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 LEGAL STUDIES

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Appeal No. 23 of 1954.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF THE
 FEDERATION OF MALAYA

BETWEEN

THE FIRM OF A. M. K. M. K. - - - - - *Appellants.*

AND

M. R. M. PERIYANAN CHETTIAR - - - - - *Respondent.*

CASE FOR THE APPELLANTS.

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1. This is an appeal from a Judgment and Decree of the Court of Appeal of the Federation of Malaya dated the 21st day of March, 1952, which upheld a Judgment and Decree of the High Court of the Federation of Malaya at Penang dated the 31st day of August, 1951, dismissing the action brought by the Appellants against the Respondent.

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 pp. 10-16.
 pp. 5 & 6.

2. The Appellants' claim was for \$49,900 being the balance of monies payable by the Respondent to the Appellants due on a current account between the Respondent and the Appellants commencing from a date long anterior to the 15th day of February, 1942, and ending on the 6th August, 1945, and ascertained in accordance with the provisions of Section 8 of the Debtor and Creditor (Occupation Period) Ordinance, 1948, of the Federation of Malaya, and interest thereon from the 1st day of April, 1946, until payment or judgment.

p. 2.

3. Sections 4 and 8 of the Debtor and Creditor (Occupation Period) Ordinance, 1948, read as follows:—

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“ 4. (1) Subject to the provisions of Subsection (2) of this Section, where any payment was made during the occupation period in Malayan currency or occupation currency by a debtor or by his agent or by the Custodian or a liquidation officer purporting to act on behalf of such debtor, to a creditor, or to his agent or to the Custodian or liquidation officer purporting to act on behalf of such creditor, and such payment was made in respect of a pre-occupation debt, such payment shall be a valid discharge of such pre-occupation debt to the extent of the face value of such payment.

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“(2) In any case—

- (a) where the acceptance of such payment in occupation currency was caused by duress or coercion; or
- (b) where such payment was made after the 31st day of December, 1943, in occupation currency in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which—
 - (i) was not due at the time of such payment;
 - (ii) if due, was not demanded by the creditor or by his agent on his behalf and was not payable 10 within the occupation period under a time essence contract; or
 - (iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent; or
- (c) where such payment was made in occupation currency to a Custodian or liquidation officer in respect of a pre-occupation capital debt exceeding two hundred 20 and fifty dollars in amount except where payment as aforesaid was caused by duress or coercion,

such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation.

“(3) In Subsection (2) of this Section—

- (a) the expression ‘pre-occupation capital debt’ means any pre-occupation debt other than a sum accruing due after the commencement of the occupation 30 period in respect of—
 - (i) rent; or
 - (ii) interest;
- (b) the word ‘demand’ includes the rendering of an account for goods supplied or services rendered.

“(4) Where any pre-occupation debt as is mentioned in Subsection (1) of this Section purports to have been wholly or partly discharged during the occupation period by payment in occupation currency, no interest on such debt or any portion thereof purporting to have been so discharged shall be chargeable in respect of the period between the date of such payment and the date of the 40

commencement of this Ordinance notwithstanding that such debt or portion thereof may, under the provisions of Subsection (2) of this Section, be deemed to be partly undischarged.

RECORD
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“ (5) For the purposes of this Section ‘ duress or coercion ’ means force, injury or detriment applied or caused, or threat of force, injury or detriment offered, to the creditor or debtor (as the case may be) or his agent or another person by the debtor or creditor (as the case may be) or his agent or an official of, or person acting on behalf of, the Occupying Power, which, in the opinion of the Court,
10 was of such a nature as to render the acceptance of a payment or a payment (as the case may be) an involuntary act.

“ In this Subsection ‘ threat of force, injury or detriment ’ includes a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the creditor or his agent to accept payment in occupation currency or of the refusal of the debtor to make payment (as the case may be).

“ 8. For the purposes of this Ordinance—

(a) any payment made by, or on behalf of, any person into any bank or other account during the occupation period shall be deemed to have been applied first to any debit balance, or part thereof, which arose during the occupation period and was still outstanding against such person in such account at the time when such payment was made; and
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(b) any withdrawal made by, or on behalf of, any person from any bank or other account during the occupation period shall be deemed to have been applied first against any credit balance, or part thereof, which arose during the occupation period and was still outstanding in favour of such person at the time when such withdrawal was made.”
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Section 6 of the Ordinance and the Schedule are annexed hereto.

4. The Appellants and Respondent were both moneylenders who for some years prior to and throughout the Japanese occupation of Malaya worked in close association from the same business address drawing on and paying into each others banking account.

5. No witnesses were called at the hearing before the learned Trial Judge by either party, but an agreed bundle of documents was put in evidence, which showed that a continuous account of the transactions
40 between the parties was kept by each of them, and that their respective accounts were in complete agreement. pp. 18-33.

6. At the commencement of the occupation period on the 15th February, 1942, the Appellants had a credit balance of \$49,900, but the p. 19.

RECORD. current account was continued to be operated during the occupation
p. 32. period, and was closed on or about the 6th day of August, 1945, there
being then on the account no balance due and payable by either party.

p. 4. 7. The case was argued in the High Court before Abbott, J., on the
p. 5. 27th day of July, 1951, and Judgment was delivered on the 25th day of
August, 1951, in which the learned Judge held that Section 4 (1) of the
said Ordinance applied, and that the pre-occupation debt of \$49,900
became liquidated by the 4th January, 1943, and therefore gave Judgment
for the Defendants with costs.

pp. 7-9. 8. From the said Judgment the Appellants appealed to the Court 10
of Appeal of the Federation of Malaya.

9. Pretheroe, J., in his Judgment dated the 21st day of March,
1952, summarised the argument for the Appellant as follows:

p. 11, l. 3.

“ On behalf of the Appellants Mr. Ramani suggested that, as
Section 8 of the Ordinance is applicable only to transactions made
during the occupation period, two lines should be ruled across the
accounts: one should be placed immediately after the last item relat-
ing to the 15th February, 1942, and the second under the last entry
made before the 5th September, 1945, as there was no entry relating
to that particular day itself. It was common ground that at the 20
point where the first line was drawn the Appellants had a credit
balance of \$49,900. Mr. Ramani then submitted that every credit
item must be set against the most recent debit item and, if any
balance then remains, against the next most recent, and so on. I
agree with this procedure, but he then went further and submitted that
in no circumstances should any credit balance of the Respondent’s
during the occupation period ever be appropriated to reduce the
Appellants’ pre-occupation balance. In the circumstances of this
case this latter submission is the crucial point upon which the final
decision depends. By the adoption of this ‘ water-tight compart- 30
ment ’ method of computing the Respondent finds himself with a
substantial sum standing to his credit when the second line across
the ledger is reached. As this amount was an occupation debt Mr.
Ramani submitted that it must be re-valued under Section 6 of the
Ordinance. By virtue of Paragraph (a) of that Section this procedure
completely liquidates the Respondent’s credit balance and the
Appellants are left with their pre-occupation credit of \$49,900
untouched.”

10. Pretheroe, J., further in his Judgment said:

p. 12, l. 27.

“ In my opinion the correct interpretation of the Section may 40
be summarised as follows:—

“ (a) When, during the occupation period, a pre-occupation
debtor had a sum credited to his account by his pre-

occupation creditor, such credit balance must first be applied to the most recent occupation period debt; RECORD.
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“ (b) if after the liquidation of the most recent occupation period debt there still remains a credit balance, such balance must be applied to the second most recent occupation period debt, and so on;

10 “ (c) if after satisfying all occupation period debts a credit balance still remains, that balance must be applied to any pre-occupation debts and the rule in *Clayton's Case* applies to such applications;

“ (d) such credit balance will be reckoned at its face value if it appears in the accounts before the last day of December, 1942;

“ (e) if it appears in the accounts after the last day of December, 1942, such balance (but not the amount applied to liquidate the occupation period debts) must be revalued in accordance with the Schedule to the Ordinance; and finally

20 “ (f) if any credit appears in the accounts after the 15th day of February, 1942, and there is at the time no occupation period debit balance, such sum must be applied to the pre-occupation balance.

30 “ Now, applying this procedure to the facts of the present case, it will be found that on the 31st December, 1942 (the date upon which Malayan currency and occupation currency ceased to be at parity), the Appellants' pre-occupation credit balance of \$49,900 had been reduced to \$1,650. By the 7th January, 1943, further sums amounting to \$3,150 had been credited to Respondent's account but there had been no more debit entries. When re-valued these latter credits were far more than required to complete the liquidation of the whole pre-occupation period credit. From the 7th January, 1943, onwards the parties alternated as creditors and on the 6th August, 1945 (the date mentioned in the statement of claim), there was a small balance standing to the credit of the Appellants. This balance does not appear in the accounts as exhibited: it only emerges after applying the procedure I have attempted to summarise above. That balance, however, was an occupation period debt and falls to be re-valued under Section 6 of the Ordinance and is thereby extinguished by virtue of the provisions of Paragraph (a) thereof. It follows that no part of the amount claimed by Appellants remains due. Thus, though for different reasons, I arrive at the same conclusion as the learned Trial Judge.”

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11. Matthew, J., delivered a similar Judgment and Murray-Aynsley, pp. 13, 14 & C.J., concurred. 15.

- RECORD.
p. 16. 12. From the Judgment and Decree of the Appeal Court dated the 16th day of August, 1952, the Appellants were on the 6th day of October, 1952, granted by the said Appeal Court leave to appeal to the Privy Council, the leave being made final on the 14th day of December, 1953.
- p. 17.
- pp. 10-16. 13. The Appellants humbly submit that the Judgments and Decree of the Appeal Court dated the 16th day of August, 1952, affirming the Judgment and Decree of the High Court dated the 31st day of August, 1951, were wrong and ought to be set aside for the following among other,
- pp. 5 & 6.

REASONS:—

1. Because Section 8 applies to payments and withdrawals arising in the occupation period only and no such payments or withdrawals should be set off against pre-occupation debts and credits until a balance for the occupation period has been struck and re-valued according to the said Ordinance. 10
2. Because the said Section 8 applies solely to payments and withdrawals during the occupation period.
3. Because the learned Trial Judge and Judges of the Court of Appeal misdirected themselves as to the law and did not properly apply the legal effect of Section 8 of the said Ordinance to the facts of the case. 20
4. Because the learned Judges of the Court of Appeal incorrectly interpreted the said Section 8.
5. Because the Judgment of the High Court and the Judgments of the Court of Appeal of the Federation of Malaya were wrong and ought to be set aside.

DINGLE FOOT.

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A N N E X U R E .

RECORD.
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EXTRACT FROM DEBTOR AND CREDITOR (OCCUPATION PERIOD) ORDINANCE, 1948.

6. Subject to the provisions of Section 7 of this Ordinance any occupation debt or part thereof which still remains unpaid at the commencement of this Ordinance shall, unless such debt was expressly made payable otherwise than in occupation currency, be revalued in accordance with the scale set out in the Schedule to this Ordinance, as at the date or dates when the same was expressed to be payable under
 10 any time essence contract governing the transaction or, in the absence of such express date or dates, as at the date when payment was first demanded by the creditor or his agent or as at the twelfth day of August, 1945, whichever of such dates is earlier in time, and shall be payable to the extent determined by such scale, and no interest shall be payable on a debt as so revalued:

Provided that—

- 20 (a) nothing shall be payable in respect of any such debt or balance of any such debt which, when revalued as aforesaid, does not amount to one hundred dollars in Malayan currency, or which was incurred after the twelfth day of August, 1945; and
- (b) if the full amount of any such debt was, after it became due and payable tendered in occupation currency by the debtor or his agent to the creditor or his agent before the thirteenth day of August, 1945, and refused by the creditor or his agent, such debt shall be deemed to have been wholly discharged and nothing shall be payable in respect thereof.

THE SCHEDULE

30 1. (a) Where any such payment as is mentioned in Sub-section (2) of Section 4 of this Ordinance was made in occupation currency during any month or on any day mentioned in the first column of the scale set out in paragraph 3 of this Schedule, such payment shall be revalued by taking the number of dollars in occupation currency set out opposite such month or day in the second column of the said scale as equivalent to one hundred dollars Malayan currency; and so in proportion for any portion of such payment amounting, when revalued, to less than one hundred dollars Malayan currency.

40 (b) Where any such payment was made in occupation currency on or after the thirteenth day of August, 1945, the value of such payment shall be taken to be nil.

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2. (a) In the case of an unsatisfied occupation debt or part thereof which falls to be revalued under Section 6 of this Ordinance, such debt or part thereof shall be revalued at the appropriate date as provided in the said Section or Sub-section by taking the number of dollars in occupation currency mentioned opposite such month or day in the second column of the scale set out in paragraph 3 of this Schedule as equivalent to one hundred dollars Malayan currency; and so in proportion for any portion of such debt amounting, when revalued, to less than one hundred dollars Malayan currency.

(b) When any such debt or part of a debt fell due for payment on or after the thirteenth day of August, 1945, its value shall be taken to be nil.

3. SLIDING SCALE OF THE VALUE OF OCCUPATION
CURRENCY 1942/1945.

<i>Month.</i>	<i>Value of \$100 Malayan currency in terms of occupation currency.</i>	
(1)	(2)	
	\$ (occupation currency).	
1942		
February	100	
March	100	
April	100	
May	100	
June	100	
July	100	
August	100	
September	100	
October	100	
November	100	
December	100	20
1943		
January	105	
February	117	
March	131	
April	153	
May	179	
June	224	
July	254	
August	282	
September	302	
October	320	
November	337	
December	385	40

<i>Month.</i>		<i>Value of \$100 Malayan currency</i>	<i>RECORD.</i>
(1)		(2)	
		\$ (occupation currency).	
1944	January	455	
	February	590	
	March	765	
10	April	860	
	May	870	
	June	910	
	July	1,010	
	August	1,210	
	September	1,400	
	October	1,530	
	November	1,720	
	December	1,850	
1945	January	2,000	
20	February	2,380	
	March	3,100	
	April	3,850	
	May	4,950	
	June	6,340	
	July	7,980	
	1st August	10,500	
	2nd "	15,500	
	3rd "	20,500	
	4th "	25,500	
30	5th "	30,500	
	6th "	35,500	
	7th "	45,000	
	8th "	55,000	
	9th "	65,000	
	10th "	75,000	
	11th "	85,000	
	12th "	95,000	
	13th "		Occupation currency to be valueless.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF
THE FEDERATION OF MALAYA

BETWEEN

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AND

M. R. M. PERIYANAN
CHETTIAR – – – *Respondent.*

CASE FOR THE APPELLANTS.

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