Bilbao, was lying in the port of Cardiff. Shortly before her arrival there, but after she had left Spain, a decree was made by the Spanish Government requisitioning all vessels registered at the port of Bilbao, and in view of this, and acting on the instructions of the Spanish Government, the Spanish consul at Cardiff went on board the 40

Cristina, stated that she had been requisitioned, dismissed the master and put a new master in charge. Thereupon the appellants issued a writ in rem claiming possession of the Cristina as their property. The Spanish Government entered a conditional appearance, and gave notice of motion for an order that the writ should be set aside inasmuch as it impleaded a foreign sovereign State.”

It was held in the case, as the headnote goes on to say:

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10 “ . . . the Courts of this country will not allow the arrest of a ship, including a trading ship, which is in the possession of, and which has been requisitioned for public purposes: by, a foreign sovereign State, inasmuch as to do so would be an infraction of the rule well established in international law that a sovereign State cannot, directly or indirectly, be impleaded without its consent, and, therefore, that the writ and all subsequent proceedings must be set aside.”

20 So that in this case, my Lords, both possession and requisitioning were proved, possession in the Spanish Government, requisition by that government. No question here of any claim, but so abundantly proved was it that the Spanish Government had a possessory interest, the right to disposition or control arising out of requisition, which some judges call an involuntary charter, and they had furthermore possession. Therefore, there was no question at all, but that a writ impleaded them. There was, originally, my Lords, in this case a claim based upon the property in the ship being in the Spanish Government, that, you will see, at page 486, the notice of motion was as follows, my Lords, the paragraph in quotation marks:

30 “That the steamship Cristina was at the time the writ in this action was issued the property of the Government of Spain a recognised foreign independent State and that the said State declines to sanction the institution of these proceedings in this Court. That at the time of the issue of the writ in this action the steamship Cristina was in the possession of the Spanish Government by its duly authorized agent. That at the time of the issue of the writ in this action the Spanish Republican Government had a right to the possession of the steamship Cristina. That this action impleads a foreign sovereign State, namely, the Government of Spain.”

But that claim, my Lords, was later abandoned and the foreign government proceeded on its notice of motion on the ground arising by right of requisition and the possession which they had, and it is interesting to note, my Lords, that at page 514, Lord Maugham, dealing with the words of the notice of motion that I have just read to your Lordships, says:

40 “The first reason has been abandoned. The respondents relied on the circumstance that by a decree of June 28, 1937, they had purported to requisition all vessels registered in the port of Bilbao (including the Cristina) and by reason thereof they claimed that they were entitled to possession of the Cristina and that they were therefore impleaded.”

And the whole of the case, your Lordships will see, including the argument, was based on the fact that the Spanish Government at the date of the writ was in possession of this ship, and Lord Justice Atkin, my Lords, at page 490, dealing with the two propositions of International Law which he says are engrafted into our domestic law and are beyond dispute, he says:

“The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages.

The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control.” 10

My Lords, those words do not mean what my friend seeks to say: that a mere claim is sufficient. Clearly, what Lord Atkin has in mind is property which is shown by the foreign sovereign to be his, or to be in his possession or control. If he shows one or another you set aside the writ, but a mere claim — and in this case it is no more, is not sufficient. You have to be very careful in a matter of this kind, and if there are any doubts you don't resolve them in favour of the applicant. Your Lordships will see that, at page 491, the question of the de facto possession of a foreign sovereign through a master and crew is dealt with by Lord Atkin. He says, after dealing with those two propositions in the paragraph beginning some six lines from the top of page 491: 20

“In my opinion the facts of this case establish the same breach of the two principles as in the illustration just given. I entertain no doubt that the effect, and the intended effect, of the action of the Spanish Consul at Cardiff in July, 1937, was to ‘purge’ the officers and crew of the ship of those who were disaffected to the present Spanish Government and to secure that the new master, officers, and crew should hold the ship for the Government: and that from and after July 14 the master, officers, and crew held the ship not for the owners but for the Government: and that by the master, officers, and crew the Government were in fact in possession of the ship.” 30

And it follows there that, of course, having that possession that the writ impleaded the foreign sovereign. The same basis for decision you will see is mentioned by Lord Thankerton at page 493, he says in the second paragraph of his judgment:

“It is admitted that the Government of the Republic of Spain is the Government of a foreign sovereign State fully recognised as such by His Majesty's Government. In my opinion it is sufficiently established that the Spanish Government, without a breach of the peace, obtained by their agents de facto possession of the ship on July 14, 1937, and have since remained in de facto possession. I am further of opinion that it is sufficiently established that such possession is for public uses, for the purposes of prosecution of the civil war in Spain.” 40

My Lords, public uses come in here because the question arose for consideration whether this sovereign immunity should attach to all kinds of ships, or should be limited to public ships only, because, until shortly after World War

10 I, my Lords, foreign sovereigns did not engage in trade, foreign sovereigns did not run ships other than of war, troopships, etc. and the question is even now expressly left open as to whether or not ships other than public ships are entitled to this form of immunity. But apart from that, public ship or no public ship played no part in this case of the *Cristina*, and the fact that the ship is not a public ship does not advance the case for the party seeking to set aside the writ one whit unless he has those facts establishing possession. Lord Wright, my Lords, at page 499, again deals with this question of the possession of the master of the foreign sovereign. He says, about eight lines from the end of his judgment on that page:

“The master and mate have sworn that at all material times they and the crew have had continuous possession of the ship on behalf of the Spanish Government and have held themselves and the ship at that Government’s disposal, subject to the arrest by the Court.”

20 The whole of every one of the judgments in this case does not in any way lend colour to the suggestion that a mere claim by a foreign government is sufficient for establishing that he is impleaded by a writ in rem. Look my Lords at page 501 and 502 in the judgment of Lord Wright. At the top of page 501. My learned friend left out some words, either by mistake or because they did not agree with him: “claims and is entitled to possession of the said ship under the said requisition.” I think properly to understand that sentence, my Lords, you will have to link those words “claim by reason of the requisition” to the words before, because it means that the right of direction or control was acquired by reason of the requisition, added to which you have in this case actual possession as well, so that the basis of the judgment in all these cases of all the judges in the *Cristina* was, firstly, an unquestionable requisition; and, secondly, de facto possession of the foreign sovereign, and very much more than a mere claim, which in my submission, is in fact what the appellants are relying on in this case. As Lord Wright says at page 505:

30 “The crucial fact in this connection is simply that de facto possession was enjoyed by the Spanish Government”.

That, my Lords, is at the end of page 505, and at the top of p.506 he says this:

“In the present case, the fact of possession was proved. It is unnecessary here to consider whether the Court would act conclusively on a bare assertion by the Government that the vessel is in its possession. I should hesitate as at present advised so to hold, but the respondent here has established the necessary facts by evidence.”

40 My Lords, after having heard Lord Goddard in *the Arantzazu Mendi* case, and the Court of Appeal in *the Haile Selassie* case, how clear is it that Lord Wright was right in his hesitation to hold that a bare assertion was sufficient. He goes on to examine the question of how the respondents gained possession, but that matters not to the argument on which I am addressing your Lordships now. The paragraph following is not without interest, and that is that at the time the claim of immunity was made there was no possession or other interest in the vessel, because, as Lord Wright says, page 506, second paragraph:

“It is unnecessary to consider by what mode the respondent obtained possession. It is enough to ascertain that it had possession at the time when the claim to immunity was made.”

(Adjourned Until 10 a.m. on the 10th December, 1952).

Third Day

(10th December, 1952 at 10 a.m. Court Resumes. Appearances as before).

President: These are the correct amendments, Mr. McNeill?

Mr. McNeill: No, my Lords, I don't think those are correct. They do require corrections, both of them. I am informed by my learned Junior that the date of the judgment is roughly inserted. If your Lordships would like it, we will put in two corrected copies and then of course we will have to refile the motion with corrections. 10

Mr. Bernacchi: May it please the Court, my Lords, before I deal with the facts, I have been asked to draw your Lordships' attention to the position of our caveat in A.J.6. That is set out in the Procedure Rules in Volume 7 of the Laws of Hong Kong under the Supreme Court Ordinance, Chapter 4, p.284 — of Griffin's Laws of Hong Kong. 137 is the first one my Lords:

“137. Any person desiring to prevent the release of any property under arrest shall file a notice, and thereupon the Registrar shall enter a caveat in the caveat release book mentioned in rule 157.” 20

“141. The party at whose instance a caveat release or caveat payment is entered shall be condemned in all costs and damages occasioned thereby, unless he shows, to the satisfaction of the court, good and sufficient reason to the contrary.

“142. A caveat shall not remain in force for more than six months from the date of entering the same.”

Of course when it expires, it is open to a party to renew it if they so choose.

“143. (1) A caveat may at any time be withdrawn by the person at whose instance it has been entered, on his filing a notice withdrawing it. 30

(2) The court may over-rule any caveat.”

These are very much the same as the English Procedure Rules which your Lordships will find in 0.29, r.8 and onwards my Lords. It is page 474 of the 1952 White Book. The rules are much the same although certain alterations or wordings appear. There are one or two differences in that way. And 0.29, r.10, in the note there is a reference to the motion or summons to overrule the caveat release and so on. It is clear therefore that to overrule the caveat release, somebody must move the Court as an applicant. To that extent therefore in A.J.6 we rely upon our caveat as a negative form of protection. If the Indonesian

Government is not impleaded by that action, then to come in and move the Court to overrule our caveat would be (a) to submit to the jurisdiction, and (b) would be necessary for them to show on what ground they claim such a locus standi. It is for those reasons that we say that indirectly our caveat release in A.J.6 gives us at least some protection in those proceedings quite regardless of the proceedings A.J.8.

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My Lords, I now come to deal with the evidence that is before the Court, that is to say, my Lords, I don't deal with the affidavits that have been struck off the Court record and concerning which the present argument is not directed.

10 Firstly, my Lords, document 6, the affidavit of Khalil Khodr of the 27th June — of bundle 7, I think, it is. He says that he is the authorized agent and attaches his power of attorney, and then in paragraph 2 he says:

“2. The abovenamed steamer is and at all material times has been the property of the Plaintiff Company as sole owners thereof. I hold the documents of title to the said vessel.”

20 There is a categorical position, my Lords, a statement of our position when odd passages and cuttings were read from these affidavits. They must be read as a whole and in the first paragraph of this first affidavit of all, you will find our position set out very clearly. “We are the sole owners and the steamer is and at all material times has been the property of the Plaintiff Company as sole owners”. As the action originally stood, there was a conflict as to whether it was of Panamanian registry or Indonesian registry but with the result of the striking out of the affidavits, the only other evidence that is on the file is of this flag raising ceremony which I will mention in due course; but the only evidence as to registry is the evidence of Mr. Khodr that it is of Panamanian registry. Then para. 4:

“The late President of the Plaintiff Company gave instructions to one Frank C. Starr to negotiate a sale of the abovenamed vessel for the sum of US\$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.”

30 And that is important when you come to see the evidence of Mr. Revilla on Philippine law.

“On the 17th of March, 1952 — and this is a paragraph Mr. Wright read — 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”.

I think, my Lords, 5 was read; I don't think 6 was read.

40 “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 any 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”.

And he then sets out the reasons why he desires the vessel to be arrested and it really amounts to this that, in view of what this Mr. Kuitert appears to be doing, "I feared a violent attempt to oust me from my possession and control through the captain of that vessel". If that includes mutiny from those 41 junior members of the crew, let it do so.

Mr. McNeill: If I might interpose, I don't think it is necessary for me before your Lordships to repeat various paragraphs of the affidavits. In the court below we objected to the reading of a large part of the evidence on the ground that it concerned investigation of title. I desire it to be noted that in the court below we made objection and I take the same objections as I took in the court 10 below.

Mr. Bernacchi: That is quite convenient to me if that is convenient to your Lordships.

President: Yes, he would take, those objections.

Mr. McNeill: To any paragraph which concerns investigation of title.

Mr. Bernacchi: I said that the only other evidence about the ship at all in that action was the flag raising ceremony.

Mr. McNeill: No, Para. 10.

Mr. Bernacchi: Oh yes, my Lords, I am sorry, I stand corrected. With so many affidavits and having read them all at one time, one forgets where one 20 paragraph appears and in whose affidavit that particular paragraph appeared. Para. 10 does set out that the vessel is still registered in the Panamanian registry but the Government of Indonesia has purported to register her at their own registry. It doesn't, therefore, add more than to entitle the court to notice that it is on both registries and my learned leader will deal with that question. Mr. Loh says that he called her an Indonesian vessel because of the flag he saw there and I will read that affidavit as I proceed.

The next document, my Lords, is document 13(b) the affidavit of Captain Silos of the 5th July, 1952. This was originally filed in certain contempt proceedings but it was also read at the substantive hearing and I will read it 30 to your Lordships, particularly in view of the references that have now been made to the affidavit of this gentleman, D.J. Mandagi. He says, my Lords:

"2. I am a Master Mariner holding a Masters' Certificate from the Republic of Philippines.

3. Seven and a half months before the 9th day of May 1952 I had been serving the Plaintiffs as their servant on their ship the s.s. "Tasikmalaja" (otherwise s.s. 'Christobal' and s.s. 'Haleakala') as Chief Officer to one Captain F.J. Aguado.

4. On the 9th day of May 1952 (when the said vessel was lying in the Harbour of Victoria in the Colony of Hong Kong) the said Captain Aguado 40 left the Colony of Hong Kong for Manila in the Philippine Islands and I was appointed Acting Captain in his place and stead.

5. On the 27th day of June 1952 when action was instituted herein and the Head Bailiff of the Supreme Court arrested the ship on a warrant issued by the Registrar, I was still Acting Captain in full charge and control of the said vessel as the only certificated officer on board holding physical possession thereof on behalf of the Plaintiffs and I was on board the said vessel when the Head Bailiff took the ship under arrest.

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10 6. On the 29th day of June 1952, Mr. L. Alltree, the said Head Bailiff came on board ship and in my presence informed Mr. J. Walandaouw, the Indonesian Purser on board, that the ship was in his custody as Head Bailiff and that everything on board should be left as it was at the time of arrest and that no trouble should be created on board. Mr J. Walandaouw replied that he understood what was being told to him and promised to give this information to the rest of the Indonesian crew on board.

20 7. I continued on board the said vessel as Acting Captain in full charge thereafter when on the 30th day of June 1952 I received a letter from the Consul-General in Hong Kong for the Republic of Indonesia purporting to dismiss me as Acting Captain of the vessel and requesting that I should leave the vessel immediately. The said letter is now produced to me marked 'A' (with copy attached hereto marked 'A1'). I replied on the same day as per copy letter attached hereto marked 'B'.

Exhibit A-1
Ref. No. 1
Exhibit B
Ref. No. 2

8. On the same day, after I had received the said letter of dismissal, an Indonesian Cadet Officer (an apprenticed mate) by the name of D. J. Mandagi rushed up to me wildly whilst I was talking to a Chinese visitor friend of mine on the ship and in the presence of a European Detective Inspector of the Hong Kong Police, ordered my Chinese friend to get off the ship. On my remonstrating with him he went away to a group of all the Indonesian crew on board composed of:—"

30 and he sets them out. I ask your Lordships to note this because this affidavit has never been denied quite apart from the question of affidavits being struck out except of course in so far as Mandagi claims that he was in control of the vessel; I ask you to notice that apart from Mandagi, the other, the most senior of all, appears to be a quartermaster and the rest we have (the quartermaster of course isn't a ship's officer) chief cook, saloon boys, cabin boys, deck boys, engineer boys, toilet boys and cabin boys and that comprises these Indonesian members of the crew. And then he sets out how this gentleman Mr. Kuitert appeared and various troubles had occurred which is not now relevant, and I think the rest of the affidavit as such is not now relevant. Para. 13, he reported to Mr. Khodr as authorised attorney of the plaintiffs and certain letters were written and he alleges
40 that he is being obstructed by the Indonesian members of the crew as a result of the instructions of the Indonesian Consul-General.

Appeal Judge: He does not give any explanations for the reason for his changeover on the 25th when he contacted the Indonesian Consul-General that the ship had been arrested.

Mr. Bernacchi: I think your Lordship is referring to an affidavit not on the file now. Of course, he does in another affidavit, but he does explain in another affidavit which I will read. On the basis that the affidavits have rightly been struck off, that is not for your Lordships at all, except in so far as he referred to them himself in a later affidavit which I will read to your Lordships and there I will read what he says.

But, for the argument based on possession and control, it is in our submission quite immaterial whether Captain Silos rightly or wrongly attorned to the plaintiff company. He can hardly do anything else because he was our servant and it is not so much whether he is right or wrong but the fact remains that the captain of this vessel at all material times held this vessel on our behalf. That is what he says. 10

President: Since he became acting captain in May. The other captain went to attend his daughter's wedding.

Mr. Bernacchi: But Capt. Silos was appointed by us acting captain and he and all the ship's officers held this vessel on behalf of the plaintiff company. The only people who have recently claimed to have held it otherwise — and when I say that, I shall deal with what they do say through the apprentice mate Mandagi the only people who have ever claimed to disagree with that, shall I say, are the certain crew members and an apprentice mate whose position as we all know is not that of a ship's officer as such, he is suspended somewhere between a member of the crew as such and one of the ship's officers. His status is clearly that of apprentice mate. You have got to read para. 2 "I am a master mariner." He means he is the only person on board who is entitled to be master of the ship; it doesn't mean he is the only officer on board. It is perfectly clear, my Lords, that you have to hold that in conjunction with para. 2 and document 6 which sets out the other officers on board who appear to have been the radio operator and two engineer officers, boatswain. The other officers on board from document 6 were two engineers and the radio officer and also the boatswain who is, of course, the senior crew member. The other important point from this affidavit, my Lords, is that although the ship was arrested by us on the 27th June and although it was clear enough from that time at least, what the attitude of Captain Silos was, it was not until the 30th June, after certain instructions had apparently been given to them by the Indonesian Government, that the Indonesian crew attempted in any way to flaunt the authority of their captain. I submit on that evidence that it is clear that they were obeying the orders of their captain until sometime on the 30th June when the Indonesian Consul-General told them not to do so. The exhibits, my Lords, are the instructions dismissing or purporting to dismiss captain Silos and his reply repudiating that the consul general was in any position to dismiss him; a letter to the Commissioner of Police from the solicitors, which is not now material and also a letter to Messrs. Wilkinson & Grist and a letter of the 3rd July, Exhibit H-1A, a rather interesting position "Our clients are allowing Capt. Silos to go on board." A letter by Messrs. Wilkinson & Grist to Mr. Silva on behalf of the consul general "Our clients are allowing Capt. Silos to go on board and are confirming his present appointment as master appointed by our clients." I mention that only, my Lords, for the purpose of comparison with this gentleman Mandagi's affidavit 20 30 40

— I am sorry, affirmation — of the 9th July in which he claims that as from the 30th June he was the captain appointed by the consul general. There you have a complete conflict. Obviously no weight can be attached to Mandagi's statement when it is clear from Exhibit H-1A that, at least as from 3rd July, the Indonesian Government was recognising that Silos was the captain of the vessel claiming that he was appointed by them. That is another matter. So that, they were at least recognising that he was the captain of the vessel, as they did, right up to the 30th June when there appears to have been this trouble on board.

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Exhibit H-1A
Ref. No. 8

Document 21(1) another affidavit of Silos which I will just refer in passing
10 dated the 10th July. He attaches a letter received from Messrs. Wilkinson & Grist
and the reply received, and he denies a statement of a suggestion which appears
to have been repeated by Mandagi that certain Filipino members of the crew had
agreed to accept orders from Mandagi and para. 3 there, my Lords, he sets out
that 6 Filipino members of the crew, and said that it was untrue that any of them
agreed to accept Mandagi's orders and that they are subservient to his orders and
never had or accepted orders from Mandagi and I would ask your Lordships to
notice the final clause there about "the said Nemesio Mortel had throughout all
material periods to date made entries only in the Panamanian Registry Engine
Log-Book and not in the purported Indonesian one which has never been entered
20 up at all." So that although there is the evidence that apparently this ship
appears on two log books in two registries, the only log book that has been used
by the officers of this vessel up to and after the commencement of these
proceedings was the Panamanian log book. Here you have the engineer using the
Panamanian registry engine log book right through until at least this date, the
10th July, long after these proceedings had started. The attached letters are not
very material now, my Lords, but I would now like to compare that evidence which
I have read with the evidence of this gentleman Mandagi, document 18, that has
been read to you. My Lords, I have been asked to mention, I heard with respect
a murmur from the other side of the table that the captain's log book was solely
30 the Panamanian log book — that will come as we read on.

Now, my Lords, Mandagi starts by saying that he confirms — I don't know
what he is confirming, with respect, because the only other evidence is of
Wilkinson & Grist of 3rd July and is quite contrary:

40 "1. I confirm that from the 30th day of June 1952 I as Captain appointed
by the Consul General have been in command of the vessel and that all the
forty-one Indonesian members of the crew and six of the seven Filipinos on
board have been obeying my orders — (and that is why this answer is
received) — I confirm that at all times I and the forty-one Indonesian
members of the crew have been ready and willing to obey the orders of the
Consul General and were at no material time prepared to obey nor did we
ever obey any commands of Captain Silos in defiance of the authority of
the said Government"

and he claims to be in possession of the vessel. So that here, my Lords, is the
height of ridiculousness. Here, after the date of the writ in this action is a
gentleman whose position is that of an apprentice on board claiming to be in
possession of this vessel as captain. On the documents before your Lordships, that

claim to possession is utterly ridiculous and it is directly contradicted by Messrs. Wilkinson & Grist's letter of 3rd July, not only by that but, in addition to filing that evidence, the Indonesian Government decided to file — because it was filed on their behalf at that time, an affidavit, document 33, in which another gentleman, a Mr. Grimsdale claimed on behalf of a Dock Company to be in possession of the vessel. We know now that that claim has been dropped in these proceedings. Of course, my Lords, Mr. Grimsdale does not say that he is in possession but it was suggested that as a result of his affidavit the Dock Company was in possession.

President: The argument was not put that way. His affidavit was mentioned by the appellants to show that the Indonesian Government through their Consul General were directing the Dock Company as to what were possibly done. 10

Mr. Bernacchi: In this Court, the claim has been dropped.

Mr. McNeill: No, my Lord, it has not been dropped. It is on this point of what is left on the affidavits.

Mr. Bernacchi: This point has been dropped. For the purposes of the present argument, it is not now claimed that the Dock Company is in possession of the vessel and are bailees for the Indonesian Government. But that demonstrates the height of the completely spurious claims to possession that were put forward. 20

President: But all this happened after the ship was arrested . . .

Mr. Bernacchi: . . . up to the date of the writ. As I shall show your Lordships, the person who directed the ship to Hong Kong, on the evidence, was the agent of the plaintiff firm — a Mr. Frank C. Starr, an entirely fraudulent gentleman, my Lords. He was never our agent to sell this vessel but he was our representative in Indonesia and it was he who gave the instructions to this ship to proceed to Hong Kong. Admittedly, my Lord. From our point of view at the time the ship was under charter to the Indonesian Government. If he had sold the ship in March, then what was he giving any orders to the ship for? So that that is further evidence not only of his fraud — and his fraud cannot be over-looked by this Court — but it is further evidence that right up to a very much later date when the ship was held in Hong Kong, the plaintiffs only knew that the ship was under charter to the Indonesian Government and nothing else. Her orders, my Lords, as received from Starr, were orders on behalf of the owners, the plaintiffs, as a result of liaison with the Indonesian Government, the charterers. 30

Appeal Judge: Who were liaisons?

Mr. Bernacchi: Starr was in Indonesia for the purpose of liaison.

Mr. Loseby: I must be allowed to call your Lordships' attention to a great disadvantage at which we are sitting. We have not before us at all the notes taken by the learned judge in the court below which, when it comes to my argument, your Lordships will see how great is our disadvantage — it is almost a 40

complete necessity. My Lords, how it happened I don't know and quite frankly there may be some slip in the Hong Kong rules but we have not got them before us at all. I don't know whether your Lordships have them, which makes it worse. My Lords, of course, I only know the English practice but there, it is a rule insisted upon. We are at a disadvantage and I thought it might be in the public interest to call your Lordships' attention to it because if there is a slip of the rules in this matter . . . My Lords, I fully appreciate that the solicitors for the applicants are overworked with labour.

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10 Mr. McNeill: We will try to find a copy for my learned friend. It is not really our obligation to supply these notes. I think my learned friend Mr. Bernacchi has one.

Mr. Bernacchi: In respect of the notes that we have — it is not an obligation on us to provide the judge's notes. Your Lordship is referring to the copy I have in my hand?

President: No, no. I mean . . .

Mr. Bernacchi: I have a copy between us.

My Lords, document 28(1), the affidavit of Khalil Khodr of the 26th July. My Lords, he says that he is an employee of the plaintiff Company and:

20 “as a superior officer in charge of the department dealing with heavy equipment, scrap metals and shipping, and am authorised to make this affidavit on behalf of the Plaintiff Company herein.

30 “4. The Plaintiff Company is, as set out in paragraph 1 of my said affidavit, a legal corporate entity being a private limited liability company, and I produce a copy (marked ‘KK-A’) of the By-Laws (which he attaches) of the said Plaintiff Company certified to be a true and correct copy of the administrative Officer of the Securities and Exchange Commission (that is to say the Registry for Corporations in the City of Manila in the Republic of the Philippines) which Registry is a public registry forming a department of the Government of the Republic of the Philippines required by law to be kept for public information or reference, such certified copy bearing the state Seal of Office of the said administrative officer, and I attach hereto copy relevant extracts from the said By-Laws marked ‘KK-A1’.”

Exhibit KK-A1
Ref. No. 50

“5. The Plaintiff Company possesses and uses a Common Seal which is the Common Seal affixed to my Power of Attorney exhibited to my said affidavit as ‘A’.”

Exhibit A
Ref. No. 49

40 “6. On the 23rd day of July, 1952, together with a representative from Mr. M. A. da Silva's office, I called at Messrs. Wilkinson & Grist and inspected the originals of the exhibits to the said affirmation of Kwee Djie Hoo, and I noticed that though copy exhibit ‘KDH-4’ attached to the said affirmation has the word ‘Seal’ in the left hand bottom corner thereof this was not the Common Seal of the Plaintiff Company, but was merely the notarial seal of the notary public who attested the execution by K. H. Hemady deceased.

Exhibit KDH-4
Ref. No. 22

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Exhibit KDH-4
Ref. No. 22

Exhibit KDH-4
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Exhibit KK-B
Ref. No. 51

I am informed by B. G. Manalac, Secretary of the Plaintiff Company at all material periods and verily believe that he had at no time affixed the Common Seal of the Plaintiff Company to the said 'KDH-4'."

Mr. McNeill: Your Lordships will appreciate that this is the kind of paragraph which we took objection to.

Mr. Bernacchi: Para. 7:

"7. The Board of Directors of the Plaintiff Company consist to-day of the following: — Mrs. Magdalena H. Hemady, Attorney Felipe Ysmael, Mr. Carlos Ysmael, Mr. Felipe Ysmael, Jr., and on the 8th of November, 1950 the composition of the said Board of Directors was the same save that 10
K. H. Hemady was the President and General Manager whereas the said Mrs. Magdalena H. Hemady is to-day the President and General Manager (the said K. H. Hemady having died on the 30th day of May, 1952). I am informed by the members of the said Board of Directors (apart from the said K. H. Hemady deceased) and verily believe that at no material period were they ever aware of the existence of 'KDH-4', or had authorised the execution of same on behalf of the Plaintiff Company; nor had they ever authorised the affixion of the Common Seal of the Plaintiff Company thereto, and that the existence of same only came to their knowledge 20
when a few days after his death, a search amongst his private papers at his residence revealed the existence of a copy of the same: save for the said K. H. Hemady deceased the Board of Directors was at no time aware that the said Frank C. Starr had been authorised to put through a sale of the abovenamed defendant vessel save that they were aware that from time to time the said Frank C. Starr was negotiating for a purported sale. In this connection I attach a resolution of the said Board of Directors under the Common Seal of the Plaintiff Company dated the 6th day of June, 1952 marked 'KK-B'."

Para. 8 and there is a bill of sale which he sets out and which is in the plaintiff company's possession and has always been in their possession 30
together with the original title deeds of the vessel so that all the title deeds of this vessel including the last bill of sale are in the possession of the plaintiffs.

President: Does that matter to the question before us:

Mr. Bernacchi: There is no contest. On all this evidence it is clear, my Lords, in other words it comes to this: if impleading means that a mere claim is sufficient, then of course you can say there is contest claimed. If a mere claim is not sufficient then there is no contest here as such. All the evidence before this Court shows that we are the owners of this vessel and that there was a claim. We are saying that on this evidence this gentleman Starr was incapable 40
of selling the vessel and there is not the slightest evidence to the contrary. There must be something to enquire into.

President: What then would happen about the charter?

Mr. Bernacchi: We say two things as regards that charter party. (1) the Indonesian Government had already avoided the charter party by the material dates and in any event, at the material date, namely, the date of this motion to set aside the writ, the charter party no longer existed and that is a matter with which my learned leader will be dealing with. That a charter party, my Lords, that same charter party, existed is admitted. If that is enough for the Indonesian Government to succeed on, that is a different matter and this is a matter which we say is clearly not enough for two reasons supported in law; but the charter party as such, is a different matter. I am dealing at the moment with this suggestion that there is a claim or that there is, I put it this way, any case for saying that the Indonesian Government are the owners of this vessel. On this evidence, my Lords, there is no case for saying that. If a mere claim is enough, that is a different matter.

President: It is not merely a claim of ownership?

Mr. Bernacchi: That is a different matter, my Lords. They don't say that. There is no affidavit on this file.

President: Surely this is not a bare assertion "We say we brought it in on orders from this man Starr?"

Mr. Bernacchi: I am with your Lordships entirely. This Court most certainly can go further and I am only dealing with the facts. This Court can go no further if the possession of this vessel were in the Indonesian Government. Assuming that they have no possession, my Lords, then it is not enough and, when your Lordships come to see these cases, even those words about the competing claims, they do not mean that merely because our affidavits show that they are claiming to have bought the ship therefore the Court must say "Stop", that the Government was impleaded. That is not enough. I say with respect that you will find no case where the courts have gone that far. The cases are all cases either of possession or some form of admitted possessory right, or finally proved. There is one case where the government — our own government — put up a claim for impleading and the Court did precisely that very thing — the House of Lords — investigated the claim of the Crown to title and found that they had made out its claim to title and therefore was impleaded. I go so far as to say that without the possession the cases show that the foreign sovereign must make out his title. It may not be a title to ownership, it may be some lesser title to that of ownership as, for instance, the requisition cases, there was a lesser claim but the title as claimed in all those cases was either admitted or established. A charter party is a different matter and that will be dealt with on two separate aspects. But as regards the claim to ownership, that is completely refuted by the evidence in this case and you have then para. 9 — a very clear statement—

"9. Thereafter the Plaintiff Company were, remained, and still are the legal registered owners of the said vessel with full beneficial ownership thereof, and had not at any time thereafter transferred the same to any person or persons, firm, company, corporation or Government.

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2 & 3
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10. Prior to the purchase of the said vessel one Frank C. Starr, an American, came to Manila in the Philippines as agent for the Government of the Republic of Indonesia for the purpose of purchasing heavy equipment for the said Government, and dealt with our Company in this regard through me and the said K. H. Hemady deceased. Gradually, the said Frank C. Starr gained the confidence of the said late K. H. Hemady and sometime after the purchase of the said vessel the said Frank C. Starr proposed to the said late K. H. Hemady that they should charter this said vessel and in due course other vessel of the Plaintiff Company to the Indonesian Government for the transport of troops and the said Frank C. Starr was appointed agent to look after and manage this vessel on a commission basis, whereupon the vessel was sent to Sourabaya and after repairs was chartered for a period of three months from the 1st day of January, 1951, at a hire of U.S.\$30,000.00 per calendar month as per copy Charter Party and Appendix (together with letter from the Chartered Bank of India, Australia and China dated 11th December, 1950, which I produce marked 'KK-D') which I had obtained from the records of the Plaintiff Company in Manila and brought to this Colony in June this year (with copies attached hereto marked 'KK-1', 'KK-2' and 'KK-3'). The original of this Charter Party and Appendix was found by Captain Jose Maria Silos in the Captain's Cabin on board the said vessel and had been handed by him to the Head Bailiff on the 5th day of July, 1952, and I crave leave to refer thereto. 10

11. At the time that the said Frank C. Starr was in Manila in the year 1950 one Jose Briones (A Filipino subject) was also there together with him as an employee also on commission basis of the Indonesian Government (later, i.e. to say in 1951 the said Frank C. Starr employed the said Jose Briones as his Secretary till May 1952). Before the said Frank C. Starr had left Manila for Indonesia in the year 1950, the said Jose Briones left first for Indonesia but before he left the said K. H. Hemady in my presence, interviewed the said Jose Briones confidentially and told him not to cause any offence to the said Frank C. Starr but asked him to speak confidentially to the representatives of the Indonesian Government and to inform them that before finalizing any terms of any charter of the said vessel they should refer such terms to the said late K. H. Hemady for his final approval, and I am informed by the said Jose Briones and verily believe that he had given this information to one Major Sukardjo, Chief Officer of the Indonesian Army appointed by the Indonesian Government to act as its representative." 30

And he goes on to say that that was in fact done and he adds also that this was reported to major Pamoe, Mr. Sukardjo (Pamoe's second in command) and we find Sukardjo removed and Major Pamoe appearing as principal agent. You will find that in fact those charter parties had to be sent back to Manila for confirmation according to Filipino law under which the company was incorporated. But in any event that is the only evidence of that final charter party, my Lords, and is an exhibit to one of the affidavits which show an ordinary charter party and the former evidence of course that was filed about some other charter party which was an exhibit that has left the file. Your Lordships recall that there was an allegation, a very serious one, and we felt that we must substantiate that these 40

charter parties, which had been produced as being the real charter parties, were in fact not the real charter parties at all. But all that is gone because the affidavits were removed from the files. He also makes a positive allegation of a certain charter party having been fraudulently prepared. The rest of the affidavit deals with these various charterings of the vessel and how certain charter monies were wrongly paid to Starr after express instructions that they were not to be paid to Starr and express instructions given to Major Pamoe and supported by letters both to Pamoe and from Major Pamoe.

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My Lords, take, for instance, paragraph 18:

10 “ 18. A reply to the said cable of the 8th of January 1952 and to the said letter of the 10th January 1952 was received from the said Major Pamoe by way of letter dated the 17th of January 1952 which is now produced to me and marked ‘KK-K’ with copy attached hereto marked ‘KK-K1’ and I ask this Honourable Court to note that the said Major Pamoe by this letter had agreed to the said purchase price of US\$450,000.00 without deductions and to effect payment to Mrs. Hemady’s account and not to the said Frank C. Starr and that this letter made no allegations of agreed deductions from the purchase price already purported to have been made in a previously executed Charter Party on an option to purchase.”

Exhibit KK-K1
Ref. No. 62

20 “ 19. The late K. H. Hemady’s suspicions of Frank C. Starr’s bona fides were heightened so considerably that on the 25th of January 1952 he cancelled the said Frank C. Starr’s agency altogether and notified this to the said Frank C. Starr and the Indonesian Government through the said Major Pamoe and appointed one Mr. J. W. Kuitert in his place and stead.”

President: How can you say the ship was brought to Hong Kong by your agent?

Mr. Bernacchi: Afterward, for a limited purpose only, Starr was permitted to function. There was an unpleasant letter from Major Pamoe, there was an open threat, he used the expression “You have no choice” and, therefore,
30 my Lords, for certain limited purposes we permitted Starr to continue to function.

Appeal Judge: But you don’t say that in paragraph 9. A verbal cancellation of the Power of Attorney, which he is supposed to have been given in legal form some time before.

Mr. Bernacchi: Not a verbal one, a written one.

Appeal Judge: Merely a letter, in delightfully vague terms. You call that a cancellation of his agency?

Mr. Bernacchi: It wasn’t under seal, but neither was the Power of Attorney. That is one of the points of the Power of Attorney. In any event, my Lord, as your Lordship will see further on, nothing much happened at that time in the
40 matter of the sale of the vessel, and, quite apart from any question of Starr’s authority, we gave direct instructions, which are acknowledged by this man, Major Pamoe, that on any sale of the vessel the price was not to be less than a certain figure without any deductions, and the letters to and from

this man, Pamoe are accepted, so, quite apart from this question of Starr's agency, which was cancelled, but later, as a result of this threatening letter recreated, or perhaps it would be better if I said he was permitted to continue functioning in Indonesia for a while after that, does not affect the question of the sale, which is the only point we are now dealing with.

President: You are asking us to hold there was no sale?

Mr. Bernacchi: Yes, my Lord.

President: You are asking us to decide an action between this firm and the Government of Indonesia?

Mr. Bernacchi: No, my Lord, not at all, my Lord. I am asking in my 10
action for a declaration that I am the owner, and when I obtained that, a
declaration that I am entitled to legal possession, and when I obtained that
declaration, the only evidence that I quote, I am talking of a matter that has in
fact happened, was the evidence of my title. For the purpose of that declaration
I did not need, nor did I call, any evidence about this Indonesian business. This
evidence is filed in the notice of motion of the Indonesian Government, saying 'We
are impleaded' and it is for the purpose of saying 'impleaded, you haven't got a
shadow of a title'. The fact that our affidavit shows that they appear to claim
a title by virtue of some purported sale is, of course, a question of the law as to 20
impleading, and I submit, my Lords, 1. that that is nothing more than a bare
assertion, and 2. that even if it is, without possession in this limited proceeding,
namely, the impleading proceeding itself, without possession they must establish
their, some title to possession of this ship, whether it be a title as owner or some
other title is another matter.

Appeal Judge: Title, a control would be a right.

Mr. Bernacchi: Yes, my Lord, at the material time. Control that it is in
the sense that it is used in the cases, where they couple it with the word possession
'possession and control'.

Appeal Judge: And they must establish that?

Mr. Bernacchi: They must either establish actual physical possession or 30
their right to possession. This is the effect of our affidavits, we say "Look, this
seems to be the substance of their claim to possession of the vessel, and this is
why it is without any substance whatsoever" that is our affidavits, and that is
the effect of our affidavits. Put it another way, my Lords 'to hold that the
Indonesian Government is impleaded, you must hold either that they have
possession of the vessel or that they have a right to possession'. These affidavits
show that they have neither possession nor a right to possession.

President: You don't think it is enough that they show they have a claim
to possession?

Mr. Bernacchi: No. My Lords, put it another way. Once it is shown 40
that they have not got possession, then some form of title must be gone into before
the Court can say they are impleaded.

Appeal Judge: In fact you must consider the question of their title.

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Mr. Bernacchi: Must consider, my Lord, some question of title. It may not be a title to ownership, because they may have a right to possession short of a claim to ownership, as for instance a requisition order. My Lords, I am not going through the cases, but when my learned leader comes to deal with them, your Lordships will see that the only case that uses the word "contest" they are not using it in the sense in which Mr. McNeill used it when he addressed you. In fact, the contest in that case was as to the respective standings in a British Court of law of two foreign states, one recognised a fortiori and one recognised de facto,
10 and of two acts of state, but I will not encroach upon the address of my learned leader. The affidavit continues, my Lords, with the various correspondence that occurred, and it is clear, my Lords, paragraph 25; a cable sent direct to Major Pamoe "We do not agree to deduct any Charter money from purchase price Tasikmalaja stop Starr inquired and we answered negatively", and on the 7th February a letter was written to Major Pamoe Rahardjo repeating these facts.

President: What was the purpose of that cable?

Mr. Bernacchi: Because, my Lord, apparently Starr telephoned to Mr. Hemady, and it is set out, I think, in the letter itself to Major Pamoe that it was a telephone call whether the plaintiffs would agree to sell the vessel with certain
20 deductions, and not only did they say to Starr 'No', but they were careful to write direct to Major Pamoe, because, as your Lordships know, they were by then already suspicious of Starr, and they told him "No, the company does not agree to deduct any charter money from the price".

President: What was the position of Starr then? What was Starr doing then?

Mr. Bernacchi: As a result of this letter from Major Pamoe where he, in our submission, stoops to the clearest blackmail, we say "Well, all right, forget about appointing Kuitert as our representative instead of Starr, Starr can go on being our representative in Indonesia", but what we do say, my Lords, is that
30 Starr had no authority to sell this ship and the Indonesian Government knew it, because we were very careful not to bind our hands.

President: Have you any document to show what authority Starr had?

Appeal Judge: He was already given a power of attorney, which has been executed, but he had full power of attorney to charter the vessel and to sell the vessel. Now you say on the 25th January, 1952, you cancelled his agency. It is not clear what that was, what actually was cancelled; nor is it clear on what date whatever was cancelled was restored to him.

Mr. Bernacchi: Paragraph 25:

"25. I communicated this to the late said K. H. Hemady who thereupon instructed me to and I sent cable to Major Pamoe Rahardjo reading as follows:—
40

"We do not agree to deduct any Charter money from purchase price Tasikmalaja stop Starr inquired and we answered negatively'.

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Exhibit KK-T1
Ref. No. 72

Exhibit KDH-4
Ref. No. 22

“On the 7th of February 1952 a letter was written to Major Pamoe by the said late K. H. Hemady as per copy (taken from the files of the Plaintiff Company by me) now produced marked ‘KK-T’ (with copy attached marked ‘KK-T1’). It is to be noted that the resumption of work and duties by the said Frank C. Starr had no reference to the Power of Attorney (KDH.4) which the said late K. H. Hemady had cancelled on the 25th January 1952.” That is paragraph 25.

President: Paragraph 19 says that on the 25th January he cancelled Starr’s agency, not his power of attorney.

Mr. Bernacchi: Well, my Lord, his power of attorney made him an agent. 10
A power of attorney creates one man an agent for another or for a firm. If he cancels his agency altogether, paragraph 19, it must include the power of attorney.

President: Why?

Mr. Bernacchi: I am not concerned, my Lord, whether the power of attorney existed or did not exist, because we notified a limitation of his power direct to the Indonesian Government, so there could be no question of holding out of any because we took the care and trouble both to cable and write to the Indonesian Government in the matter of this suggested sale. That is quite apart, my Lords, from the question of validity, as such, of the power of attorney. My Lords, take this example, let us forget about Indonesian Governments and anything 20 else. Mr. A. is the attorney of Mr. B. for certain purposes, which might, on the face of it, be taken to include the selling of certain property. Your Lordship is sitting on the case, A. getting to hear of certain things, informs the purchaser direct, a Mr. C., “My agent has no power, I do not authorise him to sell to you, except for a certain price”, and that is notified direct to the buyer. The buyer, my Lord, deliberately and fraudulently, because that is the allegation here, unanswered now, the buyer deliberately ignores that notification and enters into a purported sale at a very much lower price with the agent, at a price which they were directly notified the agent was not entitled to sell it, and cap the whole thing 30 by paying the money directly to the agent when they were specifically told not to pay money to him. The clearest form of fraud, taking A. and B. for the moment, that one can imagine. And the only evidence before this Court is that is what has happened here.

President: Before this Court here—Starr was sent down with a power of attorney as an agent, then they were notified that he was not an agent, then they were notified that he was an agent

Mr. Bernacchi: They were notified only a few days before this purported sale that Starr was not authorised to agree to sell this vessel with deductions. The deductions, of course, my Lords, were an enormous amount, they involved deducting most of the previous charter hires. He was not authorised to sell this 40 vessel with any deductions and the evidence is that in the face of that clearest instruction by cable and by letter, they purported to enter into an agreement with him to purchase with these enormous deductions. That is the evidence, my Lords, and furthermore, despite the clearest instructions not to pay money to Starr, they paid the so-called balance of \$70,000 over to him.

Appeal Judge: When was the restoration of his agency? What is the date of the restoration of this agency to Starr? Cancelled on the 25th January, including all powers, apparently, now you say, well, they were blackmailed into restoring. . . .

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Mr. Bernacchi: Paragraph 20:

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“20. Thereupon the said Frank C. Starr became alternatively pleading and threatening and the said Major Pamoe Rahardjo showed his teeth in a threateningly blackmailing manner thus:—

10 (a) The said Frank C. Starr on the 29th of January and 30th of January 1952 sent respective cable to Mr. Hemady, (original whereof is produced to me and marked ‘KK-L’ with copy attached marked ‘KK-L1’) and a cable to the Plaintiff Company (original thereof is marked ‘KK-M’ with copy attached marked ‘KK-M1’),

Exhibit KK-L1
& M1
Ref. No. 63 & 64

(b) The said Frank C. Starr wrote a letter to one Johnny Ysmael (a grandson, now deceased, of the said Mrs. Hemady) enclosing his letter to Mrs Hemady and a letter from Major Pamoe to Mr. and Mrs. Hemady:—

20 Original of letter to the said Johnny Ysmael is produced to me marked ‘KK-N’ (with copy attached hereto marked ‘KK-N1’) original of letter to the said Mrs. Hemady from Frank C. Starr being produced to me marked ‘KK-O’ (with copy attached hereto marked ‘KK-O1’); Original of letter from the said Major Pamoe to Mr. and Mrs. Hemady being now produced to me marked ‘KK-P’ (with copy attached hereto marked ‘KK-P1’).

Exhibit KK-N1,
O1 & P1
Ref. No. 65, 66
& 67

(c) at the time when Major Pamoe Rahardjo wrote the said letter the said vessel was in Indonesia and therefore in the power of the Indonesian Government.”

Appeal Judge: What is the date, that is what I have difficulty in finding when he was restored as a responsible agent of Ysmael & Co.?

Mr. Bernacchi: Paragraph 23, my Lord:

30 “23. The said late K. H. Hemady realising the full import of the threat cabled a conciliatory radiogram to the said Frank C. Starr on the 2nd of February 1952 as per copy attached hereto marked ‘KK-S’.”
that is really

Exhibit KK-S
Ref. No. 71

Appeal Judge: That is the restoration, how is that now?

Mr. Bernacchi: A cablegram, my Lord, which does not say very much:

“Insurance Tasikmalaja expires February Fifth stop if Major Pamoe buys it he can insure it there otherwise advise us so can renew here stop cabinet postponed discussion 148 until next Tuesday but we assured approval please advise Major Pamoe”.

So that, as from early in February, he was certainly held out as having certain powers, but he was specifically not held out as having the power of sale of this vessel with any deductions.

President: Power to sell, provided he got the right price?

Mr. Bernacchi: Of course, my Lord, when we go on, he had no power, this power was completely ultra vires.

President: He thought he had power to sell?

Mr. Bernacchi: He knew he had no power, Mr. Starr did, and Major Pamoe knew, and the Indonesian Government knew.

Appeal Judge: On certain terms he had power to sell, if the Indonesian 10 Government would pay a certain sum, and the respondents in this case would have consented if they have been given this sum of money?

Mr. Bernacchi: I think so, but there is no evidence of that. Probably all would have been well if they have been paid the sum that was mentioned. After a certain amount of haggling between Hemady and Major Pamoe the amount agreed was US\$450,000 and the actual amount paid was \$. being less certain deductions.

Appeal Judge: But, according to the terms of the charter party, at least according to what the Indonesian Government were saying, it was in accordance with the terms of a certain charter party. 20

Mr. Bernacchi: That is part of an affidavit that has been struck out. The only charter party is what Starr sent us, it is a typewritten document with Starr's name in writing across it, and certainly containing no option to buy. We say there was no option to buy and that there was a certain document, fraudulently prepared and prepared actually as a result of this cancellation of Starr's authority, and, as a matter of fact, my Lords, as your Lordships can see from the notes on which I addressed the learned judge in the Court below, I went into the figures rather carefully and showed, my Lords, that the final purchase was even in more onerous terms than the option contained in the so-called fourth charter party. They didn't even follow that. What happened was that we cancelled. . . . 30

Appeal Judge: You first asked him to sell.

Mr. Bernacchi: Not to sell, we never asked him to sell. The main thing we asked him. . . .

Appeal Judge: Permitted him to negotiate?

Mr. Bernacchi: To negotiate.

Appeal Judge: He was acting under the instructions of the Company?

Mr. Bernacchi: He was acting under the instructions of Mr. Hemady, who gave them without consulting the company. The important matter is a deliberate fraud in this case. He was acting under certain instructions from Mr. Hemady.

Because of certain suspicious matters, Hemady suddenly cancels all his powers as an agent in January, although, as a result of pressure, he does hold him out in February of having certain powers. But he makes the point in February of notifying the prospective buyers direct the minimum terms on which he is prepared to sell this vessel, and he points out that these points have been communicated to Starr, so they could be under no delusion whatsoever, my Lords, that the price at which they purported to buy the vessel was a price at which not even Mr. Hemady had agreed to sell. It was fantastic. Your Lordships will find in the judge's notes the result of the whole transaction, that even if the money had been paid to us, far from getting anything out of it, we were U.S.\$10,000 worse off than if we had never sold it. Pages 52 and 53 of the judge's notes in the Court below. We actually lost US\$10,000 on this so-called purported sale than if we had merely said "Carry on with the charter and give us the ship at the end of it". It was a fantastic transaction, my Lords. My Lords, if that is a convenient stage, I shall now be coming to the next affidavit.

(Court Adjourns for 10 minutes).

(Court Resumes 12 p.m. Appearances as before).

Mr. Bernacchi: My Lords, in the Court below, having finished the affidavits that I have just read to your Lordships, I proceeded to read at length all the exhibits that were attached to the affidavit. My Lords, we have considered this matter and the position is really this, that both here and below my learned friend Mr. McNeill says, and he pins his care to this statement, "I am not going into the question of title. I refuse to go into it", he says. Subject, therefore, to the charter party issue, which is a separate issue, of course, if he fails on that part, his case falls to the ground, and for those reasons, my Lords. I merely mention that these documents are all attached to that affidavit which all go to support our case that there never was any valid sale of this vessel and that such purported documents as were signed were a complete fraud; an allegation of fraud, my Lords, which, with the striking out of the affidavits, stands on the file undenied. Of course, my Lords, as I mentioned to your Lordships earlier, in fact, in the interval we have proceeded to establish our title in the action and obtained a declaration thereto. My Lords, document 28(2). I will deal with that in the same way, that, my Lords, is an affidavit of Mr. Briones of the 27th July, which is a supporting affidavit on the issue of fraud. Possibly, my Lords, I should read document 28(3) at greater length, that is an affidavit of Captain Silos of the 26th July. He says, my Lords: "... my appointment as Acting Captain was made by the said Frank C. Starr as a servant of the Plaintiff Company". The rest is Frank Starr's sudden disappearance, which is pertinent on the fraud point. Paragraph 4:

"4. I was at most material periods the Acting Captain (in the absence of the Captain, namely, Captain Francisco J. Aguado) of the abovenamed vessel and throughout all material period up to the date of commencement of these proceedings have been and am still in full physical possession and control of the abovenamed vessel."

There is a direct statement, my Lords, on the evidence of Captain Silos:

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“5. At no material period was I ever informed of the purported sale to the Indonesian Government of the defendant vessel and I understood that the change of flag ceremony was part and parcel of the chartering of the said vessel since I had previously heard the said Frank C. Starr and Major Pamoe Rahardjo discussing many months back that it was more convenient for the purpose of the charter to fly the Indonesian flag.

6. On the 3rd day of June, 1952, by reason of request of John W. Kuitert as representative in Hong Kong of the Ministry of Defence of the Republic of Indonesia for the handing over of possession or custody of the abovenamed vessel, I called on the 4th day of June 1952 on the Consul-General for the Republic of Indonesia in Hong Kong I protested and refused to hand over possession and I asserted my claim to continue in full possession on behalf of the Plaintiff Company only as Sole Owners.” 10

Here is something that is happening on the 3rd June, my Lords, which shows that before this writ, some considerable days before this writ, when some attempt was made by this gentleman, Mr. Kuitert, to obtain possession from Captain Silos, Captain Silos protests and refuses to hand possession over to him.

“7. On the 9th day of June 1952, I received a cable (produced and marked “JMS 2” with copy attached and marked ‘JMS-2a’) purported to have been sent to me by the said Frank C. Starr which I transmitted to the Plaintiff Company by cable and in respect of which I wrote to Jose Briones as per copy letter attached hereto and marked ‘JMS 3’.” 20

8. At all material periods (inclusive of the whole of the month of June, 1952, up to the date of these proceedings, I have been and am still the servant of the Plaintiff Company and as such have remained and am in full physical possession and control of the abovenamed vessel holding the same for and on behalf of the Plaintiff Company only and for no other party.

9. The allegation that the crew on board the said vessel was being paid by the Indonesian Government for the month of April 1952 onwards is untrue and deliberately misleading by the production of the payroll sheets”—(of course this refers to an affidavit which has been struck out)—” without the production of the adjustment account showing for example that the moneys being paid to the Filipino crew in Hong Kong was only a small part of the moneys to be drawn here in major part of the salaries to be payable to the families in the Philippines”—(and he produced certain pay sheets himself)—“Throughout all material periods most of these payments were being made by the Indonesian Government for and on behalf of the Plaintiff Company save some payments by Frank C. Starr when he should be in the same place where the ship was and should be in funds, thus as late as May 1952 advance salaries for May 1952 were still being paid on vouchers authorised and ‘Okayed’ by Starr with his signature, the signature of the said Purser and myself, as per three vouchers now produced to me and marked ‘JMS 5’ in a bundle (with copies attached marked ‘JMS-5a’). Again accounts for payment made by the said Frank C. Starr for and on behalf of the Plaintiff Company for the period March 1952 to 10th May 40

Exhibit JMS-2A
& 3.
Ref. No. 81 & 82

Exhibit JMS-5A
Ref. No. 84

1952 for all members of the crew were signed by the said J. W. Kuitert the said J. Walandaouw and myself as per three vouchers now produced to me and marked 'JMS-6' in a bundle (with copies attached marked 'JMS-6a').

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10. It may be that this was deliberately done in order to give us no inkling of the purported sale but at no time did any member of the crew or myself understand the payments to be made as payments from the Indonesian Government as new owners in lieu of payments from the Plaintiff Company and it is completely untrue that I and the crew were the servants of the Indonesian Government and took instructions from the Indonesian Consul-General on behalf of the Indonesian Government."

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Exhibit JMS-6A
Ref. No. 85

My Lords, the position is this, as he sets it out, that this vessel had for some considerable time, as your Lordships recall, a matter of years, been under charter to the Indonesian Government, and what had apparently happened was that where the ship was in the same place as Mr. Starr was and he was in funds, he paid the crew direct, otherwise the crew were paid by the Indonesian Government for and on behalf of the Plaintiff company, presumably adjusting the amounts they paid against the charter hire. That is as he sets it out there, my Lords, and he points out that Starr, the representative of the plaintiffs, okayed these payments even in Hong Kong during the month of May. The documents JMS-1a "letter from . . .

Exhibit JMS-1A
Ref. No. 80

President: What circumstances?

Mr. Bernacchi: I don't know.

Appeal Judge: Joe would have explained, I suppose, Joe would have cleared that up.

Mr. Bernacchi: Joe is Mr. Briones. I will come to that letter later, my Lords. Frankly, my Lords, nothing further is said. As your Lordships will see, things were starting to move fairly quickly by that time and Silos refers to his principals of the Philippines for instructions. He then gets this cable that he exhibits, from Starr, claiming that he had full authority to sell the ship, and he therefore writes to Briones, JMS-3, enclosing a copy of the cable "I am sending this cable to you, so that you may take this matter to the owner, and request them to send me an official letter regarding the truth about the sale of the s.s. Tasikmalaja to the Indonesian Army, as I can not take the cable of Mr. Starr as Official". So here, my Lords, it is before the writ in this action, here is the Captain saying "I cannot take this cable of Mr. Starr as official." There is no question, my Lords, therefore, of him holding for the Indonesian Government, and your Lordships will recall also that at all times he was using the Panamanian log book. He then exhibits these various pay rolls, particularly for the purpose of showing the references 'O.K.' signed 'Starr', etc., and many of the others, my Lords, take for example JMS-6a, and you will see that he is paying the whole lot of the crew, no question of just the Philippine crew, all these Indonesian seamen, pot washers, etc., are also being paid.

Exhibit JMS-3
Ref. No. 82

Exhibit JMS-6A
Ref. No. 85

The next affidavit, my Lords, I mentioned I think JMS-6a where it is headed as being payment by Mr. Frank C. Starr, and that covers pay at that date, up to May 10th, 1952. The next document again I will only mention and

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pass on, my Lords, 28(4), that also affects the fraud question, there is evidence of Major Pamoe in the Philippines, as late as the month of May, purporting to discuss the possibility of the sale of the vessel, and asking Hemady to reduce the price to U.S.\$450,000 at a time when it is suggested that he had bought the vessel some three months before. This document 29(1), my Lords. Silos again of the 28th July. Here again, my Lords, dealing with the possessory point. 29(1). He says "I say that throughout all material periods up to the 30th of June 1952, the Indonesian crew on board the Defendant vessel had been docile and obedient to my every order without insubordination or mutiny" and he then deals with a matter which is rather out of context, he tells about the incident concerning the Indonesian flag. He mentioned, my Lord, how he took the flag down and I don't think it is frightfully relevant on this matter, and he stressed on the 29th June "no member of the Indonesian crew raised the question of the flag at all, and they continued to obey all my orders docilely", and then he says it was on the 30th June that he receives this letter from the Indonesian Consul General, and then his cabin was raided by the Indonesian crew who snatched the flag and raised it, and "I crave leave to refer to my log book, at present in the custody of the Head Bailiff, in support of the above". With the exception of the amazing, with respect I say amazing, evidence of this apprentice, Mandagi, this statement of Silos has not been contradicted, and, indeed my Lords, Mandagi does not contradict this statement, in paragraph 2 that up to the 30th June the Indonesian crew were docile and obedient to his orders. The letters attached I don't think add anything, there is again a refusal, in JMS-9 by Captain Silos to accept an order from the Indonesian Consul General. 10 20

Exhibit JMS-9
Ref. No. 88

Then we come to document 36(1), my Lords. There again, most of this document, of this affidavit of Khalil Khodr of 16th August, he is dealing with these charter parties which of course together with the exhibits that were attached which we say were fraudulently prepared for the case and which we must say have all been removed from the files so that now much of those do not now arise. There are one or two remarks about the position of the man Aguado as such and he attaches certain letters, all of them relating really to this fraud. The first exhibit KK-EE1, my Lords, is the only evidence now on the record as to the first charter party. That is referred to my Lords in paragraph 2 of the affidavit: 30

Exhibit KK-EE1
Ref. No. 89

"2. On the late K. H. Hemady deceased's request for the last Charter Party, Frank C. Starr instead of sending the same, sent a blank printed form of a Baltime Charter, with the words typed thereon :—

"THE SSTASIKMALAJA IS CHARTERED IN ACCORDANCE WITH THIS TYPE OF CHARTER CONTRACT."

and had signed his name and his form name in his own handwriting (which I recognise) on this form." 40

and that is produced KK-EE and KK-EE1 being the copy and, on that, there is not the slightest suggestion of an option on the vessel. The other documents deal with this issue of the fraud and they had attached to them letters for instance as late as the 31st March from Captain Aguado to his principals, the plaintiffs, the final paragraph "Trusting the above meets with your approval and awaiting your further news and orders, I remain . . ." That is KK-HH1, and a letter

Exhibit KK-HH1
Ref. No. 92

of commendation in May again to his principals, the plaintiffs, concerning the Chief Engineer who has had to return to the Philippine Island on account of ill health and there you have KK-HH1 with Capt. Aguado writing a letter of commendation on his behalf. Your Lordships will notice that in the second paragraph of that letter he is pointing out to his principals that there is a considerable amount of pay owing to Alcobendas. That is the 21st September to date, being the 7th May 1952, which again supports our case that we were paying the wages of the crew. KK-KK1, my Lords, the Chief Engineer reporting on the state of the engines again to his principals, the plaintiffs, and again dated
10 the 8th May, 1952.

President: What about the last paragraph "Meanwhile some contractors were hired to work on the boilers and the main feed pump but since the Army failed to pay the contractors, work thereon has been stopped and meanwhile the crew members are doing what they can. The work was stopped by the contractors on May 5th, and we have been waiting for funds from the Indonesian Government to pay the contractors."

Mr. Bernacchi: Because under the terms of the charter party the Indonesian Government were responsible for the repairs to the vessel. They had to keep the vessel in a fit state of repair so there was nothing unusual in
20 the Indonesian Government arranging with contractors to repair the boilers or repairing anything else. My Lords, I have made a note to have the actual passage found on this question but that is the position and it can be given to your Lordships.

KK-MM1 points out how Capt. Aguado returns to Manila for his daughter's wedding, for a short visit it says, in fact of course he never returned and from that date onwards Silos had been acting as captain of the vessel and there again, of course, KK-MM1 is a letter again from this gentleman, Frank C. Starr, addressed to Mr. and Mrs. Hemady of the 8th May, 1952, totally inconsistent of course with any suggestion of the vessel having been sold months before.

30 The next document 36(2) of Briones of 16th August, that rather deals with the fraud issue and again puts in issue the contents of the charter parties exhibited by the Indonesian Government. Then there was 36(3), Silos again, of the 16th August and this is the one that refers to the flag raising ceremony. He says:

"It is untrue that I did know at material dates of the purported sale of the 'Tasikmalaja'.

2. I was puzzled by the flag raising ceremony but was aware of a previous suggestion made by Frank C. Starr of a transfer to the Indonesian flag to facilitate the purposes of a charter of the vessel. However, by reason of
40 my puzzlement I wrote on the 17th April 1952 to the Plaintiff Corporation as per original copy with newspaper clipping now produced to me".

and then he deals with this incident about Capt. Aguado's resignation and the tendering of his own resignation and how eventually everything is settled quite happily but it shows that when it comes to the question of resignations of these people, it was to the plaintiff corporation that they cabled and it was not a case

of tendering resignations to the Indonesian Government. And then we have the exhibits attached there, this letter JMS-10a sent for the attention of Mr. Hemady. You will recall of course that this was sometime before Hemady died. After he died, we have the Board sending the gentleman Khodr to Hong Kong to find out exactly what the position is. He says:

“For your information I herewith enclose a newspaper clipping from the S.C. Morning Post of April, 16, 1952.

The ceremony took place at the above date in the presence of the Consul from Indonesia and his staff and a representatives from the Panamanian Consulate Mr. Castillo. 10

The most important is, that the parties concerned such as the owners representative and the charterers did not notify the captain in writing the reasons to justify such change of colours, neither our status quo on board has been defined to us accordingly after the change of colours.

We are hoping for Mr. Starr's return to this Colony to clarify our situation on board.”

Mr. McNeill: It was not from Capt. Silos, my Lords, he was not captain then, he was mate.

Mr. Bernacchi: I stand corrected, it is signed executive officer. And your Lordships will notice the existing release to the Press which presumably was a release by the Indonesians that nothing there mentions the question of the vessel having been purchased by the Indonesian Government. The most that it says is that she will operate for the Indonesian Government when she returns to the south. That is a very peculiar way of showing or saying that the flag had been changed because the Indonesian Government had bought her and it certainly supports the contention of Capt. Silos that they were under the impression that this flag raising was for the purpose of facilitating the charter and indeed the words “She will operate for” will appear to be consistent only with the idea that the ownership was in someone else. 20

President: Who put this in? 30

Mr. Bernacchi: Of course the exclusion of the affidavits goes two ways but all one can say is that here you have a statement “She will operate for the Indonesian Government” etc. There are two aspects to it, my Lords, it seems a reasonable deduction that that statement should have come from some Indonesian source and if it did not, one would have expected a correction to have been published to the effect that it was wrongly stated that she will operate for the Indonesian Government, the flag was changed because she had been purchased by the Indonesian Government.

Appeal Judge: I certainly refuse to draw any such inference. I do not personally see anything incorrectly reported. It is not up to me to correct. . . 40

Mr. Bernacchi: In any case, my Lords, it doesn't matter in the slightest degree in this case really, but what it does show of course, my learned leader will

deal with the question of the effect of the flag; that the mere fact of this flag changing ceremony has no effect on the case because it was clearly consistent and more consistent with the view stated by Silos that it was something to do with the question of the charter. The rest of the document deal with various questions of resignations and non-resignations.

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10 The next document 36(4) deals with the fraud again indirectly. I won't trouble your Lordships with reading it and we then come to document 38(1). I only mention that in passing it was evidence or rather a comment that although Mr. Starr had come to Hong Kong, he had filed no affidavit in the case; but it was only a comment that I mention in passing. And then we come to 39(1) which is the document I mentioned to your Lordships, an affidavit again of Capt. Silos of the 19th August and this, my Lords, explains exactly how this ship did come to Hong Kong. The legal deductions to be drawn from that I leave to my learned leader but you have here the only direct evidence of how this ship did in fact come to Hong Kong:

20 "The ship left Tanjong Priok Indonesia on the 6th of March 1952 when Frank C. Starr came on board and gave the order to Captain Aguado in my presence for the vessel to proceed to Hong Kong, and Frank C. Starr sailed with the boat to Hong Kong. Major Pamoe Rahardjo was not on board".

That is the only evidence as such being, my Lords, that Frank C. Starr was the Company's representative in Indonesia and Major Pamoe Rahardjo was not on board.

President: It is not clear as to what capacity he was in during all this.

Mr. Bernacchi: Firstly, he paid the crew. He liaised with the Indonesian Government.

30 As regards to the legal inferences I leave them for the moment except to say that the man who gave the order to the captain of this vessel to sail was this man Starr. That is all I say for the moment and when Starr sailed with the vessel, the gentleman Major Pamoe was not on board and he was never on board at these times at all. Para.3:

"3. We arrived in Hong Kong on 13th March 1952, and the next day on Frank C. Starr's orders the boat was towed by tug to the wharf of the Taikoo Docks where it was moored by mooring lines to bollards."

This relates to the possession in the Indonesian Government through the Dock Company as bailees but since that is not being argued at this stage, I need not trouble your Lordships further with it.

Then there is the letter addressed to the captain:

"Sir,

40 I have the honour to inform you that Mr. J.W. Kuitert is a surveyor in connection with all repairs which are necessary in order to put the steamer 'Tasikmalaya' in running condition.

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& 112

You are therefore kindly requested to admit Mr. J.W. Kuitert aforesaid to the ss "Tasikmalaja" whenever he considers it necessary for the execution of his duties."

Now whilst admittedly such a polite letter might be written by owners to their captain, the letter is certainly more consistent with a letter from the representative of the charterers in HongKong to the captain, being the servant of the plaintiff corporation, the owners. The rest of the documents I don't think matter at this stage. I only mention in passing that your Lordships will see that a requisition of the Dock Company JMS 21, 22, says; the plaintiffs have given the Dock Company an undertaking to be responsible for the costs of these repairs". 10
I go on to JMS 22 and 23, that is the correspondence with the Dock Company. 39(2) Briones; there again is evidence that we are paying the crew; that when Frank C. Starr was here, my Lords, he provided certain monies to this gentleman Briones for certain payments and those payments were for the repatriation of an Indonesian member of the crew to Indonesia.

Now my Lords, would your Lordships turn at this stage to the bundle dealing with A.J.6 and document 18 on that bundle. I am not certain what bundle number it is, my Lords. The affidavit of Mr. Anthony Loh, document 18 of 26th July. My Lords, it says:

"1. My attention has been called to the affidavit of Khalil Khodr filed herein 20 and in particular to the words in paragraph 2 thereof 'the abovenamed vessel (meaning thereby the 'Tasikmalaja') is and at all material times has been the property of the said Juan Ysmael & Co. Inc. as sole owners thereof. I hold the documents of title to the said vessel'.

On the said 27th June 1952 I knew nothing inconsistent with the above. I have not at any material time known anything inconsistent with the above.

2. My attention has also been called to the Affidavit signed Wilkinson and Grist, Solicitors for the Government of the Republic of Indonesia and dated the 9th July, 1952 and in particular to the words in paragraph 4 thereof 30 'the said Government is and was at all material times entitled to possession of the said steamship'.

3. Prior to the said 9th July, 1952, I did not know and had no reason to suspect that the said vessel was claimed to be the property of the said Indonesian Government.

For some time prior to the said 9th July, 1952, and for some short time prior to the said 27th June and prior to the arrest of the said vessel I had seen the Indonesian flag flying over the said vessel. For this reason and no other reason I described the vessel in my previous affidavit as an 'Indonesian ship'. 40

4. As regards the work ordered upon the said vessel and carried out by me I took my orders from the Captain of the vessel in accordance with the established maritime practice and did not concern myself with the ownership of the said vessel.

I am quite unable to express any opinion of value as to the true ownership of the said vessel.”

That makes the position very clear and answer a point, namely, his reference in another affidavit. He explains in his second affidavit that by that he meant only that it was because of the flag he saw and the question of the flag the ship is flying will be dealt with by my learned leader.

Now, my Lords, I have only to refer your Lordships to document 36(5) of the other bundle, A.J.8 bundle, being the evidence of Mr. Revilla. That shows, my Lords, quite apart from the allegations of fraud, the undisputed evidence of fraud, by express words that the ship could not be sold for less than a certain sum. All that apart, this so-called power of attorney of Starr’s was completely ultra vires in so far as it purported to give him a discretionary power to sell the ship at a price agreed by him, as opposed to which it is simply the power to execute a sale at a price agreed by the company. I will read it to your Lordships. 36(5) of the 16th August. He says:—

“1. I am an Attorney-at-law practising in the Republic of the Philippines, and have been practising as such Attorney-at-law for the last 15 years. I am a law graduate as of the year 1935 as Bachelor of Laws of the University of Sto. Thomas, Manila aforesaid.

2. I am well acquainted with the law of the Republic of the Philippines, which is based upon American law and upon the ancient common law of America derived from the English common law.

3. I know and am well acquainted with the constitution of the Plaintiff Company which is a private corporation registered and duly organised and existing under and by virtue of the laws of the Philippine Islands, with registered office and postal address at Rooms 217-221 Consolidated Investments Building, Plaza Goiti, in the city of Manila in the Philippine Islands, and I say that such private corporation is equivalent to a private company in the British law.

4. I have seen an exact copy of the Power of Attorney purported to have been given by K. H. Hemady deceased to one Frank C. Starr on the 8th day of November, 1950 (being exhibit marked ‘KDH-4’ to the affidavit of Kwee Djie Hoo filed herein on the 16th day of July, 1952 and as per exact copy thereof attached hereto and marked ‘AR-1’) and I verily say that the same is invalid according to the law of the Philippines as a Power of Attorney or document of authorisation of the Plaintiff Company.

5. The strict rule of the ancient Common Law holding in the Republic of the Philippines was that a corporation could only act under its seal and therefore was not bound by any written document not under seal.

6. (a) Though this rule was relaxed at an early date as regards contracts and such-like within the constitution and in the ordinary course of the business of the Particular corporation, yet in the donation of authority by Power of Attorney or by document of authorisation, the law of the Republic

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Exhibit KDH-4
Ref. No. 22

Exhibit AR-1
Ref. No. 106

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of the Philippines (as at present extant and as extant in the year 1950) requires that the Power of Attorney must be authorised by the Board of Directors of a Corporation and must contain therein a reference to the authorisation conferred by the said Board of Directors by way of a Board Meeting Resolution giving its date and effect and must have attached to such Power of Attorney a copy of the Minute of the Resolution certified as correct under the Common Seal of the Corporation. Failing such reference in the body of the Power of Attorney and without such certified copy of Resolution, the Power of Attorney is invalid and cannot in Philippines law bind the said Corporation.

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(b) The Philippines Law is that it is strictly not necessary for the common seal of the Corporation to be affixed to the actual Power of Attorney itself so long as it is affixed in certification to the said copy of the Minute of the Board Resolution attached to and incorporated into and forming part of the Power of Attorney by actual reference in the body of the said Power of Attorney.

(c) By the said Philippines Law, however, even if there is no reference to authorisation by a Board Resolution in the body of the Power of Attorney, the Power is valid if the common seal of the Corporation is affixed to the Power of Attorney itself and the same is signed and such affixion and signature is in accordance with the articles or Constitution or By-Laws of the Corporation, in that the affixion of the Common Seal and such proper execution carry the implication that the Board of Directors had authorised the donation of the Power.

(*Mead vs. McCullough* 21 Phil. 95; *Wait vs. Nasua Armory Assn.*, 66 N.H. 581; 14 L.R.A. 356; *Yu Chuch vs. Kong Li Po*, 46 Phil. 608; *Barretto vs. La Previsora Filipina*, 57 Phil. 649, 650).

Exhibit AR-1
Ref. No. 106

7. For these reasons the said exhibit marked 'AR-1' is clearly, on the face of the document, invalid according to the Philippines Law as a Power of Attorney of the Plaintiff Company and the fact that it purports to have been given by the President and General Manager of the Corporation in no way renders it a valid Power-of-Attorney of the Corporation in Philippines Law, inasmuch as the President of the Corporation has no implied or inherent authority, merely by virtue of his office or as incident thereto, to grant a valid Power of Attorney of the Corporation or to sell and convey or to contract to sell the real or personal property of the Corporation, even though he is both President and General Manager, and over a period of years is left with the entire management and control of the affairs of the Corporation. (*Josephine Hospital Corp. vs. Modoc Realty Co.*, 307 No. 336, 270 SW 638; 3 *Fletcher, Cyc. of Corp.*, 508/9; and *Wait vs. Nasua Armory Assn. supra*).

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8. The Philippine Corporation Law expressly provides that the corporate powers of all corporations formed thereunder shall be exercised and all their business shall be conducted and all their property shall be controlled and held by the board of directors (Sec. 28, Act No. 1459). Where the charter or the law vests the management of the affairs of a corporation in a board

of directors, the corporation cannot by a by-law substitute an executive committee to act for it (*Tempel v. Dodge*, 89 Tex. 69, 32 S.W. 514). The directors, however, may delegate to particular officers or agents the power to perform purely ministerial acts (*Fleckner vs. U.S. Bank*, 8 Wheat. 338). But certainly, they cannot delegate to others their own discretionary powers (*Bliss vs. Kawesh Canal, etc. Co.*, 65 Cal. 502, 4 Pac. 507). The board of directors, however, may lawfully appoint and authorise a committee of their number to act for the corporation in a particular matter (*Union Pacific Railroad Co. vs. Chicago etc. R. Co.* 163 U.S. 564, 16 5. Ct. 1173, 41 U.S. (L. Ed.) 265); and the board may clothe a committee in the intervals between the sittings of the board, with all their own authority to conduct the ordinary business of the corporation (*Olcott v. Tioga R. Co.*, 27 N.Y. 546, 84 Am. Dec. 298). The committee thus appointed cannot, however, delegate their authority even to one of their number (Id.) and shall only have such power to bind the corporation as is conferred upon it by the board."

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In other words, whilst you can appoint an agent say to execute a document on behalf of the company, you cannot appoint an agent to carry out, what is a matter discretionary in the board itself and, in this case, to negotiate and agree a selling price. So that, my Lords, for various reasons which he has set out in his affidavit, under Filipino law this gentleman Mr. Starr had no authority whatsoever to agree to sell this vessel.

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President: But Mr. Griffiths challenges that evidence and his affidavit is on the file.

Mr Bernacchi: He challenged it in a manner which this Court can hardly look into at all, in the most atrociously hearsay form in the final proceedings and by nothing more than a cable produced from certain agents without any reason set out at all and on the ground which is technically correct—it doesn't conflict. Read it, my Lords, with respect, he says that he is informed by his agents "and verily believe that a Power of attorney does not require that the private corporate seal should be affixed thereto and there is annexed hereto and marked 'P.J.G.-1' a copy of a cable received from my said Agents containing this information. "Revilla says that too but he says if you have not got the seal on it, then you have got other things, for instance, the minutes of the board authorising the appointment. In Revilla's evidence you have the clearest evidence of the possession.

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Exhibit PJG-1
Ref. No. 18

President: The seal must be on the minute.

Mr Bernacchi: But the only way you can have a minute is with the seal of the company. He says that very clearly whereas, with respect, Mr. Griffiths, without informing his agents at all of the position, merely asks them a question and the answer he gets is "No." There must be no question but that Mr Revilla's evidence must stand as against a purely hearsay evidence by cable and giving nothing relating to the real facts of this case; given in answer to a five or six word question. I say, my Lords, that to all intents and purposes, Mr Revilla's evidence stands unanswered. So that you have Mr. Revilla's evidence this power of attorney is utterly invalid at least in so far as it entitles Frank C. Starr to agree a selling price for this vessel and, indeed, not even the President himself, Mr Hemady,

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could have sold this vessel without reference to the board. But, my Lords, that is only one aspect. On the further aspect you have the evidence of the clearest direct intimation to the Indonesian Government on the minimum terms on which Mr. Hemady says the company will sell the vessel. So that makes it even stronger; it certainly gives even less substance to the claim to have purchased the vessel. Then, my Lords, of course you have the clearest and completely unanswered evidence that there was a deliberate fraud perpetrated on the company by Mr. Starr and Major Pamoe.

President: Perpetrated from the Government of Indonesia as well?

Mr. Bernacchi: Well, all one can say is that certainly the Government of 10 Indonesia could not take advantage of a fraud deliberately perpetrated by their own representative. We are not seeking to take advantage. We say there is no sale. But what is in fact being said in so far as it is said that the Indonesian Government are claiming as owners of this vessel, they are claiming to adopt the fraudulent transactions. I say, my Lords, with respect that whatever your Lordships' eventual decision in this case, no case on these impleading issues has come before the courts on this type of facts before.

President: I think we will admit that Mr. Bernacchi.

Mr. Bernacchi: Yes, my Lords and, my Lords, the evidence now stands undisputed that throughout the time that this vessel was in Hong Kong, no attempt 20 was made to put forward to the plaintiff company this claim to have purchased the vessel. Indeed on the contrary, my Lords, every act of the principal actors concerned was designed to conceal any such claim.

Appeal Judge: Would it be wrong in the Indonesian Government to assume that Starr was an honest person?

Mr. Bernacchi: The position is this that as regards their direct representative Major Pamoe, we have clearly established that he was a party to the fraud perpetrated—that is, their direct representative, my Lords. As regards their representative in Hong Kong, he filed certain affidavits on which we sought to question him and to question the reasons for what he had done and for his actions 30 and he, in contempt of the orders of the court below, declined to come forward and answer those questions. And, my Lords, the Indonesian Government actually permitted us, on the evidence before your Lordships, to insure this vessel ourselves at a time long after it is now suggested that they had purported to buy it. My Lords, on those facts it is very difficult not to say . . .

Court Interposes: What happened in that case?

Mr. Bernacchi: They wrote to Major Pamoe and asked him if he would pay the Indonesians on behalf of the plaintiffs and deduct it from monies afterwards. Getting no answer to that we eventually insured the ship ourselves and considerably after the time it is suggested the Indonesian Government had 40 purported to buy it we insured it for ourselves as owners. We write to Major Pamoe and say this money is owing "Please remit it to London on our behalf and deduct it afterwards from monies payable to us." But they didn't do so, my Lords,

and since they never insured this vessel we go ahead and insured it, at a date long after they were supposed to have bought it and insured the vessel ourselves as owners and the insurable interest would be placed on a photostatic copy of the bill of sale. And they have no interest of course. That is what is our case. In fact it was done after the sale is supposed to have been put through. If, as we think, there is discussion going on about the possibility of selling, we cannot leave the ship uninsured. Yes, there was a possibility of there being a sale and, as your Lordships see, we cannot leave the vessel uninsured. You will see, my Lords, if your Lordships look at KK-Z1, attached to document 28(1); of the 16th April, 1952.

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“Dear Major Pamoe:

We have just received a letter from the insurance company in Manila which insured the S/S “Tasikmalaja” calling our attention to the fact that their London Office (Smith, Bell & Co. (London) Ltd.), has not as yet received the premium due for the renewal policy of the insurance of said vessel in the amount of U.S. \$33,934.28. We had repeatedly requested Mr. Starr to remit this amount from Djakarta to London but evidently he has overlooked this matter. Therefore, we have today cabled you as follows:

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‘IF INSURANCE PREMIUM TASIKMALAJA NOT YET REMITTED PER OUR SEVERAL REQUESTS PLEASE EFFECT REMITTANCE IMMEDIATELY SO VESSEL WILL BE REINSURED.’

As we have no facilities for sending dollars from this end, we would therefore request you to kindly remit to Messrs. Smith, Bell & Co. (London) Ltd., 69/70 Mark Lane, London, E.C. 3, by telegraphic transfer, the said amount of \$33,934.28, and charge same to our account. As soon as you have remitted this amount, kindly cable us accordingly.

Hoping that you will assist us in the above matter, and thanking you for this favour, we remain,

Very truly yours,

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JUAN YSMAEL & CO., INC.
K. H. HEMADY
President.”

President: That may be because Starr must have reported to Hemady.

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Mr Bernacchi: Why doesn't Major Pamoe write back? Of course it is very clear on the evidence that Pamoe was a party to the fraud. You have got here a complete conspiracy on the part of Starr from the very beginning to end until we issued the writ and arrested the vessel, and then my Lords, you have for the first time this claim put forward to the owners of the vessel. But my Lords, as I said of course, the position is this that my learned friend Mr McNeill is declining to discuss the issue of title. He says “The case stands or falls on the fact that the Court cannot go into any question of title.” If the Court can go into the title — or should go into the title — quite apart from the judgment existing in our favour as to title, my learned friend's case falls because he says so himself.

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He declines to put forward to your Lordships that he has a title to this vessel. He says that his case is based on the point that there being contesting claims, the court cannot enquire. All we have done is to show most fully that very clearly we contest any suggested title.

President: You may admit there is a contesting claim but you did not use the word 'contest.'

Mr Bernacchi: I don't admit there is any contest. I say here there is no evidence which establishes a contest. There may be a contest, of course. It is like that famous citation used by one of the learned judges in the House of Lords that when one uses a word, one means precisely what it means. Every time 10 a foreign government says "We are impleaded," there is a contest. The point is whether they are able to establish that they are impleaded — and there one has to consider what rules there are for the cases established — and we say that in showing that they have established a case, they must either establish a possession or a possessory right.

My Lords, I have finished dealing with the facts to your Lordships and I say only this, that on these facts we say quite clearly that this vessel is our vessel. Furthermore, we showed that we, through our Captain Silos and others, have possession of the vessel and we had it before, through Aguado. If it were necessary, Aguado, scoundrel that he was, still it is clear wrote to us saying that 20 he held on our behalf. If he ran with the hare and hunted with the hounds, that does not affect the position that on the evidence he held for us. Furthermore it shows that whatever that last charter party was, the latest date of expiry was the 30th June, before the notice of motion to set aside the writ, and it shows, my Lords, that in any event before this writ or, I put it this way, that the Indonesian Government's case is such that it is inconsistent with the existence of the charter party at the date of the writ of this action.

(Court Adjourns and Resumes at 2.30 p.m. 10th December, 1952).

Mr McNeill: I have now the amendments to the form in which we ask that the amended motion be filed. 30

President: Mr D'Almada, have you any objection to this?

Mr D'Almada: No, my Lord, but I rather suspect that my friend is pulling a fast one over Mr Loseby, who is not here.

President: I think Mr Loseby intimated that he had no objection, in fact I think it was his idea.

Mr D'Almada: My Lords, I was dealing yesterday, when I closed my argument, with *the Cristina*, and I must ask your Lordships to look at the case again, if you will kindly do so. I would first refer your Lordships to a few more passages in the judgments in this case, merely to show that there was no question here of a mere claim being sufficient, 1938 A.C., if your Lordships will 40 kindly look at page 508, the judgment of Lord Wright, ten lines from the top of the page; at page 508, the judgment of Lord Wright. He says, after referring to a quotation by Lord Scrutton:

“In my judgment on the facts of the present case the requisitioning of the Cristina under the decree of June 28, 1937, gave the Spanish Government a right or interest in the Cristina whether called property or not, which was immune from interference by the Courts of this country.”

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And at page 510 he goes a bit further even, my Lords, he says, beginning at the fifth line:

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10 “It might be enough to say in answer to these arguments that the circumstances under which the respondent took possession of the Cristina, particularly in view of the recitals to the decree, sufficiently bring the Cristina within the description of public property to the State destined to public use.”

The question of a mere claim or assertion, my Lords, is dealt with at page 513, and you will see, my Lords, Lord Wright stressed there the fact that it was sufficiently shown by the evidence that the plaintiff government had actually requisitioned, taken possession and control, the paragraph beginning a third of the way down the page, so that the matter was unquestionably of importance. He says:—

20 “It is in my opinion sufficiently shown by the evidence before the Court that the Spanish Government had actually requisitioned, and taken possession, and control of, the Cristina. That is all that is needed to justify the claim to immunity on the ground of ‘property.’ The question how far a mere claim or assertion by that Government would be conclusive on the Court, does not arise here.”

and he goes on, my Lord, and says:

“For the reasons which I have stated, the decision of Bucknill J. and of the Court of Appeal was in my judgment on the materials of fact upon which the Court must act a decision which flowed inevitably from the application of the principles of international law as recognized by the Courts of this country.”

30 Then, my Lords, we come to the judgment of Lord Maugham, and he says, my Lord, that the foreign sovereign in this case was asserting a possessory interest, that is it claimed a title because of the requisition, because, as your Lordships see at page 514, after setting out the contents or part of the contents of the motion to set aside the writ, he says: “the steamship Cristina was at the time the writ in this action — (this is the first reason) — was issued the property of the Government of Spain a recognised foreign independent State and that the said State declines to sanction the institution of these proceedings in this Court.” His second reason was “That at the time of the issue of the writ in this action the steamship Cristina was in the possession of the Spanish
40 Government by its duly authorised agent” and Lord Maugham says further, the third ground, “That at the time of the issue of the writ in this action the Spanish Republican Government had a right to the possession of the steamship Cristina. That this action impleads a foreign sovereign State namely the Government of Spain”. He says then, “The first reason has been abandoned. The respondents

relied on the circumstance that by a decree of June 28, 1937, they had purported to requisition all vessels registered in the port of Bilbao (including the *Cristina*) and by reason thereof they claimed that they were entitled to possession of the *Cristina* and that they were therefore impleaded” and, my Lords, there was evidence, of course, before the Court, full evidence indeed which could not have been challenged, that there was a requisition of this ship made by the Spanish Republican Government.

My Lords, a very interesting and important passage begins at the end of page 515, Lord Maugham there is dealing with the position where the action is in personam against a foreign government, and he shows the distinction between 10 that kind of action and the action in rem. First, in the case of the action in personam, he says:

“It is not in doubt that an action in personam against a foreign Government will not be entertained in our Courts unless that Government submits to the jurisdiction. The rule was founded on the independence and dignity of the foreign Government or sovereign, or, to use the language of the future Lord Esher, delivering judgment in the great case of *The Parlement Belge*”.

and then he sets out that passage, my Lords. He goes on to say:

“This immunity, be it noted, has been admitted in all civilized countries on 20 similar principles and with nearly the same limits.”

and the point is that where you have an action in personam, that is to say, in this case if we had sued the Indonesian Government, there is no doubt that this Court could not try this action unless the Indonesian Government submitted to the jurisdiction.

Appeal Judge: But do you not sue the Indonesian Government, don't you implead him directly when you know he is the owner or complainant of the ship and you issue a writ in rem?

Mr. D'Almada: No, when you deal with something like an action in rem, before a foreign sovereign can be said to be impleaded there must be evidence 30 before the Court, much more than the mere assertion or claim made by the foreign sovereign. In the illustration I gave you yesterday of the King of Ruritania and the Northern Star, do you suggest that in this illustration, a dock company arresting this ship, and knowing, if you like, that the King of Ruritania would make claim to it, does your Lordship suggest that in a case like that, just because the King of Ruritania comes forward, without a shadow of a right, without any colour of claim whatsoever, and therefore we must set aside the writ. My Lords, that is the very thing Lord Maugham goes on to deal with when he comes to an action in personam and an action in rem. Lord Maugham says this:

“The immunity of a foreign Government and its ambassador as regards 40 property does not stand on the same footing. The statute of Anne protects the goods and chattels of ‘the ambassador or other public minister . . . received as such . . . or the domestic or domestic servant of any such

ambassador or other public minister'. It is clear, I think, that the property in the goods and chattels would have to be established if necessary in our Courts before the immunity could be claimed."

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My Lords, this passage of Lord Maugham is of extreme importance. He is dealing here with the question of a ship; he is dealing with the difference arising in an action in personam where you directly implead a foreign sovereign, and a case where the foreign sovereign comes along and says "I claim I am impleaded, because I claim some interest in the res which is the subject of the action in rem". He goes on:

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10 "It is clear, I think, that the property in the goods and chattels would have to be established if necessary in our Courts before the immunity could be claimed. The ambassador could not be sued in trover or detinue; but if the property were not in his possession and he had to bring an action to recover it I am of opinion that he would have to prove in the usual way that the goods were his property. Speaking for myself I think the position of a foreign Government is the same. There is, I think, neither principle nor any authority binding this House to support the view that the mere claim by a Government or an ambassador or by one of his servants would be sufficient to bar the jurisdiction of the Court, except in such cases as

20 ships of war or other notoriously public vessels or other public property belonging to the State".

There you have it, my Lords, that phrase "other public property belonging to the state" governs that which comes before, as ships of war and other notoriously public vessels. If it is a ship of war it is so obviously a notoriously public property of the state, it is an end of the matter. But if it is not a ship of war or other notoriously public vessel, then you have to establish your claim, and a mere claim is not enough. Of course, in this case my friend says this ship was used for the purposes of carrying troops of the Indonesian Government. I ask your Lordships to note the fact that right up until April of this year that

30 ship was a Panamanian ship, flying the Panamanian flag, and until February of this year there was no question but that it belonged to Ysmael & Co. It is not the kind of ship, my Lords, which Lord Maugham had in mind when he talks about ships of war or other notoriously public vessels or other public property belonging to the state. It seems to me, my Lords with great respect, that this passage in Lord Maugham's judgment puts the position quite clearly. If the property concerned is not public property belonging to the state, if it is not for instance a man-o-war, if it is not otherwise a notoriously public vessel, then, before any question of impleading can arise, the sovereign would have to establish his claim.

40 Appeal Judge: Establish his title? What must he establish?

Mr. D'Almada: His claim. He could not come along to your Lordships and say "This is my ship, hands off". There must be evidence establishing that, the fact that he has a right to that. He must establish his title. Of course, I am dealing with this position where this piece of property, a ship or otherwise, is not in the possession of the sovereign. If it is in his possession, however rightfully

or wrongfully, there is an end of the matter, because, once again, you are impleading a foreign sovereign once you try to proceed against the property. My Lords, to follow the reasoning of Lord Maugham, I think it is made equally clear, if your Lordships will please look at page 520 and the paragraph beginning on the fourth line of that page:

“It is objected that an action in rem is one in which the foreign government, if in possession of the ship or if it has an interest in the ship, is impleaded. That I think in a sense is true; but I do not think many competent jurists are of opinion that in such a case anything more is sought, or at any rate can be obtained, than a remedy against the res.”

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Your Lordships see that if the Government is in possession or if it has an interest, what does that mean? It does not mean what the government says, it must be evidence, my Lords, and on the question of public user, my Lords, he takes the fact that the requisition evidences in reality the public user, because at the end of page 520 there is a paragraph beginning:

“I hesitate to take the view that a requisitioning decree relating to all vessels registered in an important port, whether large or small, whether built for pleasure or profit, is itself sufficient evidence of an intention to devote the vessels to public uses. On the other hand, there are special circumstances in the present case. The Government of Spain is engaged 20 in civil war and is entitled to take exceptional and drastic measures to defend itself. The ships mentioned in the requisitioning decree are Spanish ships. There may be public uses for any of such ships, e.g., in carrying stores, munitions, men, orders and the like for the purposes of defence or attack. On the whole I think the circumstances of the case justify the inference that the *Cristina* is intended to be used for some of such purposes, and is therefore brought within the description *publicis usibus destinata*. She is, as already stated, in the possession of the Spanish Government. On these grounds I think she is entitled to the immunity claimed.”

and he is dealing with the case from that point of view because he was 30 one of the judges who very much doubted that the sovereign immunity would extend to vessels other than vessels for public use, wherefore it is abundantly clear that public user is only an ingredient showing the right or interest or property of the foreign sovereign, but in a case like the present it helps not one bit, because we know, my Lords, that at the time that ship was used for that purpose, it is the ship of a Filipino company and flying the Panamanian flag, and, my Lords, the mere fact that it is destined for public use is certainly by no means sufficient, as you will see from the earlier portions of the judgment in this case, for example, my Lords, if you will look at page 493, on the very last sentence beginning on that page in Lord Thankerton's judgment he says this: 40

“Further, the order sought in the present case would necessarily displace the *de facto* possession of the Spanish Government, and I agree with my noble and learned friend that the doctrine of immunity of the property of a foreign sovereign State dedicated to public uses includes the case of actual possession for public uses.”

You see, my Lords, he is quite emphatic on the fact that there must be property of the foreign state and not mere dedication for public use before immunity can begin to arise. Similarly, my Lords, on the page opposite, Lord Thankerton goes on:

“In the Court of Appeal, in delivering the judgment of the Court, Brett L.J. held that the exemption was not confined to ships of war, but applied to ships and other property of the sovereign destined to public uses.”

It is always the element of public use being subsidiary. That passage of Lord Justice Brett is set out in the judgment of Lord Wright, page 506, and, going over the page 507. It is public property in the state and not merely public user that matters. In every case in which the question of a public vessel has come up, it is a public vessel of the state, that is, belonging to the state, and, as I said, my Lords, yesterday, in all the cases cited by my learned friend, it was either proved or admitted that the vessel was either property of the foreign sovereign or one in which he had some proprietary or lesser interest. I said there was none in this case, and, my Lords, the *Dollfus Mieg* case helps him no further, because, if you will look at the judgment of Mr. Justice Jenkins in the Court of First Instance, that is reported in 1949 Chancery, you will see, my Lords, beginning at page 382, the last paragraph, after having cited from Lord Justice Brett, and a passage from *the Cristina*, he says:

“It is, however, to be noted that, where the principle of immunity is invoked in cases in which the foreign sovereign state is not itself sued, but which concern property in which the foreign sovereign state claims some proprietary or possessory interest, then, in the absence of a proved or admitted right of property in the foreign sovereign state, possession or control by it of the thing in suit is a condition essential to the application of the principle.”

In other words, you must have one of two essential conditions, proved or admitted right of property, or, if you haven't got that, proved or admitted possession or control, because he goes on and says:

“A mere claim by a foreign sovereign state to property in the possession of a third party will not oust the jurisdiction of the municipal court over an action to recover the property brought by some other claimant against the third party.”

And, my Lords, of course it is implicit in this that it deals with a case of an action in rem, because it is a case in which the foreign sovereign is not itself sued, it is an action in property. I don't say it is only confined to that, but it includes it, and, in support of that proposition, Mr Justice Jenkins says:

“This clearly appears from the speech of Lord Maugham in *the Cristina* case, and from the judgment of the Court of Appeal delivered by the present Master of the Rolls in *Haile Selassie v. Cable & Wireless Ltd.*”

I gave you Lord Maugham just now, I gave you Sir Wilfred Green yesterday, look at Mr. Justice Jenkins' views in *the Arantzazu Mendi*, if you will turn to page 390 of the report, ten lines from the top of the page, he says:

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“Moreover, I think the contention that ‘possession’ for the purpose of the principle of immunity means actual physical possession is really impossible to reconcile with the decision of the House of Lords in *The Arantzazu Mendi*, where it was held that the vessel was in the possession of the Spanish Nationalist Government by virtue of a decree of General Franco requisitioning it for public services, coupled with declarations by the managing director of the owners and by the master of the vessel that they consented to the order of requisition and held the vessel at the disposal of the Nationalist Government. That seems to me clearly to involve the view that legal or constructive, as opposed to actual or physical, possession 10 is possession for the purposes of the principle of immunity.”

Now, my Lords, in that case, *the Arantzazu Mendi*, the Spanish Government had both the lesser interest resulting from requisition and the possession through the master and owners attorning to them. There was, therefore, abundant evidence to satisfy the Court that in those circumstances to allow the action to proceed in rem would have impleaded the foreign sovereign. I do not think, my Lords, that the judgments of the Courts of Appeal in the *Dollfus Mieg* case carry the matter very much further, but I would remind your Lordships again of that passage of the Master of the Rolls in this matter that “in an application to stay proceedings in limine; and on such an application it is not common or proper to 20 assume matters of fact, which may be in any doubt, favourably to the applicant.”

In this case, my Lords, in the *Dollfus Mieg* case, there was no question, of course, of any proprietary right in the foreign states concerned, but they had delivered the gold to the Bank of England and the Bank of England had said “We hold this gold for these governments”. There was the position of the governments and there, of course, was the evidence of possession requisite to found an impleading. What would have been the position, my Lords, if the Bank of England in those circumstances, instead of saying “It is true, we hold this gold for the U.K. France and the U.S.” had said “No, we hold this gold for the true 30 owners, Dollfus Mieg”.

Appeal Judge: But the Dock Company didn’t say that.

Mr. D’Almada: The Dock Company does not come into the picture. My friend is not arguing on the dock company, because the affidavits have been struck out, his case at the moment is this: that possession is held on behalf of the foreign sovereign by Mr. Mandagi. I am only asking your Lordships now to follow the reasoning in regard to this proposition that you must either have established your proprietary interest, or the other essential condition, possession, and I say, my Lords, that is best illustrated in this way. Let us assume that the Bank of England, instead of saying “We hold the gold on behalf of these three governments” had said “No, we hold this gold on behalf of Dollfus Mieg; 40 admittedly the owner of the gold.” In those circumstances, my Lords, if those foreign governments wished to recover the gold from the Bank of England, they would have to sue, and they would have had no proprietary right or any other right whatsoever to establish their claim, or, again, if Dollfus Mieg were suing the Bank of England instead of saying “We hold this gold on behalf of these three governments” they said “We hold it on behalf of somebody else”, in those

circumstances, where would there be possession of this gold in these foreign governments so as to enable them to raise the impleading. I am not bringing this illustration in to deal with any question of possession with the Dock company, it merely illustrates with abundant clarity, I submit, that, before a foreign sovereign can succeed in his plea that he is being impleaded, he must establish as an essential condition, one of those things mentioned by Mr. Justice Jenkins. My Lords, let us see whether the House of Lords in the *Dollfus Mieg* case makes any real inroads into the proposition so abundantly and clearly dealt with and set out by Sir Wilfred Green in *Haile Selassie*, by Lord Goddard in the *Arantzazu* 10 *Mendi*, and by Mr. Justice Jenkins in the Court of First Instance in this case. (1952) 1 A.E.R. beginning at 572. In passing your Lordships will remember that Viscount Jowitt in this case deals with that passage of Lord Atkin from *the Cristina* which is later referred to by another judge as being considered to have the force of statute, and he explains the meaning given to the word 'control' as used by Lord Atkin in *the Cristina*. I mention it in passing, my Lords, because it shows that interpretation put upon it by Lord Jowitt is this, that Lord Atkin used the word 'control' that a requisition by a foreign state concerned gave it the lesser interest than the proprietary one, which entitled it, if it proved its case, to plead immunity and therefore implead. But the point with which I am much more 20 concerned at the moment is this question of whether a mere claim is sufficient or whether, as is stated in these various cases I have referred to, it is necessary to go further. There is a reference in the judgment of Lord Justice Radcliffe which my learned friend referred to yesterday which might lend colour to that suggestion. It is the passage, my Lords beginning roughly the middle of paragraph A:

30 "If the sovereign is actually named as a party to a suit, the proceedings identify themselves. Even then, I think that it is going too far to say that such a suit must necessarily be arrested. It may depend on the purpose for which the sovereign is made a party. But certainly a special difficulty begins when he is not actually named, but the suit is one which may result in a judgment or order that will affect his interest in some piece of property. Even to say that much begs one important question, for it assumes that he has a valid interest in that property, whereas a stay of proceedings on the ground of immunity has normally to be granted or refused at a stage in the action when interests are claimed but not established, and, indeed, to require him to establish his interest before the Court (which may involve the court's denial of his claim) is to do the very thing which the general principle requires that our courts should not do."

40 My Lords, I ask your Lordships to note particularly the word "normally" which Lord Radcliffe carefully used to qualify his statement, and it is unquestionably linked, in my submission, with what he says later in the next paragraph:

"It has been applied even when the sovereign had not claimed, let alone proved, that he was the owner of the property which was the subject of the action. It has been regarded as sufficient to stay the proceedings (i) that he had de facto possession."

My Lords, you must always have one element or the other, I submit, and, if Lord Radcliffe means literally what he says, then, with great respect, it is counter to everything which was said in the Court of Appeal in the *Haile Selassie* and the *Dollfus Mieg* itself and, my Lords, incidentally this for the purposes of the *Dollfus Mieg* is . . .

President: I find one difficulty, Mr. D'Almada. If the claim of the Indonesian Government here rests on a purported sale and a document of sale, a power of attorney, surely that claim stands, that sale will stand, until some competent Court declares it not to be a sale. They have a document of sale and they have a negotiation with an agent, and they say they bought it. Surely that 10 sale is still a sale until some competent Court says 'No'?

Mr D'Almada: There is no statement in this Court of a sale.

President: But the statement of your witness, Mr Khodr. 'A purported sale.'

Mr D'Almada: That is the position, my Lord. There is no evidence of a sale before this Court, because the whole of the evidence of the Indonesian Government is out, and it is upon that footing that I am arguing the case.

President: The point I have in mind is this: there is admitted by the plaintiffs, the respondents here, that there was a purported sale. Something has to be done with that to show there wasn't a sale, it has got to be set aside, it has 20 got to be attacked.

Mr D'Almada: The whole point at the moment is, whether there was or was not a sale, the position is this. We have arrested the ship of which we claim legal possession. The other side say that 'because of a purported sale we are impleaded.' It is for the foreign government to establish that he is impleaded. We say that sale is bad, and we show abundantly that it is bad.

President: Your affidavits show that this man Starr did actually sell the ship, and that he had no authority to sell it.

Mr D'Almada: "And that he had no authority to sell." In the case of the King of Ruritania, let us assume this King is an ingenuous kind of person, a 30 man to whom the Forth bridge might have been sold, and this King falls into the clutches of this man, who says "Here is the document of title to the Northern Star, give me \$50,000 and the ship is yours." Then an action in rem is commenced against the ship by someone whose bill has not been paid, and it is clear to the shipwright that the King pretends to have some interest in this ship, and he sets the fact out in his affidavit when the question of impleading arises. It is plain as a pikestaff that the King has no shadow of a title, because he has been imposed on. There would be no more than a mere claim by the King of Ruritania, there is no more than a mere claim by the Indonesian Government. There is no evidence in this case beyond the mere claim of the Indonesian Government so far as the 40 sale is concerned. When it comes to the Charter Party I will deal with the possession from another angle, later. That is why I say, my Lords, that this statement of the law by Lord Radcliffe, looked at carefully, does not in fact make

any change in the law as laid down in *the Haile Selassie, Arantzazu Mendi* and *the Cristina*, because, if you will look, my Lords, at, for example, the judgment of Lord Tucker at page 590, you will see in paragraph F he says this:

“As soon, however, as it is made to appear to the court that by such action it is being asked to exercise its territorial jurisdiction over property in the possession or under the control of a foreign sovereign, the court will decline jurisdiction and stay the proceedings.”

Obviously it means that as soon as evidence is laid to show the Court that by exercise of their jurisdiction it is impleaded.

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10 Appeal Judge: Would you say that ‘made to appear,’ as soon as evidence is laid, not proved?

Mr D’Almada: Evidence laid and not proved is no evidence at all. If I used phrases like that, my Lord, it is not with a view to minimising the requirements which I say must be complied with or fulfilled by a foreign sovereign before he is impleaded. When my learned junior this morning mentioned the word ‘contest’ the learned judge said “Contest, you admit there is a contest?”, the point is this that before any question of competing rights can be said to arise, you must have a contest, of course there always is. You must have evidence of a right of contest, right of competing right, before there can be any question
20 of impleading. And look, my Lords, if you please, at the judgment of Lord Tucker at page 591, he too deals with Lord Atkin’s proposition in *the Cristina*, and he says, in paragraph B on that page:

“The principle being based on the avoidance of the exercise of a jurisdiction which would offend the dignity or impinge on the independence of a foreign sovereign I cannot think it would be right to place on the word ‘possession’ as used by Lord Atkin (1938) 1 A.E.R. 721) any specially narrow or restricted meaning or to confine it to actual physical possession by the sovereign himself or his servants. The particular subject-matter involved in this case could hardly have been placed anywhere else than in a bank,
30 save possibly in the vaults of an embassy. Such considerations as this, viewed in the light of the principle underlying the doctrine of immunity, lead me to the conclusion that in this context the word ‘possession’ must include the right to immediate possession of chattels which have been in the actual physical possession of a foreign sovereign or his servants and are deposited for safe custody with a bailee in this country.”

Now, my Lords, what does that mean “lead me to the conclusion that in this context the word ‘possession’ must include the right to immediate possession?” Now you would not have the right to immediate possession unless you have some other right, and you must prove that, and, my Lords, if, although at one time you
40 had the right to possession by virtue, if you like, of a sale or a charter party, then, if you have divested yourself of that right by selling the ship, or the charter party comes to an end, then you cease to have any right to possession. Your right to immediate possession can only arise if you have satisfied the Court that you have a right such as possessory right or possessory interest. My Lords, before I pass from this point, it might be convenient here, because I have been dealing with

the position that this is a Panamanian ship belonging to a Filipino company, and this is common ground up to a point, in regard to certain matters dealt with by my learned junior this morning that the change of flag is not evidence of the change of ownership of the vessel. There is evidence before you that some time in April this year, this flag was changed from Panamanian to Indonesian. That does not affect the matter at all, it is no question of ownership it may be a Dutch ship flying an English flag. . . .

Mr. McNeill: That is not possible.

President: It could be a Panamanian ship owned by a French Company, but the ship must take its nationality from the flag.

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Mr. D'Almada: An English owned ship flying the Dutch flag. And that, my Lords, is quite clear from the judgment of, again, Mr. Justice Brett in the case of *the Chartered Bank v. Netherlands Steam Navigation Co.*, reported in 10 Q.B.D. page 521, my Lords, we need not trouble with the facts of the case, but if your Lordships would please turn to page 535, beginning, if your Lordships please, at 534, it deals with certain issues raised in the course of the trial, he says:

"Now that raises two questions: First of all were these Dutch ships, or rather (which is more material), was the Atjeh a Dutch ship? and secondly, if they were Dutch ships, or the Atjeh was a Dutch ship, nevertheless is it true to say the defendants are not liable in tort in this action. Now I 20
am of opinion that neither of these ships was Dutch, but that both of them were English ships, at least for the purpose of considering whether any liability attaches according to English law to the defendants. I will treat them from the same point of view, for they both were registered in Holland according to Dutch law, and they both carried the Dutch flag. The circumstances relating to these ships were of the following kind. The defendants are an English joint stock company, limited, composed of English shareholders, and of English shareholders alone. For the purpose of carrying on a particular trade it was necessary that the company should be registered in Holland, and consequently this company obtained first of 30
all a registration of themselves as a company in Holland, the shareholders being the same, and they then had their ships registered in Holland; but the Dutch company had no power to deal with the ships. Every appointment with regard to the ships was made by the English company. The captain no doubt was a Dutchman, but he was the servant of the English company, paid by them, owing obedience to their orders, acting for them, the ship being employed solely for their benefit, and the Dutch company not being enabled to obtain anything by the working of the ship. The ship therefore being worked for the benefit of the English company, and being conducted by servants of the English company, the question is, 40
whether the mere fact of obtaining a register in Holland and carrying the Dutch flag makes her a Dutch ship. It is absurd to suppose that the mere fact of carrying the Dutch flag makes her a Dutch ship. Pirates carried the flag of every nation, but they were hanged by every nation notwithstanding. To carry false papers was an ordinary mode of evading the laws of war, but nobody ever supposed that the mere fact of carrying

10 a foreign neutral flag and having papers of a foreign neutral country would cause the ship to be considered as the ship of the nation whose flag and papers she carried. Unless a ship be employed under letters of marque of Government, which make her become a ship of the Government, and by which letters of marque the Government undertake a responsibility as government, the nationality of a ship depends upon her ownership and upon that alone. The owners of this ship are an English company, the owners of this ship are Englishmen, and it seems to me that the mere fact of her being registered in Holland for the purpose of carrying on a Dutch trade, which however is to be carried on for the benefit of the Englishmen, and them alone, does not prevent her being a British ship.”

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So, my Lords, any question that may be in your Lordships' mind that by reason of a change of flag some time in April that there is some evidence of change of ownership should be, with great respect, entirely banished. My Lords, whereas, as I said yesterday, stress was laid in the Court below that this ship was the property of the Indonesian Government, now evidence is laid on the existence of a charter right up to the 30th June.

Mr. McNeill: I don't think my friend has interpreted my speech correctly.

20 Mr. D'Almada: Now, my Lords, the Indonesian Government's case is this. As from the 13th February, the agreement for sale, or at the latest the date in March when the bill of sale was executed, they were entitled to, and they did, treat the ship as their own, and, my Lords, I say that that conduct is the clearest evidence of the repudiation by them of the charter party. It is conduct, my Lords, manifestly repugnant to any charter party, because the charter involves the return of the ship at the end of the charter, and if you say in the middle of the charter "This ship belongs to me" is it not a case where you have turned the charter party up? Your Lordships will know the familiar passages in the case of *Freeth v. Burr* in 9 Common Pleas, at page 213, in the judgment of the Lord Chief Justice. I would ask your Lordships to look at an interjection by Lord Denman, 30 he said:

“There the plaintiff did acts and said things which amounted to a declaration on his part that he did not mean to perform the contract.”

and that is the aspect of the case dealt with by Lord Coleridge at page 213, the principle is applicable to every kind of case, you will see, my Lords, he says a little less than halfway down the page:

40 “The question is whether the fact of the plaintiffs' refusal to pay for the 125 tons delivered was such a refusal on the part of the purchasers to comply with their part of the contract as to set the seller free and to justify his refusal to continue to perform it. This certainly appears, viz. that there was an extension by mutual consent of the time for the delivery of the iron from December, 1871, to May, 1872, with constant pressure on the one side and excuses and resistance on the other. I mention that because it is important to express my view that, in cases of this sort, where the question is whether the one party is set free by the action of the other, the real matter for consideration is whether the acts or conduct of the one do or do

not amount to an intimation of an intention to abandon and altogether to refuse performance of the contract. I say this in order to explain the ground upon which I think the decisions in these cases must rest. There has been some conflict amongst them. But I think it may be taken that the fair result of them is as I have stated, viz. that the true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract."

He then goes on to examine the contract and he came to the conclusion that there was not any such conduct to amount to repudiation. The principle is clear in that case. *In Mersey Steel & Iron Co. v. Naylor, Benzon & Co.*, reported in 9 10 A.C. 434, you will see that the Earl of Selborne, at p. 438, says:

"I am content to take the rule as stated by Lord Coleridge in *Freeth v. Burr*, which is in substance, as I understand it, that you must look at the actual circumstances of the case in order to see whether the one party to the contract is relieved from its future performance by the conduct of the other; you must examine what that conduct is, so as to see whether it amounts to a renunciation, to an absolute refusal to perform the contract, such as would amount to a rescission if he had the power to rescind, and whether the other party may accept it as a reason for not performing his part; and I think that nothing more is necessary in the present case than to 20 look at the conduct of the parties, and see whether anything of that kind has taken place here."

As I say, my Lords, in this case, again being an instalment question, the conduct did not in the view of the Court amount to repudiation. The circumstances before your Lordships are entirely different. Here is a party who hires a ship, and, in the course of the hire, says "The ship is mine, I have no intention of returning it to you." Another very well-known case, this case has to do with contract between master and servant, *General Bill Posting Co. v. Atkinson*, 1909 Appeal Cases, page 118, the facts might be worth a little attention.

"Employers agreed with their manager that he should hold office subject to 30 termination at twelve months' notice by either party and with a restriction on his right to trade after its termination. The employers having wrongfully dismissed him without notice:—

HELD, that he was entitled to treat the dismissal as a repudiation of the contract and to sue them for damages for breach of contract, and was no longer bound by the restriction on trade."

And again your Lordships see there is reference to Lord Coleridge's judgment in *Freeth v. Burr* at the very end of the judgment of Lord Collins at page 122. He cites the passage:

"That the true question is whether the acts and conduct of the party evince 40 an intention no longer to be bound by the contract.' I think the Court of Appeal had ample ground for drawing this inference from the conduct of the appellants here in dismissing the respondent in deliberate disregard of the terms of the contract, and that the latter was thereupon justified in rescinding the contract and treating himself as absolved from the further performance of it on his part."

As I say, my Lords, this conduct of the Indonesian Government in regarding the ship as from the date in February as theirs was conduct clearly putting an end to the charter party, evincing the most obvious intention not to be engaged by the terms of the charter, no intention to return the ship at the end of the charter party, and they are now unable to rely on the charter party. And what action was taken by my clients as a result of that? They issued this writ, which was the clearest indication that they thus rescinded the contract by virtue of the conduct of the government.

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10 Appeal Judge: You say the plaintiffs issued the writ because they said to themselves. "It is clear here the Indonesian Government are clearly repudiating their contract?"

Mr. D'Almada: Yes, my Lord.

Appeal Judge: They did not wait until the end of the contract, they said "These people are obviously repudiating the charter, so we are now going to claim possession of the ship?"

20 Mr. D'Almada: Yes, my Lord, and they did so by the issue of this writ. With a writ you clearly show that you rescind an agreement, there can be no question whatsoever, unless there is some ambiguity in the claim. Here by claiming legal possession, there is no question whatsoever but that it showed the attitude of my clients. If your Lordships want any authority for the proposition that a writ does show this, I have a short case here, I will give your Lordships the reference if you want it. If your Lordships will please call it *Snell's case* reported in 1908, 2 Chancery p. 127.

The position is this, these persons, the Indonesian Government, refuted this contract by their conduct and we, seeing that, rescinded the contract. The facts are complicated in this case but fortunately, for the purposes of our arguments, they are not material. You will see from the headnote of that case that

30 "In 1904 the plaintiffs agreed to sell S. some patents and, as the consideration for the sale, S. agreed to pay them a sum of 5000 l. cash and certain royalties, and S. also guaranteed the payment of certain annual sums by way of minimum royalties during the continuance of the patents, the first payment to be made in June, 1906, and if default were made in payment of any minimum royalty the whole of the minimum royalties were to become immediately payable. S. paid the 5000 l., and the plaintiffs by two deeds in common form assigned the patents to him for a nominal consideration and without reference to the agreement or any reservation of royalties. In 1905 S. sold and assigned the patents for value to a company with notice of the agreement of 1904, and the company paid the plaintiffs the minimum royalty that fell due in June, 1906. Subsequently S. wrongfully repudiated the agreement of 1904, and the plaintiffs brought an action against him and the company, alleging that S. by his wrongful repudiation had committed a breach of the agreement which entitled them 'to treat it as at an end and to sue him in damages for the breach,' and claiming, as against S., the total sum of the unpaid minimum royalties by

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way of damages for the breach, and, as against the company, a lien on the patents for the royalties as unpaid purchase-money. Subsequently S. became bankrupt, and his trustee in bankruptcy was added as a defendant but declined to take any part in the action. The company pleaded that the plaintiffs, having elected to treat the agreement as at an end, had no claim for royalties thereunder against them."

It was the other way around in this case; it was one of the parties seeking to show that by virtue of the fact that the plaintiffs, by bringing their action, had elected to treat the agreement as at an end. If your Lordships will look at the form of the pleading, you will see why it was held by Neville, L.J. there was 10 no unequivocal and at page 131 certain of the facts are set out and then there is a paragraph beginning:

"In December, 1906, the plaintiffs commenced an action against the defendant company alone, in which they claimed a vendor's lien on the patents in respect of the royalties payable under the agreement of June 4, 1904; and in March, 1907, they commenced the present action, in the first instance against the defendant Snell alone, claiming damages against him for breach of the same agreement. Pursuant to an order made on June 24, 1907, in the present action, the first action against the defendant company 20 was discontinued and they were made defendants to the present action. By their amended statement of claim the plaintiffs alleged (par. 4) that the defendant Snell had wrongfully repudiated the agreement of June 4, 1904, and (par. 5) by such repudiation had committed a breach of the said agreement and entitled the plaintiffs 'to treat the same as at an end'."

It is by virtue of the different claims set out there, my Lords, that Mr. Justice Neville came to the conclusion that in this instance there was no question of the writ in fact amounting to a rescission of the contract. There is no question whatsoever but that this case is clearly an authority, by inference if you like, that a writ can rescind a contract. I say, therefore, that the position with regard to the charter party is this, there is no question of the Indonesian 30 Government being able to rely upon it because upon the admitted facts, that, their side of the case, they themselves choose to treat it as at an end by or up to the 30th June, 1952. They now come along and say as a result of that "What you are doing now by arresting the ship is to interfere with my rights under the charter party". Where is there any evidence that there is any charter existing up to the 30th June, for that reason?

My Lords, I pass on now to another argument in connection with this charter. I don't know whether your Lordships are contemplating a short adjournment?

President: We will go on, Mr. D'Almada.

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Mr. D'Almada: My argument is this—I will assume now with your Lordships that this charter was in existence right up to the 30th June. In other words, that the Indonesian Government had some right or possessory interest—call it what you like—until that date. Now my Lords, before this right came to an end of course, the writ in this action was issued on the 27th June. What-

ever interest the Indonesian Government had by virtue of a possibly existing charter came to an end on the 30th June. So that, before any motion to set aside the writ on the ground that foreign sovereign was impleaded, the Government no longer had any right or interest of any kind in this ship and the fact that this interest ceased with the termination of the charter on the 30th June is no different from the position if, in fact, although I will assume the Indonesian Government were the owners of the ship at the date of the writ, subsequently to that and before any notice of motion to set aside the writ, they had sold the ship—parted with property—to someone else. Whether their interest ceased by virtue of the termination of the contract or acts they chose themselves to sell the res to somebody else, the position is the same that when they took out their motion to set aside the writ, they no longer have any interest. And the crucial point, I submit, with regard to any notice of motion of this kind is the date of the motion. To use the words of Lord Wright in *the Cristina* at p.506, “At the time when the claim to immunity is made.”

My Lords, I can best illustrate the point from two cases, one of them strangely enough is a Rent Restrictions Act case, but it shows quite clearly what is the material date for certain purposes in certain matters. The case is *Benninga v. Bijstra* reported in (1945) 2 A.E.R. p.433. The whole question in this case, my Lords, turned upon whether a certain person was a person engaged in the whole time employment of the respondents and it had to do with some sections in the 1920 and 1933 acts. I don't think I need trouble your Lordships with the facts, you will find it, my Lords, at the top of p.436 in the judgment of Lord Justice MacKinnon in a sentence beginning 6 or 7 lines from the top of the page, he says this:

“The plaintiffs' cause of action is a claim to the possession of their freehold against a tenant who has received due notice to quit. That cause of action existed on Mar. 20. The Rent and Mortgage Interest Restrictions Acts do not forbid the bringing of an action; they only prohibit the granting of certain relief to which the common law would entitle the claimant, unless certain conditions have been fulfilled. The question whether those conditions exist must be determined when the question whether the relief claimed may be granted has to be decided, namely, at the hearing of the action.”

—not, as your Lordships see, at the date of the writ. The same principle must apply here. The time for you to decide whether or not a foreign sovereign is impleaded is when he raises the question, that is to say, at the date of the notice of motion and, my Lords, that must have been indeed the basis of the decision in the case of the *Jupiter No. 2*. I say “must have been” because we have unfortunately only the judgment of the Court of Appeal in this case and not that of the Judge of First Instance. *The Jupiter No. 2* is reported in 1925 Probate p.69. Your Lordships remember the history of this case, it was originally a Russian ship, it was a subject matter of an action in the Probate Division in 1924 to which my learned friend referred you yesterday, and, in the interim, this Russian ship belonging to the Soviet Government had been sold by the Government through an agent in England to an Italian Company. The true owners of the ship, that is to say, the Russian Government, which had transferred its headquarters.

In any event, the title to the ship being in some French administrator, there was an action brought against the ship claiming its possession and the Italian Government, having brought this ship from this Agent of the Soviet Government, moved to set aside the writ which you will see set out in the head-note at p.69. The first was a question of a discretionary jurisdiction—that doesn't concern this case. The second question was that the action indirectly impleaded a foreign sovereign State. It was held in the action by Sir Henry Duke, who was President, that the proceedings did not implead the Soviet Government directly or indirectly and that judgment of his, although not reported, is referred to. First you will see in the statement of facts at p.72 just 10 before the argument of Mr. Dunlop as reported:

“At the adjourned hearing on January 19, 1925, his Lordship declined to set aside the writ on any of the grounds of objection, but gave leave to appeal.”

The matter went to the Court of Appeal and Mr. Langton, who appeared for the respondents was not even called on as you will see at the bottom of p.73. At pp.75 and 76, you will find that Lord Justice Bankes deals with this impleading issue about 2/3rds of the way down; he says:

“The second point is that indirectly the foreign sovereign State is impleaded in this dispute. That argument is founded upon this view of the matter: it is said that the plaintiffs are claiming this vessel on the ground that they, a Russian company, were the original owners of this vessel registered at Odessa, and that they always continued to be and remained the owners. The defendants say: “No, that is not so. Owing to the legislation of the Soviet Government your title to the vessel has been destroyed; and by the course of Soviet legislation the vessel became the property of the Soviet Government, and they sold her to us.” It is true, as the President pointed out, that in the sale to the defendants on behalf of the Soviet Government an indemnity was given against any claim that might be made to the vessel, but although that is the fact, it seems to me that the President's view is right; even under those circumstances it is not true to say that the foreign sovereign State is impleaded in this action, although one may see, as the President saw, great difficulties in the way of the plaintiffs ultimately getting over the point raised by the assertion, if it is proved, that the vessel became the property of the Soviet Government and that they sold her to the defendants.” 30

That, he says, disposes of the second point. Lord Justice Bankes is quite clear there when he says if, in the action proper the Soviet Government, or rather the Italian Government, is able to establish that this ship became the property of the Soviet Government by reason of certain nationalisation in these decrees, then it will go ill with the company which originally owned the ship and is seeking now to recover it because the title of the Italian Government would prevail as against the original owners of the ship. That of course was the difficulty which might have to be met by the French administration at the hearing but he said there was no question of any impleading here because at the date of the writ, and at the date of the notice of motion, a fortiori, there was no question of any foreign sovereign being impleaded because that foreign sovereign 40

had parted with the ownership of the goods, had sold the ship to this Italian Government. And the position, I submit, is exactly the same in this case because any interest the Soviet Government had in that ship had been divested when it sold the ship to the Italian Government—any interest the Indonesian Government had in this ship came to an end on the 30th June.

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Lord Justice Atkin says the same thing at p.78 of the judgment. You will see in the 4th line of the page:

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10 “The other question arises on the suggestion that this writ seeks to implead directly or indirectly a foreign sovereign. To my mind that is not the case. So far as the persons interested who have entered appearance are concerned the defendants, who contend they are the owners, are alleged to be, and undoubtedly are, an Italian company, and it is only as against them that the plaintiffs seek to have possession.”

20 Any interest or right they had came to an end before any question of impleading came before Lord Justice Atkin. My point is this, just as in this case the Soviet Government had lost all its interest in that ship by virtue of selling to the Italian Government, so here the Indonesian Government had no interest in this ship because the charter party had lapsed and the position therefore is just the same as if the Tasikmalaja, being owned by the Indonesian
Government on the 27th June, they on the 1st July had sold that ship to a
private company, to any company in Hong Kong and then subsequently entered
a conditional appearance or subsequently took out a notice of motion to set aside
the writ. That is made quite clear in the judgment of Lord Justice Atkin.
He says about 8 lines from the top of p.78:

30 “The Russian Government do not claim at the moment to be the owners or to have the right of possession, though they do say apparently that they passed their title to the defendants. Under those circumstances it seems to me to be a mere question of fact or of law as to whether or not the defendants, who are not a sovereign State, have in fact got a title to this ship, and no question, therefore, of impleading the foreign sovereign arises. It was also put in another way. It was said that inasmuch as a declaration of the foreign sovereign must be taken to be conclusive as to title, and inasmuch as there is an affidavit in which the representative here of the Soviet Governments says that they had a title in the ship but conveyed it to the defendants, it is frivolous and vexatious to make a claim contrary to that assertion. It appears to me that that is a question which raises points of difficulty which require further elucidation of the facts. I am not satisfied at present that the law is quite as plain as was
40 suggested by Mr. Dunlop, and in any case the document which vouches for the delivery of the title of the ship to the defendants does not purport to convey the title from the Russian Government to the defendants, but from, as I say, an English company, the Arcos Shipping Company, Ltd., and they are the people who give the indemnity.

The third point raises an interesting question about the authority to use the name of the Russian company to sue. In respect of that the matter will eventually have to be regarded from several points of view.

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It may be that the Russian company is dissolved, and in that case it, of course, could not sue. That is a matter of plea. It may be that the Russian company, though not dissolved, has no longer property in the ship, because the property may have been nationalized and passed to the Russian Government."

The real basis of the decision if you examine the judgments of Lord Justice Bankes and Lord Justice Atkin in that case is quite clearly this, the Russian Government were prepared to assume it had every right they could think of in this ship at one time; had full ownership by virtue of the nationalisation decree but it had divested itself completely of those rights wherefor there can be no question of its being impleaded at the time the notice of motion came on to be heard. Here, my Lords, the charter, if it existed at the date of the writ, came to an end on the 30th June. By the time this notice of motion was brought to set aside the writ, there was no further interest of any kind whatsoever in the ship on the part of the Indonesian Government and therefore no question at the time when the claim to immunity was made—to use the words of Lord Wright in *the Cristina*—after having such a right or interest. Your Lordships know of course the date of the notice of motion to set aside the writ. It is a few days on in July, my Lords. I think it is the 9th July, the date of the notice of motion. That was 9 days after the question of any right at all in the Indonesian Government being in existence. Whatever right they had, even on the charter party if it continued to exist, came to an end on the 30th June. To illustrate the point, let me take the analogy, my Lords, of a defence arising after action. If your Lordships would please look at p.272 of 25 Hailsham, you will see, my Lords, para. 457 deals with:

"Whenever any defendant, in his defence, or in any further defence, as in the last paragraph mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a judge, either before or after the delivery of such confession, otherwise orders."

In circumstances like those, of course, where you complete a defence which has arisen after action, then the plaintiff naturally is entitled to his judgment right up to that time but, thereafter, if the defence is a completely valid one, the question becomes entirely academic because in the interim between the time when he issues his writ and produces it as a good cause of action, and something happens, all that is left therefore is a question of costs and, my Lords, the analogy is very great in this case. Let us assume that on the 27th June when this writ was issued and the ship arrested, the Indonesian Government was impleaded. By the 30th June, any right or interest they had in this ship came to the most effective conclusion by reason of the termination of that charter. Thereafter they had no further right or interest and there was no question therefore of the writ impleading them after that date but, if you take the technicality that in fact it did implead them because the writ was issued three days before the termination of the charter, you will see the position now is that they are no longer entitled to that ship, and the only questions that might concern the court in those circumstances are the question of those costs. One

of the illustrations, my Lords, of those principles of confession of defence you will find in a very short case reported in the Weekly Notes in the case of *Harrison v. Marquis of Abergavenny*, 1887 Weekly Notes at p.156: This was an

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10 “Action by plaintiff, ‘on behalf of himself and all other members of the Constitutional Club except the defendants,’ against the committee of the club, charging them with breaches of trust in making profits out of contracts entered into by them on behalf of the club. The defence stated in paragraph 16 that after the commencement of the action a special general meeting of the club was summoned to ascertain whether any of the members except the plaintiff approved the institution of the action. Para-
graph 17 stated that the meeting was held and a resolution passed expressing confidence in the committee. Paragraph 18 was as follows: ‘Under the circumstances aforesaid the members of the club (other than the plaintiff) have, in fact, expressly ratified and confirmed all the acts of the defendants complained of by the plaintiff in this action: and even if this action could otherwise be maintained (which the defendants deny) it cannot now be maintained by the plaintiff on behalf of himself and all other the members of the club except the defendants.’ And para-
graph 20 stated: ‘Inasmuch as the matters complained of in this action
20 are in any event matters relating to the internal management of the club, and matters in respect of which the majority of the members of the club can bind and control the minority of such members, the plaintiff cannot under the circumstances aforesaid maintain this action.’

After that it was quite clear that the plaintiff could go on with his action so he, under 0.24, r.3, delivered a confession of defence and signed judgment for his entire costs of the action. I am not concerned with what happened subsequently, but you will see that in the course of his judgment upon that Mr. Justice Kay says:

30 “The plaintiff having confessed the statements in paragraph 16, 17 and 20 of the defence, it was clear he could not any longer maintain the action.”

In the circumstances, all we say is that it is exactly the same here. You have, if the charter existed on the 27th June, grounds for alleging that the foreign sovereign was impleaded but you had a complete change in circumstances after the 30th June by reason of the fact that on that day, whatever right or interest the Indonesian Government had in that ship was completely extinguished, the charter party having come to an end by a turn of the tide.

40 Here is another short case illustrating those principles. This is the case of the *Bridgetown Waterworks Company v. Barbados Water Supply Company* reported in 38 Ch.D. at p. 378. In this case, my Lords, one company claimed an injunction against another to prevent it, to restrain it from driving tunnels or carrying on other works in the Island of Barbados so as to divert the plaintiffs’ water supply. After the claim for the injunction — I should put it this way — the defendants put in a defence by which they pleaded the authority of a statute of the Barbados legislature called “The Water Supply Act, 1886” which was passed after the action was brought. There again you see, my Lords, any cause of action which the plaintiff company had necessarily came to an end by virtue of his statutory authorisation for the defendant company to do those things and the only outstanding question therefore after that was one of costs. You do

something in this case, as in the Constitutional Club case, which put an end to any question of a claim being persisted in, and here I say that between the date of the writ and the date of the notice of motion, you have the same happening which makes it perfectly clear that at the time when immunity was claimed, there was no question of any kind of interest whatsoever any longer existing in the Indonesian Government. There is no question, my Lords, of the Indonesian Government saying now or saying at the date of the notice of motion "By this writ I am impleaded". The answer to that will be "You might have been impleaded at the date of the writ. You ceased to have the charter of the vessel after the 30th June and now you are not impleaded; there is no question of 10 forcing you to come to this Court because you had no right to establish". Your Lordships appreciate, of course, that on this argument I am dealing with the position only as regards the charter.

President: I think Mr. D'Almada that Mr. McNeill would agree with you on the law that you are now citing, that is, that there is nothing arising out of the charter . . .

Mr. McNeill: No, my Lord, with respect, I do not agree with that proposition. Your Lordships have been listening to confessions of defence. If there is going to be any preliminary at all my friend is going to say "Although I have no cause of action, in three days time I will have a cause of action". 20

Mr. D'Almada: My Lords, my learned friend cannot agree with that proposition although Mr. Justice Williams sees that it is quite the clear position. There was no more option after the 30th June; it went with the charter party. I say first of all this Government by its conduct in February, March, tore up the contract. No more question of any option or charter existing. If, my Lords, a private individual or a company had behaved in this manner, would there be any question of any Court saying that they have been repudiating their contract by saying "This ship is now mine and you are not going to get it back again? If for some reason you entertain the argument of my learned friend that that charter existed till the 30th June, my answer is this: that may be so, but on the 1st 30 July there is no question of impleading and when you set up your claims that you are impleaded, you are no longer interested in this ship in any way at all, the charter having come to an end. My Lords, perhaps this is an effective way of illustrating the point. On the 9th July when this notice of motion was taken out by the Indonesian Government, they are saying in fact "We are — in the present tense — impleaded because we are — again in the present tense — on the 9th July the charterers" and, if they were the charterers on the 9th July, that may be well and good but there is no question of any impleading along those lines. If they say on the 9th July "We are impleaded because we had an interest in this ship as charterers which interest we lost or which came to an end on the 30th 40 June, then clearly I would submit there is no question of their being impleaded at the date of the notice of motion. My Lords, I don't know how long your Lordships propose to sit this afternoon?

President: I think, Mr. D'Almada, this is a convenient time to break off.
Mr. D'Almada: As your Lordships please, I shan't be much longer.

(Court adjourned till 11th December, 1952, at 10 a.m.).

AMENDED NOTICE OF MOTION ON APPEAL.

(10th December, 1952)

In the
Supreme
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Appellate
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No. 104
Amended
Notice of
Motion on
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Notice of Motion as amended is Red (**Printer's Note**:— by deletion of words blocked thus: □ and by addition of words in italics) by leave of the Full Court (The Hon. Sir Gerard Lewis Howe, Chief Justice and Mr. Justice Ernest Hillas Williams, Senior Puisne Judge) given in Court the 10th day of December, 1952.

(Sd.) C. D'ALMADA E CASTRO.

Registrar.

12.12.52.

10

TAKE NOTICE that the Full Court will be moved at 10.00 o'clock a.m., on Tuesday the 30th day of September 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C. and Mr. D.A.L. Wright, Counsel for the abovenamed Appellants for an Order that the Judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing the Notice of Motion filed herein on behalf of the Government of Indonesia dated the 9th day of July 1952 be rescinded and that the costs of the appeal may be paid by

the Respondents to the Appellants. *And that it may be ordered that the Writ and*

20 *all subsequent proceedings and orders in A.J. Action No. 8 of 1952 be set aside on the ground that the said Action impleads the Appellants a foreign Sovereign State and, in consequence, that it may be declared that the judgment of His Honour Mr. Justice Courtenay Walton Reece dated 24th October 1952 is null and void for want of jurisdiction and that the S/S "Tasikmalaja" be released from arrest in the said Action and that the Respondents do pay the Appellants the costs of this appeal and of and incidental to the said Motion.*

Dated the 15th day of September, 1952.

(Sd.) WILKINSON & GRIST.

Solicitor for the Government of the
Republic of Indonesia.

30

To the Plaintiffs and M. A. da Silva, their Solicitor.

TRANSCRIPT OF FURTHER PROCEEDINGS ON APPEAL.

11th & 13th December, 1952.

Fourth Day

In the
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Mr. D'Almada: My Lords, yesterday afternoon I dealt with the position upon the submission that there was no question of any charter party being in existence, by reason of the conduct of the Indonesian Government in tearing it up, and I argued, in the alternative, that if your Lordships were to find that the charter party was in force until the 30th June, there was no question of impleading thereafter. A point of extreme importance, I submit, my Lords, and clearly set out and useful, the case of the *Jupiter II*. The main argument in this case of my learned friend, Mr. McNeill, was based, of course, upon such cases as the *Arantzazu Mendi*, the *Cristina* and others. Although I examined the *Cristina* and the *Dollfus Mieg* yesterday, I did not deal with the *Arantzazu Mendi*, I would ask your Lordships now kindly to look at this case, and, for a proper appreciation of the case, to look at 1938 Probate, page 233. This has been called the high water mark of the doctrine of impleading. What my friend is asking your Lordships to do here is not only to get to the same high water mark, but to allow this flood to burst the banks wherein it has been properly confined by the *Haile Selassie* and the judgment of Lord Maugham in the *Cristina*. 10 20

My Lords, the facts are quite clearly set out in the headnote. The facts are so well known to your Lordships that I need not refer to them again, but I would ask your Lordships to note certain facts of the case as they appear in the report on pages 234 and 235. You will see, my Lords, that the writ was that of the Republican Government, at the top of 234:—

“An appearance to the Republican Government's writ was entered on behalf of the owners of the vessel and Eugenio Renteria, her present master, and on April 20, 1938, a conditional appearance under protest by the Nationalist Government was also entered.

According to the affidavit filed in support of the motion by the Duke of Alba, the agent duly appointed by the Nationalist Government of Spain to represent that Government in England, the Nationalist Government was the only Government exercising governmental and administrative control in (inter alia) the Basque provinces of Spain, including Bilbao, and was not a subordinate government to any other government, and was accordingly the sovereign government of a sovereign state. The Government had exercised control over the Basque Province of Viscaya (including Bilbao) since June 19, 1938. The *Arantzazu Mendi* was requisitioned (in accordance with a decree of March 2, 1938) by the Nationalist Government on April 5, 1938, solely for their public purposes and in particular for use in defence of the territories of the Government and for carrying goods required by them in the civil war. 30 40

Eugenio Renteria, in his affidavit, stated that on April 5, 1938, he was serving on the *Arantzazu Mendi* as her master in the service of her owners, the *Compania Naviera Sota y Aznar*, when he was served in the London

docks, where the ship was lying. with the notice of requisition, and he undertook to hold the possession of the vessel for the Nationalist Government."

and, over the page, 235, my Lords:—

"according to the affidavit filed on behalf of the Republican Government by Ramon de la Sota, the late managing director of the company owning the Arantzazu Mendi, on December 15, 1936, when the ship was at Bilbao, he sent on board the present crew and on May 6, 1937, appointed the present captain."

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10 So here was the case of a captain who had been appointed by the company as master of the ship, and although Mr. de la Sota was at one time the managing director, he was obviously no longer identified with the interests of the company, he had changed his allegiance. He sets out the fact, nonetheless, that this gentleman was appointed by the company, and it is interesting to note, my Lords, that if you will look at page 240, in the judgment of Mr. Justice Bucknill, what happened was that this captain switched his allegiance also, my Lords, because, having been appointed master and servant, and having served in the ship for some time, he subsequently changed sides and attorned to the Nationalist Government through the company itself. At page 241 of the judgment of Mr. Justice Bucknill,
20 you will see that, in the paragraph beginning five lines from the top of the page:—

"On April 5 the accredited sub-agent of the Nationalist Government of Spain served a notice of requisition under the decree and law of March 2, 1938, upon the master of the ship. On the same day the agent endorsed a note of the requisition of the ship's papers and notified the owners thereof. On April 13 the then managing director of the owners of the ship made a notarial declaration in London that he freely submitted to the provisions of the decree of the Nationalist Government, and in the name of the owners gave his consent to the vessel being requisitioned at the free disposal of the Nationalist Government."

30 There was, therefore, an attornment both by the company and by the master to the Nationalist Government, so you had in fact, not only this requisition by the Nationalist Government, but you had also quite clearly, as the House of Lords eventually decided, possession of this ship in the Nationalist Government. For that matter, of course, technically, the attornment would go for nothing once you had requisition, that requisition being admitted would show the right to control, of course, therefore, if you have the right to control that would be enough, or if you had possession that would be enough, if you had both *a fortiori*, and you will see, my Lords, at pages 248 and 249 of the judgment of Mr. Justice Bucknill, he deals with the position of the possession of the Nationalist
40 Government. He says at the end of 248:—

"A point was also taken by Mr. Pilcher who opposed the motion on behalf of the plaintiffs, that the Nationalist Government had not got possession of the ship, and that therefore the rule laid down by the House of Lords in *the Cristina* did not apply. I do not see any substantial difference between this case and *the Cristina* on that point. In my view the

Nationalist Government has done all that it can legally do to obtain possession of the ship consistently with the fact that the ship was already under arrest by warrant of this Court. The Nationalist Government has in fact got a limited possession through the ship's master, who, according to his affidavit, is on board the ship and has undertaken to hold the possession of the ship for the Nationalist Government of Spain and recognizes the sole authority of the Nationalist Government."

My Lords, I ask your Lordships to note that in particular, for this reason, whereas both in the Court of Appeal and the House of Lords there was some reference to the fact that the ship is held on behalf of the Nationalist Government 10
by both the master and the crew, in fact there is no evidence in this case at all that the crew purported to hold the ship on behalf of anyone. The only evidence is the affidavit of the master, who says 'I hold on behalf of the company' and, my Lords, in the circumstances prevailing at that time in Spain, it is difficult to believe indeed that the whole crew of a ship could have been on one side, there must have been dissident elements amongst it, and it is not unimportant to know also that this captain was appointed when the company was pro-republican, and the crew was also then appointed, but Mr. Justice Bucknill found a possession in the ship's master.

Now, in the Court of Appeal, the report, my Lords, is at 1939 P. at page 20
37, Mr. Justice Bucknill's decision was affirmed on the ground that by this requisition:—

" . . . the Nationalist Government had nevertheless shown sufficient interest in the ship to compel them to come before the Court to defend that interest . . . "

I am reading from the headnote. On that basis they held the judgment of Mr. Justice Bucknill, although they found that in this case, because the ship was in the custody of the Marshal, there could be no possession in the master. That was reversed in the House of Lords, and they found for the Nationalist Government on both the requisition and the possession. 30

Now, my Lords, if you will look at page 48 of this report, you will find the rest of the master's affidavit. He says:—

" On April 5, 1938, I was serving on the steamship Arantzazu Mendi as her master in the service of the Compania Naviera Sota y Aznar, the owners of the said steamship. On the said date I was served by the sub-agent of the Nationalist Government of Spain with a notice of requisition by the said Government of the said steamship Arantzazu Mendi and I undertook to hold the possession of the said vessel for and on behalf of the said Nationalist Government of Spain. Since the said date I have continued on board the said vessel and have held and still hold the same solely on behalf 40
of and at the order and disposition of the said Nationalist Government, and have not recognized and do not recognize any other authority than the said Government. At no time since April 5, 1938, have I received any instructions . . . " etc.

Therefore, it is clear, in my submission, my Lord, that there was no evidence before the Court that there was any purported holding on behalf of the Nationalist Government by the crew, only by the master, and that was found by the House of Lords to be a sufficient holding on behalf of the Nationalist Government, and, if your Lordships will kindly turn to page 50, you will find this in the judgment of Lord Justice Slessor. He says:—

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10 “Now the evidence before the Court is to this effect: that both the master and the owners agree that so much interest in this ship as is included in the powers of requisition, has by them been accorded to the Nationalist Government. Those are, I agree, not powers of ownership but powers of the disposition and control of the ship. For this purpose, it seems to me not material to inquire whether that requisition was or was not of legal effect in Spain. It is enough to say that the powers mentioned in that requisition, namely, the powers short of ownership, of disposition and control, are conceded by the owners and the master now to be held by them as agents for the Nationalist Government.”

And then he cites, my Lords, from the judgment of Lord Wright in the *Cristina*, and deals, over the page, with the *Haile Selassie* case, and he says there, page 51:—

20 “True it is that both in that case and the case heard in this court, *Haile Selassie v. Cable and Wireless, Ltd.* there are observations that a mere claim of itself will not necessarily justify the intervention, either on the record or before the Court, of a sovereign any more than of any other person. But here we have, on the face of it, the claim made by the master and by the owners that they do hold these limited interests arising from the requisition, for the Nationalist Government in Spain.

30 “I therefore am of opinion, first, that the Nationalist Government have not shown that they are in possession of this ship . . .” (and that was because the ship was in the custody of the Marshal) “. . . secondly, that they have failed to show that they have any ownership in this ship. Nevertheless, I think, following Lord Wright, that they have shown that they have a lesser interest imposed by the requisition, which interest, on the uncontradicted evidence, is held for their benefit by the master and the owners, who have both said that they would act according to the desires of the Nationalist Government as expressed in the requisition; and that they have shown a sufficient interest for the Nationalist Government to be compelled, unless they wish to see that interest destroyed, to come before the Court and defend that interest.”

40 My Lords, those words ‘have shown a lesser interest’ in the context given, of course prove beyond all doubt that this requisition was made by the Nationalist Government on the 5th April, 1938, plus the fact, of course, that this requisition was recognised by the master and the owners. Lord Justice Finlay delivered a judgment to like effect, bottom of page 52:—

“Now, here it appears to me, for the reasons which have just been given by my Lord, quite clear that there was an interest in the Spanish Nationalist Government. The owners and the officer had agreed to hold

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the ship on the terms that it should be subject to requisition by the Nationalist Government. What the rights of a government to requisition a ship are has been defined in a good many cases, for example *The Broadmayne*, and I find it impossible to see how it can be said here that the Spanish Nationalist Government have not and cannot have an interest in the matter now being decided." (Once you had the requisition proved, there you had the interest proved.) "A claim has been put forward, and they will therefore inevitably lose rights which they claim if judgment is given in accordance with the prayer of the writ."

That is so, unquestionably, they having satisfied the Court that they had 10
this possessory interest by reason of the requisition, if the action was proceeded
with, they would be impleaded. But, if, my Lords, they had not proved the
requisition, and if there had been no question of the master and the company
attorning, would the Court have given that decision?

Indeed, that is made abundantly clear, if it need be made any clearer, by
the judgment of Lord Justice Goddard, because he says, and if I may for the
last time read this passage, at page 55, last paragraph:—

"The speeches of the noble and learned Lords who decided *The Cristina* and
the recent case in this Court, *Haile Selassie v. Cable and Wireless, Ltd.*, I
think show this: that where a claim for immunity is made by a foreign 20
sovereign, it is not enough that his claim should be "a bare assertion of
right," as Lord Wright called it, or 'a mere claim' as Lord Maugham called it.
But if the Court can see that the question that arises is a question of
competing rights . . ." (rights, not merely of competition, not merely a
competition by reason that one party arrests the ship and the foreign
sovereign says 'I claim that ship') ". . . But if the Court can see that the
question that arises is a question of competing rights . . ."

You must have evidence before the Court at the hearing of the notice of
motion that there is some incident of competing rights to be contested, evidence
that it is proved to the satisfaction of the Court that the right exists and applies. 30

Appeal Judge: How far would you say the Government would have to go
to prove that they had competing rights?

Mr. D'Almada: If the government produced a bill of sale to which no
objection was raised by us, then it might possibly be said that the government
had proved a competing right.

Appeal Judge: If they produced a bill of sale — now a bill of sale valid
according to Philippine law, or Indonesian law, or . . . ?

Mr. D'Almada: Let us say, my Lords, a bill of sale purporting to be
executed by the agent of the owners who had no authority. It falls to the
ground. It is just as if the King of Ruritania said 'here is my bill of sale' and 40
it is made obvious beyond all doubt that this bill of sale was executed by a
confidence trickster. It is a matter which this Court must enquire into before it
can be satisfied that the foreign sovereign is impleaded.

Appeal Judge: You say they must enquire into something about the validity of the powers of Starr to give the bill of sale?

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Mr. D'Almada: If it is made perfectly clear, as it is in this case, because the position before your Lordships is this, you will obliterate from your minds everything in the affidavits of Mr. Kwee and Major Pamoe, because they are not before the Court, you have this position therefore: the only evidence in the case is this: The owners say 'this is our ship, we apprehend that the Indonesian Government is going to make a claim to this ship, because they think they have a bill of sale. That bill of sale is bad, because it was executed by an agent
10 without a power of attorney'.

President: Doesn't that hurt you on the second leg, because if you know the Indonesian Government are going to bring a claim, and you issue a writ in rem . . .

Mr. D'Almada: Take the King of Ruritania, who comes along and says 'I own this vessel' and the shipwright who arrests the vessel, knows that the King of Ruritania has this forged document. He knows that the King of Ruritania may possibly lay a claim to this ship. Nonetheless he has the ship arrested. The King of Ruritania says 'Hands off this ship, I am impleaded'.
20 The Court says 'where is any evidence that you have interest in this ship?' If there is no further evidence except the clear evidence on behalf of the shipwright that this purported bill of sale is nothing but a scrap of paper, there is nothing before the Court to show . . .

President: In whose control do you say the ship was when it came in Hong Kong waters?

Mr. D'Almada: I will deal with that later.

A foreign sovereign must prove one of two things. Either property or some sort of possessory or proprietary right or possession and control. I use the term 'possession and control' indifferently, my Lords. If he has the possession — and your Lordships understand, of course, that this is entirely independent of my
30 other argument that even if he had possession on the 27th June, there is no question of it after the 30th — if he had possession, it does not matter whether he had any colour of right to it. If he proved to your satisfaction that he has possession, there is an end of the matter. But he must prove the possession.

Now, if he has not got the possession — and our case, of course, is that in this case there was no possession in the foreign sovereign at the material time — then he has to base his claim on the other essential condition, to use the words of Mr. Justice Jenkins in the *Dollfus Mieg*, which is that he has this right either by requisition or because he owns the ship, or some other way, and I say in this
40 case, on the evidence before the Court, there is no evidence whatsoever of this foreign sovereign having begun to show that he has that right. That, my Lords, is abundantly clear from Lord Goddard's judgment in the *Arantzazu Mendi*: 'How can the Court see question is one of competing rights unless the Court sees there are competing rights?', and you will see, my Lords, that the matter is made even

clearer still, if that were possible, by the judgment of the House of Lords, that you will find, my Lords, in the 1939 A.C., page 256. You will find in the headnote, paragraph 3 at page 257, you will see that it is held:—

“3. That the vessel was in the possession of the Nationalist Government at the material date by the master and crew acting with the consent of the owners;”

and, my Lords, I can find no further evidence before the House of Lords to warrant any suggestion that the crew had anything whatsoever to do with the matter. It was the master and the master alone, as well as, of course, the fact that in the Court of Appeal there was no question but that the master alone was held to be in possession. The position, therefore, was this, my Lords: before Mr. Justice Bucknill every time it was the master, and here, for the first time it creeps, in, possibly by inadvertence, I don't know, I think it must be so. 10

My Lords, in this case your Lordships see in the House of Lords, the basis of the decision was that this ship was both requisitioned and in the possession of the Nationalist Government, they would not have the argument that it could not have been in their possession because the Marshal had the custody of it, so the foundation of the claim was both possessory rights and possession, possessory right by the requisition, attorned to by the master and the owners of the company, and, therefore, of course, there was no question about it but that there was impleading. 20

I cannot tell you exactly where it is that Lord Atkin makes this reference to the crew, but it is somewhere in this judgment, here it is, page 267, he says at the very end of his judgment:—

“The argument on the footing fails, and the simple fact emerges that the Nationalist Government was in possession of this ship at the material date by the master and crew acting with the consent of the owners.”

I think, my Lords ‘and crew’ crept into his judgment inadvertently, because it is abundantly clear from the affidavit as read by Lord Justice Slessor in the Court of Appeal, and clear from Mr. Justice Bucknill's judgment, there was no question of the crew coming into the picture at all. 30

My Lords, I ask your Lordships to look at Lord Atkin in this at page 263, he says in the paragraph beginning in the middle of the page:—

“In the events that have happened it does not seem necessary to discuss this case at much length. The question is whether the Nationalist Government of Spain represent a foreign sovereign State in the sense that entitled them to immunity from being impleaded in these Courts, and, if so, whether they are impleaded in the action by reason of being in possession of the ship in question. I state the question in that form as being sufficient to dispose of the present case. As, in my opinion, there is no doubt that the Nationalist Government was in fact in possession of the ship, the question does not arise that was discussed in *The Cristina*, whether on a writ framed in the ordinary form of a writ in rem and not having specified defendants the 40

mere fact that a foreign sovereign State was claiming to be in possession or to be entitled to possession was sufficient to show that the State was impleaded without proof that the claim was rightly or reasonably made."

He says, you see, there is no need to go into the question of whether a mere claim is sufficient, because the evidence in this case was abundantly sufficient to prove possession. My Lords, I think that is all I wish to draw your Lordships' attention to in the House of Lords report for the *Arantzazu Mendi*.

My Lords, I submit to your Lordships, with great respect, that your Lordships must disabuse your minds of this fact that, merely because we have
 10 taken out a writ in rem and because we showed in our affidavit an apprehension that the Indonesian Government might take certain steps in the matter, that therefore, by that very fact alone, there is evidence before the Court that the Government is impleaded. You might say, my Lords, that the shipwright in the case of the *Northern Star*, with full knowledge that the King of Ruritania was going to make this empty claim, was aiming his writ at him, but that does not mean to say that that sovereign can say 'by that very fact I am impleaded'. He must come to the Court and say 'I must satisfy you that I have a right to this ship', or 'I have possession'.

Because a Government claims or is expected to claim a right is by no means
 20 sufficient cause for the purposes of impleading; he must prove property or lesser rights or possession, and all that the cases decide on the question of a writ in rem is that, although by a writ in rem you don't name a foreign sovereign as a party, he may, in certain circumstances, be impleaded by it, and those circumstances are: if he shows to this Court — that is to say, proves to the Court — that he has a right.

Now, on the question of possession, my Lords, your Lordships have heard the evidence dealt with by Mr. Bernacchi, and the question is: has this government shown, proved, that at the material date they had the possession? The onus is on them, and any doubt upon the point is resolved against the applicant.

Now, on that point, what does my learned friend Mr. McNeill say? My
 30 Lords, he says (1) they brought the ship here, that is enough; or he says (2) in any event, look at the facts, he says, 80% of the crew were Indonesians, they had the greater physical control.

I ask your Lordships to note this, this crew, the master and crew of this ship were paid by the owners and if anything at all turns upon the question of who brought the ship here — and I submit it does not, nothing turns upon it — then, my Lords, the ship was brought here only at the direction of the Indonesian Government, but, as I say, in my submission it matters not who brought the ship here, the material points are: have the Government any right;
 40 if not, had they possession at the material time?

Now, my Lords, let us take a hypothetical case. Let us assume, my Lords, that nothing had happened in this case before the 30th June, and the charter expires. On the 1st July there is no question thereafter of any right or interest, so far as I can see, in the Indonesian Government, and the master says

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'On the 1st July, after the expiry of this charter party, I held this ship on behalf of the owners' and the writ in rem is issued against the ship on that date, and on the 2nd July, along comes the Indonesian Government, enters a conditional appearance and says 'I am impleaded because I brought the ship here'.

That, my Lords, makes it abundantly clear, my Lords, that the bringing of the ship to Hong Kong by the Indonesian Government makes no difference at all, because at the time the writ is issued they no longer have the interest, they no longer have the possession, and, my Lords, on this question of my friend's greater physical control, your Lordships note the evidence. On the 27th June, the master and others on board the ship declare they hold the ship on behalf 10
of the owners. There is no evidence challenging the statement of the master that until 30th June the crew were subservient to him and obeyed his orders, wherefore it is quite clear, my Lords, that the control was in the master throughout the relevant period.

Appeal Judge: Even as to ordering the repairs?

Mr. D'Almada: My Lord, how would that matter? I am talking about control of the ship, not direction as to repairs carried out on it. The charterers did in this case, but there is no evidence.

Appeal Judge: Is there not evidence by Mr. Griffiths that the Indonesian Consul General came on board and gave orders for repairs? 20

Mr. D'Almada: That is so. But that was a long time before the 27th.

Appeal Judge: I am considering events from the date of the bill of sale, or when the ship came in, about the same time, in March.

Mr. D'Almada: The only relevant period on this question of impleading is the date of the writ. That is on the question of possession. I think I can make that clear, my Lords, by saying this: assuming that the ship belonged to the Indonesian Government in January, February, March, April of this year; they brought it in, put it in the dock, and then, in the interim they lose their interest in the ship — by sale, if you like. My Lords, what they did antecedent to that sale matters not one whit to your Lordships in that case. 30

Appeal Judge: On the 27th June, were not the dock company doing repairs on behalf of the Indonesian Government, because, on the 26th they wrote to the Indonesian Government and said 'please lodge further sums'?

Mr. D'Almada: I am not quite sure what your Lordship has in mind.

Appeal Judge: That the Indonesian Government on the 27th June were still directing the dock company to do work on the ship.

Mr. D'Almada: That might be, my Lord, but that does not mean they have possession of the ship.

Appeal Judge: But you say that the only relevant question is what is happening on the 27th June. 40

Mr. D'Almada: Not what is happening, only who has possession.

Appeal Judge: I have a note here. You said possession, I think, possession and control. I don't know in what way you read possession.

Mr. D'Almada: Possession and control means exactly the same thing; the master says 'I am the boss of the ship, I control it, and I control it and hold it on behalf of the owners' just as the captain in the *Arantzazu Mendi* says 'I am holding the ship for so-and-so.' That is exactly the same position. The point, my Lords, is entirely distinct from the right to possession. I have already argued that at length. I am dealing now with the argument of possession. I say they have no right at all to possession, I am now dealing with the aspect of the case that similarly they have no possession, and if there is neither one or the other, there is no question of impleading, and there is no question, here, of any suggestion that there was possession in the dock company; that is not relied upon now. If it were I would have a complete answer, but it is not being argued, so I say, my Lords, that the evidence before this Court shows quite clearly, on the 27th June Silos, the master, holding this ship, controlling it for the owners, and the only evidence offered against that on the part of the Indonesian Government is this, that Mr. Mandagi says 'On the 30th June I was appointed master of the ship'. That, my Lords, is document 18, referred to by my learned junior yesterday, read by him in fact, and all he says is 'I am in possession on the 9th July.' My Lords, he was appointed captain on the 30th June, says he was in possession on the 9th July, when we know, upon the evidence, that on the relevant date, the 27th June, it was Silos who was the master, and Silos who had possession and control, with a crew completely subservient to him.

Appeal Judge: Why, if they were completely subservient to him, was the writ issued, because you say that the writ was issued because you were afraid that the Indonesian Government, through certain members of the crew, would take possession. If you were quite satisfied that all members of the crew were loyal on the 27th, why do you issue the writ?

Mr. D'Almada: We were afraid they might change sides, as in the *Arantzazu Mendi*.

Appeal Judge: A sort of *quia timet* action, in other words?

Mr. D'Almada: What your Lordships have in mind, probably, is the *Arantzazu Mendi* case, where the President of the Court said, if you had possession at the time you issued the writ, you have taken a course which is perilously near abuse of the process.

My Lords, supposing that it were — if your Lordships find as a fact that possession at the relevant time was in the owners, then, insofar as this notice of motion to set aside the writ is concerned, it matters not one whit, because this is an application instituted by a party who comes in and says 'Please set this writ aside, because I am impleaded.' But that has no bearing on either question. If you should find that we were in possession, it matters not to the impleading, except that it shows no ground for suggesting that they are impleaded. There

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is no evidence, no attempt to lead evidence that the ship was in the possession of Mandagi on the 27th June, and I might remind your Lordships also of this, for what it is worth Mr. Mandagi's evidence is entirely inconsistent with a letter exhibited, H-1a of document 13 (b), a letter from Messrs. Wilkinson & Grist to Mr. Silva, dated the 3rd July :—

“Dear Sir,

Our clients are allowing Captain Silos to go on board, and are confirming his present appointment as master appointed by our clients.”

How could it possibly be suggested, in those circumstances, that Mr. Mandagi was appointed master on the 30th June, and that is the kind of evidence upon which they are trying to satisfy your Lordships that he had possession at the relevant time. My Lords, every one of the authorities shows that this right to possession, or else actual possession or control, must be proved before any question of impleading can arise. 10

Appeal Judge: Mr. D'Almada, Lord Atkin, in his statement of what he considered impleading, in the first limb there is no question of possession mentioned.

Mr. D'Almada: That is in *the Cristina*?

Appeal Judge: In *the Cristina*, right at the beginning of the judgment, and only under the second limb is there this question of showing interest or claim. 20

Mr. D'Almada: He says at p.490 (1938 A.C.) :—

“The foundation for the application to set aside the writ and arrest of the ship is to be found in two propositions of international law engrafted into our domestic law which seem to me to be well established and to be beyond dispute. The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages.” 30

Is that what your Lordship has in mind?

Appeal Judge: I cannot see that possession enters in that limb.

Mr. D'Almada: If the foreign sovereign satisfies you he has a proprietary right or possessory right, then it does not have to have possession :—

“The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control.”

President: I admit in the second limb possessory right must be shown or claimed, but I don't see that there is.

Mr. D'Almada: You will see the position set out in the judgment in the Haile Selassie case. My point is this: if the foreign sovereign proves that the property is his, there is no more question about it. If he proves he has some possessory right of requisition or something like it, again the question falls to the ground. Now, the foreign sovereign may not have any right to property in the goods or the ship; he may not have any right by way of requisition, but if he happens to be in possession of the ship in the jurisdiction of this court at the relevant time, then you don't enquire into the propriety of the right. He must have one of those two things. Either the property or the proprietary right of some sort, or the possession. If he has both, the matter is at an end.

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There can be no question of Lord Atkin's judgment meaning anything less than what I have submitted, with great respect. My Lords, this wrongful possession, so long as it is possession in the foreign sovereign, ends the matter.

Let us take this case: Let us suppose that on the 25th June or thereabouts, agents of the foreign sovereign concerned had thrown the ship's master off the ship, thrown off the crew, who might have been loyal, and then had put upon this ship certain persons who say 'I hold this ship on behalf of the foreign sovereign', we would have no recourse at all to this court, because if we issued a writ claiming possession of the ship, the answer would be 'There is abundant evidence to show that Mr. X., Y., Z., have possession and are holding the ship for us', and we would be left with no remedy.

President: Page 493 :—

"It is admitted that the Government of the Republic of Spain is the Government of a foreign sovereign State fully recognised as such by His Majesty's Government. In my opinion it is sufficiently established that the Spanish Government, without a breach of the peace, obtained by their agents de facto possession of the ship on July 14, 1937, and have since remained in de facto possession."

There has never been shown that there has been a breach of the peace here.

Mr. D'Almada: That may be so. I may be going further than necessary in my illustration of the point. It does seem indeed that there must be some limitation which applies upon this doctrine of sovereign immunity. Now, a lot of sovereigns are not gentlemen, and therefore you will find that the House of Lords in this case was saying 'we have got to watch this carefully'. I agree, with great respect, it may be I am wrong in saying if they had obtained forcible possession of this ship the court might, as a result, go into the question which shows that it is not in every case that because a foreign sovereign says 'Hands off the ship, I have the possession' the court will say we won't enquire into the matter. A wrongful dispossession by the agents of a foreign sovereign. If I may be right or wrong, but some judges did suggest that wrongful possession is enough for the purposes of the setting aside of any writ. That is the sort of thing which we are guarding against when issuing our writ. We apprehend that that is the sort of act which your Lordships say in your minds would be carefully scrutinised by you before you say that in the circumstances the foreign sovereign was impleaded.

My Lords, before I conclude, we have nearly finished, would your Lordships look with me again at the judgment of the Court of Appeal in *Haile Selassie*, 38 Chancery at p.844. Sir Wilfred Green delivering the judgment of the Court of Appeal, a court consisting of himself and two other Lord Justices, says, about twelve lines from the beginning of page 844 :—

“It is unquestionably true that the Courts of this country are not competent to entertain an action which directly or indirectly impleads a foreign sovereign state. Thus, if property locally situate in this country is shown to belong to, or to be in the possession of, an independent foreign sovereign, or his agent, the Courts cannot listen to a claim which seeks to interfere with his title to that property, or to deprive him of possession of it. The rule applies in the case both of actions in personam and of actions in rem.” 10

The property must be shown to belong to or in the possession of the foreign sovereign.

President: Supposing there was no question of the possession being in the Indonesian Government, then you will say if they are not able to defend their possession, then they must go the whole way?

Mr. D'Almada: Let us assume that this was an Indonesian Government ship. If they proved the requisitioning of it, that would be sufficient. In this case there is no question of a requisition. I agree, my Lords, they must have proof of a right to the ship. 20

Court: Would that not require the judge hearing the notice of motion to hear all the evidence by which the Indonesian Government is not to say that the ship had been sold?

Mr. D'Almada: Yes, I would say so, with respect. If they came along and said they bought the ship, that would be enough.

Court: Would you agree with these words ‘Thus it is property legally situated in this country.’ You don’t say that under the word ‘belong to’ you have a claim of right.

Mr. D'Almada: I agree that if a lesser interest is proved, it is sufficient. All these cases of requisition make that perfectly clear. I had stressed the words ‘is shown (to belong)’ and if you want to paraphrase that, my Lords, to belong to, or to be the subject matter of some possessory right or to be in possession, as Sir Wilfred Green says, and he goes on to say:— 30

“The rule applies in the case both of actions in personam and of actions in rem. But it has never been extended to cover the case where the proceedings do not involve either bringing the foreign sovereign before the Court in his own person or that of his agent or interfering with his proprietary or possessory rights in the event of judgment being obtained. Where it is either admitted or proved that property to which a claim is made either belongs to, or is in the possession of, a foreign sovereign, or his agent, the principle will apply.” 40

You will engraft into that sentence the short proposition 'This is property to which the foreign sovereign has a proprietary or possessory right.'

"But where property which is not proved or admitted to belong to, or to be in the possession of, a foreign sovereign or his agent is in the possession of a third party, and the plaintiff claims it from that third party, and the issue in the action is whether or not the property belongs to the plaintiff or to the foreign sovereign, the very question to be decided is one which requires to be answered in favour of the sovereign's title before it can be asserted that that title is being questioned."

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10 President: But here, obviously, the only two contestants were the plaintiffs and the Indonesian Government.

Mr. D'Almada: Yes, I am going to deal with that now. Here, we say she was in our possession, because it is not in the possession of the foreign sovereign. That is the essence of the principle:—

"The very question to be decided is one which requires to be answered in favour of the sovereign's title before it can be asserted that that title is being questioned."

20 What could those words mean but that this Court must be satisfied upon the evidence, the onus being upon the foreign sovereign who says he is being impleaded, that he has the right. And the learned Judge makes the meaning abundantly clear, because he says:—

30 "But it was held by Bennett J. that where a foreign sovereign has made a claim the proceedings in effect amount to impleading that sovereign. In our opinion not only is that view incorrect in principle, but it is contrary to certain weighty expressions of judicial opinion to which we will later refer. So far as principle is concerned, the present action does not seek to bring His Majesty the King of Italy before the Court, nor does it seek to interfere with any proved or admitted proprietary or possessory right belonging to him." — There, you have the possessory right coming in, your Lordships see — "The fact that His Majesty the King of Italy has put forward a claim to these moneys by asserting that the chose in action consisting of a debt owed by the defendants has become vested in him does not, in our opinion, add anything. It would be a strange result if a person claiming property in the hands of, or a debt alleged to be due by, a private individual in this country were to be deprived of his right to have his claim adjudicated upon by the Courts merely because a claim to the property, or the debt, had been put forward on behalf of a foreign sovereign."

40 He is drawing the distinction between this case and the action in rem because it is suggested in this case that there is an indirect impleading of the King of Italy. Sir Wilfred Green said at page 844: "The rule applies in the case both of actions in personam and actions in rem." The argument in this case was this: Mr. Andrew Clark, at page 841, said "The Court cannot implead." That was the basis of his argument, wherefore at page 844 you will see the proposition is set out quite clearly:—

“If property locally situate in this country is shown to belong to or be in the possession of, an independent foreign sovereign, or his agent, the Courts cannot listen to a claim which seeks to interfere with his title to that property, or to deprive him of possession of it.”

The rule applies in the case both of actions in personam and to actions in rem, so what he is dealing with is Mr. Andrew Clark's proposition that in this case the King of Italy is being indirectly impleaded. He says, nonsense. That is the only effect of that last passage ending the paragraph on page 845:—

“The phrase ‘impleading indirectly’ does not, in our opinion, mean adjudicating upon such a claim as is made by the Italian Government in the present case. It refers to such proceedings as Admiralty proceedings in rem where the action in form is an action against the ship.” 10

My Lords, that of itself would be sufficient, but if you go on, you will find it is made much more clear, because, dealing with the judgment of Mr. Justice Bennett, he says:—

“Bennett J. relied upon *The Parlement Belge*. But that was a case where the property in the vessel was admittedly vested in the Belgian Government, and the claim against it involved impleading that Government. He also relied upon the observations of Scrutton L. J. in *Aksionairnoye Obschestvo A. M. Luther v. James Sagor & Co.* But with all respect to the learned judge he has, in our opinion, attributed to those observations a meaning which in the context they do not bear. Scrutton L. J. was considering a case where a foreign sovereign is in possession of property, but if his words were intended to go beyond such a case, and to apply to a case where property is in the hands of a third person, and the foreign sovereign has merely made a claim to it, we respectfully dissent from the view which he expresses.” 20

At the bottom of p.846, after referring to some of the older cases like the *Russian Bank for Foreign Trade*, he says, he goes on to *the Cristina*, and he says:— 30

“The question as to the effect of a claim by a foreign State as distinct from a proprietary title or possession proved or admitted was discussed in the House of Lords in the case of *Compania Naviera Vascongado v. S.S. Cristina*. In that case Lord Atkin said: “(and he sets out the passage which Mr. Justice Williams referred me to just now). “for present purposes we think that this can be taken as exhaustive, and it is to be observed that in the case of property the lack of jurisdiction is said to exist where the property belongs to or is in possession or control of a foreign sovereign. In the case of a debt such as that with which we are concerned there can be no question of possession or control, and the title to it is the very thing which stands to be established or not to be established in these proceedings. In *Compania Naviera Vascongado, v. S.S. Cristina* itself the vessel was in the actual possession or under the control of the Spanish Republican Government, and the decision was based on that fact. Lord Wright said: ‘In the present case the fact of possession was proved. It is 40

unnecessary here to consider whether the Court would act conclusively on a bare assertion by the Government that the vessel is in its possession. I should hesitate as at present advised so to hold, but the respondents here have established the necessary facts by evidence.' It is to be noticed that even in this case put by Lord Wright, possession is the relevant matter, and the problem which he poses is as to whether or not a mere assertion of possession can be challenged. The fact that he expresses the view, albeit tentatively, that such an assertion would not be sufficient, does in our opinion form ground for thinking that where no such possession has been or can be asserted no objection to the jurisdiction can arise."

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Lord Maugham, however, expresses a clear opinion upon the subject and all that he says was only by way of dictum. With regard to that view he said:—

"It is clear, I think, that the property in the goods and chattels would have to be established if necessary in our Courts before the immunity could be claimed." (He says 'if necessary' because in numerous cases at the time there was no question of the fact that a ship was a public vessel). "The Ambassador could not be sued in trover or detinue; but, if the property were not in his possession, and he had to bring an action to recover it, I am of opinion that he would have to prove in the usual way that the goods were his property. Speaking for myself I think the position of a foreign Government is the same. There is, I think, neither principle nor any authority binding this House to support the view that the mere claim by a Government or an ambassador or by one of his servants, would be sufficient to bar the jurisdiction of the Court, except in such cases as ships of war or other notoriously public vessels, or other public property belonging to the state. Professor Dicey has been relied on in favour of another view; but his proposition, founded on existing authorities, was that 'an action or proceedings against the property' of a foreign sovereign or an ambassador or his suite was for the purpose of the general rule 'an action or proceeding against such person'. He did not mean by this that an action against property *claimed* by such a person is beyond the jurisdiction of our Courts. An independent sovereign sued for breach of promise of marriage in our Courts can indeed claim to be outside of our jurisdiction, but there is no authority for the view that, if he wrongfully obtained possession of valuable jewellery in this country, and it was in the hands of a third person, he could claim to stay proceedings by the rightful owners against that person to recover possession of the jewellery merely by stating that he claimed it."

That is the view Mr. Justice Williams attacks as against the rather colourless judgment of Lord Thankerton in *the Cristina*, and Lord Maugham's judgment comments:—

"To come within Professor Dicey's rule he would, in my opinion, be bound to prove his title."

There is no question of limiting that passage in the judgment of Lord Maugham to things other than ships. The law is crystal clear. If a foreign sovereign wants to show that he is impleaded, he has to satisfy the court of one

of two things: property or a possessory interest or possession and control. Those exceptions, in my opinion, by Lord Maugham, in fact drive the point home, because if they are public ships, yet they belong to the foreign sovereign, and there is no more question about it; but he doesn't mean that a French ship chartered by the Americans for the purposes of carrying troops, which were flying all the time a French flag, became, by virtue of the fact that the Americans used it, an American public vessel of the American Government, and therefore a ship which belonged to that Government.

My Lords, I submit, therefore, that the judgment of Mr. Justice Reece in this case was entirely correct. If you examine that judgment, you will find that he sets out in it the propositions with which he had dealt with in an unexceptional manner. He had before him all the cases which your Lordships have heard argued—I am not going to trouble your Lordships by going through the judgment, but, if you will recall what I said in an interjection in the course of some submission by my learned friend, that it doesn't follow that if you found Mr. Justice Reece wrong on the materials before him, that there was necessarily an impleading; and that may be for this reason, because, in addition to the points which were before Mr. Justice Reece, as is clear from his judgment, that is to say, that there was no question of possession or proprietary right established, there are the points I made before you yesterday and which were not before Mr. Justice Reece because I didn't have the opportunity to argue them.

I say in this case, first, one the question of the onus which is upon the applicant, there is no evidence before your Lordships of any property or possessory interest and the onus is upon him to establish that. He has failed to do so. I say also, having failed on that, he has nothing else to rely upon, because he has similarly failed to show possession in him at the relevant date.

Those were the points before Mr. Justice Reece, and those were the points upon which he rightly decided that the motion should be dismissed. Added to those points, you have now the points I argued yesterday, which were these: there cannot be any question of reliance upon this charter, having regard to the fact that on their own showing the Indonesian Government sought to treat this ship as its own in February or March of this year. They tore up that contract.

Then, my final point, assuming again that argument that the charter party did exist until the 30th June, such interest as the foreign sovereign had by virtue of the charter, was completely extinguished by the termination of the charter, and there was no question of any right or interest of that sovereign from the 1st July onwards.

My Lords, I don't know whether you propose to take the mid-morning adjournment, but at the suggestion of my instructing solicitor, I have concluded my submission.

Adjourned for ten minutes.

Mr. D'Almada: Your Lordships may be sorry to hear that I have a few words to say before I conclude. There was one point which I omitted to ad-

dress your Lordships on, and that is, if I may go back to the *Arantzazu Mendi* case, 1939 Probate, in the judgment of Lord Goddard. Your Lordships will recall the passage cited to you at page 55, in which Lord Goddard says:—

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“If the Court can see that the question that arises is a question of competing rights, as in this case here, where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign who is claiming immunity rights over the ship—it may be that those rights are good or it may be they are bad, that is just what we cannot try—but if they purport to give rights over their ship and therefore 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, then it appears to me the principle of immunity applies.”

What he has in mind there, quite clearly, is the particular facts of the case, that is to say, a requisition by the Nationalist Government, and that is the kind of right you cannot try, because, as Lord Justice Slessor says, earlier on in the same case, at page 43, citing *Luther & Sagor*, about two-thirds of the way down, he says:—

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“There it was held that where a foreign government has been recognised de jure or de facto the Court will not inquire into the validity of its acts.”

So, you see Lord Goddard was clear when he says you may not try those rights he means you cannot go into the question of requisition, because, that being the act of a recognised state, there is no question of the court examining into it and, in that case, as a matter of fact, there were two competing acts of state, the Republican Government had requisitioned, and the Nationalist Government in turn requisitioned. I ask you to note that, because otherwise there might be a misconception of Lord Goddard's judgment. The rights arose from the act of a recognised foreign state, into whose validity the courts will not enquire.

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Finally, my Lords, my learned friend, Mr. McNeill, said in his opening address to your Lordships that no question of title arose in this case. That was a question which Mr. Justice Reece did go into. He found a title, and that was clearly in accordance, both with Lord Maugham in *the Cristina*—or shall I say he found that the other side had failed to prove a title—and with the judgment in the Court of Appeal in the *Haile Selassie*. *Haile Selassie's* case is in no way affected by the judgment of the Court of Appeal in the *Arantzazu Mendi*. There is no suggestion that they distinguished it; there is no suggestion that they attempted to criticize the judgment of the Court of Appeal in any way. That judgment stands, and with it you have Lord Maugham in *the Cristina*. The question of title is out of the way. My learned friend did not even try to establish title, and we have a judgment from Mr. Justice Reece, declaring that we are entitled to the legal possession of the ship. The only question is possession, and the evidence is abundantly clear that the possession was not in the foreign sovereign. He has failed to discharge the onus upon him in saying that in the absence of any proprietary interest or possessory right, he has possession.

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I beg your Lordships' serious consideration to the whole of that passage in the judgment of Sir Wilfred Green in the *Haile Selassie* case. That shows that it is applicable to all kinds of actions in personam or in rem, and that it is abundantly clear that the law now is that before a foreign sovereign can say he is impleaded, he has to establish his right or establish possession. Any suggestion that any kind of a half-way house is enough is far from the true state of the law, but might be thought to be lent colour to by the words of Lord Goddard in the *Arantzazu Mendi*, which say "These are rights we cannot try." The court in that case was considering the question of the validity of the acts of a foreign government, and they were the rights arising out of the acts and 10 the acts cannot be enquired into.

Mr. Loseby: May it please your Lordships, as representing the respondents in Action No. 6, I say that my learned friend Mr. D'Almada has omitted something which I understood.....

Mr. D'Almada: (Interposes) My learned friend is right. I was going to say that I adopt Mr. Loseby's argument in this case, just as I understand he was going to adopt mine.

Mr. Loseby: My Lords, talking to my learned friend last night, I put to him a certain point of view and a certain argument which I asked him to adopt if he thought fit, to make it plain, if it happened to be left out, and my learned 20 friend said it would be a better course, he indicated, that he is leaving that point of view of that argument to me. I can commence then with an observation that I hope will be cheering to your Lordships, namely, that the gist of anything that I have to say is contained in my preliminary observations.

But, my Lords, and I am going to largely repeat the point of view that I have put forward in other cases—but I hope you will forgive me, I have to be a little on my guard because certain observations which I made on the previous occasions gave offence, and, as I am repeating a somewhat similar line today, I want to make it plain that there is no ground for offence. It was suggested to me very strongly that in a line of attack that I had made I had been guilty 30 of grave lese majeste. My Lords, something that concerns me much more was that I had said something that might be read as a reflection either upon my learned friend Mr. McNeill or upon his instructing solicitors. My Lords, I happen to have a great admiration for his instructing solicitors, and anything further from my thoughts could not be imagined.

It came to this, I think, I cannot imagine there being anything that they did not think they were entitled to do in the strictest observation of every proper rule of etiquette nor unless it was their duty in the interest of their clients so to do—I do not intend for a fraction of a second anything to the contrary, but, my Lords, I think it may have arisen out of an observation of 40 mine that I suggested that the trouble in this matter—and of course I might have been wrong—had arisen out of a fundamental misconception of the law governing these particular facts by my learned friend and indeed, possibly, his instructing solicitors.

But, my Lords, lawyers live on conceptions and misconceptions. If there were no misconceptions in law, then the legal profession would not exist and, in my opinion, that would be a catastrophe.

It is my suggestion that, whichever way the decision in this matter goes, it is bound to make new law, at any rate to the extent of clarifying the law—to make it plain. The circumstances running through the cases are the facts, but nothing quite like these facts have been hinted at in all the cases, namely, that certain circumstances may arise under which the precise relation of sovereign immunity to those circumstances has to a degree, for the purposes of the procedure to be followed, to be studied afresh. I don't think it can possibly be disputed that the facts of this case are, or cannot be said to be found, at any rate in toto, in any case quoting the doctrine of sovereign immunity. My Lords, the documents, I suggest, the Magna Carta of those people who argue and contend the cases in which the applicability of sovereign immunity applies, I say the doctrines relating to that, in my submission, have only been hinted at in many cases, but they have only been set out, as far as I can find out, with reasonable clarity in the case of *Haile Selassie and Cable & Wireless*.

My Lords, if the doctrines and principles in that case are not correctly set out and are not sufficiently fully set out, then comes the next question, and I think it makes this appeal a simple one: to what extent ought they to be modified? My learned friend Mr. D'Almada ended with it. The particular words, my Lords, I want to admit, but what I am going to say is that the learned Judge in the court below plainly based himself and the action that he adopted—and I am going to argue that what the learned judge did in the court below is very important and has to be closely examined—is set out in these words, and I am going to quote the learned judge:—

“Where it is either admitted or proved that property to which a claim is made either belongs to, or is in the possession of, a foreign sovereign or his agent, the principle will apply; but where property which is not proved or admitted to belong to, or to be in the possession of, a foreign sovereign or his agent is in the possession of a third party, and the plaintiff claims it from that third party, and the issue in the action is whether the property belongs to the plaintiff or to the foreign sovereign, the very question to be decided is one which requires to be answered in favour of the sovereign's title before it can be asserted that that title is being questioned.”

I don't think your Lordships had that before you. I am reading from 3 A.E.R. (1938) page 386. My Lords, my reference to the learned judge is this, I don't remember whether he quoted from it or not, but it is clear he acted upon it. And, then, my Lords, at page 387, the words—and this is what the judge says:—

“It would be a strange result if a person claiming property in the hands of, or a debt alleged to be due by, a private individual in this country were to be deprived of his right to have his claim adjudicated upon by the courts merely because a claim to the property, or the debt, had been put forward on behalf of a foreign sovereign. Such a claim can be adjudicated upon without impleading the foreign sovereign either directly or indirectly.”

But I don't want to do any more than most respectfully submit in regard to that and to say now, is that clear? Or is it not clear? Has it been modified or has it not been modified, or to what extent has it been modified if

at all? My Lords, the case being—this particular case—being one in which not only is the ownership and possession contested to the last inch, but, my Lords, is completely contested—I am referring to this particular moment.

Then, my Lords, the next document is the document of the learned judge in which — my learned friend did not actually I think read to you — in which he deals with his — in which he says, I think at page 10 of the judgment in the court below — my Lords, the principle on which the learned judge has acted is at page 10 of the judgment. It is a very short passage. He first of all quotes from the *Dollfus Mieg* case:—

“I am of the opinion that the state of the law on the question of the 10
impleading of Sovereign States requires the foreign State claiming
immunity from the jurisdiction of the Court to satisfy the Court that it
has at least an interest in the property whose release is sought, and this
can only be done by evidence which has been found to be satisfactory and
trustworthy.”

Now, my Lords, in my submission, that is the whole basis of the learned
judge’s judgment. He says, or he indicates, that there are cases, namely cases,
in which the essentials are not either admitted or proved, in which there must be
something in the nature of a preliminary hearing by the Court. In my view it
comes to that and a preliminary hearing, and the learned judge does not say this, 20
in which the person seeking the preliminary hearing comes as plaintiff and in
which — and this is the point I want to make — he either has to prove it or fail.
Now, my Lords, I ask your Lordships and I ask my learned friend: was there
anything wrong in that view of the law taken by the learned judge, that the
circumstances of the case were such that there had to be something of a
preliminary hearing to see if the essentials were there, and, my Lords, I will deal
with that in a moment.

My Lords, and then the document I want to call your Lordships’ attention
to is the amended notice of appeal. My Lords, I call your Lordships’ attention 30
— my Lords, in this case there has been a trial out by the learned judge on an
issue of fact, mixed fact and law. My Lords, was there anything wrong in the
matter of that hearing, because, my Lords, in my respectful submission, this appeal
simply cannot be heard in the manner that my learned friend Mr. John McNeill
has wished that it should be heard, as though it were a re-hearing from the
outset. My Lords, acting upon certain principles, which my learned friend may
say they are totally wrong, there has been a hearing of very considerable length,
and a judgment given by the learned judge. Well, my Lords, my learned friend
has wished, he has almost treated that judgment as a nullity. Why hasn’t my
learned friend started at the right end of the stick because, I am sure your
Lordships will agree and say, this is where I complain and this is the manner in 40
which I wish it to be dealt with by the learned judge. My Lords, and he
commences his first notice of appeal, his first notice of appeal your Lordships will
remember, which reads that —

“That the judgment of the Honourable Mr. Justice Reece dated the 15th
day of September 1952 dismissing the Notice of Motion filed herein on
behalf of the Government of Indonesia dated the 9th day of July 1952 be
rescinded and that the costs of this Appeal may be paid by the Respondents
to the Appellants.”

He is completely entitled to put it in that way, but, my Lords, the rescinding of the motion, that would probably be a fair — if the learned judge has fundamentally erred, and my Lords, we haven't even been told how he has erred at all, if he has fundamentally erred, what then? I can understand justices demanding 'this is a preliminary investigation only, in which you have to prove certain matters or fail'. You yourself have chosen to adopt that course, and it is a well-known rule that Counsel must make up their minds what course they wish to adopt, because when once they have adopted it they must stand by it in the interests of the parties to the litigation. It must never be forgotten

16 throughout this appeal, the learned judge applied his mind to nothing else.

My Lords, it might be, I can understand circumstances under which it would be right, because of some misconception by the judge, and I make this present to my friend right now, that that judgment gives the impression that it was written in an exasperated frame of mind. If the learned judge had given us his full and true reasoning, he would have said 'By reason of orders of mine — they have not only been treated with contempt, and it is plain and patent to me that the proceedings can go no further. Mr. McNeill, for the second time I will give you three days'. — he had done it once already. My Lords, wasn't the refusal evident in that matter. Finally and emphatically, such that I think

20 your Lordships would say, and I ask your Lordships to say: 'If you want this to be a re-hearing, and you haven't given us any ground for it yet, then we must put ourselves in the like circumstances.'

My Lords, let me just state a little bit more of what I was saying. My Lords, put yourselves in the position of the learned judge — if I may respectfully ask you to do so — he does not call those witnesses of his own motion, but because he is asked to do so by my learned friend Mr. Leo D'Almada for the purposes of cross-examination. Why? Because justice in this case cannot be done without the cross-examination of those witnesses, and the learned judge considers it very carefully and makes the order in respect of two. My Lords, he

30 is confronted with this position, that either he has to, in a matter in which he is entitled to hold they have given evidence on oath, those witness 'the case cannot proceed without injustice, in my view, I having given that order, without the presence of those witnesses.' It is a farce. Suppose, my Lords, he had said 'All right, Mr. McNeill, I will wait three days.' He does not turn up. He says 'I am going to wait six days, Mr. McNeill, but I am not going on with this case until those witnesses turn up.' It is just going through farcical justice. It is tantamount to saying 'then, Mr. McNeill, I am going to say I am simply not going to hear further a party in contempt who makes it plain to me that the contempt is going to be continued'. It is not a question of only washing out the affidavits,

40 your contempt goes to the root of the matter, and it simply' — Mr. Leo D'Almada wasn't asked, I could have said I knew that; my Lords, to me it was totally fundamental, we knew the judge would make the order, and then a matter of the utmost importance without which the case could not be adequately heard when once they — My Lords, I put that proposition as high as that.

My Lords, that takes me back to the notice of motion. My Lords, I really did not know whether my friend intended his notice of motion to stop where he has stopped it. But, my Lords, if Mr. Justice Reece has fundamentally erred — and in my submission has not erred from first to last, and his whole

judgment from beginning to end has to be read in order that you may see his line of thought upon it, my Lords, he said he had not read or he had not referred to certain cases — because, my Lords, the law set out in those cases wasn't in dispute, he did not refer to cases, he only referred to cases in which — which dealt with the point, and that is all he had in his mind. Dealing with the motion before the court to strike out somebody else's action and a preliminary hearing in respect of which, No. 1, it must be remembered always, the motion to strike out, it was a proceeding in which my learned friend had come to the court in the first instance, asking for something from the court, certain proceedings in which he had bowed in toto to the jurisdiction of the Court, in which, for the moment, any references to immunity were waived, there was no immunity in those particular proceedings. My Lords, that is the proposition that I put up. Now then, my Lords. 10

Appeal Judge: You mean diplomatic immunity? Are you dealing with diplomatic immunity or sovereign immunity?

Mr. Loseby: Any immunity. In those proceedings. Any immunity at all, my Lord, proceedings devised for this particular purpose.

My Lords, my learned friend Mr. McNeill was totally right in his conception that 'I cannot answer this claim of \$25,000 which it is alleged I owe. I do not say that I admit \$25,000 at all', and in the next matter he would say a similar thing 'I do not owe \$175,000 at all'. He cannot go there and he cannot say it, because by so going, even by entering an appearance, he is accepting the jurisdiction of the Court, and, my Lords, what is the point of the motion to strike out instead of saying the same thing in the action. You are allowed to do that, just as in arbitration proceedings you are allowed to take the round-about course of staying and striking out, exactly the same, in my submission, and, my Lords, a very important point. 20

Now, my Lords, as my friend's motion originally stands, he is asking, it was that the motion should be rescinded, and your Lordships might very well have said, if he only put that case to you instead of the preliminary investigation, say just for the fun of the thing, and that he can have as many bites at his cherry as he choses, instead of adopting that assumption, my Lords, then, my Lords, the order of the judge is set aside. The order, my Lords, it might very well be valid if there was something fundamentally wrong in the judgment of Mr. Justice Reece, but not only then. Leave to bring a fresh motion, as though you haven't brought it, because the same proceeding has got to be adopted by somebody or another, because otherwise you get it upset, and how is this Court in a position for a re-hearing, for a full re-hearing, and why should your Lordships consent? But if your Lordships did consent, then your Lordships would say, and I would invite your Lordships to say, that if you considered it at all, it is a complete farce on behalf of this Court to again summon those two witnesses for the purposes of cross-examination. Your Lordships, in my view, in my respectful submission can only consent to treat this as a re-hearing, unless there was a failure of justice in the Court below. The ordinary rule, just as if you were sending it back to a jury. 30 40

Now, your Lordships could put yourselves in the same position, if your Lordships thought fit, as the learned judge, and I respectfully submit it to your Lordships that, even now I know it is a farce and it would be a farce, and your Lordships may very well say 'we cannot be parties to a farce'. But can your Lordships, if your Lordships don't do that, finalise the position? Mr. McNeill is entirely in your hands, but I am not going on with this hearing if this final motion is dismissed. My Lords, not to be dealt with was simply in a like way to which my learned friend Mr. D'Almada was only dealing with the alternative of simply saying 'we will treat it as though these affidavits were not there.'

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- 10 My Lords, that is the true fact, and so I ask your Lordships at this stage to consider under what circumstances will the Court constitute itself a Court of re-hearing. In my submission, the answer to that is, only if in respect of any slip made by the judge in the Court below, which resulted in an injustice. My Lords, that is the rule, in my submission, governing all re-hearing, and so, my Lords, it is, my Lords, referring to my own friend, my friend's misconception. My Lords, this is what I mean. My learned friend had abundance of time. It was for him to decide as to his own best method of procedure, and in my respectful submission, he should weigh up these two things, namely that a sovereign power can come to the Courts of Hong Kong at any time it likes: No.
- 20 1. And the most full and complete opportunity will be given by the Courts of Hong Kong, without any doubt at all, under any claim that he may have, as to right to possession, right to ownership, or anything else. And the circumstances may well be such that it may pay him to do the one, or it may pay him to do the other. My Lords, what he chooses would probably have been the best procedure from his own point of view if he had asked himself 'can my witnesses stand cross-examination'. 'I weigh up this case, there must be some cases in which a preliminary investigation is called for, the facts of this case are such that I cannot hope to escape from a preliminary investigation, because possession is not admitted and has to be proved.' My Lords, what is the misconception, that you
- 30 can treat a preliminary hearing (Interruption) I was on the point of saying, it was that to which I was making reference. But the ruling applicable to it is that merely because a sovereign power cannot use the doctrine of impleading to his own advantage in certain cases, it does not mean that he is left without redress, and in that I personally was referring to — and in that matter only — in other words, my learned friend had chosen a certain line of approach, whereas a simple line might have been more to his advantage, and the misconception was that proceedings may either be wholly or in part such that a party to them is immune. Now, my Lords, those were the only preliminary points, my Lords, that I had to make.

40 Adjourned until 2.30 p.m.

2.30 p.m. Court Resumes. Appearances as before.

Mr. Loseby: My Lords, in the interval I have been told, or certain omissions have been pointed out to me, and one of them was that I insufficiently replied to Mr. Justice Williams who asked me what exactly I said or contended in regard to immunity in the motion to strike out. What I had been submitting was — and I was submitting it with complete confidence — that the motion to

strike out stands on a completely different footing to the action in rem and the motion to strike out is a motion in which my learned friend comes in as the aggressor and automatically submitted to the jurisdiction of the Court. My Lords, of course that would not necessarily mean fully and completely that there is no immunity in the matter of the motion, in the matter of this appeal arising out of the motion; there is complete immunity or may be in the actio in rem, but that is totally a different matter. My Lords, Mr. Justice Williams was only very kindly asking me but, at any rate, that was what I was submitting.

That brings me to another point. My learned friend Mr. D'Almada, is not satisfied that he made a completely good, an elementary point arising out of the *Arantzazu Mendi* case. Of course, although there was immunity, if at some stage the parties have been granted immunity, that would not mean that you could in those proceedings go into the sovereign rights. That would, my Lords, remain immune, and this is the point and I am hoping that I am making it clear — at any rate I must try. The point is, he wishes to, as it were, reiterate, as I understand it, the last words of pages 55 and 56 in the *Arantzazu Mendi* case which my learned friend asked you to treat — he just took one section — that as constituting an addition to the rules plainly set out at page 386 of *Haile Selassie & Cable & Wireless*. (1938 A.E.R.) 10

My Lords, it is interesting to observe in this case in the judgment, that the judge commences by quoting with approval the *Haile Selassie and Cable & Wireless* case. He quoted with approval immediately in front of the wrong reference given by my learned friend. It is not the kind of exception, in the submission of my learned friend, because if you read it, my Lords: — (1939 Probate) 20

“But if the Court can see that the question that arises is a question of competing rights . . .” — namely rights based on acts of state, completely, as to whether a state was a right state to effect the act of State — “. . . as in this case here, where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign who is claiming immunity rights over the ship — it may be that those rights are good or it may be they are bad, that is just what we cannot try . . .” 30

Of course we cannot try it but, my Lords, you cannot blandly substitute the word ‘claim’ for ‘right’ — that constitutes a reverse of *Haile Selassie*. It might have arisen and arisen completely in this very matter, the judgment, the trial of elementary facts in the Court of Appeal, go into one point, were facts proved, or were they not proved? Which will go to make an offender impleaded. I hope I have the point clear.

I have to ask your Lordships if you will be so good as to read carefully the judgment of the learned judge, and you can only come to the conclusion it is no question of any kind that you must, in certain cases only, prove in the ordinary way the existence of certain facts, even ownership. There was nothing in those proceedings and, with great respect, again I use the word ‘misconceived’ because there was nothing to prevent my friend, if he had thought it right, without taking a step, claiming ownership and going into it fully. My learned friend did not go 40

into it at all because he knew, I suggest, that he could not establish it and there, I suggest, that my learned friend has not misconceived that; that he deliberately put it in at all.

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That brings me quite shortly, and I am going to ask your Lordships from now on to apply your minds where it has reference to both cases, that is to say, to Action No. 6, the motion to strike out, and Action No. 8, by giving you the history of the case very shortly. It is with reference to Action No. 6. My Lords, I have already said that the judgment appealed against is short and it is none the worse for that. My Lords, the learned judge merely doesn't make reference,
10 but he made it very plain that those are cases where the parties are in agreement — that and no more.

Now to Action No. 6. Your Lordships know that commenced with an action in rem in which my clients say the amount that he claimed against the ship was no more than \$25,000, and your Lordships may think that he is being involved in a great deal of litigation with respect to his \$25,000. But that is not the only matter. There are, as I understand, other people in exactly the same position who also brought their actions in rem, the amount involved — of course it would affect the other actions if your Lordships thought it right to allow this appeal — being not less than \$200,000 claimed to be owing to people
20 within the jurisdiction and enforceable under ordinary circumstances. Of course the effect of your judgment would be that they would have no redress of any kind, because, of course, one can also make an order for costs within the jurisdiction and one can be sure that the order would be enforced.

My Lords, he sought an order on the ship for the costs of the repair and the costs incurred in holding the ship. I look hard at my learned friend in this matter. (Mr. D'Almada). My Lords will notice that my friend Mr. D'Almada looks very guilty there.

Court: When you issued the writ, whom did you believe were the owners of the ship?

30 Mr. Loseby: I believed that it was an Indonesian vessel — I need not say private ownership. I had no suspicion of any kind that a sovereign state was involved. I will give you degrees as I am coming to them.

President: When you issued a writ in rem against a ship flying the flag of a foreign national, you will also have to add in your affidavit that to your knowledge no owner of the ship was within the jurisdiction. Did you make any enquiries?

Mr. Loseby: There was no reason of any kind as far as I know, and as far as it is suggested on any affidavit. He says emphatically on one affidavit that he had no suspicion but that it is the property of the Indonesian Government.

40 President: “. . . to the best of his knowledge and ability no owner of the ship resided within the jurisdiction” and you will see that set out. It is incumbent on the person issuing the writ to make some enquiries as to where the owner lives and he must state in his affidavit that the owner is not in the country.

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Mr. Loseby: We have made efforts to recover our money and, at any rate, there was nobody who was sufficiently interested in the ownership to indicate his ownership to ourselves. I am told that it is completely common practice — it may be wrong — they rely on the *actio at rem*. It is the one and only safeguard they have got. In fact, he neither knew nor suspected and I cannot carry it further. Whether he failed in his duty or not, I cannot carry it any further than that and that is all.

My Lords, the Indonesian Government, by motion, applied to strike out my *actio at rem* and lodged affidavits dealing with the questions of fact and among other things the ownership of the Tasikmalaja, but something else had happened. 10
My information was at this stage that they were not the owners of the Tasikmalaja; that they have not got an interest in the Tasikmalaja, nor were there any grounds which would justify them in their impleading allegation.

My information was fortified by a caveat entered in the same proceedings by Ysmael & Company, in which they lodged affidavits which were very strong and very emphatic — I am only referring to my own mind — at a very early date, and you will find that there were no grounds on which an impleading allegation could be raised. That was the position of fact. And then, the Indonesian Government comes in, applies by motion to strike out Action No. 6. I had not at that time even heard of Action No. 8, and I did not hear of it until I 20
walked into Court for the purpose of arguing my motion and, to my intense indignation, I think Mr. Bernacchi put forward a proposition that Actions Nos. 6 and 8 were to be heard at the same time. Being by nature a little cautious, I had no kind of idea as to whether they might not possibly matter, and therefore I protested, with all the force that I could muster, to the two actions being tried at one and the same time. There were two different motions and two different sets of circumstances, and I only refer to it to ask your Lordships to be good enough to bear in mind that Action No. 6, the motion to strike out, and Action No. 8 are in fact different, and may turn out to be different in certain matters important to your Lordships' minds — even matters I have not sufficiently grasped. 30

Then the whole of the evidence of Ysmael & Company went to the point that none of those matters were present in this case which were to constitute an impleading, and their contention was that, within the lines indicated by the *Haile Selassie* case—that is the case which we have all been certain of—may make it plain what is the procedure when contentions go right to the root of the matter. As far as I was concerned, I was in my own mind completely innocent. At any rate, my case required no courage at all, and I was only too glad to take advantage to the full, as your Lordships have seen me doing, of learned counsel.

Of course, if they have succeeded in your Lordships' view in establishing 40
possession, then, my Lords, I may have an afterthought, but my present thought would be that my case will go and, as far as I can see, I cannot see that there would be a kick left in me, but possibly one would think of one.

I want to make it plain that it turned on one matter, and one matter only, namely, not only, were they in possession, but could they prove it? Because the case must arise sometime or other whether the *Haile Selassie* case

was rightly decided or not, and I should have thought that my learned friend's action would constitute sovereign immunity, because it is impossible or difficult to imagine a case which called for an investigation with the facts alleged. I can blandly say 'I appreciate that you say this belongs to you, but I am informed and told you have not got any claim of any kind, right to possession or anything else.' What can one do in circumstances like that? This is quite a ridiculous case. May the applicants send a post card in cautious terms to every ship in the harbour of Hong Kong claiming that they are the owners of the ship and in possession of it? Whereas my knowledge is that they are not
10 the owners and they are not in possession of it. That is the reduction of my learned friend's contention, as I understood it, that a claim is sufficient. The *Haile Selassie* case shows where you can use that doctrine, and you are entitled to the full benefit of that doctrine where a claim to ownership or possession is admitted. Nearly all the cases, my Lords, were cases in which it was completely, completely, proved. But we were waiting for the case in which it is contested to the last inch. All common sense points in the direction that the procedure adopted by the learned judge in the Court of Appeal was the right procedure, when in fact, my Lords, he said there must be a preliminary enquiry as to what is, or 'Is there a sufficient matter within the rule to enable
20 me to say I have been impleaded.' That hearing, my Lords, has been held, and a more patient hearing cannot be interrupted, the learned judge intervening or patiently consenting from time to time to adjourn the matter in order that some decision here may be filed before he went on, before the next decision was filed or appealed before he went on, and then we all tried to take his distracted mind back to business again until a final climax came.

Now, my Lords, to go into it, my learned friend proposed his case by certain affidavit evidence; putting his witnesses in precisely the same position as if he had called them to give oral evidence in Court. I can see no difference of any kind.

30 My argument rests entirely upon the rightness of my proposition that this is a motion for the purpose of a consideration by this Court, and at this time, in which my learned friend has come in order that he must take a step to prove certain matters or fail. There is not any case in which a person comes half and half and says to the judge 'I want to make it plain that I shall obey such orders of yours as I think fit. Although I have brought these proceedings, bear in mind that all the time I am a sovereign power.' That cannot be done. You either waive the jurisdiction or you don't.

40 Now, my Lords, the first point of interest is—and I am not doing very much more than repeating—if my learned friend thinks fit, he can call any evidence he likes. It later transpires that he calls two witnesses in respect of whom he is going to claim diplomatic immunity at a later stage. I answered him promptly. First and foremost you cannot, in the first instance, having waived your immunity and when you called those witnesses—and this is very obvious to Mr. Justice Reece—you cannot call witness yourself and at the same time claim diplomatic immunity before him. Three people at the same time waived that diplomatic immunity, if they ever had any. First of all, the Indonesian Government; secondly the witness himself, and thirdly my learned friend Mr. McNeill when he called and, the moment he did, my learned friend

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commences by making a great difference between filing an affidavit and the reading of it, and he pointed out, with all the authorities that he possesses, that there is all the difference in the world between filing an affidavit and having it read. When you have read it it is adopted—and quite rightly in my humble view—for the purposes of the proceedings, and it is part of the proceedings. Mr. Justice Reece in the Court below very carefully went into it—as to their claim in that matter — and decided, quite regardless of the point that they waived it, which I thought was complete and final; but they were not, in any event, entitled to it. In this case I am only talking of the litigant because the litigant at this moment is not considered a litigant at all; he has waived his immunity 10 for the moment.

President: I don't understand your words, waiving immunity, because I understand the Indonesian Government to be saying 'I protest against being brought in.'

Mr. Loseby: And the Court has said 'Before I can say that, I have to enquire into it.' With great respect, if your Lordships will see on this point, it is quite a common thing. I remember a judgment of your Lordship's in which your Lordship has pointed out a difference between a sovereign power coming in for his own purposes, and in my submission, this was clearly one of them. I will show your Lordships the illustration in cases of trust where there is a trust in England, and a person comes and says he is entitled to a share in a trust in England, and the Courts say he needn't come, but the courts will allow him to come, in order that injustice may not be done to him. And this motion, in my submission, is backed by all the evidence inviting the judge to award them costs and themselves accepting the jurisdiction of the judge to order costs, and if they waived it, what was it? 20

I am only dealing with this, but I am coming to the culminating point, namely, that my learned friend has not chosen a certain procedure. He mentioned—I forget what he calls it—half and half, but in the circumstances, it is totally wrong. There is no such thing as half and half, and you will find that Mr. Justice Reece deals with it. He doesn't argue it. He seemed too angry to argue on that point. I should have thought that, unchallenged, you cannot have it both ways, and a full and complete opportunity is given to my friend to establish, if he can, those elementary points in his own favour. Even then, he would have an enormous advantage over us, without which he says it is impossible for him to take the drastic step that you have asked me to take. He didn't go on to say 'I know how cautious Mr. Loseby is' but that was the position before Mr. Justice Reece. He had before him the whole of the affidavits on both sides. 30

I am indicating a certain fear in the matter, namely, that your Lordships may be thinking this is a little abrupt. It was a little abrupt, and it was so abrupt that Mr. D'Almada was not even asked if, before the case was decided at all, he wished to answer Mr. McNeill.

It was not one of those cases, as it were, that encouraged the learned judge to be abrupt, but your Lordships cannot get the true picture of it unless I face it up, and what I am really coming to is this: in my respectful submis-

sion, the learned judge fundamentally made no error at all, although the text-books, to a cursory examination of anyone who, unable to go to the root of things, might have invited him to do so for one reason only, that nearly every-one of the reported cases deals either with proved possession or ownership, or some sufficient interest admitted, and the learned judge had it fairly in his mind, all the way through 'How can I, in justice to two ordinary litigants—very important rights being involved—how can I strike them out merely on your assertion that you have been impleaded?.' There must be some case in which it has been gone into. In my view it must be so that there has to be this preliminary enquiry. I use the words 'preliminary enquiry,' I don't know how many days it took, but I hope I am not exaggerating if I say very many, in which we were going backwards and forwards that no injustice should be done to one of the investigators, and the learned judge gave his decision. Now, what did he say? He said much more, and he doesn't say, as in this matter, this is a question of proving title. He did not say the striking out of an action is a very serious matter, in which the onus, as he must have said, is upon the applicant. He (the applicant) has been in contempt or some contempt. What does he decide? Not only that they did not prove the case to his satisfaction and thus enable him to take the drastic step of striking out, but there is no evidence to support it. If he was wrong in No. 1, he would most certainly have been right in No. 2, and I am putting this proposition forward in the alternative, namely, that, supposing you to come to the conclusion, in spite of everything, that the learned judge slipped somewhere, then I shall ask your Lordships to consider very carefully what your Lordships, or what the judgment of your Lordships would be.

I shall ask your Lordships to reject every word in that passage underlined in red to which I was the instigator or I had something to do with it—I mean because I wanted it quite plain that my friend was asking you to go to that extreme. It is very difficult to know what the right course is, and I think it is best, to take it all in all, for me to say no more than it is my respectful submission that the learned judge had in mind the right principle in law throughout; that he gave a judgment which could not be quarrelled with under all the circumstances of the case.

My Lords, I have already made the point as to the dilemma of the judge. I ask your Lordships to bear in mind that it really doesn't matter whether a contempt is misconceived or not. A witness or a party may think all kinds of rude things about the learned judge if they want to, but the order of the learned judge is an order. I have not argued as to whether his initial order, that they were subject to cross-examination, was right or not, because, my Lords, it seems to me all this is unanswerable. You cannot go into Court and say 'Here I am. There is no difference.' This is not a question of compelling somebody to come to Court. It is somebody who is before the Court because he has given evidence and submitted to the jurisdiction and he cannot be allowed, the learned judge himself said, and it makes no difference. You cannot come to Court and say 'Having given my evidence, before I am interrupted I did not intend to ask any further questions.' Where then is the learned judge? Suppose the learned judge thinks, as he undoubtedly thought in this case 'I cannot decide the matter in issue, though it is my duty to decide, unless my order is

carried out,' and, my Lords, if you read the affidavits concerned and counter affidavits, I think that your Lordships, quite apart from a contempt, will come to that conclusion.

But, with great respect to my learned friend, he said he used the phrase 'but it is not the witness doing it, it is yourself' because at one stage the learned judge said 'I cannot consent' and my learned friend thereby made it plain, in my submission, from a misconception, anxious as he was to stand on his right, but he must be careful or he will be out of Court, and it is my submission in regard to the whole of that matter that one has to read into the learned judge's judgment rather more than he said. It is plain. I have not called your Lordships' attention to the passage because, in my opinion, the learned judge just puts in enough and not too much. I am not asking for an amendment of any kind whatsoever, but, if I am wrong in that, then my learned friend asks you to rehear it. 10

I ask your Lordships to refuse to do anything of the kind, because I am confident your Lordships are entitled to ask us what to do, and I respectfully submit that it is to my interest to say we think we can hold that judgment exactly as it is, under all the circumstances of the case, and we ask your Lordships to say that, under all the circumstances of the case, that your Lordships are not willing to rescind it or indeed criticise it. But then, my Lords, there is all the difference in the world if your Lordships at any stage were to say 'what then? Suppose we find so and so?' There is all the difference in the world between the case of a rehearing — that is a step further. A rehearing of the matter being different to a rescinding, and going much further in enabling your Lordships — I ask your Lordships to say that it has not been proved to your Lordships' satisfaction that any injustice of any kind has been done. My learned friend, Mr. D'Almada, has, I observed, made no complaints. He has not put in a cross-appeal. It is my respectful submission that your Lordships cannot, in justice to the parties, that if your Lordships thought that something Mr. McNeill might have said or had said . . . then I can understand why the order of the learned judge was rescinded, the motion possibly to be struck out and a right given to bring any motion on the same facts or even to send it back to the learned judge in such a case. But that, my Lords, would depend — my Lords, if it were a rehearing, I find it impossible to understand how your Lordships can rehear it, except with the same rights and in the same duties that the judge in the Court below had — duties to the litigant in the matter. 20 30

My Lords, I have endeavoured to show a sidelight upon the matter just from the point of view of my client for your Lordships' consideration. My Lords, I made just one or two notes that I don't want to miss. I have already made the point of the hypothetical case in the *Haile Selassie* case. Suppose some foreign power claims impleading under a misapprehension of his powers by reason of fraud, for example, thinks that he is the owner of property or in possession, when in fact he was not — My Lords, I only ask the question in regard to that, is a preliminary enquiry legitimate? Does the fact that he thinks he is the owner, does it make any difference at all? I respectfully submit it doesn't, and cannot make any difference to the position. I have already dealt with various cases. And then just on the question as to whether there is a possibility of any injustice being done to the Indonesian Government, my Lords, just again, as I understand the position, the Courts say to a sovereign power 'I reserve this right.' There 40

are certain circumstances in which we cannot help you in your own way, namely, via sovereign immunity. We cannot always help you via sovereign immunity, only when you have ownership or possession; but there are cases in which the burden is on you to decide for yourselves. You can only come as an ordinary litigant. It doesn't mean that because you cannot plead sovereign immunity successfully that you have not got the ordinary rights of litigants. You can at all times come to the Courts; nothing bars you from that. You cannot have sovereign immunity unless you show that a conclusion has been decided in your favour by the ordinary process of the courts . . .

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10 . Appeal Judge: What is the advantage of a foreign sovereign claiming immunity if he has got to go as far as proving it?

Mr. Loseby: Everyone of the cases illustrate this point, and he has not got to say anything more. He has not got to say "I am the owner, it is admitted I am the owner. Therefore I, being the owner, although it may be said that I owe \$50,000,000, the courts must say 'we cannot go into it because you are the admitted owner'." What rights follow? If he can only prove possession at the right time, he can sail this ship away as far as this Government is concerned. I am only answering your Lordship's question, because I agree, my Lords, I got an order for costs, I took it for granted I cannot levy execution on him. My Lords, it is
20 the very, very, minimum. If you establish just the bare possession at the right time, everything else follows. You can sail away with every ship in the harbour.

My Lords, I don't dispute the sovereign immunity doctrine in any kind of way, but, my Lords, I only say it is not a ridiculous doctrine, it cannot be carried to ridiculous extremes. My Lords, my own case of costs — may I take the costs. I have had this order for costs made against me. My Lords, I don't know why. He is a sovereign power, he has been in the Court below, they haven't even given him his judgment, but I cannot get my costs. Your Lordships will embarrass me by giving costs in my favour, Mr D'Almada will take advantage of it. With very
30 great respect, it is very important, the question your Lordships put to me. In answer to your question I say, an enormous advantage, but there are certain essentials which must be insisted upon, otherwise it becomes totally ridiculous. My Lords, there is not difficulty, but I won't trouble your Lordships with it at all, for me to take the doctrine as put forward by my learned friend, as opposed to the one we have put forward, and put hypothetical cases showing society simply could not carry on, and particularly a business community like that. That people could defeat debt — nobody has ever suggested that you could defeat debt to any degree by merely pleading a sovereign immunity, unless it is properly safeguarded, and in my humble view, it is properly safeguarded, otherwise it would be ridiculous, but, my Lords, even safeguarded the advantages are enormous, and my final word
40 is we don't have to attack nor need we complain about any of the privileges given by sovereign immunity. We only say, we ask your Lordships to insist that the matter is properly safeguarded, and it has been safeguarded in this case. My Lords, if they were not a sovereign power, what chance would my learned friend have here, with his argument. Suppose a motion, any motion, and this is my final point, and this was a matter in which he stood in exactly the same position as any other litigant.

Adjourned for ten minutes.

3.55 p.m.

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Mr. McNeill: If it please you, my Lords. I have listened with attention to the speeches made by the learned leader on the other side, and also to the excerpts from the affidavits which were read by my learned friend's junior. My Lords, I ask myself, and I invite your Lordships to ask yourselves again the question which I first posed: can it be said that here there is a matter of competing rights? Now, my Lords, nobody listening to the speeches which have been made and the large section of the affidavits read, without coming to the conclusion that, without any shadow of a doubt, there are in both actions matters of competing rights, rights which, if the issue of impleading had not been raised, would have been fought out in the Courts, with evidence on both sides — conflicting evidence — that I think was the expression used by the learned judge in the Court below — conflicting evidence, upon which a decision would have been reached as to which right had been established. 10

Now, my Lords, the question of whether there is enough material before the Court to indicate that there is a question of competing rights, is one with which I dealt at some length, and your Lordships will remember my first point was this: if a ship, or goods, is brought into the country by a foreign state or sovereign, then the matter of competing rights is sufficiently established if it is merely asserted that the sovereign or state has one of the necessary interests. That was my first point. 20

My Lords, I am not going to take your Lordships' time very long on that point, because I am going to say that your Lordships need not decide whether I am right or wrong in that, for the simple reason that there is ample material before your Lordships to show facts, — to use my learned friend Mr. Loseby's phrase — to show facts that there is a question of competing rights, so the time I occupy your Lordships on the first point will be very slight.

I am anxious, my Lords, that the confusion, the dust of confusion I say with respect to my learned friend Mr D'Almada, is quite considerable, and I just want to dispel it. Now, in the *Haile Selassie* case there was no question whatever of the money which was claimed, the commission claimed by the Emperor, there was no question that this commission had not been brought into the country. The sum of money claimed was a debt due from the Cable & Wireless Company to someone, it was either a debt, it was money held and which ought to be paid to the plaintiff in the action, or it was money to be paid to somebody else, I think it was the King of Italy. There was no question of money being brought in, that did not arise, and the distinction, my Lords, is made perfectly plain in the *Haile Selassie* case, reported, my Lords, in 1938 Chancery at 839, at page 844, my Lords. This is the passage upon which my learned friend Mr. D'Almada relied, page 844, in the middle of the page:— 30 40

“ It is unquestionably true that the courts of this country are not competent to entertain an action which directly or indirectly impleads a foreign sovereign state. Thus, if property *locally situate in this country* is shown to belong to, or to be in the possession of, an independent foreign sovereign, or his agent, the Courts cannot listen to a claim which seeks to

interfere with his title to that property, or to deprive him of possession of it. The rule applies in the case both of actions in personam and of actions in rem."

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Now, my Lords, I take my learned friend Mr. Loseby's example on that, he says that if you allow this appeal to succeed, a foreign sovereign can send a post-card to all those ships in the Colony. My Lords, those ships are in the Colony and in the possession of somebody else. It is always a third party, like Cable & Wireless in this case, it is a third party. It goes on:—

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10 "The rule applies in the case both of actions in personam and of actions in
rem. But it has never been extended to cover the case where the
proceedings do not involve either bringing the foreign sovereign before the
Court in his own person or that of his agent or interfering with his
proprietary or possessory rights in the event of judgment being obtained.
Where it is either admitted or proved that property to which a claim is
made either belongs to..." — of course 'Belongs' includes a proprietary
interest — "belongs to or is in the possession of, a foreign sovereign, or his
agent, the principle will apply. But where property which is not proved or
admitted to belong to, or to be in the possession of a *third party*, and the
20 plaintiff claims it from that third party, and the issue in the action is
whether or not the property belongs to the foreign sovereign, the very
question to be decided is one which requires to be answered in favour of
the sovereign's title before it can be asserted that that title is being
questioned."

Of course it applies to a ship in the harbour, it is in the hands of a third party. If Ysmael & Co. were to issue a writ in rem against a ship in the harbour in the possession of a third party, we would have to, if we wished to make our claims, come in and prove it, and of course that is made perfectly clear. I am not going to re-read the passage on page 845 where reference is made to the difference between an action in rem and an action in personam.

30 Now, my Lords, there was nothing in the passages which were read from
the Cristina, passages at 508, 514 and 516, which in any way affect the position
as I have stated it. I will take, for example, my Lords, the passage in *the
Cristina* at page 508, 1938 A.C. :—

40 "It has, however, been strenuously contended that the decision in *the Jupiter*
does not govern this case because the requisition was there effected within
the jurisdiction of the requisitioning State, whereas in the present case
the Spanish Government seized *the Cristina* in British territorial waters. It
was said that such seizure constituted a wrongful act which was a breach of
international comity and excluded a right to claim the reciprocal comity of
immunity. The famous judgment of Marshall C. J. in *The Exchange* was
also relied on as resting the immunity on a licence in favour of the sovereign
State which brings its own property within the alien jurisdiction on the
footing of the licence, whereas no such licence can be implied when the
vessel has entered the jurisdiction in the owners' possession and has then
been wrongly seized. It was also said that the judgment of the Courts

below, if upheld, would enable a foreign sovereign State to effect unlawful seizures in this realm of chattels or property without either the State itself or its agents being under any liability civil or criminal."

That is precisely the example given by my learned friend Mr. Loseby, the example of the postcards and the ships in the harbour. He goes on:—

"But in my judgment these objections are ill conceived...."

and that is all I need say about that. Now, my Lords, I maintain and continue to maintain that where a foreign state brings ship into the country and says 'this is my ship,' that is enough, the matter of competing rights is then before the Court. 10

Now, my Lords, when it comes to the second branch of my argument, in my submission it is enough. Here you have got before your Lordships evidence, ample evidence, of a purported contract of sale of the ship to my clients. That is enough. That itself is enough. You have that in evidence. That is a fact which is admitted on all sides. Now, what the respondents say is this, 'that is not enough, because we say this contract of sale is fraudulent, invalid, bad in every kind of way.' Now, my Lords, again I say, if there had been no impleading motion, what would have been the issue to be tried in the action? It must have been whether that purported sale was good or not. Having regard to the right claimed under an admitted charter, a right claimed by the respondents, there would be two competing rights, one right the contract of sale, the other right the charter which they say was going to expire and contained no option. 20

Now, my Lords, if it was necessary upon an impleading motion for the appellants to establish the validity of that purported sale and similarly in other cases, your Lordships would not find any reported decisions of impleading motions, because what is the use of saying 'I don't submit to your jurisdiction, I will not have my claim of a sale adjudicated upon by you, I do not agree to it'—what is the use of that if the Court is then, upon affidavit evidence, to adjudicate upon the claim, and that is what was meant by Lord Justice Goddard when he said 'As soon as you see that it is a question of competing rights, you cannot go any further.' 30

Now, my Lords, we are not concerned — neither with respect are your Lordships concerned, as to whether this branch of law relating to immunity is properly founded, whether it ought to be as it is, your Lordships, in my submission, have to be guided by the views of the higher Courts.

Now, my Lords, arising out of this, a very curious argument was put forward by my learned friend, Mr. D'Almada. I would call it Operation Mulberrybush. He is going round and round the mulberry bush until I, quite frankly, got quite dizzy yesterday. He says this: 'there is a claim, you claim a sale, we say that sale is bad because really the ship was only chartered without any reference to the sale. 'But' he says 'you cannot rely upon the charter, which we admit, you have brought it to an end because you have made a purported sale.' So you have got around, again, my Lords, to the beginning, because he says 'you cannot have a purported sale because you have a charter.' So you can go round 40

and round again, my Lords. It just does not mean anything. It shows the absurdity of the contention that we must prove up to the hilt that this sale was a good and valid sale.

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My Lords, my Lord Mr. Justice Williams and also your Lordship asked, again and again, a very simple question of my learned friend, it was said: 'Now, how far do you say that the appellants have to go? To what extent have they got to prove their claim?'. Now, my Lords, I did not hear any answer to that. My learned friend could not say: 'he has got to prove it up to the hilt' because he found himself in the position that you might just as well try the action, and you would
10 be trying it on affidavits. So we had a sort of half-way house, and he said 'They ought to do a little more than they have done.' The fact of the matter is, my Lords, that all we have to do on this branch is present to your Lordships the foundation of our claim.

Mr. D'Almada: Of course your Lordships know quite clearly that I have never conceded that a half-way house is sufficient. I have used the words, time and time again, from the *Haile Selassie*, from Lord Maugham in *the Cristina*, that that claim must be established, established by evidence satisfactory to this Court. I said nothing about a half-way house.

Mr. McNeill: I can only assume, my Lords, my learned friend is saying
20 that your Lordships must try this action on the affidavits, must try this question of competing rights on affidavits. That is what he means by establishing. He cannot mean anything else.

Now, my Lords, I have already dealt with the *Haile Selassie*, upon which he relies, I have already pointed out to your Lordships that there the matter in issue concerned property in the hands of a third party, with two outside competing parties who tried to obtain possession. Now, that is precisely what Lord Maugham says in *the Cristina*, he says if a foreign sovereign wrongfully gets hold of goods in this country and hands them to a third party, then, if the owner or a proposed owner comes along to the third party and sues him, the foreign
30 sovereign must then come in and establish his title. He must prove it up to the hilt.

But that is not the position here, my Lords, and I take, on this point, my Lords, as the clearest exposition, the statement of Lord Radcliffe in the *Dollfus Mieg* case. Of course your Lordships will appreciate that in that case the money was brought in, the gold bars were brought in by the governments concerned. Lord Radcliffe, my Lords, 1952 A.E.R., at page 588, paragraph B. Now, my Lords, your Lordships will remember that my learned friend Mr. D'Almada said that he wanted to emphasise in the sentence I am going to read, the word 'normally,' so I am going to read it that way:—

40 "Even to say that much begs one important question, for it assumes that he has a valid interest in that property, whereas a stay of proceedings on the ground of immunity has *normally* to be granted or refused at a stage in the action when interests are claimed but not established...."

Now, my Lords, I wasn't clear why the emphasis should be laid on the word 'normally,' the word 'normally' refers to the time at which, the stage in the action at which an interest is usually claimed. When Lord Radcliffe used the word 'normally,' he is talking about the time at which an impleading motion usually raises the issue of immunity, and, of course, the usual time is as soon as possible after the writ has come to the attention of the foreign state.

Now, my Lords, the only reason why he used the word 'normally' there, I am not going to refer your Lordships to the passages, it was rather curious in that case the Bank of England raised the question of immunity, and it went right up through the first Court, the Court of Appeal, and was about to come to the House of Lords, when apparently the foreign governments concerned must have been advised that it was a little dangerous on the basis of the Bank claiming immunity, and that they should be added as parties. They therefore applied to the Court of First Instance, were dismissed, went to the next Court and then went to the House of Lords. 10

I am going to read that sentence once more, emphasising the word that I think ought to be emphasised, according to the law:—

“Even to say that much begs one important question, for it assumes that he has a *valid* interest in that property, whereas a stay of proceedings on the ground of immunity has normally to be granted or refused at a stage in the action when interests are claimed but not *established*.” 20

Now, what could be plainer than that, my Lords, and it is interesting the word 'establish' there, because whereas my learned friend Mr. D'Almada says I have got to establish my interest because Lord Radcliffe says that the application for immunity comes forward as a rule, as it has in this case, at a time long before the interests have to be established in the Court, that is the right time and that is the essential element my Lords, in impleading. You don't have to finally establish your interest, otherwise you might just as well fight the action.

Again and again, my Lords, it is said, these rights, whether right or wrong, these claims, whether right or wrong, and that I think is contained in a passage of Lord Justice Goddard, where he says it is a question of competing rights, and he goes on, on page 56, 1939 Probate, he says:—

“Where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign who is claiming immunity rights over the ship—it may be that those rights are good or it may be they are bad, that is just what we cannot try . . .”

in other words, they cannot try the validity of the rights.

Now, my Lords, it was said by my learned friend that in the *Arantzazu Mendi*, the Court would not try the question of the validity of a foreign decree anyway. Now, my Lords, that was not what Counsel argued. At page 40, my Lords, in the argument of Counsel, at the top of the page, in the first paragraph, Counsel says:—

“Neither proprietary nor possessory rights are acquired by the requisition on behalf of the Nationalist Government (see *The Broadmayne*), and further the assertion as to requisition is disputed.”—that is what is meant very often by assertion—” for the Republican Government undoubtedly requisitioned the vessel first.”

There was the question of which of those two requisitions was the better, and that is what the Court said is exactly what we will not go into.

Now, as to purported right, your Lordships have the affidavit of Khalil Khodr, and your Lordships will find in that affidavit, paragraphs 28, 29 and 31, repeated statements about a purported sale, and if that was not enough, my Lords, the writ in Action No. 6, undeniably contains a statement that Ysmael & Co. have not got the legal possession of the ship, whatever other possession they have got, or rather alleged to have. My Lords, it was for that reason that I referred your Lordships to Pollock & Wright on Possession. How can these people come along and say to your Lordships that there is no interest in anyone else, possessory or proprietary, when they themselves alleged in their writ that somebody else has a legal possession and they wish to have it decreed to them. Well, the only other party was the Indonesian Government.

Might I, in passing, my Lords, just deal with that same point in Action No. 6. My Lords, Mr. Justice Williams, pointed out that there was no record of the plaintiffs in that action ever having made the enquiry required by Rule 30 of the Admiralty Rules. My Lords, not only is there no record of their having made an enquiry, but there is an expressed statement in the affidavit of Mr. Anthony Loh, in paragraph 4 of his affidavit, that he did not concern himself with the ownership of the said ship. So it is not merely a question of overlooking something, he said ‘I don’t care who owns the ship’ and, of course, in doing so, he undertook those risks which anyone undertakes when they bring an action in rem, that a foreign government may be concerned, and, my Lords, Mr. Anthony Loh has sworn that he knew this ship flew the Indonesian flag. Had he been concerned with the ownership of this ship, all that he had to do was to go along to the Indonesian Consulate, where the ship must have been registered, and say ‘who is the owner of this ship, I have got a claim against the owners’, and he would have been told there that the Indonesian Government was the owner. How he can come along now, in the Court below, having omitted very ordinary precautions which are laid down for the benefit of those who do not take ordinary precautions, laid down in Admiralty rules, it is difficult to understand.

My Lords, it will be quite enough for your Lordships to say there was a claim of ownership supported by, on the evidence, by a purported contract of sale to my clients. That is enough, your Lordships need go no further. If you wish to go further, there is an admitted charter, and your Lordships will remember the mulberry bush argument. They say ‘you repudiated it by purporting to buy, we repudiated it by issuance of the writ’. That argument cannot hold water.

My Lords, yesterday my learned friend Mr. D’Almada, I think it was yesterday, said that the crucial time was not the date of the writ, but the date when the motion of impleading was made. Of course, my Lords, that is, in my submission, entirely incorrect. If your Lordships will look at the file, you will find that the ship was arrested on the same date as the writ.

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Appeal Judge: Re-arrested.

Mr. McNeill: Re-arrested, my Lord, on the same day as the writ in Action No. 8, was arrested on the same day in Action No. 6. As soon as the ship was arrested and she was in the custody of the Court—and the *Arantzazu Mendi*, which is contained in 1939 P.D. shows, and your Lordships have had it before you in other proceedings, that you must maintain the status quo, that the Court, when it arrests a ship, holds it through the Marshal for all persons claiming any interest. Nothing that happened afterwards could affect the interests claimed.

Now, as I understand my learned friend's argument, he says 'By your motion you claim that at date of the motion you had some interest'. That is not correct, my Lords, first of all the motion seeks to set aside the writ and all subsequent proceedings. It says the government is impleaded by the writ, by the writ itself. Secondly, your Lordships will find in the notice of motion frequent use of the words 'is and was at the material times'. Now, my Lords, on this point my learned friend Mr. D'Almada cited a number of cases with which I am not going to deal, because each one of them concerned defences arising after the writ which could be set up by the defendant. He spoke of confessions of defence and so on. My Lords, the simple answer to that is that you cannot endorse upon a writ of summons in an action, any cause of action which does not then exist. My Lords, it is very difficult to find an authority for this proposition, but I have found one, Odgers on Pleading, 13th Edition, page 149, the third line:—

"A plaintiff may only include in his Statement of Claim cases of action which existed at the date of the writ."

Now, my Lords, if this Action, No. 8 or No. 6 had not been checked by a motion of impleading, it would have gone to the Courts. In the light of my learned friend's cases, we could have raised any defence to the action which occurred before or after the date of the writ, but he could not have inserted on his writ afterwards any cause of action which arose afterwards. That is the difference, and when you are dealing with an impleading motion, and not with a cause of action or a defence, such cases as he referred to, which say that the position at the date of the action is what you must look at, obviously have no relevance at all, because when the Court has arrested the ship, the *status quo* on that date is the date when you must consider the circumstances.

Appeal Judge: I was under the impression that it was the date, the relevant date, when the claim to immunity was made, and your claim to immunity was made on the 30th June, because your solicitors wrote on that date. A short passage, on page 506 of *the Cristina* (1938 A.C.):—

"It is enough to ascertain that it had possession at the time when the claim to immunity was made."

Mr. McNeill: I don't read it that way, my Lord. I read it that at the time it was claimed there was immunity. Does your Lordship say . . . ?

Appeal Judge: Yes.

Mr. McNeill: The sentence could be read in both ways.

Appeal Judge: It does not matter, it is either the 27th or the 30th.

Mr. McNeill: It does not matter, my Lord, for the simple reason that the ship was arrested, and that is the date on which all possessory or proprietary interests have to be decided. It is not necessary for your Lordships to decide one way or another.

Mr. D'Almada: If that was in your Lordship's mind, you should have given me an opportunity to deal with it. If Wilkinson & Grist write to the plaintiffs' solicitors and say "we own this ship", that is not a claim to immunity.

10 Appeal Judge: There are three dates before the Court; the 27th, the 30th — as between those dates there is no difference — but you say the 9th?

Mr. D'Almada: There was a claim made by letter, but the notice of motion was on the 9th July.

President: Suppose the foreign sovereign who claims to be impleaded does not hear about it for a month, do you say.

Mr. D'Almada: Yes, if in the interval he sells the ship.

Mr. McNeill: There again you have the mulberry bush.

20 My Lords, my learned friend obviously has not listened to his own argument. We claim a purported sale on the evidence. Now, if we were right in that, of course it continues after the 30th June — we are the owners. If the answer is that 'the ship is only under charter, and your interest came to an end', so, whatever the date is, there is still a competing interest — there must be, because they say 'under our charter you had no right, you had no claim, you had no power to buy this ship'. Then you come round the mulberry bush to the other side.

30 So, in my submission the date does not matter at all, but if there was any argument, I would say that the date of the writ is the right date, for the reason I have given to your Lordships; secondly because it is an action in rem which calls upon anybody who has an interest, and the very terms of the writ in Action No. 8 itself claiming legal possession from the only other person who can have possession. So, from all these points of view, my Lords, the date is not really a material one in either of these two actions. The page in the *Abodi Mendi* is 194, which is merely showing that rights crystallised on the dates in May. 1939 Probate, page 195, it talks of "keeping the ship in *medio*, and all questions of the right to possession of the ship open till the action was decided", and 194, it says:—

"In our view, once the ship, in an action for possession, was put into the charge of the marshal of the Admiralty Court, all persons concerned in the litigation were under a duty to abstain from any interference with the custody . . ."

It is merely a reference, my Lords, to show that as soon as the ship was arrested, all possessory interests are protected.

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My Lords, there are a few loose ends, one of which is this question of the agent, Starr. My Lords, really a good deal of discussion took place, argument took place, I think by my learned friend's junior, on the question of whether the sale was valid or not, having regard to the allegation that the power of attorney is illegal. Now, all that is an investigation of title. Then he said Starr's agency, his authority, terminated, then of course the suggestion that the respondents, through their agent Starr, brought their ship into the Colony can have no substance whatever. That was their suggestion: "well, Starr gave the order to bring it in, and therefore, he, as our agent brought it in, and not the government." When my Lord, Mr Justice Williams said to Mr. Bernacchi 'what is your authority, 10 you say there was a restoration', he said it was restored for some purposes and not for others, but we were not able to ascertain for which purposes.

President: Can you establish an unconscious control?

Mr. McNeill: That is what they have been trying to say. They are saying that Captain Silos, at some undetermined moment decided that he would hold the ship for the owners and not the Indonesian Government.

President: But even as regards Starr. Because, so far as the respondent company is concerned, I understand that they thought the ship was still under charter, not knowing about the sale.

Mr. McNeill: That applies to Captain Silos too. 20

President: It must revert again to Starr, because if he had purported to sell the ship to the Indonesian Government, how can he say 'I am the agent'?

Mr. McNeill: That is one of the very numerous fallacies. Actually, of course, the evidence shows that he moved the ship upon the instructions of the Ministry of Defence of Indonesian Government. That is what he thought he was doing. Now, taking Captain Silos's evidence, it seems that he, while pacing the bridge in mid-ocean, made some sort of mental reservation that if an action was brought in which the question of ownership was going to be discussed, he had then at that moment, transferred his allegiance to someone else.

Now, my Lords, whichever way you look at it, when he said 'I hold it for 30 the owners', that, of course, must be subject to the orders of the charter. Again, my Lords, the Indonesian Government, my clients, ordered repairs, your Lordships will remember that there was a letter from the Consul General, addressed to the captain of the ship "Please kindly allow Mr. Kuitert to go on board, because he is looking after the repairs". There was no protest about that. They proceeded to have repairs done, they made a contract with the Dock Company, they pay hundreds of thousands of dollars, and all the time Captain Silos is making an intricate mental reservation.

I invite your Lordships to say that there is not any evidence showing that there is a possessory control, whether it was as owners, as we say we are, or as 40 charterers, in any way altered by these mental reservations of Captain Silos. I say the evidence is clear, that we brought this ship into this Colony, within your Lordships' jurisdiction, and that the position as far as possessory interest and

proprietary interest are concerned, remain the same right up to the date of the writs in those two actions. My Lords, whether emphasis was placed on ownership or charter, I think is merely a red herring. We have from the beginning maintained that we were owners of this ship, and they admit their charter, and we don't mind, but I would say that the proper ground is ownership, is purported ownership, a purported sale, and, my Lords, on both grounds I invite your Lordships to allow this appeal.

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My Lords, I am reminded that the proportionate number of the crew was always substantially in favour of my clients, and whatever my learned friend Mr. D'Almada may say, I am not prepared to believe that the learned Lords in the House of Lords used the words 'master and crew' if they had not appeared before them.

On those grounds I ask your Lordships to allow the appeal and say that my clients are impleaded by the writs in both actions, that all those proceedings should be stayed, the writs should be set aside and consequential orders made for which I have asked. Your Lordships have power, of course, to make any orders, not only an order which the judge in the Court below could have then made, your Lordships also have powers to make any necessary orders which you think fit. I give your Lordships the reference, it is the Supreme Court, Chapter 4, Admiralty Rules, Rule 124:—

"The Full Court shall have power to give any judgment and make any order which ought to have been given or made and to make such further or other order as the case may require. . . ."

Mr. D'Almada: May I make this observation on my learned friend's reply that it appears that the master suddenly made some reservations on the 27th June, and that is why he says he held it on behalf of the company, and I ask your Lordships to note in connection with that, document 23, to which is exhibited a cable from Djakarta, informing him, Silos, of the sale of the ship on the 9th June, and there is evidence that he went to the Indonesian Consulate and he says he thereafter held the ship for the owners. It is not a question of mental reservations, but you have a very good reason.

President: Mr. D'Almada, I think we can put this particular issue over until Saturday morning.

Adjourned until 10 a.m. Saturday, 13th December, 1952.

13th December, 1952, 10 a.m.

FIFTH DAY

Court Delivers Verbal Judgment:—

These motions were argued on one point only, that is, that even after the removal of certain affidavits from the record, there was enough left to show that the Government of the Republic of Indonesia was impleaded. We find ourselves in agreement with this contention and it therefore becomes

unnecessary for us to hear arguments on the other issues raised. We hold that these proceedings impleaded the Government of the Republic of Indonesia and we give judgment therefore in terms of the two motions. We will give our reasons for this judgment later.

Mr. D'Almada: Two questions arise as a consequence of your Lordships' judgment. The first is the disposal of the other appeals that are on the record, and, on that, I take it your Lordships will hear my learned friend Mr. McNeill because they are his appeals.

The second point is an application which I deem it proper to make now upon the delivery of your Lordships' judgment, for a stay until further order, because my instructions are that my clients propose to seek leave to appeal to the Privy Council. Your Lordships will hear me now on the question of a stay? 10

President: I think, Mr. D'Almada, we might adjourn it and put it down for another day.

Mr. D'Almada: As your Lordships please. I was going to suggest that there be a stay for a week or a fortnight and the matter could be argued then.

President: What does Mr. McNeill wish to say about it?

Mr. McNeill: My Lords, I don't want to go into arguments of stay. I should have thought a stay would be unnecessary at the moment because the ship is still under arrest in Action No. 13, and as my learned friend's clients have a caveat release, so, until that is disposed of, I should have thought they were safe, and any question of a further stay of these proceedings was not necessary at this stage. 20

Mr. D'Almada: My Lords, I cannot leave it just at that. We have this ship arrested in Actions 6 & 8, and I am asking for a stay so that the arrest will remain.

Mr. McNeill: My Lords, I have only just mentioned that point. I am instructed that we have no objection to any date your Lordships suggest for argument for stay.

President: You have no objection to a stay pending that period? 30

Mr. McNeill: My Lords, I must say I should have thought it was unnecessary but my learned friend could apply at any time if there was any movement in Action No. 13, my Lords, as he has a caveat. He has got a caveat in Action 13, the ship cannot depart, it must remain under arrest in that action, so I must confess that I don't quite see the object of a stay.

Mr. D'Almada: Shall I say candidly that I am very suspicious. I don't know what may happen; 13 may be an unlucky number for me. I want this stay, my Lords, until this matter can be argued between ourselves and Mr. Wright. There is no question of removing the arrest made in Action No. 8, and, in view of the fact that general proceedings will be stayed for a fortnight, may I suggest that the matter be taken some time early in January? 40

President: Why not wait until the end of January?

Mr. D'Almada: I am entirely in your Lordship's hands as to these matters.

Mr. McNeill: My instructions are, I ask your Lordships to fix the earliest possible date.

President: I think early in January, Mr. McNeill.

Mr. McNeill: Early in January, the earliest date available for an argument for stay, and, frankly, I see no reason for a stay at this stage regarding the decision in the other action, and if a stay is granted at this stage, my learned
10 friend's clients must give an undertaking with regard to expenses in connection with the stay.

Mr. D'Almada: I have a faint recollection that when the other side made an application for a stay, no terms were imposed and I don't see why there should be any here. The stay is merely that the arrest may stand until the matter is argued. I cannot see how your Lordships, having denied the terms when we applied, they should now be imposed.

President: Have you any idea how long you will take, Mr. D'Almada?

Mr. D'Almada: A very short time, a half hour should be ample.

President: If the 2nd January is agreeable, that date will be fixed for
20 the hearing of the application to stay, and there will be a stay on this judgment until further order. I don't think, Mr. McNeill, we are of opinion we should impose any conditions for this brief period.

Mr. McNeill: The stay, I suppose, refers to the arrest; it doesn't refer to anything else?

Appeal Judge: Nothing else.

Mr. McNeill: My Lords, with regard to the other appeal, I don't think any formal order has been made, a consolidating order.

President: 11 and 12?

Mr. McNeill: My Lords, they were to be tried together, but I believe no
30 formal order was made consolidating them, and I would ask your Lordships to make an order consolidating the two appeals, in which case the effect of your Lordships' judgment will be that the appeal, the consolidated appeal, would be allowed, and your Lordships not desiring to hear argument on the other points.

President: Well, Mr. McNeill, I am not quite sure about that, because these relate to the process of issuing a subpoena and the striking off the record. We have not heard any argument as to whether you would succeed or not.

Mr. McNeill: If all these had been set out in one notice of motion, your Lordships in your present judgment would have said it was not necessary to go into the question.

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President: Would it not be better if they were consolidated and adjourned *sine die* with leave to apply?

Mr. McNeill: The only thing is this as I understand it, my learned friend says he is instructed that an appeal will be made to the Privy Council, and it would be rather absurd to have two bites at the cherry and, in the unlikely event that it would be over-ruled, suppose it were, you would still have the other one outstanding, whereas . . .

President: You want it to be allowed?

Mr. McNeill: No, if the two appeals were consolidated, then there would merely be one appeal in each action, and your Lordships' judgment would merely say "We haven't invited any argument on the other parts, because we have come to a decision on the first one", and then my learned friend's appeal would then go up to the Privy Council with all the arguments there, and if, for example, the Privy Council did not agree with your Lordships on the point which you now decide, there would still be the other points which would require argument — that seems to be two bites of the cherry. 10

President: It is precisely the course the Privy Council would take on this point. I don't think the Privy Council would listen to the substantive appeal on the other two grounds. They would send it back to us.

Mr. McNeill: Because it is not argued. 20

Mr. D'Almada: There would be no question of consolidating those appeals which have not been heard with the appeal which your Lordships have heard and decided. I think there are two outstanding, they may be consolidated, leaving this one entirely distinct.

President: Adjourned *sine die*, with liberty to apply?

Mr. D'Almada: Yes, my Lord.

Appeal Judge: That is not what Mr. McNeill asked for, he asked for it to be consolidated with this appeal.

Mr. D'Almada: How can you say this judgment applies to the other two? I think, my Lords, consolidating the outstanding appeals would be the proper course and adjourning them *sine die*. 30

Mr. Loseby: My Lords, I had rather hoped, I had rather expected, but maybe I am totally wrong in the matter, that your Lordships, in the event of deciding a certain way, would have asked if there was any argument that would have left the matter of costs before further argument, and I appreciate I have no right to anticipate anything of the kind.

President: It is in our remarks, Mr. Loseby, we have not got to that point, we have it on this piece of paper. It was our intention.

Mr. Loseby: My Lords, your Lordships used the phrase "The order in accordance with the motion." I was going to say that if your Lordships, or rather on a word from your Lordships, I won't say anything, I won't say a word. But if your Lordships would allow me at some time to just present a point of view on the question of costs.

President: There is more than the costs, Mr. Loseby, there is what might appear to be an apportionment of the expenses of the detention. After all, this vessel has now been arrested three times on three different warrants.

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Mr. McNeill: With regard to those other two appeals which I asked your
10 Lordships to consolidate, I would ask your Lordships, to note that I did, when
I opened, before your Lordships, indicate that you were going to require argument
on one particular point, I was going to apply on the second appeal for the issue
of further evidence. Your Lordships will remember the question of reading an
affidavit came out.

President: Yes, indeed.

Mr. McNeill: . . . and I would ask your Lordships to note that had
argument been heard on that appeal, we should have applied for further evidence
on matters which occurred after judgment, and your Lordships have on your
file certain documents which haven't been read yet, two affidavits by Mr. Griffiths.
20 I would have applied.

President: Mr. McNeill, on the whole I am of the opinion that the proper
course now is to consolidate 11 and 12, adjourn them *sine die*, with liberty to apply
as to costs. I see the difficulty of consolidating them with this particular issue
in which the judgment has already been given. I don't think he would be
allowed to argue.

Mr. McNeill: I was thinking more of the expense and time.

President: I don't think it will take very much. I would feel happier
with that order.

Mr. McNeill: Will your Lordships make an order for the payment out of
30 the sum of \$20,000.00 which your Lordships will recall was lodged with the Court
for security for costs of the appeal?

Mr. D'Almada: There are two appeals adjourned *sine die*, and the terms
as to security must apply equally to those two as to this one.

Mr. McNeill: I can only express my surprise and not my consternation.

President: Mr. D'Almada, would it be convenient to you if, when we
hear the motion for stay, we can then discuss the matter of costs?

Mr. D'Almada: *I think it would be convenient, my Lord*, very much
more convenient.

Mr. McNeill: My Lords, costs? I haven't quite grasped your Lordship's.

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President: There will, I think, arise the question of costs on certain motions, there will arise, possibly, an application from Mr. Loseby on the costs to be borne by him.

Mr. McNeill: As to which of these two parties will bear the costs, I don't think we mind very much which of these parties bears the costs.

President: It is really an inter-respondents' battle.

Mr. McNeill: What about security?

President: We will pay you that out, and we will reserve the question of costs until the 2nd January. You have asked in these two motions for the costs incidental in each motion against each of the respondents. You will certainly get 10 the costs one way or another.

Mr. D'Almada: Except for this, that many of these motions, summonses, etc., and much of the argument before this case came before your Lordships on appeal, had to do with matters which were the subject matters of the other two appeals, so it would be best if we were given an opportunity to sort everything out and bring the matter before your Lordships on the 2nd January.

President: Yes, I think so.

Mr. Loseby: I don't want to be ungrateful, but I don't quite understand your Lordships' first answer to me. My Lords, I do feel this case is a rather exceptional one from every point of view or, my Lords, any point of view, and 20 even as between—I am only referring to Action 6—even as between the applicants and the respondent, as far as Action 6 is concerned, if your Lordships had considered the matter, my Lords, I did rather hope that even, that, if your Lordships were against one, could possibly ask for—before your Lordships gave a final judgment.

President: The final judgment on costs will not be given.

Mr. Loseby: If so, my Lords, I would have liked a short word between myself and Mr. John McNeill.

President: I am sure Mr. Wright will attend.

Mr. McNeill: My Lords, it is not necessary to go into this question now. 30 I don't think any of us is prepared to do so. As long as we know we have judgment for terms in the motion, that is enough.

President: Your learned Junior will attend on the 2nd?

Mr. McNeill: Yes.

Mr. Loseby: My Lords, my learned friend has taken it for granted that it is exactly opposed as to what I have asked your Lordships. If it is in the terms of the motion, it is final.

President: We are reserving the question of these costs until the 2nd, to hear argument as to what should be paid and who should pay them. The only certain thing is that Mr. McNeill will be paid costs by someone.

Mr. Loseby: I should have thought that my learned friend would not have minded just leaving that one point open.

Mr. McNeill: I am content with the judgment your Lordships have delivered, and your Lordships have now intimated that on the 2nd January you desire to hear further discussion as to how these costs will be dealt with.

10 Appeal Judge: That is on both of the appeals that we heard and also the various motions leading up to the hearing.

President: We endeavoured to go through all those motions.

Mr. Loseby: One has to be so careful, and so long as I am quite clear that there is no final order yet as to costs.

Appeal Judge: No order as to any costs.

Mr. McNeill: We have asked for the costs of the action and the costs of appeal. If orders have been made in the interim, that is a matter for the Taxing Master.

20 President: I can see Mr. Loseby's point of view, that his client will not have to pay anything at all on certain aspects of the case. I think that that is what he will argue.

Mr. McNeill: As far as we are concerned, we are the successful party and entitled to costs. What those costs are and from whom they can be obtained is not our concern.

President: And on what particular motions.

Mr. McNeill: On some motions costs may have been reserved, that wants sorting out.

President: That wants sorting out, Mr. McNeill.

Mr. Loseby: But Mr. Justice Williams expressed himself in terms.

President: You will be fully heard, Mr. Loseby.

30 Mr. D'Almada: There is one outstanding matter. I take it that your Lordships will deliver a judgment in writing, or rather your Lordships will give your reasons in writing?

President: Yes. The reason we are giving a verbal judgment like this, was that we thought it was an unnecessary expense to the litigants if we did not express our views now.

**NOTICE OF MOTION BY JUAN YSMAEL & CO. INC.
FOR LEAVE TO APPEAL TO PRIVY COUNCIL
AND FOR STATUS QUO TO BE MAINTAINED**

(30th December, 1952.)

No. 106
Notice of
Motion by
Juan Ysmael
& Co., Inc.,
for leave to
appeal to
Privy Council
and for status
quo to be
maintained.
30th December,
1952.

TAKE NOTICE that this Honourable Court will be moved on Thursday the 8th day of January 1953 at 2.15 o'clock in the afternoon or so soon thereafter as Counsel can be heard by the Honourable Leo D'Almada, Q.C., and Brook Bernacchi, Esq., as Counsel for and in behalf of the abovenamed Respondents Juan Ysmael & Company Incorporated for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court delivered in this Action on the 13th day of December, 1952:— 10

- (a) Rescinding the Judgment of the Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge dated the 15th day of September, 1952, dismissing the Notice of Motion filed herein on behalf of the Government of Indonesia dated the 9th day of July, 1952;
- (b) Ordering that the Writ and all subsequent proceedings and orders in Admiralty Jurisdiction Action No. 8 of 1952 be set aside on the ground that the said Action impleads the Appellants a foreign Sovereign State; 20
- (c) Declaring that the judgment of the Honourable Mr. Justice Courtenay Walton Reece dated 24th October 1952 is null and void for want of jurisdiction;

the Respondents undertaking to comply with the provisions of the Rules and Instructions concerning Appeals to Her Majesty the Queen in Her Privy Council;

And also for an order that pending the Appeal to Her Majesty the Queen in Her Privy Council the vessel the steamship "Tasikmalaja" shall remain under arrest by and in the custody of the Head Bailiff of the Supreme Court and the status quo thereon maintained.

Dated at Hong Kong this 30th day of December, 1952. 30

(Sd.) MARCUS DA SILVA

Solicitor for Juan Ysmael & Company
Incorporated.

To: The Registrar of the Supreme Court of Hong Kong;

The abovenamed Appellants and to Messrs. Wilkinson
and Grist, their Solicitors;

Anthony Loh trading as A. W. King
and to Messrs. Stewart & Co., his Solicitors.

No. 107

AFFIDAVIT OF KHALIL KHODR

(30th December, 1952.)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

I, KHALIL KHODR, of Shamrock Hotel, in the Dependency of Kowloon in the Colony of Hong Kong, Merchant, make oath and say as follows:—

No. 107
Khalil Khodr's
Affidavit.
30th December,
1952.

1. I am authorised by Juan Ysmael & Company Incorporated to make this affidavit on their behalf.
2. I have been advised and verily believe that Juan Ysmael & Company Incorporated have good and proper grounds for appeal from the Judgment of this Honourable Court delivered in this action on the 13th day of December 1952 to Her Majesty the Queen in Her Privy Council.
3. I verily believe and say that if the steamship "Tasikmalaja" is permitted to leave the jurisdiction of this Honourable Court under the direction and control of the Indonesian Government, that a successful appeal to Her Majesty the Queen in Her Privy Council will be nugatory.

AND LASTLY the contents of this my affidavit are true.

Sworn etc.

No. 108

PETITION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

(30th December, 1952.)

No. 108
Petition for
leave to
appeal to
Privy Council.
30th December,
1952.

To: The Honourable the Judges of the Supreme Court of Hong Kong.

The Humble Petition of the abovenamed Respondents Juan Ysmael & Company Incorporated.

RESPECTFULLY SHEWETH:—

1. That these proceedings were brought by Your Petitioners the abovenamed Respondents against the steamship "Tasikmalaja" claiming to have legal possession decreed to them of the said vessel, which claim appears from the Statement of Claim endorsed on the Writ of Summons in Rem dated the 27th day of June, 1952.
2. That an Appearance under Protest was entered on the 30th day of June, 1952 on behalf of the abovenamed Appellants, the Government of the Republic of Indonesia, also claiming to be owners of the said ship "Tasikmalaja" and without prejudice to their application to dismiss the action.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 108
Petition for
leave to
appeal to
Privy Council.
30th December,
1952.
continued.

3. That the abovenamed appellants filed a Notice of Motion on the 9th day of July, 1952 applying for an Order that the Writ of Summons and all subsequent proceedings be set aside with costs on six separate grounds as set out therein.
4. That the said Motion was heard before The Honourable Mr. Justice Courtenay Walton Reece, Puisne Judge, on various dates from the 28th day of July 1952 to the 9th day of September 1952, both days inclusive.
5. That on the 15th day of September 1952, judgment was rendered by the said Mr. Justice Reece dismissing the said Motion filed herein on the 9th day of July 1952 on behalf of the abovenamed Appellants with costs. 10
6. That the abovenamed Appellants filed a Notice of Motion dated the 15th day of September 1952 that this Honourable Court would be moved at 10 a.m. on Tuesday the 30th day of September 1952 or so soon thereafter as Counsel could be heard by Counsel for the Appellants for an Order that (as amended) the Judgment of the Honourable Mr. Justice Reece dated the 15th day of September 1952 dismissing the Notice of Motion filed herein on behalf of the Government of Indonesia dated the 9th day of July 1952 be rescinded and that the Writ and all subsequent proceedings and orders in Admiralty Jurisdiction Action No. 8 of 1952 be set aside on the ground that the said Action impleaded the Appellants a Foreign Sovereign State and, in consequence that it might be declared that the Judgment of the Honourable Mr. Justice Courtenay Walton Reece dated the 24th day of October 1952 was null and void for want of jurisdiction and that the s.s. "Tasikmalaja" be released from arrest in the said action and that the Respondents were to pay the Appellants the costs of the Appeal and of and incidental to the said Motion. 20
7. That Admiralty Jurisdiction Action No. 8 of 1952 then came to trial and on the 24th day of October, 1952 the said Mr. Justice Reece signed final judgment decreeing legal possession of the s.s. "Tasikmalaja" to Your Petitioners. 30
8. That the said Motion of the 15th day of September, 1952 was heard before this Honourable Court consisting of the Honourable the Chief Justice Sir Gerard Lewis Howe, Kt., Q.C., and the Senior Puisne Judge Mr. Justice Ernest Hillas Williams, sitting together on the 8th, 9th, 10th and 11th December, 1952.
9. That on the 13th day of December 1952 the said the Honourable the Chief Justice and the Senior Puisne Judge allowed the Appeal with the question of costs reserved. The result in law of the aforesaid Judgment is that the Judgment of the said The Honourable Mr. Justice Reece dated the 15th day of September, 1952 dismissing the Notice of Motion filed herein on behalf of the Government of Indonesia dated the 9th day of July, 1952, has been rescinded and that the Writ and all subsequent proceedings and Orders in Admiralty Jurisdiction Action No. 8 of 1952 have been set aside on the ground that the said Action impleads the Appellants a Foreign Sovereign State. 40

10. Your Petitioners feel aggrieved by the said Judgment of this Honourable Court, and desire to appeal therefrom.

11. The said Judgment affects a matter in dispute amounting to \$5,000.00 and upwards and further involves directly a claim of question to or respecting property amounting to or of the value of \$5,000.00 or upwards.

12. Your Petitioners therefore pray:—

(1) That this Honourable Court will be pleased to grant to Your Petitioners leave to appeal from the said Judgment of this Honourable Court to Her Majesty the Queen in her Privy Council.

10 (2) That this Honourable Court may make such further or other Order in the said premises as may seem just.

AND Your Petitioners will ever pray, etc.

Dated Hong Kong the 30th day of December, 1952.

(Sd.) MARCUS DA SILVA

Solicitor for the abovenamed
Petitioners.

(Sd.) LEO D'ALMADA

Counsel for the abovenamed
Petitioners.

20 This Petition is filed by Mr. M. A. da Silva of Rooms Nos. 107/109 Gloucester Building First Floor, Victoria in the Colony of Hong Kong, Solicitor for the abovenamed Petitioners.

It is intended to serve this Petition on:—

Messrs. Wilkinson & Grist, Solicitors for the Appellants.

No. 109

AFFIDAVIT OF MARCUS ALBERTO DA SILVA

(30th December, 1952.)

I, MARCUS ALBERTO DA SILVA, of Rooms Nos. 107/109 Gloucester Building, First Floor, Victoria in the Colony of Hong Kong, Legal Practitioner,
30 make oath and say as follows:—

1. I am the solicitor for the abovenamed Respondents, Juan Ysmael & Company Incorporated and as such I have the conduct and management of this Action.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 108
Petition for
leave to
appeal to
Privy Council,
30th December,
1952.

continued.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 109
MARCUS ALBERTO
DA SILVA'S
Affidavit.
30th December,
1952.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 109
Marcus Alberto
da Silva's
Affidavit.
30th December,
1952.
continued.

2. The statements made in the Petition filed herein on even date for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court delivered in this Action on the 13th day of December, 1952, are to the best of my knowledge information and belief true in substance and in fact.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn etc.

No. 110
Reasons for
Judgment of
Full Court.
8th January,
1953.

No. 110
REASONS FOR JUDGMENT OF FULL COURT

10

(8th January, 1953).

These appeals which were heard together arise from Admiralty Jurisdiction Actions Nos. 6 and 8 of 1952 which were respectively as follows:—

“IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 6 OF 1952

ANTHONY LOH trading as A. W. KING

Plaintiff

against

The Ship “TASIKMALAJA”

Defendant

To:

the owner and all others interested in the Ship
“TASIKMALAJA”

20

1. The Plaintiff is Anthony Loh trading as A. W. King of Room No. 9 Mezz floor, Telephone House, Des Voeux Road, Central Hong Kong. The Plaintiff claims from the Defendant ship Hong Kong Dollars Twenty-five thousand Five hundred and eighty-six (HK\$25,586.00) being for Ship's necessaries as follows:—

| | | |
|--|---------------|----|
| Bills Nos. 6001-2/52 | HK\$23,380.00 | |
| Partial Payments received on various dates | 12,280.00 | |
| | HK\$11,100.00 | 30 |
| Bill No. 6003/52 | HK\$14,486.00 | |
| | HK\$25,586.00 | |

- 2.
- 3.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

(Sd.) STEWART & CO.
Solicitors for the Plaintiff."

No. 110
Reasons for
Judgment of
Full Court.
8th January,
1953.
continued.

"IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 8 OF 1952

BETWEEN: Juan Ysmael & Company Incorporated Plaintiff

and

10 The steamship "Tasikmalaja" (Ex
the steamship "Christobal" and
the steamship "Haleakala") Defendant

ACTION FOR POSSESSION

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.

20 The Plaintiffs as sole owners of the steamship "Tasikmalaja" (Ex the steamship "Christobal" and the steamship "Haleakala") of the port of Panama in the Republic of Panama, claim to have legal possession decreed to them of the said vessel.

(Sd.) M. A. DA SILVA
Solicitor for the Plaintiffs."

30 Subsequently the S.S. Tasikmalaja was arrested on the 25th day of June, 1952, in respect of Admiralty Jurisdiction Action No. 6 and again on the 27th day of June, 1952, in respect of Admiralty Jurisdiction Action No. 8, and a conditional appearance in both actions was filed by the Government of the Republic of Indonesia on the 30th day of June, 1952, and on the 9th day of July, 1952, motions were filed in both Admiralty Jurisdiction Actions Nos. 6 & 8 by the Government of the Republic of Indonesia to set aside the writs of summons and all subsequent proceedings on the ground that the actions impleaded a Foreign Sovereign State which was unwilling to submit to the jurisdiction of the Court. This motion which was in similar terms in each action was as follows:—

“TAKE NOTICE that on Thursday the 10th day of July, 1952 at 12 noon a.m. in the forenoon or so soon thereafter as Counsel can be heard by Counsel The Government of the Republic of Indonesia will by Counsel move the Judge in Court for an Order that the Writ of Summons and all subsequent proceedings herein be set aside with costs on the following grounds:—

1. That this Action impleads a Foreign Sovereign State namely the Government of the Republic of Indonesia. The said Government is unwilling to submit to the jurisdiction of this Honourable Court.
2. That the said Steamship is the property of the Government of the 10 Republic of Indonesia.
3. Further or alternatively that the said steamship is and at all material times was in the possession and effective control of the said Government by its duly authorised Agents.
4. That the said Government is and was at all material times entitled to possession of the said steamship.
5. That the claim in this case is against a Foreign Sovereign State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the same.
6. That a claim to the said Steamship is being made by a Foreign Sovereign 20 State and the Court has no jurisdiction or alternatively will not exercise its jurisdiction to decide the validity of the said claim.”

These two motions were heard together by Reece, J. and affirmations as to facts were filed by Mr. Kwee Djie Hoo, Consul-General for the Republic of Indonesia in Hong Kong, and a Major Pamoe Rahardjo who described himself in one affirmation as a Major in the Army of the Republic of Indonesia and attached to the Secretary General of the Ministry of Defence of that Government and in a subsequent affirmation as a Diplomatic Courier of that Government, holding a diplomatic passport.

During the hearing of the motions, applications were made to cross-examine 30 Mr. Kwee Djie Hoo, the Consul-General, and Major Pamoe Rahardjo upon their affirmations as to facts and questions arose as to the diplomatic immunity of these gentlemen and in the event the learned Judge held that neither had the immunity claimed for him and granted an application for a subpoena to issue against each for cross-examination upon the affirmations. Subsequently, upon their failure so to appear, the learned Judge ordered that their affirmations be struck off the file.

In both actions, Appeals (11 and 12 of 1952) to the Full Court were taken from the decision of Reece J., refusing the diplomatic immunity claimed and granting the applications for cross-examination upon the affirmations and motions for a stay of proceedings in both actions were also made to the Full Court. 40 The Appeals Nos. 11 and 12 of 1952 were adjourned *sine die* by the Full Court and the motions for a stay of proceedings dismissed.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 110
Reasons for
Judgment of
Full Court.
8th January,
1953.
continued.

To: The Plaintiff and to Messrs. Stewart & Co., his Solicitors and to Mr. M. A. da Silva, Solicitor for Messrs. Juan Ysmael & Co., Inc."

**"IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
APPEAL NO. 15 OF 1952**

(On Appeal from Adm. Jurisdiction Action No. 8 of 1952)

BETWEEN:

THE GOVERNMENT OF THE REPUBLIC OF Appellants
INDONESIA (Defendants) 10

— AND —

JUAN YSMAEL & COMPANY INCORPORATED Respondents
(Plaintiffs)

*Order XXIX
Rule 13 of
the Rules of
The Supreme
Court
Ordinance
Sec. 28.*

TAKE NOTICE that the Full Court will be moved at 10.00 o'clock a.m., on Tuesday the 30th day of September, 1952 or so soon thereafter as Counsel can be heard by Mr. John McNeill, Q.C., and Mr. D. A. L. Wright, Counsel for the abovenamed Appellants for an Order that the Judgment of the Honourable Mr. Justice Reece dated the 15th day of September, 1952 dismissing the Notice of Motion filed herein on behalf of the Government of Indonesia dated 20 the 9th day of July, 1952 be rescinded. And that it may be ordered that the Writ and all subsequent proceedings and orders in A.J. Action No. 8 of 1952 be set aside on the ground that the said Action impleads the Appellants a foreign Sovereign State and, in consequence, that it may be declared that the judgment of His Honour Mr. Justice Courtenay Walton Reece dated 24th October, 1952 is null and void for want of jurisdiction and that the S/S "Tasikmalaja" be released from arrest in the said Action and that the Respondents do pay the Appellants the costs of this appeal and of and incidental to the said Motion. 30

Dated the 15th day of September 1952.

(Sd.) WILKINSON & GRIST,
Solicitors for the Government of
the Republic of Indonesia.

To: The Plaintiffs & to Mr. M. A. da Silva, their Solicitor."

Counsel for the appellants submitted :—

1. That the learned Judge erred in making the orders for the cross-examination of Mr. Kwee Djie Hoo and Major Pamoe Rahardjo;

2. That the learned Judge erred in refusing to grant to Mr. Kwee Djie Hoo and Major Pamoe Rahardjo the diplomatic immunity claimed for them; and
3. Assuming that the learned Judge was correct in his decisions in 1 and 2 above, there was left upon the record ample material upon which the imploding motions should have been allowed.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 110
Reasons for
Judgment of
Full Court.
8th January,
1953.
continued.

At the hearing of the appeals the last submission 3 above was argued first as it was clear that if it were to succeed, the question of whether the learned Judge was correct in his decisions on submissions 1 and 2 would become academic.

- 10 It may be noted here that this submission 3 above was not specifically argued before the learned Judge.

In view of the decision we have reached on this ground 3, no argument was heard on submissions 1 and 2 and, accordingly, comment by this Court on them is purely *obiter dicta*. It is sufficient to mention here that in our consideration it might perhaps have been wiser had the Consul-General attended for cross-examination, claiming his immunity to refuse to answer those questions knowledge of which he had acquired in the course of his official duties, and we consider it unfortunate that the Diplomatic Courier, who has immunity of person and despatches while actually engaged on a mission, found himself
20 compelled to return to his own country on the Saturday before the Monday on which his cross-examination had been fixed.

On the hearing of these appeals the Court was directed to the material parts of the affidavits and affirmations remaining upon the record from which it appears that there were previous charter parties between the Government of the Republic of Indonesia and the respondents Juan Ysmael and Company Incorporated and that the S.S. Tasikmalaja was at all material times under a charter party due to expire on the 30th June, 1952, subject to a submission by Counsel for the Respondents, Juan Ysmael & Company, that the Government of the Republic of Indonesia, by entering into what the respondents term "a purported
30 sale", thereby had repudiated the charter party. This final charter party contained an option to purchase described as fraudulent by the respondents, Juan Ysmael and Company and all charter parties were for the purpose of carrying Indonesian troops.

The S.S. Tasikmalaja during the early part of 1952 was in Indonesian waters and it is common ground that negotiations for a sale were proceeding between Major Pamoe Rahardjo of the Indonesian Government and a Mr. Starr as attorney for Mr. Hemady, then President and General Manager for Juan Ysmael & Company, and eventually on the 13th February, 1952, an agreement for sale was entered into between these parties constituting what the respondents
40 throughout refer to as the purported sale. It was Mr. Starr who had negotiated the charter parties.

Subsequently the ship left for Hong Kong arriving in these waters on the 13th March, 1952, for repairs, some of which at least were directed by the Consul-General for the Republic of Indonesia. It is to be noted that on the voyage to Hong Kong Mr. Starr was on board.

On the 16th April, 1952, there was a ceremony on board the S.S. Tasikmalaja, up till then of Panamanian registry, at which the Panamanian flag was hauled down and the flag of the Republic of Indonesia raised to mark the transfer of the S.S. Tasikmalaja to the Indonesian registry. Representatives of both the Indonesian Consulate General and the Panamanian Consulate were present at this ceremony.

The S.S. Tasikmalaja had been under the command of a Captain Aguado who, on 9th May, 1952, left for the Philippines being replaced by Acting Captain Silos. There is some dispute after the 30th June, 1952, as to who actually was in command as it was urged by the appellants that one, Mandagi, a cadet officer, had 10 actually taken over command and that he attorned to the appellants whereas Acting Captain Silos attorned to the respondents but on the view we have taken, the matter appears to be of no great importance. The crew were mixed and consisting of 52 Indonesians, 19 Filipinos and 2 of outside nationality.

The case for the appellants may conveniently be summarized as follows:—

- (a) That the S.S. Tasikmalaja was under charter from the respondents and was used for the transport of Indonesian troops under the terms of the charters.
- (b) That the last charter party contained an option to purchase, and that during the term of this charter the ship was sold to the Government 20 of the Republic of Indonesia by a Mr. Starr, agent of the respondent. Juan Ysmael & Company, for a specific sum which was duly paid;
- (c) That the ship was under the direction and control of the Government of the Republic of Indonesia when it arrived in Hong Kong waters and so continued up to the date of the issue of the writs and its arrest;
- (d) That in any event, apart from the sale, the ship was arrested on the 25th day of June, and again on the 27th day of June, while the charter party did not expire until the 30th June;
- (e) That therefore the Government of the Republic of Indonesia had such measure of control and such a proprietary interest that the issue of a 30 writ in rem necessarily impleaded a foreign sovereign State.

In reply the respondents submitted:—

- (a) That the term of the charter party containing the option to purchase was fraudulent;
- (b) That Mr. Starr, the agent who sold the ship, had no authority to sell under the law obtaining in the Philippines.
- (c) That in any event Mr. Starr, in selling at the price he did, had exceeded the instructions given to him, and that the Government of the Republic of Indonesia had been specifically informed of the terms upon which the respondent company would be prepared to sell;

- (d) That the purported sale therefore was fraudulent and a nullity;
- (e) That the Government of the Republic of Indonesia by entering into this purported sale had repudiated the charter party;
- (f) That even if (e) above were not so, yet the charter party expired on the 30th June, 1952, and if the ship had been arrested on the 25th and 27th June, 1952, the appellants had no rights under the charter party on the date in July, 1952, on which the impleading motions were filed;
- (g) That the appellants therefore had acquired no interest at all under the purported sale and had lost their interest under the charter party;
- 10 (h) That when the ship entered Hong Kong waters, it was under the control of Mr. Starr, agent for the respondent Company.

We are indebted to Counsel for a close examination of the authorities cited on the impleading issue which were necessarily to a great extent common to both appellants and respondents who sought mainly to place opposing construction upon them. These included:—*Dollfus Mieg v. Bank of England* (1949 Ch. 1); *Dollfus Mieg v. Bank of England* (1950 Ch. D); *U.S.A. & anors. v. Dollfus Mieg* (1952 1 A.E.R.); *The Parlement Belge* (5 Probate); *The Broadmayne* (1916 Probate); *The Jupiter* (1924 Probate); *The Jupiter No. 2* (1925 Probate); *The Jupiter No. 3* (1927 Probate); *The Arantzazu Mendi* (1939 Probate); *Luther v. Sagor* (1921 20 3 K.B.D.); *The Cristina* (1938 A.C.); *Haile Selassie v. Cable & Wireless Company Ltd.* (1838 Ch. D); et cet.

We are of opinion that the observations of Lord Atkin in "*The Cristina*" have not been either so extended or so limited by later decisions as to affect the main principles. We find that the S.S. *Tasikmalaja* was brought into Hong Kong under the direction and control of the Government of the Republic of Indonesia which has throughout claimed ownership by reason of the purported sale. It is also clear that at the time of the issue of the writs and its arrest, certainly the respondent Juan Ysmael & Company knew of the purported sale while the second respondent, apart from swearing that the ship was an Indonesian ship, had 30 apparently not taken the steps required of him by rule 30(2) of the Supreme Court (Admiralty Procedure) Rules to enable him to swear that owner or part owner was domiciled in the Colony. It must be remembered that this respondent was carrying out repairs on a ship used for carrying troops and flying the Indonesian flag. Further, by the wording of the claim in the writ issued by the respondent Juan Ysmael & Company "claim to have legal possession decreed to them of the said vessel", the inference is open that the intention was to challenge the purported sale to the Government of the Republic of Indonesia.

In these circumstances we are of the opinion that the issue of these writs in rem directly impleaded the Government of the Republic of Indonesia.

40 The respondent Juan Ysmael & Company claim possession or control of the S.S. *Tasikmalaja* as against the appellants on its arrival in Hong Kong waters through Mr. Starr, the agent of the respondent Company Juan Ysmael & Company, and thereafter first through Captain Aguado and thereafter through Acting

Captain Silos who attorned to that Company. We cannot see how Mr. Starr who had entered into the purported sale as agent of the respondents Juan Ysmael & Company may thereafter be claimed to be in possession or control for that Company of a ship which he had purported to sell to the appellants, nor do we see how in any event his presence aboard may benefit the respondent Anthony Loh and indeed as the respondents Juan Ysmael & Company assert that they did not know of the purported sale until after the arrival of the ship in Hong Kong waters, they must have assumed it still to be under charter in which case it is difficult to see how the presence aboard of Mr. Starr could serve to deprive the charterers of possession or control.

10

Captain Aguado is described in an affirmation filed on behalf of the respondent Juan Ysmael & Company as a "conspirator" in the sale and therefore cannot be held to have exercised control or claimed possession on behalf of Juan Ysmael & Company. Again, subsequent to the arrival of the ship in Hong Kong, repairs were arranged for and some payments therefor made by the Consul-General for Indonesia and the ship was taken into dock in consequence of these arrangements.

We do not attach any great importance to the sides taken by the mixed crew after the dispute as to ownership had become general knowledge and we hold that the ship was brought into Hong Kong waters by the Government of the Republic of Indonesia and was under the control of that Government until the ship was arrested.

20

We hold too that the Government of the Republic of Indonesia has more than a bare claim of assertion to ownership of the S.S. Tasikmalaja. We are of opinion that by the admitted purported sale, that Government has acquired a proprietary right sufficient within the authorities to maintain a plea of impleading and we hold that on this aspect also the Government of the Republic of Indonesia is impleaded by the issues of the writs in rem.

We are of opinion that such proprietary right stems from the purported sale and that the issue of whether or not that sale was valid is not one for these Courts, nor do we consider that the proposition that as the purported sale was allegedly fraudulent it was therefore void and that the appellants by entering into it had repudiated the charter party is one for us to decide: in our opinion, it is sufficient that the Government of the Republic of Indonesia brought the S. S. Tasikmalaja into Hong Kong waters; that the Government remained in control of the ship until its arrest, and that that Government had and has a proprietary right in it arising from the purported sale until that purported sale is upset, remain in our opinion sufficient to maintain that proprietary right.

30

It seems to us that the words of Goddard L.J. in the *Arantzazu Mendi* (1939 Probate Division) are very cogent:—

40

"But if the Court can see that the question that arises is a question of competing rights, as in this case here, where we have got the fact that the owners of the ship admittedly have purported to give to the foreign sovereign who is claiming immunity rights over the ship—it may be that those rights

are good or it may be they are bad, that is just what we cannot try—but if they purport to give such rights over their ship and therefore 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, then it appears to me, that the principle of immunity applies,.....”.

We therefore hold that both of the principles laid down by Lord Atkin in *the S. S. Cristina* have been broken.

These appeals are therefore allowed.

(Sd.) G. L. HOWE,

President.
8.1.1953.

(Sd.) E. H. WILLIAMS,

Appeal Judge
8.1.1953.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 110
Reasons for
Judgment of
Full Court.
8th January,
1953.
continued.

10

No. 111

**TRANSCRIPT OF PROCEEDINGS ON HEARING
OF MOTION FOR LEAVE TO APPEAL TO
PRIVY COUNCIL.**

(8th January, 1953.)
(12th January, 1953.)

No. 111
Transcript of
Proceedings
on hearing of
Motion for
Leave to
Appeal to
Privy Council.
8th & 12th
January, 1953.

20

Mr. D.A.L. Wright, instructed by Messrs. Wilkinson & Grist, for the appellants in both appeals.

Mr. Charles Loseby, Q.C., instructed by Messrs. Stewart & Co., for Anthony Loh, Respondent.

Hon. Leo D'Almada, Q.C. and Mr. B.A. Bernacchi, instructed by Mr. M.A. da Silva for the respondents, Juan Ysmael & Co. Inc.

President: We hand down our reasons for the judgment we gave the other day.

30 Mr. D'Almada: May it please your Lordships. My Lords, I appear with my learned junior, Mr. Bernacchi, on behalf of the appellants in this case in support of motion for leave to appeal to the Privy Council from the judgment delivered on 13th December, and the reasons for which your Lordships have just kindly handed down. An appeal in Admiralty is as of right under the Colonial Courts Admiralty Act, 1890, but it is necessary, nonetheless, to obtain the leave of this Court to appeal, and unless your Lordships desire me to do so, I don't propose

to read aloud the notice of motion or the petition or the documents filed in support, because your Lordships are fully acquainted with this case, and, in my submission, it is a proper case where leave should be granted.

President: This is Action No. 8 only?

Mr D'Almada: There are identical notices of motion in respect of appeals Nos. 14 and 15, my Lord, and I should have said that at the beginning, actions 6 and 8, that is, and my remarks are applicable to both.

President: You are appealing in both?

Mr. D'Almada: Yes. I appear for Ysmael & Co., my Lord. Your Lordships will recall, of course, that in A.J.6 and A.J.8, they were held together. 10

President: You are concerned in Action No. 8?

Mr. D'Almada: Yes. I don't know whether your Lordships desire me to read the notice of motion and the petition. In A.J.6 we entered an appearance. We are appellants in respect of both these actions and the appeals therefrom. As I say, my Lords, unless your Lordships wish me to read these affidavits — I should suggest that this is a clear case for appeal, and then it comes to a question of terms.

President: Where does Mr. Loseby stand in all this. You are appealing from both decisions.

Mr. D'Almada: We are parties to both actions, we are plaintiffs in one, 20 and entered an appearance in the other.

President: As defendants?

Mr. D'Almada: Yes. My Lords, so far as I know, Mr. Loseby's client has filed no documents in these proceedings, so, my Lords, I don't think one need be concerned with that particular party.

President: We will hear you as to terms.

Mr. D'Almada: First, my Lords, might I refer your Lordships to 7 Griffin, page 283, and to certain section of the Supreme Court Admiralty Procedure Rules. If your Lordships will look at 128, you will find :—

“ 128. A party desiring to appeal to His Majesty in Council from any 30 decision of the Full Court shall, within one month from the date of the decree or order appealed from, file a notice of appeal, and give bail in such sum, not exceeding £300, as the Full Court may order, to answer the costs of the appeal.”

That is one of the matters which is in the hands of your Lordships at the hearing of this petition, and a matter of greater importance, I submit, your Lordships, is this: Your Lordships will recall that when judgment was given at this appeal, on the 13th December, I was prepared to argue the question of stay pending the decision of the Privy Council in this case, and it was in support

of this application that an affidavit was put upon the file by Mr. Khalil Khodr, that otherwise the result of the appeal might be rendered nugatory, and your Lordships will not require any authorities for the proposition that where an appeal might be nugatory, the stay is granted. But in Admiralty cases, the position is even stronger, if your Lordships will kindly look at 129, you will see exactly how the appeal is dealt with when the appeal is from Admiralty. Section 129 reads :—

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10 “ 129. Subject to any order of His Majesty in Council or of the Judicial Committee of the Privy Council, the Full Court may proceed to carry into effect the decree or order appealed from, provided that the party in whose favour it has been made gives bail to abide the event of the appeal, and to answer the costs thereof, in such sum as the Full Court may order.”

so that, my Lords, whether or not your Lordships should order that the decree be carried into effect, that is to say your Lordships' decision at the hearing of the appeal that the writ be set aside, and, of course, arrest removed, is a matter in your Lordships' discretion, but subject always to the proviso, eminently necessary, of course, in Admiralty procedure where the action is in rem and you want to detain the res, subject to the proviso that the party who seeks to have the order put into effect, shall give bail to the satisfaction of the Court. In other words, there is provision in our rules to ensure that a successful appellant shall not
20 have merely an empty judgment, and your Lordships are really in a very different position than that in which a litigant comes and says 'may I have a stay, because I am appealing'. If the successful appellant, up to now, wishes the order to be carried into effect, it can only be done at your Lordships' discretion, provided he puts up bail.

President: Would we have any jurisdiction to make a stay of execution at all?

Mr. D'Almada: Your Lordship has in mind that the respondent is a foreign sovereign?

President: I have in mind the Privy Council on Order in Council.

30 Mr. D'Almada: The Order in Council has nothing to do, with great respect, with the particular application I am making now, because consider the additional instructions I think your Lordships have in mind.

President: What I have in mind is the Order in Council 1909, section 5.

Mr. D'Almada: Section 5 says :—

“ 5. Where the judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just.”

40 That is only applicable to the case where the appellant is adjudged liable to pay money or to perform a duty, neither of which circumstances arise in this case. The Court in Hong Kong has not judged that the appellant shall perform a duty. They are persons who come strictly within 129 of the Admiralty Procedure Rules.

President: I am in some little doubt, it seems to me that the Admiralty Rules must be subject to section 5 of the Privy Council Order. Where we are doubtful, Mr. D'Almada, is: I am at present construing section 5 of the Privy Council Order as being a section of limitation, that only in such circumstances may a stay of execution be granted. You are construing it the other way.

Mr. D'Almada: As your Lordships will see, the question of the jurisdiction on appeals to the Privy Council from the courts of Admiralty in a Colony are entirely governed by Colonial Courts of Admiralty Act, 1890. That is clear if you will look at the footnote of 283, Griffin, and true it is that :—

“The right of appeal has been defined and regulated by Order of H.M. in 10 Council dated 10th August, 1909.

but the fact that your Lordships must abide by Rule 129, I think, is in no way affected by section 5 of the additional provision to which your Lordship has just referred me, because they have to do strictly with matters of civil jurisdiction, not Admiralty jurisdiction. “Where the judgment appealed from requires the appellant to pay money . . .” — then you have power to stay execution. Here the position is the reverse, it is not any question of any power of staying execution, but the matter is stayed automatically unless bail is put up by the respondents. It is one of those provisions which, I submit, the legislature has thought fit to provide for the reason that otherwise in Admiralty actions the res disappears, is taken out of 20 the jurisdiction, and a successful applicant is left with a nugatory judgment. There is no suggestion in Bentwich on Privy Council Practice that this section is in any way affected or cut down by section 5 of the additional rules to which your Lordship referred me just now, because Bentwich at 248 refers, my Lords, to what he calls ‘local rules’, he says certain rules have been provided for certain colonies :—

“In the other colonies special Rules are provided for the steps to be taken in the Admiralty appeals in the colonial Court.”

and, my Lords, ours are those special rules, including rules 129 and 132. It would seem to me that unless the position is as I submit it is, you might run a pencil 30 right across 129 and say it means nothing at all, because by Additional Rule 5 of the Privy Council, you are only empowered to do certain things in certain events. The real answer, I submit, is that these events have nothing to do with this matter which is an appeal from Admiralty. Section 7, I am informed by my learned Junior, of the Colonial Courts of Admiralty Act, empowers the local courts to make their rules: “Whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction.”

President: (Not heard)

Mr. D'Almada: I am afraid I haven't made my point clear, my Lord. I 40 refer your Lordships to the Colonial Courts of Admiralty Acts, you will find it at Halsbury's Statutes, section 6, which says, your Lordships, in certain circumstances only need leave be applied for. Section 7 deals with the rules of Court :—

“ Rules of court for regulating the procedure and practice (including fees and costs) in the court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made.”

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Then there is a proviso relating to the slave trade, and subsequently there is this :—

10 “ It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.”

20 These rules, my Lords, I submit are quite clearly made pursuant to this Act and as clearly govern the position where the appeal is from Admiralty, so there is no question whatsoever, in my submission, of Additional Instruction No. 5 in any way cutting down the powers of the Court, under section or rule 129 of our Admiralty Procedure Rules. Else, as I submit, my Lords, 129 is entirely meaningless and the position therefore, I submit, is that, if the respondents in this case wish your Lordships’ order, that is the order of the Full Court, to be carried into effect, your Lordships, in your discretion, may allow it, provided bail is put up by the respondents.

President: I am still a little worried Mr. D’Almada. You see, 129 starts off by saying “Subject to any order of His Majesty in Council . . .” and here is an order of His Majesty in Council.

Mr. D’Almada: Does your Lordship, with great respect, suggest that this order of His Majesty in Council, that is section 5, overrules 129 entirely?

President: I think there is no applicability at all if it is inside section 5. It must only pertain to those cases outside section 5.

30 Mr. D’Almada: If it was within the scope of section 5, there would be no question of putting up bail at all, because, under section 5, the Court is concerned only with a case where an appellant is required to pay money or perform a duty, and we are not concerned in this case to do either. We have arrested a ship of which we claim legal possession; the respondents in this case have moved the Court to set aside a writ because it impleaded a foreign sovereign, the Full Court has allowed the appeal from the decision of Mr. Justice Reece, so that if there was no appeal now, the Court would set aside the writ, remove the arrest, and the ship would go. This particular case does not come under Additional Instruction 5 at all, it therefore comes within section 129, and is therefore not subject to any such
40 regulation or rule, as your Lordship pointed out, because section No. 5 has no bearing on the matter at all. As my learned junior reminds me, I am not certain, with great respect, whether my Lord, the Chief Justice, is entitled to read these words “Subject to any order of His Majesty in Council” as meaning one of these additional instructions, it would seem to me something peculiar to the appeal itself. If there was some other order made by Her Majesty in Council in the

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particular appeal, the position might be different, but I cannot, with great respect, see how it can be suggested that Additional Instruction 5 in any way affects the force of rule 129, because, if you will look at the footnote again :—

“ Rules 128 to 132 relate only to the proceedings to be taken in the Supreme Court of Hong Kong. Appeal lies to the Judicial Committee of the Privy Council from the Supreme Court of Hong Kong. See s.6 of the Colonial Courts of Admiralty Act, 1890. The right of appeal has been defined and regulated by Order of H.M. in Council dated 10th August, 1909.”

This is a note by the learned editors of Griffin, and, in my submission, the position is abundantly clear therefore, that, whereas, in civil jurisdiction, 10 unquestionably additional Instruction No. 5 is the relevant one, that in no way affects the power of the Court — the duty of the Court I would say — under rule 129.

President: I wonder why the learned author put the footnote in the section, if it had no application.

Mr. D'Almada: Because in other matters you have to go to these rules.

President: It is all relevant except section 5? The Order in Council appears to be entirely relevant, but you say you mustn't look at 5.

Mr. D'Almada: 5 may be relevant in certain circumstances, I don't know, my Lord, but in this particular case it does not apply at all. The object, of course, 20 is perfectly clear, my Lords, you are dealing — I think the position becomes abundantly clear when you realise, my Lords, if, as I submit your Lordships were correct in this matter, then there would be no question of any value at all to be attached to 129. That is, in effect, what your Lordship is suggesting, because, until weight is to be given to it — and full weight, I submit — or, to put it the other way round, if, as your Lordship seems to think, Additional Rule 5 overrules it, why should it be there at all?

President: I think it is very relevant in those cases where section 5 applies.

Mr. D'Almada: Then only? Then there would be no question, with respect, no question of putting up bail. It would be a question of bail if the appellant is 30 required to pay a sum of money, he pays the sum of money, and the judge is satisfied, or, if you like, there is a stay of execution. If the appellant is required to perform a certain duty — Here there is neither a question of payment of money or performance of duty. It is a matter entirely in Admiralty jurisdiction unless you put up bail. If you do, then it is within the discretion of the Court to say you may remove the res.

President: If the appellant loses, they have tied up the respondents' ship for a year. Where is the merit in such an order?

Mr. D'Almada: That might be so if the appellant loses. Supposing.....

President: Supposing you happened to lose this appeal, and it would take a 40 year, the ship would be in the harbour.

Mr. D'Almada: Yes, that may be so. Exactly the same position would have arisen if we had won before the Full Court. I don't think that is a consideration, because in a case like *the Cristina* and the *Arantzazu Mendi*, there was still a stay granted by the Court, pending the decision of the House of Lords.

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President: What I meant was this. That here on any application for stay, here we only exercise the jurisdiction conferred either by statute or rule or by Order in Council. My difficulty is that if 129 is to be construed with Section 5 in the Order in Council, that constitutes our only jurisdiction to grant a stay of execution pending an appeal to Her Majesty in Council, that being so, we
10 are bound by both. I construe section 5 as a constricting one.

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Mr. D'Almada: We are not asking for a stay of execution in that sense of the term, as dealt with in Additional Instruction 5. Section 5 says:—

“Where the judgment appealed from required the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just.”

Of course, my Lord, you may say it is arriving at the same thing by a different method, but in truth and in fact.....

20 President: What you are saying to us is, the respondents may take their ship away, if they leave bail?

Mr. D'Almada: Yes, and that is entirely provided for by 129. So far from the appellant seeking a stay of execution, in fact the position is this: If the respondent in a Privy Council appeal from Admiralty wishes this Court to exercise its discretion by ordering that the order of the Full Court shall take effect, he shall put up bail.

President: I thought that you were arguing your motion for the stay of execution, which I don't think we have power to grant at the moment.

30 Mr. D'Almada: My point at the moment is this: We have to comply with certain conditions, one of them is the security of £300. Your Lordships will give consequential directions. All these matters can be easily dealt with.

President: There is a standard form of order.

Mr. D'Almada: If I may put my argument this way then: There is no question of this Court ordering the removal of the arrest of the ship, except on the application of the party who, at present, up to this moment, is successful; he must make the application. Your Lordships, in your discretion, would then say, we are prepared to grant it, provided bail is put up.

President: I was only trying to get it clear. I take it now that you are abandoning your motion for a stay of execution.

Mr. D'Almada: On the assumption that my friend will say 'please have the arrest removed, we want to take the ship away', my answer to that would be 129. So far from our having to ask for a stay of execution, the matter is to remain as it is, in *status quo*, unless your Lordships in your discretion, see fit to say 'If you will put up bail in a satisfactory amount, you may take the ship away.'

President: I am trying to get your motion straight. Your motion reads:

"And also for an order that pending the Appeal to Her Majesty the Queen in Her Privy Council the vessel the steamship 'Tasikmalaja' shall remain under arrest by and in the custody of the Head Bailiff of the Supreme Court and the *status quo* thereon maintained."

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That is one of your prayers.

Mr. D'Almada: That is so, my Lord. What we might have done was to have asked for this order, and added, of course, 'unless bail is granted'. But, in truth, my Lord, I think your Lordship is right and, with great respect, I think the true position is, there is no necessity for an appellant to seek a stay of execution in these particular circumstances; if the other party, the respondent, wishes to have the res himself, and, possibly, to remove it from the jurisdiction, he must apply to have the order carried into effect.

President: In fact, you will oppose his motion.

Mr. D'Almada: I will oppose his motion in this appeal.

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Now, my Lords, since I have already begun upon this point, perhaps I can carry on further in anticipation of what my learned friend has to say. Bail, my Lords, of course would be the value of the ship, I submit, because here we are entitled to be in legal possession of it, plus such sum as your Lordships see fit to order in respect of costs in terms of rule 129, and the provisions as to bail are, of course, set out in Admiralty Court Rules. He has the alternative choice of putting up cash, putting into Court the equivalent of the bail. On that point, if there was any question of its not applying because the respondents in this case are a foreign sovereign, that is not a consideration, with great respect, because, even in England where you have no such provision, your Lordships will find, in the case both of the *Cristina* and the *Arantzazu Mendi* a stay was granted, that is to say the ship remained under arrest, although the Court of First Instance, and later the Court of Appeal, decided that, in fact, the foreign sovereign was impleaded. If your Lordships will kindly look at *the Cristina*, reported in 1937 4 All England, page 313. This my Lords, is the report of the Court of Appeal, your Lordships will find at the very last page, page 320, a note in italics:—

"Appeal dismissed. Leave to appeal to the House of Lords refused. Stay granted for one week."

President: What was the purpose of the stay?

Mr. D'Almada: The stay, presumably, was so that the parties may apply to the House of Lords for the right to appeal. I haven't been able to find any other reference to a stay in this particular case, but I cannot imagine, for a moment,

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any other party going to the House of Lords if *the Cristina* had been removed from the jurisdiction, and the inference is that in fact the arrest continued. The matter is more clearly dealt with in the case of the *Arantzazu Mendi*, and, here again, I refer to the All England Law Reports, 1938, 4 A.E.R., you will find that, in the judgement of Lord Justice Slessor, page 269, paragraph g. You will find reference to the fact that:

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“In the court below, Bucknill, J. acceded to the argument raised by the Nationalist Government of Spain, and, in the result, he made an order, as they prayed, and the arrest of the ship was continued until this appeal was determined.”

and then the Court of Appeal in turn decided that, in fact, a foreign sovereign was impleaded; they upheld the judgment of Mr. Justice Bucknill, and you will find, my Lords, again in italics, at the end of the report, page 279, this statement by the editors:—

“Appeal dismissed with costs. Leave to appeal to the House of Lords. Ship to remain under arrest, provided that notice of appeal be given within a week.”

That puts it beyond all doubt. There is no question at all that in the case of the *Arantzazu Mendi* there was an order by the Court of Appeal that the ship shall remain under arrest, but naturally the Court wished to expedite it, and said ‘If you file your appeal within a week, the ship will remain under arrest’.

I think there is one other case which shows the arrest, that is the *Abodi Mendi*, 1939 Probate, page 178 at page 187, the judgment of the President, about eight or ten lines from the end of the page dealing, first, with the fact that there was an appeal pending in the case of the *Arantzazu Mendi*:—

“I think the arrest should be continued until the position of the Nationalist Government in our Courts is thus finally determined”,

so the facts, my Lords, that a foreign sovereign was involved in these three cases, *the Cristina*, *the Abodi Mendi* and the *Arantzazu Mendi*, did not . . . The strongest and clearest of the three cases is, of course, *the Arantzazu Mendi*, my Lords.

President: What was the purpose of this?

Mr. D’Almada: Of what, my Lord?

President: I am a little lost in the *Abodi Mendi*, Mr. D’Almada, because it seems to me that the true motion before the Court was that the writ in rem should be set aside on the ground that the action had been discontinued.

Mr. D’Almada: The whole action did concern the question of whether or not a foreign sovereign had a right to a ship. The President did order that the arrest should continue. That is only one of the illustrations, my Lord, but I think the best one to give you is the *Arantzazu Mendi*.

Now my Lords, there is no question here, of course, but that the bail, I submit, should be the equivalent of the value of the ship.

President: The value now, or at the end of a year?

Mr. D'Almada: Its present value. And, my Lord, your Lordship mentioned a year, and this brings to my mind the possibility that you might feel that an appeal to the Privy Council takes so long, it would be unfair to hold the ship or bail for so long a time. In the case of the *Arantzazu Mendi*, the case first came before Mr. Justice Bucknill in the month of May, and the House of Lords' decision was not given until the following February. Similarly, in the case of *the Cristina*, Mr. Justice Bucknill began hearing the case in July, and it was not until the following 10 March that the House of Lords gave judgment.

There is no question of any undue delay on our part, we have, under the Admiralty Procedure Rules one month, we did in fact, file our notice of motion within seventeen days of your Lordship's judgment. We are as anxious as anyone else, my Lords, to see a final conclusion to this matter, and it may well be that the Privy Council may accede to any request to expedite the appeal. I should imagine, my Lords, that there is power to apply to the Privy Council for an earlier hearing of the case, and in circumstances like this, it may well be that they may consider an earlier hearing. But, that does not affect the principle, my Lords, that clearly, if you wish to remove the res from the jurisdiction, if you wish your order to be 20 carried into effect, you must put up bail. Passages, pages 248, 249 of Bentwich:—

“The Rules of 1883, which form the model of the Rules made under the Act of 1890 for governing the procedure in the Court below in appeals from a Colonial Court of Admiralty to the Privy Council, and which apply to such appeals where no special rules have been made, are as follows:—

A party desiring to appeal must, within one month from the date of the decree or order appealed from, file a notice of appeal and give bail in such sum, not exceeding £300, as the Judge may order, to answer the costs of the appeal.”

That, my Lords, corresponds to our rule 128, then:

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“Notwithstanding the filing of the notice of appeal the Judge may at any time before the service of the inhibition proceed to carry the decree or order appealed from into effect, provided that the party in whose favour it has been made gives bail to abide in the event of the appeal, and to answer the costs . . .” etc.

For that we have our counterpart 129, and, in my submission, my Lords, it is quite clear, therefore, that these additional instructions of 1909 do not in any way affect the position insofar as appeals from Admiralty are concerned.

My Lords, insofar as any question of leave to appeal is concerned, or bail, I have quoted my submissions. There is the outstanding matter, of course, of costs 40 of various motions, etc. My Lords, the outstanding question is with regard to costs, and my learned Junior, Mr. Bernacchi, will address you on this subject.

Mr. Wright: I think we had better decide this question of bail before we go on to the question of costs.

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May it please you, my Lords. My submission in regard to matters dealt with by my learned friend, Mr. D'Almada, are, briefly (a) that the Order in Council of 1909 is a complete code on the subject of whether a judgment or order should be carried into effect, or, in other words, executed, and that regulation or rule 5 of that Order in Council completely overrides rule 129 of chapter 4. Secondly, we say, my Lords, that, even if that were not the case, you cannot apply rule 129 to a case where a foreign sovereign is impleaded. In other words, my Lords, you have to
10 construe rule 129 in the light of the general principles set out on page 152 of the 9th Edition of Maxwell on the Interpretation of Statutes, namely:—

“Every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law.”

Now, my Lords, the position is this, that the Full Court of this Colony has decided that the Government of the Republic of Indonesia has been impleaded, and they have decided, my Lords, that both of the principles set forth by Lord Atkin in the *Cristina* case have been rightly invoked by the Republic of Indonesia, and that both of those principles would be contravened if the action were allowed to
20 proceed. Bearing that in mind, our submission on this second limb of the argument is that if you attempt to interfere with the order that your Lordships have made, you are prolonging an arrest, prolonging an impleading, and you are directly contravening the second principle which I will deal with later, set forth by Lord Atkin in *the Cristina* on which your Lordships have just based your judgment.

In particular, you will note that rule 129 enjoins the Full Court to call upon a sovereign power to give bail. In our submission, the Full Court will no more entertain an application that the Indonesian Government should give bail, than they will entertain an application that the Indonesian Government shall give
30 security for costs.

Now, my Lords, returning to the first part of my argument, rule 129 starts off with the significant words “Subject to any order of His Majesty in Council.” Now, my Lords, that clearly, even on the Interpretation Ordinance, means an order made by His Majesty in His Privy Council. That, my Lords, is one of the definitions contained in section 3 of the Interpretation Ordinance, and the rules of 1909 come precisely within that definition. They are rules that are made by Order of His Majesty in Council, and there is no getting away from the fact. Now, my Lords, these rules contain a complete code on the subject. They apply not only to civil cases, but also to Admiralty cases. You will find it stated in the preamble
40 in unmistakable terms:—

“The Rules hereunder set out shall regulate *all* appeals to His Majesty in Council from the said Colony of Hong Kong and its Dependencies.”

It is right at the end of the preamble, preceding rule 1.

“The Rules hereunder set out shall regulate all Appeals to His Majesty in Council from the said Colony of Hong Kong and its Dependencies.”

Now, my Lords, those particular rules, those instructions, were brought into force after rules 128 to 131 of chapter 4, because, my Lords, those rules are dated 1896 — you will see, by glancing at the preamble, 1st September, 1896. These rules prescribed by this Order in Council are subsequent to this ordinance, and to these rules, and, as rule 129 specifically says that that particular provision is subject to any Order of His Majesty in Council, it is obviously subject to the 1909 rules, which in specific terms deal with precisely the same subject matter.

My Lords, it is inconceivable that when these rules were being drafted for 10 His Majesty in Council, that those legislators who drafted these rules, did not have in mind the provisions of section 129, and, in our submission, they abrogate them entirely. There is not a syllable from start to finish, my Lords, in these rules, which indicates that Admiralty cases were to be excepted from their purview. Now, my Lords, it is not without interest, my Lords, to glance at those pages in Bentwich, which deal with the nature of these rights, and how they are to be construed. You will see that, in page 103 of Bentwich, that is the third edition, which is a part, my Lords, dealing with conditions and rules:—

“In the former part of this book it has been pointed out that in nearly every place where the Sovereign has jurisdiction, the conditions of appeal in 20 accordance with the royal grant have been laid down by Orders in Council on a uniform scheme.”

Now, over the page, my Lords, you will see a very interesting annotation as to how these rules are to be construed:—

“The Court below is generally absolutely bound by the rules of the Order in Council or other instrument which governs the admission of the appeal, and, unless specially authorised, is unable to extend any of the periods mentioned therein.”

In like manner, my Lords, if through these orders in Council the safeguards went out of their way to deal specifically with this subject, namely whether a 30 judgment or order should be executed or carried into effect, then, my Lords, you cannot go outside those provisions, and if those provisions do not grant you a right to have a judgment stayed, or not given effect to, then you have no right either, whatever hardship may accrue. Page 111, my Lords, shows you that is the position, foot of the page:—

“The Court from which the appeal lies, upon application being made for leave to appeal, in the first place grants only conditional leave and fixes the security. The appellant has to see to the completion of the security within the time limited by the rules. The appellant in his application for leave generally asks, where the rules provide for it, to have execution suspended.” 40

So, my Lords, there is no question, in my submission, of any automatic stay. You are only entitled to stay where the rules provide for it.

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Mr. Wright: This is my lords a decision that a foreign government is being impleaded and there can be no question of a stay or refusal to carry the Court's order into effect in such a case.

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My Lords, in our submission the appellants in this case were fully aware of the dangers of this argument being put against them because they are trying to get the best of a bite of the cherry not only by filing petition of these rules but also by having another bite by filing a notice of motion under Rule 128. So, if they went down on one, at least the other was there to argue. So, in our submission, it is quite clear that as His Majesty in Council has laid down a complete code in regard
10 as to what is to happen on the judgment of the Full Court being appealed against to the Privy Council, you must strictly observe and apply those particular rules and if those rules did not provide that you are entitled to a stay or some decree or order, then indeed you are deprived of any right to a stay at all, and, my Lords, I would not attach too great weight to those words "to carry into effect" as Mr. D'Almada has tried to do in Rule 129 because those words are used obviously and what was meant there was "execution".

Williams, J: Assuming now, when this case goes to the Privy Council, you say that you ought not to put any value under Rule 129(5); suppose the Privy
20 Council finds against you, then what happens if in the meantime the ship has been taken away by the Indonesian Government, assuming we did not require them to submit to any terms.

Mr. Wright: That is just too bad for the appellants and their remedy, as is stated in *the Cristina*, is by diplomatic representation or any other such means. That is the risk that people take when they deliberately and wilfully writ a foreign sovereign in the United Kingdom or any British possession and that particular aspect of the matter should not deter your Lordships in the least from refusing to stay this matter further. The matter is by diplomatic action and there is no evidence before this Court and, I am sure this Court will not entertain any
30 submission that even if the appellants succeeded in the Privy Council, they could still go to Indonesia and prosecute their rights in the Indonesian Courts. There is nothing in this Court to show they won't get a full and fair hearing. In any event the position is that you are playing with fire when you are impleading a foreign sovereign.

Now our second argument is that even if in normal cases Rule 129 is applicable, nevertheless it cannot be applicable at all in cases, as in this case, where a foreign sovereign is involved. You must interpret the law in such a way that it is not to apply to cases where a comity of nations would be in any way contravened or affected prejudicially. That is to say, you have got to interpret this statute
40 according to that principle that I have read out from Maxwell's at p.152:

"Every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law."

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Now, my Lord, I say that you are not to apply this section at all as it is not applicable to the circumstances as submitted by my friend Mr. D'Almada—you are not to apply it at all to this case. My Lords, it is well known to your Lordships the passage from the judgment of Lord Atkin at p.490 of *the Cristina*, 38 A.C., which contains these two principles. The first principle:

“ A proposition of international law engrafted into our domestic law which seem to me to be well established and to be beyond dispute. The first is that the Courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or 10 seek to recover from him specific property or damages.

The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for the commercial purposes of the sovereign or to personal private property. In this country it is in my opinion well settled that it applies to both.”

So we there have a well settled principle of international law engrafted on to the domestic law and in that, it is clear that no Court will by its process seize 20 or detain property which is the foreign sovereign's or of which he is in possession or control.

Now, what your Lordships are asked to do in this case is this, you are asked to ignore this proposition in international law and you are asked to say this, that despite the fact that the Full Court has decided that the Indonesian Government is impleaded, nevertheless we are going to wilfully infringe this second proposition and against his will, detain his property in this Colony by prolonging the arrest.

My Lords, however the problem is presented to you by the other side, that is the effect of the application they are making and that is exactly what your Lordships would do if you enforce Rule 129 in the manner that my learned friend 30 Mr. D'Almada requires you to enforce it. The general principle, as I have already cited to your Lordships from Maxwell's, is that you must interpret and apply the law so far as its language permits in such a way that it will accord with that generally recognised principle of international law. Here, you have one that is well established and yet you are asked to ignore that in order to give effect to Rule 129.

My Lords, on this particular aspect, there are some passages on this second proposition by Lord Atkins which is in issue here before your Lordships at the moment — there are one or two very short passages in *the Cristina* at p.491. At the top of the page you will find that Lord Atkin says: 40

“ It seems to me clear that, in a simple case of a writ in rem issued by our Admiralty Court in a claim for collision damage against the owners of a public ship of a sovereign State in which the ship is arrested, both principles are broken. The sovereign is impleaded and his property is seized.”

That is the effect of an arrest and that is the position in this case at the present moment as found by your Lordships; the ship has been arrested, both of the principles are broken because I think your Lordships' judgment ends up on that. It says "We therefore hold that the principle laid down by Lord Atkin in *the Cristina* have been broken." You have conclusively stated that that is the point of view of your Lordships' — that a foreign sovereign is impleaded, the property is seized. You are now asked in defiance of a well established principle of interpretation to perpetuate, that is, to prolong that situation. Again at p.492, the last paragraph:

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- 10 "The present case is not one of control for public purposes but of actual possession for public purposes. It is indistinguishable from *The Gagara*, which in the Court of Appeal was decided solely on the ground that the ship was in the actual possession of a foreign sovereign — namely, the State of Estonia. The Courts of our country will not allow their process to be used against such a ship and the arrest cannot be maintained."

Again at p.507 of the judgment you will find on that page that Lord Wright says as follows:

- 20 "The Government, it was held, could not be deprived by the order of the Court of her services nor could the Court interfere with her so long as she was in the Crown's employment, though any rights against the owners not affecting the user by the Crown, were preserved."

- 30 That is exactly, in our submission, what is happening if your Lordships grant some type of stay on terms. You are, in effect, interfering with the Indonesian Government's control and use of this ship which is one devoted to public purposes. My Lords, you have held by your judgment that this ship cannot be interfered in that way; that it cannot be arrested. Now you are asked, in effect, to say that that arrest must be prolonged. What you are asked to do really is to say this: "Although we have decided that the judgment in the lower Court is wrong and the Government is impleaded, nevertheless we will continue the effects of that wrong judgment; we will, in other words, exercise the jurisdiction to detain that ship which we have held the Courts of Hong Kong cannot entertain". And, my Lords, the consequences of such (as I have already stated) an attitude by the Full Court should not be avoided in any way merely because may be the defendants may be successful in the Privy Council, and the ship may have been taken out of the jurisdiction of this Court and the relevant passage is at p.509 of *the Cristina*:

- 40 "This gives the sovereign, so far as concerns courts of law, an immunity even in respect of conduct in breach of the municipal law. The remedy, if any, is *prima facie* by diplomatic representation or other action between the sovereign States, not by litigation in municipal Courts."

My Lords, the position is this, that the principle on which impleading is based, namely, the comity of nations and the preservation of comity between nations is of paramount importance and any harsh consequences that follow from the enforcement of that principle, that harshness or those inconveniences, must bow to the paramount dictates of enforcing this well established, well recognised principle of immunity.

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I also want to cite a passage from the American Journal of International Law and I ask your Lordships to take it as if it were my own argument and attach to it whatever merits it deserves and ignore the fact it comes from this Journal. In any event, there is this judgment in which the learned Judge states as follows in the American Journal of International Law of July, 1952, at p.520, dealing with *the Cristina*:

“In *Dexter v. Carpenter* . . . (book not available) . . . under all circumstances”.

Even though, in my submission, it may be that this ship will go out of the jurisdiction if no stay is granted, well that has to be faced up to and the principle demands that the appellants have no complaint on that score. In all events, the successful litigants cannot be deprived of the fruits of that judgment where this principle comes within the issues of impleading, then it must bow to the paramount importance of impleading and sovereign immunity. 10

My Lords, the law of our own Colony recognises this position of the sanctity of a ship enjoying immunity from civil process and, if you look at Order 26, rule 13 of our Code, you will find the following provision:

“Where the extreme urgency or other peculiar circumstances of the case appear to the court so to require, it shall be lawful for the court, on the application of the plaintiff in any action or of its own motion, by warrant under the seal of the court, to stop the clearance or to order the arrest and detention by the bailiff of any ship about to leave the Colony, other than a ship enjoying immunity from civil process, and such clearance shall be stopped or the ship arrested and detained accordingly.” 20

If that ship goes out of the jurisdiction, he has lost any course of action; he has lost any opportunity he could have of enforcing the claim against the ship, be it for necessaries, for repairs, or anything of that nature. So there, in a case of that nature, in order that the plaintiff will not be deprived of his remedy, there is a special provision in our Ordinance that the ship is not to be allowed to escape from the jurisdiction and it can be seized quickly and rapidly under the process set forth in this rule. But, my Lords, even though my friend has suggested that he has a personal remedy of value which our courts recognise, be that as it may, it is a ship enjoying immunity of civil process; it must be allowed to proceed from the Colony. Exactly in the same way, I say in this case that you should not be deterred by the fact that the *Tasikmalaja* may be removed from the waters of this Colony and the plaintiffs may be deprived of their remedy against the ship in these Courts. They may not be deprived of their remedies if, ultimately, they should be successful in other spheres either in Indonesia or as a result of diplomatic or other intervention. If you are to enforce this rule 129, you are flying in the face of this well recognised principle of international law. You are prolonging an arrest which the courts of Hong Kong have not the right to order, and it is a clearest possible case of ignoring this rule completely in a case where a foreign sovereign is involved. If that rule is applicable at all and, in our submission, this rule is not applicable because we say that it is a complete dead letter and it is ruled by a subsequent ruling and, indeed, Rule 129 itself is expressly subject to any order made by His Majesty in Council and this is such an order subsequently made. 30 40

It does appear in regard to these cases in which there are very vague references about a stay: The *Arantzazu Mendi* and *the Cristina*: that if you look at p.273 para. (f) of 38 A.C., you will see that the arrest was prolonged, at any rate, for some time. One reason was that in any event, my Lords, there is not the slightest indication in either *the Cristina* or *Arantzazu Mendi* that there is any argument as to whether any order would be made for a stay or not. As a matter of fact, one would forsee some account of such an argument had it been put up. However, all we know on these sketchy references to a stay or to the arrest being prolonged are that they have been done by consent. It does not appear to be argued or supposed that the arrest should be continued. This was a conflict, my Lords, between two rival governments and that differentiates this case in any event from the present case. In any event, I will draw your attention to the fact that in Rule 129 the words, the effect of your Lordships ordering bail, "Ordering bail" means that you are asking a foreign Government to put up money to abide the event of an appeal and I say that that is a matter which your Lordships would never do, no more than you would order a foreign Government to give security for costs. You have decided—the highest Court in this Colony—that the Indonesian Government is impleaded and you have emphatically so found in your judgment. Nevertheless, you are now asked, so to speak, to ignore that position for the time being and to continue this impleading for an indefinite period and, on top of that, if that position is to obtain, you are asked to ask a foreign Government to put up thus, amount of money into Court to abide the event of an appeal. That is a stay which no Full Court or which, in my submission, no court will entertain or do. For these reasons, my Lords, we submit that no order can be made preventing us from carrying into effect the Full Court's orders and that your Lordships should make no such order.

Court: Do you want to reply, Mr. D'Almada?

Mr. D'Almada: Yes, my Lords. First, may I say with respect to my learned friend that I have never heard such an argument more quietly advanced by him... We have had it said more than once, "Here is a foreign sovereign. This foreign sovereign is impleaded. If you continue the arrest of this ship, you are further impleading the foreign Government." That is exactly what was done in the cases of *the Cristina* and the *Arantzazu Mendi*.

Court: The latter was of 2 governments, the *de jure* and the *de facto*.

Mr. D'Almada: That is so, my Lords. In *the Cristina* the stay was to enable them to see if that order could be reversed. But, in the *Arantzazu Mendi*, it is perfectly clear the appeal was dismissed with costs to be given within a week. And, for my friend to suggest that in this case, for all we know, it was a consent order is really the height of absurdity.

Williams, J: *The Arantzazu Mendi* was also between 2 foreign sovereigns.

Mr. D'Almada: The fact remains in any event that the Court of Appeal found that a foreign sovereign was impleaded and, if that were the position, "Hands off." The principle of comity still applies.

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Any argument which my learned friend has based upon what Lord Atkin said in *the Cristina* has no bearing whatsoever upon this point now before your Lordships and when my learned friend says in answer to my Lord, Mr. Justice Williams' question: "What is the poor appellant to do if he is successful in the Privy Council and if the ship is outside the jurisdiction?", he says again "Look at *the Cristina* — diplomatic representation. Diplomatic representation is the proper procedure if it is found that the foreign sovereign is impleaded". This is the very matter under appeal now and it doesn't come into the picture until the Privy Council has decided. There is no question of a foreign sovereign being impleaded and there is no further necessity of making that diplomatic representation. 10

Now, my Lords, to come back to this rule 129, I must confess, with respect, that what your Lordships suggested to me that these words "subject to His Majesty in Council or to the Judicial Committee" meant something like regulation 5 of the additional instructions overrode that took me by surprise and I still think that this has no bearing on the point. These additional instructions are a complete code. How can they be a complete code when they are additional, I don't know.

Secondly, I still say he has not answered my point that whereas regulation 5 deals with an application for a stay of execution, the position under Rule 129 of the Admiralty Procedure Rules is something entirely the opposite and designed for the 20 very object which Mr. Justice Williams had in mind when he asked the question "What would happen if the appellants succeed and, in the interim, the ship is taken out of the jurisdiction because we have removed the arrest?"

President: I have never quite followed when you mentioned the 1929 Rules.

Mr. D'Almada: I have here, my Lords, certain pages from what is called Alabaster's Laws of Hong Kong.

President: I have here the Order in Council.

Mr. D'Almada: It is headed Rules for Appeal to the Privy Council . . . additional instructions dated the 21st January, 1886 and these are additional instructions given to our Governor and Commander-in-chief on the 10th day of 30 August, 1929.

President: It says here . . . (indistinct) but not additional to anything except the Alabaster edition.

Mr. D'Almada: If that is so, my Lords, the position here is this: we are not dealing with appeals from the civil jurisdiction and we are dealing with matters pertaining to a Court created by an imperial statute. The Colonial Acts of Admiralty of 1890 is the act which governs our Admiralty Jurisdiction and that is quite clearly set out at p.245-46 of Bentwich. It deals with the position as to Admiralty and Prize Court appeals.

President: I must interrupt you. I think the explanation of the additional 40 instructions that appear in the Alabaster edition is this, that formerly instructions had been given in the form of instructions and therefore had to be revoked by later instructions and that is merely the instructions revoking the prior instructions.

Mr. D'Almada: In any event, my submission is that they have no particular form. It might perhaps probably be whereas I say under Rule 5 this Court is empowered to do certain things upon an application for a stay of execution. Rule 129 has nothing to do with that, it is designed to meet the possibility which Mr. Justice Williams put to my learned friend Mr. Wright.

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If your Lordships will kindly look at p.245, you will see in the third paragraph of that page:

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10 “In Admiralty matters appeals still lie to the Sovereign in Council from the Court of Admiralty of the Cinque Ports, from the Royal Courts of Jersey and Guernsey in their Admiralty jurisdiction, from the Staff of Government Division of the Isle of Man judiciary in its appellate Admiralty jurisdiction, and from Colonial Courts of Admiralty.

By the Colonial Courts of Admiralty Act, 1890, the English Admiralty jurisdiction abroad was vested in every Court in a British possession declared to be a Colonial Court of Admiralty; or, where no such declaration is in force in the possession, in the Court which exercises in such possession unlimited civil jurisdiction” (That is, our Supreme Court). “Unless duly authorised the Colonial Court is not to exercise any jurisdiction in relation to Prize.

20 All enactments relating to appeals to His Majesty in Council or to the powers of His Majesty in Council, or the Judicial Committee in relation to those appeals, are to apply to appeals under the Act. Local rules of Court approved by His Majesty are to have force as part of the Act. The provisions of the Act with respect to appeals to His Majesty in Council are set out in section 6.”

30 And you have section 6 following. Clearly therefore, in my submission, these rules 128-132 of our Admiralty Procedure Rules are part of this Colonial Courts of Admiralty Act. It is the Act by which this Supreme Court of Hong Kong exercises its Admiralty Jurisdiction because we have not got a separate Court of Admiralty and if your Lordships will kindly turn over-page, you will see that passage to which I referred your Lordships and on which I have heard no reply I think from my learned friend:

40 “Local Rules have been made and approved by Order in Council under section 7 of the Act in the following places: Gibraltar, Cyprus, Canada, Jamaica, Newfoundiand, Straits Settlements, Fiji and Queensland. In the case of the Exchequer Court of Canada and the Supreme Court of Jamaica and Fiji, the Rules which govern the procedure of appeal to the Privy Council in civil cases are applied also to Admiralty appeals. In the other colonies special Rules are provided for the steps to be taken in the Admiralty appeals in the Colonial Court.”

Then at the bottom of p.248 you have a reference to the rules of 1883 which form a model of the rules of 1889 and then comes this:

“A party desiring to appeal must, within one month from the date of the decree or order appealed from, file a notice of appeal and give bail in such sum, not exceeding £300, as the Judge may order, to answer the costs of the appeal.”

That, I submit, corresponds to 128 in our Rules. Then:

“Notwithstanding the filing of the notice of appeal, the Judge may at any time before the service of the inhibition proceed to carry the decree or order appealed from into effect, provided that the party in whose favour it has been made gives bail to abide the event of the appeal.”

That, what does that mean, my Lords? These are passages taken from the 1883 10
Rules — if I may hand them over to your Lordships later — you will find these
rules, my Lords, in Safford & Wheeler’s Privy Council Practices. This paragraph
in Bentwich begins, “Notwithstanding the filing of the notice of appeal” and is
section 151 of the Rules of 1883. If you will now kindly look at 7 Griffin’s, what
you will find is that in the footnote there is a reference to the Order in Council
of the 11th December, 1865, and those rules of the 11th December, 1865, are also
to be found in Safford & Wheeler at p.926 and following and the explanation of the
words “subject to any order of His Majesty in Council or the Judicial Committee”
is clear when you have regard to these words “notwithstanding the filing of the
notice of appeal . . . into effect”. My Lords, try to envisage this position. The 20
Full Court gives a judgment in Hong Kong. It gives leave to appeal to the Privy
Council. Nothing is done with regard to carrying into effect the order of the
Full Court of Hong Kong. The appellant goes to the Privy Council and gets his
inhibition from the Privy Council which is a complete prohibition against anyone
and then the party who seeks to get the order carried into effect cannot do so
at all because that would be an order by His Majesty in Council or of the Judicial
Committee against which the Full Court in Hong Kong can do nothing. That is
the kind of order of His Majesty in Council or the Judicial Committee which is
contemplated under Section 129 because your Lordships will find in the 1865
Rules laid down by Rule 4 that when the registry has ascertained that the petition 30
of appeal has been referred to the Judicial Committee, he may, on the application
of the solicitors, issue the usual inhibition order and the form of the inhibition is also
set out in Safford & Wheeler and is in the most comprehensive terms reading thus,
“We do here . . . stated”. My Lords, I will hand you Safford & Wheeler later
but that makes it clear what is meant by those words. They deal with the position
where for example a respondent may not have made any application to the Court
to have his successful judgment in the appeal court carried into effect. If, in
the interim, there has been an order by the Judicial Committee, then the Court’s
hands are tied which makes it abundantly clear that so far as concerns an
appellant . . . and if the respondent wishes to have the order carried into effect, 40
he must make an application which application must fail if the appellant has, in
the interim, got an inhibition from the Privy Council; which application your
Lordships may entertain if there is no inhibition in your discretion provided of
course that bail has been given by the respondents.

If that be not the position, then you get this ludicrous result: the appellant
goes to the Privy Council, succeeds, and comes back to Hong Kong and finds
nothing to satisfy his judgment. In my submission in the 1883 and 1865 Rules,

that is the only meaning to be attached to the phrase "subject to any order . . ." There is a further argument which is of course, I think, not without importance. If my learned friend is right, then the editors of the Ordinance of Hong Kong have included a section in the Admiralty Procedure Rules which ought to have been struck out immediately after these instructions of 1929 were issued. One is Admiralty Jurisdiction and the other, is the other jurisdiction.

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As I am reminded by my learned Junior, assuming they were struck out, what is to be the position? The position therefore is, in my submission, quite clear. Rule 129 has nothing to do with Rule 5 which says that an appellant must apply for a stay of execution and will be granted only in certain cases. The position is, you have an action in rem; you have an unsuccessful appellant getting leave to appeal to the Privy Council. In order that the res should be safeguarded, he may get an inhibition order from the Privy Council. If he does not, then it is open to the Court to entertain an application by the respondent who is successful up to that point for the removal of the arrest; in other words the carrying into effect of the order of the Full Court but only upon that condition that he shall put up bail. Otherwise, this section is meaningless and there is no reason why, I submit, you should say that these two are irreconcilable because they deal with entirely separate material.

20 Have I given your Lordships the pages in Safford & Wheeler? You will find it at p.908-10 of the 1883 Rules and at p.926 you will find the form of inhibition. Can your Lordships conceive that for one moment that if Rule 129 were of no effect because of Regulation 5, you would have a footnote like this, for example, on this particular page? It gives you references to practice and procedure. It is quite clear that the only point is this, these words "subject to any order" means such an order as an inhibition. Then the Full Court may say "Well despite the fact that this appeal is going to the Privy Council but only on such terms because these terms are not discretionary, they form the subject matter of a proviso in the rules themselves". It is mandatory of course.

30 For these reasons, I submit that there is no question whatsoever of this order, this arrest of the ship being removed at this stage whether because it is a foreign sovereign involved or because, as my learned friend seems to suggest, there is a conflict between Regulation 5 and Rule 129. I say the two are entirely distinct and the position is perfectly clear on the reading of any regulation. My Lords, we have not made this position clear that although we have asked for a stay of execution, it is not necessary if it is . . .

Court (interposes): I raised at the beginning, this section 5 of the Order, because I thought you were moving in terms of your motion.

40 Mr. D'Almada: I have, since the drafting of this motion, found this, which I think is the rule governing the position. It is not a substantive application by us until my friend makes the application, when he says 'should this order be carried into effect, I will provide the bail'. Otherwise your Lordships cannot even do that.

Court: Could we hear Mr. Bernacchi on costs now, or is it Mr. Loseby, or Mr. Wright who likes to bring the matter up?

Mr. Bernacchi: I think we all desire to address your Lordships.

Court: Mr. D'Almada. I take it the parties are not agreed as to costs?

Mr. D'Almada: I don't think there is a possibility of agreeing.

Court: I was only hoping to shorten, Mr. D'Almada. It seems that some of the items can be easily agreed, leaving only one or two controversial ones that you want to argue in front of us.

Mr. D'Almada: It may be some of them might be agreed.

Court: All these parties are before us on Monday next — not the parties, but Counsel.

Mr. Loseby: With great respect, I have been on this subject for a very, 10
very long time, but I cannot imagine any possibility of agreement. I have been
trying to get various concessions from my friend for some time, and I have not
been able to get any concession of any kind. My Lords, as I am going to make a
curious application, I wondered if it would be fairer to my friend, I should not
want to have any right to apply, if I commenced, my Lords, it will take me a
short, very short time, my Lords, I am going to ask, my Lords, your Lordships
to consider — You see, my Lords, it must be so, in my humble opinion, that the
Indonesian Government will ask for costs in full following the judgment. I don't
shrink from that at all, and they have shown no kind of inclination to be moved 20
from that position, and I have made, as I thought, modest requests and have been
totally unsuccessful. I have not even made any request to the Indonesian
Government, but I have approached Ysmael & Co., with a total lack of success,
and I am going to make a rather startling suggestion, my Lords, but I am only going
to ask your Lordships if your Lordships will consider, we have done our best, and now
it comes to the question of the costs, and I am going to ask, my Lords, quite boldly,
that your Lordships should order the whole of my costs, under the circumstances,
as your Lordships have found, be paid by Ysmael & Co., in that they have been
unfortunate enough in the matter that has been given against them. Under these
circumstances, my Lords, namely that I put down the motion against myself to
strike out my very humble matter, or put down, and to my horror, somewhat to 30
my dismay, the action to strike out No. 8 was put down and, in what I call an
unholy alliance, but Ysmael & Co. leading, an application was made that both
matters should be tried and heard at the same time. My Lords, I protested with
all the vigour that I was capable of against that course being taken, and I submitted
that I was entitled to take my action in defence to strike out No. 6 alone. My
Lords, I was pushed aside and this rather extensive litigation has followed, and
I am only going to ask your Lordships, because it is no good approaching my
friends, if your Lordships, when your Lordships come to consider how the costs
can be divided, then one sees a great problem, and I only ask your Lordships to
consider that matter separately. If your Lordships remember, I put that before. 40
In so far as the Indonesian Government were responsible also, my Lords, I am
not asking a lot, I am only asking your Lordships to consider it, the matter was
tried and heard in a way obviously prejudicial to me, then that they be awarded
no costs against presume that for the purpose of my argument, within three days
of the caveat they are established for the fight, and I was compelled, whether I

liked it or not, to treat myself as one in the much greater and important matter going to the whole ownership of the vessel, and, my Lords, I don't put it any higher than that matter, and I don't think there is another word that I can say, usefully, because I am perfectly sure, if there is anything, your Lordships will think of it.

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I ask your Lordships to do that, but I merely ask your Lordships to be good enough to consider my matter separately, and merely to have it plainly just on the record, that I absolutely submit that that is the application I make to your Lordships, and, my Lords, I don't wish to reply to my learned friend, and
10 I wonder if your Lordships, under those circumstances, would release me. My Lords, I cannot possibly say any more.

Court: Thank you Mr. Loseby.

Mr. D'Almada: We think the best course might be to stand it over until Monday morning, to be taken before the other appeal.

(The stay will be continued until the 12th January, 1953, or until further order).

12th January 1953.
10.00 a.m.

Mr. Wright instructed by Mr. Griffiths for Appellants.

20 Mr. D'Almada Q.C. and Mr. Bernacchi instructed by Mr. Silva for Respondents.

Mr. Bernacchi: My Lords.

President: (Interposes) You are dealing now with?

Mr. Bernacchi: Costs generally.

President: Perhaps if you could wait, I would like to intimate to Mr. D'Almada certain considerations as to the question of stay of execution under the res of the vessel. I turned up the 1883 Rules where you see the thing is there specific; it is entirely negative.

Mr. D'Almada: Negative, my Lord?

30 President: Negative in your favour, but I don't think there is any necessity of going into the law as to whether those rights superseded our rules or our rules are silent. We have come to the conclusion that on Article 5 or Rule 5 of that Order in Council I think you are precluded from asking for stay of execution following naturally from the rules in our own procedure because it is not an order for a sum of money to be paid, nor have you a duty to perform. On the other hand, we have come to the conclusion that Rule 129 I think differs in form from the Rules of 1883 as binding upon any party whether that party be or be not a foreign Sovereign power. As far as we can see, the position is that you may not apply for stay of execution but Mr. Wright may apply, under Rule 129, for
40 release of the ship. To hold otherwise, as we have found, will be a complete stultification of any appeal from this Court. We will be asking the Privy Council to decide an academic question.

Mr. D'Almada: That is so, my Lords. That is a point I should have made to your Lordships. I am grateful to your Lordships for that observation.

Court: Now, Mr. Bernacchi, we will hear you on the question of costs.

Mr. Bernacchi: My Lords, I will deal with costs, vis-a-vis the successful appellants and then deal with certain observations of my learned friend Mr. Loseby afterwards.

President: Mr. Loseby was very short and to the point. He wants you to pay his.

Mr. Bernacchi: Yes. May I say, my Lords, that with only one exception I think, my learned friend Mr. Wright and I are both agreed on costs and were indeed entirely agreed in our attitude to my learned friend Mr. Loseby. 10

President: That I can well understand; he is not here.

Mr. Bernacchi: My Lords, dealing with the issues between him and myself, your Lordships have before you certain dates and I will ask your Lordships to notice the following dates: the 28th July, 21st August, 25th August, 25th August, 27th August, 29th August, 29th August. Then, skipping one, 4th September and the 9th September. We are agreed, my Lords, that the costs of those matters should be reserved pending appeals Nos. 11 & 12.

President: They have been adjourned sine die. Yes, we have reached that conclusion. 20

Mr. Bernacchi: We are equally agreed of course, my Lords, that with only certain exceptions dealing with the interlocutory matters, the other costs will have to follow the event of the appeal but we will ask one thing, my Lords, and that is this; and on this point I don't think my learned friend is in agreement with me. First of all, there are going to be a number of costs in fact reserved. Secondly, that is if your Lordships agree to reserve those costs, the sovereign status of the appellants would certainly be sufficient ever to preclude us from actually recovering those costs in the event of a successful order from the Privy Council. We would therefore ask, my Lords, that there be an undertaking for refund of the costs in the event of our appeals to the Privy Council being successful and your Lordships will recall that a similar solicitor's undertaking was demanded of us. 30

President: But that is common practice.

Mr. Bernacchi: Yes, your Lordships, so we will ask that there be that solicitor's undertaking and our payment of costs be subject to that undertaking. Apart from those matters, there are only the following items in dispute. The 16th September "Full Court's decision . . ." Oh, I am sorry my Lords, just above that. 1st September, ruling by Full Court "In courtesy to the Indonesian Consul-General, 3 days stay granted . . . Appeals Nos. 11 & 12". We say therefore that they should be reserved to Appeals Nos. 11 & 12. Apparently my learned friend's view is that he is entitled to them because he has got a 3 days stay, but this is nothing like what he asked for. He asked for a stay pending the hearing of his appeals and in fact, at the time we asked for the costs forthwith and your Lordships made an order for the costs in the cause, and I submit that the costs of the 1st September should be reserved in the same manner as the other costs. 40

Then we come to the 16th September, "Full Court's decision granting stay upon 5 terms to be complied with within 7 days". That was a stay of the further proceedings before Mr. Justice Reece. And the 24th September, "Full Court informed by Indonesian Consul-General . . . Court reserves costs". So that the terms indicated on the 16th September were not only not complied with, but this Court was never asked to reconsider or to consider any alternative terms and, on 24th September, that motion was dismissed. That was your Lordships' order and I would therefore submit that that particular motion, the costs of that particular motion covering the 16th and 24th September, should be my clients.

*In the
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10 Then we come to the proceedings of the 24th October and the 31st October when your Lordship did two things. Firstly, your Lordships refused our application for security for costs. (3 things altogether). Secondly, your Lordships refused the Indonesian Government's motion for an advancement of dates, and thirdly, your Lordships granted a stay of the execution of Mr. Justice Reece's judgment upon \$20,000 security, a matter which was in the nature of a special order and was not in any way, my Lords, an order of right. I submit it is a type of order that the party pays the costs for in any event. So, I would submit that on these motions you have, in effect, our security for costs is dismissed; their motion for the advancement of dates was dismissed; and they
20 were granted a stay but only on certain terms as a favour by the Court and a type of favour which the courts usually only give with costs and therefore, I submit, my Lords, that there should be no order for costs in respect to the comprehensive proceedings of the 24th and 31st October. That should include the 21st, my Lords, 21st, 24th and 31st October.

Of course, my Lords, on this list there are various dates and I think it sets out the history of the case. There are costs involved by us which have nothing to do at all with the successful appellants and I am not saying, my Lords, that on the other dates the costs go to them. The order that I would ask your Lordships for is, costs reserved as to hearings of the 28th July, 21st, 25th, 27th and 29th
30 August; and the 1st, 4th and 9th September. I would ask for an order for costs in the respondents' favour in respect to the hearings of the 16th and 24th September and I would ask for no order for costs as to the hearing as to the matters of the 21st, 24th and 31st October. All other costs to be the Indonesian Government's.

President: I have lost you, you have asked for costs in the respondents' favour in respect of . . . ?

Mr. Bernacchi: In respect of the matters of the 16th and 24th September.

Appeal Judge: But you are not the appellants.

Mr. Bernacchi: I was calling ourselves the respondents to the appeal
40 before your Lordships. Perhaps I should have said Juan Ysmael & Company. We are the appellants to the Privy Council, but we are the respondents before your Lordships in these appeals.

Mr. Bernacchi: (continues) We are the respondents before your Lordships on the 16th and 24th September. Costs to Juan Ysmael. No order for costs in respect to the matters of the 21st, 24th and 31st October. All the rest of the costs to be the Indonesian Government's subject to a solicitor's undertaking as to the return thereof in the event of a successful appeal in the Privy Council.

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Now, my Lords, so much for the matters in dispute between my learned friend Mr. Wright and I, but I have the following observations in respect to the matters dealt with by my learned friend Mr. Loseby.

Firstly, my learned friend was mistaken, my Lords, in saying that we applied to consolidate the actions. The Indonesian Government applied to consolidate and our attitude was, we did not object to consolidation but, if they are not consolidated, we want No. 8 heard first. The only thing we object to was No. 6 being heard first and that was also the last thing that Mr. Loseby wanted. So, in fact, it was the Indonesian Government who applied for the two to be heard together. Secondly, that precisely the same arguments applied to No. 6 as applied to No. 8 and if, my Lords, there was any difference in the arguments, it was that there was an additional argument in No. 6 not applicable to No. 8 and so it cannot be said that further time was incurred by the two being heard together when both involved the same matter. In fact, my Lords, for the express purpose of saving his own clients' costs, my learned friend Mr. Loseby sought leave, and obtained leave, from Mr. Justice Reece not to appear on most of the days that Juan Ysmael were arguing their case. Of course, my Lords, most of the days were spent on the argument with the Indonesian Government where, again, my learned friend Mr. Loseby had to listen to for he had No. 6 to deal with. The argument was precisely the same on No. 6 and No. 8.

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Then he says that he wanted to be in a position to surrender if No. 8 failed. Well, my Lords, I submit that an argument on tactics can hardly influence the question of costs. If I put it this way around, my Lords, he always wanted and always did leave us to fight his battles for him and you have a certain mutuality there, my Lords, and neither side I feel had a right to urge that as affecting the costs themselves. He ran with us for his own advantage, and there never has been an issue between him and us on which he has been successful; there never has been an issue between himself and ourselves on which he has been successful. So much so, my Lords, that on succeeding before Mr. Justice Reece we have paid him the full amount of his claim although, as he informed your Lordships, there was a dispute as to costs outstanding.

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President: Paid by Juan Ysmael?

Mr. Bernacchi: Juan Ysmael paid my learned friend's clients the full amount of his claim leaving only the argument as to costs outstanding.

President: That was paid after?

Mr. Bernacchi: After the judgment of Mr. Justice Reece.

Admittedly, of course, my Lords, subject to the all prevailing claim of sovereign immunity, we have a right to recoup ourselves from the Indonesian Government but whether we will ever succeed on that is a very different matter. Then my learned friend says that he wants us, having got from us his claim itself, he wants us apparently not only to bear all the costs of these proceedings but to actually pay him his costs as well and all that, my Lords, with nothing more than my learned friend Mr. Loseby's own very able address, but without any authority for such, I submit, startling proposition.

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I ask, my Lords, that your Lordships should apportion the costs that your Lordships awarded to the Indonesian Government between the clients of my learned friend Mr. Loseby, the plaintiffs in A.J.6. and my own clients, the plaintiffs in A.J.8. The actual apportionment I leave in your Lordships' hands but, I submit, it should be an order of a proportionate nature; so much of the costs to be paid by Juan Ysmael, so much of the costs to be paid by Mr. Anthony Loh.

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Court: Yes, Mr. Wright?

Mr. Wright: May it please your Lordships, we agree that the costs of the proceedings indicated by my learned friend in the beginning of his address should
10 be reserved, that is, the 28th July, 21st, 25th August and the list of dates read out by my learned friend.

President: (Reads list of dates) They should be reserved?

Mr. Wright: Yes.

Appeal Judge: Is the 1st September in that as well?

Mr. Wright: No. that is the first one that is in dispute. Actually we agree with him now that that should be reserved so that should include the 1st September.

The 16th and 24th September. My learned friend says he should get the costs; we say we should get the costs. My Lords, the bulk of that argument was
20 based on the proposition that we were not entitled to a stay at all and it was not until my learned friend Mr. D'Almada was forced to the position that he said that if there was to be a stay at all, it should be an additional one. So, in those circumstances, we say that the Court having found we were entitled to a stay even though on terms to that extent, we succeeded and my friend has no right to get the costs for these two days.

President: But in effect, Mr. Wright, how can we give you costs for a motion that you abandoned?

Mr. Wright: We did not abandon the motion.

President: This Court never made an order. This Court said it would be
30 prepared to grant a stay of execution upon the following terms. We gave you a week in order So, no order was made for a stay at all. You abandoned it, Mr. Wright.

Mr. Wright: As I submit, in the beginning most of the argument was directed to the point that in no circumstances were we entitled to a stay at all.

President: I think the point is, that you withdrew from your motion. Can you ask the costs against somebody else when you have withdrawn from the motion?

Mr. Wright: In the circumstances of these two applications, I submit we can. In any event, I shall leave that to your Lordships. We again agree,
40 generally, with my learned friend as to the 21st, 24th and 31st October.

Now, my Lords, what occurred on those dates was that we asked

Appeal Judge (interposes): Mr. Bernacchi suggests that there should be an order as to costs.

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Mr. Wright: One counter-balances the other. In any event, my Lords, it is conceded that their application for security for costs was dismissed on the merits and the only reason, my Lords, that our application for advancement of dates was not acceded to was because it was rendered unnecessary as your Lordships granted us a stay until hearing of the appeal.

President: Which again was academic because somebody seizes the ship.

Mr. Wright: If your Lordships will recall it, there was a substantial argu- 10
ment there as to whether there should be security for costs and you decided that point in our favour and we did get a stay on the payment of \$20,000 security. We succeeded, and that rendered our application for advancement of dates unnecessary. My Lords, we should get the costs of all that is in my submission.

President: We are inclined to agree with you Mr. Wright.

Mr. Wright: The advancement of dates, after all, is academic. There was no lengthy argument but there was quite a stormy argument on the question as to whether you could order costs against the Government or not and your Lordships will remember that there was a quantity of authority cited. We maintain, there- 20
fore, that we should get the costs of all those particular applications. As regards the solicitor's undertaking, we will leave that matter to the Court to make the usual normal order in these matters.

President: You are raising no point about the undertaking to be given (by the solicitors)?

Mr. Wright: We are raising no point on that.

Mr. Bernacchi: In the absence of my learned friend Mr. Loseby, Mr. Way has asked me to mention that the plaintiffs in A.J.6 also asks for the costs of the hearings of the 16th and 24th September.

Mr. Wright: There is one outstanding point, and that is the position of Mr. Anthony Loh—my learned friend Mr. Loseby's clients. What in fact he asked for 30
on behalf of his client was that no order should be made against his client for any costs in favour of the Indonesian Government. That is what it amounts to. My Lords, we did not consider that his clients should get off scot free in this matter at all. I want to draw your Lordships' attention to this, that as far back as the 2nd September, we gave Mr. Loseby's clients a method of escaping from the heavy costs that they would be likely to incur in this case, in continuing to argue on the impleading issue and we wrote a letter to them on the 2nd September, 1952, which I will read to your Lordships; this is from Messrs Wilkinson & Grist and Stewart and Company: "With reference to the present proceedings instituted by your clients against the Tasikmalaja.....should not be mentioned to the Court" 40

Now, my Lords, we there adopted a most reasonable attitude.

Appeal Judge: They could not have accepted that because in the event you did not succeed—you have now succeeded—but they could not have withdrawn after that letter had been written.

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Mr. Wright: They accepted the terms on the following day: “We thank you for your letter of yesterday’s date. . . .with which we agree.” So, my Lords, in that event, if we won, they had our undertaking that we would have paid them their claim in full plus costs taxed to the date of the letter as to the figures agreed between the solicitor. If we lose, their action is still there; they are fully covered. It looked as if they had entered into some sort of similar agreement
10 with the other side. The other side also paid them the full amount of their claim, no costs having been mentioned by my learned friend in that connection. But, in any event, your Lordships can see there that from the 2nd September my learned friend Mr. Loseby never left this case fully satisfied that as far as the Indonesian Government was concerned, they were absolutely safe. In the face of that, Mr. Loseby did nothing of the kind. He continued to identify himself with every step in the proceedings taken thereafter and he strongly argued that we were not impleaded and, my Lords, we say that in these circumstances, he should not be absolved entirely from guilt at all.

We leave to the Court the question of apportionment but, in our submission,
20 the larger burden of the costs should be borne by my learned friend Mr. Bernacchi’s clients because, if you will look at the record, you will see that the bulk of the documents on the other side were filed by them. Indeed, Anthony Loh was in no position to adduce any evidence at all. The bulk of the documents and affidavits were filed by Juan Ysmael & Company.

Appeal Judge: Your attitude, I think, was that Mr. Loseby’s clients ought never to have issued the writ in rem.

Mr. Wright: That is the point also that has been referred to by your Lordships in the appeal because it is quite clear from the affidavit sworn to in their behalf that they made no enquiries as to the ownership of the vessel, even
30 though it was flying the Indonesian flag.

President: Obviously they must have asked. Mr. Anthony Loh, an experienced man like that, he obviously must have asked who was ordering the work. It is quite incredible that he did not see the ship in its true character.

Mr Wright: So therefore, he should not be entirely absolved from his obligations to pay some costs from these proceedings. The major portion of the costs should, of course, we submit, be borne by Juan Ysmael and the apportionment we leave to the Court.

President: Will you both check to see if I have got this right? The costs of the 28th July, 21st August, 25th August, 25th August, 27th August, 29th
40 August, 29th August, 1st September, 4th September, 9th September to be reserved.

Mr Wright: Correct, my Lord.

President: We find that the costs of the 16th and 24th September should be paid by the Government of the Republic of Indonesia to the appellants Juan Ysmael and Anthony Loh the plaintiffs in No. 6. All other costs to be paid by the appellants

Juan Ysmael and Anthony Loh, the plaintiffs in No. 6, to the Government of the Republic of Indonesia in the proportion of four-fifths by Juan Ysmael and one-fifth by Anthony Loh. If I have made an error in any one of these dates, let us correct it amicably in Chambers.

Mr Bernacchi: I was going to say, will you give general liberty to apply?

President: Yes.

Mr Bernacchi: Will your Lordships also award the costs to us . . . My Lords, I am instructed that certain items of the 16th and 24th were joint items. I would ask for the costs in the same proportion, that is, four-fifths to us and one-fifth to Anthony Loh. Some of the items concerned on those dates were joint items. 10

President: Surely Mr Anthony Loh through his solicitors and counsel would put forward his costs for coming to listen to the motion. You are not joint to getting the costs, you are only joint to paying them.

Mr Bernacchi: Yes, that is what it seemed to me, my Lords. Yes, my Lords, I was mistaken. There is one other thing and that is the costs of all these hearings, that is to say, last Friday and to-day.

President: Costs in the matter.

Mr Wright: We maintain we are entitled to the costs of these motions which were heard on the Thursday because we never protested that they had the right to appeal to the Privy Council and my learned friend has failed on his application to stay because it has been pointed out to him by the Full Court that he has no right to demand it and he states that that is the correct procedure. 20

Mr Wright (Continues): We never protested to that. We didn't even argue it. So, why should they get costs?

President: Do you propose to apply under Rule 129?

Mr Wright: We will have to take instructions on that now that the Full Court has decided that that is the position.

President: For the present we will have to reserve costs and there will be an opportunity to apply again because it all depends, if you do, on whether you have to make an application under Rule 129. 30

Mr Wright: My Lords, that would be a separate application. Those proceedings are finished. We will have to make a separate motion.

President: I must pause here. I thought Mr D'Almada was asking for a stay of execution whereas it in fact turned out to be . . .

Mr Wright: The correct interpretation is that my learned friend Mr D'Almada did not realise what the true legal position was until a later stage of the argument when the full light of perception burst upon him. So it will really mean that he has made a motion which he should never have made. He has argued a point which he never should have argued. My Lords, you have dismissed his motion so far as it asks for a stay of execution of it or anything of that nature 40 so that we should get the costs of that motion.

President: All the parts of it in fact because his motion is divided into two.

Mr Wright: My Lords, I agree we would be mulct in Court if we opposed their right to apply for leave to appeal to the Privy Council. We said straightaway they are entitled and so, why should we pay costs to the other side in respect of that?

*In the
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continued.

Mr D'Almada: We had to bring this motion for leave to appeal. It had to be ex parte because this Court has to settle terms. We cannot ask for a stay so far as it is mentioned in the Notice of Motion but the fact remains that the ship should remain under arrest by virtue of Rule 129 so that I think those costs should also be, at worst, costs in the cause. There is no reason why these costs should be
10 issued against us.

President: While you are on your feet, Mr D'Almada, as regards the terms upon which leave to appeal to the Privy Council?

Mr D'Almada: Yes, my Lords. It occurred to me that the question might arise as to whether we wanted the shorthand writers' notes or your Lordships' notes. With respect, I would submit that I would like your Lordships' notes. I am sure your Lordships' notes are full enough.

President: My notes are illegible and I don't know whether my brother, Mr Justice Williams's notes are as bad as mine. I will have to speak to Mr Williams as to whether he had a shorthand writer the whole time.

20 What I was thinking of, Mr. D'Almada, was that this provisional leave granted; that appellants put up security for costs in the sum of \$5,000 to the satisfaction of the Registrar within 3 months.

Mr D'Almada: Say £300.

President: The costs are ordered to be paid by the appellants in their share to the solicitors of the Government of the Republic of Indonesia.

Mr Wright: (interposes) Are your Lordships stipulating the period within which ...

President: Three months, Mr Wright.

30 Mr Wright: I think with respect that your Lordships should make the order that our costs should be paid within that time.

President: That is so, three months.

All costs is ordered to be paid by the appellants in their share within three months. Your solicitors will make the usual undertaking to make the usual refund. Mr Wright, do you expect bringing in any further motion to this Court?

Mr Wright: We don't know, my Lords. We are not in a position to say.

President: I would then, in those circumstances, think the best order we can make as to costs of to-day and costs of Friday is, we will reserve them in the meantime and you can apply.

Mr D'Almada: Thank you, my Lords.

40 President: We feel that the shorthand record should be the main record.

Mr D'Almada: As your Lordships please.

**ORDER OF THE FULL COURT AS TO COSTS AND
GRANTING PROVISIONAL LEAVE TO APPEAL
TO PRIVY COUNCIL.**

(12th January, 1953)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*
—
No. 112
Order of the
Full Court as
to costs and
granting
provisional
leave to appeal
to Privy
Council.
12th January
1953.

Upon the motion of Juan Ysmael & Company Incorporated and upon hearing Counsel for the said Juan Ysmael & Company Incorporated and Counsel for the abovenamed Appellants The Government of the Republic of Indonesia It Is Ordered:—

AS TO COSTS:—

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AS to A. J. Action No. 8 of 1952 and Appeal No. 15 of 1952:—

- (1) That the costs of the 28th July, 21st, 25th, 27th, 29th August, 1st, 4th and 9th September, be reserved.
- (2) That the taxed costs of and incidental to the hearing before the Full Court on the 16th and 24th days of September, 1952 of an application for a stay by the Indonesian Government be paid by the Government of Republic of Indonesia to Messrs. Juan Ysmael & Co., Inc.
- (3) That the taxed costs of and incidental to all other proceedings in A. J. Action No. 8 of 1952 and Appeal No. 15 of 1952 be paid by Messrs. Juan Ysmael & Co., Inc. to the Government of the Republic of Indonesia. 20

with liberty to apply in respect of Order as to costs above.

AS TO THE MOTION brought by the Appellants, Messrs. Juan Ysmael & Co., Inc., leave to appeal to the Privy Council is hereby given in the following terms:—

- (1) Appellants to put up security in the sum of \$5,000.00 to the satisfaction of the Registrar within three months or less.
- (2) Balance of costs in favour of the Government of the Republic of Indonesia as ordered above to be paid by the Appellants, Messrs. Juan Ysmael & Co., Inc. to the Solicitors for the Government of the Republic of Indonesia upon the usual undertaking to be repaid if the appeal is 30 successful.
- (3) Record to be prepared within three months.
- (4) Liberty to apply.

Costs of these hearings (Thursday the 8th day of January 1953 and today) reserved with liberty to apply.

(L. S.)

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN
CHAMBERS OF APPLICATION FOR CLARIFICATION
OF ORDER AS TO COSTS MADE ON 12TH JANUARY 1953.**

(18th February, 1953)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 113
Transcript of
Proceedings
on hearing in
Chambers of
Application for
clarification of
Order as to
Costs made on
12th January
1953.
18th February,
1953.

Mr Wright instructed by Mr Cooper of Wilkinson & Grist for the Indonesian Government.

Mr Bernacchi instructed by Mr M. A. da Silva for Ysmael & Co.

Mr Way for Anthony Loh.

- 10 Mr Wright: My Lords, in the order that your Lordships made as to costs with regard to the provisional leave to appeal to the Privy Council, there now arises some misapprehension. Your Lordships will recall that at the outset there were and are two Notices of Motion in this case for provisional leave to apply to the Privy Council. One appeal is No. 14 of 1952 and the other is No. 15 of 1952.

President: Tell me, who is applying to the Privy Council?

Mr Wright: In No. 14 of 1952, you have the interveners, that is, Ysmael & Co, applying to the Privy Council. That is A. J. 6 of 1952, which is a claim by Anthony Loh against the ship for necessaries — repairs.

President: That is A.J. 6.

- 20 Mr. Wright: That is A.J. 6. And in that case Ysmael & Co. intervened and the Indonesian Government applied to have the action stayed. The other action is A.J. 8 of 1952, in which Ysmael & Co. are plaintiffs in an action for possession, and the Indonesian Government applied—

Appeal Judge: That is Appeal No. 15.

Mr. Wright: A.J. 6 is Anthony Loh, for necessaries. A.J. 8 is Ysmael & Co's action for possession.

President: But I take it that Anthony Loh is not appealing to the Privy Council.

- 30 Mr. Wright: In neither case is Anthony Loh appealing, but in both cases Ysmael & Co are appealing or have sought conditional leave to appeal to the Privy Council.

President: I must admit what is puzzling me for so long —

Mr. Wright: That is clearly the position now.

President: Anthony Loh brought an action against the ship. The Government of Indonesia claimed they were impleaded. The Full Court held that in fact they were impleaded. Against that decision of the Full Court Anthony Loh is going to appeal.

Mr. Bernacchi: But before that, a third party had become party to the action — Ysmael & Co. They are on the record as second defendants, by virtue of being interveners, and they are appealing. They are parties to A.J. 6.

Mr. Wright: Now apparently, my Lords, this position is not made very clear to your Lordships, for this matter came up before, on the last occasion, in the application for conditional leave to appeal to the Privy Council. You will recall, my Lords, that there was no order for consolidation of these two actions.

President: They were heard together.

Mr. Wright: They were heard together, but there was no order for consolidation. No order for consolidation, so therefore we maintain quite clearly that there must be separate orders as to costs. There being no order for consolidation, there should be separate orders as to the costs in each case. 10

Now, of course, it would be a matter for the discretion of the Registrar to decide, in view of the fact that the cases were heard together, whether full brief fees and full refreshers should be awarded in each case. He may decide that perhaps only half brief fees and half refreshers should be paid in each case, or he may decide that three-fourths brief fees and three-fourths refreshers should be paid in each case. In any event separate fees were paid, their separate affidavits were sworn in each case, filed, and served, and your Lordships have separate files.

The documents in each case are not absolutely identical. And not all the applications were made in both cases. As a matter of fact, in one of the applications that came before your Lordships for a stay — that was the case in which your Lordships granted a stay on payment of \$20,000 — and the only application made in Appeal No. 15, so that your Lordships will see that there will be great difficulty unless the two cases were kept entirely separate. In view of these factors, in view that there was no order for consolidation. 20

However, should there be any doubt as to how to frame a comprehensive order covering both cases: on the comprehensive order as it stands on your Lordships' files now, Anthony Loh is called upon to pay a fifth of the fees in an action of an appeal of which he has never been a part. Neither a party in A.J. 8 or Appeal No. 15. 30

So it is our submission that there must be separate orders as to costs and that it is improper to make a comprehensive order, and that there is no authority for the proposition that you can make a comprehensive order.

To emphasize, my Lords, the misapprehension which has hitherto prevailed in this matter, you will find that although there were two Notices of Motions to appeal to the Privy Council, there was only one order made, and obviously there will have to be two orders and two applications for conditional leave to appeal to the Privy Council because there must be two records, two separate records.

President: I had understood that Anthony Loh had been set aside. 40

Mr. Way: Anthony Loh had had his claim set aside.

Mr. Bernacchi: Set aside by the very persons who wish to appeal that very action.

President: That wouldn't alter his position.

Mr. Wright: That is a matter for my friends to satisfy your Lordships.

Mr. Bernacchi: I think the costs are even more than the claim at this stage.

President: I will hear you later on that point. The position is this. What does Anthony Loh gain by being made a respondent, by going to the Privy Council?

Mr. Bernacchi: It is what we are standing to gain.

President: If you are appealing in both of them, there must be two records. What does the defendant or the respondent, Anthony Loh, stand to gain in any way by the decision of the Privy Council because he has been made a respondent?

Mr. Bernacchi: That, of course, my Lord, I respectfully submit is immaterial, so long as we, the appellants, stand to gain something. We are a party.

President: (To Clerk of Court) 1944 1 All England Law Reports. (To Mr. Bernacchi) What does he stand to gain, supposing you won?

Mr. Bernacchi: Supposing we won? He will then proceed to obtain his costs.

President: No, but you put him there as a respondent. How can a respondent recover his costs?

Mr. Bernacchi: But we, the appellants, stand to gain a considerable amount.

President: Of course. But what is the issue between Anthony Loh and you? There is no live issue between you and Anthony Loh, no live issue that the Privy Council or the House of Lords will listen to. Anthony Loh doesn't stand to lose or win.

Mr. Bernacchi: There is a live issue between us and the first respondent. And it is not necessary for us to make Anthony Loh a respondent. Anthony Loh stands to gain if the appeal is successful, because he can then proceed to recover his costs from the ship, he may recover his costs against us —

President: How can he recover his costs against the ship when he is not an appellant before the Privy Council or the House of Lords? I fail to see how an unsuccessful respondent in an action before the House of Lords can come back to this Court and say: "Now I am entitled to this sum of money because I have lost in the House of Lords and the Privy Council." That is the position. Can he come before the Full Court and say: "Now pay me all the costs because having been dragged to the Privy Council, I have been unsuccessful, lost the action, and am now entitled to a large sum of money?"

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 113
Transcript of
Proceedings
on hearing in
Chambers of
Application for
clarification of
Order as to
Costs made on
12th January
1953.
18th February,
1953.
continued.

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 113
Transcript of
Proceedings
on hearing in
Chambers of
Application for
clarification of
Order as to
Costs made on
12th January
1953.
18th February,
1953.
continued.

He has lost in the Privy Council, if you accept that, and is an unsuccessful suitor, and he now says: "Now order these people to pay me a large sum of money because I am an unsuccessful litigant in the Privy Council."

I am not trying to confuse the matter of costs, Mr Bernacchi, but this occurred to me yesterday when I was pondering on the matter, when it seemed to me that you ought to take a very long look if you want to make Anthony Loh a respondent. Because he has nothing to gain and nothing to lose, and as between this appellant and the respondent Anthony Loh, the question is purely hypothetical. Anthony Loh doesn't stand to gain one cent or to lose one cent.

Sun Life Insurance Company of Canada against Gerver (cited).

10

The only reason—my Brother will forgive me if I brought that up now—it might have a very great effect as to the form in which these costs should be paid. On that assumption that I have stated. Obviously Mr Wright is correct and there should be two separate costs.

Mr. Bernacchi: There should be two records of appeal and we have recognised that—

President: We have taken it all the way through. Anthony Loh could behave to the Privy Council either as an appellant or as a defendant. As an appellant because he and as a respondent because there is no live issue. Mr. Wright is correct and there must be two separate costs. I think that is the 20 meat—whether the costs are consolidated. Don't you think you ought to make up your minds on that point? We can adjourn this to allow you to do that. It is not going to hold up your appeal to the Privy Council.

Mr. Bernacchi: I have come prepared to argue the point. I think your Lordship has both proposals before you. It only affects Clause 3.

President: When my Brother and I made that order in the Full Court, it never occurred to us that Anthony Loh was going to the Privy Council as a defendant. It never occurred to us that he could be dragged there as a defendant, because it seemed to us there could be no live issue. And therefore we made a single consolidation of costs on the assumption that Anthony Loh was out of 30 the matter altogether. Had we there and then been informed of that by the notice of motion, had we grasped that you were making Anthony Loh a respondent in your appeal to the Privy Council as well as the Indonesian Government, then quite clearly we would have contemplated two records, two sets of costs; and I think this matter now turns on whether you will continue with your intention to bring Anthony Loh before the Privy Council.

Mr. Bernacchi: And if that had been correct—

President: If you are going to the Privy Council—If you are not going to the Privy Council, there is a lot to be said for the consolidation of costs, because these appeals were heard together, which was our intention when we 40 made it.

Mr. Wright: I think if they go to the Privy Council on that, Privy Council must have two records.

President: On the facts as you know them, and we are wrong in making a consolidated order. Our consolidated order seemed to us a convenient method of assessing the costs of a joint hearing in two different Courts. And I think you must make your minds up on that first. Do you agree with that, Mr. Wright?

10 Mr. Wright: It is not quite clear, my Lords. The question of Anthony Loh only crops up in one case—Admiralty Jurisdiction Action No. 6. We have to assume because the Notices of Motion were filed in each case that they were going to the Privy Council. Now you have pointed out a suspicion of grave
10 doubt as to whether they can go to the Privy Council at all in one case, and in that event you suggest if they don't take that case to the Privy Council.

President: A consolidated order would be more appropriate.

Mr. Way: So long as I am not going to be asked to pay costs in an action to which we were never a party.

Mr. Bernacchi: I think the position is such that I should see my learned leader on this.

President: No live issue, not between the Government of Indonesia and Mr. Anthony Loh; but no live issue between you, the appellants, and Mr. Anthony Loh; because no matter what happens to him he is in the same position.

20 Mr. Bernacchi: The answer is: Mr. Anthony Loh should be an appellant or nothing.

President: I agree with you fully, if he appeals between, but I can't see that there is a live issue between you, the appellants, who arrested the ship on one ground, and Mr. Anthony Loh, who arrested the ship on another. There can be no issue between you. The only issue between you is a joint issue when you were impleading, in other words, your interests are joined. There is no issue and if that is so, if there is no substance in that at all, you must be prepared to argue to the Privy Council that there is a live issue which you say benefited Mr. Way, because they may throw out your appeal against Mr. Anthony
30 Loh with very heavy costs if there were no live issue.

Mr. Bernacchi: Could we ask your Lordships for another day?

President: As far as the appeal is concerned, I don't think any delay will be occasioned, and I think, unless Mr. Wright has any objections, we will let Mr. Bernacchi—

Mr. Wright: Except of course before the three months are up.

Mr. Bernacchi: We are only asking for another day.

President: If you would like to put this down for any spare hour or two that we have got. But I think you have got something to think about there. As I say, no live issue between two unsuccessful plaintiffs here, unsuccessful on
40 the same point.

Mr. Bernacchi: Well, then, your Lordships, can your Lordships fit us in some time next week?

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 113
Transcript of
Proceedings
on hearing in
Chambers of
Application for
clarification of
Order as to
Costs made on
12th January
1953.
18th February
1953.
continued.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 113
Transcript of
Proceedings
on hearing in
Chambers of
Application for
clarification of
Order as to
Costs made on
12th January
1953.
18th February,
1953.
continued.

President: Next week? Once you've made your minds up as to what you are going to do with Anthony Loh, whether you are going to continue, the position is going to be simply a joint order, subject to what Mr. Wright has to say is a more convenient way of writing up the costs. If you are going to join them, then clearly Mr. Wright must be correct, because clearly there must be two sets of costs. I think once you've agreed on what you want to do, this won't take half an hour. We could if necessary take it at half-past nine.

Thursday, 26th February.

Mr. Bernacchi, you will forgive me for pointing this out, but this is something which has just occurred to me. 10

3.30 p.m. Adjourned.

No. 114
Notes of the
Chief Justice
on further
hearing in
Chambers of
Application for
Clarification of
Order as to
Costs made on
12th January
1953.
26th February,
1953.

No. 114

**NOTES OF THE CHIEF JUSTICE ON FURTHER HEARING IN
CHAMBERS OF APPLICATION FOR CLARIFICATION OF
ORDER AS TO COSTS MADE ON 12TH JANUARY 1953**

(26th February, 1953)

Wright (Cooper) for the Indonesian Government.
Bernacchi (Silva) for Juan Ysmael & Co., Inc.
Way for Anthony Loh.

Wright: Have seen new proposed order — disagree — in absence of order 20
for consolidation no power to make a joint order.

Bernacchi: Whatever joint form of order, only one point in dispute — documents can be separated and are so in draft — joint hearings — more in one action than another. Anthony Loh only pays 1/5th of his own costs under Wright's draft. Too difficult to send to Registrar on Wright's basis — only when hearings joint is it necessary to apportion.

ORDER: Order in terms of draft by Wright as amended.

(Sd.) G. L. HOWE.

No. 114A

NOTES OF THE SENIOR PUISNE JUDGE ON SAME HEARING

(26th February, 1953)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 114A
Notes of the
Senior Puisne
Judge on same
hearing.
26th February,
1953.

Wright (Cooper) for the Indonesian Government.

Bernacchi (Silva) for Juan Ysmael & Co., Inc.

Way for Anthony Loh.

Bernacchi: Had conference with my leader — feel we should bring in Anthony Loh — there is further issue in that case and wish to have Adm. 6 and Appeal 14 before —.

10 Wright: There must be separate sets of costs. Joint and several order — now prepared by Bernacchi. See Bernacchi's 2nd draft. (b)

In absence of order for consolidation no power to make joint order of this nature.

Function of Registrar to deal with question of costs.

From every point of view proper order should be separate order in each case — particularly in absence of joint order.

Bernacchi: real issue is this — order as to hearing — documents can be separated — (b) & (c)

20 Hearing of Adm. 6 and 8)
and Appeal 14 & 15) were joint hearings.

It was because hearings were so much take up with 8 and 15 — rather than 6 and 14 that Court proportioned 1/5th to Loh.

If separate orders — basis of orders must be altered. Loh should pay 4/5ths costs attributable to his case — 6 and 14.

If order is — — we don't bother to apportion as to parts heard together.

On Wright's submission. Loh pays 1/10th or less as we pay whole of 8 & 15.

Wright: All Loh filed were few documents.

30 Bernacchi: No objection to joint order re hearings which were heard together if Court makes separate orders. Reg. will have heavy burden — also in effect — Loh will pay only 1/5th of his costs and none of the other.

We concede separate orders in everything except as to cost of hearings.

We make order as to costs with slight amendments to Wright's draft.

(Sd.) E. H. WILLIAMS.

26.2.53.

No. 115

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

**EX PARTE NOTICE OF MOTION BY JUAN YSMAEL & CO. INC. FOR
EXTENSION OF TIME TO PREPARE RECORD ON APPEAL**

(8th April, 1953)

No. 115
Ex Parte
Notice of
Motion by
Juan Ysmael
& Co. Inc.
for extension
of time to
prepare record
on appeal.
8th April,
1953.

Counsel on behalf of Juan Ysmael & Company Incorporated to move the Full Court in Chambers for immediate absolute orders:—

- (1) Granting further time to prepare the record on appeal within a period of 30 days from the 12th day of April, 1953, or such further time as the Full Court may order;
- (2) Fixing a time or period within which the said record shall be dispatched to England; 10
- (3) Fixing a time or period within which the balance of costs ordered to be paid by Juan Ysmael & Company Incorporated to the Solicitors for the Government of the Republic of Indonesia shall be so paid; and
- (4) Granting the costs of this Motion as costs in the appeal

or alternatively that Juan Ysmael & Company Incorporated may be at liberty to serve Notice of Motion for 10.00 o'clock in the forenoon on Thursday the 9th day of April 1953, before the Full Court in Chambers for the Government of the Republic of Indonesia to appear and show cause why orders should not be made as herein applied for. 20

Dated the 8th day of April, 1953.

(Sd.) MARCUS DA SILVA

Solicitor for the abovenamed
Juan Ysmael & Company Incorporated.

No. 116

No. 116
Affidavit of
Marcus Alberto
da Silva.
8th April,
1953.

AFFIDAVIT OF MARCUS ALBERTO DA SILVA

(8th April, 1953)

I, MARCUS ALBERTO DA SILVA, of Rooms Nos. 107/109 Gloucester Building, First Floor, Victoria in the Colony of Hong Kong, Legal Practitioner, make oath and say as follows:— 30

1. I am the solicitor having the conduct of the matters herein and of the Appeal to the Privy Council on behalf of the abovenamed Juan Ysmael & Company Incorporated, and I am authorised to make this affidavit on behalf of my clients.
2. Shortly after the decision of the Full Court reversing the judgment of the Honourable Mr. Justice Courtenay Walton Reece, inasmuch as my clients were desirous of appealing to the Privy Council, I made application for a transcript of the Full Court proceedings to the Clerk to the Honourable the Chief Justice.

3. Thereafter from time to time I kept on pressing the said Clerk for the transcript, but was unable to obtain same wherefore I wrote the attached copy letter marked "MAS-1" to the said Clerk. I received what purported to be a full transcript of the Full Court proceedings on the 31st day of March, 1953, and when I proceeded to read through the same and to separate the same for inclusion in the record on appeal, checking the same with my own notes, I discovered that the transcript was not a complete one, wherefore I wrote a further letter to the said Clerk on the 7th day of April, 1953, as per copy letter attached marked "MAS-2".

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 116
Affidavit of
Marcus Alberto
da Silva,
8th April,
1953.
continued.

10 4. In the course of preparing the record on appeal, I also discovered that the transcript of part of the proceedings in the Court below which should have been prepared by the Government of the Republic of Indonesia for the Full Court, had not been so prepared, wherefore I wrote to the Clerk to the Honourable Mr. Justice Courtenay Walton Reece as per copy letter attached and marked "MAS-3".

Exhibit MAS 1
Ref. No. 130

Exhibit MAS 2
Ref. No. 131

Exhibit MAS 3
Ref. No. 132

5. Apart from the said missing transcripts delaying the preparation of the record on appeal, I say that by reason of the late delivery of the incomplete transcript to me, it became a physical impossibility for the record to be made ready by the 12th day of April, 1953, for the reasons that:—

20 (a). On receipt of the transcript, it was necessary for me to read through the same and to check same with my notes to ensure that it was a complete one;

(b). After so checking, it was necessary for me to check the transcript in order to ascertain what were the necessary Court documents and exhibits to be included or excluded for the record on appeal;

(c). It was again necessary for me to separate the transcript as per the various applications and motions made, and to set them in the proper order or sequence in the record on appeal; and

30 (d). After doing the above, to obtain the whole of the prepared record to be properly typed out with proper annotated headings and properly indexed.

6. The costs to be taxed herein are in process of being taxed, and I am of the opinion that taxation will not be completed for a period of at least 14 days from the date hereof, inasmuch as the bills presented for taxation by the Government of the Republic of Indonesia, if fully allowed, will total the sum of about \$80,000.00, and the taxation will involve considerable argument and will entail a very lengthy process.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN CHAMBERS OF MOTION
FOR EXTENSION OF TIME TO PREPARE RECORD ON APPEAL**

(8th April, 1953)

No. 117
Transcript of
Proceedings
on hearing in
Chambers of
Motion for
Extension of
Time to
prepare Record
on Appeal.
8th April,
1953.

8th April, 1953 at 12.15 p.m.

Mr. Bernacchi instructed by M. A. da Silva for Juan Ysmael & Co. Inc. —
exparte.

Mr. Bernacchi: My Lords, I must apologize for coming before your Lordships during the Vacation, but I would respectfully submit, my Lords, that this is a case that comes within section 25(2) of the Supreme Court Ordinance, Chapter 104.

Court: Easter Vacation?

Mr. Bernacchi: Yes. It is a Vacation until Thursday. Section 25(2), whereby the Court can hear any applications that requires to be heard. I start by asking your Lordships for immediate orders on the ground that notices of motion are exparte in the first instance but it is obvious that your Lordships, I think, would want to hear both sides on matters 2 & 3. The only matter that causes some concern is matter 1. There has been an unfortunate delay in receiving the record and our time is up on Saturday.

Court: Is it?

20

Clerk of the Court: The 11th is the last day, my Lords. It is three months from the 12th of January.

Mr. Bernacchi: So, in fact, it was up on Friday. That being so, my Lords, we are very much concerned over this and I would respectfully submit that that order is an order which could hardly be refused.

Court: I think what we might do is to give an order stating the extension, but the precise amount of extension to be determined inter partes. You can have it inter partes. This is a very long record. You must remember that anything happens here. Our Court reporters are used for the Legislative Council and when you have a big batch of record, it is extremely difficult for them to take in Court and then be asked to do other work. You have to stop supplying the Court Reporters to the Legislative Council. 30

Mr. Bernacchi: I appreciate the difficulty, my Lords.

Court: The time for the preparation of the record is hereby extended. The precise duration of such extension to be fixed at the inter partes hearing. This is fixed at 10 a.m. on Thursday, is that convenient? Short notice of inter partes hearing to be served.

Mr. Bernacchi: If your Lordships are prepared to give that short time it will undoubtedly have to be. But midday Friday?

Court: It cannot be Friday. What about Thursday next week.

40

Mr. Bernacchi: The only difficulty is that both my learned leader and myself are before Mr. Justice Gould solidly starting next week.

Court: This I don't think would take very long!

Mr. Bernacchi: I think half a day, possible less.

Court: Make it Wednesday, the 15th at 10 a.m. in Chambers (if you make your peace with Mr. Justice Gould he would give you half an hour off). Returnable at 15th April, 10 a.m. in Chambers, leave to serve during Vacation.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 117
Transcript of
Proceedings
on hearing in
Chambers of
Motion for
Extension of
Time to
prepare Record
on Appeal.
8th April,
1953.
continued.

No. 118

**ORDER OF THE FULL COURT IN CHAMBERS GRANTING EXTENSION OF
TIME TO PREPARE RECORD ON APPEAL**

10

(8th April, 1953)

UPON the application of the Respondents Juan Ysmael & Company Incorporated upon reading the affidavit of Marcus Alberto da Silva filed herein on the 8th day of April, 1953, and upon hearing Counsel for the said Respondents Juan Ysmael & Company Incorporated IT IS ORDERED as follows:—

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 118
Order granting
extension of
time to
prepare Record
on Appeal.
8th April,
1953.

(A) As an immediate absolute order, that the said Respondents Juan Ysmael & Company Incorporated be granted further time as from the 12th day of April, 1953 to prepare the record on appeal, the precise period of such further time to be ascertained or fixed at the hearing inter partes of the Motion;

20

(B) That the said Motion be dealt with during Vacation;

(C) That the said Juan Ysmael & Company Incorporated be at liberty during Vacation to file and serve (pursuant to short notice ordered) Notice of Motion for 10 o'clock in the forenoon on Wednesday the 15th day of April, 1953, before the Full Court in Chambers for the Government of the Republic of Indonesia to appear and show cause:—

(i) As to the period of further time of the extension ordered under paragraph (A) hereof;

(ii) As to the fixing of a time or period within which the said record should be despatched to England;

30

(iii) As to the fixing of a time or period within which the balance of costs ordered to be paid by the said Juan Ysmael & Company Incorporated to the Solicitors of the Government of the Republic of Indonesia shall be so paid; and

(iv) Why an order should not be made granting the costs of this motion as costs in the Appeal.

(Sd.) C. D'ALMADA E CASTRO.
Registrar.

(L. S.)

NOTICE OF MOTION BY JUAN YSMAEL & CO. INC. TO FIX PERIOD OF
EXTENSION OF TIME TO PREPARE RECORD ON APPEAL

(9th April, 1953)

No. 119
Notice of
Motion by
Juan Ysmael
& Co. Inc. to
fix period of
extension of
time to
prepare Record
on Appeal.
9th April,
1953.

TAKE NOTICE that the Full Court will be moved in Chambers at 10.00 o'clock in the forenoon on Wednesday, the 15th day of April, 1953 (pursuant to an Order made by the Full Court (The Honourable Sir Gerard Lewis Howe, Kt. Q.C. Chief Justice and The Honourable Mr. Justice Ernest Hillas Williams, Senior Puisne Judge) in Chambers dated the 8th day of April, 1953) or so soon thereafter as Counsel can be heard by Mr. Brook Bernacchi, Counsel for the Respondents Juan Ysmael & Company Incorporated, for the Government of the Republic of Indonesia to appear and show cause:—

- (1) As to the period of further time of the extension from the 12th day of April 1953 to prepare the record on appeal as ordered under paragraph (A) of the said Order of the Full Court referred to above;
- (2) As to the fixing of a time or period within which the record on appeal should be dispatched to England;
- (3) As to the fixing of a time or period within which the balance of costs ordered to be paid by the said Juan Ysmael & Company Incorporated to the solicitors of the Government of the Republic of Indonesia shall be so paid; and
- (4) As to why an order should not be made granting the costs of this Motion as costs in the Appeal.

Dated the 9th day of April, 1953.

(Sd.) M. A. DA SILVA

Solicitor for the said Juan Ysmael
& Company Incorporated.

To:— The Government of the Republic of Indonesia, and
to Messrs. Wilkinson & Grist, their solicitors.

No. 120

LETTER—M. A. DA SILVA TO REGISTRAR

(11th April, 1953)

11th April, 1953.

The Registrar,
Supreme Court,
Hong Kong.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 120
Letter —
M. A. da Silva
to Registrar.
11th April,
1953.

Dear Sir,

Re: **Appeal to the Privy Council from
Full Court Appeal No. 15 of 1952.**

10

I enclose herewith my cheque for \$5,000.00, being security as ordered to be put up by my clients, Messrs. Juan Ysmael & Company Incorporated for leave to appeal to the Privy Council.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

No. 121

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN CHAMBERS OF MOTION
FOR FIXING PERIOD OF EXTENSION OF TIME**

(15th April, 1953)

No. 121
Transcript of
Proceedings on
hearing in
Chambers of
Motion for
fixing Period
of Extension
of Time.
15th April,
1953.

20 Present: Mr. D. A. L. Wright (P. J. Griffiths) for the Indonesian Government.

Mr. Brook Bernacchi (M. A. da Silva) for Juan Ysmael & Co. Inc.

Mr. Way for Anthony Loh.

Mr. Way: May I open by asking that I be excused on behalf of my clients from any further attendances and from all other subsequent interlocutory applications because my client does not wish to be incurred in any further costs in these proceedings.

(Mr. Way is excused by the Court and leaves).

Mr. Bernacchi: This is a summons.

30 President (interposes): You know what happened. We extended it without fixing any time.

Mr. Wright: I am dubious whether your Lordships has any jurisdiction to do that once you set down the time limit.

President: That is a point that has occurred to me.

Mr. Wright: So we cannot take that point.

President: We were mostly influenced in doing it in so far as to a certain degree it was not a failure or inadvertence on the part of the solicitors but sheer inability of our Court Reporters to type out the thing in time.

Mr. Wright: That is one of the reasons why we did not strenuously argue the point, but we must take it.

President: I think we had better record that you take it. I think we are going to assume an inherent jurisdiction at the moment. We can take the point later if there was any point. I think we ought to record the delay as 10 not being the solicitors' fault.

Mr. Wright: I have got something to say on that point, my Lords, when my turn comes to speak because the whole burden of my submissions to your Lordships is that the time, the extended time, should be cut down to the absolute minimum for various reasons that I will detail.

Mr. Bernacchi: My Lord, this question of time; we are quite as anxious as my friends that there should be a minimum amount of delay and I have asked my instructing solicitor what are his views from his side and he informs me that he can be ready within 14 days of the delivery of the balance of the transcript. Now my Lord, the delivery of the balance of the transcript; when 20 that can be done, I am in the Court's hands.

Clerk of the Court: I have spoken to the Court Reporters and they have said that they will be able to hand over the transcript by the 25th of this month, the whole lot. They have just about finished typing, and it has to be checked.

Mr. Wright: I was going to suggest that inquiry be made, but now that it has been duly made, so we know how we stand with regard to the transcript.

President: I don't think, it is not open to you; you can object but you cannot do anything about it at this stage, the documents or transcript that you think unnecessary.

Mr. Wright: The record has to be prepared by agreement between both 30 sets of solicitors and we can insist of course that documents that have not been put in by the other side must be put in but, of course, the responsibility finally rests with the Registrar.

President: Can you go in reverse, Mr. Wright? Can you say that document is not necessary. You can produce the document at this stage saying "That was unnecessary and we produce it now" and if the Privy Council so finds it.....

Mr. Wright interposes: Yes.

Mr. Bernacchi: I went into it in what is known as the "H. K. Woo Appeal case"—we can only record our objection.

Mr. Wright: My main point is this, my Lord, that once the documents have been received from the Court, the solicitors for the appellants can prepare them and have them put in order within a matter of 2 to 3 days at the very maximum. That is merely secretarial work. He has got all the documents, he has got a secretary and stenographer staff. The index is a matter of greatest simplicity and by now he should have the bulk of the documents in some sort of order because we know what the remaining ones are and, once he has got the documents, it should be only a matter of 2 or 3 days to have the documents put in order.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 121
Transcript of
Proceedings on
hearing in
Chambers of
Motion for
fixing Period
of Extension
of Time.
15th April,
1953.
continued.

10 President: What about the printing?

Mr. Wright: The printing is done in England.

Mr. Bernacchi: There is the typing. You can't just stick the Court transcript in and send it. You have to retype the whole Court transcript.

Mr. Wright: As far as the rest of the record is concerned, there is no excuse at all why it is not ready and why it has not been typed.

Williams, J: Assuming that the transcript was received on the 25th, do you say then it should only be with you a matter of a few days?

Mr. Wright: Exactly.

20 Williams, J: (to Mr. Bernacchi): They say two days more; you say a maximum of a week from the 25th ought to be sufficient?

Mr. Wright: One does not have to look at any law. There is no intricacy about it at all. It is merely all stenography work. My instructing solicitor has done a couple of cases to the Privy Council before and he says there is no great difficulty.

Mr. Bernacchi: Then my friend is forgetting another step. After it goes from us to them; back from them to us, we then have to forward it to the Registrar. The Registrar has to get his own staff to go through every word of that record and cross-check it and I submit, my Lord, that the very minimum that that could be done is

30 Mr. Wright interposes: What has been done previously was, it has to be done at the same time with the instructing solicitor for the appellants.

President: Now, the 25th; now is the 15th.

Mr. Wright: Everything can be ready save the outstanding matters and all the typing can be done save for these outstanding transcripts. It is merely a question of the insertion of these and the typing of the duplicates and, even the index can be made out; provision can be made for the transcript. This is a foreign Government being impleaded. The Full Court has decided that it is impleaded. This ship is held up in Hong Kong. We have got to pay the salaries and maintenance of the ship and it is not improving its condition by its being kept here
40 and it is thought of the greatest urgency to see that no great delay should be incurred.

President: A point of wasted money does not move me.

Mr. Wright: We won't get it back anyway.

Williams, J: It is a question of division of time between a fortnight and a week. You want a week; you want a fortnight.

President: If I had to err, I would rather err 2 days on the longer period than 2 days on the shorter. I can view with alarm Mr. Silva and Mr. Bernacchi dashing in here at the last moment and asking to extend it again.

Mr. Wright: We would be agreeable to that, my Lord.

Mr. Bernacchi: That leaves us no time.

Williams, J: The extra 3 days may make all the difference. 10

President: 14 days from the 25th. Where would that bring us to? The 8th May would be the final day. The date we should fix is the 8th May — 14 days from the 25th. Of course you are running into vacations. It is the end of June.

Mr. Wright: That is what we are afraid of.

Mr. Bernacchi: 3 days; there is not very much difference in that.

Mr. Wright: Time is of importance in this case.

Mr. Bernacchi: I think my friends would have to make an application I understand that we are applying for an expedition to London.

President: I don't know what my brother feels but the feeling I have is that it was the Court that held up Mr. Silva. I am inclined to extend the time 20 to the 8th May; it is not very long.

Williams, J: That is point (1) in the Notice of Motion.

Mr. Bernacchi: Yes, my Lord.

Mr. Wright: Of course I assume that if Mr. Silva should have the record before that time he will send it in earlier.

President: The next point is?

Mr. Bernacchi: That is the despatching to England. My suggestion is 3 days thereafter.

President: Now there, I cannot see; if it is ready on the 8th.

Mr. Wright: Within the hour. 30

President: I am not sure whether that is not another way of making the 8th the 11th May now.

Mr. Wright: The responsibility for despatching is the Registrar's of course.

President: But I think myself that if the thing is ready on the 8th May, it should be tied up with string and sent off. The 9th is a Saturday and the 10th is a Sunday.

Mr. Bernacchi: That is the Registrar's responsibility; if he can send it on the day, well and good.

President: I think it might go on the same day.

Mr. Bernacchi: It is despatched by air.

Williams, J: Yes.

President: I think it might be the 8th. (Record to be despatched to
10 England on or before the 8th May).

President: Point (3)?

Mr. Bernacchi: The position is this that, as your Lordships are aware, we are ourselves a company incorporated in the Philippines and, to get money to Hong Kong, we have to go through their exchange controls. Now the position amounts to this, that the bill has to be taxed, the bill presented for a phenomenal sum of \$80,000 which of course we are resisting very strongly and we hope, my Lord, to trim it down to a sum of about \$30,000. But there, my friend disagrees and so your Lordships will see there might be quite a considerable amount of arguing before the taxing master.

20 President: We fixed three months?

Mr. Bernacchi: No time is fixed at all. My Lords, what we would ask your Lordships is, we ask for 7 days after the decision of the taxing master.

Mr. Wright: It must be before they get final leave to appeal to the Privy Council but, of course, they cannot despatch the record to England before they get final leave to appeal.

President: They have to come before us for final leave.

Mr. Bernacchi: I thought that we could apply for final leave after the despatching.

President: No, no.

30 Mr. Bernacchi: That means to say, my Lord, that the last day for the preparation of the record is the 8th; your Lordships have fixed the 9th to despatch it, then we can make an application.

President: You can make an application on the Saturday morning.

Mr. Bernacchi: The main difficulty is this, my Lord, when is it going to be taxed? Your Lordships see how involved the thing is becoming.

Mr. Wright: The bills for costs have been filed and it is just a question of argument.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

—
No. 121
Transcript of
Proceedings on
hearing in
Chambers of
Motion for
fixing Period
of Extension
of Time.
15th April,
1953.
continued.

Williams, J: Before the end of the month.

President: The Registrar will have to be asked to take this at once because it has got to be despatched on the 9th and final leave on the 9th.

Mr. Bernacchi: If we simply say, paid by the 9th.

President: The balance of costs to be paid by the 9th.

Clerk of Court: It must be the 8th.

Mr. Bernacchi: It must be the 8th.

President: Balance of costs to be paid on or before the 8th May. I don't know really, I don't really see it. I cannot see that it can take more than 2 or 3 days.

10

Mr. Bernacchi: One of the points is whether two weeks is

President interposes: What about the costs of this? Is there any way at all in which I can interfere with the costs? Except for the preparation of the record to the Privy Council, we can either say we can give you leave to appeal or we can refuse you final leave to appeal but we cannot do anything else.

Mr. Wright: I am instructed it is a drop in the ocean.

President: I think it must be costs in the cause. We can make an order.

No. 122

ORDER FIXING PERIOD OF EXTENSION OF TIME

(15th April, 1953)

20

UPON the Motion of Juan Ysmael & Company Incorporated the abovenamed Respondents and upon hearing Counsel for the said Juan Ysmael & Company Incorporated and Counsel for the Government of the Republic of Indonesia the abovenamed Appellants IT IS ORDERED:—

- (1) That further time from the 12th day of April, 1953 to prepare the Record on Appeal as ordered under paragraph (A) of the Order of the Full Court in Chambers made on the 8th day of April, 1953 be granted till the 8th day of May, 1953;
- (2) That the Record on Appeal be despatched to England on or before the 9th day of May, 1953;
- (3) That the balance of costs ordered to be paid by the said Juan Ysmael & Company Incorporated to the Solicitors for the Government of the Republic of Indonesia be so paid on or before the 8th day of May, 1953; and
- (4) That the costs of this Motion be costs in Appeal.

30

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

(L.S.)

No. 123

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN CHAMBERS OF
APPLICATION FOR EXTENSION OF TIME TO PREPARE AND
DESPATCH RECORD ON APPEAL**

(5th May, 1953)

Mr. Wright instructed by Mr. Griffiths for the Indonesian Government.

Mr. Bernacchi instructed by Mr. M. da Silva for Juan Ysmael & Company.

10 Mr. Bernacchi: Well, my Lords, I find that I have to apply to your Lordships for a further extension of time in this case, and I ask your Lordships to make it until further order. As your Lordships are aware, certain difficulties have arisen over taxation.

President: If you weren't obstinate, you could finish at 12.00.

Mr. Bernacchi: Ah, my Lords, where \$40,000 are concerned!

President: What do you say, Mr. Wright?

Mr. Wright: We would not like to be recorded as consenting, because it might impinge upon our sovereignty, but we acquiesce. We asked you to give us liberty to apply so that we don't have to call your Lordships together again in similar circumstances.

ORDER

20 The order of the 15th April extended until further order.
Costs in the cause.
Liberty to apply.

No. 124

ORDER EXTENDING PERIOD OF TIME UNTIL FURTHER ORDER

(5th May, 1953)

UPON the Motion of Juan Ysmael & Company Incorporated the abovenamed Respondents under general liberty to apply and upon hearing Counsel for the said Juan Ysmael & Company Incorporated and Counsel for the Government of the Republic of Indonesia the abovenamed Appellants and by consent IT IS ORDERED:

- 30 (a) That the respective periods of time granted in paragraphs (1), (2) and (3) of the Order of the Full Court in Chambers made on the 15th day of April, 1953 to be extended until further order;
- (b) That there be liberty to apply; and
- (c) That the costs of this Motion be costs in the Appeal.

(L.S.)

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 123
Transcript of
proceedings on
hearing in
Chambers of
application for
extension of
time to prepare
and despatch
Record on
Appeal.
5th May, 1953.

No. 124
Order extending
period of time
until further
order.
5th May, 1953.

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN CHAMBERS
OF FURTHER APPLICATION FOR EXTENSION OF TIME**

(22nd July, 1953)

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 125
Transcript of
Proceedings on
hearing in
Chambers of
further
application for
extension of
time.
22nd July, 1953.

Present:

Mr. D. A. L. Wright (Griffiths) for Indonesian Government.

Mr. B. Bernacchi (Silva) for Juan Ysmael & Co.

Mr. Bernacchi: My Lords, this is my application — I think, my Lords, that they are all consent orders — first of all for an order, my Lords, that the record be printed and ready for dispatch within two months and fourteen days. The parties have found, my Lords, that it is quicker and cheaper to print in Hong Kong. 10

President: Two months and fourteen days, that is a nice little piece of working out.

Mr. Bernacchi: We have a letter from the printers that that is the period within which they can undertake that the documents be ready.

Then, my Lords, we also ask for the apportionment of costs between Anthony Loh and Juan Ysmael to be referred to the Registrar within seven days and decided by him. Liberty to apply exists already, I don't know whether your Lordships need to make any further order, there is liberty to apply already. 20

President: It does no harm to put it in. You are consenting, Mr. Wright?

Mr. Wright: Yes, my Lords, although we claim that the costs of this application should be taxed and paid to us.

Mr. Bernacchi: This was not mentioned at all when we discussed these consent orders, they are essentially costs of discretion.

Mr. Wright: The Court here has got power to award us the costs of this application, and we should get them. Unless all these costs are paid before final leave is given we shall never recover them.

President: Are these costs what you say should be your costs in any event.

Mr. Wright: They should be our costs in any event. 30

President: Aren't they covered under security of costs for appeal.

Mr. Wright: But that is only \$5,000.

Gould, J: That is as far as we can go.

President: I think they are inside that, for what it is worth.

Mr. Bernacchi: In fact, my Lords, I submit that it is not a fit case for an order for costs. This is designed to save time and nothing else; it is not an order brought about by anybody defaulting. It is going to take much longer if this

record is despatched unprinted, and printed in England, and if we had not agreed in the argument for apportionment of costs, it would have taken a full day or perhaps two before your Lordships. These orders are designed for no other reason than to avoid costs and there is not any ground for saying that they are costs which should go to my friend's clients in any event.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 125
Transcript of
proceedings in
Chambers of
further
application
for extension
of time.
22nd July, 1953.
continued.

President: No order, Mr. Wright.

Mr. Wright: We agree to that, but we would say here and now that we would strongly oppose any further application that would tend to delay this appeal, because so far as I am instructed, the record has not even been submitted to my
10 instructing solicitors or to the Registrar for approval, and that should have been a long time ago.

Mr. Bernacchi: That is not right, it was submitted a long time ago, but had not been sent back. It is available now.

Mr. Wright: It is not necessary to go into that now, the fact is, my Lords, that we will oppose further extensions.

President: Let it be so, then.

Mr. Bernacchi: Thank you, my Lords.

No. 126

**ORDER BY CONSENT FOR RECORD TO BE PRINTED
AND DESPATCHED WITHIN TWO MONTHS
AND FOURTEEN DAYS FROM DATE**

(22nd July, 1953)

No. 126
Order by
Consent for
Record to be
printed &
despatched
within 2
months & 14
days from date.
22nd July, 1953.

20

UPON the Motion of the abovenamed Respondents under the general liberty to apply and upon hearing Counsel for the Respondents and Counsel for the Appellants and by consent IT IS ORDERED:—

- (1) That the record on appeal be printed and ready for dispatch within two months and fourteen days from the date hereof with liberty to apply; and
- (2) That there be no order as to the costs of this Motion.

(L.S.)

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

30

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 127

LETTER — M. A. DA SILVA TO CHIEF JUSTICE'S CLERK

(2nd October, 1953)

No. 127
Letter—
M.A. da Silva
to Chief
Justice's Clerk.
2nd October,
1953.

The Clerk to The Honourable
The Acting Chief Justice,
PRESENT.

2nd October, 1953.

Dear Sir,

Re: Appeals Nos. 14 and 15 of 1952.

For the reasons set out in the supporting affidavit of Augusto Antonio Noronha, the printed record cannot be dispatched to London within the period 10 expiring on the 7th day of October, 1953 and a further 5 weeks as from the 7th day of October, 1953 is required, wherefore I am instructed on behalf of Juan Ysmael & Co., Inc. to respectfully apply to the Full Court in Chambers by Counsel on Tuesday next, 6th instant at 9.30 a.m. for an extension of the time for the dispatch of the printed record to London.

This application is made pursuant to the "Liberty to Apply" herein.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

c.c. Messrs. Wilkinson & Grist.

No. 128
Augusto
Antonio
Noronha's
Affidavit.
2nd October,
1953.

No. 128

20

AFFIDAVIT OF AUGUSTO ANTONIO NORONHA

(2nd October, 1953)

I, AUGUSTO ANTONIO NORONHA of Rooms Nos. 107/109 Gloucester Building, first floor, Victoria in the Colony of Hong Kong, Clerk, do make oath and say as follows:—

1. I am a clerk in the employ of Mr. M. A. da Silva, the solicitor having the conduct of this Appeal on behalf of Juan Ysmael & Company Incorporated and I am authorised to make this affidavit on their behalf.
2. The Record in Appeal No. 15 of 1952 is of a most complex nature and comes to a total of about 600 pages and nearly every document included in these 30 600 pages had to be substantially altered or completely retyped because, as I was instructed, all unnecessary portions and headings had to be deleted and new headings for the guidance of the Privy Council had to be typed in, marginal notes and cross-references made and the order of documents completely arranged and re-arranged. This applies equally to the lesser record in Appeal No. 14 of 1952 which comes to about 150 pages.
3. After the preparation of the typed record, the same had to be handed over to Mr. P. J. Griffiths of Messrs. Wilkinson & Grist for his approval and I have had many conferences with him in regard to amendments, alterations and cross-references required by him and in regard to the inclusion of 40 certain portions of the record, to which inclusion Mr. Silva on behalf of Juan Ysmael & Company Incorporated had registered objection.

4. Immediately upon my obtaining Mr Griffiths' approval to a substantial part of the record, I dispatched the same to the printers, namely, the South China Morning Post Limited and these printers had with urgency effected the printing thereof and from time to time over the last two and a half months rough proofs had been received by me from the printers, perused, checked and mistakes noted for correction. A copy of the rough proof was sent to Mr. Griffiths for his notation.
5. For the purposes of the work aforesaid, I enlisted the services of three other clerks besides myself in Mr. da Silva's office.
- 10 6. I obtained the final proof in Appeal No. 15 of 1952 as regards pages 1 to 92 on the 29th day of September, 1953, and I immediately handed over the same to the Registrar who has commenced the perusing and checking of same.
7. On the 1st day of October, 1953 I received the final proof of pages 93 to 174 which I immediately handed over to the Registrar for his perusal and checking and on the same day I handed over to Mr. Griffiths a copy of the same final proof from pages 1 to 174 for his perusal and checking.
8. I am informed by the printers and verily believe that the balance of the final proof of the record in Appeal No. 15 of 1952 will be handed over for
20 perusal and checking within the next ten days.
9. The rough proof for the record in Appeal No. 14 of 1952 as from Documents Nos. 1-53 (more than half) was handed by the printers to me on the 30th day of September, 1953 and I handed over the same on the 1st day of October, 1953 to Mr. Griffiths for his perusal and checking. I am informed by the printers and verily believe that the balance of the rough proof will be ready within a week.
10. I am informed by Mr. da Silva and verily believe that the Registrar can complete the perusal and checking of the final proof in both Appeals Nos. 14 and 15 of 1952 in a period of three weeks from date and that the
30 Registrar can complete the perusal and checking of the final printed edition of the said record in both Appeals within seven days from his being handed the same; and in this regard I am informed by the printers and verily believe that the final printed edition of the record in both Appeals can be completed within four weeks from the final proof being returned to them, but that with the proof being returned to them by instalments, the first 100 pages having been checked in 2 days by the Registrar, the time of printing can be shortened.
11. I therefore respectfully and verily say that a further period of five weeks as from the 7th day of October, 1953 is required for all this work to be
40 done and for the printed records to be ready for dispatch to London.
12. There has been no undue delay in the preparation and the printing of these records and I had acted with all promptitude and urgency in the work done, the printers also having done their work with promptitude and despatch.

AND LASTLY I do make oath and say that the contents of this my affidavit are true.

Sworn, etc.

AFFIDAVIT OF PETER JOHN GRIFFITHS

(5th October, 1953)

In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction

No. 129
Peter John
Griffiths'
Affidavit.
5th October,
1953.

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central in the Colony of Hong Kong, Solicitor, hereby make oath and say as follows:—

1. I have the conduct of the Appeal on behalf of the Government of the Republic of Indonesia, the abovenamed Appellants, who are the Respondent in the proposed Appeal to Her Majesty the Queen in Her Privy Council.
2. Leave to appeal to the Privy Council was granted by this Honourable Court on the 12th day of January 1953 and it was a condition of such leave that 10 the Record should be prepared within three months.
3. On the 9th day of April 1953 an application was made on behalf of Messrs. Juan Ysmael & Co. Inc. for inter alia a further extension of the time to prepare the Record. On the 15th day of April, 1953 this Honourable Court granted an extension of time until the 8th day of May, 1953.
4. On the 5th day of May 1953 a further application was made by Messrs. Juan Ysmael & Co. Inc. for an extension of time for preparing the record and on the 5th day of May 1953 this Honourable Court granted an extension until further order. The purpose of this extension was to enable the outstanding costs to be taxed. 20
5. On the 22nd day of July, 1953 a further Motion was made by Messrs. Juan Ysmael & Co. Inc., under the general liberty to apply granted in previous orders for an extension of a further two months and fourteen days and on the 22nd day of July, 1953 such order was granted.
6. On the 7th day of April 1953 the Solicitor for Messrs. Juan Ysmael & Co. Inc. sent to me a draft Record for perusal and approval. On the 8th day of April 1953 I returned the draft to Mr. M. A. da Silva with comments and for it to be put in proper order.
7. On the 26th day of May 1953 I wrote to Mr. M. A. da Silva protesting that despite the delay owing to taxation of costs we had still not received the 30 draft Record in proper form.
8. On the 26th day of May 1953 I received the draft Record (incomplete) for approval and this was returned on the 10th day of June, 1953.
9. Having heard nothing further as to the Record I wrote on the 4th day of August 1953 to Mr. M. A. da Silva protesting at the delay. A copy of my letter of that date is attached hereto and marked Exhibit "PJG-1". There appeared to be very little activity as regards the preparation of the Record until the month of September when certain portions of the Printers' proofs were submitted to me for approval. Despite this to this very day I have not yet received a complete draft of both these Appeals. 40
10. I am instructed by the Government of the Republic of Indonesia to oppose any application for a further extension of time on the grounds that there has been ample time for the Record to be printed and despatched to England and in the meanwhile State property of the Indonesian Government is being detained within the jurisdiction of this Honourable Court despite the fact that the Full Court decision has held that the said Government is impleaded. AND lastly the contents of this my Affidavit are true.

Sworn, etc.

**TRANSCRIPT OF PROCEEDINGS ON HEARING IN
CHAMBERS OF FURTHER APPLICATION
FOR EXTENSION OF TIME**

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

(6th October, 1953)

No. 130
Transcript of
Proceedings on
hearing in
Chambers of
further
application for
extension of
time.
6th October,
1953.

Present:

Mr. Wright instructed by Mr. Griffiths for the Indonesian Government.

Mr. Bernacchi instructed by Mr. M. da Silva for Juan Ysmael & Co.

Mr. Bernacchi: This is my application, my Lords. My Lords, I am sorry
10 to have to come before your Lordships once again on the matter of this record,
and I feel that I should go into the matter possibly in a little more detail than
before, in view of the fact that Mr. Griffiths, the solicitor for the Respondents, that
is to say, the appellants in the case before your Lordships, has filed an affidavit in
effect suggesting that we are responsible for the delay that has occurred.

My Lords, very briefly, the past history. It was originally intended that
the record should be printed in England, and the earlier matters to which Mr.
Griffiths' affidavit refers were all based on that assumption, and, for instance, in
April a month's extension was obtained purely with a view to the preparation of
the typed documents here to be despatched to England. Then, my Lords, both
20 sides agreed that it would be much cheaper and much more convenient to have
the printing done in Hong Kong. In practice, my Lords, I would say that had it
gone to England for printing, the delay would have been very, very much more
considerable, because there would have been repeated references back to Hong
Kong. These documents, my Lords, which I have here — one might call them
the indexed documents — have passed to and fro between the solicitors — there
is a whole bundle of them here — your Lordships will see many denotations. There
are various other documents here — I don't know what you call them — I think
they are galleyproofs, they have passed to and fro, my Lords, and your Lordships
will see many notations upon them.

30 The record itself which I have here to date, my Lords — it is this bundle
here — going up to page 324, which my Lords, is approximately half-way, has to
be cross-referenced. My Lords, just by chance I have turned it open at page
73, and your Lordships will see that at page 73 there are cross-references to pages
35, 36, 37, 38 and 97. Practically every page, my Lords, has to have these cross-
references. Page 69 I have just opened, cross-references to pages 55, 39, 57 and 19.

President: Is this cross-referencing peculiar to this appeal.

Mr. Bernacchi: I am only pointing out, my Lords, that when you are dealing
with a record of what is going to be 700 pages, the cross-referencing is a matter
which, I understand, takes an enormous amount of time. I gather, my Lords, it
40 is required by the Privy Council to have the cross-references. I am instructed,
my Lords, that particularly where there are a considerable number of documents,
the Privy Council requires cross-references in the documents and the record. Every
time that there was any alteration or error or change required altogether, my
Lords, four new documents to be done in the resetting. In the light of that, my
Lords, I ask your Lordships to glance at Mr. Noronha's affidavit. Mr. Noronha
is the clerk in charge in Mr. Silva's office of preparing this record, and he says,
paragraph 2, that:—

- “It is of a most complex nature and comes to a total of about 600 pages...” — that is for one, appeal 15 — “...and nearly every document included in these 600 pages had to be substantially altered or completely retyped because, as I was instructed, all unnecessary portions and headings had to be deleted and new headings for the guidance of the Privy Council had to be typed in, marginal notes and cross-references made and the order of documents completely arranged and re-arranged. This applies equally to the lesser record in Appeal No. 14 of 1952 which comes to about 150 pages.
3. After the preparation of the typed record, the same had to be handed over to Mr. P. J. Griffiths of Messrs. Wilkinson & Grist for his approval and I have had many conferences with him in regard to amendments, alterations and cross-references required by him and in regard to the inclusion of certain portions of the record, to which inclusion Mr. Silva on behalf of Juan Ysmael & Company Incorporated had registered objection. 10
 4. Immediately upon my obtaining Mr. Griffiths' approval to a substantial part of the record, I dispatched the same to the printers, namely, the South China Morning Post Limited and these printers had with urgency effected the printing thereof and from time to time over the last two and a half months rough proofs had been received by me from the printers, perused, checked and mistakes noted for correction. A copy of the rough proof was sent to Mr. Griffiths for his notation. 20
 5. For the purposes of the work aforesaid, I enlisted the services of three other clerks besides myself in Mr. da Silva's office.
 6. I obtained the final proof in Appeal No. 15 of 1952 as regards pages 1 to 92 on the 29th day of September, 1953, and I immediately handed over the same to the Registrar who has commenced the perusing and checking of same.
 7. On the 1st day of October, 1953, I received the final proof of pages 93 to 174 which I immediately handed over to the Registrar for his perusal and checking and on the same day I handed over to Mr. Griffiths a copy of the same. 30
 8. I am informed by the printers and verily believe that the balance of the final proof of the record in Appeal No. 15 of 1952 will be handed over for perusal and checking within the next ten days.
 9. The rough proof for the record in Appeal No. 14 of 1952 as from Documents Nos. 1-52 (more than half) was handed by the printers to me on the 30th day of September, 1953, and I had handed over the same on the 1st day of October, 1953, to Mr. Griffiths for his perusal and checking.
 10. I am informed by Mr. da Silva and verily believe that the Registrar can complete the perusal and checking of the final proof in both Appeals in a period of three weeks from date and that the Registrar can complete the perusal and checking of the final printed edition of the said record in both Appeals within seven days from his being handed the same. 40

I remember, my Lords, at a much earlier stage, we blissfully talked about a day or two for the Registrar to check.

President: You considered he should work at a higher rate than yourselves.

Mr. Bernacchi: No, my Lord, that may be what Mr. Griffiths meant, I don't know. But your Lordships will appreciate how utterly unrealistic we were at an earlier stage in discussing the timing of these matters.

“ . . . and in this regard I am informed by the printers and verily believe that the final printed edition of the record in both Appeals can be completed within four weeks from the final proof being returned to them, but that with the proof being returned to them by instalments, the first 100 pages having been checked in two days by the Registrar, the time of printing can be shortened.

- 10 11. I therefore respectfully and verily say that a further period of five weeks as from the 7th day of October, 1953, is required for all this work to be done and for the printed records to be ready for dispatch to London.”

And “there has been no undue delay of these records”. The position is, my Lords, that Mr. Noronha has filed the same, similar affidavit in the other appeal, and Mr. Griffiths has filed an affidavit in which he sets out the earlier steps taken at a time before it was decided to print in Hong Kong, and he then goes on to the later stages, paragraph 5:—

- 20 “ 5. On the 22nd day of July, 1953 a further Motion was made by Messrs. Juan Ysmael & Co., Inc. under the general liberty to apply granted in previous orders for an extension of a further two months and fourteen days and on the 22nd day of July, 1953 such Order was granted.”

Then he goes back again to April, my Lords, about the draft record, when it was going to be printed in England, and he refers to a matter in May, when he protested at some delay, and he receives a draft record in May, and then paragraph 9:—

- 30 “ 9. Having heard nothing further as to the Record I wrote on the 4th day of August, 1953 to Mr. M. A. da Silva protesting at the delay. A copy of my letter of that date is attached hereto. There appeared to be very little activity as regards the preparation of the Record until the month of September when certain portions of the Printers' proofs were submitted to me for approval. Despite this to this very day I have not yet received a complete draft of both these Appeals.

10. I am instructed by the Government of the Republic of Indonesia to oppose any application for a further extension of time . . . ” etc.

- 40 Your Lordship will recall that Mr. Noronha points out that after the preparation of a typed record the same was handed to Mr. Griffiths for his approval, and there were many conversations between Mr. Noronha and Mr. Griffiths regarding amendments, alterations and cross-references required by Mr. Griffiths and required by Mr. Silva, and then, immediately on obtaining Mr. Griffiths' approval to a substantial part of the record, the same was despatched and the rough proofs have been sent to Mr. Griffiths as they have come in.

I mention, with the consent of my learned friend Mr. Wright, there is a letter of the 2nd October from the printers, in which the second paragraph is — the first paragraph is not material, it deals with costs — :—

“ With regard to the date of delivery for the finished job, providing no further obstacles crop up, we will be able to deliver to you on the 1st November, 1953.”

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 130
Transcript of
Proceedings on
hearing in
Chambers of
further
application for
extension of
time.
6th October,
1953.
continued.

So that, in other words, my Lords, the printers' own estimate, on which our earlier time was based, has been considerably exceeded, or will be eventually considerably exceeded. Their estimate, my Lords, was two months, fourteen days. I think, my Lords, of course, that neither they nor ourselves contemplated the snags caused by the obvious time that has been taken up in checking these proofs.

The present position, my Lords, is 324 pages of proofs delivered to date, and the Registrar has now checked 250 pages, and the checking and returning of the pages is averaging 70-80 pages a day.

It is for those reasons, my Lords, that I ask your Lordships for this further extension, but we have had to ask for it for five weeks, because we are now, my Lords, only in the first week of October, but it is clear from this letter from the printers that the printed record will not be ready until the 1st November and, my Lords, if we work to absolutely cut times, once again, my Lords, we may find that there is a week out here or there which would necessitate another application. The printers give the 1st November, my Lords, for all they know that will enlarge itself into the 4th, 5th or 6th November, and even then the final arrangements for dispatch have to be made, and I am instructed, my Lords, that seven days should be allowed between the time the record is received from the printers and its final despatch. 10

President: What is the interim procedure? That the Registrar's approval will be given as the pages come in? You say it will be finished by the 1st November 20

Mr. Bernacchi: Then the Registrar again will be — whatever the final part is will have to be checked again. That may be a day or so.

President: What has the Registrar been checking so far?

Mr. Bernacchi: The final rough proof.

President: Does he have to check that again in the final print?

Mr. Bernacchi: The completed job will again have to be checked by him; obviously it won't take as long as the rough proofs. I am referred to paragraph 10 of Mr. Noronha's affidavit, he say the Registrar needs a week in which to check the final printed edition. 30

President: And he will be checking the final rough proof as it comes forward between now and the 1st November?

Mr. Bernacchi: Between now and probably the third week in October.

In conclusion, my Lords, I would say this, that whilst the result of printing here means that there has been a considerable time that has elapsed in Hong Kong between provisional leave and the despatch of the record, had it been sent to England, it is our view at least, my Lords, that although we would then have had final leave to appeal, the matter would have been out of our hands in Hong Kong, and the delay would, in fact, have been much longer, because we feel that they would have been referring back to Hong Kong repeatedly from England. And for these reasons, my Lords, I would ask your Lordships for five weeks' extension on the time for despatch. 40

President: Mr. Wright?

Mr. Wright: My Lords, on my instructions I oppose strenuously this application. This is the fourth application which has been made for an extension

of time in this case. Leave to appeal to the Privy Council was given on the 12th January, and it is quite fantastic to say that it will take ten months to prepare a record of an appeal to the Privy Council. All these points mentioned by my learned friend, such as checking and cross-reference, and cross-indexing — they are tasks which are inherent in the preparation of every record such as this, that they should take ten months is utterly ridiculous.

10 It has been submitted on behalf of the appellants that there has been no undue delay, but on their own figures, my Lords, it has taken them six and a half months to prepare this record ready to submit to the printer. It has apparently reached the Registrar only after eight months, although that record is said to be prepared under his supervision it has taken eight months to reach him, and even to this very day my instructing solicitor for the respondents has not yet received a complete draft record of either proceedings.

President: By that you mean that he has never received it in one bundle, or that there are parts of the draft which he has never seen?

Mr. Wright: He has never received a complete draft record to today for submission to the printer.

President: Does that mean he has never received a complete draft record, or he has not had an opportunity of inspecting all the draft in different pieces.

20 Mr. Wright: What is meant by 'no complete draft record having been received' my Lord is this, that the record and those documents so far seen by Mr. Griffiths do not comprise a complete record, because there are omissions.

President: Has he pointed out the omissions?

Mr. Wright: Yes, my Lord, they have been pointed out.

Again, on this point of undue delay, my Lords, no draft at all, no documents at all were put up to Mr. Griffiths for approval until over three months after the date that leave was given the first document, and that is indicative, in my submission, of the delay in this matter when it is appreciated that normally the record should be completed and printed within three months.

30 Mr. Bernacchi: Not printed.

Mr. Wright: Drafted within three months. My Lords, the last extension asked for was two months, fourteen days. That was granted on the estimate of the printers in writing, produced at the time before the Full Court sitting to hear that application. Now, time and time again these applications were made, and we have the same pious hopes and aspirations voiced, but apparently we are no nearer finality.

40 My Lords, this is an exceptional case, because it is a case where government property — where the Full Court has decided that a sovereign government has been impleaded and that government property, namely a ship, is detained in the Colony for now over ten months and, of course, with consequent deterioration, and it is a case in which the Government cannot apply for release of the ship by putting up bail under the Admiralty practice, because it might mean, or might be interpreted as if the Government submitted to the jurisdiction, so for this reason the government are precluded from applying for the release of the ship, which is a factor to be taken into account, because in a normal case, where government

property is not involved, that would not be an obstruction. There are special reasons in this type of case why, in our submission, this particular application should be refused.

President: Anything further, Mr. Wright.

Mr. Wright: No, my Lord.

President: Mr. Bernacchi?

Mr. Bernacchi: Only this one point, I do not know whether your Lordships are clear, I am sure I am not, about this, my Lords, about no complete draft record received. I am instructed, my Lords, that exactly as Mr. Noronha says, there were these meetings between him and Mr. Griffiths, in which Mr. Griffiths wanted 10 amendments and alterations made, and these have been incorporated.

I also understand, my Lords, that there are one or two formal orders to be attached to the record regarding this extension of time — I think there are two orders which need to be attached to the record for extension of time. But the very fact, my Lords, that we cannot really get it clear what is meant by this rather airy statement 'no complete draft record received', indicates that there is nothing in that point, and the rough proofs have been sent to Mr. Griffiths every time it is received.

As regards the comment that the ship is held up, my Lords, the ship is held up, of course, because my learned friend's clients, the Indonesian Government, are 20 not prepared to put up the security to obtain its release.

President: They are not prepared to do so, but the reason given is one which may have some validity. The reason given is that, should they put up security, they might be held to have submitted to the jurisdiction. I don't know if they would, but

Mr. Bernacchi: As your Lordship says, that is the reason given. We regret that this application has become necessary, but I would ask your Lordships for this order, and as I say, my Lords, the date now given by the printers is the 1st November for the complete, finished edition.

President: It does seem that there probably was delay in the earlier part 30 of this. Although the Record was originally to have been despatched to England. I see no reason, myself, why that should have held up the preparation of the early typing, checking and cross-referencing. However, be that as it may, we do not feel that the appeal should be rendered nugatory for the sake of another month or so, and we are prepared to extend the time for five weeks from the 7th day of October. At the same time we would intimate that only in very special circumstances would we be prepared to consider anything further than that. The costs, I think, would be Mr. Wright's clients'.

Mr. Wright: In view of the repeated applications that have been made in this matter and the necessity of dragging in Counsel and Solicitor for opposing 40 them, payment should be forthwith. It is an extraordinary position that in regard to an appeal, it should take ten months to prepare a record to send to the Privy Council.

Mr. Bernacchi: My Lords, I am quite sure that the costs would be awarded to my friend in any event, but I only mention this to your Lordships that I understood that the Court took the view last time that all costs should be left to the

Privy Council, the Court being to some extent the Privy Council's delegate in this matter; it is no longer a Court of Appeal as such, in that the appeals 14 and 15 are over, and this is now an appeal to the Privy Council which necessitates, however, certain things being done in Hong Kong. I only mention it, my Lords, in that I understood that that was the view the Court did take at an earlier stage when I asked for costs to be paid to us.

President: I don't think I remember being a member of the Court.

Mr. Bernacchi: It was mentioned by my Lord, the Chief Justice, Sir Gerard Howe.

10 President: The last time I sat on this, it was merely to extend the time.

Mr. Bernacchi: I think Mr. Justice Williams then sat.

President: To me the situation would appear to be that we are now in the position of a judge taking interlocutory proceedings, as in an O.J. trial the judge may take interlocutory proceedings and costs.

Mr. Bernacchi: Obviously the costs will eventually go to them.

President: What was it last time.

Mr. Bernacchi: Certainly I submit that they should be in any event; there have been certain occasions and matters in the past when we have asked for costs which were in fact left to the Privy Council, which might easily have otherwise
20 been taxed at the time.

President: I must find the record of the proceedings. On the 5th May the order made by the Court was:—

“The order of the 15th April extended until further order. Costs in the cause.”

That, in effect, is an order for costs.

Mr. Wright: The reason for that is that there were some questions in that extension about the costs in the old action being taxed.

Mr. Bernacchi: That was the occasion when I mentioned the Court took the view that the costs should be left in the cause, leaving it to the discretion of
30 the Privy Council.

President: An order for costs in the cause is not really leaving it to the Privy Council. It is really an order for costs. The order in July:—

“That the record on appeal be printed and ready for despatch within two months and fourteen days from the date hereof;

That there be no order as to the costs of this Motion.”

I think that was because it had reference more to the Registrar because Mr. Williams had departed from the Colony and the same Full Court could not be called. I am quite sure that in previous cases we have made orders as to costs. You are described as the Respondents in this appeal, Mr. Wright? There is only
40 now one Respondent, your clients?

Mr. Wright: Yes, my Lord.

President: The costs of this application to the Respondents in any event. I see no reason to make any order for payment forthwith.

Mr. Bernacchi: Thank you, my Lords.

*In the
Supreme
Court of
Hong Kong
Appellate
Jurisdiction*

No. 130
Transcript of
Proceedings on
hearing in
Chambers of
further
application for
extension of
time.
6th October,
1953.
continued.

**ORDER GRANTING EXTENSION OF 5 WEEKS
FROM 7TH OCTOBER, 1953**

(6th October, 1953)

No. 131
Order granting
Extension of 5
weeks from 7th
October, 1953.
6th October,
1953.

UPON the Motion of Juan Ysmael & Company Incorporated under the general liberty to apply and upon hearing Counsel for the said Juan Ysmael & Company Incorporated and Counsel for the Government of the Republic of Indonesia IT IS ORDERED:—

- (1) That the time for the Record on Appeal to be printed and dispatched be extended for five weeks from the 7th day of October, 1953; and 10
- (2) That the costs of this application be the Government of the Republic of Indonesia's in any event.

(L.S.)

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

No. 132

Order granting
Final Leave to
Appeal to Privy
Council to 11th
November,
1953.

No. 132

ORDER GRANTING FINAL LEAVE TO APPEAL TO PRIVY COUNCIL

Dated the 11th day of November, 1953.

UPON READING the Petition of Juan Ysmael & Company Incorporated filed herein on the 30th day of December 1952 for leave to Appeal to Her Majesty in Her Privy Council from the Judgment of this Honourable Court 20 pronounced on the 13th day of December 1952 reversing the Decision of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece dated the 15th day of September 1952 and UPON READING the Order herein dated the 12th day of January 1953 made on the said Petition and the subsequent Orders varying the same including the final Order dated the 6th day of October 1953 and two several Certificates of the Registrar of this Court both dated the 10th day of November 1953 of due compliance with the said Orders and UPON HEARING the Solicitor for the said Juan Ysmael & Company Incorporated THIS COURT DOTH ORDER that the final leave to Appeal prayed for be granted.

(L.S.)

(Sd.) C. D'ALMADA E CASTRO,
Registrar.

30

EXHIBITS.

Exhibit A1
Ref. No. 1
Referred to in
Doc. No. 7

*Exhibit A1
Letter—Kwee
Djie Hoo
to Acting
Captain s.s.
"Tasikmalaja"
30th June
1952.*

Ref. No. 1
Referred to in
Doc. No. 7

REPUBLIK INDONESIA

Konsulat Djenderal
Hong Kong
30th June, 1952

No. 210/3302.

10 Dear Sir,

As you have failed to obey my orders, I have to inform you that as from today you are dismissed and consequently you are requested to leave the s.s. "Tasikmalaja" at once.

I am, dear Sir,
Yours truly,
(Sd.) KWEEDJIEHOO,
Consul-General.

(Seal).

20 The Acting Captain,
s.s. "Tasikmalaja",
Present.

Exhibit B
Ref. No. 2
Referred to in
Doc. No. 7

*Exhibit B
Letter—Captain
Jose Ma. Silos
to Kwee Djie
Hoo.
30th June 1952.*

Hong Kong June 30th 1952
s.s. "Tasikmalaja"

Ref. No. 2
Referred to in
Doc. No. 7

Dear Sir,

30 In connection with your letter of dismissal No. 210/3302, I regret to inform you that you are not in a position to give me such order of dismissal as captain of the above-named vessel, and will not entertain any further imposition from you.

Sincerely yours,
(Sd.) JOSE MA. SILOS,
Captain
s.s. Tasikmalaja

Kweedjehoo Esq.
Consul General
Republic of Indonesia
Present.

Exhibit C.
Letter—M. A.
da Silva to
Commissioner
of Police.
3rd July, 1952.

Exhibit C
Ref. No. 3
Referred to in
Doc. No. 7

3rd July, 1952.

Ref. No. 3
Referred to in 346/52.
Doc. No. 7

The Honourable
The Commissioner of Police,
Present.

Sir,

10

Re: s.s. "Tasikmalaja" (otherwise s.s. "Christobal"
and s.s. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

I am acting for the Juan Ysmael & Company Incorporated, the owners of the abovenamed vessel and plaintiffs in the above action in rem (the defendant being the vessel itself) wherein my clients claimed:

As sole owners to have legal possession decreed to them of the said vessel.

At the time action was commenced (27th June 1952) the crew on board constituted:—

20

- | | |
|--------------------|-------------------|
| 1. Jose Ma. Silos | — Acting Captain |
| 2. Ricardo Aguado | — 3rd Officer |
| 3. Fermin Alimpia | — Radio Operator |
| 4. Jose Rubion | — Boatswain |
| 5. Cesencio Molo | — Ordinary Seaman |
| 6. Nemesio Mortel | — 3rd Engineer |
| 7. Alberto Aviles | — 4th Engineer |
| 8. Antonio Tonalgo | — Oiler |
| 9. Dionisio Cabil | — Oiler |
| 10. Norberto Pavia | — Steward |

30

and J. Walandaouw, an Indonesian Purser, an Indonesian Cadet Officer (apprenticed Mate) D. J. Mandaji, and 36 Indonesian sailors. The Acting Captain and other crew (numbered 1 to 10) declared on that date, i.e. 27th June, that:

" We the undersigned confirm that we are in full physical possession and control of the vessel s.s. "Tasikmalaja" at all material dates up to the date of this letter and that we held and are still holding such full physical possession and control as servants of and for and on behalf of Messrs. Juan Ysmael & Co., Inc. as sole owners and for no other party."

On the same date, a warrant for the arrest of the ship was issued by the Registrar of the Supreme Court and the Head Bailiff executed the warrant 40 forthwith, taking the vessel into his custody, i.e. the custody of the Court.

The statu quo being as above stated, it became the duty of all persons concerned in the litigation as from the moment of the Head Bailiff taking charge of the vessel to abstain from any interference with the custody of the ship by the Head Bailiff maintaining the statu quo on board until further ordered by the Court (See *The Abodi Mendi* (1939) 1 P.178).

Exhibit C.
Letter—M. A.
da Silva to
Commissioner
of Police.
3rd July, 1952.

Ref. No. 3
Referred to in
Doc. No. 7
continued.

On the 30th day of June 1952, (*after* litigation had commenced) the Consul-General in Hong Kong for Indonesia purported to dismiss the Acting Captain by Notice in writing and requested that he should leave the vessel immediately and the Acting Captain as the servant of the owners, i.e. my clients, refused to recognise
10 the dismissal and the said Consul-General's right to so dismiss him. In the meantime, Messrs. Wilkinson & Grist had entered appearance under protest on the 30th day of June, 1952 in the action on behalf of the Republic of Indonesia claiming to be owners of the said vessel.

As from 30th June 1952, the Indonesian crew on board the vessel by sheer force of numbers and by threats of physical violence (as can be testified to by the Head Bailiff, the Marine Superintendent of Police, the Divisional Superintendent (Kowloon City) of Police and the Police guards at the Kowloon Docks' gates) have prevented the Acting Captain from going on and remaining on board the vessel, the Indonesian Quartermaster stating that these were his orders from the
20 Consul-General in Hong Kong for the Republic of Indonesia and that no one was to be admitted without a pass from the said Consul-General.

The circumstances are very similar to the facts in the *Abodi Mendi* case where:

There was a purported dismissal of the Captain: and the taking up of the gangway (during the Captain's absence ashore) by the crew in prevention of the Captain's return to the vessel (See p. 180 of the report of the case).

It is clear from the Judgment of the President of the Court of Trial (on p. 183) that where at the time of arrest the Captain was the lawful Captain (and this is admitted by the very fact that the Indonesian Consul-General had purported
30 to dismiss him *after* arrest of the ship):

(a) The Marshal (Head Bailiff) or the parties could have *invoked the assistance of the police*, and/or

(b) The Court would have ordered the Captain's reinstatement for the purpose of protecting the res.

The President of the Court of Trial (in *the Abodi Mendi*) had dismissed, in the Court below, the Summons to reinstate the excluded Captain on the basis that he had been dismissed before the material date (non-existent in our case), but the Court of Appeal (at pp. 194, 195 *et sequitur*) decided that this was a wrong view:

40 (a) Because the Captain was on board at the time the ship was put into the charge of the marshal; and

Exhibit C.
Letter—M. A.
da Silva to
Commissioner
of Police.
3rd July, 1952.

Ref. No. 3
Referred to in
Doc. No. 7
continued.

- (b) Because the action of “forcible exclusion was a taking of the law into their own hands” of the persons doing that act and constituted a “contempt of Court”, whereas the proper course was to keep “the ship in medio and all questions of the right to possession of the ship open till the action was decided”.

Wherefore it is clear on this authority, that the present action of the crew in excluding Acting Captain Silos from the ship (on orders from the Indonesian Consul-General as per statements made by the Indonesian Quartermaster and as per letter of 30th June 1952 from the said Consul-General (copy enclosed herewith) constitutes an interference with the statu quo existing at the time of the arrest 10 of the ship and a taking of the law into the hands of the persons concerned by way of contempt of the Supreme Court: Pending contempt and other proceedings advised by Counsel, I am instructed to invoke police assistance for the escorting of Captain Silos on board and the stationing of a police guard on board to see to his not being forcibly evicted therefrom.

Apart from the right to so invoke police protection the position is clear:

- (a) That the Captain (the only licensed officer of this vessel) must remain on board to attend to the ship and its safety;
- (b) That without a police officer on board, a violent breach of the peace by the Indonesian crew is certain to occur. 20

and I shall be respectfully obliged if this police guard be afforded for 3 p.m. to-day, the 3rd instant, when Captain Silos will be going on board the said ship.

I desire, respectfully, to make it clear that my clients are not invoking police assistance to aid them in any way in their suit against contesting parties but merely to seek their right to have the statu quo preserved till trial and judgment as against forcible acts which are in contempt of the Head Bailiff’s custody.

I have the honour to be,

Sir,

Yours very respectfully,

(Sd.) MARCUS DA SILVA. 30

c.c. The Consul-General in Hong Kong
for the Republic of Indonesia.
The Registrar, Supreme Court.
The Head Bailiff, Supreme Court.

Exhibit D
Ref. No. 4
Referred to in
Doc. No. 7

3rd July, 1952.

The Consul-General in Hong Kong
of the Republic of Indonesia.

Sir,

Re: S.S. "Tasikmalaja"
(otherwise S.S. "Christobal" and
S.S. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

10

I enclose copy of letter of even date addressed to The Honourable The Commissioner of Police for your perusal and notation.

I am instructed to ask that you should purge the contempt of Court by an immediate countermanding of orders to the Indonesian crew on board to forcibly exclude Acting Captain Silos from the said vessel.

I shall be obliged for your written undertaking not to interfere with the statu quo as existing at the date of arrest of the ship and your withdrawal of your
20 request in your letter of the 30th June last, that Captain Silos was "to leave the s.s. "Tasikmalaja" at once".

I am,

Sir,

Yours faithfully,
(Sd.) MARCUS DA SILVA.

Exhibit E
Ref. No. 5
Referred to in
Doc. No. 7

30 346/52

3rd July, 1952.

Messrs. Wilkinson & Grist,
Present.

Dear Sirs,

Re: s.s. "Tasikmalaja" (otherwise s.s.
"Christobal" and s.s. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

I enclose:

- 40 (a). Copy of letter to the Honourable the Commissioner of Police; and
(b). Copy of letter to the Consul-General in Hong Kong for the Republic of Indonesia;

for your perusal and notation.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Exhibit D.
Letter—M. A.
da Silva to
Consul-
General
in Hong Kong
for the
Republic of
Indonesia.
3rd July, 1952.

Ref. No. 4
Referred to in
Doc. No. 7

Exhibit E.
Letter—M. A.
da Silva to
Wilkinson &
Grist.
3rd July, 1952.

Ref. No. 5
Referred to in
Doc. No. 7

Exhibit F.
Letter—M. A.
da Silva to
Registrar,
Supreme
Court.
3rd July, 1952.

Exhibit F
Ref. No. 6
Referred to in
Doc. No. 7

3rd July, 1952.

Ref. No. 6
Referred to in
Doc. No. 7

The Registrar,
Supreme Court.

Sir,

Re: S.S. "Tasikmalaja"
(otherwise S.S. "Christobal" and
S.S. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

10

I enclose copies of letters of even date to:—

- (a) The Honourable, The Commissioner of Police;
- (b) The Consul-General in Hong Kong for the Republic of Indonesia; and
- (c) The Head Bailiff;

for your perusal.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Exhibit G.
Letter—M. A.
da Silva to
Head Bailiff,
Supreme
Court.
3rd July, 1952.

Exhibit G
Ref. No. 7
Referred to in
Doc. No. 7

20

3rd July, 1952.

Ref. No. 7
Referred to in
Doc. No. 7

The Head Bailiff,
Supreme Court.

Dear Sir,

Re: S.S. "Tasikmalaja"
(otherwise S.S. "Christobal" and
S.S. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

30

I enclose copies of letters of even date to:—

- (a) To The Honourable The Commissioner of Police;
- (b) To the Consul-General in Hong Kong for the Republic of Indonesia;
- (c) To the Registrar, Supreme Court.

I shall be obliged if you will also seek Police assistance to maintain the statu quo as existing at the time of arrest and to re-instate and keep Acting Captain Silos on board the vessel.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

40

Exhibit H-1a
Ref. No. 8
Referred to in
Doc. No. 7

Exhibit H-1a.
Letter—
Wilkinson &
Grist to M. A.
da Silva.
3rd July, 1952.

WILKINSON & GRIST.

3rd July, 1952.

M. A. da Silva Esq.,
Gloucester Building,
Hong Kong.

Ref. No. 8
Referred to in
Doc. No. 7

Dear Sir,

10

Re: "Tasikmalaja"

Our clients are allowing Captain Silos to go on board, and are confirming his present appointment as master appointed by our clients.

Unless Capt. Silos brings on board the ships log-books and other ships papers, we will be instructed to take action.

Yours faithfully,

(Sd.) WILKINSON & GRIST.

Encl: Copy of letter to
Commissioner of Police.

20

Exhibit H-2a
Ref. No. 9
Referred to in
Doc. No. 7

Exhibit H-2a.
Letter—
Wilkinson &
Grist to
Commissioner
of Police.
3rd July, 1952.

3rd July, 1952.

The Hon. Commissioner of Police,
Hong Kong.

Ref. No. 9
Referred to in
Doc. No. 7

Sir,

Re: S.S. "Tasikmalaja"—Admiralty Jurisdiction
Action No. 8 of 1952.

30 We have received a copy of Mr. M. A. da Silva's letter to you of to-day's date, and have instructions from the Consul-General for Indonesia on behalf of the Government of the Republic of Indonesia (Ministry of Defence) to answer the allegations set forth in that letter.

The Indonesian Government bought the vessel by way of a Bill of Sale on the 17th March last, the Bill of Sale being signed by Capt. F. Starr, Attorney for the then owners, Messrs. Juan Ysmael and Company Inc., a Manila company. The ship was then in the Taikoo Dockyard, and Major Pamoe, who signed the Bill of Sale for the Indonesian Government ordered the ship over to the Hong Kong & Whampoa Dock Company Limited, where she now is. The then master,

Exhibit H-2a.
Letter—
Wilkinson &
Grist to
Commissioner
of Police.
3rd July, 1952.

Ref. No. 9
Referred to in
Doc. No. 7
continued.

Captain Akwado, was dismissed about this time, and Captain Silos, who was then the mate, was appointed master; on about the 16th April 1952, there was a ceremony on board at which the Indonesian Consul-General was present. A representative of the Panamanian Government was also present, and the Panamanian flag was lowered, and the Indonesian flag raised. Photographs were taken, and speeches were made, including a speech by Captain Silos, who promised his faithful service to the Indonesian Government. This ship has been under the Indonesian flag ever since. The Director of Marine was informed of the change of ownership, and the change of flag.

Mr. M. A. da Silva on behalf of the sellers, Messrs. Juan Ysmael & Co., did not commence action until the 27th June 1952, which was commenced without notice to the Indonesian Consul-General, under whose flag the vessel was. On this being done, Captain Silos gave orders that the Indonesian flag should be lowered against the sovereignty of the Indonesian Government, and thus attempting to change the statu quo. This was the reason why notice of dismissal was given to him. 10

The crew, including Captain Silos, have been paid ever since March or April by the Indonesian Consul-General. The ship was received by the Hong Kong & Whampoa Dock Co. Ltd. from our clients. The late owners Juan Ysmael & Co. Inc., have never been in possession of the ship since March/April last. The Hong Kong & Whampoa Dock Co. Ltd. have verbally acknowledged through their Secretary, Mr. Grimsdale, that the ship is in their physical possession, that the Bailiff is on board, the ship is in *custodia legis*, and that subject thereto the vessel is held as our clients' property. 20

Our clients have no desire to alter the status quo, and we consider that Mr. da Silva's request to you should not have been made in this way, but should have been made to the Registrar of the Supreme Court or the Head Bailiff, or by one of these officers to you if they, in pursuance of their duty, considered it necessary to do so.

In the interest of peace our clients are now giving instructions to allow Captain Silos to go on board and captain the ship subject, of course, to the possession of the Bailiff and that of the Dock Company, since he was the master of the vessel appointed by them. Our clients place him there as their servant. 30

We would add that we are informed that Captain Silos wrongfully has removed the log-books and other ships papers from the ship.

We have the honour to be,

Sir,

Your obedient servants,

(Sd.) WILKINSON & GRIST.

Copies to: Registrar of the Supreme Court,
M. A. da Silva Esq.,
Secretary, Hong Kong & Whampoa Dock Co. Ltd.,
Indonesian Consul-General,
Head Bailiff,
Panamanian Consul-General.

40

Exhibit J-1
 Ref. No. 10
 Referred to in
 Doc. No. 7

Exhibit J1.
 Letter—M. A.
 da Silva to
 Wilkinson &
 Grist.
 5th July, 1952.

Reference No. 346/52.

Hong Kong, 5th July, 1952.

Messrs. Wilkinson & Grist,
 Present.

Ref. No. 10
 Referred to in
 Doc. No. 7

Dear Sirs

10 Re: S.S. "Tasikmalaja" (ex S.S. "Christobal" and
 S.S. "Haleakala")
 Admiralty Jurisdiction Action No. 8 of 1952.

I am instructed to reply to your letter of the 3rd July 1952 received on the 4th July 1952.

Acting Captain Silos does not admit that your clients have the power or privilege to allow or permit of his going on board or to appoint him Master.

20 Acting Captain Silos will be proceeding on board as servant of the Plaintiffs herein and your clients are warned not to prevent his going on board or to molest him whilst on board. Your clients are asked for an immediate clarification as to whether they will still prevent Acting Captain Silos from going on board or whether they will still molest him on board since he has refused to recognise their alleged rights as above stated, particularly in that, in spite of my telephonic communication with your Mr. P. J. Griffiths at 5.20 p.m. on the 3rd instant, Acting Captain Silos was molested and warned off the vessel and the keys to his cabin were wrongfully demanded from him by various members of the Indonesian crew at 6.40 p.m. on the 3rd instant.

Your enclosure of copy letter to The Honourable The Commissioner of Police contained several untruths which will be refuted in proper course.

30 In reference to the last paragraph of your letter under reply Acting Captain Silos informs me:—

- (a) That the Panamanian Registry Log Book which he had been using at all material periods was taken off by him because he was compelled by his wrongful exclusion from the ship to bring it ashore to make his daily entries: He has deposited this with the Head Bailiff for safekeeping and will proceed to the Supreme Court to make his entries therein from time to time. A purported Indonesian Registry Log Book in which there are no entries is on board and it would be best (to avoid possible conflict as to its condition) that the Head Bailiff should take charge of this; and
- 40 (b) For safekeeping, the documents contained in the attached List marked "A" (signed by me for identification), had been taken ashore by Acting Captain Silos and have been deposited by him with the Head Bailiff.

Yours faithfully,
 (Sd.) MARCUS DA SILVA.

Exhibit J2.
List of
Documents
enclosed in
Exhibit J1.

Exhibit J-2
Ref. No. 11
Referred to in
Doc. No. 7

Ref. No. 11
Referred to in
Doc. No. 7

LIST OF DOCUMENTS

1. Photostatic copy of Bill of Sale of s.s. "Christobal" dated 16th September, 1950 from George Ho to Juan Ysmael & Co. Inc.
2. Document in Spanish headed s.s. "Tasikmalaja" and signed by Mario E. Guillen, Consul-General for the Republic of Panama, and dated 22nd March, 1952. 10
3. Receipt dated September 30, 1950, given by Frank C. Starr to Captain F. J. Aguado for photostatic copy of Bill of Sale No. 79 (Sale) of the s.s. "Christobal."
4. Document in Spanish headed "Habilitado, la, Clase, Un Balboa, Bienio de 1949-1950, Pagado" and signed in the top right hand corner by Julio E. Briceno, Ministro de Panama en China.
5. Copy letter dated 16th January, 1951 addressed to Dinas Lalu Lintas Tentara, Republic of Indonesia, Djakarta.
6. Appendix to the Charter Party agreed this day November 25th 1950 between Juan Ysmael & Co. as the Owners of the s.s. "Christobal" and the Government of the Republic of Indonesia. 20
7. Charter Party between Juan Ysmael & Co. and the Government of the Republic of Indonesia dated at Djakarta, November 25th, 1950.
8. Copy letter from Frank C. Starr to Dinas Lalu Lintas Tentara, undated.
9. Statement of account of the s.s. "Tasikmalaja" totalling Rps. 661,715.50.
10. Document No. 040015 dated 16 de Septiembre de 1950, Despacho No. 142 re s.s. "Christobal" issued by the Consul-General for the Republic of Panama in Manila, P.I.
11. Document headed "Republica de Panama—Servicio Radio—telegrafico—Licencia No. Uno, Name of Ship "Christobal" issued 2 Febrero, 1949. 30
12. Certificate dated 17 de Agosto de 1949, issued by the Consul-General for the Republic of Panama at Manila, P.I. certifying that Francisco J. Aguado has been appointed Captain of the vessel "Christobal."
13. Document in Spanish dated 16 de Septienbre de 1950, signed by Francisco J. Aguado, and also by E. M. Grimm, Consul-General ad-honorem Por M. Lacuesta Encargado, of the Consulate General of Panama, Manila, P.I.
14. Patente Provincial de Navegacion No. 1203-SH, dated at Shanghai China a los Dos dias del mes Febrero di mil novecientos caurenta y mueve, and signed by the Consul de Panama en Shanghai, China.

"A"

(Sd.) MARCUS DA SILVA.
5/7/52.

40

Exhibit K-1
Ref. No. 12
Referred to in
Doc. No. 7

Exhibit K1.
Letter—
Commissioner
of Police to
M. A. da Silva.
4th July, 1952.

Ref. No. P.H.Q. L/M 1004/52.
Your Ref. 346/52.

Ref. No. 12
Referred to in
Doc. No. 7

4th July, 1952.

Sir,

10 Re: S.S. "Tasikmalaja"
(otherwise S.S. "Christobal" and
S.S. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

I refer to your letter dated 3rd July, 1952. If you consider that there has been contempt of the Court Order your remedy lies in application to the Supreme Court and the police will not intervene unless there is a breach of the peace.

20 2. I confirm that Mr. Griffith of Messrs. Wilkinson & Grist tells me that he has advised his client to permit the return on board of Captain Silos and in no way to molest him. He understands that his client accepts his advice.

I am Sir,
Your obedient servant,
(Sd.) A. C. MAXWELL,
/Commissioner of Police.

M. A. da Silva, Esq.,
Solicitor,
Gloucester Building,
(First Floor),
Rooms Nos. 107—109,
20 Hong Kong.

Chopped: **OUTWARD**
PHQ
Serial No. 6265
4 July, 1952.

Exhibit A1
Ref. No. 13
Referred to in
Doc. No. 10

Exhibit A1.
Letter—
Wilkinson &
Grist to M. A.
da Silva.
8th July, 1952.

8th July, 1952.

Ref. No. 13
Referred to in
Doc. No. 10

40 M. A. da Silva, Esq.,
Hong Kong.

Dear Sir,

Re: S.S. "Tasikmalaja"

With reference to your letter of the 5th instant, we have now taken our clients' instructions and they state that it is entirely untrue that Captain Silos was molested or warned off the vessel, as alleged. It is admitted that the

Exhibit A1.
Letter—
Wilkinson &
Grist to M. A.
da Silva.
8th July, 1952.

Ref. No. 13
Referred to in
Doc. No. 10
continued.

Captain, appointed by our clients, asked him for the keys to the cabin because he wished to check over the Ship's documents. Our clients reiterate that no obstacle is being or will be placed to prevent Captain Silos from going on the Ship whenever he chooses to do so. The Indonesian members of the crew, however, have been instructed to obey only Captain Mandagi, and of the seven Filipino crew remaining on board, six have agreed to accept the orders of Captain Mandagi. The reason that Captain Mandagi was appointed and the crew placed under his orders is because of Captain Silos wrongfully disobeying the commands given to him.

We were advised on Saturday last that Captain Silos came on board the Ship with a Captain Jackson, and Captain Silos stated that Captain Jackson had been sent on board by the Supreme Court Authorities. We have to-day ascertained from the Registrar that this is entirely untrue and, therefore, our clients do not agree that Captain Jackson should be permitted on board the ship. We wish to place on record his irresponsible conduct last night when apparently under the influence of liquor he was removed from the Ship by the Police.

Yours faithfully,
(Sd.) WILKINSON & GRIST.

Exhibit B.
Letter—M. A.
da Silva to
Wilkinson &
Grist.
10th July, 1952.

Ref. No. 14
Referred to in
Doc. No. 10

Messrs. Wilkinson & Grist.

Dear Sirs,

Re: S.S. "Tasikmalaja"
(Ex. S.S. "Christobal" and S.S. "Haleakala")
Admiralty Jurisdiction Action No. 8 of 1952.

My clients are somewhat puzzled by your letter of the 8th instant:— 30

- (a) On the 3rd July, 1952, your clients purported to appoint Captain Silos the Captain of the abovenamed vessel.
- (b) On the 3rd evening, Captain Silos went on board and the incident referred to in your letter under reply then occurred, when according to your said letter, your clients had a rival Captain appointed, i.e., Mr. D. J. Mandagi, an uncertificated apprentice mate, who demanded the keys.
- (c) In spite of the purported appointment of Captain Silos, which to date your clients have not purported to cancel, "the Indonesian members of the crew . . . have been instructed to obey only Captain Mandagi"

Exhibit B
Ref. No. 14
Referred to in
Doc. No. 10

20

10th July, 1952.

(d) Your clients' allegation that six of the Philipino crew "have agreed to accept the orders of Captain Mandagi" is again untrue. My clients are in possession of signed written refutation of this allegation from:—

- | | |
|--------------------|---------------------|
| (1) Nemesio Mortel | (2) Alberto Aviles |
| (3) Dionisio Cabil | (4) Antonio Tonalgo |
| (5) Cresencio Molo | (6) Fermin Alimpia |
| (7) Norberto Pavia | (8) Jose Rubion |

*Exhibit B.
Letter—M. A.
da Silva to
Wilkinson &
Grist.
10th July, 1952.*

Ref. No. 14
Referred to in
Doc. No. 10
continued.

10

which also makes it clear that they had at all times held themselves as subservient to Captain Silos and reported to him daily as such Captain. It is true, however, that Purser Jules Walandaouw, attempted, yesterday evening, to get signed statements from the Filipino crew stating that they recognised the Indonesian Government as owners from whom they were allegedly receiving salaries, which they refused to give.

Your paragraph dealing with Captain Jackson is based apparently on the mistaken reference by you to the Registrar and not the Head Bailiff, who, i.e., the Head Bailiff had informed your Indonesian crew that he, the Head Bailiff, had appointed Captain Jackson as Chief Officer in the interests of the safety of the vessel.

20

In this connection, the Registrar has written you.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Exhibit WTG-1
Ref No. 15
Referred to in
Doc. No. 17

*Exhibit WTG 1.
Estimate for
Repairs by the
Hong Kong &
Whampou Dock
Co. Ltd.*

Tender No. 91/52
21st April, 1952.

Ref. No. 15
Referred to in
Doc. No. 17

JRL: EH
30 Captain & Owners
s.s. "TASIKMALAJA",
c/o Mr. Kuitert,
Indonesian Consulate.

Dear Sirs,

Drydocking & Machinery Repairs

We beg to tender :—

To *Drydocking*

Exhibit WTG 1
 Estimate for
 Repairs by the
 Hong Kong &
 Whampoa Dock
 Co. Ltd.
 21st April, 1952.

Ref. No. 15
 Referred to in
 Doc. No. 17
 continued.

Drydock vessel for a period of three (3) days for drawing tailshaft, opening up seawalves and painting.

Our price would be: HK\$ 2,491.00

HONGKONG DOLLARS TWO THOUSAND FOUR HUNDRED AND NINETY ONE ONLY.

Wash down, supply and apply one coat of anti-corrosive to load line and one coat of anti-fouling and one boottopping.

Our price would be: HK\$ 6,140.00

HONGKONG DOLLARS SIX THOUSAND ONE HUNDRED & FORTY ONLY.

Range anchors and cables, knock out shackle pins for examination, anneal and test, wire brush and apply one coat of coal tar. 10

Our price would be: 3,000.00

HONGKONG DOLLARS THREE THOUSAND ONLY.

To *Boiler Room*

Clean fire and water side of four (4) Babcock & Wilcox Boilers, turbinate and wash out 2960 — 2" water tubes, remove front, back and portable doors, steamdrum doors and baffle plates. Renew 1928 header door joints and steamdrum manhole door joints. 20

Cut out 120 — 4" water tubes, build up tubeplate holes by welding, dress and ream holes and supply and expand new 4" tubes.

Remove, fair and refit fifteen (15) side casing plates with angle stiffeners, remove sixteen (16) portable boiler front doors, crop and renew lower portion of doors and refit.

Remove and refit fifteen (15) front baffle plates, and make workable 664 locking handles. Renew four (4) circle supportingplates and weld on forty (40) webs.

Cut four (4) additional access holes inside casing and made and fit portable covers with handles and fasteners. 30

Cut out and remove shore all furnace brickwork in four (4) boilers, supply new high refractory bricks, hollow insulating tiles, tube deflector tiles and furnace front quarls, rebrick four boilers and apply plastic compound of high refractory clay mixed with molasses.

Open up all boiler mountings for examination overhaul as necessary and grind in valves.

To *Forced Draught Fans*

Remove electric motors and starters from four (4) forced draught fans, overhaul and instal.

*Exhibit WTG 1.
Estimate for
Repairs by the
Hong Kong &
Whampoa Dock
Co. Ltd.
21st April, 1952.*

To *Fuel Heaters*

Remove four (4) Oil Fuel heaters to workshop, clean, test and re-instal.

*Ref. No. 15
Referred to in
Dec. No. 17
continued.*

To *Fuel Burner Pipes*

Manufacture twenty four (24) working and six (6) spare solid drawn steel burner oil supply pipes.

- 10 Any further repairs or renewals found necessary would be charged extra.

NOTE. As it is impossible to obtain early shipment of firebricks, insulation brick and high refractory fireclay from abroad, we have included for the use of locally manufactured bricks and fireclay and would be pleased to provide samples for your inspection before commencement of work.

Our price would be: 236,000.00

HONGKONG DOLLARS TWO HUNDRED & THIRTY SIX THOUSAND ONLY.

To *Machinery: Main Engine*

- 20 Open up main engine cylinders for examination, supply and fit new rings for HP, MP and 2 — LP cylinders and supply one complete set of spare rings.

Open up HP, MP and LP valves for examination.

Open up eccentric straps for examination and adjustment.

Open up top and bottom end bearings, remove connecting rods and lift main engine crankshaft for examination of main bearings, adjust and re-assemble.

Open up cooling water system for cleaning and inspection including supply of piston rings as detailed.

30 Our price would be: 45,000.00

HONGKONG DOLLARS FORTY FIVE THOUSAND ONLY.

Exclusive of any repairs or renewals or remetalling of bearings or eccentric straps.

Exhibit WTG 1.
 Estimate for
 Repairs by the
 Hong Kong &
 Whampoa Dock
 Co. Ltd.
 21st April, 1952.

Ref. No. 15
 Referred to in
 Doc. No. 17
 continued.

To *Thrust Block*

Open up Thrust Block for inspection and adjustment of collars and shoes and clean cooling water system. Exclusive of repairs, removals or remetalling.

Our price would be: HK\$ 1,500.00

HONGKONG DOLLARS ONE THOUSAND FIVE HUNDRED ONLY.

To *Air Pump*

Open up two (2) pump cylinders and valve plates for examination. Open up two (2) steam cylinders and steam valve chests for examination, adjust and re-assemble.

10

Exclusive of repairs and renewals.

Our price would be: 2,000.00

HONGKONG DOLLARS TWO THOUSAND ONLY.

Centrifugal Circulating Pump

Open up two (2) engines for inspection, adjust and re-assemble.

Open up one (1) pump casing for examination of impeller shaft, bearings and sealing rings. Exclusive of repairs and renewals.

Our price would be: 2,000.00 20

HONGKONG DOLLARS TWO THOUSAND ONLY.

To *Main Condenser*

Open up main condenser for cleaning of water space, test and mark tubes for renewal. Re-test after renewal of tubes. Close up and rejoin doors on completion.

Exclusive of repairs and renewals to tubes.

Our price would be: 3,500.00

HONGKONG DOLLARS THREE THOUSAND FIVE HUNDRED ONLY.

To *Feed Pumps*

Open up steam and water ends and valve boxes of two (2) Weir Feed Pumps, adjust and re-assemble.

30

Exclusive of repairs and renewals.

Our price would be: 1,500.00

HONGKONG DOLLARS ONE THOUSAND FIVE HUNDRED ONLY.

To *Steam Driven Generators*

Open up, clean and adjust two (2) steam engines, renew piston rings and supply one (1) spare set of each size.

Lift crankshafts for examination of main bearings and open up top and bottom bearings for examination and adjustment. Overhaul two (2) dynamos and shunt regulators.

40

Exclusive of repairs and renewals.

Our price would be: HK\$ 7,000.00

HONGKONG DOLLARS SEVEN THOUSAND ONLY.

Exhibit WTG 1.
Estimate for
Repairs by the
Hong Kong &
Whampoa Dock
Co. Ltd.
21st April, 1952.

To *Electric Wiring*

Megger test main cables from generators to switchboard, fan switchboard to first distribution point outside engine room, and electric wiring throughout ship.

Ref. No. 15
Referred to in
Doc. No. 17
continued.

Our price would be: 600.00

HONGKONG DOLLARS SIX HUNDRED ONLY.

10 An estimate of repairs and renewals will be given after the above tests are completed.

To *Tailshaft*

Remove propeller and draw tailshaft inboard for examination of shaft and bearings. Re-instal and repack sternland.

Exclusive of repairs or renewals to bearings.

Our price would be: 4,500.00

HONGKONG DOLLARS FOUR THOUSAND FIVE HUNDRED ONLY.

To *Sea Valves*

20 Open up inlet and discharge valves for overhaul, clean and paint internally, re-assemble, rejoin and pack glands.

Our price would be: 1,500.00

HONGKONG DOLLARS ONE THOUSAND FIVE HUNDRED ONLY.

To *Terms of Payment*

30 In view of prevailing currency restrictions we should, in the event of this tender being accepted, require the total tender price in Hongkong Dollars to be deposited at time of acceptance with the Hongkong & Shanghai Banking Corporation in Hongkong under mutual acceptable arrangements for the payment to us of the appropriate instalments during the progress of the work and for the settlement of our account in full before the vessel leaves our work.

Yours faithfully,
HONGKONG & WHAMPOA DOCK CO. LIMITED

A. STORRAR
Chief Manager

Exhibit WTG-2.
Letter — Kwee
Djie Hoo to
Hong Kong &
Shanghai
Banking
Corporation.
26th June, 1952.

Exhibit WTG-2
Ref. No. 16
Referred to in
Doc. No. 17

26th June, 1952.

Dear Sir,

Ref. No. 16
Referred to in
Doc. No. 17

I have the honour to inform you that I have authorised the Hongkong & Whampoa Dock Co., Ltd., to draw HK\$100,000.— (One hundred thousand Hongkong Dollars) on the joint account in the name of said Company and this Consulate-General.

10

I am, dear Sir,
Yours truly,

KWEEDJIEHOO,
Consul-General.

The Manager,
Hongkong & Shanghai Banking Corp.,
Present.

Exhibit WTG-3
Letter—Hong
Kong &
Whampoa Dock
Co. Ltd. to
Kwee Djie Hoo.
27th June, 1952.

Exhibit WTG-3
Ref. No. 17
Referred to in
Doc. No. 17

20

HONG KONG & WHAMPOA DOCK CO., LTD.
WTG/JN

27th June, 1952.

Ref. No. 17
Referred to in
Doc. No. 17

Mr. Kweedjiehoo,
Consulate General of the Republic of Indonesia,
HONG KONG.

Dear Sir,

S.S. "TASIKMALAJA"

We presume that you are conversant with the legal action which has recently been taken against the above-named vessel. On the 25th instant, a writ was served on board which we understand is in respect of an account unpaid, and to-day the Bailiff of the Marine Court has made a further visit to the ship and lodged a writ, which we understand is in respect of disputed ownership. According to our information, four men have been posted on board by the Bailiff.

Pending further instruction from yourself or from the Marine Court, we shall continue to carry out repairs to the vessel, in accordance with your instructions and the correspondence which has been exchanged between us.

Yours faithfully,
HONG KONG & WHAMPOA DOCK CO., LTD.
(Sgd.) A STORRAR,
Chief Manager.

40

Exhibit PJG-1
Ref. No. 18
Referred to in
Doc. No. 18

Exhibit PJG 1.
Cable — Sevans
(Ross, Selph,
Carrascoso &
Janda) to
Wilgrist
(Wilkinson
& Grist).
31st July, 1952.

MNU461 MANILA 53 31 1558

WILGRIST HONGKONG

Ref. No. 18
Referred to in
Doc. No. 18

POWER ATTORNEY DOES NOT REQUIRE PRIVATE COMPORATE
SEAL AND NEED NOT BE REGISTERED ANY PUBLIC OFFICE UNLESS
NOTARIZED WHEN COPY WILL BE FILED IN OFFICE CLERK OF COURT
10 UNDER NAME OF NOTARY THERE IS NO INDEX NAMING GRANTORS
AND RECORDS VOLUMINOUS CAN YOU GIVE DATE NAME NOTARY AND
NAME AGENT.

SEVANS.

Exhibit KDH-1
Ref. No. 19
Referred to in
Doc. No. 18A

Exhibit KDH-1
Fourth Charter
Party between
Juan Ysmael &
Co. Inc. and
the Government
of the Republic
of Indonesia.
1st December
1951.

20 Exhibit to Affirmation Struck Out from the Records by Order of the
Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on
15th September, 1952, Now Included on Insistence of the Government
of the Republic of Indonesia, But Objected to by Juan Ysmael &
Company Incorporated.

Ref. No. 19
Referred to in
Doc. No. 18A

CHARTER PARTY CONTRACT

It is this 1st day of December, 1951, mutually agreed between: JUAN
YSMAEL & CO. INC., Manila, for this purpose represented by her lawful attorney
Mr. FRANK C. STARR, OWNERS of the steamer called the "S.S. CHRISTOBAL"
formerly called the U.S. Army Transport "S.S. HALEAKALA" and presently with
a pending request for a change of new name into the "S.S. TASIKMALAJA" of
3679 gross tons, 1546 net tons, with indicated horsepower of 5000 and fully loaded
30 capable of steaming about 16 knots in good weather and smooth water on a con-
sumption of 45 tons of bunker per day.

and

THE MINISTRY OF DEFENCE OF THE REPUBLIC OF INDONESIA,
for this purpose represented by MAJOR PAMOERAHARDJO CHARTERERS.

Article I.

OWNERS agree to let and CHARTERERS agree to hire steamer for a
period of six (6) calendar months beginning on the 1st day of January, 1952.

Article II.

40 Steamer to be employed by the INDONESIAN ARMY, or their assignees,
for the transport of Troops and their materials and equipments to any port of the
world, except those ports under communist authorities, where she can lay safely
afloat.

*Exhibit KDH-1
Fourth Charter
Party between
Juan Ysmael &
Co. Inc. and
the Government
of the Republic
of Indonesia.
1st December
1951.*

Ref. No. 19
Referred to in
Doc. No. 18A
continued.

Article III.

The sum of US\$210,000.- representing the charter cost for six (6) months, at US\$35,000.- per month, shall be paid in advance by telegraphic transfer to the AMERICAN TRUST COMPANY at Sacramento, California, for deposit to the account of Mr. Frank C. Starr, said payment in accordance with the BALTIME INTERNATIONAL TIME CHARTER of vessels throughout the world.

Article IV.

There will be a Commanding Officer of Troop (COT) appointed by the CHARTERERS who shall have full charge of maintaining order and interests of the troops on board the vessel at all times.

10

Article V.

The beginning of this Charter Party Contract shall commence upon the 1st day of January, 1952, and terminate upon the 30th day of June, 1952.

Article VI.

Steamer to be redelivered on the expiration of the Charter period in the same good order as when delivered to the CHARTERERS (fair wear and tear excepted) at any port in Indonesia where the vessel can lie safely afloat.

Article VII.

CHARTERERS, upon payment of the Charter fee of US\$210,000.- for the months of January — 30th June, 1952, shall have a six (6) months (January — 20 June, 1952) "option to buy" the "S.S. TASIKMALAJA" based upon the following calculation:

| | | |
|--|---------------|----|
| 1. Original Sales Price of vessel | US\$450,000.- | |
| 2. Charter fee (210,000) (June-December 1951) already paid and applicable to purchase price of vessel | US\$210,000.- | |
| 3. Balance due | US\$240,000.- | |
| 4. Charter fee to be paid US\$210,000.- (for Charter period Jan.-June 1952) applicable against balance due during the six (6) months "option to buy" period of January-June 1952 | US\$210,000.- | |
| 5. Therefore balance due is | US\$ 30,000.- | 30 |

Article VIII.

IF CHARTERERS agree to buy the vessel during the six (6) months "option to buy" period the balance due of US\$30,000.- must be paid including OWNERS calculated monthly cost of operation of vessel in Indonesia based upon the following:—

(OPTION TO BUY PERIOD) (MONTHLY COST OF OPERATION)

| | | | |
|---------------------|----------|--------------|---------------|
| 1st Month | January | US\$28,000.- | (\$ 28,000.-) |
| 2nd Month | February | US\$28,000.- | (\$ 56,000.-) |
| 3rd Month | March | US\$28,000.- | (\$ 84,000.-) |
| 4th Month | April | US\$28,000.- | (\$112,000.-) |
| 5th Month | May | US\$28,000.- | (\$140,000.-) |
| 6th Month | June | US\$28,000.- | (\$168,000.-) |

*Exhibit KDH-1
Fourth Charter
Party between
Juan Ysmael &
Co. Inc. and
the Government
of the Republic
of Indonesia.
1st December
1951.*

*Ref. No. 19
Referred to in
Doc. No. 18A
continued.*

THEREFORE IF CHARTERERS agreed to buy vessel during January the "balance due" would be US\$30,000.- plus the cost of operation for the month of
10 January (\$28,000.-) . . . making a grand total of US\$58,000.-. If the decision to buy is in the month of February the same scale US\$30,000.- plus two (2) months of operation cost (\$56,000.-) making a total of US\$86,000.- etc.

Article IX.

The monthly cost of operation amounting to US\$28,000.- will only be accepted by both parties after a thorough investigation of the OWNERS original cash books, ledgers and other office records, receipts and invoices pertaining to the actual operation of the vessel. This investigation must be effected within two weeks after signing of this charter party contract. The decision of the CHARTERERS reference the actual monthly cost of operation amount shall be
20 final and duly accepted by OWNERS.

Article X.

OWNERS agree to renew the present existing INSURANCE policy on vessel with LLOYDS OF LONDON underwriters of US\$600,000.- during the month of January, 1952, which said INSURANCE will be valid for one year (January 1952-January 1953) and OWNERS agree that the CHARTERERS shall be named BENEFICIARY under the new policy and that the estimated cost of the above INSURANCE is US\$40,000.- payable in cash, in January 1952, and that payment shall be for the account of OWNERS. If CHARTERERS agree to purchase vessel during "option to buy" period CHARTERERS agree to re-imburse OWNERS
30 US\$20,000.- said sum representing one-half of the cost of INSURANCE.

Article XI.

So OWNERS and CHARTERERS are hereby agreed that during the first two weeks of January, 1952, (1st January-15th January) CHARTERERS shall present to OWNERS all copies of claims against OWNERS by CHARTERERS said claims shall be accompanied by copies of invoices, receipts, statements or any other form of record in possession of CHARTERERS and that OWNERS agree to make full settlement of the said claim to CHARTERERS on the 15th day of January, 1952.

and

40 likewise during the same period mentioned above OWNERS shall present their claims against CHARTERERS together with the necessary copies of invoices, receipts, statement or any other form of record in possession of OWNERS, and

*Exhibit KDH-1
Fourth Charter
Party between
Juan Ysmael &
Co. Inc. and
the Government
of the Republic
of Indonesia.
1st December
1951.*

that CHARTERERS after having duly accepted said claims by OWNERS, that CHARTERERS agree to re-imburse OWNERS, or deduct said amounts of claims from the amounts due CHARTERERS by OWNERS on the 15th day of January, 1952. The above settlement refers only to the charter period of June-December 31, 1951.

Article XII.

*Ref. No. 19
Referred to in
Doc. No. 18A
continued.*

So OWNERS and CHARTERERS are agreed in this Charter Party Contract to submit to the International Uniform Time Charter known as the 1939 Baltimore Charter Contract and hereby agree to all conditions, terms and regulations as set forth in the said Baltimore Charter Contract.

10

Article XIII.

Any dispute arising under the Charter Party Contract to be referred to arbitration in Djakarta, one arbitrator to be nominated by the OWNERS and the other by the CHARTERERS, and an Umpire shall be appointed by the said Arbitrators, and the award of the said Arbitrators or Umpire shall be final and binding upon both parties. If the Arbitrator of the one party unduly prolongs the case the other party to have the right to claim award given within a certain fixed period.

Article XIV.

Therefore OWNERS and CHARTERERS hereby affix their signature below thus irrevocably binding any and all terms, conditions and agreements reference this contract.

..... DONE AT DJAKARTA IN DUPLICATE
(Sgd.) ILLEGIBLE, (Sgd.) FRANK C. STARR,
Charterers. Owners.

*Exhibit KDH-2
Sale Contract
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia.
13th February
1952.*

*Exhibit KDH-2
Ref. No. 20
Referred to in
Doc. No. 18A*

30

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

SALE CONTRACT

*Ref. No. 20
Referred to in
Doc. No. 18A*

It is mutually agreed between:

JUAN YSMAEL & CO. INC., Manila, represented by Mr. FRANK C. STARR, who has full power of attorney and acts on behalf of Mr. K. H. HEMADY, 40 president and general manager of Juan Ysmael & Co. Inc., Manila, here after known in this sale contract as

SELLERS,

and

THE MINISTRY OF DEFENSE OF THE REPUBLIC OF INDONESIA
represented by MAJOR PAMOE RAHARDJO, who acts for and on behalf of the
Ministry of Defense here after in this sale contract known as,

PURCHASERS,

as follows:
Article 1.

SELLERS have sold to PURCHASERS one vessel, known as

| | | | |
|----|--|---|---|
| 10 | Name | : | SS TASIKMALAJA (ex SS CHRISTOBAL, ex SS HALEAKALA respectively) |
| | Registration | : | Panama |
| | Gross Tonnage | : | 3679 |
| | Type | : | steam (passengers-cargo) |
| | Length (from fore part of stern to the aft side of the head of the stern post) | : | 345 feet |
| 20 | Breadth (main breadth to outside of plank) | : | 46 feet |
| | Depth (from top deck at side amidship to bottom of keel) | : | 27 feet |

at the price of US\$30,000.00 (thirty thousand US dollars) with the understanding
that the sum mentioned above will be added US\$40,000.00 (forty thousand
US dollars), being the operating expenses for the ship for two months, (i.e.
January and February of 1952), as has been stipulated in the article VIII of
Charter-Contract of the SS TASIKMALAJA, made and signed by both parties
at Djakarta on December 1, 1951. Therefore the sum which the PURCHASERS
will pay to the SELLERS should be US\$30,000.00 + US\$40,000.00 equals
30 US\$70,000.00 (seventy thousand US dollars).

Article 2.

As soon as this Sale Contract is signed by SELLERS and PURCHASERS
all the rights of the SELLERS of the ship are to be transferred to the
PURCHASERS, while PURCHASERS are obliged to pay the amount of
US\$70,000.00, as mentioned, within five days after the signing of this sale
contract, to the SELLERS by transferring by telegraph to the personal account
of Frank C. Starr at the National City Bank of New York at Singapore, Straits
Settlement.

*Exhibit KDH-2
Sale Contract
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia.
13th February
1952.*

Ref. No. 20
Referred to in
Doc. No. 18A
continued.

Exhibit KDH-2
 Sale Contract
 between Juan
 Ysmael & Co.
 Inc. and the
 Government of
 the Republic
 of Indonesia.
 13th February
 1952.

Ref. No. 20
 Referred to in
 Doc. No. 18A
 continued.

Article 3.

The SELLERS agree to pay the expenses when the ship requires dry-docking for reparation or remodelling, the sum of US\$35,000.00 (thirty five thousand US dollars); to be paid to the PURCHASERS.

Article 4.

The SELLERS hereby declare and guarantee that the ship in question is free from any incumbrances, such as mortgage, security or other civil obligations.

Article 5.

The SELLERS agree to hand over to the PURCHASERS the ship in good condition, as to her equipments and its seaworthiness, all in accordance with the international practice and usage. The SELLERS will hand over to the PURCHASERS all the articles, such as instruments, engines and tools as well as kitchen utensils or dining services for the needs of passengers. With a view to the above, the SELLERS and the PURCHASERS will make together an inventory of all articles belonging to the ship after this sale contract is signed. 10

The SELLERS guarantee that the time of signing this sale contract no instruments, equipments, engines or other articles on board the ship are to be removed or lost. In order to prevent any removal or loss, the SELLERS have to take action by instructing by cable the master of the ship to take good care of and to keep good watch over all articles belonging to the ship for the benefit of the PURCHASERS. 20

Articles lost will be compensated by the SELLERS.

Article 6.

Should there be any dispute arising under the contents and interpretation of this sale contract, it should be referred to arbitration at Djakarta, consisting of three arbitrators one to be nominated by the SELLERS, one by the PURCHASERS, and the third one to be nominated by both parties.

Article 7.

The SELLERS will transfer with the right of substitution all rights to the PURCHASERS, and to exercise the special rights to change the name from the SELLERS to the PURCHASERS, to make petitions, to supply information, to sign contracts and to correct, or to modify or to change the certificate of registration, to choose the domicile or other measures and steps necessary for the same purpose. 30

Article 8.

The sale contract is made at Djakarta on Wednesday, the 12th February 1952 in two copies with the same text, one to be kept by the SELLERS and the other by the PURCHASERS.

SELLERS.

(Sgd.) Frank C. Starr
 13/2/52.

PURCHASERS.

(Sgd.) Illegible 40
 13/2/52.

APPENDIX

Supplement I: The SELLERS have to bear all expenses of the shipcrews, commencing from the departure from a port in Indonesia to abroad.

The expenses so incurred can be claimed by the SELLERS from the PURCHASERS.

Exhibit KDH-2
Sale Contract
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia.
13th February
1952.

Ref. No. 20
Referred to in
Doc. No. 18A
continued.

Supplement II: The transfer of the ship between the SELLERS and the PURCHASERS shall take place at the port of Tandjung Priok Indonesia, in the presence of witnesses of both parties in accordance with the current regulations in Indonesia.

10

The SELLERS agree to pay all expenses relating to registration of the change of the registration of the ship from Panamanian to Indonesian.

SELLERS.

(Sgd.) Frank C. Starr
13/2/52.

PURCHASERS.

(Sgd.) Illegible
13/2/52.

APPENDIX A

IT IS HEREBY to day the 23rd of February, 1952, mutually agreed between OWNERS and CHARTERERS that the stipulated monthly cost of operation of the SS TASIKMALAJA" be set US\$20,000. — (Twenty thousand US dollars only), per month, based upon calculation previously rendered by both parties.

20

OWNERS

(Sgd.) Frank C. Starr
23/2/52.

CHARTERERS.

(Sgd.) Illegible

Exhibit KDH-3
Ref. No. 21
Referred to in
Doc. No. 18A

Exhibit KDH-3
Bill of Sale
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia
17th March 1952.

30

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Ref. No. 21
Referred to in
Doc. No. 18A

FORM NO. 10a.

NO. 79a. (SALE).

BILL OF SALE. (BODY CORPORATE.)

Prescribed by the
Commissioners of
Customs & Excise

40

with the consent of
the Board of Trade

Exhibit KDH-3
Bill of Sale
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia
17th March, 1952

| Official Number | Name of Ship | No. Date and Port of Registry | | |
|---|---|-------------------------------|--------|--|
| | s.s. "Tasikmalaja" (ex s.s. "Cristobal" and ex s.s. "Haleakala") | PANAMA | | |
| Whether a Sailing, Steam or Motor Ship | | Horse Power of Engine, if any | | |
| Steam | | 5500 | | |
| | | Feet | Tenths | |
| Length, from forepart of stern, to the aft side of the head of the stern post | | 345 | - | |
| Main breadth to outside of plank | | 46 | - | |
| Depth from top of deck at side amidships to bottom of keel | | 27 | 9 | |
| NUMBER OF TONS | | | | |
| Gross | 3679 | Registered | 1546 | |

and as described in more detail in the Certificate of the Surveyor and the Register Book

Ref. No. 21
Referred to in
Doc. No. 18A
continued.

10

We The undersigned

having our principal place of business at Manila, P.I., JUAN YSMAEL & COMPANY INC., Manila in consideration of the sum of One United States Dollar and other consideration paid to us by Ministry of Defense, Republic of Indonesia of the Receipt whereof is hereby acknowledged, transfer all that the abovementioned Ship above particularly described, and in her boats, guns, ammunition, small arms, and appurtenances, to the said Ministry of Defense, Republic of Indonesia.

20

Further, we, the said JUAN YSMAEL & COMPANY INC., Manila, P.I. for ourselves and our successors covenant with the said Ministry of Defense, Republic of Indonesia and their assigns, that we have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances

In witness whereof on this Seventeenth day of March One thousand nine hundred and fifty two at Hong Kong the said JUAN YSMAEL & COMPANY INC., Manila has caused its lawful Attorney FRANK C. STARR to affix his name here- unto in the presence of:—

(Sd.) J. T. PRIOR. 30
Notary Public, Hong Kong.

(Sd.) FRANK C. STARR.
Frank C. Starr
Attorney for JUAN YSMAEL
& CO., INC.

EL INFRASCRITO CONSUL DE LA
REPUBLIC DE PANAMA EN
HONG KONG
CERTIFICA:

Que la firms que antecede exprecive del nombre y apellido de J. T. Prior quiea ejerce actualmente el cargo de notario Pubuco en Hong Kong es autentica

(Sd.) MARIO E. GUILLEN. 40
Consul General de Panama
en Hong Kong.
22nd March, 1952.

Seal: CONSULADO GENERAL
DE LA REPUBLICA
DE PANAMA
HONG KONG

(Sd.) PAMOE RAHARDJO
For the Ministry of Defense,
Republic of Indonesia by their
Authorised Representative,
Pamoe Rahardjo.
Major T.N.I.

*Exhibit KDH-3
Bill of Sale
between Juan
Ysmael & Co.
inc. and the
Government of
the Republic
of Indonesia
17th March, 1952*

No. 25/52.
Doracho B/5.00
MC 22 Del/A.C.

Witness to the above signature:—
Consul for Indonesia, Hong Kong.

Ref. No. 21
Referred to in
Doc. No. 18A
continued.

10

Seal:
CONSULATE GENERAL
REPUBLIC OF INDONESIA
HONG KONG

No. D/iv/205
Dilihat di Konsulat Djenderal
Indonesia Hong Kong pada
Tanggal 17th March, 1952.
Untuk legalisasi (Illegible)
tanda tangan Mr. J. T. Prior.
(Sd.) ILLEGIBLE,

Konsul Muda.

Gratis.
Fee HK\$

20

Exhibit KDH-4
Ref. No. 22
Referred to in
Doc. No. 18A

*Exhibit KDH-4
Power of
Attorney—Juan
Ysmael & Co.
Inc. to Frank
C. Starr.
8th November
1950.*

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Ref. No. 22
Referred to in
Doc. No. 18A

30

2373
STAMP OFFICE
I 17 III 52 I
HONG KONG

HONG KONG
STAMP DUTY PAID
\$5.00

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That JUAN YSMAEL & CO., INC., a domestic Filipino corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with office and postal address at Rooms 217-221 Consolidated Investments Bldg., Plaza Goiti, Manila, Phillipines, have made constituted and appointed, and by these presents, does hereby MAKE, CONSTITUTE AND APPOINT, MR. FRANK
40 C. STARR, an American citizen, of legal age, with temporary residence at Djakarta, Indonesia, its true, sufficient, and lawful Attorney, for it and in its name, place and stead and its use and benefit;

Exhibit KDH-4
Power of
Attorney—Juan
Ysmael & Co.
Inc. to Frank
C. Starr.
8th November
1950.

Ref. No. 22
Referred to in
Doc. No. 18A
continued.

To bargain, sell, transfer and convey, to any person or persons, entity or entities, and for any sum of money, or other consideration as to him may seem most advantageous and beneficial to the company, the vessel exclusively owned by it known in Philippine waters as the S/S "CHRISTOBAL", formerly S/S "Haleakala", but presently with a pending request for a change of new name into S/S "TASIKMALAJA", registered under Panamanian registry, now located at Soerabaia, Java, and presently under charter to the Indonesian Government;

To ask, demand, sue for, collect and receive all sums of money, debts, accounts, interests, and other demands whatsoever which are or shall become owing and payable to JUAN YSMAEL & CO., INC., by reason of, or arising from the sale of the abovementioned vessel, and in general, to have full and complete charge and management of the same, and to do any act and thing in relation thereto which to him may seem advisable and expedient, pending the sale thereof; and

To prosecute and defend any and all suits, actions and other proceedings in the courts, tribunals, departments and offices of the Government concerned, regarding the abovementioned vessel, and to terminate, compromise, settle and adjust the same and the subject matter thereof;

HEREBY GIVEN AND GRANTING unto its said Attorney-in-Fact full power and authority to do and perform any and every act and thing whatever requisite or necessary or proper to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do if personally present and acting in person, and HEREBY RATIFYING AND CONFIRMING all that the said Attorney shall lawfully do or cause to be done under and by virtue of these presents.

IN WITNESS WHEREOF, JUAN YSMAEL & CO., INC., through its President and General Manager, MR. K. H. HEMADY, has signed this instrument at the City of Manila, Philippines, this 8th day of November, 1950.

(SEAL)

JUAN YSMAEL & CO., INC.

By: (Sd.) K. H. HEMADY

K. H. HEMADY

30

SIGNED IN THE PRESENCE OF:

President & General Manager

(Sd.) (Illegible)

(Sd.) (Illegible)

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) — SS.

At the City of Manila, Philippines, this 8th day of November, 1950, A.D., before me the undersigned Notary Public in and for the said City, personally appeared MR. K. H. HEMADY, with Residence Certificate No. A-4193752, issued at Quezon City, on February 24, 1950, in his capacity as President and General Manager of the JUAN YSMAEL & CO., INC., known to me and to me known to be the same person who executed the foregoing instrument, consisting of two (2) pages only, including this page, and purporting to be a special Power of Attorney in favour of MR. FRANK C. STARR, and he acknowledged to me that the same is of his own free will and voluntary act and deed as well as the free will and
 10 voluntary act and deed of the corporation which he represents.

*Exhibit KDH-4
 Power of
 Attorney—Juan
 Ysmael & Co.
 Inc. to Frank
 C. Starr.
 8th November
 1950.*

*Ref. No. 22
 Referred to in
 Doc. No. 18A
 continued.*

Mr. K. H. Hemady exhibited, to me also the Residence Certificate of JUAN YSMAEL & CO., INC., No. C-174, issued at Manila, on January 9, 1950, and C1-1428, also issued at Manila, on April 28, 1950.

Each of the pages composing this instrument has been signed by the executor hereof and by the two witnesses to his signature and sealed by my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand and caused my Notarial Seal to be affixed hereon at the place and date first above mentioned.

20

(Sd.) (Illegible)
 EUSEBIO C. ENCARNACION
 NOTARY PUBLIC
 Until December 31, 1950.

Doc. No. 562;
 Page No. 18;
 Book No. XX;
 Series of 1950.
 (SEAL)

30

INTERNAL
 REPUBLIC OF THE PHILIPPINES
 60 CENTAVOS
 DOCUMENTARY
 REVENUE TAX

2372
 STAMP OFFICE
 I 17 III 52 I
 HONG KONG

 HONG KONG
 STAMP DUTY PAID
 \$3.00



Exhibit KDH-5
Letter — Juan
Ysmael & Co.
Inc. to Frank
C. Starr.
6th March, 1951.

Ref. No. 23
Referred to in
Doc. No. 18A

Exhibit KDH-5
Ref. No. 23
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

JUAN YSMAEL & CO., INC., ESTABLISHED 1898
IMPORTERS & EXPORTERS
MANUFACTURERS' DISTRIBUTORS
217-221 CONSOLIDATED INVESTMENT'S BUILDING
PLAZA GOITI, MANILA, P.I.
TEL: 3-26-08

10

March 6, 1951.

Mr. Frank C. Starr,
Admiral Apartments,
MANILA.

Dear Sir,

20

This will confirm our previous power of attorney granted to you in reference to your full authority to sell or continue the charter of our vessel known as the S/S "Tasikmalaja", formerly known as the S/S "Christobal" to any interested party whomsoever. Furthermore, for your information and guidance, in the sale of a vessel, regardless of whether it is registered under a Panamanian flag or otherwise, there is no requirement for securing the consent of the Government under which the flag is registered as long as upon such sale a certificate of registration is sent to the respective government under which the said vessel is flying a flag.

Yours very truly,
JUAN YSMAEL & CO., INC., 30
(Sd.) K. H. HEMADY,
K. H. HEMADY,
President.

KHH:Fbs—

Exhibit KDH-6
Telegraphic
Transfer Advice
of the Java
Bank, Djakarta
for US\$70,000.00
26th February
1952.

Ref. No. 24
Referred to in
Doc. No. 18A

Exhibit KDH-6
Ref. No. 24
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

40

MD/Oei

DE JAVASE BANK Telegrafische overmaking/Telegraphic transfer

DJAKARTA, Febr. 26th, 1952.—

Heden gaven wij ingevolge Uw verzoek
telegrafisch de onderstaande betalingsopdracht:
Today we issued by cable the following payment —
order according to your request:

T.T. 124/DKT/1680.

Exhibit KDH-6
Telegraphic
Transfer Advice
of the Java
Bank, Djakarta
for US\$70,000.00
26th February
1952.

In opdracht van: By order of: Ten gunste van: In favour of:

DJAWATAN PERBENDAHARAAN THE AMERICAN TRUST COMPANY,
PUSAT KEMENTERIAN SACRAMENTO, CALIFORNIA, i.f.o. DE-
PERTAHANAN DJAKARTA. POSIT ACC. OF MR. FRANK C. STARR

Ref. No. 24
Referred to in
Doc. No. 18A
continued.

Bedrag in letters Amount in letters In cijfers/in figures
10 US\$. —SEVENTY THOUSAND ONLY— US\$. 70,000.—

Rekening Account Deviezenvergunning Exchange Licence

OURS WITH YOU. 011879 Ind. 8/169/284/42/20

Bijzonderheden:

Details:

For purchase s.s. TASIKMALAJA.

We refer also to our cable of March 3, 1952.

Please advise Mr. Frank C. Starr c/o your Singapore Office.

Uit te betalen door:

NIET VERHANDELBAAR:

To be paid out by:

NOT NEGOTIABLE:

NATIONAL CITY BANK OF

DE JAVASCHE BANK

20 NEW YORK,

signed:

NEW YORK.

illegible

illegible

DEBETNOTA VOOR OPDRACHTGEVER:

| | |
|---|---------------|
| Uit te betalen bedrag (zie boven) @ 11.43 | Rp. 800.100.— |
| Deviezenprovisie 1 % | 800.10 |
| Porti | 1.75 |
| Seinkosten | 30.— |
| Aangewend B.E.D. No. B 060532 dd. 29 Febr. 1952 | |
| ad. US\$ 70,000.— | |

TOTAAL in het DEBET van Uw 5 x Hfd-rekening Val. Rp. 800,931.85

30 ref. Uw schrijven dd. 23 Febr. 1952 No. 418/B/52/K/

BESTEMD VOOR ANGKATAN LAUT REPUBLIK INDONESIA, DJAKARTA
(K.P).

Exhibit KDH-7
 Extract from
 the South
 China Morning
 Post.
 17th March,
 1952.

Ref. No. 25
 Referred to in
 Doc. No. 18A

Exhibit KDH-7
 Ref. No. 25
 Referred to in
 Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

SOUTH CHINA MORNING POST HONG KONG.

10

Thursday, April 17, 1952.

CHANGE OF FLAG

Indonesian Colours Hoisted

ON TASIKMALAJA

The Colours of the Republic of Indonesia was hoisted over the ss Tasikmalaja off North Point yesterday at a change of flag ceremony which was attended by officials from the Indonesian Consulate-General and the Panamanian Consulate-General.

After the Panamanian flag was lowered by Mr. E. C. Castillo, Secretary of the Panamanian Consulate-General, representing Mr. Mario E. Guillen, 20 Consul-General, the Indonesian flag was hoisted by Mr. Achadl, Indonesian Vice-Consul, representing Mr. Kwee Djie Hoo, Consul-General.

The Tasikmalaja will be operated by the Indonesian Government as a troopship. She arrived here last month for repairs and overhauling.

Formerly the Christobal the 1,546-ton freighter has passenger accommodation for nearly 2,000 people. She was formerly engaged in ferrying pilgrims from the Philippines and Indonesia to Mecca.

Heading the 75-men crew is Capt. F. J. Aguado.

Exhibit KDH-8
Ref. No. 26
Referred to in
Doc. No. 18A

Exhibit KDH-8
Payroll of
crew of s.s.
"Tasikmalaja"
for April 1952.
30th April, 1952.

Ref. No. 26
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10 S.S. "TASIKMALAJA"

**PAYROLL OF THE MONTH OF APRIL 30, 1952
OF THE DECK DEPARTMENT**

| Num. | Name | Position | Salary | Signature |
|------|------------------------|-------------------|---------------------|---------------|
| | 1. J. M. Silos | Executive Officer | Hg.\$ 200.— (Sd.) | J. M. Silos |
| | 2. A. Alimpia | Radio Operator | Hg.\$ 200.— (Sd.) | A. Alimpia |
| | 3. R. Aguado | 3rd Officer | Hg.\$ 200.— (Sd.) | R. Aguado |
| | 4. M. Pillat | Appr. Mate | Hg.\$ 200.— (Sd.) | M. Pillatt |
| | 5. D. J. Mandagi | Appr. Mate | Hg.\$ 200.— (Sd.) | Mandagi |
| | 6. J. Rubion | Boatswain | Hg.\$ 200.— (Sd.) | J. Rubion |
| 20 | 7. P. Segovia | Carpenter | Hg.\$ 200.— (Sd.) | P. Segovia |
| | 8. L. Salgado (Jail) | Deck St. Keeper | Hg.\$ 200.— (Sd.) | |
| | 9. Haron | Winchman | Hg.\$ 200.— (Sd.) | Haron |
| | 10. H. Seiman | Quartermaster | Hg.\$ 200.— (Sd.) | H. Seiman |
| | 11. N. Bishima | Quartermaster | Hg.\$ 200.— (Sd.) | H. Bishima |
| | 12. H. Lumisay | Ord. Seaman | Hg.\$ 200.— (Sd.) | N. Lumisay |
| | 13. C. Molo | Ord. Seaman | Hg.\$ 200.— (Sd.) | C. Molo |
| | 14. M. Sahabu | Quartermaster | Hg.\$ 200.— (Sd.) | Sahabu |
| | 15. Sudjajos | Ord. Seaman | Hg.\$ 200.— (Sd.) | Sudjajos |
| | 16. T. Lowel | Ord. Seaman | Hg.\$ 200.— (Sd.) | T. Lowel |
| 30 | 17. E. Tjong Sui | Ord. Seaman | Hg.\$ 200.— (Sd.) | E. Tjong Sui |
| | 18. Sudarman | Ord. Seaman | Hg.\$ 200.— (Sd.) | Sudarman |
| | 19. R. Victoria (Jail) | Ord. Seaman | Hg.\$ 200.— (Sd.) | |
| | 20. A. Tuabara | Watchman | Hg.\$ 200.— (Sd.) | A. Tuabara |
| | 21. L. Tjong Jung | Watchman | Hg.\$ 200.— (Sd.) | L. Tjong Jung |
| | | Total | Hg.\$4,200.— | |

**FOUR THOUSAND TWO HUNDRED ONLY
PAID IN FULL.**

Hong Kong, April 30, 1952.

| | | | |
|----|--|--|--|
| 40 | (Sd.) J. M. SILOS. J. M. Silos, Executive Officer. | (Sd.) J. Walandouw J. Walandouw, Purser. | (Sd.) CAPT. F. J. AGUADO. CAPT. F. J. AGUADO. Master, s.s. "TASIKMALAJA". |
|----|--|--|--|

Exhibit KDH-8 S.S. "TASIKMALAJA"
 Payroll of
 crew of s.s.
 "Tasikmalaja"
 for April 1952.
 30th April, 1952.

PAYROLL FOR THE MONTH OF MAY, 1952
 OF THE STEWARD DEPARTMENT

Ref. No. 26
 Referred to in
 Doc. No. 18A
 continued.

| Num. | Name | Position | Salary | Signature | |
|-------|-----------------|------------------|-------------------|---------------|----|
| 1. | J. Walandouw | Purser | Hg.\$ 200.— (Sd.) | J. Walandouw | |
| 2. | N. Pavia | Chief Steward | Hg.\$ 200.— (Sd.) | N. Pavia | |
| 3. | Kaka | Chief Cook | Hg.\$ 200.— (Sd.) | Kaka | |
| 4. | Ludu | 2nd Cook | Hg.\$ 200.— (Sd.) | Ludu | |
| 5. | Sigama | Cook Helper | Hg.\$ 200.— (Sd.) | Sigama | |
| 6. | Siba Hassan | 3rd Cook | Hg.\$ 200.— (Sd.) | S. Hassan | 10 |
| 7. | Kasanudin | Potwasher | Hg.\$ 200.— (Sd.) | Kasanudin | |
| 8. | Hassan 3 | Potwasher | Hg.\$ 200.— (Sd.) | Hassan 3 | |
| 9. | Mahmud | Saloon Boy | Hg.\$ 200.— (Sd.) | Mahmud | |
| 10. | Matheos Boko | Saloon Boy | Hg.\$ 200.— (Sd.) | M. Boko | |
| 11. | Hassan 2 | Saloon Boy | Hg.\$ 200.— (Sd.) | Hassan 2 | |
| 12. | Tjolli | Saloon Boy | Hg.\$ 200.— (Sd.) | Tjolli | |
| 13. | Lamburi | Cabin Boy | Hg.\$ 200.— (Sd.) | Lamburi | |
| 14. | Duhung | Cabin Boy | Hg.\$ 200.— (Sd.) | Duhung | |
| 15. | Jan. A. Mandang | Cabin Boy | Hg.\$ 200.— (Sd.) | J. A. Mandang | |
| 16. | Idrus Ishag | Toilet Boy | Hg.\$ 200.— (Sd.) | I. Ishag | 20 |
| 17. | Lamani | Capt. Boy | Hg.\$ 200.— (Sd.) | Lamani | |
| 18. | H. Tampi | Ass. Capt. Boy | Hg.\$ 200.— (Sd.) | H. Tampi | |
| 19. | J. Pieters | Ch. Engineer Boy | Hg.\$ 200.— (Sd.) | J. Pieters | |
| 20. | Rukdin Mosoi | Deck Officer Boy | Hg.\$ 200.— (Sd.) | Rukdin Mosoi | |
| 21. | Ento Suminto | Cabin Boy | Hg.\$ 200.— (Sd.) | E. Suminto | |
| Total | | | Hg.\$4,200.— | | |

FOUR THOUSAND TWO HUNDRED ONLY

PAID IN FULL.

Hong Kong, April 30, 1952.

(Sd.) J. M. SILOS.
 J. M. Silos,
 Executive Officer.

(Sd.) J. Walandouw
 J. Walandouw,
 Purser.

(Sd.) CAPT. F. J. AGUADO.
 CAPT. F. J. AGUADO.
 Master,
 s.s. "TASIKMALAJA".

30

S.S. "TASIKMALAJA"

**PAYROLL FOR THE MONTH OF APRIL 30, 1952
OF THE ENGINE DEPARTMENT**

*Exhibit KDH-8
Payroll of
crew of s.s.
"Tasikmalaja"
for April 1952.
30th April, 1952.*

*Ref. No. 26
Referred to in
Doc. No. 18A
continued.*

| Num. | Name | Position | Salary | Signature |
|-------|--------------------|----------------|-------------------|---------------|
| | 1. P. Alcobendas | Chief Engineer | Hg.\$ 200.— (Sd.) | P. Alcobendas |
| | 2. M. Senoran | 2nd Engineer | Hg.\$ 200.— (Sd.) | M. Senoran |
| | 3. N. Mortel | 3rd Engineer | Hg.\$ 200.— (Sd.) | N. Mortel |
| | 4. A. Aviles | 4th Engineer | Hg.\$ 200.— (Sd.) | A. Aviles |
| | 5. P. Rozenberg | Electrician | Hg.\$ 200.— (Sd.) | P. Rozenberg |
| 10 | 6. A. Tonalgo | Oiler | Hg.\$ 200.— (Sd.) | A. Tonalgo |
| | 7. D. Cabil | Oiler | Hg.\$ 200.— (Sd.) | D. Cabil |
| | 8. J. Lewerisa | Oiler | Hg.\$ 200.— (Sd.) | J. Lewerisa |
| | 9. Achmad | Oiler | Hg.\$ 200.— (Sd.) | Achmad |
| | 10. Joh. Walandouw | Oiler | Hg.\$ 200.— (Sd.) | |
| | 11. M. Sigar | Oiler | Hg.\$ 200.— (Sd.) | M. Sigar |
| | 12. D. Sumolang | Oiler | Hg.\$ 200.— (Sd.) | D. Sumolang |
| | 13. L. Manlohy | Fireman | Hg.\$ 200.— (Sd.) | L. Manlohy |
| | 14. Tjali Toba | Fireman | Hg.\$ 200.— (Sd.) | Tjali Toba |
| | 15. Ali | Fireman | Hg.\$ 200.— (Sd.) | Ali |
| 20 | 16. R. Walandouw | Fireman | Hg.\$ 200.— (Sd.) | R. Walandouw |
| | 17. A. Gigil | Fireman | Hg.\$ 200.— (Sd.) | A. Gigil |
| | 18. R. Sudarsono | Wiper | Hg.\$ 200.— (Sd.) | R. Sudarsono |
| | 19. V. Pongilatan | Wiper | Hg.\$ 200.— (Sd.) | Pongilatan |
| | 20. A. Karauwan | Wiper | Hg.\$ 200.— (Sd.) | A. Karauwan |
| | 21. V. Kaparang | Wiper | Hg.\$ 200.— (Sd.) | V. Kaparang |
| | 22. C. Lombogia | Wiper | Hg.\$ 200.— (Sd.) | C. Lombogia |
| | 23. P. Kaparang | Wiper | Hg.\$ 200.— (Sd.) | P. Kaparang |
| Total | | | Hg.\$4,600.— | |

FOUR THOUSAND SIX HUNDRED ONLY
PAID IN FULL.

30

Hong Kong, April 30, 1952.

(Sd.) J. M. SILOS.
J. M. Silos,
Executive Officer.

(Sd.) J. Walandouw
J. Walandouw,
Purser.

(Sd.) CAPT. F. J. AGUADO.
CAPT. F. J. AGUADO.
Master,
s.s. "TASIKMALAJA".

Exhibit KDH-9
Roll of Advance
Payments to
crew of s.s.
"Tasikmalaja"
against salary
for May 1952.
3rd May 1952.

Ref. No. 27
Referred to in
Doc. No. 18A

Exhibit KDH-9
Ref. No. 27
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

S.S. "TASIKMALAJA"

10

UANG MUKA UNTUK BULAN MEI, 1952
BAG: DEK

AGAINST ADVANCE SALARY OF THE MONTH OF
May, 1952 OF THE DECK DEPARTMENT

| Num. | Name | Position | Salary | Signature |
|-------|--------------------|-------------------|-------------------|----------------|
| 1. | J. M. Silos | Executive Officer | Hg.\$ 100.— (Sd.) | J. M. Silos |
| 2. | A. Alimpia | Radio Operator | Hg.\$ 100.— (Sd.) | A. Alimpia |
| 3. | R. Aguado | 3rd Officer | Hg.\$ 100.— (Sd.) | R. Aguado |
| 4. | M. Pilat | Appr. Mate | Hg.\$ 100.— (Sd.) | M. Pilat |
| 5. | D. J. Mandagie | Appr. Mate | Hg.\$ 100.— (Sd.) | D. J. Mandagie |
| 6. | J. Rubion | Boatswain | Hg.\$ 100.— (Sd.) | J. Rubion |
| 7. | P. Segovia | Carpenter | Hg.\$ 100.— (Sd.) | P. Segovia |
| 8. | L. Salgado (Jail) | Deck St. Keeper | Hg.\$ 100.— (Sd.) | |
| 9. | Haron | Winchman | Hg.\$ 100.— (Sd.) | Haron |
| 10. | H. Seiman | Quartermaster | Hg.\$ 100.— (Sd.) | Seiman |
| 11. | N. Bishima | Quartermaster | Hg.\$ 100.— (Sd.) | N. Bishima |
| 12. | M. Sahabu | Quartermaster | Hg.\$ 100.— (Sd.) | M. Sahabu |
| 13. | H. Lumisay | Ord. Seaman | Hg.\$ 100.— (Sd.) | H. Lumisay |
| 14. | C. Molo | Ord. Seaman | Hg.\$ 100.— (Sd.) | C. Molo |
| 15. | Sudjajos | Ord. Seaman | Hg.\$ 100.— (Sd.) | Sudjajos |
| 16. | T. Lowel | Ord. Seaman | Hg.\$ 100.— (Sd.) | T. Lowel |
| 17. | E. Tjong Sui | Ord. Seaman | Hg.\$ 100.— (Sd.) | E. Tjong Sui |
| 18. | Sudarman | Ord. Seaman | Hg.\$ 100.— (Sd.) | Sudarman |
| 19. | R. Victoria (Jail) | Ord. Seaman | Hg.\$ 100.— (Sd.) | |
| 20. | A. Taubara | Watchman | Hg.\$ 100.— (Sd.) | A. Taubara |
| 21. | L. Tjong Jung | Watchman | Hg.\$ 100.— (Sd.) | L. Tjong Jung |
| Total | | | Hg.\$ 2,100.— | |

TWO THOUSAND ONE HUNDRED ONLY

Hong Kong, May 3, 1952.

| | | | |
|--|--|--|----|
| (Sd.) J. M. SILOS. J. M. Silos, Executive Officer. | (Sd.) J. Walandouw J. Walandouw, Purser. | (Sd.) CAPT. F. J. AGUADO. CAPT. F. J. AGUADO. Master, s.s. "TASIKMALAJA". | 40 |
|--|--|--|----|

S.S. "TASIKMALAJA"

UANG MUKA UNTUK BULAN MEI, 1952
BAG: SIPIL

AGAINST ADVANCE SALARY OF THE MONTH OF
MAY, 1952 OF THE STEWARD DEPARTMENT

*Exhibit KDH-9
Roll of Advance
Payments to
crew of s.s.
"Tasikmalaja"
against salary
for May 1952.
3rd May 1952.*

Ref. No. 27
Referred to in
Doc. No. 18A
continued.

| Num. | Name | Position | Salary | Signature |
|-------|---------------------|------------------|-------------------|--------------|
| | 1. J. Walandouw | Purser | Hg.\$ 100.— (Sd.) | J. Walandouw |
| | 2. N. Pavia | Chief Steward | Hg.\$ 100.— (Sd.) | N. Pavia |
| | 3. Kaka | Chief Cook | Hg.\$ 100.— (Sd.) | Kaka |
| 10 | 4. Ludu | 2nd Cook | Hg.\$ 100.— (Sd.) | Ludu |
| | 5. Siba Hassan | 3rd Cook | Hg.\$ 100.— (Sd.) | Siba Hassan |
| | 6. Sigama | Cook Helper | Hg.\$ 100.— (Sd.) | Sigman |
| | 7. Kasanudin | Potwasher | Hg.\$ 100.— (Sd.) | Kasanudin |
| | 8. Hassan 3 | Potwasher | Hg.\$ 100.— (Sd.) | Hassan |
| | 9. Mahmud | Saloon Boy | Hg.\$ 100.— (Sd.) | Mahmud |
| | 10. Matheos Boko | Saloon Boy | Hg.\$ 100.— (Sd.) | Matheos Boko |
| | 11. Hassan 2 | Saloon Boy | Hg.\$ 100.— (Sd.) | Hassan 2 |
| | 12. Tjolli | Saloon Boy | Hg.\$ 100.— (Sd.) | Tjolli |
| | 13. Lamburi | Cabin Boy | Hg.\$ 100.— (Sd.) | Lamburi |
| 20 | 14. Duhung | Cabin Boy | Hg.\$ 100.— (Sd.) | Duhung |
| | 15. Jan. A. Mandang | Cabin Boy | Hg.\$ 100.— (Sd.) | Mandang |
| | 16. Idrus Ishag | Toilet Boy | Hg.\$ 100.— (Sd.) | Idrus Ishag |
| | 17. Lamani | Capt. Boy | Hg.\$ 100.— (Sd.) | Lamani |
| | 18. H. Tampi | Ass. Capt. Boy | Hg.\$ 100.— (Sd.) | H. Tampi |
| | 19. J. Pieters | Ch. Engineer Boy | Hg.\$ 100.— | |
| | 20. Rukdin Mosoi | Deck Officer Boy | Hg.\$ 100.— (Sd.) | Rukdin Mosoi |
| | 21. Ento Suminto | Cabin Boy | Hg.\$ 100.— (Sd.) | Suminto |
| Total | | | Hg.\$2,100.— | |

TWO THOUSAND ONE HUNDRED ONLY

30

(Sd.) N. PAVIA,
Chief Steward.

Hong Kong, May 3, 1952.

(Sd.) J. M. SILOS.
J. M. Silos,
Executive Officer.

(Sd.) J. Walandouw
J. Walandouw,
Purser.

(Sd.) CAPT. F. J. AGUADO.
CAPT. F. J. AGUADO.
Master,
s.s. "TASIKMALAJA".

Exhibit KDH-9 S.S. "TASIKMALAJA"
 Roll of Advance
 Payments to
 crew of s.s.
 "Tasikmalaja"
 against salary
 for May 1952.
 3rd May 1952.

Ref. No. 27
 Referred to in
 Doc. No. 18A
 continued.

UANG MUKA UNTUK BULAN MEI, 1952
 BAG: MESIN

AGAINST ADVANCE SALARY OF THE MONTH OF
 MAY, 1952 OF THE ENGINE DEPARTMENT

| Num. | Name | Position | Salary | Signature | |
|-------|---------------|----------------|-------------------|---------------|----|
| 1. | P. Alcobendas | Chief Engineer | Hg.\$ 100.— (Sd.) | P. Alcobendas | |
| 2. | M. Senoran | 2nd Engineer | Hg.\$ 100.— (Sd.) | M. Senoran | |
| 3. | N. Mortel | 3rd Engineer | Hg.\$ 100.— (Sd.) | N. Mortel | |
| 4. | A. Aviles | 4th Engineer | Hg.\$ 100.— (Sd.) | A. Aviles | 10 |
| 5. | P. Rozenberg | Electrician | Hg.\$ 100.— (Sd.) | P. Rozenberg | |
| 6. | A. Tonalgo | Oiler | Hg.\$ 100.— (Sd.) | A. Tonalgo | |
| 7. | D. Cabil | Oiler | Hg.\$ 100.— (Sd.) | D. Cabil | |
| 8. | J. Lewerisa | Oiler | Hg.\$ 100.— (Sd.) | J. Lewerisa | |
| 9. | Achmad | Oiler | Hg.\$ 100.— (Sd.) | Achmad | |
| 10. | Joh Walandouw | Oiler | Hg.\$ 100.— (Sd.) | Walandouw | |
| 11. | M. Sigar | Oiler | Hg.\$ 100.— (Sd.) | M. Sigar | |
| 12. | D. Sumolang | Oiler | Hg.\$ 100.— (Sd.) | Sumolang | |
| 13. | L. Manlohy | Fireman | Hg.\$ 100.— (Sd.) | M. Manlohy | |
| 14. | Tjali Toba | Fireman | Hg.\$ 100.— (Sd.) | Tjali Toba | 20 |
| 15. | Ali | Fireman | Hg.\$ 100.— (Sd.) | Ali | |
| 16. | H. Walandouw | Fireman | Hg.\$ 100.— (Sd.) | R. Walandouw | |
| 17. | A. Gigil | Fireman | Hg.\$ 100.— (Sd.) | A. Gigil | |
| 18. | R. Sudarsono | Wiper | Hg.\$ 100.— (Sd.) | R. Sudarsono | |
| 19. | V. Pongilatan | Wiper | Hg.\$ 100.— (Sd.) | V. Pongilatan | |
| 20. | A. Karauwan | Wiper | Hg.\$ 100.— (Sd.) | A. Karauwan | |
| 21. | V. Kaparang | Wiper | Hg.\$ 100.— (Sd.) | V. Kaparang | |
| 22. | C. Lombogia | Wiper | Hg.\$ 100.— (Sd.) | C. Lombogia | |
| 23. | P. Kaparang | Wiper | Hg.\$ 100.— (Sd.) | P. Kaparang | |
| Total | | | Hg.\$ 2,300.— | | 30 |

TWO THOUSAND THREE HUNDRED ONLY

(Sd.) P. ALCOBENDAS,
 Chief Engineer.

Hong Kong, May 3, 1952.

(Sd.) J. M. SILOS.
 J. M. Silos,
 Executive Officer.

(Sd.) J. Walandouw
 J. Walandouw,
 Purser.

(Sd.) CAPT. F. J. AGUADO.
 CAPT. F. J. AGUADO.
 Master,
 s.s. "TASIKMALAJA".

Exhibit KDH-10
Ref. No. 28
Referred to in
Doc. No. 18A

Exhibit KDH-10
Payroll of crew
of s.s.
"Tasikmalaja"
for May 1952.
31st May, 1952.

Ref. No. 28
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10 S.S. "TASIKMALAJA"

PAYROLL FOR THE MONTH OF MAY, 1952
OF THE FILIPINO CREW

| Num. | Name | Designation | Salary | Signature |
|-------|-------------|----------------|-------------------|------------|
| 1. | J. M. Silos | Captain | HK\$ — | — |
| 2. | P. Alimpia | Radio Operator | HK\$ 144.00 (Sd.) | P. Alimpia |
| 3. | J. Rubion | Boatswain | HK\$ 108.00 (Sd.) | J. Rubion |
| 4. | C. Molo | Ord. Seaman | HK\$ 56.40 (Sd.) | C. Molo |
| 5. | N. Mortel | 2nd Engineer | Hg.\$ 100.— (Sd.) | N. Mortel |
| 6. | A. Avilos | 4th Engineer | HK\$ 144.00 (Sd.) | A. Aviles |
| 20 7. | Tonalgo | Oiler | HK\$ 72.00 (Sd.) | A. Tonalgo |
| 8. | D. Cabil | Oiler | HK\$ 192.00 (Sd.) | D. Cabil |
| 9. | N. Pavia | Chief Steward | HK\$ 350.00 (Sd.) | N. Pavia |
| Total | | | HK\$1,246.40 | |

ONE THOUSAND TWO HUNDRED AND FORTY-SIX 40/100 ONLY

Hong Kong, May 31, 1952.

(Sd.) J. W. KUITERT. (Sd.) J. Walandouw (Sd.) J. M. SILOS.
J. W. Kuitert, J. Walandouw, Capt. Jose Ma. Silos,
Tech. Adviser Kem. Purser. S.S. "TASIKMALAJA".
Pertahanan R.I.

30 S.S. "TASIKMALAJA"

PAYROLL FOR THE MONTH OF MAY, 1952
OF THE DECK DEPARTMENT
(Indonesian Crew)

| Num. | Name | Designation | Salary | Signature |
|-------|---------------|---------------|-------------------|----------------|
| 1. | J. D. Mandagi | Appr. Mate | HK\$ 200.00 (Sd.) | J. D. Mandagie |
| 2. | M. Sahabu | Quartermaster | HK\$ 175.00 (Sd.) | M. Sahabu |
| 3. | H. Lumisay | Ord. Seaman | HK\$ 162.50 (Sd.) | H. Lumisay |
| 4. | Sudjajos | Ord. Seaman | HK\$ 162.50 (Sd.) | Sudjajos |
| 5. | Thomas Lowel | Ord. Seaman | HK\$ 162.50 (Sd.) | T. Lowel |
| 40 6. | E. Tjong Sui | Ord. Seaman | HK\$ 162.50 (Sd.) | E. Tjong Sui |
| 7. | Sudarman | Ord. Seaman | HK\$ 162.50 (Sd.) | Sudarman |
| 8. | A. Taubara | Watchman | HK\$ 175.00 (Sd.) | A. Taubara |
| 9. | L. Tjong Jung | Watchman | HK\$ 175.00 (Sd.) | Tjong Jung |
| Total | | | HK\$1,537.50 | |

ONE THOUSAND FIVE HUNDRED AND THIRTY-SEVEN 50/100 ONLY

Exhibit KDH-10
Payroll of crew
of s.s.

"Tasikmalaja"
for May 1952.
31st May, 1952.

Ref. No. 28
Referred to in
Doc. No. 18A
continued.

Hong Kong, May 31, 1952.

(Sd.) J. W. KUITERT. (Sd.) J. Walandouw
J. W. Kuitert, J. Walandouw,
Tech. Adviser Kem. Purser.
Pertahanan.

(Sd.) J. M. SILOS.
Capt. Jose Ma. Silos,
S.S. "TASIKMALAJA".

S.S. "TASIKMALAJA"

PAYROLL FOR THE MONTH OF MAY, 1952
OF THE ENGINE DEPARTMENT

(Indonesian)

| Num. | Name | Designation | Salary | Signature | 10 |
|-------|----------------|-------------|-------------------|--------------|----|
| 1. | P. Rozenberg | Electrician | HK\$ 275.00 (Sd.) | | |
| 2. | J. Lewerisa | Oiler | HK\$ 175.00 (Sd.) | J. Lewerisa | |
| 3. | Joh. Walandouw | Oiler | HK\$ 175.00 (Sd.) | Walandouw | |
| 4. | Ahmad | Oiler | HK\$ 162.50 (Sd.) | Ahmad | |
| 5. | M. Sigar | Oiler | HK\$ 175.00 (Sd.) | M. Sigar | |
| 6. | D. Sumolang | Oiler | HK\$ 175.00 (Sd.) | D. Sumolang | |
| 7. | L. Nanlohy | Fireman | HK\$ 162.50 (Sd.) | L. Nanlohy | |
| 8. | Tjali Toba | Fireman | HK\$ 175.00 (Sd.) | Tjali Toba | |
| 9. | Ali | Fireman | HK\$ 162.50 (Sd.) | Ali | |
| 10. | R. Walandouw | Fireman | HK\$ 162.50 (Sd.) | R. Walandouw | 20 |
| 11. | Ahmad Gigil | Fireman | HK\$ 162.50 (Sd.) | Ahmad G. | |
| 12. | R. Sudarsono | Fireman | HK\$ 162.50 (Sd.) | R. Sudarsono | |
| 13. | A. Karauwan | Wiper | HK\$ 150.00 (Sd.) | A. Karauwan | |
| 14. | V. Pongilatan | Wiper | HK\$ 150.00 (Sd.) | Pongilatan | |
| 15. | V. Kaparang | Wiper | HK\$ 150.00 (Sd.) | V. Kaparang | |
| 16. | C. Lombogia | Wiper | HK\$ 150.00 (Sd.) | C. Lombogia | |
| 17. | P. Kaparang | Wiper | HK\$ 150.00 (Sd.) | P. Kaparang. | |
| Total | | | HK\$2,875.00 | | |

TWO THOUSAND EIGHT HUNDRED AND SEVENTY-FIVE ONLY

Hong Kong, May 31, 1952.

30

(Sd.) J. W. KUITERT. (Sd.) J. Walandouw
J. W. Kuitert, J. Walandouw,
Tech. Adviser Kem. Purser.
Pertahanan.

(Sd.) J. M. SILOS.
Capt. Jose Ma. Silos,
S.S. "TASIKMALAJA".

S.S. "TASIKMALAJA"

**PAYROLL FOR THE MONTH OF MAY, 1952
OF THE STEWARD DEPARTMENT
(Indonesian Crew)**

Exhibit KDH-10
Payroll of crew
of s.s.
"Tasikmalaja"
for May 1952.
31st May, 1952.

Ref. No. 28
Referred to in
Doc. No. 18A
continued.

| Num. | Name | Designation | Salary | Signature |
|------|--------------------|------------------|-------------------|--------------|
| | 1. J. Walandouw | Purser | HK\$ 400.00 (Sd.) | J. Walandouw |
| | 2. Kaka | Chief Cook | HK\$ 200.00 (Sd.) | Kaka |
| | 3. Sigama | 2nd Cook | HK\$ 162.50 (Sd.) | Sigama |
| | 4. Hassan | Saloon Boy | HK\$ 150.00 (Sd.) | Hassan |
| 10 | 5. Tjoli | Saloon Boy | HK\$ 150.00 (Sd.) | Tjoli |
| | 6. Matheos Boko | Saloon Boy | HK\$ 150.00 (Sd.) | M. Boko |
| | 7. Jan. A. Mandang | Cabin Boy | HK\$ 150.00 (Sd.) | Mandang |
| | 8. Rukdin Mosoi | Deck Officer Boy | HK\$ 150.00 (Sd.) | R. Mosoi |
| | 9. Jan. Pieters | Ch. Eng. Boy | HK\$ 150.00 (Sd.) | Jan. Pieters |
| | 10. Idrus Ishag | Deck Crew Boy | HK\$ 150.00 (Sd.) | I. Ishag |
| | 11. Hendrik Tampi | Cabin Boy | HK\$ 150.00 (Sd.) | H. Tampi |
| | 12. Lamburi | Cabin Boy | HK\$ 150.00 (Sd.) | Lamburi |
| | 13. Duhung | Cabin Boy | HK\$ 150.00 (Sd.) | Duhung |
| | 14. Ento Suminto | Cabin Boy | HK\$ 150.00 (Sd.) | E. Suminto |
| 20 | | Total | HK\$2,412.50 | |

TWO THOUSAND FOUR HUNDRED AND TWELVE 50/100 ONLY

Hong Kong, May 31, 1952.

(Sd.) J. W. KUITERT. (Sd.) J. Walandouw (Sd.) J. M. SILOS.
J. W. Kuitert, J. Walandouw, Capt. Jose Ma. Silos,
Tech. Adviser Kem. Purser. S.S. "TASIKMALAJA".
Pertahanan.

Exhibit KDH-11
Ref. No. 29
Referred to in
Doc. No. 18A

Exhibit KDH-11
Receipt from
Captain Silos
for Advance
against wages.
21st June, 1952.

30

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmal & Company Incorporated.

Ref. No. 29
Referred to in
Doc. No. 18A

RECEIVED from Mr. J. W. Kuitert, Tech. Adviser, Kem Pertahanan the sum of HK\$462.00 (FOUR HUNDRED AND SIXTY TWO) to be applied to my salary, as follows:

40 Balance of my salary (allowance) as Acting Captain of the s.s. "TASIKMALAJA" from May 9, 1952 to MAY 31, 1952. — 192.50. (H.K.\$462.00).

Hong Kong, June 21, 1952.

(Sd.) J. M. SILOS
Captain Jose Ma. Silos
S.S. "TASIKMALAJA".

Exhibit KDH-12
 Letter—Jose
 Ma. Silos to
 Kwee Djie Hoo.
 25th June, 1952.

Ref. No. 30
 Referred to in
 Doc. No. 18A

Exhibit KDH-12
 Ref. No. 30
 Referred to in
 Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Hong Kong, June 25/52.

10

s.s. "Tasikmalaja"

Dear Sir,

I have the honour to inform you that when I came back to my ship at about 1800 hrs, I found out that the ship was arrested.

A Court order was issued and the bailiff placed two guards on our ship by request of Mr. A. W. King's attorneys for payment of his bills.

I have called on your residence to inform you of this matter but unfortunately you was out.

I am, Sir,

Yours very sincerely,

20

(Sgd.) JOSE MA. SILOS

Master

s.s. "Tasikmalaja"

Kweedjiehoo, Esq.,
 Consul General,
 Republic of Indonesia,
 Cecil Hotel,
 HONG KONG.

Exhibit KDH-13
Ref. No. 31
Referred to in
Doc. No. 18A

*Exhibit KDH-13
Letter—Stewart
& Co. to the
Indonesian
Consul-General.
27th June, 1952.*

Ref. No. 31
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10 STEWART & CO.

Hong Kong, 27th June, 1952.

Our Ref. S/3272.

The Indonesian Consul General,
Hotel Cecil, 1st Floor,
HONG KONG.

Dear Sir,

Re: Admiralty Action No. 6 of 1952
Anthony Loh trading as A. W. King
against
The Ship "Tasikmalaja"

20

We are instructed to inform you that this ship has been arrested by the Head Bailiff of the Supreme Court in connection with a Writ issued for \$25,586.00 for repairs carried out by the Plaintiff.

Yours faithfully,
(Sgd.) STEWART & CO.

Exhibit KDH-14
Ref. No. 32
Referred to in
Doc. No. 18A

*Exhibit KDH-14
Translation of
Certificate of
Nationality
of
"Tasikmalaja"
17th April, 1952.*

30

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Ref. No. 32
Referred to in
Doc. No. 18A

Provisional No. B/0002/52

TRANSLATION OF OVERLEAF TEXT

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

To all who shall see this Certificate of Nationality or hear it read:

G R E E T I N G S :

40 Whereas it has been satisfactorily established that the Steamship, recorded as the

Exhibit KDH-14
 Translation of
 Certificate of
 Nationality
 of s.s.
 "Tasikmalaja"
 17th April, 1952.
 Ref. No. 32
 Referred to in
 Doc. No. 18A
 continued.

“ T A S I K M A L A J A ” :

nett measurement cubic metres or 1546 register tons, gross measurement cubic meters or 3679 register tons, having four decks, two masts, one funnels, one propellers, her principal engines (motors) developing 5500 IHP (BHP, +) and commanded by Captain F. J. Aguado is an Indonesian sea going vessel under the terms of the Decree-1934 relative to Certificates of Nationality.

And whereas this Certificate of Nationality has been issued accordingly, so that this vessel is entitled to fly the Indonesian flag.

Now therefore all authorities and officers in Indonesia are ordered, and all others whom it may concern, are requested, to receive the Captain with his 10 ship and cargo in an friendly way, and to treat him in a manner consistent with the law of the Republic of Indonesia and with the Treaties concluded with other Sovereign States.

Issued at Hong Kong, on 17th April, 1952.

By the Minister of Communications,
 U. C.

(KONSULAT DJENDERAL)
 (REPUBLIK INDONESIA)
 (HONG KONG)

(Sd.) (Illegible)
 Konsul Djenderal R.I., Hong Kong.

+) and four boilers, owned by the Ministry of Defence at Djakarta of the 20 Republic of Indonesia.

Recorded in the Register of Certificates of Nationality kept by the Department of Navigation at Jakarta, R.I.:

Register No.

Page No.

Mark according to the Certificate of Measurement:

.....

Call name according to the International Signalling Code:

Jakarta,

19

The Head of the Department of Navigation,

30

Captain's signature:

Signed in my presence:

Issued at

on

19

The Captain of an Indonesian sea going ship entering a foreign port, where an Indonesian Consul is established shall, if his ship remains in port for a period exceeding twenty-four hours, report in person to this officer, not later than the day after the ship's arrival, in order to have the Consul sign this Certificate of Nationality unless complete or partial exemption from this provision shall have been granted.

Exhibit KDH-15
Ref. No. 33
Referred to in
Doc. No. 18A

Exhibit KDH-15
Statement by
40 Indonesian
members of
crew of s.s.
"Tasikmalaja"
15th July, 1952.

Ref. No. 33
Referred to in
Doc. No. 18A

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10 The Indonesian Text translated into English reads :

We, the undersigned being the Indonesian members of the crew of the s.s. "TASIKMALAJA" do hereby state that we were present on board the vessel on the 17th day of April, 1952, when the Panamanian flag was lowered and the flag of the Republic of Indonesia was raised on the vessel. Ever since that date we have considered the vessel to belong to the Indonesian Government and have taken orders from Acting Captain Silos and other Filipino members of the deck crew believing them to be paid and employed by our Government. We have never obeyed any orders from the said Captain Silos or anyone else in defiance to the authority of our Government nor would we have obeyed at any time
20 any instructions given by the said Captain Silos if they were or had been to our knowledge in defiance of the authority of our Government or of the Consul General for Indonesia in Hong Kong.

This statement has been interpreted to us and we understand that it is for the purpose of being annexed to an Affirmation to be produced in proceedings in the Supreme Court of Hong Kong.)

| | | | |
|----|--------------------|----------------|----------------------|
| | 1. J. D. Mandagie | Acting Captain | (Sd.) J. D. Mandagie |
| | 2. M. Sahabu | Quartermaster | (Sd.) M. Sahabu |
| | 3. H. Lumisay | Ord. Seaman | (Sd.) H. Lumisay |
| | 4. Sudjajos | Ord. Seaman | (Sd.) Sudjajos |
| 30 | 5. Thomas Lowel | Ord. Seaman | (Sd.) Thomas Lowel |
| | 6. E. Tjong Sui | Ord. Seaman | (Sd.) E. Tjong Sui |
| | 7. Sudarman | Ord. Seaman | (Sd.) Sudarman |
| | 8. A. Tuabara | Watchman | (Sd.) A. Tuabara |
| | 9. L. Tjong Jung | Watchman | (Sd.) L. Tjong Jung |
| | 10. P. Rozenberg | Electrician | (Sd.) P. Rozenberg |
| | 11. J. Lewiresa | Act. Mandur | (Sd.) J. Lewiresa |
| | 12. Joh. Walandouw | Oiler | (Sd.) Joh. Walandouw |
| | 13. Ahmad | Oiler | (Sd.) Ahmad |
| | 14. M. Sigar | Oiler | (Sd.) M. Sigar |
| 40 | 15. D. Sumolang | Oiler | (Sd.) D. Sumolang |
| | 16. L. Nanlohy | Fireman | (Sd.) L. Nanlohy |
| | 17. Tjali Toba | Fireman | (Sd.) Tjali Toba |
| | 18. Ali | Fireman | (Sd.) Ali |
| | 19. R. Walandouw | Fireman | (Sd.) R. Walandouw |
| | 20. Ahmad Gigil | Fireman | (Sd.) Ahmad Gigil |

| | | | | |
|--|---------------------|---------------|-----------------------|----|
| <i>Exhibit KDH-15 Statement by 40 Indonesian members of crew of s.s. "Tasikmalaja" 15th July, 1952.</i> <i>Ref. No. 33 Referred to in Doc. No. 18A continued.</i> | 21. R. Sudarsono | Fireman | (Sd.) R. Sudarsono | |
| | 22. A. Karauwan | Wiper | (Sd.) A. Karauwan | |
| | 23. V. Pongilatan | Wiper | (Sd.) V. Pongilatan | |
| | 24. V. Kaparang | Wiper | (Sd.) V. Kaparang | |
| | 25. C. Lombogia | Wiper | (Sd.) C. Lombogia | |
| | 26. P. Kaparang | Wiper | (Sd.) P. Kaparang | |
| | 27. J. Walandouw | Purser | (Sd.) J. Walandouw | |
| | 28. Kaka | Chief Cook | (Sd.) Kaka | |
| | 29. Sigama | 2nd Cook | (Sd.) Sigama | |
| | 30. Hassan 2 | Saloon Boy | (Sd.) Hassan | 10 |
| | 31. Tjolli | Saloon Boy | (Sd.) Tjolli | |
| | 32. Matheos Boko | Saloon Boy | (Sd.) Matheos Boko | |
| | 33. Jan. A. Mandang | Cabin Boy | (Sd.) Jan. A. Mandang | |
| | 34. Rukdin Mosoi | Deck Off. Boy | (Sd.) Rukdin Mosoi | |
| | 35. Jan. Pieters | Ch. Eng. Boy | (Sd.) Jan. Pieters | |
| | 36. Idrus Ishag | Deck Crew Boy | (Sd.) Idrus Ishag | |
| | 37. Hendrik Tampi | Cabin Boy | (Sd.) Hendrik Tampi | |
| | 38. Lamburi | Cabin Boy | (Sd.) Lamburi | |
| | 39. Duhung | Cabin Boy | (Sd.) Duhung | |
| | 40. Ento Suminto | Cabin Boy | (Sd.) Ento Suminto | 20 |

Hong Kong, 15 July, 1952.

*Exhibit
KDH-15a
Indonesian text
of Statement
by 40
Indonesian
Members of
crew of s.s.
"Tasikmalaja"
15th July, 1952.*

*Ref. No. 34
Referred to in
Doc. No. 18A*

*Exhibit
KDH-15a
Ref. No. 34
Referred to in
Doc. No. 18A*

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

30

Kami jang bertanda tangan dibawah ini, anak buah kapal s.s. "TASIKMALAJA" bangsa Indonesia, bersama ini menerangkan bahwa kami berada diatas kapal pada tanggal 17 April 1952, ketika bendera Panama diturunkan dan bendera Republik Indonesia dinaikan diatas kapal tersebut.

Semendjak tanggal itu, kami bersenantiasa menganggap kapal tersebut sebagai milik Pemerintah Indonesia dan kami mendjalankan perintah wakil Kapten Silos dan lain2 anak buah bangsa Philipina diatas dek karena kami pertjaja bahwa mereka itu adalah pegawai jang digadjih oleh Pemerintah kita.

Kami tidak pernah mendjalankan perintah wakil Kapten Silos tersebut 40 atau siapapun djuga jang bertentangan dengan kuasa Pemerintah kita dan djuga kami tidak akan tunduk kepada petundjuk2 jang diberikan oleh Kapten Silos

tersebut, djika kami mengetahui bahwa petundjuk2 itu bertentangan dengan kuasa Pemerintah kita, atau kuasa Konsul Djenderal Republik Indonesia di Hong Kong.

Keterangan ini telah didjelaskan kepada kami dan kemi yakin benar2 bahwa keterangan ini dimaksudkan untuk ditjantumkan kepada Affirmation jang akan diadjukan dalam perkara dihadapan Supreme Court, Hong Kong.

| | | | |
|----|---------------------|---------------------|-----------------------|
| | 1. J. D. Mandagie | Wakil Kapten | (Sd.) J. D. Mandagie |
| | 2. M. Sahabu | Djurumudi | (Sd.) M. Sahabu |
| | 3. H. Lumisay | Kelasi | (Sd.) H. Lumisay |
| 10 | 4. Sudjajos | Kelasi | (Sd.) Sudjajos |
| | 5. Thomas Lowel | Kelasi | (Sd.) Thomas Lowel |
| | 6. E. Tjong Sui | Kelasi | (Sd.) E. Tjong Sui |
| | 7. Sudarman | Kelasi | (Sd.) Sudarman |
| | 8. A. Tuabara | Pandjarwala | (Sd.) A. Tuabara |
| | 9. L. Tjong Jung | Pandjarwala | (Sd.) L. Tjong Jung |
| | 10. P. Rozenberg | Kepala Listrik | (Sd.) P. Rozenberg |
| | 11. J. Lewirsea | Wakil Mandur | (Sd.) J. Lewirsea |
| | 12. Joh. Walandouw | Tukang Minjak | (Sd.) Joh. Walandouw |
| | 13. Achmad | Tukang Minjak | (Sd.) Achmad |
| 20 | 14. M. Sigar | Tukang Minjak | (Sd.) M. Sigar |
| | 15. D. Sumolang | Tukang Minjak | (Sd.) D. Sumolang |
| | 16. L. Nanlohy | Tukang Api | (Sd.) L. Nanlohy |
| | 17. Tjali Toba | Tukang Api | (Sd.) Tjali Toba |
| | 18. Ali | Tukang Api | (Sd.) Ali |
| | 19. R. Walandouw | Tukang Api | (Sd.) R. Walandouw |
| | 20. Ahmad Gigil | Tukang Api | (Sd.) Ahmad Gigil |
| | 21. R. Sudarsono | Tukang Api | (Sd.) R. Sudarsono |
| | 22. A. Karauwan | Tukang Ansur | (Sd.) A. Karauwan |
| | 23. W. Pongilatan | Tukang Ansur | (Sd.) W. Pongilatan |
| 30 | 24. V. Kaparang | Tukang Ansur | (Sd.) V. Kaparang |
| | 25. C. Lombogia | Tukang Ansur | (Sd.) C. Lombogia |
| | 26. P. Kaparang | Tukang Ansur | (Sd.) P. Kaparang |
| | 27. J. Walandouw | Kepala Tata Usaha | (Sd.) J. Walandouw |
| | 28. Kaka | Djurumasak | (Sd.) Kaka |
| | 29. Sigama | Pembantu Djurumasak | (Sd.) Sigama |
| | 30. Hassan 2 | Pelajan | (Sd.) Hassan 2 |
| | 31. Tjolli | Pelajan | (Sd.) Tjolli |
| | 32. Matheos Boko | Pelajan | (Sd.) Matheos Boko |
| | 33. Jan. A. Mandang | Pelajan | (Sd.) Jan. A. Mandang |
| 40 | 34. Rukdin Mosoi | Pelajan | (Sd.) Rukdin Mosoi |
| | 35. Jan Pieters | Pelajan | (Sd.) Jan Pieters |
| | 36. Idrus Ishag | Pelajan | (Sd.) Idrus Ishag |
| | 37. Hendrik Tampi | Pelajan | (Sd.) Hendrik Tampi |
| | 38. Lamburi | Pelajan | (Sd.) Lamburi |
| | 39. Duhung | Pelajan | (Sd.) Duhung |
| | 40. Ento Suminto | Pelajan | (Sd.) Ento Suminto |

*Exhibit
KDH-15a
Indonesian text
of Statement
by 40
Indonesian
Members of
crew of s.s.
"Tasikmalaja"
15th July, 1952.*

Ref. No. 34
Referred to in
Doc. No. 18A
continued.

Hong Kong, 15 Djuli, 1952.

Exhibit PR-1
Letter—
Captain F. J.
Aguado to
Major Pamoe
Rahardjo.
25th March 1952.

Ref. No. 35
Referred to in
Doc. No. 18B

Exhibit PR-1
Ref. No. 35
Referred to in
Doc. No. 18B

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Hong Kong, 25th March, 1952.

10

Major Pamoe Rahardjo, (TNI)
Ministry of Defence,
Hong Kong.

Sir:

In connection with the alterations and repairs to which the S.S. "TASIKMALAJA", under my command is to undergo and in compliance with your memorandum of the 24th instant, enclosed please find the following documents:

- (a) List of Officers and crew to remain on board during the vessel's repairs and alterations.
- (b) On the above list you will find the salaries of officers and crew. 20
- (c) Cost of subsistence of the above crew per day.
- (d) Memorandum on fuel and lubricating oil.

As some work is to be done by the ship's engineers and crew, it is reminded that some funds are made available for the purchase of anti corrosive paints and primers, also for gasket and packing materials and other incidentals which may arise during the period.

Trusting that the above meets with your requirements, I remain

Very respectfully,

(Sd.) F. J. AGUADO.

Capt. F. J. Aguado,

Master

S.S. "TASIKMALAJA"

30

S.S. "TASIKMALAJA"

PANAMA

TO MANILA:

- | | | |
|----|-------------|------------|
| 1. | First Class | Passengers |
| 3. | 3rd Class | Passengers |

TO DJAKARTA:

25 3rd Class Passengers

The above is based on the assumption that the transportation of the crew is to be made by ship.

(Sd.) J. Ma. SILOS.

Hong Kong 25 March, 1952

(Sd.) F. J. AGUADO.

J. Ma. Silos
Executive Officer

Capt. F. J. Aguado,
Master

S.S. "TASIKMALAJA"

Exhibit PR-1
Letter—
Captain F. J.
Aguado to
Major Pamoe
Rahardjo.
25th March 1952.

Ref. No. 35
Referred to in
Doc. No. 18B
continued.

10

J. Walandouw
Purser.

S.S. "TASIKMALAJA"
PANAMA

CREW LIST OF THE S.S. "TASIKMALAJA"
TO BE RETAINED ON BOARD

| No. | Name | Designation | Nationality | Age |
|-----|------|-------------|-------------|-----|
|-----|------|-------------|-------------|-----|

DECK DEPARTMENT

| | | | | |
|----|---------------|-------------|------------|----|
| 1. | Rubion | Boatswain | Filipino | 36 |
| 2. | Haren | Winchman | Indonesian | 25 |
| 3. | A. Taubara | N. Watchman | Indonesian | 25 |
| 4. | L. Tjong Jung | N. Watchman | Indonesian | 22 |

20 ENGINE DEPARTMENT

| | | | | |
|-----|--------------|--------------------|------------|----|
| 5. | M. Signeran | 1st. Ass. Engineer | Filipino | 58 |
| 6. | Martel. N | 2nd. Ass. Engineer | Filipino | 43 |
| 7. | A. Aviles | 3rd. Ass. Engineer | Filipino | 28 |
| 8. | P. Rezenberg | Electrician | Dutch | 20 |
| 9. | A. Tenalge | Oiler | Filipino | 26 |
| 10. | D. Cabil | Oiler | Filipino | 48 |
| 11. | J. Lewerisa | Oiler | Indonesian | 29 |
| 12. | T. Toba | Fireman | Indonesian | 24 |

Hong Kong March.....1952

30

Jose Ma. Silos
Executive Officer

Capt. F. J. Aguado,
Master

S.S. "TASIKMALAJA"

J. Walandouw
Purser.

Exhibit PR-1
Letter—
Captain F. J.
Aguado to
Major Pamoe
Rahardjo.
25th March 1952.

**S.S. "TASIKMALAJA"
PANAMA**

**CREW LIST OF THE S.S. "TASIKMALAJA"
TO BE SENT HOME**

Ref. No. 35
Referred to in
Doc. No. 18B
continued.

| No. | Name | Designation | Nationality | Age |
|-----|------|-------------|-------------|-----|
|-----|------|-------------|-------------|-----|

DECK DEPARTMENT

| | | | | | |
|-----|--------------|------------------|------------|----|----|
| 1. | H. Seiman | Quartermaster | Indonesian | 33 | |
| 2. | N. Biahima | Quartermaster | Indonesian | 26 | |
| 3. | M. Sahabu | Quartermaster | Indonesian | 22 | |
| 4. | H. Lumisay | Ordinary Seaman | Indonesian | 25 | |
| 5. | Sudjajes | Ordinary Seaman | Indonesian | 27 | |
| 6. | T. Lewel | Ordinary Seaman | Indonesian | 21 | 10 |
| 7. | E. Tjeng Sui | Ordinary Seaman | Indonesian | 23 | |
| 8. | Sudarman | Ordinary Seaman | Indonesian | 28 | |
| 9. | R. Victeria | Ordinary Seaman | Filipine | 20 | |
| 10. | C. Mele | Ordinary Seaman | Filipine | 20 | |
| 11. | P. Segevia | Carpenter | Filipine | 24 | |
| 12. | L. Salgade | Deck Storekeeper | Filipine | 23 | |
| 13. | J. Mandagie | App. Mate | Indonesian | 21 | |
| 14. | M. Pillat | App. Mate | Indonesian | 32 | |

ENGINE DEPARTMENT

| | | | | | |
|-----|----------------|---------|------------|----|----|
| 15. | Jeh. Walandeuw | Oiler | Indonesian | 23 | 20 |
| 16. | Ahmad | Oiler | Indonesian | 29 | |
| 17. | M. Sigar | Oiler | Indonesian | 21 | |
| 18. | D. Sumelang | Oiler | Indonesian | 23 | |
| 19. | L. Nanlehy | Fireman | Indonesian | 33 | |
| 20. | Ali | Fireman | Indonesian | 25 | |
| 21. | R. Walandeuw | Fireman | Indonesian | 20 | |
| 22. | A. Gigil | Fireman | Indonesian | 20 | |
| 23. | R. Sudarsene | Wiper | Indonesian | 20 | |
| 24. | A. Karauwan | Wiper | Indonesian | 20 | |
| 25. | V. Pengilatan | Wiper | Indonesian | 20 | 30 |
| 26. | V. Kaparang | Wiper | Indonesian | 21 | |
| 27. | C. Lembegia | Wiper | Indonesian | 35 | |
| 28. | P. Kaparang | Wiper | Indonesian | 23 | |

Jose Ma. Silos
Executive Officer

Hong Kong, March, 1952.

Capt. F. J. Aguado,
Master
S.S. "TASIKMALAJA"

J. Walandouw
Purser.

*Exhibit PR-1
Letter—
Captain F. J.
Aguado to
Major Pamoe
Rahardjo.
25th March 1952.*

*Ref. No. 35
Referred to in
Doc. No. 18B
continued.*

S.S. "TASIKMALAJA"
PANAMA

CREW LIST OF THE S.S. "TASIKMALAJA"
TO BE SENT HOME

| No. | Name | Designation | Nationality | Age |
|------------------------------|-----------------|--------------------|-------------|-----|
| 10 STEWARD DEPARTMENT | | | | |
| 1. | Kaka | Chief Cook | Indonesian | 35 |
| 2. | Ludu | 2nd Cook | Indonesian | 21 |
| 3. | Siba Hassan | 3rd Cook | Indonesian | 20 |
| 4. | Sigama | Cook Helper | Indonesian | 21 |
| 5. | Kasanudin | Potwasher | Indonesian | 25 |
| 6. | Hassan 3 | — do — | Indonesian | 20 |
| 7. | Mahmud | Saloon Boy 1 | Indonesian | 22 |
| 8. | Hassan 2 | Saloon Boy 2 | Indonesian | 20 |
| 9. | Tjelli | Saloon Boy 3 | Indonesian | 22 |
| 20 10. | Matheos Boke | Saloon Boy 4 | Indonesian | 23 |
| 11. | Lambury | Cabin Boy 1 | Indonesian | 20 |
| 12. | Duhung | Cabin Boy 2 | Indonesian | 20 |
| 13. | Ente Suminte | Cabin Boy 3 | Indonesian | 21 |
| 14. | Rukdin Mesei | Deck Officer Boy | Indonesian | 30 |
| 15. | Jan Pieters | Chief Engineer Boy | Indonesian | 20 |
| 16. | Laura Lamani | Capt. Boy | Indonesian | 22 |
| 17. | Idrus Ishag | Toilet Boy | Indonesian | 20 |
| 18. | Hendrick Tampi | Toilet Boy | Indonesian | 20 |
| 19. | Jan. A. Mandang | Cabin Boy | Indonesian | 20 |

30

Hong Kong March1952

Jose Ma Silos
Executive Officer

Capt. F. J. Aguado,
Master
S.S. "TASIKMALAJA"

J. Walandouw
Purser.

Exhibit PR-2
Letter—
Captain F. J.
Aguado to
F. C. Starr.
15th April 1952.

Ref. No. 36
Referred to in
Doc. No. 18B

Exhibit PR-2
Ref. No. 36
Referred to in
Doc. No. 18B

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Hong Kong 15th April, 1952.

10

Mr. F. C. Starr,
Owner's Representative,
For S.S. "TASIKMALAJA"
Ocean Park Hotel,
Singapore.

Sir:

The Consul General for the Republic of Indonesia has delivered to me a letter which reads as follows:

"As the steamer "Tasikmalaja" has been transferred to the Government of the Republic of Indonesia and is now a property of the Indonesian State, I 20 herewith request you to put the steamer under the Indonesian colours." The Indonesian Consul has set the date for changing the flag as of 16 April, 1952 and to that effect I have made all preparations for the ceremony.

As you are now travelling towards the South I shall send a copy of this letter to Messrs. Ysmael & Co. of Manila, as well as a copy to you to Djakarta.

Very respectfully,
Capt. F. J. Aguado
Master
S.S. "TASIKMALAJA"

Ini surat dibuka Oleh
Major Pamurahardjo

30

dikantor Kem: Pert:

Pada tanggal 25 April 1952

Djam: 10.00 pagi.

(sd) (Illegible)

Exhibit PR-3
 Ref. No. 37
 Referred to in
 Doc. No. 18B

Exhibit PR-3
 Letter—
 Captain F. J.
 Aguado to
 F. C. Starr.
 17th April 1952.

Ref. No. 37
 Referred to in
 Doc. No. 18B

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10

Hong Kong, 17th April, 1952.

Mr. F. C. Starr,
 Owner's Representative,
 For S.S. "TASIKMALAJA"
 Ocean Park Hotel,
 Singapore.

Sir:

I beg to inform you that at 1530 hrs. of the 16th April 1952, the ceremony for changing the flag of the S.S. "TASIKMALAJA" under my command, took place, while the vessel lay alongside the Taikoo Sugar Company pier at North Point,
 20 Hong Kong.

The Consul General for Indonesia and his Staff and a representative of the Consular office for the Republic of Panama of this port were present. All officers and crew members of the vessel were also present.

Very respectfully,

(Sd.) F. J. AGUADO.

Capt. F. J. Aguado,

Master

S.S. "TASIKMALAJA"

30 Ini surat dibuka Oleh

Major Pamurahardjo

Dikantor Kem: Pert:

Pada tanggal 25 April 1952

Djam: 10.00 pagi.

(sd) (Illegible)

Exhibit PR-4
Cable—
Alcobendas,
Silos, Senoran
to Major
Pamoe
Rahardjo.
21st April 1952.
—
Ref. No. 38.
Referred to in
Doc. No. 18B

Exhibit PR-4
Ref. No. 38.
Referred to in
Doc. No. 18B

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Hong Kong 21st April, 1952. 10

L. T. MAJOR PAMOERAHARDJO
MINISTRY OF DEFENCE
DJAKARTA

HEREBY TENDER OUR RESIGNATION EFFECTIVE 30 INSTANT IN PROTEST TO COWARDLY ASSAULT MADE BY KUITERT TO OUR CAPTAIN.

ALCOBENDAS, SILOS, SENORAN.

Paulins, Alcobendas, Ch: Eng:
Jose Ma. Silos, Of: Off:
Mannel Senoran, 1st Ass: Eng:

20

Exhibit KDH-A
Second
Charter
Party
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia.
26th February
1951.
—
Ref. No. 39
Referred to in
Doc. No. 18C

Exhibit KDH-A
Ref. No. 39
Referred to in
Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

CHARTER PARTY

30

It is this day mutually agreed between:

Juan Ysmael & Co., Manila, for this purpose represented by her lawful Attorney, Mr. Frank C. Starr, OWNERS of the Steamer called "SS CHRISTOBAL", formerly called the U.S. Army Transport "SS HALEAKALA", and presently with a pending request for a change of new name into "SSTASIKMALAJA", of 3679 gross tons, 1546 net tons, classed (American Bureau pending) indicated horse-power 5000 and fully loaded capable of steaming about 16 knots an hour in good weather and smooth water on a consumption of about 45 tons bunker fuel per day.

and

40

The Ministry of Defence of the Republic of Indonesia, for this purpose represented by Major Soekardjo, Director of the D.P.A.P. D.L.L.T. CHARTERERS.

Article I

OWNERS AGREE to let, and CHARTERERS agree to hire Steamer for a period of three (3) calendar months.

Charter hire from the time (not a Sunday or a legal Holiday, unless taken over) the vessel arrives, or is afloat, at any port so directed by CHARTERERS = such port in Indonesian waters = beginning on the 1st day of April, 1951.

Article II

Steamer to be employed by the Indonesian Army for the transport of troops and their equipments to any part of the world, except, those ports under
10 communist authority, where she can safely lay afloat.

Article III

The CHARTERERS to pay as hire:

= U.S.\$35,000.00 = per calendar month until her re-delivery to the OWNERS. Payment of hire to be made in advance for three months (US\$105,000.-) by telegraphic transfer to the AMERICAN TRUST COMPANY at Sacramento, California, U.S.A. for deposit to the account of Mr. Frank C. Starr.

Article IV.

In the event the CHARTERERS desire to purchase the Vessel the sum of
20 US\$450,000.- should be deposited to the above mentioned account in the aforementioned bank in the United States.

The OWNERS agree that one-half of the previous charter fee paid for the months of Jan-March can be applied by CHARTERERS against the above purchase price if the vessel is bought before 15th March, 1951. OWNERS furthermore agree that the Philippine crew now serving on board the vessel shall remain on board for a period of 100 days, for instruction purposes to Indonesian personnel, free of charge to the CHARTERERS providing the vessel is purchased before 15th March, 1951. The salaries of the Philippine crew will be for the account of the
30 OWNERS.

Article V.

Steamer to be re-delivered on the expiration of the Charter period in the same good order as when delivered to the CHARTERERS (fair wear and tear excepted) at any port in Indonesia where the vessel can lie safely afloat.

Article VI.

There will be a Commanding Officer of the Troops (COT), appointed by the CHARTERERS, who will have full charge of maintaining the order and interest of the troops on board the vessel at all times.

Article VII.**FEEDING OF TROOPS:**

40 The CHARTERERS to deposit to the account of Mr. Frank C. Starr, at the Chartered Bank, Djakarta, the sum of Rupiahs TWO HUNDRED FIFTY THOUSAND to be used by OWNERS to supply the Troops on board Vessel at all times (3 meals per day) with food and rations necessary for the feeding of Troops on any Troop Transport operating in the world.

Exhibit KDH-A
Second
Charter
Party
between Juan
Ysmael & Co.
Inc. and the
Government of
the Republic
of Indonesia.
26th February
1951.

Ref. No. 39
Referred to in
Doc. No. 18C
continued.

Exhibit KDH-A
 Second
 Charter
 Party
 between Juan
 Ysmael & Co.
 Inc. and the
 Government of
 the Republic
 of Indonesia.
 26th February
 1951.

Ref. No. 39
 Referred to in
 Doc. No. 18C
 continued.

OWNERS AGREE TO THE FOLLOWING TERMS AND CONDITIONS REGARDING RECEIPT OF THE ABOVE AMOUNT FOR FEEDING OF TROOPS ON BOARD VESSEL:

- (1) Monthly invoices, signed by the Commanding Officer of Troops on board Vessel, shall be sent to the office of the DIRECTOR DLLT, Djakarta, said invoices, pertaining to the purchasing of food and supplies.
- (2) OWNERS agree to feed the Troops based on the following agreed cost per day:
 - for 1 (one) Officer f10 = for three meals per day.
 - for 1 (one) Soldier f 6 = for three meals per day. 10
 - (3) for 1 (one) Guest f 8 = for three meals per day.

OWNERS AGREE THAT CHARTERERS MAY RETAIN VESSEL IF SETTLEMENT OF THE ACCOUNTS FOR THE FEEDING OF TROOPS HAVE NOT BEEN COMPLIED WITH.

Based upon the above rate of feeding at the expiration of the Charter-Period either the OWNERS shall return that portion of the above amount advanced for the feeding of troops, after calculating per invoices, (or) CHARTERERS shall reimburse OWNERS any amount in excess spent by OWNERS for feeding of the Troops on board vessel after calculating upon expiration of the THREE MONTHS CHARTER PERIOD. 20

Article VIII.

So OWNERS & CHARTERERS are agreed in this Charter-party to submit to be INTERNATIONAL UNIFORM TIME CHARTER known as the "BALTIME CHARTER CONTRACT."

Article IX.

Any dispute arising under the Charter to be referred to arbitration in Djakarta, one arbitrator to be nominated by the OWNERS and the other by the CHARTERERS, and an Umpire by the said Arbitrators, and the award of the said Arbitrators or Umpire shall be final and binding upon both parties. If the Arbitrators of the one party unduly prolong the case, the other party to have the 30 right to claim award given within a certain fixed period.

Article X.

SIGNATURES:

Therefore the above terms and conditions upon both parties hereby become a mutual understanding between OWNERS & CHARTERERS as of the fixing of the signatures of both parties below.

Done at Djakarta
 (in four copies)

CHARTERERS:

(Sd.) PAMOE 26/11/51
 (Major Soekardjo)
 (Sd.) Pamoe Rahardjo
 (Major)

OWNERS: 40
 (Sd.) FRANK C. STARR
 (Frank C. Starr)

WITNESSES:
 (Sd.) ILLEGIBLE.

Exhibit KDH-B
 Ref. No. 40
 Referred to in
 Doc. No. 18C

Exhibit KDH-B
 Third Charter
 Party between
 Juan Ysmael
 & Co. Inc.
 and the
 Government
 of the
 Republic of
 Indonesia.
 25th April 1951.
 —
 Ref. No. 40
 Referred to in
 Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10

ORIGINAL

CHARTER PARTY

It is this day mutually agreed between:

Juan Ysmael & Co., Manila, for this purpose represented by her lawful Attorney, Mr. Frank C. Starr, OWNERS of the Steamer called "S.S. CHRISTOBAL", formerly called the U.S. Army Transport "S.S. HALEAKALA" and presently with a pending request for a change of new name into the "S.S. TASIKMALAJA", of 3679 gross tons, 1546 net tons, classed (American Bureau pending) with indicated horsepower of 500 and fully loaded capable of steaming about 16 knots an hour in good weather and smooth water on a consumption of
 20 about 45 tons bunker fuel per day.

and

The Ministry of Defence of the Republic of Indonesia, for this purpose represented by Major Soekardjo, Director of the D.P.A.P. D.L.L.T. CHARTERERS.

Article 1.

OWNERS agree to let, and CHARTERERS agree to hire Steamer for a period of six (6) calendar months beginning on the 1st day of July, 1951.

Article 2.

Steamer to be employed by the Indonesian Army for the transport of troops and their equipments to any part of the world, except, those ports under
 30 communist authority, where she can lay safely afloat.

Article 3.

From the sum of \$210,000, representing the charter cost for six months (July-December) the amount of \$45,000 shall be deducted for payment to the Soerdok at Soerabaja as soon as possible. The balance of the charter fee can be paid on or before the 1st day of July, 1951.

Article 4.

In the event the CHARTERERS desire to purchase the vessel for \$450,000 the above charter cost of \$210,000 may be applied against the purchase price of the vessel, during the charter period (July-December), thus the cost of the vessel
 40 would be only \$240,000. This enables an inspection commission to have plenty of time to inspect the vessel for purchase if desired.

Exhibit KDH-B
Third Charter
Party between
Juan Ysmael
& Co. Inc.
and the
Government
of the
Republic of
Indonesia.
25th April, 1951.

Ref. No. 40
Referred to in
Doc. No. 18C
continued.

Article 5.

There will be a Commanding Officer of the Troops (COT) appointed by the Charterers, who will have full charge of maintaining order and interest of the troops on board the vessel at all times.

Article 6.

Steamer to be re-delivered on the expiration of the Charter period in the same good order as when delivered to the Charterers (fair wear and tear excepted) at any port in Indonesia where the vessel can lie safely afloat.

Article 7.

In the event Charterers purchase vessel the Insurance by Lloyds Underwriters 10 in the amount of \$600,000 shall be transferred free of charge to Charterers by Owners.

Article 8.

So Owners & Charterers are agreed in this Charter Party to submit to the INTERNATIONAL UNIFORM TIME CHARTER known as the "Baltim Charter Contract."

Article 9.

Any dispute arising under the Charter Party to be referred to arbitration in Djakarta, one arbitrator to be nominated by the owners and the other by the Charterers, and an Umpire shall be appointed by the said arbitrators, and the 20 award of the said arbitrators or Umpire shall be final and binding upon both parties. If the Arbitrators of the one party unduly prolong the case the other party to have the right to claim award given within a certain fixed period.

Article 10.

Therefore the above terms and conditions upon both parties hereby become a mutual understanding irrevocably binding, between Owners & Charterers as of the fixing of the signatures of both parties below.

DONE AT DJAKARTA
(in duplicate)

4/25/51.

30

CHARTERERS

OWNERS

(Sd.) ILLEGIBLE
Soekardjo, Major
25/IV/51.

(Sd.) FRANK C. STARR
Frank C. Starr

WITNESSES

(Sd.) PAMOE

&

(Sd.) ILLEGIBLE

ORIGINAL

Exhibit KDH-C
Ref. No. 41
Referred to in
Doc. No. 18C

*Exhibit KDH-C
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
23rd April 1952.*

Ref. No. 41
Referred to in
Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

10

Hong Kong, 23rd April, 1952.

The Consul General,
Republic of Indonesia,
HONG KONG.

Sir,

Pursuant to our conversation in the afternoon of the 21st instant and yesterday being a holiday as you informed me, I hereby tender my resignation as Master of the S.S. "TASIKMALAJA", effective as soon as you name a substitute.

20 The reasons for my resignation are the assault suffered by me from Mr. Kuitert which have resulted in contusions, the extent of which will be known in the next day or two. The next reason is the uselessness to continue serving on the ship in conjunction with your Mr. Kuitert to avoid further trouble which may again result in physical injuries.

Very respectfully,
(Sd.) Capt. F. J. AGUADO,
Master,
S/S "Tasikmalaja".

Exhibit KDH-C1
Ref. No. 42
Referred to in
Doc. No. 18C

*Exhibit KDH-C1
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
23rd April 1952.*

30

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Ref. No. 42
Referred to in
Doc. No. 18C

Hong Kong, 23rd April, 1952.

The Consul General,
Republic of Indonesia,
HONG KONG.

40 Sir,

In connection with my letter to you of 19 April in connection with the theft perpetrated on board and pursuant to the conversation had with you the other day in this respect I beg to inform you that the investigator officer who investigated

Exhibit KDH-C1
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
23rd April 1952.

the suspected parties on board could not at the time pin anything on the suspects, but has promised to follow up the case by inspection of the shops which may have possibly purchased the stolen goods and then find out who was the person responsible for having sold them.

For the above purpose, the Chief Officer has furnished a sample of the stolen goods to properly identify them.

Ref. No. 42
Referred to in
Doc. No. 18C
continued.

As soon as there is any further report on the subject same will be reported to you.

Very respectfully.

(Sd.) Capt. F. J. AGUADO,
Master,
S/S "Tasikmalaja".

10

Exhibit KDH-C2
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
24th April 1952.

Exhibit KDH-C2
Ref. No. 43
Referred to in
Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

20

Ref. No. 43
Referred to in
Doc. No. 18C

Hong Kong, 24th April, 1952.

The Honourable Consul General,
Republic of Indonesia,
HONG KONG.

Sir,

In compliance with your request, I herewith attach a somewhat detailed repair list required by the S.S. "TASIKMALAJA", which to my opinion and that of the Chief Engineer would allow the vessel to safely negotiate the distance to Djakarta.

30

The Deck Department also requires that the telemotor and its system be overhauled. Also the only wooden boat now on board should be overhauled and refitted for the trip.

I trust that the above is clear and may be useful in the solution of the ship's problem and should you require further information, I shall be at your disposal when called upon to do so.

Very respectfully,

(Sgd.) F. J. AGUADO,
Master,
S.S. "Tasikmalaja".

40

Refer to the list furnished to Chief Engineer thru 1st Asst. Engr. on 19th April, 1952.

Hong Kong, 24th April, 1952.

*Exhibit KDH-C2
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
24th April 1952.*

*Ref. No. 43
Referred to in
Doc. No. 18C
continued.*

BOILERS

Item No.

1. Leave out to be executed in Surabaya.
2. — do —
3. To remove and replace after retubing, all portable doors as required by the work on item No. 5.
- 10 4. Renew and replace only those that have been opened for inspection made for quotation purposes.
5. Work to be completely made at Hong Kong.
6. Only the plates damaged to be faired or repaired.
7. Overhaul and repairs to be done to those doors absolutely requiring working on.
8. This item to be done in full.
9. Asbestos to be renewed only on the furnaces the brickwork of which are to be repaired temporarily.
10. Work to be executed.
- 20 11. Not to be done at all.
12. Repair the two furnaces that require working on.
13. No work to be done, but as material obtainable here is superior to that manufactured in Surabaya, it is recommended that the ship's requirements be purchased here and taken to Indonesia.
14. No work on this item to be done here except the repair of the two damaged furnaces requiring repairs.
15. To overhaul 8 water gauge fittings. If found not too good to repair, purchase locally the fittings, which can be obtained here. All other boiler fittings may be attended to by engine crew while other repairs going on.

30 BLOWERS

Overhaul starters on four motors (electric).

FUEL OIL HEATERS

No work to be done locally.

Exhibit KDH-C2 BURNERS

Letter—
 Captain F. J.
 Aguado to
 the Consul-
 General of
 the Republic
 of Indonesia.
 24th April 1952.

To manufacture as per sample six (6) flexible tube connections for burners. If flexible material not obtainable to manufacture same in form of sample out of seamless copper tubing of the size of sample.

MAIN ENGINE

Ref. No. 43
 Referred to in
 Doc. No. 18C
 continued.

No work required at present. Broken piston ring found on LP cylinder replaced by used spare one.

AIR PUMP

Overhaul as required after opening.

CONDENSER

10

Clean, overhaul and test.

BOILER FEED PUMPS

These pumps are to be repaired on the water side. Cylinder rebored and piston changed. Overhaul other parts and repair as found necessary. These require complete work.

Exhibit KDH-C3
 Letter—
 Captain F. J.
 Aguado to
 the Consul-
 General of
 the Republic
 of Indonesia.
 27th April 1952.

Ref. No. 44
 Referred to in
 Doc. No. 18C

Exhibit KDH-C3
 Ref. No. 44
 Referred to in
 Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

20

Hong Kong, 27th April, 1952.

The Consul General,
 Republic of Indonesia,
 HONG KONG.

Sir,

At about 4.30 p.m. on the 26th April, Mr. N. Pavia, Chief Steward of the 30 S.S. "Tasikmalaja" reported that one of his store-rooms, the former jail, had been opened, the padlock and ring having been tampered with. Upon investigation of its contents, it has been found out that sixteen tins of ground coffee had been lost. Upon inspection of the padlock, same had been hammered opened and the ring sawn off.

The Chief Steward was questioned by the undersigned and it has been disclosed that the coffee with canned sardines were kept in this store-room, but only the coffee has been lost.

As the undersigned was going ashore to see the Chief Engineer who is in the hospital regarding the fuel oil, the matter was reported to the Police.

Attached please find Report of the Chief Steward, a copy of which has been given to the Police.

*Exhibit KDH-C3
Letter—
Captain F. J.
Aguado to
the Consul-
General of
the Republic
of Indonesia.
27th April 1952.*

*Ref. No. 44
Referred to in
Doc. No. 18C
continued.*

As this is the third time that losses have been reported the undersigned wishes to request authority to engage shore guards with Police licence to guard on board and avoid further recurrence.

It is also important to have work done on the existing store-rooms to make them safer.

Very respectfully,

(Sgd.) Capt. F. J. AGUADO,
Master,
S.S. "Tasikmalaja".

Hong Kong, April 27th, 1952.

Sir,

The undersigned, Chief Steward of S.S. "Tasikmalaja" hereby declare that on Saturday, April 26, 1952 at about 2 p.m. I discovered that the 16 tins of Java Coffee in my Store Room are missing. The first person I question was the Chief Cook by the name of Kaka, Indonesian citizen, but he does not seem to know about it. I have searched also the engine rooms but found nothing. I remember that these tins of coffee were still in the same Store Room when the Ship was still at Taikoo Docks. In my opinion these tins of Coffee were stolen during our anchorage opposite the Kowloon Dry Docks where we are now anchored. The padlock was hammered forced open.

Respectfully yours,
(Sgd.) NORBERTO A PAVIA,
Chief Steward.

Captain F. J. Aguado,
Master S.S. "Tasikmalaja",
HONG KONG.

| DEBETNOTA VOOR OPDRACHTGEVER | | Exhibit KDH-D Telegraphic Transfer Advice of the Java Bank, Djakarta for US\$90,000.00. 6th November 1950. | |
|---|-----------|--|---------------------|
| Uit te betalen bedrag (zie boven) a | 342.900,— | | |
| 3.81 | 342,90 | | |
| Deviezenprovisie | | Ref. No. 45 Referred to in Doc. No. 18C continued. | |
| Kosten betaalbaarstelling | | | |
| Applicatiekosten | | | |
| Kosten Deviezeninstituut | | | |
| Zegels | | | |
| Porti | 1,50 | | |
| 10 Seinkosten | 25,— | | |
| Deviezen Cert. No. 123/V.17068 vide debetnota W. Z. 123/18227. | | | |
| TOTAAL in het DEBET van Uw 3 X rekening Val | | | f 343.269,40 |

Exhibit KDH-D1
Ref. No. 46
Referred to in
Doc. No. 18C

20 **Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.**

Exhibit KDH-D1
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$105,000.00.
14th March
1951.
Ref. No. 46
Referred to in
Doc. No. 18C

DE JAVASCHE BANK Telegrafische overmaking/telegraphic transfer DJAKARTA

March 14th, 1951.

Heden Gaven wij ingevolge Uw verzoek telegrafisch de onderstaande betalingsopdracht:

To-day we issued by cable the following payment-order according to your request:

| | | T.T.123/10054 |
|---|----|---|
| 30 AAN | TO | Ten gunste van In favour of |
| DJAWATAN PERBENDAHARAAN PUSAT KEMEN TERIAN PERTAHANAN = DJAKARTA = | | Mr. Frank C. Starr, c/o American Trust Company at Sacramento, California. |

Exhibit KDH-D1
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$105,000.00.
14th March
1951.

Ref. No. 46
Referred to in
Doc. No. 18C
continued.

| Bedrag in letters | Amount in letters | In cijfers | In figures |
|---|-------------------------------------|------------------|------------|
| US\$ One Hundred Five Thousand only | | US\$105.000.— | |
| Rekening Account | Deviezenvergunning Exchange License | Applic. No. | |
| Ours with you | 9/29676/900 Index No. 9 dd.10/3-'51 | | |

Bijzonderheden

Details

Charter costs "Tasikmalaja" for three months

(May/July 1951)

Payment against delivery of invoices in six fold

| Uit te betalen door | To be paid out by | Niet verhandelbaar | Not negotiable |
|---------------------|--|--------------------|-----------------|
| | WELLS FARGO BANK & UNION TRUST COY, = <u>SAN FRANCISCO</u> = | DE JAVASCHE BANK | 10 |
| | | (Sd.) Illegible | (Sd.) Illegible |

JB.531—250 x 25/6—8'50 R.38658

DEBETNOTA VOOR OPDRACHTGEVER

| | | |
|--|------|---------------------|
| Uit te betalen bedrag (zie boven) a | 3.81 | 400.050.— |
| Deviezenprovisie | 1%o | 400.05 |
| Kosten betaalbaarstelling | | |
| Applicatiekosten | | |
| Kosten Deviezeninstituut | | 20 |
| Zegels | | |
| Porti | | 1.75 |
| Seinkosten | | 40.— |
| Deviezen Cert. No. vide debetnota No. WZ.123/41010 | | |
| TOTAAL in het DEBET van Uw 2 x rekening Val | | f 400.491.80 |

ref. br. D.P.P.K.P. No. 1011/B/51/k dd. 12 Maart 1951.

Exhibit KDH-D2
Ref. No. 47
Referred to in
Doc. No. 18C

Exhibit KDH-D2
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$165,000.00.
29th June 1951.

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

Ref. No. 47
Referred to in
Doc. No. 18C

10 . . . Oei

3208/10-7-51.

DE JAVASCHE BANK Telegrafische overmaking/telegraphic transfer DJAKARTA,

June 29th, 1951.

Heden gaven wijingevolge Uw verzoek telegrafisch de
onderstaande betalingsopdracht:

To-day we issued by cable the following payment-order according to your
request:

T.T. 124/456

| AAN | TO | Ten gunste van | In favour of |
|-----|---|---|--------------|
| 20 | DJAWATAN PERBENDAHARAAN PUSAT KEMENTERIAN PERTAHANAN, = DJAKARTA = | American Trust Company Sacramento in favour of Mr. Frank C. Starr. | |

| Bedrag in letters | Amount in letters | In cijfers in figures |
|---|---|-----------------------|
| US\$ One Hundred Sixty Five Thousand only | | US\$165.000.— |
| Rekening Account | Deviezenvergunning Exchange License | Applic. No. |
| Ours with you | 9/32312/900/D. Index No. 9 dd. 29/6-'51 | |

Bijzonderheden

Details

Chartercosts S.S. "Tasikmalaja" for six months
from July 1, till December inclusive

| | | |
|----|--|-----------------------------------|
| 30 | Uit te betalen door To be paid out by | Niet verhandelbaar Not negotiable |
| | WELLS FARGO BANK & UNION TRUST COY, = SAN FRANCISCO= | DE JAVASCHE BANK |

JB. 531—250 x 25/6—12-'50

(Sd.) Illegible

(Sd.) Illegible

Exhibit KDH-D2
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$165,000.00
29th June 1951.

Ref. No. 47
Referred to in
Doc. No. 18C
continued.

| DEBETNOTA VOOR OPDRACHTGEVER | | |
|--|------|--------------|
| Uit te betalen bedrag (zie boven) a | 3.81 | 628.650.— |
| Deviezenprovisie | 1%o | 628.65 |
| Kosten betaalbaarstelling | | |
| Applicatiekosten | | |
| Kosten Deviezeninstituut | | |
| Zegels | | |
| Porti | | 1.75 |
| Seinkosten | | 40.— 10 |
| Deviezen Cert. No. vide debetnota No. WZ.124/36266 | | |
| TOTAAL in het DEBET van Uw 2 x rekening Val | | f 629.320.40 |

ref. Uw schrijven dd.29 Juni 1951 No. 2236/B/51/k.

Exhibit KDH-D3
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$210,000.00.
10th December
1951.

Ref. No. 48
Referred to in
Doc. No. 18C

Exhibit KDH-D3
Ref. No. 48
Referred to in
Doc. No. 18C

Exhibit to Affirmation Struck Out from the Records by Order of the Honourable the Puisne Judge Mr. Justice Courtenay Walton Reece on 15th September, 1952, Now Included on Insistence of the Government of the Republic of Indonesia, But Objected to by Juan Ysmael & Company Incorporated.

20

MD/Oei

DE JAVASCHE BANK Telegrafische overmaking/telegraphic transfer DJAKARTA,

December 10th, 1951.

Heden gaven wij ingevolge Uw verzoek telegrafisch de onderstaande betalingsopdracht:

To-day we issued by cable the following payment-order according to your request:

T.T. 124/DKT/1337. 30

| AAN | TO | Ten gunste van In favour of |
|---|----|---|
| DJAWATAN PERBENDAHARAAN PUSAT KEMENTERIAN PERTAHANAN, = DJAKARTA = | | The American Trust Company, Sacramento for account of Mr. Frank C. Starr. |

| | | |
|--|-------------------|-----------------------|
| Bedrag in letters | Amount in letters | In cijfers in figures |
| <hr/> | | |
| US\$ Two Hundred Ten Thousand only | | US\$210.000.— |

*Exhibit KDH-D3
Telegraphic
Transfer
Advice of the
Java Bank,
Djakarta for
US\$210,000.00.
10th December
1951.*

| | | |
|------------------|---------------------------------------|------------------|
| Rekening Account | Deviezenvergunning Exchange License | Applic. No. |
| Ours with you | 9/35205/900/E Index No. 9 dd.8/12-'51 | |

Ref. No. 48
Referred to in
Doc. No. 18C
continued.

Bijzonderheden

Details

Chartercosts of S.S. "Tasikmalaja" for six months
(January) 1952 up to June 1952 inclusive

| | |
|---|---|
| Uit te betalen door To be paid out by | Niet verhandelbaar Not negotiable |
| 10 WELLS FARGO BANK & UNION TRUST COY, = SAN FRANCISCO = | DE JAVASCHE BANK (Sd.) Illegible (Sd.) Illegible |
| J.B. 531—250 x 25/6—8'50 R. 38658. | |

DEBETNOTA VOOR OPDRACHTGEVER

| | | |
|---|------|--------------|
| Uit te betalen bedrag (zie boven) a | 3.81 | 800.100.— |
| Deviezenprovisie | 1‰ | 800.10 |
| Kosten betaalbaarstelling | | |
| Applicatiekosten | | |
| Kosten Deviezeninstituut | | |
| 20 Zegels | | |
| Porti | | 1.75 |
| Seinkosten | | 30.— |
| Deviezen Cert. No. vide debetnota No. WZ. 124/47592 | | |
| TOTAAL in het DEBET van Uw 2 x rekening Val | | f 800.931.85 |

Ref. Uw schrijven dd. 10/12-'51 No. 3703/B/51/k.

Exhibit A1
Power of
Attorney—
Juan Ysmael &
Co. Inc. to
Khalil Khodr.
16th June 1952.

Republic of
the Philip-
pines City of
Manila

Exhibit A1
Ref. No. 49
Referred to in
Doc. No. 19

Ref. No. 49
Referred to in
Doc. No. 19

OFFICE OF THE PRESIDENT OF THE PHILIPPINES

I, JOSE P. DE LEON, Assistant, Executive Secretary, DO HEREBY CERTIFY that Ramon Alonso, whose name appears signed to the attached certificate, was at the time of signing the said certificate, Assistant Clerk, CFI-Manila, Philippines, duly appointed and qualified and was, as such Assistant Clerk of Court duly authorized by the laws of the Philippines to sign the same, and that 10 the full FAITH AND CREDIT ARE AND OUGHT TO BE given to his official acts; and I FURTHER CERTIFY that I am well acquainted with his handwriting and verily believe the sign true and seal affixed to the said certificate are genuine.

IN WITNESS WHEREOF, I have hereunto set my hand at Manila, Philippines, this 17th day of June, A. D. 1952.

(Sd.) ILLEGIBLE,
Assistant Executive Secretary.

I, BERNARD JOSEPH WALL, British Vice-Consul at Manila Certify that the above signature is that of Jose P. de Leon, of Assistant Executive Secretary.

This 17th day of June 1952, at
British Legation
Consular Section
Manila

20

(Sd.) ILLEGIBLE,
BRITISH VICE-CONSUL

**REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA**

I, RAMON ALONSO, Assistant, Clerk of Court, Court of First Instance of Manila, do hereby certify that

EUSEBIO C. ENCARNACION

30

whose name is subscribed to the acknowledgment written at the bottom of the last page of the annexed SPECIAL POWER OF ATTORNEY consisting of two (2) pages, executed by Magdalena H. Hemady in her capacity as President of Juan Ysmael & Co., Inc., in favour of Khalil Khodr, and Identified as Doc. No. 1012, page 97, Book XXII, Series of 1952, was, at the time of signing the same, a notary public acting in and for the City of Manila, duly commissioned and sworn and qualified to act as such; that he has on file in my office copy of his appointment and qualification as a notary public in and for the City of Manila, and that I have compared the aforesaid signature of such officer with his signature in my office and believe that the signature to the annexed instrument is genuine.

40

IN WITNESS WHEREOF, I have hereunto set my hand affixed the Official seal of the Court this 17th day of June, 1952.

(Sd.) RAMON ALONSO,
Assistant Clerk Of Court.

O. R. No. 29347
Date June 17, 1952
Amount paid \$1.00.

Exhibit A1
Power of
Attorney—
Juan Ysmael
& Co. Inc. to
Khalil Khodr.
16th June, 1952.

Ref. No. 49
Referred to in
Doc. No. 19
continued.

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

10 That JUAN YSMAEL & CO., INC., a domestic Filipino corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with office and postal address at 217-221 Consolidated Investments Building, Plaza Goiti, Manila, Philippines, represented herein by its President, Mrs. MAGDALENA H. HEMADY, with full powers to do so as per attached Resolution of the Board of Directors of the company, which resolution is made a part hereof, has made, constituted and appointed, and by these presents, does hereby MAKE, CONSTITUTE and APPOINT, Mr. KHALIL KHODR, a Lebanese, of legal age, with residence at No. 20 Broadway, New Manila, Quezon City, Philippines, its true, sufficient, and lawful attorney, for it and in its name, place and stead and its use
20 and benefit:

To bargain, sell, lease, transfer and convey, to any person or persons, entity or entities, and for any sum of money, or other consideration as to him may seem most advantageous and beneficial to the company, the vessels exclusively owned by it, at present known as S/S "TASIKMALAJA", ex "Christobal", ex "Haleakala", and the M/V "FS-148", both vessels under charter to the Indonesian Government, the first at present in Hongkong waters undergoing repairs and the latter in Indonesian waters;

To ask, demand, sue for, collect and receive all sums of money, debts, accounts, interests, and other demands whatsoever which are or shall become owing
30 and payable to JUAN YSMAEL & CO., INC., by reason of, or arising from the charter and/or sale of the abovementioned vessels, and in general, to have full and complete charge and management of the same, and to do any act and thing in relation thereto which to him may seem advisable and expedient, pending the sale thereof; and

To prosecute and defend any and all suits, actions and other proceedings in the courts, tribunals, departments and offices of the Government concerned, regarding the abovementioned vessels, and to terminate compromise, settle and adjust the same and the subject-matter thereof;

HEREBY GIVING AND GRANTING unto its said Attorney-in-Fact full
40 power and authority to do and perform any and every act and thing whatever requisite or necessary or proper to be done in and about the premises, as fully to

Exhibit A1
Power of
Attorney—
Juan Ysmael
& Co. Inc. to
Khalil Khodr.
16th June, 1952.

all intents and purposes as the undersigned might or could do if personally present and acting in person, and **HEREBY RATIFYING AND CONFIRMING** all that the said Attorney shall lawfully do or cause to be done under and by virtue of these presents.

Ref. No. 49
Referred to in
Doc. No. 19
continued.

IN WITNESS WHEREOF, JUAN YSMAEL & CO., INC., through its President, MRS. MAGDALENA H. HEMADY, has signed this instrument at the City of Manila, Philippines, this 16th day of June 1952.

JUAN YSMAEL & CO., INC.

By: (Sd.) M. HEMADY
MAGDALENA H. HEMADY 10
President.

SIGNED in the PRESENCE OF:
(Sd.) ILLEGIBLE.

Republic of
the Philip-
pines City of
Manila

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) SS.

Juan Ysmael & Co.
(Sd.) M. Hemady,
President & Gen. Manager.

At the City of Manila, Philippines, this 16th day of June 1952, A.D., before me, the undersigned Notary Public in and for the said City, personally appeared MRS. MAGDALENA H. HEMADY, with Residence Certificate No. A—4798099, 20 issued at Quezon City on May 10, 1952, in her capacity as President of JUAN YSMAEL & CO., INC., known to me and to me known to be the same person who executed the foregoing instrument, consisting of two (2) pages only, including this page, and purporting to be a Special Power of Attorney in favour of MR. KHALIL KHODR, and she acknowledged to me that the same is of her own free voluntary act and deed of the corporation which she represents.

MRS. MAGDALENA H. HEMADY exhibited to me also the Residence Certificate of JUAN YSMAEL & CO., INC., No. C-733, issued at Manila on January 21, 1952, and C1-2663, issued at Manila on May 15, 1952.

Each of the pages composing this instrument has been signed by the 30 executor hereof and by the two witnesses to her signature and sealed by my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand and caused my Notarial Seal to be affixed hereon at the place and date first abovementioned.

(Sd.) ILLEGIBLE
NOTARY PUBLIC
Until December 31, 1952.

(Sd.) Illegible.
(Sd.) Illegible.

DOC. NO. 1013
Page No. 97
Book No. XXII
Series of 1952.

REPUBLIC OF THE PHILIPPINES
CITY OF MANILA

Exhibit A1
Power of
Attorney—
Juan Ysmael
& Co. Inc. to
Khalil Khodr.
16th June, 1952.

OFFICE OF THE PRESIDENT OF THE PHILIPPINES

Ref. No. 49
Referred to in
Doc. No. 19
continued.

I, JOSE P. DE LEON, Assistant, Executive Secretary DO HEREBY CERTIFY that Ramon Alonso, whose name appears signed to the attached certificate was at the time of signing the said certificate, Assistant Clerk, CFI, Manila, Philippines, duly appointed and qualified and was, at such Assistant Clerk of Court, duly authorized by the laws of the Philippines to sign the same, and that the full faith and credit are and ought to be given to his official acts; and I
10 FURTHER CERTIFY that I am well acquainted with his handwriting and verily believe the sign true and seal affixed to the said certificate are genuine.

IN WITNESS WHEREOF, I have hereunto set my hand at Manila, Philippines, this 17th day of June, A. D. 1952.

(Sd.) ILLEGIBLE

(O V E R)

Assistant Executive Secretary

I, BERNARD JOSEPH WALL, British Vice-Consul at Manila certify that the above signature is that of Jose P. de Leon, of Assistant Executive Secretary.

This 17th day of June 1952 at

British Legation
20 Consular Section
MANILA

(Sd.) ILLEGIBLE

BRITISH VICE-CONSUL

REPUBLIC OF THE PHILIPPINES

COURT OF FIRST INSTANCE OF MANILA

I, RAMON ALONSO, Assistant Clerk of Court, Court of First Instance of Manila, do hereby certify that

EUSEBIO C. ENCARNACION

whose name is subscribed to the oath written at the bottom of the annexed
30 MEETING OF THE BOARD OF DIRECTORS OF JUAN YSMAEL & CO., INC., signed by B. G. Manalac, as Secretary of the Board of Directors, and attested by Magdalena H. Hemady, as Chairman, and identified as Doc. No. 1011, Page 97, Book XXII, Series of 1952.

Was, at the time of signing the same, notary public acting in and for the City of Manila, duly commissioned and sworn and qualified to act as such, that he has on file in my office copy of his appointment and qualification as a notary public in and for the City of Manila, and that I have compared the aforesaid signature of such officer, with his signature in my office and believe that the signature to the annexed instrument is genuine.

Exhibit A1
Power of
Attorney—
Juan Ysmael
& Co. Inc. to
Khalil Khodr.
16th June, 1952.

Ref. No. 49
Referred to in
Doc. No. 19
continued.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Court this 17th day of June, 1952.

(Sd.) RAMON ALONSO
Assistant Clerk of Court

O. R. No. 29347
Date June 17, 1952
Amount Paid \$1.00

Meeting of the Board of Directors of JUAN YSMAEL & CO., INC., at the Company office in Manila, on June 6th, 1952, at 5:30 P.M.

Present:

10

Magdalena Hemady
Atty. Felipe Ysmael
Carlos Ysmael
Felipe Ysmael, Jr.

The Chairman brought up the matter of the proposed sale of the s.s. "Tasikmalaja" (ex ss. "Christobal" ex SS "Haleakala") the FS-148 and any other vessel which now or may hereafter belong to Juan Ysmael & Co., Inc., and after due deliberations and upon motion duly seconded, it was—

"Resolved that the s/s "Tasikmalaja", the FS/148 and any other vessel now owned by or which may hereafter be owned by Juan Ysmael & Co., Inc., 20 be sold or chartered, and that for this purpose, a Power of Attorney be executed by the Company in favor of Mr. FELIPE YSMAEL, JR., and/or Mr. Khalil Khodr of this office, at such terms, price and conditions as they may deem proper and convenient.

"Resolved further that the President be, as she hereby is, empowered to sign, execute and deliver all such documents and instruments as may be necessary to effectuate the foregoing purposes."

Upon motion duly seconded, the meeting was adjourned.

(Sd.) B. G. MANALAC
Secretary

30

ATTEST (Sd.) M. HEMADY
MAGDALENA H. HEMADY
Chairman

SUBSCRIBED AND SWORN to before me this 16th day of June, 1952, by Mr. B. G. Manalac, who exhibited to me his Residence Certificate No. A-0075133, issued at Manila on January 15, 1952 and by Magdalena H. Hemady, who exhibited to me also her Residence Certificate No. A—4798099, issued at Quezon City on May 10, 1952.

(Sd.) ILLEGIBLE
NOTARY PUBLIC
Until December 31, 1952.

40

Doc. No. 1012
Page No. 97
Book No. XXII
Series of 1952.

Exhibit KK-A1
 Ref. No. 50
 Referred to in
 Doc. No. 20

Exhibit KK-A1
 Extract of
 By-Laws of
 Juan Ysmael
 & Co. Inc.

Ref. No. 50
 Referred to in
 Doc. No. 20

COPY EXTRACT

of

BY LAWS

of

JUAN YSMAEL & CO., INC.

ARTICLE IV

POWER OF DIRECTORS

The absolute control and management of the business and property of the Corporation shall be vested in the Board of Directors.

In the management and control of the business and property of the Corporation, the directors shall have power:—

1. To call special meetings of the stockholders when they deem it necessary. And they shall call a meeting at any time upon the written request of the stockholders holding one-third of the subscribed and paid in capital stock;
2. To appoint and at any time at pleasure to remove any or all officers, agents and employees of the corporation, prescribe their duties, fix their compensation and require from them security for faithful service;
3. To conduct the affairs of the corporation, and to make rules and regulations not inconsistent with the laws of the Philippine Islands or the By Laws of the Corporation for the guidance and management of the Corporation and its property.

Article V Officers

2. *Powers and Duties of President.* The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the stockholders and of the Board of Directors. He shall have general charge and supervision of the business of the Corporation. He may sign and execute all authorized bonds, contracts or obligations in the name of the Corporation, and with the Secretary or Treasurer or an Assistant Secretary may sign all certificates of the shares in the capital stock of the Corporation. He shall from time to time make such reports of the affairs of the Corporation as the Board of Directors may require and shall annually present a report of the preceding year's business to the Board of Directors at their meeting immediately

Exhibit KK-A1
Extract of
By-Laws of
Juan Ysmael
& Co. Inc.

Ref. No. 50
Referred to in
Doc. No. 20
continued.

preceding the annual meeting of the stockholders, which report may be read at the annual meeting of the stockholders. He shall do and perform such other duties as may be from time to time assigned to him by the Board of Directors.

4. *Powers and Duties of Secretary.* The Secretary shall keep the minutes of all meetings of the Board of Directors, and the minutes of all meetings of the stockholders. He shall attend to the giving and serving of all notices of the corporation; he may sign with the president in the name of the Corporation all contracts authorized by the Board of Directors or by the executive committee, and when so ordered by the Board of Directors or the executive committee he shall affix the seal of the Corporation thereto; he shall have charge of such books and papers as the Board of Directors or the executive committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the Corporation during business hours; he shall in general perform all of the duties incident to the office of the secretary, subject to the control of the Board of Directors, and shall do and perform such other duties as may from time to time be assigned to him by the Board of Directors or by the executive committee.

Article VIII

20

Corporate Seal

The Corporation shall have a common seal, consisting of a round seal, with a margin therein, and the upper outer margin shall contain the words "JUAN YSMAEL & CO., INC." and the lower outer margin "MANILA, P.I." and in the center the word "INCORPORATED".

Exhibit KK-B
Resolution of
Board of
Directors of
Juan Ysmael
& Co. Inc.
6th June 1952

Ref. No. 51
Referred to in
Doc. No. 20

Exhibit KK-B
Ref. No. 51
Referred to in
Doc. No. 20

A meeting of the Board of Directors of JUAN YSMAEL & CO., INC., was held in the Office of the Company in the City of Manila, P.I., at 5:00 o'clock p.m., June 6th, 1952, pursuant to due call and notice.

Present:

Magdalena Hemady
Atty. Felipe Ysmael
Carlos Ysmael
Felipe Ysmael, Jr.

The meeting was called to order by the Chairman and the Secretary kept the minutes of the proceedings.

The Chairman called the attention of the Board of Directors to a power of Attorney found, among other papers, of the late Mr. K. H. Hemady purportedly giving Mr. Frank C. Starr the power, among others, to sell the S/S "Tasikmalaja," ex S/S "Christobal," ex S/S "Haleakala." The Chairman called the attention of the Board to the necessity of acting on this purported power

of Attorney for the protection of the Corporation. After an exchange of views on the matter, Mr. Felipe Ysmael, Jr., seconded by Mr. Carlos Ysmael, proposed the following Resolution:

*Exhibit KK-B
Board of
Directors of
Juan Ysmael
& Co. Inc.
6th June 1952.*

“WHEREAS, it appears that on November 8, 1950, the late Mr. K. H. Hemady executed a Power of Attorney in favour of Frank C. Starr, as per Doc. No. 562, page 18, Book No. 20, Series of 1950 of the Notarial Register of Notary Public Eusebio C. Encarnacion of the City of Manila, authorizing him, among others, to sell the S/S “Tasikmalaja”, ex S/S “Christobal”, ex S/S “Haleakala”;

*Ref. No. 51
Referred to in
Doc. No. 20
continued.*

10 “WHEREAS, said K. H. Hemady was not authorised by this Board to extend such power to Frank C. Starr, and the Power of Attorney executed by him was never submitted to this Board;

“WHEREAS, this Board finds that it is not in the interest of the Corporation to recognize said Power of Attorney or to confirm the same;

NOW, THEREFORE, be it resolved, AS IT IS HEREBY RESOLVED that this Board expressly disapprove said Power of Attorney;

“BE IT FURTHER RESOLVED that a copy of this Resolution be furnished Mr. Frank C. Starr for his information, the Government of Indonesia, and also the Consulate General of Panama in Manila, Djakarta and Hongkong for their respective
20 informations”.

After further exchange of views, the Board unanimously approved the foregoing Resolution.

On motion duly seconded, the meeting adjourned.

(Sd.) B. G. MANALAC
Secretary

Seal of: (JUAN YSMAEL & CO. INC.)
(INCORPORATED 1918)
(ILOILO, PHILIPPINES)

ATTEST:

30 (Sd.) M. HEMADY
Chairman.

Subscribed And Sworn To, before me, at the City of Manila, Philippines, this 16th day of June 1952 by Mr. B. G. Manalac who exhibited to me his Residence Certificate No.A-0075133, issued at Manila, on January 15, 1952, and by Magdalena Hemady, who exhibited to me her Residence Certificate No.A-4798099, issued at Quezon City, on May 10, 1952.

Seal of: (EUSEBIO C. ENCARNACION) (Sd.) ILLEGIBLE
(NOTARIO PUBLICO) NOTARY PUBLIC
(MANILA, I. F.) Until December 31, 1952.

40 Doc. No. 1010
Page No. 96
Book No. XXII
Series of 1952.

Exhibit KK-C1
 Bill of Sale-
 George Ho to
 Juan Ysmael &
 Co. Inc.
 16th September,
 1950.

Exhibit KK-C1
 Ref. No. 52
 Referred to in
 Doc. No. 20

Ref. No. 52
 Referred to in
 Doc. No. 20

(H. R. 474)
 (Prescribed by the Commissioner)
 (of CUSTOMS AND EXCISE)
 (With the consent of)
 (the Board of Trade)

Form No. 10 BILL OF SALE. (INDIVIDUALS
 OR JOINT OWNERS) No. 79 (Sale).

10

| Official Number | Name of Ship | No., Date, and Port of Registry |
|--|---------------------|---------------------------------|
| 1203-HK | C H R I S T O B A L | PANAMA |
| Whether a Sailing, Steam or Motor Ship | | Horse Power of Engine, if any. |
| S T E A M | | 5500 |

| | Feet | Tenths |
|---|------|--------|
| Length from fore part of Stem to the aft side of the head of the stern post | 345 | — |
| Main breadth to outside of plank | 46 | — |
| Depth from top of Deck at side amidships to bottom of keel | 27 | 9 |

| NUMBER OF TONS | |
|----------------------|---------------------------|
| Gross 3679 | Registered 1546 |

20

and as described in more detail in the Certificate of the Surveyor and the Register Book.

(a) I the undersigned (b) GEORGE HO of 14, Chatham Road, 3rd floor Kowloon in the Colony of Hong Kong in consideration of the Sum of One United State Dollar and other consideration. paid to (c) me by (d) JUAN YSMAEL & CO., INC., located at Consolidated Investments Building, Plaza Goiti, Manila the Receipt whereof is hereby acknowledged, transfer all that the above mentioned ship above particularly described and in her boats, guns, ammunitions small arms, and appurtenances, to the said JUAN YSMAEL & CO., INC. 30

Further, I, the said George Ho for (e) myself and my heirs covenant with the said JUAN YSMAEL & CO., INC. and (f) their assigns, that (a) I have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances (g)

In witness whereof (a) I have hereunto subscribed (h) my name and affixed (h) my seal this Sixteenth day of September One thousand nine hundred and fifty.

Executed by the abovenamed GEORGE HO

in the presence of (i)

(Sd.) GEORGE HO. (Seal)

(Sd.) ILLEGIBLE.
Notary Public,
Hong Kong.

Visto en este Consulado-General da la Republico de Panama hoy dia 16 de Septiembre de 1950
Derechos: B.10.00
Art. o Num. 52
del Arancel Consular

*Exhibit KK-C1
Bill of Sale-
George Ho to
Juan Ysmael &
Co. Inc.
16th September,
1950.
Ref. No. 52
Referred to in
Doc. No. 20*

10 (Seal) SEAL of Consulate General
of Panama, Manila

CONSULADO-GENERAL DE LA
REPUBLICA DE PANAMA
(Sd.) ILLEGIBLE
Consul-General

(a) "I" or "we". (b) Here insert full name and address, with the description of the transferor or transferors. (c) "me" or "us". (d) Here insert full name and address of transferees with their description in the case of individuals, and adding as "Joint Owners" where such is the case. (e) "myself" and "my" or "ourselves" and "our". (f) "his", "her", "their" or "its". (g) If there be any subsisting Mortgage, or outstanding Certificates of Mortgage or Sale, add "save as appears by the Registry of the said Ship". (h) "my" or "ours". (i) Names, address and description of witness. Space for signature and seal.

20

Exhibit KK-1
Ref. No. 53
Referred to in
Doc. No. 20

*Exhibit KK-1
Letter—
Chartered
Bank of
India
Australia &
China to
Juan Ysmael
& Co. Inc.
11th December
1950.*

**THE CHARTERED BANK OF INDIA, AUSTRALIA & CHINA
(INCORPORATED IN ENGLAND BY ROYAL CHARTER 1853)**

No.967 Manila 11th December, 1950.

Messrs. Juan Ysmael & Co.
Manila.

*Ref. No. 53
Referred to in
Doc. No. 20*

Dear Sirs,

30

Frank C. Starr

At the request of the above gentleman, through the medium of our Djakarta Office, we enclose for record purposes Charter Agreements signed by Mr. Starr, acting on your behalf, and Major Soekardgo, acting on behalf of the Government of the Republic of Indonesia.

Kindly acknowledge receipt by signing the duplicate of this letter.

Yours faithfully,
(Sd.) ILLEGIBLE
Manager.

JKC/t

Exhibit KK-2
Appendix
to Charter
Party,
25th November
1950.

Ref. No. 54
Referred to in
Doc. No. 20

Tasikmalaja
25/11/50.

Exhibit KK-2
Ref. No. 54
Referred to in
Doc. No. 20

APPENDIX

to

The Charter Party agreed this day November 25th 1950 between *Juan Ysmael & Co.* as the Owners of the S.S. "Christobal" and *the Government of 10 the Republic of Indonesia.*

Owners take care of the feeding of the troops under the following conditions:

1. There will be served three meals a day.
2. The Charterers will pay:
 - a. for an officer Rp 8.-/day meal
 - b. for one man of the troop Rp 4.-/day meal
 - c. for a member of staff Rp 6.-/day meal

sub b: including coffee and soup.
3. The prices are based upon 20
 - a. 60 officers
 - b. 10 members of staff
 - c. a minimum of 500 men, it means 1,500 meals a day or 45,000 meals a month.
4. At the end of each month it is checked by Troop Staff and Ship Staff how many meals have been delivered.

In case of having been delivered less than 45,000 meals Owners will pay back Rp 0.85 a meal.

In case of having been delivered more than 45,000 meals Charterers will pay additionally Rp 1.25 a meal. 30
5. The price ad Rp 60,000 each month will be deposited—in advance—by the Charterers in the Chartered Bank in Djakarta on the account of Frank C. Starr.
6. Owners will place at the disposal of Charterers plates, forks, spoons and cups.

Charterers will pay for the use of this dinner-things a guarantee-sum of Rp 20,000.-

In case of breakage or loss the corresponding price will be deducted from the said guarantee-sum.

7. All expenditures, invoices etc., will be given by Owners monthly to the Army Transportation Office, Ministry of Defence, Republic of Indonesia, Djakarta.

Exhibit KK-2
Appendix
to Charter
Party,
25th November
1950.

Ref. No. 54
Referred to in
Doc. No. 20
continued.

Stamp
Indonesia
3.— (Initialled);
25/xi/50 Illegible.
10 Charterers
(Initialled)
Illegible.
25/xi
(Major Soekardjo)

Djakarta, November 25th, 1950.
(Sd.) FRANK C. STARR.
Owners,
(Sd.) FRANK C. STARR.
(Frank C. Starr)

Exhibit KK-3
Ref. No. 55
Referred to in
Doc. No. 20

Exhibit KK-3
Charter Party
between
Juan Ysmael
& Co. Inc. &
Government
of Republic
of Indonesia.
25th November
1950.

Ref. No. 55
Referred to in
Doc. No. 20

Tasikmalaja
20 25/11/50.

CHARTER PARTY

It is this day mutually agreed between;

Juan Ysmael & Co., at Manila, for this purpose represented by her lawful Attorney Mr. Frank C. Starr, *Owners* of steamer called: s.s. "Christobal," formerly s.s. "Heleakala" presently with a pending request for a change new name into s.s. "Tasikmalaja," of 3679 tons gross 1546 tons net Register, classed $\sqrt{\text{of}}$ 5,000 indicated horse power, carrying about _____ tons dead weight on Board of Trade summer freeboard inclusive of Bunkers, having as per Builder's plan _____ cubic feet bale capacity, exclusive of permanent bunkers, which
30 contain about 90 tons and fully loaded capable of steaming about _____ knots an hour in good weather and smooth water on a consumption of about _____ tons best coal, now trading

$\sqrt{\text{Bureau}}$
Veritas
(Initialled):—
a.t. F.C.S. 25
XI

and

The Government of the Republic of Indonesia, for this purpose represented by Major Soekardjo, Director of the "Djawatan Lalu Lintas Tentara."

Charterers,

1. Owners agree to let, and Charterers agree to hire Steamer for a period of three calendar months from the time (not a Sunday or a legal Holiday, unless taken over) the Steamer is delivered and placed at the disposal of
40 the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at Tandjong Priok in such available berth where she can lie safely always afloat, as Charterers may direct, she being in every way fitted for ordinary cargo service.

Exhibit KK-3
Charter Party
between
Juan Ysmael
& Co. Inc. &
Government
of the Republic
of Indonesia,
25th November
1950.

Ref. No. 55
Referred to in
Doc. No. 20
continued.

∟ their
(Initialled):—
a.p.t. F.C.S. 25
—
XI

∟ calendar
month
(Initialled):—
a.p.t. F.C.S. 25
—
XI

Steamer to be delivered in Tandjong Priok not later than January 1st 1951.

2. Steamer to be employed by the Indonesian Army for the transports of troops and the ∟ equipment to any part in the world, except those which are under communist authority, where she can lie safely afloat.
3. The Charterers to pay as hire:

U.S. \$30,000.—

per one calendar month, commencing with clause 1 until her re-delivery to the Owners. Also all harbour expenses and fuel are for the account of Charterer.

Payment of hire to be made in cash in Djakarta, without discount, every day ∟ in advance.

4. Steamer to be re-delivered on the expiration of the charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) port in the Chartered option in Tandjong Priok, or any other port in Indonesia.
5. There will be a Commander Officer of the troops (C.O.T.) who will have charged of the maintaining of order among the troops.
6. Should the Steamer not be delivered by the first day of January 1951 the Charterers to have the option of cancelling.
7. Any dispute arising under the charter to be referred to arbitration in Djakarta, one arbitrator to be nominated by the Owners and the other by the Charterers, and an Umpire by the said Arbitrators, and the award of the said Arbitrators or Umpire shall be final and binding upon both parties.

If the Arbitrators of the one part unduly protracts the case, the other party to have the right to claim the award given within a certain fixed period.

8. Owners to pay a commission of one percent to on any freight paid under this Charter.

9. So Owners as Charterers are agreed in this Charter Party to submit to 30 the Uniform Time Charter known as the "Balttime."

The Chartered.
Stamp.
Indonesia
3.—25/xi.50
(Sd.) Illegible.
(Major Soekardjo)

Djakarta, November 25th, 1950.
The Owners,
(Sd.) FRANK C. STARR.
(Frank C. Starr)

Printer's
Note:—
words insid

indicate
cancelled
text

10
Printer's
Note:—
words insid

indicate
cancelled
text

20

Printer's
Note:—
words insid

indicate
cancelled
text

Initialled):
F. C. S. 25
—
XI

Exhibit KK-E1
Ref. No. 56
Referred to in
Doc. No. 20

Exhibit KK-E1
Cable—
Major
Soekardjo to
Juan Ysmael
& Co. Inc.
11th May 1951.

1951, May 11 p.m. 2. 08.

PG—3 (D262)

DM108 S DJAKARTA 33/30 11 1002 ETAT INDNG JVR VIARCA

JUAN ISMAIL

MANILA

Ref. No. 56
Referred to in
Doc. No. 20

10 NO 1339/1/RDG/Dllt/51 TGL 11 MEI 1951 KINDLY ANSWER IMMEDIATELY IF YOU AGREE WITH THE CHARTER CONTRACT MADE BY ME AND MR STARR AT 25/4 STOP P MJ SUKARDJO.

ICFM: JUAN ISMAIL NO 1339/1/RDG/DLLT/51 TGL 11 MEI 1951 25/4 P MJ SUKARDJO.

Exhibit KK-F1
Ref. No. 57
Referred to in
Doc. No. 20

Exhibit KK-F1
Cable-K. H.
Hemady to
Major
Soekardjo.
10th May 1951.

THE EASTERN EXTENSION AUSTRALASIA AND CHINA TEL. COY. LTD.

20

Time

filed 3 p.m. 5-10-51

Ref. No. 57
Referred to in
Doc. No. 20

MAJOR SOEKARDJO KEM PERTAHANAN DJAKARTA

REFERENCE CHARTERPARTY CONTRACT DULY SIGNED BY YOURSELF AND FRANK C STARR UPON 25TH APRIL 1951 CONCERNING SS TASIKMALAJA HAS FULL APPROVAL ACCORD OUR COMPANY.

K. H. HEMADY PRESIDENT,
JUAN YSMAEL & CO. MANILA.

Exhibit KK-G
Ref. No. 58
Referred to in
Doc. No. 20

Exhibit KK-G
Letter—
K. H. Hemady
to Frank
C. Starr.
31st January
1952.

30

January 31, 1952.

Mr. Frank C. Starr,
c/o Asia Baru Associates,
Tanah Abang Timur 3,
Djakarta, Indonesia

Ref. No. 58
Referred to in
Doc. No. 20

Dear Mr. Starr:

40 Please send to us immediately copies of the charter contract for the S.S. "Tasikmalaja" and the motor vessel "Rante Pao," duly signed by the official representative of the Indonesian Army. It is important that the charter contract be sent here so that we can have them filed here after reading them.

If the Indonesian Army prefers to purchase the "Tasikmalaja" and the "Rante Pao," instead of chartering them, we must know which they prefer.

With kindest regards and best wishes in which Mrs. Hemady joins me, I remain.

Sincerely yours,
K. H. HEMADY.

50

Exhibit KK-H
Letter—
K. H. Hemady
to Frank
C. Starr.
23rd January
1951.

Exhibit KK-H
Ref. No. 59
Referred to in
Doc. No. 20

January 23, 1951.

Ref. No. 59
Referred to in
Doc. No. 20

Mr. Frank C. Starr
c/o Asia Baru Associates
Tanah Abang Timur 3,
Djakarta, Indonesia

Dear Mr. Starr:

10

Thank you for all your cables, all of which have been replied to. I also wish to thank you for your letter of January 18, 1951, and I am happy to note that a new firm has been formed in which you are a partner.

In regards to the TASIKMALAJA, in case they want to renew the charter, the new price should not be less than \$45,000 per month and for a period of not less than 6 months. In case they desire to buy her, the price shall be US\$600,000.00 cash.

As mentioned in our previous cable to you, the Central Bank has temporarily declined approval of our licence to remit the balance as many items have been duplicated in their statements of accounts, that is, some items have been included 20 in subsequent statements which were already set forth in their previous statements. The Central Bank people themselves found out this discrepancy and they declined to act on our application to remit the balance. We have cabled the Drydock Co. regarding this matter, and have requested them to send us a revised and itemized statement from the beginning to the end, but so far they have not furnished us with this information. Therefore, we are not responsible for the delay. For your information, we are enclosing herewith copies of their various statements and you will note therein the duplications referred to by us. We have also advised Mr. Jan Walandouw about this.

Yesterday, we dispatched the cable requested by you re the Lincoln Sedan. 30 As we have no copy of the Bill of Lading, nor other documents except the Invoice we do not know the chassis number, as requested by you, nor who the shipper was, but we presume the shipper was either Mr. Grimm or the car company. At any rate, we hope the cable dispatched will serve your purposes.

We have made inquiries regarding the piledriving equipment mentioned by you but we find that this is not available locally. However, we dispatched a cable to you yesterday to inquire direct from the firm mentioned therein in Tokyo. I am sure that they will attend to your requirements promptly.

Hoping to see you soon in Manila, and with kindest personal regards and best wishes, in which Mrs. Hemady joins me, I remain 40

Sincerely yours,

K. H. HEMADY.

KHH:FBS—
A TRUE COPY:

535

Exhibit KK-11
Ref. No. 60
Referred to in
Doc. No. 20

Exhibit KK-11
Cable—
Juan Ysmael
& Co. Inc.,
to Major
Pamoe
Rahardjo.
8th January
1952.

C O P Y

RADIOGRAM

RCA

COMMUNICATIONS

INC. Ref. No. 60
Referred to in
Doc. No. 20

SENDER'S NAME: JUAN YSMAEL & CO., INC.

ADDRESS: 217 CONSOLIDATED INVESTMENTS BLDG MANILA

10

January 8, 1952.

MAJ PAMOE RAHARDJO
MINISTRY OF DEFENCE
DJAKARTA (INDONESIA)

PLEASE DO NOT PAY FOR TASIKMALAJA BEFORE YOU RECEIVED
OUR REGISTERED LETTER ON GARUDA STOP WE MISS YOU AND HOPE
SEE YOU AGAIN BEFORE LONG.

YSMAEL.

RCA COMMUNICATIONS, INC.
CERTIFIED TRUE COPY.

20

By (Sgd.) ILLEGIBLE.
SUPT. RCA MANILA.

Exhibit KK-J
Ref. No. 61
Referred to in
Doc. No. 20

Exhibit KK-J
Letter—
Juan Ysmael
& Co. Inc.,
to Major
Pamoe
Rahardjo.
10th January
1952.

C O P Y

JUAN YSMAEL & CO., INC.

Ref. No. 61
Referred to in
Doc. No. 20

VIA REGISTERED MAIL

January 10th, 1952.

STRICTLY CONFIDENTIAL

30 Maj. Pamoe Rahardjo
Ministry of Defence of the Republic of Indonesia
Djakarta, Indonesia

Dear Maj. Pamoe:

The other day, we cabled you as follows :

Exhibit KK-J
Letter—
Juan Ysmael
& Co. Inc.,
to Major
Pamoe
Rahardjo,
10th January
1952.

Ref. No. 61
Referred to in
Doc. No. 20
continued.

“PLEASE DO NOT PAY FOR THE TASIKMALAJA BEFORE YOU RECEIVE OUR REGISTERED LETTER ON GARUDA STOP WE HAVE MISSED YOU AND HOPE SEE YOU AGAIN BEFORE LONG”.

We are writing you this letter to confirm our above-quoted cable, with the request that henceforth all the charter fees even for the “Tasikmalaja” and the “Rante Pao”, as well as for the FS-141 and FS-148 should be remitted directly by you or your bank to the BANK OF AMERICA MAIN BRANCH, Los Angeles, California, to the credit of MRS. MAGDALENA DE HEMADY:

It is our desire that the charter moneys for the above vessels be remitted as above stated, and we earnestly hope that you will be kind enough to comply 10 with our request, for which we sincerely thank you.

We understand that Mr. Starr was paid the amount corresponding to the charter of the “Rante Pao” but Mr. Starr has not paid us anything on this. In case you buy the “Tasikmalaja”, there should be no deduction of \$450,000.00 in case Mr. Starr receives any money on account.

The charter of the S/S “Tasikmalaja” up to December 31, 1951, has been received by us and in case Mr. Starr receives any money on the sale of the boat, it should not be deducted from the purchase price of the boat.

It has been a pleasure for us to have made your acquaintance, and we have missed you greatly since you left. We hope that before long we will see you 20 again.

With kindest regards and best wishes, we remain.

Very sincerely yours,
JUAN YSMAEL & CO., INC.

(Sgd.) K.H. Hemady,
(Typed) K.H. HEMADY,
President.

I hereby certify that the foregoing is a true and correct copy of the duplicate in our file, the original of which was sent to Maj. Pamoe Rahardjo of Djakarta, by registered mail.

30

(Sd.) C. YSMAEL,
CARLOS YSMAEL,
Treasurer, Juan Ysmael & Co., Inc.

Manila, June 30, 1952.

Exhibit KK-K1
 Ref. No. 62
 Referred to in
 Doc. No. 20

Exhibit KK-K1
 Letter—
 Pamoe
 Rahardjo to
 Mrs. & Mr.
 Hemady.
 17th January
 1952.

Dear Mrs. and Mr. Hemady,

I was getting late for the Garuda last week. So, may these letter reach his idea now.

Ref. No. 62
 Referred to in
 Doc. No. 20

10 What very important is for me is the contract I have order Mr. Kuitert in my letter to contact you about the contract. Please make a contract for each vessel appartley in the idea what I have made with Mr. Starr. There is very necessary, because to get the money. My first idea was to make it with Mr. Starr in Indonesia, but I am very sorry, he is not yet in Indonesia until now. I expect the whole papers on Saturday with the plane. Please give to Mr. Kuitert to the Steward or stewardess and I will wait for the plane on the air-port on Saturday.

I have received your cable and letter and I understand exactly what you mean. Hereabout I must wait for Mr. Starr, but be satisfy I will handle it based on your letter.

What very important too is, about the spareparts what will very necessary for your vessels, which are in operating in Indonesia.

20 I hope you'll have a very nice crew on board of said vessels, which are very important to do have a nice communication with us. Mr. Bombasi is nice.

Hoping to see you again very soon, I remain.

King regards

(Sd.) PAMOE RAHARDJO.
 17.1.1952.

Note :

1. Very sorry my language is so bad.
 2. I expecting your reply on Saturday.
 - 30 3. Please, I like to see the Indonesian house with Venetian house with Venetian Blinds, which is unable to get in Djakarta. All the sizes I have given it already to Mr. Kuitert.
 4. I don't know why Mr. Starr is staying so long in Singapore. I expecting him next week. He has some trouble with his passport. He has to renew that with the American Embassy in Singapore. (Initialled) :
-

Exhibit KK-L1
Cable—
Frank C.
Starr to Mrs.
Magdalena
Hemady
29th January
1952.

Exhibit KK-L1
Ref. No. 63
Referred to in
Doc. No. 20

RADIOGRAM

RCA COMMUNICATIONS, INC.

1952 JAN 29TH PM 10 3.

Ref. No. 63
Referred to in
Doc. No. 20

HV PLB3 DM75 DJAKARTA 75/74 29 1925 VIA RCA

MRS MAGDALENA HEMADY

BROADWAY NEWMANILA MANILA

10

IN ORDER TO SAVE ALL ADVISE YOUR SICK HUSBAND TO OBTAIN
VISA IMMEDIATELY FOR MARAMIS STOP HAVE JUST LEARNED THIS —
AFTERNOON CONTENTS HIS LETTERS AM DEEPLY SORRY WHERE
MATHEUS FAILED KEUITERT WON IN SUCH A STRANGE GAME OF
INTRIGUE STOP IF MARAMIS ARRIVES AT MANILA WITH LETTER FOR
YOU IT WILL SHOW WHAT A MISTAKE YOUR SICK HUSBAND HAS DONE
STOP I LEAVE HV PLB3 DM75 MRS. MAGDA P/2

THIS IN YOUR HANDS NOW

STARR

Exhibit KK-M1
Cable—
Frank C.
Star to Juan
Ysmael &
Co. Inc.
30th January
1952.

Exhibit KK-M1
Ref. No. 64
Referred to in
Doc. No. 20

20

1952 JAN 30 AM 7 34

Ref. No. 64
Referred to in
Doc. No. 20

DM80 PLC9 VN

D94

DJAKARTA 66 30 0600 JVR

YSMAEL MANILA

KEUITERT PAID BY MY DJAKARTA OFFICE DURING HIS FOUR
MONTHS SERVICES OVER 8000 RUPIAHS WHICH MORE THAN
SUFFICIENT AS EVERYONE HERE STOP TOWING OF RANTEPAO 30
MAKASZAR DJAKARTA WAS FOR ACCOUNT OF ARMY KEUITERT HAD
NO AUTHORIZATION TO PAY FOR TOWING AS ADVISED HIM BY ARMY
AND MYSELF

STOP YOU HAVE WALKED INTO A BOOBY TRAP WITH YOUR EYES
WIDE OPEN.

F C STARR

539

Exhibit KK-N1
Ref. No. 65
Referred to in
Doc. No. 20

Exhibit KK-N1
Letter—
Frank C.
Starr to Johnny
Ysmael.
(Undated)

Ref. No. 65
Referred to in
Doc. No. 20

The other letter is from Major Pamoe Rahardjo of the Indonesian Army.

Dear Johnny:

Will you be kind to take this letter to your Mother and read it to her. I feel so sorry that she apparently has allowed Mr. Hemady to take a decision that 10 will result in the *end of everything* from this end

If you have any say so in your Mother's business affairs advise her to send Baby down here for a visit immediately. *HE WILL LEARN ALL THE FACTS* It is impossible to ever try to explain them to her Husband as *something has gone wrong with him. I believe he is really ILL.*

thank you,

(Sd.) FRANK C. STARR.

(Printed text of Radiogram form)

Exhibit KK-O1
Letter—
Frank C.
Starr to Mrs.
Hemady.
31st January
1952.

Exhibit KK-O1
Ref. No. 66
Referred to in
Doc. No. 20

Djakarta.

Ref. No. 66
Referred to in
Doc. No. 20

Dear Mrs. Hemady:

It is needless to say at this time that I was indeed surprised to arrive at Djakarta and learn from certain members of the Indonesian Army that your husband had written letters advising them that I'm no longer your agent in Indonesia. 10

If this has your approval then there is nothing left for me to say that in as much as you *know* that I have no use whatsoever for *money* and that it's earthly value has no meaning to me whatsoever only that it does seem to make *some people* happy on this earth is the reason I personally enjoy earning same.

Your husband, who is to be pitied ever so much (mainly because of his association with those two individuals at his office) has my heartfelt sympathy.

I am willing to answer any questions he may desired answered truthfully and *I want to advise YOU that Mr. Hemady amazes me* by his seemly apparent thought *that it takes no money to run this show down here.* HE IS 100% BADLY MISTAKEN and astounds me that all these years in business he took this attitude. 20

If his and your trust in me has gone *then* by all means is time for us to say "goodbye".

I know deep in your heart you know I personally would not take once any cent that I could pass on to you *as money means nothing to me* but your husband *believing lies from strangers and others* has passed on to that point in business life where he is far better off to *RETIRE*.

If *YOU* or *YOUR HUSBAND* only could meet and see the looks of DISGUST on the faces of many many Army and other Indonesian business peoples here when they learned from Mr. Hemady's new found DUTCH friend and representative had gone to Manila *and succeeded in destroying your trust in a* 30
man who has done more than normal to save you and your husband from losing *every cent* you had invested in the Christobal — instead of losing you have at least recovered your investment — and having done this — your Husband *cast aside* that individual who not only has done more than his share but lost most of his personal account (money) with your undertaking of the Christobal.

For this decision on Mr. Hemady's part . . . *THANK HIM DEEPLY* and when *that DAY ARRIVES* before he leaves this earth LET HIM THINK WHAT HE HAS DONE TO SOMEONE WHO HAS PLAYED THE GAME WITH BOTH OF YOU 100% *REGARDLESS OF WHAT YOU HAVE HEARD* *YOU DON'T KNOW THE FACTS* And if you ever did . . . 40
YOU BOTH WOULD NEVER FORGET that Frank Starr was *someone* who was to be *TRUSTED WITH EVERY CENT YOU HAVE* as you yourself told to me on last *CHRISTMAS DAY* . . . Allah have mercy on both of you.

(Sd.) FRANK C. STARR.
FRANK C. STARR.
31st January, 1952.

Exhibit KK-PI
 Ref. No. 67
 Referred to in
 Doc. No. 20

Exhibit KK-PI
 Letter—
 Pamoe
 Rahardjo to
 Mrs. & Mr.
 Hemady.

Personal

Ref. No. 67
 Referred to in
 Doc. No. 20

My dear Mrs. and Mr. Hemady.

All your letters and cables, message's and last but not least your jam, I have received it. I am very glad and thank you a thousand for your kindness.

10 The situation is this:

1. We need the contract for thy FS 148. to arrange your payment. Make it on the base what F.C. Starr has made.

2. *About the Tasik*

I am very glad to know you recently when I was in the Philippine, and glad too to know your principles.

Your last letter about Mr. Starr, that he will not arranged again the whole shipping business, I understand:

20 But my Mrs. and Mr. Hemady. I know very well the difficulties of Mr. Starr. Indeed he makes a lot of faults, but I cannot what your business will be without Mr. Starr.

He is in Indonesia again now and try his best to fix and help the whole situation.

I wondered that Mr. Starr has not told you yet, about the last contract of the Tasik.

30 We have chartered the Tasik for 6 months more until June this year with option to buy the vessel. The purchase price of the vessel will be applied to the charter price of the 6 months of last year. These contract is settled down already and we agreed. We can and dared to do this because Mr. Starr has the full of Attorney from your Company to charter or to purchase the vessel.

Believe me Mr. Starr tried to do his best to fix your business here and a clear business.

To operate the vessel, indeed you need a lot of money. Beside the price of the charter about the payment of the crew, to repair the ship and keep he clean, the food of the crew etc. is on the account of the owner i.e. on your and Mr. Starr I don't know about the internal question between you and Mr. Starr, but we will have difficulties if you leave the whole shipping to an other.

40 At present the Tasikmalaya has a confession of guilt for the whole year of 1951, the amount of 1,000,000 rupiah or +US\$100,000.00 to our army and financial department. There is not yet the amount of which the ship has made outside the army. You know all these difficulties are in the hand of Mr. Starr. That doesn't means that the reason is because Mr. Starr. No. Nothing like that.

Because to operate a ship you must spend a lot of money, not yet the concurrent of the Dutch here in Indonesia.

Exhibit KK-PI
Letter—
Pamoe
Rahardjo to
Mrs. & Mr.
Hemady.

Ref. No. 67
Referred to in
Doc. No. 20
continued.

3. *The Rantepao*

I have heard about financial of the Rantepao. You know yourself Mrs. and Mr. Hemady, that the Rantepao came to Indonesia in a very bad situation. The ship was in fact useless. Mr. Bombasi can told about that. The reparations of the ship himself needs thousands of money (in rupiah I means) and still until nowaday it is not yet fix it clear. Many protest are coming about this ship, because it is not yet in running condition.

After you both read these letter I hope you will have any situation about your shipping in Indonesia. I advise you like a friend, in other hands it will be hopeless, because the situation of the ship himself. I hope this letter will not 10 fallen in wrong situation I remain.

Kind regards.
(Sd.) PAMOE RAHARDJO.

To Mrs. and Mr. K. H. Hemady
.....Broadway Newmanila Manila.

P. S.

Incidentally I wondered why Mr. Kuitert dare to accept your offer as your representative in my country, when he is already serving as my technical adviser holding this position only a short time ago and previous to that your Mr. Starr has had been so kind to give him employment on the Tasikmalaya and help him 20 in a thousand other way.

Needless to stay to you Mr. Kuitert very ashamed and I leave it up to you and Mrs. Hemady to advise finally your decision reference Mr. Starr.

(Sd.) PAMOE RAHARDJO.

Exhibit KK-PA
Letter—
Juan Ysmael
& Co. Inc.,
to Frank C
Starr.
6th March
1951.

Ref. No. 68
Referred to in
Doc. No. 20

Exhibit KK-PA
Ref. No. 68
Referred to in
Doc. No. 20

March 6, 1951

30

Mr. Frank C. Starr
Admiral Apartments
Manila

Dear Sir:

This will confirm our previous Power of Attorney granted to you in reference to your full authority to sell or continue the charter of our vessel known as the S/S "Tasikmalaya", formerly known as the S/S "Christobal" to any interested party whomsoever. Furthermore, for your information and guidance, in the sale of a vessel, regardless of whether it is registered under a Panamanian flag or otherwise, there is no requirement for securing the consent of the Government under which the flag is registered as long as upon such sale a certificate of registration is sent 40 to the respective government under which the said vessel is flying a flag.

Yours very truly,
JUAN YSMAEL & CO., INC.
(Sd.) K. H. HEMADY,
President

KHH:Fbs—

543

Exhibit KK-Q1
Ref. No. 69
Referred to in
Doc. No. 20

Exhibit KK-Q1
Cable—
Captain
Aguado to Mr.
Hemady.
31st January
1952.

1576 SN/1 HOMO CG 47 RDO

SS TASIK MALAJA VIA GLOBE JAN. 31, 1952 1/3/GMT

HEMADY

NEWMANILA

MANILA

Ref. No. 69
Referred to in
Doc. No. 20

10 MAJOR PAMU DESIRES IMMEDIATE INFORMATION WHEN 148 COMING
STOP HE NOW ON BOARD WITH KEUITERT STOP STARR TODAY HAS
PAID ENTIRE SHIPS PERSONNEL OF 135 MEN INCLUDING OVER TIMES
STOP STARR REQUEST YOU STANDBY FOR HIS CABLE TOMORROW
MORNING AT 7 A.M.

CAPT. AGUADO.

655PM 31st CG

Exhibit KK-R1
Ref. No. 70
Referred to in
Doc. No. 20

Exhibit KK-R1
Cable—
Frank C.
Starr to Mrs.
Hemady.
1st February
1952.

20

1/1 HOMO AM/EP 1/9 RDO

SS TASIK MALAJA VIA GLOBE FFB1/52 6 AM

MRS MAGDALENA HEMADY

NEWMANILA/PSE TELEPHONE AND GET REPLY/

Ref. No. 70
Referred to in
Doc. No. 20

30 REFERENCE 21 DEC. 19 YOU HAVE ALREADY RECEIVED 1/5 OTHER
HALF WAS CONVERTED INTO LOCAL CURRENCY FOR OPERATIONAL
EXPENSES LAST PART OF 51 PRESENT AND CONTINUATION CHARTER
STOP 1 HAD IT ARRANGED ANOTHER REMITTANCE THIS MONTH
PROVIDING LETTER FROM MR. HEMADY HAD BEEN SENT REFERENCE
30 CHARTER PRICE NOT APPLICABLE AGAINST PURCHASE PRICE
HOWEVER IN VIEW LETTERS FROM HEMADY EVERYTHING FOLLOWED
UP COMPLETELY STOP 1 NOW REQUEST IMMEDIATE DECISION
BEFORE NEXT HOUR IS IT KUITERT OR ME YSMAEL WANTS RUN THIS
SHOW STOP IF NO ANSWER TELEPHONED TO GLOBE WIRELESS WILL
TAKE IT THAT KUITERT HAS AUTHORITY AND LEAVE SHIP FOR
GOOD ADVISE IMMEDIATELY

STARR

Exhibit KK-S
Cable—
Juan Ysmael
& Co. Inc.,
to Frank C.
Starr.
2nd February
1952.

Exhibit KK-S
Ref. No. 71
Referred to in
Doc. No. 20

Sender's Name JUAN YSMAEL & CO. INC.

Ref. No. 71
Referred to in
Doc. No. 20

ADDRESS 217 Consolidated Investments Bldg. Manila

FEBRUARY 2, 1952.

STARR
DJAKARTA

INSURANCE TASIKMALAJA EXPIRES FEBRUARY FIFTH STOP IF MAJOR 10
PAMOE BUYS IT HE CAN INSURE IT THERE OTHERWISE ADVISE US
SO CAN RENEW HERE STOP CABINET POSTPONED DISCUSSION 148
UNTIL NEXT TUESDAY BUT WE ASSURED APPROVAL PLEASE ADVISE
MAJOR PAMOE

YSMAEL

Exhibit KK-T1
Letter—
K. H. Hemady
to Major
Pamoe
Rahardjo.
7th February
1952.

Exhibit KK-T1
Ref. No. 72
Referred to in
Doc. No. 20

February 7, 1952.

20

Ref. No. 72
Referred to in
Doc. No. 20

Major Pamoe Rahardjo
Ministry of National Defence of the Republic of Indonesia
Djakarta, Indonesia

My dear Major Pamoe:

Thank you very much for your nice letters (undated) contents of which have been duly noted. Please accept my sincerest apologies for not writing you before now because I have been very busy personally attending to the permit for the sailing of the FS-148, and I had to go from one Government department to another, as well as to the Cabinet to personally work on this matter so that its departure can be expedited.

30

As to the appointment of Mr. Kuitert to take charge of operations and pay the crews of both boats, this was done by us because Mr. Starr was then detained in Singapore and we were not certain as to when he would arrive in Djakarta. Therefore, in order not to delay the performance of such works, we temporarily appointed Mr. Kuitert to do the job, and when Mr. Starr cabled us that he already arrived in Djakarta, we told him to resume the work and duties which he heretofore was doing for us, and your recommendation was accepted with great pleasure.

As to the deduction of any charter money from the purchase price of the Tasikmalaja, which has not as yet been consummated, we cabled you yesterday as follows:

40

“WE DO NOT AGREE TO DEDUCT ANY CHARTER MONEY FROM PURCHASE PRICE TASIKMALAJA STOP STARR INQUIRED AND WE ANSWERED NEGATIVELY”.

Exhibit KK-T1
Letter—
K. H. Hemady
to Major
Pamoe
Rahardjo.
7th February
1952.

This also pertains to the Rante Pao. We hope you will understand our position for not agreeing to any deduction of any charter money from the purchase price of the Tasikmalaja and the Rante Pao because as you undoubtedly realise, we are and have always been under heavy expense on these two boats and we hardly make enough money for all our efforts after deducting the expenses for repairs, salaries and food of crews of officers, insurance of said vessels, and other expenses.

Ref. No. 72
Referred to in
Doc. No. 20
continued.

10 On the other hand, we are doing our very best to be of service to you from this end and it is indeed a pleasure to be able to be of service to you.

FS-148: This vessel has been ready to sail for the past three weeks or so, and during all that period of time we have been continually paying for the salaries of officers and crews, including salaries and subsistence of guards of the Bureau of Customs and the NBI (National Bureau of Investigation) who are assigned there to guard the boat. Our request to send the boat to Djakarta was submitted to the President's Cabinet three times. When it was first submitted to the Cabinet, it was not acted upon because the agenda was full and at that time the Cabinet was very busy taking up other matters of national importance. During the second time, 20 the Cabinet resolved to indorse the matter to the Maritime Commission, which is a newly appointed Commission to look after matters pertaining to navigation, the said Commission acted favourably on our request and they said that the ship can be sent to Indonesia. In last Thursday's meeting of the Cabinet, which was the third time it was submitted to the Cabinet, they again resolved to indorse the matter to the NBI (National Bureau of Investigations) who also acted favorably on our case, but it did not reach the Cabinet on time to be acted and we have been assured that it will be approved, and on the same day the boat will leave for Makassar.

FS-141: This boat will be ready to sail within a week's time. The crew 30 working on it are making a first-class job on this boat. In this connection, I am sending you herewith the contract covering this vessel, which please sign as official representative of the Ministry of Defense of the Republic of Indonesia. The date of the contract should be the last day when you were in Manila. After keeping a copy for yourself, please send the copies back to us as it will have to be notarised here by our attorney and then submitted to the President's Cabinet for approval, as was the case with the FS-148. I think that we will have an easier time getting the permit for the FS-141 as a precedent will have been set by the FS-148. Incidentally it might interest you to know that for drydocking alone, we have spent about P20,000 for the FS-141, excluding what enquires, and not including also what 40 we are paying for other expenses.

We have cabled Mr. Starr to the effect that the Central Bank here demands advance payment on account of the charter of the FS-148 before sailing and to request you to please remit the amount through the Hongkong & Shanghai Banking Corporation, Manila, payable to the Central Bank of the Philippines for account of Juan Ysmael & Co., Inc. The Hongkong Bank has a branch in Djakarta who can remit the money direct to the Central Bank here. I hope that you will have no objection to this as, after all, the FS-148 is very sure to sail shortly.

Exhibit KK-T1
Letter—
K. H. Hemady
to Major
Pamoe
Rahardjo.
7th February
1952.

Ref. No. 72
Referred to in
Doc. No. 20
continued.

S.S. Tasikmalaja: We asked Mr. Starr whether the Indonesian Government will purchase this vessel, and if so, to renew the insurance at that end. He cabled us that he will advise us in due time. However, since the insurance was about to expire, and not hearing from Mr. Starr definitely, we decided to renew the insurance on this vessel for which there is due the underwriters in London, the amount of \$33,934.28. We have agreed with the local agents of the Under-writers that this amount will be remitted from Djakarta to London. Therefore, may we request you to please remit, and deduct from the charter price of the S.S. Tasikmalaja, the amount of \$33,934.28 to:

SMITH, BELL & CO. (LONDON) LTD., 10
69/70, Mark Lane,
London, E.C.3.

Please remit the said amount by telegraphic transfer and please state that it is being remitted in behalf of Juan Ysmael & Co. to cover the renewal premium of the insurance of the S/S Tasikmalaja. After this is done, please confirm the payment to us so that we can advise the local agents accordingly.

Thank you very much for your attitude of tolerance and understanding. We know you realize that we are doing our utmost to serve you in the interest of the Indonesian Government, and we thank you for cooperating with us too.

Mrs. Hemady underwent to delicate operation some two weeks ago in the 20 hospital, with four doctors, all specialists attending to her. She had her gall bladder removed, which has been the source of so much inconvenience for her for sometime now, and thanks to God she pulled through. She is now at home, completely recovered and in the very best of health.

May I take this occasion to express my personal and sincere gratitude for the kind understanding and benevolent cooperation which you are and have been extending to us. I consider it an honor to have made your acquaintance when you came to Manila, and your friendship and acquaintance will be cherished by me eternally. I hope that some day soon you will find time to be in Manila and I sincerely assure you that you are always welcome to our house and to our office. 30

With kindest personal regards and sincerest best wishes, in which Mrs. Hemady joins me, I remain

Very sincerely yours,
(Sd.) K. H. HEMADY.

Exhibit KK-U1
 Ref. No. 73
 Referred to in
 Doc. No. 20

Exhibit KK-U1
 Letter—
 K. H. Hemady
 to Frank C.
 Starr.
 7th February
 1952.

February 7th, 1952.

Ref. No. 73
 Referred to in
 Doc. No. 20

My dear Mr. Starr:

All your cables have been received and their contents duly noted.

The most important matter which I wish to stress in this letter is what
 10 I told you before that we do not agree to the deduction of any charter money of
 the "Tasikmalaja" or the "Rante Pao" from the purchase price of said vessels.
 Kindly advise Major Pamoe that we are under heavy expense on these two boats
 and we hardly make enough money for all our troubles and efforts after deducting
 the expenses for repairs, crews' salaries and food, insurance of said vessels, etc.
 We have cabled Major Pamoe yesterday as follows:

"WE DO NOT AGREE TO DEDUCT ANY CHARTER MONEY FROM
 PURCHASE PRICE TASIKMALAJA STOP STARR INQUIRED AND
 WE ANSWERED NEGATIVELY"

and we also cabled you yesterday quoting our above cable to Major Pamoe. I
 20 hope that our good friend Major Pamoe will understand our position in the matter
 and will not object to our above cable because we here are doing our best to be
 of service to them at that end, and it is a pleasure for us to serve them in any
 way we could. However, they should also consider our position.

The 105 which was received on December 12, 1951 was for the charter
 ending December 31, 1951, but the charter for the next six months beginning
 January 1, 1952, and ending June 30, 1952, which is 210 as mentioned by Major
 Pamoe should be credited to our account and should not be deducted from the
 selling price of the boats. In your cable of the 6th instant, you said that this
 will be remitted to "Emmy about 21st this month for certain".

30 FS-148: This vessel has been ready to sail for the past three weeks or
 so, during all that period of time we have been continually paying for the officers'
 and crews' salaries, food, etc., including the salaries and subsistence of the Guards
 of the Customs and of the NBI (National Bureau of Investigation). The matter
 of sending the boat to Djakarta was submitted three times to the Cabinet. The
 first time it was submitted to the Cabinet, it was not acted upon because the
 agenda of the Cabinet was full as they were taking up other matter of national
 importance, and they resolved, during the second time, to indorse the matter to
 the Maritime Commission, which is a newly appointed commission to look after
 matters pertaining to navigation, and the said Commission acted favourably on
 40 our request and said that the ship can be sent to the Indonesian Government.
 In last Thursday's meeting, which was the third, they said that the matter should
 be referred to the NBI (National Bureau of Investigation), who also acted
 favourably on our case, but it did not reach the Cabinet on time to be acted upon.
 However, the Cabinet will act on it for sure tomorrow, and we have been assured
 that it will be approved, and on the same day the boat will leave for Makassar.

Exhibit KK-U1
 Letter—
 K. H. Hemady
 to Frank C.
 Starr.
 7th February
 1952.
 Ref. No. 73
 Referred to in
 Doc. No. 20
 continued.

FS-141: This boat is still in the drydock. They are making a first class job on it and the boat will be ready to sail within a week. Someone in Djakarta called us by overseas phone and we told them that the FS-148 will be leaving tomorrow and the FS-141 will be leaving in a week's time. I am sending Major Pamoe the contract for the FS-141 duly signed by me, which should be signed by the Major too. The date of the contract should be on the last day when he was in Manila. Please tell Major Pamoe about this and kindly ask him to expedite the return of the papers to us because they will again be submitted to the Cabinet and the departments of the Government concerned before the boat can sail for Djakarta. This boat is also causing us too much expense for dry-docking alone, we have spent about P20,000 excluding the cost of the spare parts which we purchased direct from the States for the engines, and also officers' and crew's salaries, food, guards, etc. 10

We have today cabled you as follows:

“CENTRAL BANK HERE DEMANDS ADVANCE PAYMENT CHARTER MONEY FOR 148 BEFORE SAILING STOP PLEASE REMIT AMOUNT THROUGH HONGKONG AND SHANGHAI BANKING CORPORATION MANILA PAYABLE TO CENTRAL BANK ACCOUNT JUAN YSMAEL & CO.”.

The Hongkong Bank here has a branch in Djakarta who can remit the money direct to the Central Bank here for account of our company. Please advise Maj. Pamoe about this because they will not permit the boat to sail without this advance payment. By the way, the Cabinet wants that the contract on the FS-141 be signed in Manila, so the Major will sign it there and then send it back here and the date will be on the last day when he was in Manila. 20

I also cabled you previously that the insurance on the “Tasikamalaja” will expire on the 6th of this month, and that if the Indonesian Government wanted to buy it instead of charter it, that they could renew the insurance there. You said that you will advise me, but since it was already going to expire and no advise was received before the expiration date, we renewed the insurance as you can see from the attached letter written to us by Smith, Bell & Co., Ltd., dated 6th February, 1952. 30

We had to renew the insurance even without your advice whether the Indonesian Government had decided to purchase because the amount involved was big and in case anything happens to the boat, and if the insurance has expired, we will not be able to recover anything for the loss that we may suffer.

As you can see from the letter of Smith, Bell & Co., Ltd., there is due the Underwriters in London the amount of \$33,934.28. As it is very difficult to send dollars out from the country, we have agreed that the premium on this \$600,000 policy will be sent direct to the Underwriters in London by Maj. Pamoe, which will be deducted from the charter of the vessel. Please advise Maj. Pamoe about this. Although we are also writing to him about it. The \$33,934.28 should be remitted to: 40

SMITH, BELL & CO. (London) LTD.
 69/70, Mark Lane,
 London, E. C. 3

When remitting the said amount by telegraphic transfer, as requested by them, please state that it is being remitted in behalf of Juan Ysmael & Co. to cover the premium on the insurance of the "Tasikmakja" (renewal). The local agents' commission will be paid by us here in Pesos.

I am writing to Maj. Pamoe to day regarding all the above.

Mrs. Hemady, who was operated on in the hospital for her gall bladder is now at home, completely recovered. She wishes to express her gratitude for all your efforts and for everything you are doing for us.

10 With kindest personal regards and best wishes, in which Mrs. Hemady joins me, I remain,

Sincerely yours,
(Sd.) K. H. HEMADY.

KHH:Fbs—

P.S.: Enclosed are copies of cables received from you and sent to you. Please require Capt. Aguado to send one new allotment identification of Antonio Tenalگو (Oiler) as our record here is not clear.

Exhibit KK-U1
Letter—
K. H. Hemady
to Frank C.
Starr.
7th February
1952.

Ref. No. 73
Referred to in
Doc. No. 20
continued.

Exhibit KK-V1
Cable—
Ref. No. 74
Referred to in
Doc. No. 20

Exhibit KK-V1
Cable—
Frank C.
Starr to
Briones.
7th February
1952.

Ref. No. 74
Referred to in
Doc. No. 20

(February 7, 1952)

(C O P Y)

CABLE AND WIRELESS LIMITED

| No. | Clerk's Name | Time Received |
|---|----------------------|------------------|
| 60478 | Illegible | |
| VU438 | DJAKARTA 31 7 0545 = | BRIONES KIMBERLY |
| HOTEL HONGKONG = GOOD WORK BUT DONT LET ANYONE KNOW OF | | |
| TASIK COMING THERE BESIDES TAIKOO STOP VISIT CHIEF DAILY ALSO | | |
| A KING CAUSEWAY BAY REGARDS FROM ALL = FRANK STARR | | |

Exhibit KK-W1
Cable—
Ref. No. 75
Referred to in
Doc. No. 20

Exhibit KK-W1
Cable—
Frank C.
Starr to
Briones.
24th February
1952.

Ref. No. 75
Referred to in
Doc. No. 20

(C O P Y)

CABLE AND WIRELESS LIMITED

(February 24, 1952)

| No. | CLERK'S NAME | TIME RECEIVED |
|--|-----------------------|--------------------------------------|
| 89037 | Illegible | |
| VU1181 | DJAKARTA 17 23 2117 = | BRIONES KIMBERLY |
| 40 | HOTEL HONGKONG = | CONTACT TAIKOO IMMEDIATELY HAVE SENT |
| THEM URGENT CABLE KEEP STRICTLY CONFIDENTIAL REGARDS = | | |
| STARR | | |

Exhibit KK-X1
Letter—
Frank C.
Starr to Mr.
Hemady,
7th March
1952.

Ref. No. 76
Referred to in
Doc. No. 20

Exhibit KK-X1
Ref. No. 76
Referred to in
Doc. No. 20

Djakarta, 7 March, 1952.

Dear Mr. Hemady:

Chief Officer Buendia is returning to Manila after having done a real splendid job on board the Tasikmalaja and I highly recommend him for further duty with your company wherever possible to place him. His integrity and honesty is beyond reproach and he possesses that rare ability to handle a large group of men 10 under his command.

Chief Buendia will report to you of the condition of the vessel as well as the well being of his fellow crew members.

This office has nothing charged against him and in view of his splendid work it is hoped your office can effect immediate payment of his March salary and his two week bonus period for overseas service.

Very truly yours,

(Sd.) FRANK C. STARR.

FRANK C. STARR.

Djakarta 7 March, 1952. 20

Exhibit KK-Y1
Letter—
Captain F. J.
Aguado to
Juan Ysmael
& Co. Inc.
5th March
1952.

Ref. No. 77
Referred to in
Doc. No. 20

Exhibit KK-Y1
Ref. No. 77
Referred to in
Doc. No. 20

ASIA BARU ASSOCIATES

Tanah Abang Timar 3 — Djakarta. — Phone 4282 Gambir.

Djakarta, 5 March, 1952.

Messrs. Juan Ysmael & Co., Inc.,
Manila,
Philippines.

30

Attn. Mr. K. H. Hemady,
President

Dear Sirs:

Bearer is Mr. Jacinto Buendia, who with the consent of Mr. F. C. Starr is returning to Manila due to some family requirements, which according to him require his presence urgently.

As Mr. Buendia, who up to the arrival at that port is to be paid, has been holding the position of Chief Officer on the S.S. "Tasikmalaja", under my command.

Mr. Buendia has not received from me anything here as his full pay has been allotted in Manila, consequently he has no accounts to settle, nor we with him, 40 except that he is to be paid the month of March up to and including the day of his arrival.

Although Mr. Buendia is under contract for six months, his arrival there will be one day short of the contract, which if I may suggest may be paid to that date.

The returning of Mr. Buendia is in no way affecting the operation of the vessel as Executive Officer Silos and the other two officers are filling up the gap.

Trusting that the above is clear and awaiting your further orders, I remain

Very respectfully,
 (Sd.) F. J. AGUADO.
 Capt. F. J. AGUADO,
 Master
 S.S. "TASIKMALAJA"

*Exhibit KK-Y1
 Letter—
 Captain F. J.
 Aguado to
 Juan Ysmael
 & Co. Inc.
 5th March
 1952.*

Ref. No. 77
 Referred to in
 Doc. No. 20
 continued.

10

Exhibit KK-Z1
 Ref. No. 78
 Referred to in
 Doc. No. 20

April 16, 1952.

Major Pamoe Rahardjo
 Ministry of Defence of the Republic of Indonesia
 Djakarta, Indonesia.

*Exhibit KK-z1
 Letter—
 Juan Ysmael
 & Co. Inc.,
 to Major
 Pamoe
 Rahardjo.
 16th April 1952.*

Ref. No. 78
 Referred to in
 Doc. No. 20

20 Dear Major Pamoe:

We have just received a letter from the insurance company in Manila which insured the S/S "Tasikmalaja" calling our attention to the fact that their London Office (Smith, Bell & Co. (London) Ltd), has not as yet received the premium due for the renewal policy of the insurance of said vessel in the amount of US\$33,934.28. We had repeatedly requested Mr. Starr to remit this amount from Djakarta to London but evidently he has overlooked this matter. Therefore, we have today cabled you as follows:

30

"IF INSURANCE PREMIUM TASIKMALAJA NOT YET REMITTED PER OUR SEVERAL REQUESTS PLEASE EFFECT REMITTANCE IMMEDIATELY SO VESSEL WILL BE REINSURED".

As we have no facilities for sending dollars from this end, we would therefore request you to kindly remit to Messrs. Smith Bell & Co. (London) Ltd., 69/70 Mark Lane, London, E.C. 3, by telegraphic transfer, the said amount of \$33,934.28, and charge same to our account. As soon as you have remitted this amount, kindly cable us accordingly.

Hoping that you will assist us in the above matter, and thanking you for this favour, we remain

Very truly yours,
 JUAN YSMAEL & CO., INC.,

40

K. H. HEMADY,
 President.

KHH:Fbs:

552

Exhibit KK-
AA1
Cable—
Juan Ysmael
& Co. Inc.,
to Major
Pamoe
Rahardjo.
15th April 1952.

Exhibit KK-
AA1
Ref. No. 79
Referred to in
Doc. No. 20

(COPY)

RADIOGRAM

RCA COMMUNICATIONS, INC.

SENDERS' NAME JUAN YSMAEL & CO., INC.
ADDRESS 217 Consolidated Investments Bldg., Manila.

10

April 16, 1952.

MAJOR PAMOE RAHARDJO,
MINISTRY OF DEFENSE
DJAKARTA (Indonesia).

IF INSURANCE PREMIUM TASIKMALAJA NOT YET REMITTED PER
OUR SEVERAL REQUESTS PLEASE EFFECT REMITTANCE IMMEDIATELY
SO VESSEL WILL BE REINSURED

YSMAEL

RCA COMMUNICATION, INC.
CERTIFIED TRUE COPY
BY (Sd.) ILLEGIBLE.
SUPT. RCA MANILA.

20

Exhibit JMS-1A
Letter—
Frank C. Starr
to Captain
Silos.
16th May 1952.

Exhibit JMS-
1A
Ref. No. 80
Referred to in
Doc. No. 22

WINNER HOUSE

HOTEL DE LUXE

310-316 King's Road Hong Kong
TEL: 34706-34749

30

Dear Capt. Silos,

Am leaving for Singapore today (Joe will explain) and hope to come back
within 10 days.

Regards and try to do your best under such circumstances.

(Sd.) FRANK C. STARR,

16

5 —

52

Hong Kong

40

Exhibit JMS-
2A
Ref. No. 81
Referred to in
Doc. No. 22

Exhibit JMS-2A
Cable—
Frank C. Starr
to Captain
Silos.
9th June 1952.

CABLE AND WIRELESS LIMITED

= ET =

HONG KONG

9 — JUN 1952.

Ref. No. 81
Referred to in
Doc. No. 22

No. Clerk's Name

10 61155 / D G /

TV U23 DJAKARTA 96-94 9 1502 = LT = CAPTAIN SILOS
SS TASIKMALAJA HONGKONG PLEASE ADVISE MR BRIONES COMA
INDONESIAN CONSULATE COMA PANAMANIAN CONSULATE ALL OF
HONGKONG THAT SALE OF STEAMSHIP TASIKMALAJA TO INDONESIAN
ARMY WAS DONE WITH FULL VALID AUTHORITY IN WRITING GIVEN TO
ME BY THE LATE K H HEMADY PRESIDENT JUAN YSMAEL COMPANY
STOP ANY DETRIMENT STATEMENTS MADE OR TO BE MADE BY ANY
OF THE ABOVE SHALL RESULT IN COURT ACTION BEING TAKEN
AGAINST PARTY IMMEDIATELY ALSO PERSONAL ACTION BY ME STOP
20 KINDLY SEND COPY OF THIS CABLE TO ABOVE PARTIES FULLSTOP =
FRANK C STARR ASIA BARU

ASSOCIATES DJAKARTA

Exhibit JMS-3
Ref. No. 82
Referred to in
Doc. No. 22

Exhibit JMS-3
Letter—
Jose M. Silos
to Jose
Briones.
10th June 1952.

Hongkong June 10/52
s.s. Tasikmalaja

Ref. No. 82
Referred to in
Doc. No. 22

Mr. Jose Briones,
Kimberley Hotel,
30 Kowloon.

Dear Joe:

I herewith enclose a true copy of Mr. Frank C. Starr cable to me dated June 9/52 and a true copy of my cable sent to him today in reply of his, both are self explanatory.

I am sending this cables to you, so that you may take this matter to the owner, and request them to send me an official letter regarding the truth about the sale of the s.s. Tasikmalaja to the Indonesian Army, as I can not take the cable of Mr. Starr as official.

Hoping to hear from you soon. I remain,

40

Yours very sincerely,
(Sd.) J. MA. SILOS.
JOSE MA. SILOS,
Master
s.s. Tasikmalaja.

Exhibit JMS-4A
Payroll of
Filipino
crew of s.s.
"Tasikmalaja"
for May 1952.
21st June 1952.

Ref. No. 83
Referred to in
Doc. No. 22

Exhibit JMS-4A
Ref. No. 83
Referred to in
Doc. No. 22

S.S. "TASIKMALAJA"
PAYROLL AND ACCOUNT SALARY FOR THE MONTH OF MAY, 1952
OF THE FILIPINO CREW

| Num. Name | Position | Monthly Salary | Deposit at Off. Manila | Amount to be received on board | Received (Paid) | Signature |
|----------------|----------------|----------------|------------------------|--------------------------------|-----------------|------------------|
| 1. J. M. Silos | Captain | P. 775.— | P. 775.— | — | — | — |
| 2. P. Alimpia | Radio Operator | P. 360.— | P. 300.— | P. 60.— | H.K.\$ 144.— | (Sd.) P. Alimpia |
| 3. J. Rubin | Boatswain | P. 225.— | P. 180.— | P. 45.— | H.K.\$ 108.— | (Sd.) J. Rubin |
| 4. C. Molo | Ord. Seaman | P. 123.50 | P. 100.— | P. 23.50 | H.K.\$ 56.40 | (Sd.) C. Molo |
| 5. N. Mortel | 2nd Engineer | P. 675.— | P. 600.— | P. 75.— | H.K.\$ 180.— | (Sd.) N Mortel |
| 6. A. Aviles | 4th Engineer | P. 360.— | P. 300.— | P. 60.— | H.K.\$ 144.— | (Sd.) A, Aviles |
| 7. Tonalgo | Oiler | P. 180.— | P. 150.— | P. 30.— | H.K.\$ 72.— | (Sd.) Tonalgo |
| 8. D. Cabil | Oiler | P. 180.— | P. 100.— | P. 80.— | H.K.\$ 192.— | (Sd.) D. Cabil |
| 9. N. Pavia | Chief Steward | P. 375.— | P. 250.— | P. 125.— | H.K.\$ 300.— | (Sd.) N. Pavia |

Total H.K.\$1,196.40.

ONE THOUSAND ONE HUNDRED AND NINETY SIX 40/100 DOLLARS ONLY

.....
Hong Kong, June 21, 1952.

(Sd.) JOSE MA. SILOS
Captain Jose Ma. Silos
s.s. "Tasikmalaja".

.....
J. WALANDOUW
J. Walandouw
Purser.

(Sd.) J. W. KUITERT
J. W. Kuitert
Tech. Adviser Kem. Pertahanan

Exhibit JMS-
5A
Ref. No. 84
Referred to in
Doc. No. 22

Exhibit JMS-5A
Three State-
ments of
Account of
Salary
advances to
Steward, Deck
and Engine
Departments
of s.s.
"Tasikmalaja"
for May 1952.
10th May, 1952.
Ref. No. 84
Referred to in
Doc. No. 22

S.S. "TASIKMALAJA"

AGAINST ADVANCE SALARY FOR THE MONTH OF
MAY, 1952 OF THE

STEWARDS DEPARTMENT

| 10 | Num. | Name | Position | Salary | Signature |
|----|------|-------------------|------------------|---------------|-----------|
| | 1. | J. Walandouw | Purser | Hg. \$ 100.- | illegible |
| | 2. | N. Pavia | Chief Steward | Hg. \$ 100.- | illegible |
| | 3. | Kaka | Chief Cook | Hg. \$ 100.- | kaka |
| | 4. | Ludu | 2nd Cook | Hg. \$ 100.- | illegible |
| | 5. | Siba Hassan | 3rd Cook | Hg. \$ 100.- | illegible |
| | 6. | Sigama | Cook Helper | Hg. \$ 100.- | illegible |
| | 7. | Mahmud | Saloon Boy | Hg. \$ 100.- | illegible |
| | 8. | Hassan 3 | Saloon Boy | Hg. \$ 100.- | illegible |
| | 9. | Hassan 2 | Saloon Boy | Hg. \$ 100.- | illegible |
| 20 | 10. | Tjoli | Saloon Boy | Hg. \$ 100.- | illegible |
| | 11. | Matheos Boko | Saloon Boy | Hg. \$ 100.- | illegible |
| | 12. | Kasannudin | Potwasher | Hg. \$ 100.- | illegible |
| | 13. | Lamburi | Cabin Boy | Hg. \$ 100.- | illegible |
| | 14. | Ento Suminto | Cabin Boy | Hg. \$ 100.- | illegible |
| | 15. | Duhung | Cabin Boy | Hg. \$ 100.- | illegible |
| | 16. | Jan. Ari. Mandang | Cabin Boy | Hg. \$ 100.- | illegible |
| | 17. | Rukdin Mosoi | Deck. Off. Boy | Hg. \$ 100.- | illegible |
| | 18. | Lamani | Capt. Boy | Hg. \$ 100.- | illegible |
| | 19. | Hendrik Tampi | Ass. Capt. Boy | Hg. \$ 100.- | illegible |
| 30 | 20. | Jan. Pieters | Ch. Engineer Boy | Hg. \$ 100.- | illegible |
| | 21. | Idrus Ishag | Toilet Boy | Hg. \$ 100.- | illegible |
| | | | TOTAL | Hg. \$2,100.- | |

TWO THOUSAND ONE HUNDRED ONLY

Hong Kong May 10, 1952

(Sd.) J. M. SILOS

JOSE MA. SILOS.

MASTER

Initialed):

J. W.

J. Walandouw

Purser.—

40 O. K.
(Sd.) STARR.

S.S. "TASIKMALAJA"

**AGAINST ADVANCE SALARY FOR THE MONTH OF
MAY, 1952 OF THE
DECK DEPARTMENT**

Exhibit JMS-5A
Three State-
ments of
Account of
Salary
advances to
Steward, Deck
and Engine
Departments
of s.s
"Tasikmalaja"
for May 1952.
10th May, 1952.

Ref. No. 84
Referred to in
Doc. No. 22
continued.

| Num. | Name | Position | Salary | Signature | |
|-------|---------------|-------------------|---------------|---------------------|----|
| 1. | J. M. Silos | Executive Officer | Hg. \$ 100.- | (Sd.) J. M. Silos. | |
| 2. | A. Alimpia | Radio Operator | Hg. \$ 100.- | (Sd.) A. Alimpia | |
| 3. | R. Aguado | 3rd officer | Hg. \$ 100.- | | |
| 4. | M. Pilat | Appr. Mate | Hg. \$ 100.- | (Sd.) M. Pilat | |
| 5. | D. J. Mandagi | Appr. Mate | Hg. \$ 100.- | (Sd.) Mandagi. | 10 |
| 6. | J. Rubion | Boatswain | Hg. \$ 100.- | (Sd.) J. Rubion | |
| 7. | P. Segovia | Carpenter | Hg. \$ 100.- | (Sd.) P. Segovia | |
| 8. | L. Salgado | Deck. St. Keeper | Hg. \$ 100.- | (Sd.) L. Salgado | |
| 9. | Haron | Winchman | Hg. \$ 100.- | (Sd.) Haron. | |
| 10. | H. Seiman | Quartermaster | Hg. \$ 100.- | (Sd.) H. Seiman | |
| 11. | N. Bishima | Quartermaster | Hg. \$ 100.- | (Sd.) N. Bishima | |
| 12. | H. Lumisay | Ord. Seaman | Hg. \$ 100.- | (Sd.) H. Lumisay | |
| 13. | C. Molo | Ord. Seaman | Hg. \$ 100.- | (Sd.) C. Molo | |
| 14. | M. Sahabu | Quartermaster | Hg. \$ 100.- | (Sd.) M. Sahabu | |
| 15. | Sudjajos | Ord. Seaman | Hg. \$ 100.- | (Sd.) Sudjajos | 20 |
| 16. | T. Lowel | Ord. Seaman | Hg. \$ 100.- | (Sd.) T. Lowel | |
| 17. | E. Tjong Sui | Ord. Seaman | Hg. \$ 100.- | (Sd.) E. Tjong Sui | |
| 18. | Sudarman | Ord. Seaman | Hg. \$ 100.- | (Sd.) Sudarman | |
| 19. | R. Victoria | Ord. Seaman | Hg. \$ 100.- | (Sd.) R. Victoria | |
| 20. | A. Taubara | Watchman | Hg. \$ 100.- | (Sd.) A. Taubara | |
| 21. | L. Tjong Jung | Watchman | Hg. \$ 100.- | (Sd.) L. Tjong Jung | |
| TOTAL | | | Hg. \$2,100.- | | |

TWO THOUSAND ONE HUNDRED ONLY

Hong Kong May 10, 1952

Initialled):

J. W.

J. Walandouw

Purser.—

(Sd.) J. M. SILOS.

JOSE MA. SILOS

MASTER

30

O. K.
(Sd.) STARR.

S.S. "TASIKMALAJA"
AGAINST ADVANCE SALARY FOR THE MONTH OF
MAY, 1952 OF THE
ENGINE DEPARTMENT

Exhibit JMS-5A
Three State-
ments of
Account of
Salary
advances to
Steward, Deck
and Engine
Departments
of s.s
"Tasikmalaja"
for May 1952.
10th May, 1952.

| Num. | Name | Position | Salary | Signature |
|--------------|-------------------|--------------|----------------------|---------------|
| | 1. M. Senoran | 2nd Engineer | Hg. \$ 100.- (Sd.) | M. Senoran |
| | 2. N. Mortel | 3rd Engineer | Hg. \$ 100.- (Sd.) | N. Mortel |
| | 3. A. Aviles | 4th Engineer | Hg. \$ 100.- (Sd.) | A. Aviles |
| | 4. P. Rozenberg | Electrician | Hg. \$ 100.- (Sd.) | P. Rozenberg |
| 10 | 5. A. Tonalgo | Oiler | Hg. \$ 100.- (Sd.) | A. Tonalgo |
| | 6. D. Cabil | Oiler | Hg. \$ 100.- (Sd.) | D. Cabil |
| | 7. J. Lewiresa | Oiler | Hg. \$ 100.- (Sd.) | J. Lewiresa |
| | 8. Achmad | Oiler | Hg. \$ 100.- (Sd.) | Achmad |
| | 9. Joh Walandouw | Oiler | Hg. \$ 100.- (Sd.) | Joh Walandouw |
| 10 | 10. M. Sigar | Oiler | Hg. \$ 100.- (Sd.) | M. Sigar |
| | 11. D. Sumulang | Oiler | Hg. \$ 100.- (Sd.) | D. Sumulang |
| | 12. L. Nanlohy | Fireman | Hg. \$ 100.- (Sd.) | L. Nanlohy |
| | 13. Tjali Toba | Fireman | Hg. \$ 100.- (Sd.) | Tjali Toba |
| | 14. Ali | Fireman | Hg. \$ 100.- (Sd.) | Ali |
| 20 | 15. R. Walandouw | Fireman | Hg. \$ 100.- (Sd.) | R. Walandouw |
| | 16. A. Gigil | Fireman | Hg. \$ 100.- (Sd.) | A. Gigil |
| | 17. R. Sudarsono | Wiper | Hg. \$ 100.- (Sd.) | R. Sudarsono |
| | 18. V. Pongilatan | Wiper | Hg. \$ 100.- (Sd.) | V. Pongilatan |
| | 19. A. Karauwan | Wiper | Hg. \$ 100.- (Sd.) | A. Karauwan |
| | 20. V. Kaparang | Wiper | Hg. \$ 100.- (Sd.) | V. Kaparang |
| | 21. C. Lombogia | Wiper | Hg. \$ 100.- (Sd.) | C. Lombogia |
| | 22. P. Kaparang | Wiper | Hg. \$ 100.- (Sd.) | P. Kaparang |
| TOTAL | | | Hg. \$2,200.- | |

Ref. No. 84
 Referred to in
 Doc. No. 22
continued.

TWO THOUSAND TWO HUNDRED ONLY

30

Hong Kong May 10, 1952

Initialled):
 J. W.
 J. Walandouw
 Purser.—

(Sd.) JOSE MA. SILOS.
 JOSE MA. SILOS
 MASTER

O. K.
 (Sd.) STARR

Exhibit JMS-6A
Three State-
ments of
Account of
payments to
crew of s.s.
"Tasikmalaja"
for period
15th March to
10th May, 1952.
3rd June 1952.

Ref. No. 85
Referred to in
Doc. No. 22

Exhibit JMS-6A
Ref. No. 85
Referred to in
Doc. No. 22

S.S. "TASIKMALAJA"

PAYMENT SALARY & DRAW FROM MARCH 15, 1952 TO MAY 10, 1952
OF THE FILIPINO AND INDONESIAN CREW OF THE S.S. "TASIKMALAJA"

STEWARD DEPARTMENT

By Mr. Frank C. Starr.

| Num. | Name | Designation | March 15, 1952 | March 21, 1952 | March 26, 1952 | April 16, 1952 | April 28, 1952 | April 30, 1952 | May 3, 1952 | May 10, 1952 |
|------|-----------------|----------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|----------------|-----------------|
| 1. | J. Walandouw | Purser | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 2. | N. Pavia | Chief Steward | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 3. | Kaka | Chief Cook | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 4. | Ludu | 2nd Cook | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 5. | Sigama | Cook Helper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 6. | Siba Hassan | 3rd Cook | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 7. | Kasanudin | Potwasher | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 8. | Hassan 3 | Potwasher | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 9. | Mahmud | Saloon Boy 1 | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 10. | Matheos Boko | Saloon Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 11. | Hassan 2 | Saloon Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 12. | Tjoll | Saloon Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 13. | Lamburi | Cabin Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 14. | Duhung | Cabin Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 15. | Jan. A. Mandang | Cabin Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 16. | Idrus Ishag | Deck Crew Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 17. | Lamani | Capt. Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 18. | H. Tampi | Ass. Capt. Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 19. | Jan. Pieters | Ch. Eng. Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 20. | Rukdin Mosoi | Deck Off. Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |
| 21. | Ento Suminto | Cabin Boy | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$- | HK\$200.- | HK\$100.- | HK\$100.- |

(Sd.) J. W. KUITERT.

J. W. Kuitert,
Tech. Advisor, Kem. Pertahanan.

(Sd.) J. WALANDOUW.

J. Walandouw,
Purser.

Hong kong, June 3, 1952.

(Sd.) J. M. SILOS.
Capt. Jose Ma Silos,
S.S. "TASIKMALAJA".

S.S. "TASIKMALAJA"

PAYMENT SALARY & DRAW FROM MARCH 15, 1952 TO MAY 10, 1952
OF THE FILIPINO AND INDONESIAN CREW OF THE S.S. "TASIKMALAJA"

ENGINE DEPARTMENT

By Mr. Frank C. Starr.

| Num. | Name | Designation | March 15, 1952 | March 21, 1952 | March 26, 1952 | April 16, 1952 | April 28, 1952 | April 30, 1952 | May 3, 1952 | May 10, 1952 |
|------|----------------|----------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|----------------|-----------------|
| 1. | P. Alcobendas | Chief Engineer | HK\$ - | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$ - |
| 2. | M. Senoran | 2nd Engineer | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 3. | N. Mortel | 2nd Engineer | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 4. | A. Aviles | 4th Engineer | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 5. | P. Rozenberg | Electrician | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 6. | A. Tonalgo | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 7. | D. Cabil | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 8. | J. Lewerisa | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 9. | Achmad | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 10. | Joh. Walandouw | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 11. | M. Sigar | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 12. | D. Sumolang | Oiler | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 13. | L. Nanlohy | Fireman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 14. | Tjali Toba | Fireman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 15. | Ali | Fireman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 16. | R. Walandouw | Fireman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 17. | A. Gigit | Fireman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 18. | R. Sudarsono | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 19. | V. Pongilatan | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 20. | A. Karauwan | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 21. | V. Kaparang | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 22. | C. Lombogia | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 23. | P. Kaparang | Wiper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |

(Sd.) J. W. KUITERT.

J. W. Kuitert,
Tech. Advisor, Kem. Pertahanan.

(Sd.) J. WALANDOUW.

J. Walandouw,
Purser.

Hong kong, June 3, 1952.

(Sd.) J. M. SILOS.
Capt. Jose Ma Silos,
S.S. "TASIKMALAJA".

Exhibit JMS-6A
Three State-
ments of
Account of
payments to
crew of s.s.
"Tasikmalaja"
for period
15th March to
10th May, 1952.
3rd June, 1952.
Ref. No. 85
Referred to in
Doc. No. 22
continued.

Exhibit JMS-6A
Three State-
ments of
Account of
payments to
crew of s.s.
"Tasikmalaja"
for period
15th March to
10th May, 1952.
3rd June, 1952.

Ref. No. 85
Referred to in
Doc. No. 22
continued.

S.S. "TASIKMALAJA"
PAYMENT SALARY & DRAW FROM MARCH 15, 1952 TO MAY 10, 1952
OF THE FILIPINO AND INDONESIAN CREW OF THE S.S. "TASIKMALAJA"

DECK DEPARTMENT

By Mr. Frank C. Starr.

| Num. | Name | Designation | March 15, 1952 | March 21, 1952 | March 26, 1952 | April 16, 1952 | April 28, 1952 | April 30, 1952 | May 3, 1952 | May 10, 1952 |
|------|---------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|----------------|-----------------|
| 1. | J. M. Silos | Executive Officer | HK\$ - | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 2. | M. Calacal | 2nd Officer | HK\$50.- | HK\$100.- | HK\$100.- | HK\$ - | HK\$ - | HK\$ - | HK\$ - | HK\$ - |
| 3. | M. Palarca | 3rd Officer | HK\$50.- | HK\$100.- | HK\$ - | HK\$ - | HK\$ - | HK\$ - | HK\$ - | HK\$ - |
| 4. | A. Alimpia | Radio Operator | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 5. | M. Pilat | Appr. Mate | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 6. | Dj. Mandagie | Appr. Mate | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 7. | J. Rubion | Boatswain | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 8. | P. Segovia | Carpenter | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 9. | L. Saigado | Sr. Keeper | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 10. | R. Aguado | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$ - |
| 11. | B. Victoria | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 12. | C. Molo | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 13. | Haron | Winchman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$ - |
| 14. | H. Seiman | Quartermaster | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 15. | N. Bahima | Quartermaster | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 16. | M. Sahabu | Quartermaster | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 17. | H. Lumisay | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 18. | Sudjajoes | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 19. | J. Lowel | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 20. | E. Tjong Sui | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 21. | Sudarman | Ord. Seaman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 22. | A. Tuabara | Watchman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |
| 23. | L. Tjong Jung | Watchman | HK\$50.- | HK\$100.- | HK\$100.- | HK\$50.- | HK\$50.- | HK\$200.- | HK\$100.- | HK\$100.- |

(Sd.) ILLEGIBLE.

J. W. Kuitert,
Tech. Advisor, Kem. Pertahanan.

(Sd.) ILLEGIBLE.

J. Walandouw,
Purser.

Hong kong, June 3, 1952.

(Sd.) ILLEGIBLE.
Capt. Jose Ma Silos,
S.S. "TASIKMALAJA".

Exhibit JMS-
7A
Ref. No. 86
Referred to in
Doc. No. 24

Exhibit JMS-7A
Letter—
Khalil Khodr
to Captain
Jose Ma. Silos.
27th June 1952.

Capt. Jose Ma. Silos,
Master,
s.s. "Tasikmalaja",
Hong Kong.

Hong Kong, 27 June, 1952.

Ref. No. 86
Referred to in
Doc. No. 24

10 Sir :

As owners of the s.s. "Tasikmalaja" and not recognising the purported transfer of ownership, nor its flag, the undersigned as authorised representative of legal owners Juan Ysmael & Co., Inc., of Manila, Philippines, hereby orders you to lower, with the due respect which a National Flag should be treated, the Indonesian Colours, after which it should be duly and safely stored with other National Flags.

Until further orders you are not to display any Colours and shall see that the vessel is fully taken care of.

Yours faithfully,

20

(Sd.) KHALIL KHODR,
Khalil Khodr
Attorney in Fact
for JUAN YSMAEL & CO., INC.,
Manila.

Exhibit JMS-
8A
Ref. No. 87
Referred to in
Doc. No. 24

Exhibit JMS-8A
Letter—
Kwee Djie
Hoo to Acting
Captain s.s.
"Tasikmalaja"
28th June 1952.

30

KONSULAT DJENDERAL
HONG KONG

28th June, 1952.

Sir,

In case there is any doubt in your mind, I have to inform you that the Indonesian flag has to fly on the s.s. "Tasikmalaja" as usual.

I am, Sir,

Yours truly,

(Sd.) KWEEDJIEHOO.

40

Seal : KONSULAT-DJENDERAL
REPUBLIK INDONESIA
HONG KONG.

Kweedjehoo,
Consul-General.

Act. Captain s.s. "Tasikmalaja"
Present.

Exhibit JMS-9
Letter—
Jose Ma. Silos
to Kwee Djie
Hoo.
28th June 1952

Ref. No. 88
Referred to in
Doc. No. 24

Exhibit JMS-9
Ref. No. 88
Referred to in
Doc. No. 24

Hongkong, June 28, 1952.
s.s. Tasikmalaja

In reply to your letter dated June 28/1952, I regret to inform you that you are not in a position to give me an order, neither I am in a position to obey any order from you.

Sincerely yours, 10

(Sd.) J. M. SILOS.

Jose Ma. Silos
Captain
s.s. Tasikmalaja.

Kweedjehoo Esq.
Consul General
Republic of Indonesia
Present.

Exhibit KK-EE1
Form of
Baltim
Charter.

Ref. No. 89
Referred to in
Doc. No. 25

Exhibit KK-
EE1
Ref. No. 89
Referred to in
Doc. No. 25

20

THE s.s. TASIKMALAJA IS CHARTERED IN ACCORDANCE WITH THIS TYPE OF CHARTER CONTRACT.

Natie

File/435

(Sd.) FRANK C. STARR,
Asia Baru Associates.

Adopted by the
Document
Committee of
the Chamber
of Shipping of
the United
Kingdom

HENDERSON TRIPPE SHIPPING CO., INC.
PHILIPPINES — HONGKONG
GUAM — AUSTRALIA

30

THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE
(Formerly The Baltic and White Sea Conference)

[FLAG]

UNIFORM TIME — CHARTER

Issued
5/2/1902
Amended
13/3/1911
Amended
6/3/1912
Amended
10/6/1920
Amended
1/3/1939
CODE-NAME
BALTIME
1939

Description of
Vessel.

IT IS THIS DAY MUTUALLY AGREED between Owners
of the vessel called of tons gross Register,
tons net
classed of indicated horse power,
carrying about tons deadweight on Board of Trade summer freeboard inclusive

19

of bunkers, stores, provisions and boiler water, having as per builders plan
 cubic feet $\frac{\text{grain}}{\text{bale}}$ capacity, exclusive of permanent bunkers, which contain
 about tons, and fully loaded capable of steaming about knots in
 good weather and smooth water on a consumption of about tons best
 Welsh coal, or about tons oil fuel, now
 and
 of

Exhibit KK-EEI
Form of
Baltim
Charter.

Ref. No. 89
 Referred to in
 Doc. No. 25
continued.

Charterers, as follows :

- 10 1. The Owners let, and the Charterers hire the vessel for a period of
 calendar months from the time (not a Saturday or a legal Holiday unless
 taken over) the vessel is delivered and placed at the disposal of Charterers
 between 9 a.m. and 6 p.m. or between 9 a.m. and 2 p.m. if on Saturday, at
 Charterers.
 Period.

in such available berth where she can safely lie always afloat, as the
 Charterers may direct, she being in every way fitted for ordinary cargo
 service.

The vessel to be delivered.

- 20 2. The Vessel to be employed in lawful trades for the carriage of lawful
 merchandise only between good and safe ports or places where she can safely
 lie always afloat with the following limits :
 Port of
 Delivery
 Time of
 Delivery.
 Trade.
- No live stock nor injurious, inflammable or dangerous goods (such as acid,
 20 explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their
 products) to be shipped.

3. The Owners to provide and pay for all provisions and wages, for insurance
 of the Vessel, for all deck and engine-room stores and maintain her in a
 thoroughly efficient state in hull and machinery during service.

The Owners to provide one winchman per hatch. If further winchmen are
 required, or if the stevedores refuse or are not permitted to work with the Crew,
 the Charterers to provide and pay qualified shore-winchmen.
 Owners to
 provide.

- 30 4. The Charterers to provide and pay for all coals, including galley coal, oil-fuel,
 water for boilers port charges, pilotages (whether compulsory or not),
 canal steersmen, boatage, lights, tug-assistance, consular charges (except
 those pertaining to the Master, Officers and Crew) canal dock and other
 dues and charges, including any foreign general municipality or state taxes,
 also all dock, harbour and tonnage dues at the ports of delivery and
 re-delivery (unless incurred through cargo carried before delivery or after
 re-delivery) agencies, commissions, also to arrange and pay for loading,
 trimming, stowing, (including dunnage and shifting boards, excepting any
 already on board) unloading, weighing, tallying and delivery of cargoes,
 surveys on hatches, meals supplied to officials and men in their service and
 all other charges and expenses whatsoever including detention and expenses
 40 through quarantine (including cost of fumigation and disinfection).
 Charterers to
 provide

Exhibit KK-EE1
Form of
Baltic
Charter.

Ref. No. 89
Referred to in
Doc. No. 25
continued.

All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers, and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.

Esther

Bunkers. 5. The Charterers at Port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports. The Vessel to be re-delivered with not less than _____ tons and not exceeding _____ tons of coal or oil-fuel 10 in the Vessel's bunkers.

Hire.
Payment. 6. The Charterers to pay as hire : per 30 days, commencing in accordance with clause 1 until her re-delivery to the Owners. Payment of hire to be made in cash, in _____ without discount, every 30 days, in advance.

In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, noting without any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

Re-delivery. 7. The Vessel to be re-delivered on the expiration of the Charter in the same 20 good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option in between 9 a.m. and 6 p.m. and 9 a.m. to 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.

Notice. The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.

Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage will allow re-delivery about the time fixed for the termination of the Charter, but for any 30 time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.

Cargo
Space. 8. The whole reach and burthen of the Vessel, including lawful deck capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

Master. 9. The master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under order of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all 40 consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying

goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.

Exhibit KK-EE1
Form of
Baltim
Charter.

If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter and, if necessary and practicable, to make a change in the appointments.

Ref. No. 89
Referred to in
Doc. No. 25
continued.

10. The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents. Directions and logs.
11. (A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident either hindering or preventing the working of the vessel and continuing for more than twenty-four consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly. Suspension of Hire etc.
- (B) In the event of the Vessel being driven into port or to anchorage through stress of weather trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.
12. Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready. Cleaning Boilers.
13. The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods on board, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel sea-worthy and fitted for voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general. Responsibility and Exemption.
- 40 The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants. Advances.

Exhibit KK-EE1
Form of
Baltimere
Charter.

Ref. No. 89
Referred to in
Doc. No. 25
continued.

Excluded
Ports
Ice.

14. The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 percent p.a., such advances to be deducted from hire.
15. The Vessel not to be ordered to nor bound to enter: (a) any place where fever or epidemics are prevalent or to which the Master, Officer and Crew by law are not bound to follow the Vessel (b) any ice-bound place or any place where lights, lightships, marks and bouys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the 10 place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterer's fresh instructions.

Unforeseen detention through any of above causes to be for the Charterers' account.

Loss of
Vessel.

16. Should the Vessel be lost or missing, hire to cease from the date when she was lost. If that date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of 20 arrival at the destination. Any hire paid in advance to be adjusted accordingly.

Over-
time.

17. The Vessel to work day and night if required. The Charterers to refund the Owners their outlays for all overtime paid to Officers and Crew according to the hours and rates stated in the vessels articles.

Lien.

18. The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

Salvage

19. All salvage and assistance to other vessels to be for the Owners' and the 30 Charterers' equal benefit after decuting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

Sublet.

20. The Charterers to have the option of subletting the Vessel, giving due notice to the Owners but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

War

21. (A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any 40 service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war, hostilities, warlike operations, acts of piracy or hostility or malicious damage against this or any other

vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.

Exhibit KK-EE1
Form of
Balttime
Charter.

Ref. No. 89
Referred to in
Doc. No. 25
continued.

10 (B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of clause 11 hire to be paid for all time lost including any lost owing to loss of or injury to the Master, Officers, or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks.

20 (C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefore, such account being rendered monthly.

Section
(C) is
optional
and should be
deleted unless
agreed

(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppage, destination, delivery or in any otherwise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.

30 (E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agree, the Vessel to be redelivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharging of any cargo on board.

(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation:

40 22. Should the Vessel not be delivered by the _____ day of _____ 19____
the Charterers to have the option of cancelling.

Cancelling.

If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

Exhibit KK-EE1
Form of
Baltimere
Charter.

Ref. No. 89
Referred to in
Doc. No. 25

23. Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed) one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitration or the Umpire to be final and binding upon both parties.

Arbitration

24. General Average to be settled according to York/Antwerp Rules, 1950. Hire not to contribute to General Average.

General
Average

25. The Owners to pay a commission of _____ to _____ on any hire paid under the Charter, but in no case less than is necessary to 10 cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.

Commission.

Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission, but in such case the commission not to exceed the brokerage on one year's hire.

Exhibit KK-FF
Letter—
Juan Ysmael
& Co. Inc.,
to Captain
Francisco
Aguado.
16th April 1952.

Ref. No. 90
Referred to in
Doc. No. 25

Capt. Francisco Aguado
Master, S/S "Tasikmalaja"
Taikoo Dock, Hong Kong.

Exhibit KK-FF
Ref. No. 90
Referred to in
Doc. No. 25

20

1 4 8 4

April 16, 1952.

Dear Capt. Aguado:

We are in receipt of a communication from Messrs. Smith, Bell & Co., Ltd., this City, reading in part as follows:

"It seems that the Underwriters in London have expressed the hope that 30 when the vessel (SS "Tasikmalaja") drydocks in Hongkong, she will be thoroughly overhauled and, at the same time, the Owners will arrange to obtain the necessary certificate and reclassification from the American Bureau of Shipping, asked for by Underwriters; you will recall that this insurance was originally granted on the absolute understanding that the certificate from the American Bureau of Shipping for the reclassification of the vessel would be obtained at this time it is more important than ever to obtain the pertinent reclassification of the SS Tasikmalaja as the survey made in Indonesia recently is, from Underwriters' point of view, in many ways unsatisfactory." 40

"As you are no doubt aware, all big Hull insurance, such as the cover for the SS "Tasikmalaja," are in most cases placed by companies or Underwriters in the London market; therefore, we strongly recommend that London's

advices (re obtaining certificate and reclassification from the American Bureau of Shipping) be complied with at this time, whilst the vessel is on drydock at Hongkong, otherwise it may become impossible to obtain insurance cover for this vessel in any part of the world."

In order to comply with the foregoing, and thus make possible the renewal of the insurance of the "Tasikmalaja", it is imperative that you endeavor to obtain, as soon as possible, the abovementioned certificate and reclassification from the American Bureau of Shipping. Please attend to this immediately, and as soon as accomplished, advise us so that we can in turn advise the insurance company.

Exhibit KK-FF
Letter—
Juan Ysmael
& Co. Inc.,
to Captain
Francisco
Aguado.

16th April 1952.

Ref. No. 90
Referred to in
Doc. No. 25
continued.

10

Very truly yours,
JUAN YSMAEL & CO., INC.
Sd. K. H. Hemady
President.

Exhibit KK-
GG1
Ref. No. 91
Referred to in
Doc. No. 25

Hong Kong, 24 April, 1952.

Exhibit KK-
GG1
Letter—
Captain F. J.
Aguado to
Juan Ysmael
& Co. Inc.
24th April 1952.

20 Messrs. Juan Ysmael & Co., Inc.,
Manila.

Attn. Mr. K. H. Hemady,
President

Ref. No. 91
Referred to in
Doc. No. 25

Dear Sirs:

I have today received your letter dated 16 April, 1952 and in reply wish to inform you that although the SS "Tasikmalaja" arrived at this port on the 13th. March last, no repairs have been done on the vessel and in accordance with the latest instructions from Djakarta, the vessel is to return to Indonesia to have the repairs executed at the Navy Yard in Surabaya.

30 In connection with the survey of the vessel for re-classification, I believe that it would not be in order to just apply for a survey in the regular manner, as the ship has been out of class for about two years, the survey made on the September, 1950 docking, having been made by Veritas.

I suggest that this matter be discussed with Mr F. C. Starr, who has attended the vessel at her two above mentioned dockings.

As soon as there are definite movements of the vessel, I shall inform you to arrange for the application of the survey.

Very respectfully,
Sd. F. J. AGUADO,
Capt. F. J. AGUADO,
Master
SS "TASIKMALAJA"

40

Exhibit KK-
HH1
Letter—
Captain F. J.
Aguado to
Juan Ysmael
& Co. Inc.
31st March
1952.

Ref. No. 92
Referred to in
Doc. No. 25

Exhibit KK-
HH1
Ref. No. 92
Referred to in
Doc. No. 25

File 1484

Hong Kong, 31 March, 1952.

Messrs. Juan Ysmael & Co., Inc.,
Manila.

Attn. Mr. K. H. Hemady,
President

10

Dear Sirs:

Attached please find copy of letter sent to Dr. Imperial of the Philippine Embassy in Djakarta, regarding the supplier who furnished fresh food supplies for the SS "TASIKMALAJA" for the trip from Djakarta to Hong Kong, which letter is self explanatory.

As Dr. Imperial's letter speaks of a letter sent to you by the Supplier, I am sending this copy of my letter to Dr. Imperial as an explanation of the case.

Trusting that the above meets with your approval and awaiting your further news and orders. I remain.

20

Very respectfully,
(Sd.) F. J. AGUADO,
Capt. F. J. AGUADO,
Master
S.S. "TASIKMALAJA"

Hong Kong, 31 March, 1952.

Dr. Jose F. Imperial,
Philippine Embassy,
Djakarta, Indonesia.

Copy for Manila

My dear Dr. Imperial:

30

I have your kind letter of the 19th. instant in connection with an unpaid bill for food supplies to W. H. King & Sons, who supplied our provisions before we left for this port.

The delay in the settlement of this bills has been due to the supplier not following my instructions when Mr. Pavia my chief steward, introduced me to them. The instructions were to accompany the delivery with the invoice in order to approve same preparatory to its payment. When the delivery was made I personally inquired about the bill and same did not accompany the delivery.

As the movements of the vessel were under the orders of the Ministry of Defence and my departure from Djakarta was ordered in a very rapid manner, 40 the bill covering the deliveries has not been signed by the undersigned, and consequently will not be paid by the Djakarta office.

I believe the suppliers could have sent their bill to this port the next day of our sailing, addressed to the Indonesian Consul at this port and by this time am sure could have been all settled, without having to bother you.

As according to my Chief Steward, there is a small error on the bill, please instruct Supplier to forward same to this port in care of the Indonesian Consulate or care Taikoo Dock, Hong Kong, when I shall approve same and return for payment.

Thanking you for having intervene in this matter and assuring you that I shall do my part for the payment of same as soon as possible, I remain.

Exhibit KK-
HH1
Letter—
Captain F. J.
Aguado to
Juan Ysmael
& Co. Inc.
31st March
1952.

Ref. No. 92
Referred to in
Doc. No. 25
continued.

10

Very sincerely
(Sd.) F. J. AGUADO,
Capt. F. J. AGUADO,
Master
S.S. "TASIKMALAJA"

Exhibit
KK-JJ1
Ref. No. 93
Referred to in
Doc. No. 25

Exhibit KK-
JJ1
Letter—
Captain F. J.
Aguado to
Juan Ysmael
& Co. Inc.
7th May 1952.

20

File 1484

Hong Kong, 7 Mayo, 1952.

Messrs. Juan Ysmael & Co., Inc.,
Manila.

Attn. Mr. K. H. Hemady,
President

Ref. No. 93
Referred to in
Doc. No. 25

Dear Sirs:

Bearer Mr. Paulino Alcobendas, until this day Chief Engineer of the S.S. "TASIKMALAJA" is returning to Manila due to ill health. Mr. Paulino has been hospitalized twice during the past month.

30

Mr. Alcobendas has allotted to Manila to his family the amount of P900.00 per month, payable to Miss Rosario Alcobendas. Although Mr. Alcobendas had an amount payable on board of P150.00, he has not collected any amount on board during the period of his service, from Sept. 21, 1951 to date.

Mr. Alcobendas has rendered excellent service on board and has always had his machinery in good operating condition.

Very respectfully,
Sd. F. J. AGUADO,
Capt. F. J. AGUADO,
Master
S.S. "TASIKMALAJA"

40

Exhibit KK-
KK1
Letter—
Paulino
Alcobendas to
Mr. K. H.
Hemady.
8th May 1952.

Ref. No. 94
Referred to in
Doc. No. 25

Exhibit KK-
KK1
Ref. No. 94
Referred to in
Doc. No. 25

File 1484

Manila, May 8, 1952.

Mr. K. H. Hemady

President, Juan Ysmael & Co., Inc.,
Manila

10

Dear Sir:

I arrived yesterday, May 7th, from Hongkong, and I hereby submit the following report regarding the s/s "Tasikmalaja".

When I first boarded the ship sometime in September 23, 1951, I found out that the engine room and the Boiler Room were in bad condition. Practically all the boilers and also all the tubes were leaking very badly. The main engine and all the auxiliaries were also in very bad condition. My impression was that it was utterly neglected and nobody was taking care of it, so that everything was in bad condition.

During my time, I started to fix all the defects little by little. I did what 20 I can to remedy the said defects and during our trip in Indonesian waters, the board sailed without any delay.

On March 7th, 1952, the boat left Djakarta for Hongkong for repair arriving at Hongkong on March 13, 1952. The repair of the boat was suggested by the Army authorities, and since the arrival of the boat in Hongkong we have been waiting the Army's decision for repair. Meanwhile some contractors were hired to work on the boilers and the main feed pump but since the Army failed to pay the contractors, work thereon has been stopped and meanwhile the crewmembers are doing what they can. The work was stopped by the contractors on May 5th, and we have been waiting for funds from the Indonesian Government 30 to pay the contractors.

Very truly yours,

(Sd). P. ALCOBENDAS,
PAULINO ALCOBENDAS
Chief Engineer, S/S "Tasikmalaja"

1 allotment paid there
2 proved O.K.

573

Exhibit KK-LL
Ref. No. 95
Referred to in
Doc. No. 25

Exhibit KK-LL
Cable—
Halmahera
(Frank C.
Starr) to
American
Trust Co.
12th March
1952.

T R A N S M I T T E D

NR 1 HOMO CK 29 RDO TASIKMALAJA MARCH 12 1144 GMT

AMERICAN TRUST COMPANY
SACRAMENTO CALIFORNIA

Ref. No. 95
Referred to in
Doc. No. 25

YOUR CABLE RECEIVED RE HOLDING FUNDS STOP TRANSFER
10 NOW BY TELEGRAPH TENTHOUSAND DOLLARS PAYABLE TO CAPTAIN
FRANCISCO J AGUADO CARE CITIBANK HONG KONG FULLSTOP

HALMAHERA

SENT TO KOK 1148 GMT

Exhibit KK-
MM1
Ref. No. 96
Referred to in
Doc. No. 25

Exhibit KK-
MM1
Letter—
Frank C.
Starr to
Mr. & Mrs.
Hemady.
8th May 1952.

8 May 52

20 Dear Mr. Mrs. Hemady:

Ref. No. 96
Referred to in
Doc. No. 25

At long last Captain Aguado is returning to Manila for a short short visit to see his only daughter get married. He is travelling with his son and in view of his splendid services on board the SS Tasikmalaja it is without a doubt that he is entitled to not only a short visit but a real vacation, however, the ship now under going repairs etc badly needs his services as he is the only person capable of holding the ship together in all manner and form.

Hoping to see you two very soon, I remain,

Very truly yours,
(Sd.) FRANK C. STARR.
FRANK C. STARR
Hong Kong

Exhibit JMS-
10A
Letter—
J. M. Silos
to Juan
Ysmael &
Co. Inc.
17th April 1952.

Ref. No. 97
Referred to in
Doc. No. 27

Exhibit JMS-
10A
Ref. No. 97
Referred to in
Doc. No. 27

File 1484

Messrs. Ysmael & Co.
Manila, Philippines

Hongkong April 17th 1952

Attention: Mr. Hemady (Manager)

Dear Sir:

10

For your information I herewith enclose a newspaper clipping from the S. C. Morning Post of April, 16, 1952.

The ceremony took place at the above date in the presence of the Consul from Indonesia and his staff and a representative from the Panamanian Consulate Mr. Castillo.

The most important is, that the parties concerned such as the owners representative and the charterers did not notify the captain in writing the reasons to justify such change of colours, neither our status-quo on board has been define to us accordingly after the change of colours.

We are hoping for Mr. Starr's return to this Colony to clarify our situation 20 on board.

Sincerely yours

(Sd.) J. M. SILOS.

Jose Ma. Silos

Executive Officer

s.s. Tasikmalaja

CHANGE OF FLAG CEREMONY

A change of flag ceremony will take place this afternoon aboard the ss Tasikmalaja off North Point when the Indonesian emblem will be hoisted 30 over the 1,546-ton freighter.

Formerly flying the Panamanian flag, the vessel is the second ship to change to Indonesian registry in Hongkong. (The Bintang Samudra, formerly the Pacific Star, was the first).

The Tasikmalaja arrived here in the middle of last month from the south for her annual overhauling in local dockyard. She will operate for the Indonesian Government when she returns to the south.

Exhibit JMS-
11A
Ref. No. 98
Referred to in
Doc. No. 27

Exhibit JMS-
11A
Letter—
P. Alcobendas,
M. Senoran &
J. M. Silos to
Juan Ysmael
& Co. Inc.
21st April 1952.
—
Ref. No. 98
Referred to in
Doc. No. 27

Hongkong April 21st 1952
s.s. Tasikmalaja

Messrs. Ysmael & Co.
Manila, Philippines

10 **Attention: Captain F. J. Aguado**
Sir:

We the undersigned Paulino Alcobendas Chief Engineer, Manuel Senoran Second Engineer and Jose Ma. Silos 1st Mate of the above mentioned vessel, jointly tender our resignation as Chief Engineer second engineer and 1st mate of the s.s. Tasikmalaja under your command to be effective on April 30th, 1952.

Reasons: For the cowardly attack made by Keuter to our captain on April 19th, 1952.

Aside from the above, Paulino Alcobendas Chief Engineer is at present at the Saint Paul Hospital under medical care.

20 Manuel Senoran is also suffering from acute rheumatism and contract long overdue.

Jose Ma. Silos 1st Mate, contract long overdue and will not continue any further than the above date.

Sufficient time is given you to employ the necessary officers to relieve us from duty and to make arrangements for our passage back home as agreed upon in our contract.

Hoping to hear from you soon, we remain Sir,

Yours very sincerely

30 (Sd.) P. ALCOBENDAS
Paulino Alcobendas
Chief Engineer

(Sd.) M. SENORAN
Manuel Senoran
Second Engineer

(Sd.) J. M. SILOS
Jose Ma. Silos
1st Mate

Acknowledge received:

40 (Sd.) F. J. AGUADO
F. J. Aguado
Master.

Exhibit JMS-
12A
Translation of
Cable—
Captain F. J.
Aguado to
Mr. Hemady.
23rd April 1952.

Ref. No. 99
Referred to in
Doc. No. 27

Hemady Manila

Exhibit JMS-
12A
Ref. No. 99
Referred to in
Doc. No. 27

T R A N S L A T I O N

Due to the fact that I was cowardly mauled by Keutert having suffered contusions, I am forced to resign from my position hoping that you will appoint another to replace me. I do not have any idea where Starr is to notify him. My 10 letter has all the details. Silos, Alcobendas and Senoran are also resigning.

Aguado.

Exhibit JMS-
13A
Cable—
J. M. Silos,
P. Alcobendas
& M. Senoran
to Juan Ysmael
& Co. Inc.
8th May,
1952.

Ref. No. 100
Referred to in
Doc. No. 27

Exhibit JMS-
13A
Ref. No. 100
Referred to in
Doc. No. 27

**THE EASTERN EXTENSION AUSTRALASIA AND CHINA
TELEGRAPH COMPANY, LTD.**

**ASSOCIATED WITH
CABLE AND WIRELESS LIMITED**

20

8th May, 1952. AM 6 33

TUMN 54 HONGKONG SUB 37 7 0920 =

LT YSMAEL MANILA =

SO FAR THERE IS NO REPLY FROM YOUR GOOD OFFICE REGARDING OUR RESIGNATION AS CABLED TO YOU BY CAPTAIN AGUADO STOP KINDLY SEND OFFICERS TO RELIEVE US AT YOUR EARLIEST CONVENIENCE =

SILOS ALCOBENDAS SENORAN +

577

Exhibit JMS-
14A
Ref. No. 101
Referred to in
Doc. No. 27

Exhibit JMS-
14A
Cable—
Juan Ysmael
& Co. Inc.
to Captain
Aguado.
8th May 1952.

Ref. No. 101
Referred to in
Doc. No. 27

| | | |
|---------------------|-----------------|------|
| CLASS OF SERVICE | NUMBER | |
| FULL RATE | _____ | |
| RADIOLETTER | CHECK | |
| PRESS | FAST RCA DIRECT | 1484 |
| 10 FULL RATE UNLESS | _____ | |
| OTHERWISE MARKED | TIME FILED | |

RADIOGRAM
1952 May 8 AM 8 5

RCA COMMUNICATIONS, INC.

A SERVICE OF RADIO CORPORATION OF AMERICA

| | |
|---|--------------|
| SENDER'S NAME Juan Ysmael & Co., Inc. | Main Office |
| ADDRESS 217 Consolidated Investments Bldg. Manila | PLAZA MORAGA |
| "VIA RCA" | Tel 2-79-01 |

MAY 8 1952

20 *File*

CAPT AGUADO
SS TASIKMALAJA
TAIKOO DOCK
HONGKONG

YOUR RESIGNATION AND OTHER OFFICERS NOT ACCEPTED STOP
PLEASE CONTINUE YOUR PRESENT POSITION AND THIS CABLE YOUR
AUTHORITY

YSMAEL

VIA
30 RCA

RECEIPT FOR RADIOGRAM

JUAN YSMAEL & CO. INC. PG No. 00001

We acknowledge with thanks receipt of a 26 ord word radiogram to Capt
Aguado Hong Kong the amount of P4.68 will be charged to your account.

(Sd.) ILLEGIBLE. 1952 May 8 AM 8 5

.....

Receiving Clerk Time Accepted

Tel. 2-79-01 RCA Communications, Inc. Manila P.I.
Insular Life Bldg.

Exhibit JMS-15A
Translation of
Cable--
Captain
Aguado
to Captain
Silos.
26th May 1952.

Exhibit JMS-15A
Ref. No. 102
Referred to in
Doc. No. 27

TRANSLATION

Ref. No. 102
Referred to in
Doc. No. 27

SILOS SS TASIKMALAJA KOWLOON DOCK HONG KONG

I BEG YOU NOT TO ABANDON THE SHIP. WILL ARRIVE THERE THIS WEEK WITH REPLACEMENTS. HOPE YOU WILL CONSIDER THAT WE HAVE TO LOOK FOR THE INTERESTS OF OWNER HEMADY.

10

AGUADO.

VIA
RCA

RECEIPT FOR RADIOGRAM

Capt. F. J. AGUADO
c/o Juan Ysmael & Co.

PG No. 00004

We acknowledge with thanks receipt of a 30 lt word telegram to Silos Hong Kong. The amount of P 2.70 will be charged to your account.

(Sd.) ILLEGIBLE. 152 May 26 AM 9 10

.....
Receiving Clerk Time Accepted

Tel. 2-79-01 RCA Communications, Inc. Manila P.I. 20
Insular Life Bldg.

Exhibit JMS-16A
Translation of
Letter--
Captain
Aguado
to Captain
Silos.
23rd May 1952.

Exhibit JMS-16A
Ref. No. 103
Referred to in
Doc. No. 27

TRANSLATION

LETTER OF CAPTAIN AGUADO

Ref. No. 103
Referred to in
Doc. No. 27

May 23/1952.

Dear Pipe:

30

Received your letter dated 19 instant contents note and am replying herewith that: the list you are enclosing herewith is almost the same as the one we have already outlined previously, there are only few items of repairs that are not included in the previous list.

It is of much important that we should know of what repairs is done in Boiler No. 4 since you said that these will be ready in a few weeks. I hope they do it well, otherwise the Chief engineer who will take charge, they will make him responsible of other people mistake.

Exhibit JMS-
16A
Translation of
Letter—
Captain
Aguado
to Captain
Silos.
23rd May 1952.

Ref. No. 103
Referred to in
Doc. No. 27
continued.

The enclose copy of the Indonesian Consul letter, does not bear any address to whom, or you must have forgotten to copy to whom it was addressed for, I request you send me a true copy of his letter by the next mail. After all the letter does not give full authority to Kuitert except that the Consul is only asking from you a permission to allow Kuitert on board as a surveyor to
10 look after the repairs of the boilers and machineries to be effected in the engine room. I have also cabled you today with a query to inform me of what Briones told me that Kuitert was recalled to Indonesia and that he left yesterday. For these reason I want to know the truth because I want to prepare and be ready on something, so as not to allow them to continue fooling us same as what they did ever since.

All what you said about Starr is still too little, he thinks that he has always been dealing with a bunch of people like Ramirez and others etc., and he wants to do what he wants and whatever he wishes with us, and I hope that this will not be long.

20 That bloater ball headed (Kuitert) you will not expect a thing from him. He is a man without shame and with him all that surrounds him. What is exrange is that Starr says one thing on Kuitert's back and another thing in his front, so as the Major (referring to Pamoe) and they spit on their words since there are many things they are hiding for. I hope that these comedies will not last long and with all what I know now they can be prepared, and I hope this will meet his end.

Regarding the two who committed larceny in that Colony, I hope you make the necessary arrangement to shipped them back home as soon as you can and on the first opportunity. If the Indonesian Consul thinks he can
30 deprived the captain with all his authority, this remain to be seen, much more concerning that guy (referring Kuitert).

The old man Hemady says nothing at present but he hopes that you will look for his interest the best you can, and to notify me of every movement specially regarding Kuitert and the Indonesian at the Consulate's Office.

Will write you with much details within a few days and I hope you will exercise with much interest all for the benefit of the one who is paying us.

(Sd.) F. J. AGUADO
Captain.

NB.—Yours Mrs. was paid till 15th instant according to your wishes.

Exhibit JMS-
17A
Translation of
Letter—
Captain
Aguado
to Captain
Silos.
30th May, 1952.

Exhibit JMS-
17A
Ref. No. 104
Referred to in
Doc. No. 27

TRANSLATION

Ref. No. 104
Referred to in
Doc. No. 27

Letter of Captain Aguado addressed to Capt. Silos May 30th, 1952.

Dear Pepe:

Received your letters dated 21, 23, 24, 26 and 27 instant but owing to too many things that have arise recently and Mr. Hemady being absent from the office, I could not concentrate my mind to answer your letters. 10

To start with I am thankful to you for the patience you have and your strong determination to wait for developments, and for all what you are doing I will be greatly indebted to you, and hope to repay you in the same manner.

Regarding your request as to the amount of money to be deducted from the three crew members plus Mr. Senoran, I say that from the moment their account is settled in the office and paid, I shall collect from them whatever you spent for their repatriation and will deliver the amounts to your wife.

Just after your Mrs. had collected her allotment for the halfmonth of May, Mr. Hemady fell sick and was taken away, and seems to have an attack due to strong accumulation of "URIC ACID" the cure must be painful and slow. 20

Your letter seems to tell me that you are all in a TOWER OF BABEL. I have always suppose to since that dirty ball headed is hungry of power (Kuitert). It was a pity that they had the opportunity of sending me away and on this way the Major (referring Pamoe) has utilize all the opportunity so as for me not to come back so soon to avoid trouble, as you know the captain is an authority on board that only the true owner could dispose of his authority. An since Starr and Pamoe has played with the old man with a double face they did in the same way with me; but it is up to them, now things are much clear when the case will presented here when Starr comes to Manila. 30

The fat man (Starr) had thousands of strategies, he tried hard to get me out from here so that by the time he gets here to Manila I will not be present, but the old man won't allow me to go out, he wanted me to face Starr when he arrives. At first he asked Mr. Hemady to let me go to Singapore for an important conference. Since the old man did not allow me to go away, he requested Mr. Briones to deliver to us two important letter one for Mr. Hemady and one for me. In his letter he emphazies that he could not do it in writing what he wants to say and that Briones can only explain verbally. When I knew what it was, I told Briones that everything was a farce, he only wanted me to see him in Singapore. And same thing he told the old man. Since he was not able to do what he wants, Starr left for Djakarta where he is at present and he requested Major Pamoe to ask me to come to Djakarta with the money 40

I paid for my round trip to Hongkong. And since all my papers was on board consequently I had to pass Hongkong to get all my documents. This was all their strategy, and for what we understand clearly the fat man (Starr) sold the boat without the knowledge of the old man and without pay. And it seems that the first six months charter fees was not received by the old man and much less the purchase price. And I am positive that this will keep all of us in suspense for some time.

*Exhibit JMS-17A
Translation of
Letter—
Captain
Aguado
to Captain
Silos.
30th May, 1952.*

*Ref. No. 104
Referred to in
Doc. No. 27
continued.*

10 In the way the fat man and the Major has dealt with me, I have no choice to come back on the ship, but I have no other alternative than to wait developments. I am fixing the personnel for the ship but everything go slow for reason that the old man is sick.

Have patience and wait because it is not easy to reach heaven. I am thinking to send Ricardo there to get my documents. Hope that you are well with the best regards from my family and sons.

(Sd.) F. J. AGUADO
Captain.

20

*Exhibit FA-1
Ref. No. 105
Referred to in
Doc. No. 28*

*Exhibit FA-1
Radiogram—
Halmahera
(Frank C.
Starr) to
American
Trust Co.
12th May 1952.*

TRANSMITTED

NR 1 HOMO CK 29 RDO TASIKMALAJA MARCH 12 1144 GMT

*Ref. No. 105
Referred to in
Doc. No. 28*

AMERICAN TRUST COMPANY
SACRAMENTO CALIFORNIA

YOUR CABLE RECEIVED RE HOLDING FUNDS STOP TRANSFER
NO BY TELEGRAPH TENTHUSAND DOLLARS PAYABLE TO CAPTAIN
FRANCISCO J AGUADO CARE CITIBANK HONG KONG FULLSTOP

HALMAHERA

SENT TO KOK 1148 GMT

Exhibit AR-1
Power of
Attorney—
Juan Ysmael
& Co. Inc.
to Frank C.
Starr.
8th November
1950.

Exhibit AR-1
Ref. No. 106
Referred to in
Doc. No. 29

Ref. No. 106
Referred to in
Doc. No. 29

2373

(STAMP OFFICE) (HONG KONG)
(1—17 111 52—1) (STAMP DUTY PAID)
(HONG KONG) (\$5.00)

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

10

That JUAN YSMAEL & CO. INC., a domestic Filipino corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with office and postal address at Rooms 217/221 Consolidated Investments Bldg., Plaza Goiti, Manila, Philippines, have made, constituted and appointed, and by these presents, does hereby make, CONSTITUTE AND APPOINT, MR. FRANK C. STARR, an American citizen, of legal age, with temporary residence at Djakarta, Indonesia, its true, sufficient, and lawful Attorney, for it and in its name, place and stead and its use and benefit:

To bargain, sell, transfer and convey, to any person or persons, entity or entities, and for any sum of money, or other consideration as to him 20 may seem most advantageous and beneficial to the company, the vessel exclusively owned by it known in Philippine waters as the S/S "CHRISTOBAL," formerly S/S "HALEAKALA," but presently with a pending request for a change of new name into S/S "TASIKMALAJA," registered under Panamanian registry, now located at Soerabaia, Java, and presently under charter to the Indonesian Government;

To ask, demand, sue for, collect and receive all sums of money, debts, accounts, interests, and other demands whatsoever which are or shall become owing and payable to JUAN YSMAEL & CO., INC., by reason of, or arising from the sale of the above mentioned vessel, and in general, to have full and 30 complete charge and management of the same, and to do any act and thing in relation thereto which to him may seem advisable and expedient, pending the sale thereof; and

To prosecute and defend any and all suits, actions and other proceedings in the courts, tribunals, departments and offices of the Government concerned, regarding the abovementioned vessel, and to terminate, compromise, settle and adjust the same and the subject matter thereof;

HEREBY GIVING AND GRANTING unto its said Attorney-in-Fact full power and authority to do and perform any and every act and thing whatever requisite or necessary or proper to be done in and about the premises, as fully 40 to all intents and purposes as the undersigned might or could do if personally present and acting in person, and HEREBY RATIFYING AND CONFIRMING all that the said Attorney shall lawfully do or cause to be done under and by virtue of these presents.

IN WITNESS WHEREOF, JUAN YSMAEL & CO., INC., through its President and General Manager, MR. K. H. HEMADY, has signed this instrument at the City of Manila, Philippines, this 8th day of November, 1950.

(NOTARIAL SEAL)
Signed in the presence of:
(Sd.) (Illegible)
(Sd.) (Illegible)

JUAN YSMAEL & CO., INC.
By: (Sd.) K. H. HEMADY
K. H. HEMADY
President & General Manager.

*Exhibit AR-1
Power of
Attorney—
Juan Ysmael
& Co. Inc.
to Frank C.
Starr.
8th November
1950.
—
Ref. No. 106
Referred to in
Doc. No. 29
continued.*

—Page 2—

10 REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) — SS.

At the City of Manila, Philippines, this 8th day of November, 1950, A.D., before me, the undersigned Notary Public in and for the said City, personally appeared MR. K. H. HEMADY, with Residence Certificate No.A-4193752, issued at Quezon City, on February 24, 1950, in his capacity as President and General Manager of JUAN YSMAEL & CO., INC., known to me and to me known to be the same person who executed the foregoing instrument, consisting of two (2) pages only, including this page, and purporting to be a Special Power of Attorney in favour of MR. FRANK C. STARR, and he acknowledged to me that the same is of his own free will and voluntary act and deed as well as the free will and voluntary act and deed of the corporation which he represents.

Mr. K. H. Hemady exhibited to me also the Residence Certificate of JUAN YSMAEL & CO. INC., No.C-174, issued at Manila, on January 9, 1950, and C1-1428, also issued at Manila, on April 28, 1950.

Each of the pages composing this instrument has been signed by the executor hereof and by the two witnesses to his signature and sealed by my notarial seal.

IN WITNESS WHEREOF, I have hereunto set my hand and caused my Notarial Seal to be affixed hereon at the place and date first above mentioned.

30 (Sd.) (Illegible)
EUSEBIO C. ENCARNACION
NOTARY PUBLIC
Until December 31, 1950.

Doc. No. 562;
Page No. 18;
Book No. XX;
Series of 1950.

2372
(STAMP OFFICE)
(1—17 111 52—1)
(HONG KONG)

(NOTARIAL SEAL)
40 (INTERNAL) (HONG KONG)
(REPUBLIC OF THE PHILIPPINES) (STAMP DUTY PAID)
(60 CENTAVOS) (\$3.00)
(DOCUMENTARY)
(REVENUE TAX)

Exhibit JMS-
18A
Letter—
Kwee Djie Hoo
to Captain s.s.
"Tasikmalaja".
9th May 1952.

Ref. No. 107
Referred to in
Doc. No. 31

Exhibit JMS-
18A
Ref. No. 107
Referred to in
Doc. No. 31

KONSULAT DJENDERAL
HONG KONG

9th May, 1952.

Sir,

I have the honour to inform you that Mr. J. W. Kuitert is a surveyor 10 in connection with all repairs which are necessary in order to put the steamer "Tasikmalaya" in running condition.

You are therefore kindly requested to admit Mr. J. W. Kuitert aforesaid to the S.S. "Tasikmalaja" whenever he considers it necessary for the execution of his duties.

Thanking you for your kind co-operation.

I have the honour to be,
Sir,

Your obedient servant,

(Sd.) KWEEDJIEHOO. 20

Kweedjiehoo,
Consul-General

Chopped:

KONSULAT-DJENDERAL
REPUBLIK INDONESIA
HONG KONG.

Captain S.S. "Tasikmalaja",
Present.

Exhibit JMS-19
Letter—
Wilkinson &
Grist to
Commissioner
of Police.
3rd July 1952.

Ref. No. 108
Referred to in
Doc. No. 31

Exhibit JMS-19
Ref. No. 108
Referred to in
Doc. No. 31

The Hon. Commissioner of Police,
HONG KONG.

3rd July, 1952.

30

Sir,

Re: S.S. "Tasikmalaja" — Admiralty Jurisdiction
Action No. 8 of 1952.

We have received a copy of Mr. M. A. da Silva's letter to you of to-day's date, and have instructions from the Consul-General for Indonesia on behalf of the Government of the Republic of Indonesia (Ministry of Defence) to answer the allegations set forth in that letter.

The Indonesian Government bought the vessel by way of a Bill of Sale on the 17th March last, the Bill of Sale being signed by Capt. F. Starr, Attorney 40 for the then owners, Messrs. Juan Ysmael and Company Inc., a Manila company. The ship was then in the Taikoo Dockyard, and Major Pamoe, who signed the Bill of Sale for the Indonesian Government ordered the ship over to the Hong Kong

& Whampoa Dock Company Limited, where she now is. The then master, Captain Akwado, was dismissed about this time, and Captain Silos, who was then the mate, was appointed master; on about the 16th April, 1952, there was a ceremony on board at which the Indoesian Consul-General was present. A representative of the Panamanian Government was also present, and the Panamanian flag was lowered, and the Indonesian flag raised. Photographs were taken, and speeches were made, including a speech by Captain Silos, who promised his faithful service to the Indonesian Government. This ship has been under the Indonesian flag ever since. The Director of Marine was informed of the change of ownership, and the

10 change of flag.

Mr. da Silva on behalf of the sellers, Messrs. Juan Ysmael & Co., did not commence action until the 27th June, 1952, which was commenced without notice to the Indonesian Consul-General, under whose flag the vessel was. On this being done, Captain Silos gave orders that the Indonesian flag should be lowered against the sovereignty of the Indonesian Government, and thus attempting to change the status quo. This was the reason why notice of dismissal was given to him.

The crew, including Captain Silos, have been paid ever since March or April, by the Indonesian Consul-General. The ship was received by the Hong Kong & Whampoa Dock Co., Ltd. from our clients. The late owners, Juan Ysmael & Co., Inc., have never been in possession of the ship since March/April last. The

20 Hong Kong & Whampoa Dock Co., Ltd. have verbally acknowledged through their secretary, Mr. Grimsdale, that the ship is in their physical possession, that the Bailiff is on board, the ship is in *custodia legis*, and that subject thereto the vessel is held as our clients' property.

Our clients have no desire to alter the status quo, and we consider that Mr. da Silva's request to you should not have been made in this way, but should have been made to the Registrar of the Supreme Court or the Head Bailiff, or by one of these officers to you if they, in pursuance of their duty, considered it necessary to do so.

30 In the interest of peace our clients are now giving instructions to allow Captain Silos to go on board and Captain the ship subject, of course, to the possession of the Bailiff and that of the Dock Company, since he was the master of the vessel appointed by them. Our clients place him there as their servant.

We would add that we are informed that Captain Silos wrongfully has removed the log-books and other ships papers from the ship.

We have the honour to be,
Sir,
Your obedient servants,
(Sd.) WILKINSON & GRIST.

40 Copies to: Registrar of the Supreme Court.
M. A. da Silva Esq.,
Secretary, Hong Kong & Whampoa Dock Co., Ltd.,
Indonesian Consul-General,
Head Bailiff,
Panamanian Consul-General.

Exhibit JMS-19
Letter—
Wilkinson &
Grist to
Commissioner
of Police.
3rd July, 1952.

Ref. No. 108
Referred to in
Doc. No. 31
continued.

Exhibit JMS-
20A
Letter—
Hong Kong
& Whampoa
Dock Co. Ltd.
to Wilkinson &
Grist.
5th July 1952.

Exhibit JMS-
20A
Ref. No. 109
Referred to in
Doc. No. 31

HONGKONG & WHAMPOA DOCK CO. LTD.

Ref. No. 109
Referred to in
Doc. No. 31

Your Ref. JTP/RGD
Our Ref. WTG/EE

REGISTERED OFFICE, KOWLOON DOCKS.

HONG KONG 5th July, 1952

Messrs. Wilkinson & Grist,
National City Bank Building,
Hong Kong.

10

Dear Sirs:

We have received your letter of the 3rd of this month addressed to the Hon. Commissioner of Police.

We require the sentence in lines 3 and 4 on page two, as follows, to be deleted:

“and that subject thereto, the vessel is held as our client’s property.”

The vessel is at our premises and being repaired by us to the instructions of the Consul General for the Republic of Indonesia and is subject to our possessory 20 lien at any time for repairs etc. executed and unpaid for.

Yours faithfully,

HONGKONG & WHAMPOA DOCK CO., LIMITED
(Sd.) W. T. GRIMSDALE

W. T. Grimsdale,
Secretary.

Copies to: Registrar of the Supreme Court
M. A. da Silva Esq.
Indonesian Consul-General,
Head Bailiff,
Panamanian Consul-General
Hon. Commissioner of Police.

30

Exhibit JMS-
21A
Ref. No. 110
Referred to in
Doc. No. 31

Exhibit JMS-
21A
Letter—
Hong Kong
& Whampoa
Dock Co. Ltd.
to M. A. da
Silva.
8th July,
1952.

HONG KONG & WHAMPOA DOCK CO., LTD.

Our Ref. WTG/EM

Hong Kong, 8th July, 1952.

M. A. da Silva, Esq.,
Gloucester Building,
10 Hong Kong.

Ref. No. 110
Referred to in
Doc. No. 31

Dear Sir,

S.S. "TASIKMALAJA"

We understand that you are acting for Juan Ysmael & Co., Inc., Manila, in connection with matters relating to the above-named ship which is at our premises undergoing repairs. We also understand that Juan Ysmael & Co., Ltd. desires that we should continue with these repairs, and we shall be glad if you will confirm to us in writing that your client will be responsible for the payment of the balance of our bills irrespective of any decisions which may be made by the Court in this matter.

20 The ship is at present in *custodia legis* and it is therefore imperative that we receive this written assurance.

Yours faithfully,

HONG KONG & WHAMPOA DOCK CO., LTD.
(Sd.) W. T. GRIMSDALE.

W. T. Grimsdale,
Secretary.

c.c. Messrs. Wilkinson & Grist.

30

Exhibit JMS-22
Ref. No. 111
Referred to in
Doc. No. 31

Exhibit JMS-22
Letter—
M. A. da Silva
to Hong Kong
& Whampoa
Dock Co. Ltd.
10th July 1952.

10th July, 1952.

Messrs. Hong Kong & Whampoa Dock Co., Ltd.,
PRESENT.

Ref. No. 111
Referred to in
Doc. No. 31

Dear Sirs,

Re: S.S. "Tasikmalaja" Admiralty Jurisdiction
Action No. 8 of 1952.

In reply to your letter of the 8th instant, I enclose my clients' undertaking and trust that same is satisfactory.

40

Yours faithfully,

Encl.

(Sd.) MARCUS DA SILVA.

Exhibit JMS-22
Letter—

M. A. da Silva
to Hong Kong
& Whampoa
Dock Co. Ltd.
10th July 1952.

Ref. No. 111
Referred to in
Doc. No. 31
continued.

Hong Kong, 10th July, 1952.

Messrs. Hong Kong & Whampoa Dock Co., Ltd.,
Hong Kong.

Dear Sirs,

Re: S.S. "Tasikmalaja" Admiralty Jurisdiction
Action No. 8 of 1952.

I confirm on behalf of Messrs. Juan Ysmael & Co., Inc. that the said Messrs. Juan Ysmael & Co., Inc. will be responsible for the payment of the balance of your bills irrespective of any decisions which may be made by the Court in this matter.

10

Yours faithfully,

(Sd.) KHALIL KHODK.
(Under Power of Attorney
Registered No. 29347,
dated June 17, 1952).

Exhibit JMS-
23A
Letter—
Hong Kong &
Whampoa
Dock Co. Ltd.
to M. A. da
Silva.
12th July 1952.

Ref. No. 112
Referred to in
Doc. No. 31

Exhibit JMS-
23A
Ref. No. 112
Referred to in
Doc. No. 31

20

HONG KONG & WHAMPOA DOCK CO., LTD.

Your Ref. 346/52
Our Ref. WTG/EE

Hong Kong, 12th July, 1952.

Mr. M. A. da Silva,
Solicitor,
Gloucester Building, 1st floor,
Hong Kong.

Dear Sir,

Re: S.S. "Tasikmalaja"

30

We have for acknowledgement your letter of the 10th instant, with its enclosures, for which we thank you.

Yours faithfully,

HONG KONG & WHAMPOA DOCK CO., LTD.
(Sd.) W. T. GRIMSDALE.

W. T. Grimsdale,
Secretary.

Exhibit "A"
Ref. No. 113
Referred to in
Doc. No. 61

Exhibit "A"
Letter—
Hong Kong &
Whampoa
Dock Co. Ltd.
to M. A. da
Silva.
8th July, 1952.

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

HONG KONG & WHAMPOA DOCK CO., LTD.

Ref. No. 113
Referred to in
Doc. No. 61

8th July, 1952.

10 M. A. da Silva, Esq.,
Gloucester Building,
Hong Kong.

Dear Sir,

Re: S.S. "TASIKMALAJA"

We understand that you are acting for Juan Ysmael & Co., Inc., Manila, in connection with matters relating to the abovenamed ship which is at our premises undergoing repairs. We also understand that Juan Ysmael & Co., Inc., desires that we should continue with these repairs, and we shall be glad if you will confirm to us in writing that your client will be responsible for the payment of the balance
20 of our bills irrespective of any decisions which may be made by the Court in this matter.

The ship is at present in *custodia legis* and it is therefore imperative that we receive this written assurance.

Yours faithfully,

HONG KONG & WHAMPOA DOCK CO., LTD.

(Sd.) W. T. GRIMSDALE,
Secretary.

c.c. Messrs. Wilkinson & Grist.

30

Exhibit "B"
Ref. No. 114
Referred to in
Doc. No. 61

Exhibit "B"
Letter—
Juan Ysmael
& Co. Inc.,
to Hong Kong
& Whampoa
Dock Co. Ltd.
10th July, 1952.

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

Hong Kong, 10th July, 1952.

Ref. No. 114
Referred to in
Doc. No. 61

Messrs. Hong Kong & Whampoa Dock Co., Ltd.,
HONG KONG.

Dear Sirs,

40

Re: S.S. "Tasikmalaja" Admiralty Jurisdiction
Action No. 8 of 1952.

Exhibit "B"
Letter—
Juan Ysmael
& Co. Inc.,
to Hong Kong
& Whampoa
Dock Co. Ltd.
10th July 1952.

Ref. No. 114
Referred to in
Doc. No. 61
continued.

I confirm on behalf of Messrs. Juan Ysmael & Co., Inc., that the said Messrs. Juan Ysmael & Co., Inc. will be responsible for the payment of the balance of your bills irrespective of any decisions which may be made by the Court in this matter.

Yours faithfully,

Juan Ysmael & Co., Inc.
by their Atty.
(Sd.) KHALIL KHODR.
(Under Power of Attorney
registered No. 29347,
dated June 17, 1952)

10

Exhibit KK-1
Letter—
M. A. da Silva
to 40 named
Indonesian
members of
crew of s.s.
"Tasikmalaja".
24th October
1952.

Ref. No. 115
Referred to in
Doc. No. 66

Exhibit KK-1
Ref. No. 115
Referred to in
Doc. No. 66

24th October, 1952.

Dear Sirs,

You are informed that by a judgment of this morning of the Honourable Mr. Justice Courtenay Walton Reece in Admiralty Jurisdiction Action No. 8 of 1952, Juan Ysmael & Company Incorporated were decreed legal possession of the S.S. "Tasikmalaja".

20

I am now instructed by the said Juan Ysmael & Company Incorporated to order that you should leave the ship by 3 p.m. to-day. It is imperative that this order be obeyed and you are warned that any refusal to comply will be followed by immediate action.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

- | | |
|--------------------|---------------------|
| 1. J. D. Mandagi | 21. R. Sudarsono |
| 2. M. Sahabu | 22. A. Karauwan |
| 3. H. Lumisay | 23. V. Pongilatan |
| 4. Sudjajos | 24. V. Kaparang |
| 5. Thomas Lowel | 25. C. Lombogia |
| 6. E. Tjong Sui | 26. P. Kaparang |
| 7. Sudarman | 27. J. Walandouw |
| 8. A. Taubara | 28. Kaka |
| 9. L. Tjong Jung | 29. Sigama |
| 10. P. Rozenberg | 30. Hassan 2 |
| 11. J. Lewiresa | 31. Tjolli |
| 12. Joh. Walandouw | 32. Matheos Boko |
| 13. Ahmad | 33. Jan. A. Mandang |
| 14. M. Sigar | 34. Rukdin Mosoi |
| 15. D. Sumolang | 35. Jan Pieters |
| 16. L. Nanlohy | 36. Idrus Ishag |
| 17. Tjali Toba | 37. Hendrik Tampi |
| 18. Ali | 38. Lamburi |
| 19. R. Walandouw | 39. Duhung |
| 20. Ahmad Gigil | 40. Ento Suminto |

30

40

Exhibit KK-2A
 Ref. No. 116
 Referred to in
 Doc. No. 66

Exhibit KK-2A
 Letter—
 Wilkinson &
 Grist to M. A.
 da Silva,
 24th October
 1952.

Hong Kong, 24th October, 1952.

Ref. No. 116
 Referred to in
 Doc. No. 66

M. A. da Silva, Esq.,
 HONG KONG.

Dear Sir,

Re: S.S. "Tasikmalaja"

10 Your letter of even date addressed to forty Indonesian crew members of the S.S. "Tasikmalaja" has been handed to us with instructions to reply thereto.

It is noted that your clients were decreed legal possession of the vessel, but it appears that she is still under arrest and, therefore, in the custody of the Bailiff. In view of this circumstance, it seems to us that the status quo must be maintained on the vessel until her release is ordered. In view of these circumstances, we feel that the second paragraph of your letter is premature.

You will, in any event, bear in mind that these crew members will have to be signed off and discharged in the proper manner, and, for this purpose, it will, of course, be recalled that the vessel is registered under the Indonesian flag and 20 that the crew member should be signed off at the Indonesian Consulate. Our clients understand that it has been your contention that they are your servants.

The question of repatriation of the crew also arises, and we believe that it is necessary to obtain the permission of the Immigration Authorities before discharging a foreign crew in Hong Kong.

Yours faithfully,

(Sd.) WILKINSON & GRIST.

Exhibit KK-3
Letter—
M. A. da Silva
to Wilkinson
& Grist.
24th October
1952.

Ref. No. 117
Referred to in
Doc. No. 66

Exhibit KK-3
Ref. No. 117
Referred to in
Doc. No. 66

24th October, 1952.

Messrs. Wilkinson & Grist.

PRESENT.

Dear Sirs,

Re: S.S. "Tasikmalaja"

I am in receipt of your letter of even date. 10

I am advised by Counsel that as a result of to-day's decree, my clients are entitled to make such dispositions as they wish in the matter of the crew.

I am, however, forwarding a copy of this correspondence to the Bailiff.

On behalf of the Government of the Republic of Indonesia your goodselves formerly produced a letter from these 40 persons refusing to accept orders from the now legally decreed owners of the vessel — my clients. I go so far as to say, therefore, that the continued presence of these 40 persons on board the vessel is a contempt of the Court's declaration. In any event, your clients refuse to leave the vessel at their peril and if they are not off by 12 noon to-morrow, 25th October 1952, my clients will apply to the Court for an order. 20

In answer to your last two paragraphs you will recall that the Indonesian Registry to which you refer is not admitted by my clients and in any event any question of signing off or repatriation of these dissident members of the crew can be attended to hereafter.

I am instructed to add that my clients assume full responsibility for all monies for which the ship may be found legally liable in respect of the crew.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Exhibit AAN-1
Letter—
M. A. da Silva
to Wilkinson
& Grist.
28th October
1952.

Ref. No. 118
Referred to in
Doc. No. 67

Exhibit AAN-1
Ref. No. 118
Referred to in
Doc. No. 67

30

28th October, 1952.

Messrs. Wilkinson & Grist.

PRESENT.

Dear Sirs,

Re: S.S. "Tasikmalaja"

As regards your clients, viz. the Indonesian members of the crew of the abovenamed vessel, I am making application ex parte (as it should be) on Thursday next the 30th instant at 9.15 a.m. before the Honourable Mr. Justice Reece in terms of the enclosed copy Motion (with affidavit in support also enclosed herewith). 40

If you desire to be present I will place no objections to your attendance and to your being heard.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Encls.

Appeal
Exhibit KK-1
Ref. No. 119
Referred to in
Doc. No. 84

Appeal
Exhibit KK-1
Letter—
M. A. da Silva
to Wilkinson
& Grist.
24th September
1952.

24th September, 1952.

Messrs. Wilkinson & Grist.
PRESENT.

Ref. No. 119
Referred to in
Doc. No. 84

Dear Sirs,

10 Re: Appeals Nos. 11, 12, 14, & 15 of 1952.

I am instructed to ask whether your clients will (as regards Juan Ysmael & Co., Inc. only):—

- (1) Provide security for the costs of all appeals in the sum of \$12,500.00.
- (2) Provide security for the costs of the various applications for stay in the appeals in the sum of \$4,000.00.
- (3) Provide security in appeals Nos. 14 & 15 of 1952 for the costs ordered in the Court below as taxed and allowed.
- (4) Provide security for watchmen's fees and Bailiff's expenses in the sum of \$4,000.00.

20 Nos. (1) and (4) will be by way of payment into Court and Nos. (2) and (3) will be by way of payment to me on the usual undertaking by me to refund if ordered.

I shall be obliged for your reply by 4 p.m. on Friday the 26th instant, failing which a Motion will be filed.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit KK-2
Ref. No. 120
Referred to in
Doc. No. 84

Appeal Exhibit
KK-2
Letter—
M. A. da Silva
to Wilkinson
& Grist.
25th September,
1952.

30

25th September, 1952.

Messrs. Wilkinson & Grist,
PRESENT.

Ref. No. 120
Referred to in
Doc. No. 84

Dear Sirs,

Re: Appeals Nos. 11, 12, 14 & 15 of 1952.

Further to paragraph (3) of my letter of yesterday's date, my two bills of costs in A. J. Action Nos. 6 & 8 of 1952 have been taxed and allowed at in the respective sums of \$4,432.14 and \$18,920.00, i.e. a total of \$23,352.14.

40 I am instructed to formally demand payment.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit KK-3A
Letter—
Wilkinson
& Grist to
M. A. da Silva,
25th September,
1952.

Ref. No. 121
Referred to in
Doc. No. 84

Your Ref. 346/52.

M. A. da Silva Esq.,
Hong Kong.

Dear Sir,

Re: Appeals Nos. 11, 12, 14 & 15 of 1952.

We thank you for your letter of the 24th instant with reference to the question of security for costs.

As you are well aware, we have to take instructions on this matter from some distance, and even by cable it will be impossible to obtain the same by the date indicated in your letter.

We are at the moment taking instructions, and will inform you as soon as we receive them.

Yours faithfully,

(Sd.) WILKINSON & GRIST.

10

20

Appeal
Exhibit PJG-1
Letter—
M. A. da
Silva to 40
named
Indonesian
members of
crew of s.s.
"Tasikmalaja"
24th October,
1952.

Ref. No. 122
Referred to in
Doc. No. 90

From: M. A. da Silva Esq. Hong Kong.
Date : 24th October 1952.

Dear Sirs,

You are informed that by a judgment of this morning of the Honourable Mr. Justice Courtenay Walton Reece in Admiralty Jurisdiction Action No. 8 of 1952, Juan Ysmael & Company Incorporated were decreed legal possession of the s.s. "Tasikmalaja."

I am now instructed by the said Juan Ysmael & Company Incorporated to order that you should leave the ship by 3 p.m. today. It is imperative that this order be obeyed and you are warned that any refusal to comply will be followed by immediate action.

(Sd.) M. A. DA SILVA.

Here follows the names of the forty
Indonesian crew members.

30

40

Appeal
Exhibit KK-3A
Ref. No. 121
Referred to in
Doc. No. 84

Hong Kong 25th September, 1952.

Our Ref. PJG:DC.

Appeal
Exhibit PJG-1
Ref. No. 122
Referred to in
Doc. No. 90

Exhibit to Affidavit Included in Record of Proceedings on Insistence by the Government of the Republic of Indonesia but Objected to by Juan Ysmael & Company Incorporated.

Appeal
Exhibit PJG-2
Ref. No. 123
Referred to in
Doc. No. 90

Appeal
Exhibit PJG-2
Letter—
Wilkinson
& Grist to
M. A. da
Silva.
24th October,
1952.

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

Ref. No. 123
Referred to in
Doc. No. 90

24th October, 1952.

10 M. A. da Silva Esq.
Hong Kong.

Dear Sir,

Re: S.S. "Tasikmalaja"

Your letter of even date addressed to forty Indonesian crew members of the s.s. "Tasikmalaja" has been handed to us with instructions to reply thereto.

It is noted that your clients were decreed legal possession of the vessel, but it appears that she is still under arrest and, therefore, in the custody of the Bailiff. In view of this circumstances, it seems to us that the status quo must be maintained on the vessel until her release is ordered. In view of these 20 circumstances, we feel that the second paragraph of your letter is premature.

You will, in any event, bear in mind that these crew members will have to be signed off and discharged in the proper manner and, for this purpose, it will, of course, be recalled that the vessel is registered under the Indonesian flag and that the crew members should be signed off at the Indonesian Consulate. Our clients understand that it has been your contention that they are your servants.

The question of repatriation of the crew also arises, and we believe that it is necessary to obtain the permission of the Immigration Authorities before discharging a foreign crew in Hong Kong.

30

Yours faithfully,

(Sd.) WILKINSON & GRIST.

Appeal
Exhibit PJG-3
Letter—
M. A. da Silva
to Wilkinson
& Grist,
24th October,
1952.

Ref. No. 124
Referred to in
Doc. No. 90

Appeal
Exhibit PJG-3
Ref. No. 124
Referred to in
Doc. No. 90

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

From: M. A. da Silva Esq., Hong Kong.
To: Messrs. Wilkinson & Grist, Hong Kong.
Date: 24th October, 1952.

10

Sir,

Re: S.S. "Tasikmalaja"

I am in receipt of your letter of even date.

I am advised by Counsel that as a result of today's decree, my clients are entitled to make such dispositions as they wish in the matter of the crew.

I am, however, forwarding a copy of this correspondence to the Bailiff.

On behalf of the Government of the Republic of Indonesia your goodselves formerly produced a letter from these 40 persons refusing to accept orders from the now legally decreed owners of the vessel — my clients. I go so far as to say, 20 therefore, that the continued presence of these 40 persons on board the vessel is a contempt of the Court's declaration. In any event, your clients refuse to leave the vessel at their peril and if they are not off by 12 noon tomorrow, 25th October, 1952, my clients will apply to the Court for an order.

In answer to your last two paragraphs you will recall that the Indonesian Registry to which you refer is not admitted by my clients and in any event any question of signing off or repatriation of these dissident members of the crew can be attended to hereafter.

I am instructed to add that my clients assume full responsibility for all monies for which the ship may be found legally liable in respect of the crew. 30

Yours faithfully,

(Sd.) M. A. DA SILVA.

Appeal
Exhibit PJG-1
Ref. No. 125
Referred to in
Doc. No. 92

Appeal
Exhibit PJG-1
Letter—
M. A. da Silva
to Wilkinson
& Grist.
28th October,
1952.

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

Ref. No. 125
Referred to in
Doc. No. 92

28th October, 1952.

10 From M. A. da Silva
Messrs. Wilkinson & Grist,
Present.

Dear Sirs,

Re: s.s. "Tasikmalaja"

As regards your clients viz the Indonesian members of the crew of the above named vessel I am making application ex parte (as it should be) on Thursday next the 30th instant at 9.15 a.m. before the Honourable Mr. Justice Reece in the terms of the enclosed copy Motion (with affidavit in support also enclosed herewith).

20 If you desire to be present I will place no objections to your attendance and to your being heard.

Yours faithfully,
(Sd.) M. A. DA SILVA.

Appeal
Exhibit PJG-2
Ref. No. 126
Referred to in
Doc. No. 92

Appeal
Exhibit PJG-2
Notice of
Motion for
Injunction
against 40
named
Indonesian
members of
crew of s.s.
"Tasikmalaja".
28th October,
1952.

30 **Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

**IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 8 OF 1952**

Ref. No. 126
Referred to in
Doc. No. 92

BETWEEN

Juan Ysmael & Company Incorporated Plaintiffs

and

The Steamship "Tasikmalaja" (Ex
the steamship "Christobal" and
the steamship "Haleakala") Defendant.

40

NOTICE OF MOTION

Appeal
Exhibit PJG-2
Notice of
Motion for
Injunction
against 40
named
Indonesian
members of
crew of s/s
"Tasikmalaja".
28th October,
1952.
—
Ref. No. 126
Referred to in
Doc. No. 92
continued.

Counsel on behalf of the abovenamed Plaintiffs to move the Court in Chambers ex parte for an injunction to forthwith restrain:

- | | | | |
|--|-------------------|--------------------|----|
| Order 11 rules 7 and 8, Order 17 r. 8 of the Code of Civil Procedure and Rules of Court (Cap 4) and the Inherent Jurisdiction. | 1. J. D. Mandagi | 21. R. Sudarsono | |
| | 2. M. Sahabu | 22. A. Karauwan | |
| | 3. H. Lumisay | 23. V. Pongilatan | |
| | 4. Sudjajos | 24. V. Kaparang | |
| | 5. Thomas Lowel | 25. C. Lombogia | |
| | 6. E. Tjong Sui | 26. P. Kaparang | |
| | 7. Sudarman | 27. J. Walandouw | 10 |
| | 8. A. Tuabara | 28. Kaka | |
| | 9. L. Tjong Jung | 29. Sigama | |
| | 10. P. Rozenberg | 30. Hassan 2 | |
| | 11. J. Lewiresa | 31. Tjolli | |
| | 12. Joh Walandouw | 32. Matheos Boko | |
| | 13. Ahmad | 33. Jan A. Mandang | |
| | 14. M. Sigar | 34. Rudkin Mosoi | |
| | 15. D. Sumolang | 35. Jan Pieters | |
| | 16. L. Nanlohy | 36. Idrus Ishag | |
| | 17. Tjali Toba | 37. Hendrik Tampi | 20 |
| | 18. Ali | 38. Lamburi | |
| | 19. R. Walandouw | 39. Duhung | |
| | 20. Ahmad Gigil | 40. Ento Suminto | |

from remaining or going on board the above named Defendant vessel and for an order as to the costs of and incidental to this Notice of Motion.

Dated the 28th day of October 1952.

(Sd.) MARCUS DA SILVA.
Solicitor for the Plaintiffs.

Appeal
Exhibit PJG-3
Ref. No. 127
Referred to in
Doc. No. 92

Appeal
Exhibit PJG-3
Affidavit
of Khalil
Khodr.
28th October,
1952.

**Evidence Included in Record of Proceedings on Insistence by the
Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

Ref. No. 127
Referred to in
Doc. No. 92

**IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION
ACTION NO. 8 OF 1952**

10

BETWEEN

Juan Ysmael & Company Incorporated

Plaintiffs

and

The Steamship "Tasikmalaja" (Ex
the steamship "Christobal" and
the steamship "Haleakala")

Defendant.

I Khalil Khodr of Kimberley Hotel in the Dependency of Kowloon in the
Colony of Hong Kong Merchant make oath and say as follows:—

- 20 1. I am authorised to make this affidavit on behalf of the Plaintiff Company.
2. The Plaintiff Company are the sole owners of the above named Defendant
vessel having been decreed legal possession of the said vessel by a judgment
rendered herein on the 24th day of October, 1952.
3. On the same day thereafter on my instructions the Plaintiff Company's
Solicitor Mr. M. A. da Silva gave written notice to the following members
of the crew of the Defendant vessel viz:
- | | |
|-------------------|--------------------|
| 1. J. D. Mandagi | 21. R. Sudarsono |
| 2. M. Sahabu | 22. A. Karauwan |
| 3. H. Lumisay | 23. V. Pongilatan |
| 30 4. Sudjajos | 24. V. Kaparang |
| 5. Thomas Lowel | 25. C. Lombogia |
| 6. E. Tjong Sui | 26. P. Kaparang |
| 7. Sudarman | 27. J. Walandouw |
| 8. A. Tuabara | 28. Kaka |
| 9. L. Tjong Jung | 29. Sigama |
| 10. P. Rozenberg | 30. Hassan 2 |
| 11. J. Lewiresa | 31. Tjoli |
| 12. Joh Walandouw | 32. Matheos Boko |
| 13. Ahmad | 33. Jan A. Mandang |
| 40 14. M. Sigar | 34. Rudkin Mosoi |
| 15. D. Sumolang | 35. Jan Pieters |

Appeal
Exhibit PJG-3
Affidavit
of Khalil
Khodr.
28th October,
1952.

Ref. No. 127
Referred to in
Doc. No. 92
continued.

- | | |
|------------------|-------------------|
| 16. L. Nanlohy | 36. Idrus Ishag |
| 17. Tjali Toba | 37. Hendrik Tampi |
| 18. Ali | 38. Lamburi |
| 19. R. Walandouw | 39. Duhung |
| 20. Ahmad Gigil | 40. Ento Suminto |

to leave the said ship by 3 p.m. as per copy letter attached marked KK-1 to which a reply was received from their solicitors Messrs. Wilkinson & Grist as per letter produced marked KK-2 with copy attached marked KK-2A.

4. Again on my instructions Mr. M. A. da Silva wrote to Messrs. Wilkinson & Grist on the same day as per copy letter attached marked KK 3 giving the said crew members final notice to quit the said vessel by 12 noon on the 25th October 1952 with which notice they failed to comply as of date. 10
5. The Plaintiff Company at Manila has instructed me that the said ship is to be sent back immediately to Manila for an intended charter but I have sought instructions as to a possible pending sale (being negotiated locally) and my instructions are that the sale would have to be completed and fully paid for by Thursday next the 30th day of October 1952 otherwise the ship (with all repairs obligations paid off) will have to be sent immediately to Manila. In either case it is urgent that the ship should be forthwith cleared 20 of the said dissident members of the crew comprising over 80% of the crew on board, as the previous conduct and behaviour of the said crew members exemplified in the contempt proceedings instituted in this action to which I crave leave to refer, do not leave me free of apprehension of sabotage to the newly repaired engines etc. or to the steering mechanism of the vessel such sabotage being very difficult to guard against in view of the said dissident members of the crew constituting the large majority thereof on board: Neither I firmly believe will these dissident crew members obey any orders of our Acting Captain Jose Maria Silos.
6. I crave leave to refer to the previous affirmations filed herein and I verily 30 believe that the Indonesian Consul General has paid off all salary dues of these crew members to date.
7. I have arranged with the Sailors' Home and Seamen's Institute at No. 40 Gloucester Road Hong Kong for the accommodating and boarding of the defendants ashore.

AND LASTLY the contents of this my affidavit are true.

Sworn at the Courts of Justice)
Victoria Hong Kong this 28th)
day of October, 1952.)

(Sd.) KHALIL KHODR.

Before me,

(Sd.) C. D'ALMADA E CASTRO.
A Commissioner etc.

This is the exhibit marked KK 1 referred to in the affidavit of Khalil Khodr filed herein on the 28th day of October, 1952.

(Sd.) C. D'ALMADA E CASTRO.
A Commissioner etc.

Appeal
Exhibit PJG-3
Affidavit
of Khalil
Khodr.
28th October,
1952.

Ref. No. 127
Referred to in
Doc. No. 92
continued.

COPY

346/52

24th October, 1952

10 Dear Sirs,

You are informed that by a Judgment of this morning of the Honourable Mr. Justice Courtenay Walton Reece in Admiralty Jurisdiction Action No. 8 of 1952 Juan Ysmael & Company Incorporated were decreed legal possession of the s.s. Tasikmalaja.

I am now instructed by the said Juan Ysmael & Company Incorporated to order that you should leave the ship by 3 p.m. to-day. It is imperative that this order be obeyed and you are warned that any refusal to comply will be followed by immediate action.

Yours faithfully,

20

(Sd.) MARCUS DA SILVA.

(Here follows the full list of names of the forty crew members).

(C O P Y)

This is the exhibit marked KK 2A referred to in the affidavit of Khalil Khodr filed herein on the 28th day of October, 1952.

(Sd.) C. D'ALMADA E CASTRO.
A Commissioner etc.

24th October, 1952.

30 M. A. da Silva Esq.,
Hong Kong.

Dear Sir,

Re: SS Tasikmalaja

Your letter of even date addressed to forty Indonesian crew members of the SS Tasikmalaja has been handed to us with instructions to reply thereto.

It is noted that your clients were decreed legal possession of the vessel but it appears that she is still under arrest and therefore in the custody of the Bailiff. In view of these circumstances we feel that the second paragraph of your letter is premature.

40 You will in any event bear in mind that these crew members will have to be signed off and discharged in the proper manner and for this purpose it will be recalled that the vessel is registered under the Indonesian flag and that

Appeal
Exhibit PJG-3
Affidavit
of Khalil
Khodr.
28th October,
1952.

Ref. No. 127
Referred to in
Doc. No. 92
continued.

the crew members should be signed off at the Indonesian Consulate. Our clients understand that it has been your contention that they are your servants.

The question of the repatriation of the crew also arises and we believe that it is necessary to obtain the permission of the Immigration Authorities before discharging a foreign crew in Hong Kong.

Yours faithfully,

(Sd.) WILKINSON & GRIST.

This is the exhibit marked KK 3 referred to in the affidavit of Khalil Khodr filed herein on the 28th day of 10 October, 1952.

Before me,

(Sd.) C. D'ALMADA E CASTRO.

A Commissioner etc.

Messrs. Wilkinson & Grist,
Present.

24th October, 1952.

Dear Sirs,

Re: SS "Tasikmalaja"

I am in receipt of your letter of even date.

I am advised by Counsel that as a result of to-day's decree my clients are 20 entitled to make such dispositions as they wish in the matter of the crew.

I am however forwarding a copy of this correspondence to the Bailiff.

On behalf of the Government of the Republic of Indonesia your goodselves formerly produced a letter from these 40 persons refusing to accept orders from the new legally decreed owners of the vessel — my clients. I go so far as to say therefore that the continued presence of these 40 persons on board the vessel is a contempt of the Court's declaration. In any event your clients refuse to leave the vessel at their peril and if they are not off by 12 noon tomorrow 25th October 1952 my clients will apply to the Court for an Order.

In answer to your last two paragraphs you will recall that the Indonesian 30 Registry to which you refer is not admitted by my clients and in any event any question of signing off or repatriation of these dissident members of the crew can be attended to hereafter.

I am instructed to add that my clients assume full responsibility for all monies for which the ship may be found legally liable in respect of the crew.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit PJG-1
Ref. No. 128
Referred to in
Doc. No. 97

Appeal
Exhibit PJG-1
Decision—
By the
Honourable
Mr. Justice
Courtenay
Walton Reece.
31st October,
1952.

**DECISION BY THE HONOURABLE MR. JUSTICE COURTENAY WALTON
REECE**

(31st October, 1952)

Ref. No. 128
Referred to in
Doc. No. 97

This is an *ex parte* application on behalf of the Plaintiffs Juan Ysmael &
10 Company Incorporated for an injunction forthwith to restrain the forty persons,
named in the Summons from remaining on or going on board the S.S.
"Tasikmalaja."

On the 24th October, 1952, I gave judgment decreeing legal possession of
the said vessel to the plaintiff Company.

When the application came on for hearing Mr. McNeill, who was present
with Mr. Wright and Mr. Griffiths, Solicitor of Messrs. Wilkinson & Grist, stated
that it was an *ex parte* application, but that he had been served with notice. Mr.
McNeill added that this clients, the Government of Indonesia, had entered a
conditional appearance in Action No. 13 of 1952 and that Mr. Griffiths had been
20 instructed to raise the impleading issue in Admiralty Action No. 13 of 1952. Mr.
McNeill suggested that the Summons before the Court should be made *inter partes*
and, with leave, he, Mr. Wright and Mr. Griffiths withdrew.

This application is being made in Action No. 8 of 1952 to which the
Government of the Republic of Indonesia is no longer a party, in view of my
judgment dated the 15th September, 1952, dismissing the motion filed on its
behalf. Consequently the Government of the Republic of Indonesia is not entitled
to appear in any application to the Court in this Action.

A letter was addressed to Messrs. Wilkinson & Grist, solicitor for the
Indonesian members of the crew of the abovenamed vessel, a copy of which is
30 exhibited to the affidavit of Augusto Antonio Noronha, stating that no objection
would be made to their being present and being heard. In my view, this was an
unnecessary letter having regard to the fact that the motion is made *ex parte*.
But in any event, it gives no right of attendance to the Government of Indonesia,
the clients of Mr. McNeill.

The affidavit of Khalil Khodr, in support of the motion, alleges that on the
24th October, 1952, the date on which possession of the vessel was decreed to the
plaintiffs, the plaintiffs' Solicitor gave written notice to the members of the crew,
whose names are set out in the petition to leave the ship by 3 p.m. on that day.
A second notice was given to Messrs. Wilkinson & Grist on behalf of the members
40 of the crew requiring the crew to leave the ship by 12 noon on the 25th October,
1952. The crew have failed to leave the ship and the plaintiffs have applied to
the Court to restrain them from remaining on the ship.

*Appeal
Exhibit PJG-1
Decision—
By the
Honourable
Mr. Justice
Courtenay
Walton Reece.
31st October,
1952.*

It seems to me that having decreed possession of the ship to the plaintiffs, it is the duty of the Court to see that the decree becomes effective. The members of the crew have been notified of and, from the exhibits attached to the affidavit of Khalil Khodr dated the 28th day of October, 1952, I am satisfied that they have knowledge of the decree.

Ref. No. 128
Referred to in
Doc. No. 97
continued.

In the circumstances, I take the view that refusal to leave the ship is a contempt and I therefore order the member of the crew named in the Notice of Motion to leave the ship forthwith after service of this order on them and thereafter to refrain from returning to the said ship. And I further order the said members of the crew to pay the costs of this application.

10

Certified correct copy of
a decision delivered by The
Honourable Mr. Justice Reece
on the 31st October 1952.

(Sd.) C. W. REECE.
Puisne Judge.
31 Oct 1952

(Sd.) C. M. LEUNG
Puisne Judge's Clerk
Supreme Court, Hong Kong
31.10.52.

*Appeal
Exhibit PJG-1
Affirmation of
Marjoenani
filed in A. J.
Action No. 13
of 1952.
30th Nov., 1952.*

Ref. No. 129
Referred to in
Doc. No. 102

*Appeal
Exhibit PJG-1
Ref. No. 129
Referred to in
Doc. No. 102*

20

**Exhibit to Affidavit Included in Record of Proceedings on Insistence by
the Government of the Republic of Indonesia but Objected to by Juan
Ysmael & Company Incorporated.**

**AFFIRMATION OF MARJOENANI FILED
IN A.J. ACTION No. 13 of 1952**

(20th November, 1952.)

30

**IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION**

Action No. 13 of 1952

BETWEEN:

HONG KONG & WHAMPOA DOCK CO. LTD. Plaintiffs

— and —

THE STEAMSHIP "TASIKMALAJA" Defendants

I, MARJOENANI of the Indonesian Embassy, 38 Grosvenor Square, London, W.1, do solemnly sincerely and truly declare and affirm as follows:—

1. I am the duly authorised Charge d’Affairs of the Indonesian Government, appointed to represent the interests of such Government in London, and I am authorised by my said Government to make this Affirmation.

*Appeal
Exhibit PJG-1
Affirmation of
Marjoenani.
20th Nov., 1952.*

2. As the duly authorised representative of the said Government in London I am entitled to immunity in any proceedings in the Courts of Hong Kong relating to State property. Indonesia is an independent sovereign State and I am authorised by my Government to object to the purported exercise of any jurisdiction over the State of Indonesia or over the property of that State or its diplomatic representative.

*Ref. No. 129
Referred to in
Doc. No. 102
continued.*

10 3. On the instructions of my said Government, I formulated on the 14th day of November 1952 to the Foreign Secretary of Her Majesty’s Britannic Government, a claim to ownership and possession of the vessel S.S. “Tasikmalaja”, which I am informed and verily believe is within the jurisdiction of the Hong Kong Courts, and is the subject of certain proceedings at present before those Courts.

4. There is now produced and shown to me marked “M-1” a copy of the letter dated the 14th November 1952, written on behalf of my said Government, formulating the said claim for immunity in the case of the said vessel S.S. “Tasikmalaja.”

20 5. For the reasons set out in the said letter I respectfully submit on behalf of my said Government that Her Majesty’s Britannic Courts in Hong Kong should declare that the ship S.S. “Tasikmalaja” which is the subject of these proceedings, is immune from their jurisdiction and these proceedings should accordingly be stayed.

AFFIRMED at 38, Grosvenor)
Square in the County of)
London, England, this 20th) (Sd.) MARJOENANI
day of November 1952)

Before me,

30 (Sd.) ALAN RICKETTS

Not: Pub: (Seal)

A Notary Public and
a Commissioner for Oaths.

"M. 1"

IN THE SUPREME COURT OF HONG KONG
ADMIRALTY JURISDICTION

Action No. 13 of 1952

Appeal
Exhibit PJG-1
Affirmation of
Marjoenani.
20th Nov. 1952.

Ref. No. 129
Referred to in
Doc. No. 102
continued.

BETWEEN:

HONG KONG & WHAMPOA DOCK CO. LTD. Plaintiffs

— and —

THE STEAMSHIP "TASIKMALAJA" Defendants

This is the Exhibit marked "M.1" referred to in the Affirmation of
MARJOENANI affirmed herein this 20th day of November 1952. 10

Before me,

(Sd.) ALAN RICKETTS

(Seal)

Not: Pub:

A Notary Public and
a Commissioner for Oaths.

K 2553

INDONESIAN EMBASSY

The Charge d'Affairs of the Republic of Indonesia presents his
compliments to Her Majesty's Principal Secretary of State for Foreign Affairs
and in connection with the case of the s.s. "Tasikmalaja," has the honour to
communicate as follows. 20

On the instructions of the Government of the Republic of Indonesia, the
Charge d'Affairs has the honour to refer to the Note of the Ministry of
Foreign Affairs of the Republic of Indonesia addressed to Her Majesty's
Embassy for the United Kingdom of Great Britain and Northern Ireland in
Djakarta on the 27th October 1952, in which the Government of the Republic
of Indonesia formally made a claim to the ownership and possession of the
vessel s.s. "Tasikmalaja," which is at present within the jurisdiction of the
Court of Hongkong.

On the further instructions of the Indonesian Government the Charge
d'Affairs has the further honour to confirm the claim which was put forward 30
in the said Note, to the effect that the Indonesian Government as a sovereign

state is entitled to immunity in the Courts of the said Colony, which are not entitled to implead the sovereign rights of the Indonesian Government or to enquire into the subject matter of proceedings pending before them in respect of the said vessel s.s. "Tasikmalaja."

*Appeal
Exhibit PJG-1
Affirmation of
Marjoenani.
20th Nov. 1952.*

*Ref. No. 129
Referred to in
Doc. No. 102
continued.*

The grounds upon which the Charge d'Affairs is instructed to put forward the Indonesian Government's claim for sovereign immunity are that the ownership is claimed by the Indonesian Government of the said vessel, which was brought into the jurisdiction of the Hong Kong Courts by a Master and crew acting on the instructions of, and in obedience to, orders of the Indonesian
10 Government. The said vessel is in fact State property and is destined for troop carrying operations.

The Charge d'Affairs is instructed to make it clear that up to the date when the said vessel entered the jurisdiction of the Hongkong Courts, there was no indication of any disloyalty from the Master of the vessel or the Philippino members of the crew, and even after that date the Indonesian crew, comprising over 80% of the crew members, have remained completely loyal to his Government. In fact, the Indonesian crew at all material times has been, and still is, in possession and control of the said vessel on behalf of the Indonesian Government.

20 The said vessel is registered under and is flying the Indonesian flag, the former Panamanian flag having been lowered in the presence of the Panamanian Consulate representative in Hongkong. The said vessel has an Indonesian Certificate of Nationality and was delivered to a dock Company in Hongkong for repairs by the Indonesian Government.

A Bill of Sale at present in possession of the Indonesian Government can, if required, be produced as prima facie evidence of title.

30 Having regard to the information supplied above, the Charge d'Affairs has the honour to suggest that His Excellency should formally confirm in writing that the Government of the Republic of Indonesia are entitled to immunity in the Hongkong Courts and that a copy of this letter, together with such confirmation, should be transmitted to the Authorities in Hongkong for their attention.

The Charge d'Affairs, while expressing his sincere thanks to Her Majesty's Principal Secretary of State for Foreign Affairs, for his intermediary in this matter, avails himself of this opportunity to convey to His Excellency the assurances of his highest consideration.

14th November, 1952

Her Majesty's Principal Secretary of State for Foreign Affairs,
Foreign Office,

40 S. W. 1.

Appeal
Exhibit MAS-1
Letter—
M. A. da Silva
to Clerk to
Chief Justice.
21st March
1953.

Ref. No. 130
Referred to in
Doc. No. 116

Appeal
Exhibit MAS-1.
Ref. No. 130
Referred to in
Doc. No. 116

21st March, 1952.

The Clerk to His Honour The Chief Justice

Dear Sir,

Re: Appeals Nos. 14 and 15 of 1952.
"TASIKMALAJA"

10

Shortly after the decision of the Full Court, I made an application for the transcript of the shorthand notes and a copy of the judge's notes.

I regret that up to date I have not received same and that this has delayed me from getting the records ready. I am compelled to make an official complaint. It will now appear that I will have to make an application to the Full Court for an extension of time. I shall be obliged if you will give this matter your urgent attention.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit MAS-2
Letter—
M. A. da Silva
to Clerk to
Chief Justice.
7th April,
1953.

Ref. No. 131
Referred to in
Doc. No. 116

Appeal
Exhibit MAS-2
Ref. No. 131
Referred to in
Doc. No. 116

20

7th April, 1953.

The Clerk to the Honourable The Chief Justice.

Dear Sir,

Re: Appeals Nos. 14 and 15 of 1952.

With reference to my letters of the 22nd January and 23rd March 1953 I note that the Notes of Proceedings for the following hearings were omitted from 30 the transcripts supplied by you to me:—

16th September, 1952.
24th September, 1952.
24th October, 1952.
31st October, 1952.
3rd November, 1952.
7th January, 1953.
12th January, 1953.

As the records for my clients' appeal to the Privy Council are incomplete without same, please let me have two copies thereof at your earliest convenience, 40 the charges for which I undertake to pay.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit MAS-3
Ref. No. 132
Referred to in
Doc. No. 116

Appeal
Exhibit MAS-3
Letter—
M. A. da Silva
to Clerk to
Mr. Justice
Reece.
7th April,
1953.

7th April, 1953.

Ref. No. 132
Referred to in
Doc. No. 116

The Clerk to the Honourable

Mr. Justice Courtenay Walton Reece,

Supreme Court,

10 Hong Kong.

Dear Sir,

Re: Admiralty Jurisdiction Actions Nos.
6 and 8 of 1952.

I note that the following Notes of Proceedings taken by Mr. Justice Reece herein are not contained in the transcripts supplied by you to Messrs. Wilkinson & Grist for purpose of their clients' appeal to the Full Court:—

- (a) Notes of the Contempt proceedings heard on 11th July, 1952;
- (b) Notes of the proceedings on 2nd October, 1952, on the intervention of the Attorney-General;
- 20 (c) Notes of the proceedings on 2nd October, 1952, on the examination-in-chief of Khalil Khodr; and
- (d) Notes of the proceedings on 31st October, 1952, for an injunction against 40 Indonesian crew members of the res.
- (e) Notes of the proceedings in Chambers on 31st October, 1952.

As the above are required to complete the records for my clients' appeal to the Privy Council, I shall be obliged if you will let me have, at your *earliest urgent* convenience, two copies thereof, the charges for which I undertake to pay.

Yours faithfully,

(Sd.) MARCUS DA SILVA.

Appeal
Exhibit PJG-1
Letter—
Wilkinson
& Grist to
M. A. da Silva.
4th August,
1953

Ref. No. 132A
 Referred to in
 Doc. No. 129

M. A. da Silva, Esq.,
 HONG KONG

Dear Sir,

Appeal
Exhibit PJG-1
Ref. No. 132A
Referred to in
Doc. No. 129

4th August, 1953.

re: s.s. "Tasikmalaja"

We note with surprise that, despite the fact that you have informed us 10 that the Record or parts of it have been sent to the Printer, we have not yet had an opportunity of seeing the draft. We understand also that the draft had not been submitted for approval to the Registrar under whose supervision it should be prepared. As the time limited for the printing of the Record is not long, we expect to receive a copy of the draft Record at once.

Will you also please attend to the filing of the Orders made as to costs and as to the variation of the preparation of the Record.

Unless we receive the Record within a reasonable time, we shall be compelled to file an Affidavit of the facts and to apply to the Full Court for directions.

Yours faithfully,

(Sd.) WILKINSON & GRIST.

20

Court
Exhibit 1
Second Charter
Party.
26th February,
1951.

Ref. No. 133
 Referred to in
 Doc. No. 37
 (p. 69)

Court
Exhibit 1
Ref. No. 133
Referred to in
Doc. No. 37
(p. 69)

(See Exhibit KDH-A, Ref. No. 39)

Court
Exhibit 2
Third Charter
Party.
25th April,
1951.

Ref. No. 134
 Referred to in
 Doc. No. 37
 (p. 69)

Court
Exhibit 2
Ref. No. 134
Referred to in
Doc. No. 37
(p. 69)

(See Exhibit KDH-B, Ref. No. 40)

30

Court
Exhibit A
Decision of the
Philippines
Court
16th September,
1950.

Ref. No. 135
Referred to in
Doc. No. 63
(at p. 138).
continued.

| | | |
|--|-----------------|----|
| “ Balance of purchase price of vessel claimed in Civil Case No. 10798 | P170,000.00 | |
| Six per cent (6%) on P170,000.00 from July 23, 1949 to July 23, 1950 | 10,200.00 | |
| Claims asserted in Civil Case No. 10797 | 29,528.47 | |
| Six per cent (6%) interest on P29,528.47 from July 28, 1949 to July 28, 1950 | 1,771.71 | |
| Expenses of suit consisting of: | | |
| Filing fees | 135.00 | |
| Bond premium for above 2 cases | 2,316.90 | 10 |
| Sheriffs' fees re attachment until July 31, 1950 inclusive .. | 2,080.00 | |
| Attorney's fees | 10,575.00 | |
| Total | P224,527.08 | |

- “ 3. That the plaintiff A. Magsaysay, Inc. and the defendant Salipada K. Pendatun waive and renounce any and all rights each may have against the other arising from the agency and operation of the vessel S.S. CRISTOBAL ex SS HALEAKALA; and that said plaintiff and defendant expressly agree that said agency was terminated up to *March, 1950*.
- “ 4. That the intervenors Captain, Officers and crew of the SS CRISTOBAL ex SS HALEAKALA expressly agree to accept the sum of P80,000.00 in full and complete settlement of their claim for wages and salaries asserted in their two complaints in intervention dated August 7, 1950, in the above entitled cases, totalling P114,000.00, and in their complaint before the Court of First Instance of Zamboanga, Civil Case No. 211, which complaint the herein intervenors shall cause to be dismissed with prejudice. 20
- “ 5. That all the parties hereto, including the intervenors, expressly agree and pray that the Court authorize and order the Sheriff of Zamboanga to effect the sale of the attached vessel S.S. CRISTOBAL (ex S.S. HALEAKALA) to Juan Ysmael & Co. Inc. of Manila for the sum of P200,000.00 — which proceeds of the sale shall be deposited with this Court and paid by order of the Court as follows: P120,000.00 to the plaintiffs George Ho and A. Magsaysay, Inc. and P80,000.00 to the intervenors Captain, Officers, and crew of the S.S. CRISTOBAL (ex S.S. HALEAKALA), defendant Salipada K. Pendatun shall have the right to deduct from the sum of P80,000.00 the advances made to the intervenors; the said sale to be effective immediately, and the vessel to be delivered to the purchaser Juan Ysmael & Co., Inc. and the title of the vessel, which is now registered in the Panamanian Consulate to be transferred and delivered to Juan Ysmael & Co. Inc. 30
- “ 6. That the proceeds of the sale of P200,000.00 consisting of all the corresponding checks issued in favor of the plaintiffs George Ho and A. Magsaysay, Inc. and the other made in favor of Francisco J. Aguado for the intervenors shall be deposited with the Court of First Instance of Manila, under the strict understanding that the same cannot be withdrawn by their respective payees until after Captain Francisco J. Aguado should telegraphically advise this Court of the arrival of the S.S. CRISTOBAL (ex S.S. HALEAKALA) at Djakarta; 40

" 7. That if the vessel S.S. CRISTOBAL (ex S.S. HALEAKALA) should not reach its destination, for reasons of force majeure and perils of the sea, then the parties hereto particularly agree:

" (a) That the aforesaid checks deposited with the Court shall be returned to the purchaser Juan Ysmael Co. Inc.

" (b) That Juan Ysmael Co. Inc. of Manila shall pay the plaintiff George Ho and A. Magsaysay, Inc. the sum of P40,000.00;

" (c) That the defendant Salipada Pendatun shall pay the plaintiff George Ho and A. Magsaysay, Inc. another sum of P80,000.00, the payment of the P40,000.00 of which is guaranteed by the purchaser Juan Ysmael Co. Inc. of Manila, the said guarantee to be effective until defendant Salipada Pendatun should substitute the same with a surety bond.

" 8. That all Sheriffs' and guards' fees and court expenses after July 31, 1950 shall be paid by the defendant Salipada K. Pendatun before the aforesaid sale and the same are not to be taken from the proceeds of said sale;

" 9. That the defendant Salipada K. Pendatun agrees to indemnify the plaintiffs George Ho and A. Magsaysay, Inc. for any and/all liability that the latter may incur in favor of third-party claims against the SS CRISTOBAL (ex SS HALEAKALA) superior and/or preferred to this claim of the plaintiffs George Ho and A. Magsaysay, Inc.; it being expressly understood, however, that the parties hereto make no admissions that there is any superior and/or preferred claims;

" 10. That this compromise constitute the final termination of the above-entitled cases and of Civil Case No. 211, Court of First Instance of Zamboanga, entitled "Francisco J. Aguado et al vs. Salipada K. Pendatun, et al, the parties including the intervenors, waiving defunctly and completely any and all claims above against each other, except as stated in paragraph nine (9) of this motion."

WHEREFORE, judgment is hereby rendered approving the above-quoted compromise agreement and directs the parties to comply strictly with its terms and conditions. The Provincial Sheriff of Zamboanga is hereby *ordered to effect the sale of the attached vessel S.S. CRISTOBAL (ex S.S. HALEAKALA) to Juan Ysmael & Co. Inc. of Manila* for the sum of P200,000.00 which is already deposited in court. There is no special pronouncement as to the costs.

SO ORDERED.

Manila, September 16, 1950.

(L.S.)

(Sgd.) EMILIO PENA,
Judge.

Court
Exhibit B
Ref. No. 136
Referred to in
Doc. No. 63
(p. 138)

(See Exhibit KK-Cl, Ref. No. 52)

Court
Exhibit A
Decision of the
Philippines
Court
16th September,
1950.

Ref. No. 135
Referred to in
Doc. No. 63
(at p. 138).
continued.

Court
Exhibit B
Bill of Sale—
George Ho to
Juan Ysmael
& Co. Inc.
16th September,
1950.

Ref. No. 136
Referred to in
Doc. No. 63
(p. 138)

No. 45 of 1958.

In the Privy Council.

ON APPEAL
FROM THE APPEAL COURT IN HONG KONG

BETWEEN

JUAN YSMAEL & COMPANY INCORPORATED (Plaintiffs) - - - - Appellants.

AND

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA (Defendants) Respondents.

RECORD OF PROCEEDINGS

MESSRS. REID SHARMAN & CO.,

36, Bedford Row, W. C. 1.

Solicitors for the Appellants.

MESSRS. MARKBY, STEWART & WADESONS,

5 Bishopsgate, E.C. 2,

Solicitors for the Respondents.