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UNIVERSITY OF LONDON
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- 8 JUL 1956 No. 23 of 1954.

In the Privy Council, INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE COURT OF APPEAL OF THE FEDERATION OF
MALAYA.

BETWEEN

THE FIRM OF A.M.K.M.K. (Plaintiffs) . . . Appellants

AND

M.R.M. PERIYANAN CHETTIAR (Defendant) . . . Respondent.

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Case for the Respondent.

RECORD.

1. This is an appeal from a judgment of the Court of Appeal of the Federation of Malaya dated the 16th August 1952 from a judgment of Abbott J. dated the 25th August 1951. Leave to appeal to Her Majesty in her Privy Council was granted to the Appellant by an Order of the said Court of Appeal dated the 14th December 1953.

p. 16.
p. 5.
p. 17.

2. The question for consideration in this appeal is whether or not upon the true construction and effect of an Ordinance of the Federation of Malaya No. 42 of 1948 passed in the Legislature Council on the 16th December 1948 the short title whereof is the Debtor and Creditor (Occupation Period) Ordinance 1948—the Respondent is indebted to the Plaintiff in a sum of \$49,900 with interest from the 1st April 1946.

3. The material provisions of the said Ordinance for the purposes of this appeal are as follows :—

“ Section 2 (1)—‘ Malayan currency ’ means the dollar currency in circulation and constituting legal tender in the territories now comprising Malaya before or after the occupation period ;

‘ occupation currency ’ means any currency issued by the Occupying Power and in circulation during the occupation period, but does not include Malayan currency ;

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‘ occupation debt ’ means a debt payable by virtue of an obligation incurred during the occupation period and accruing due at any time ;

‘ occupation period ’ means the period commencing on the fifteenth day of February 1942 and ending on the fifth day of September 1945 both dates inclusive and includes any part of such period ;

‘ pre-occupation debt ’ means a debt payable by virtue of an obligation incurred prior to the commencement of the occupation period and accruing due at any time.”

“ Section 4 (1)—Subject to the provisions of sub-section (2) of this section ” (which the Respondent contends do not apply in this action) “ where any payment was made during the occupation 10 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 a 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.”

“ Section 8—For the purposes of this Ordinance—

- (A) any payment made by, or on behalf of, any person into 20 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
- (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 30 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.”

p. 1.
p. 2.
p. 3.

4. This action was commenced by Writ dated the 29th September 1950 issued by the Appellants as Plaintiffs against the Respondent as Defendant in the High Court at Penang. As appears from paragraphs 1, 2 and 3 of the Statement of Claim which were admitted in the Defence the Appellants and the Respondent both carried on the business of money-lenders in Penang and from February 1939 the Appellants and Respondent commenced dealings between themselves on current account on terms that 40 interest on the appropriate balances should be calculated and debited at the end of every six monthly period in such account in accordance with the usual Penang current account rate as fixed by Chettiar custom from time to time. As further appears from the said Statement of Claim and Defence it is not in dispute that the said account continued to be operated by the Appellants and the Respondent during the occupation period as defined in the said Ordinance and until the 6th August 1945.

The Statement agreed by the Appellants and the Respondent showing the debit and credit current account of the Respondent in the books of the Appellants does not draw any balances but if a balance had been drawn from day to day it is the fact and it is not in dispute between the Appellants and the Respondent that at the commencement of such occupation period the Respondent was indebted to the Appellants in a sum of \$49,900. The first debit or credit to the said account in such period was a credit on the 20th February 1942 to the Respondent in a sum of \$700. The continued operating of the account drawing balances from day to day shows as stated in paragraphs 2 and 3 of the Defence that on the 4th January 1943 the debit and credit between the Appellants and the Respondents was nil and that was again the position on the 8th March 1943. Thereafter the Appellants and Respondent alternated as creditor until the account ceased to be operated.

5. This action came on for hearing before Mr. Justice Abbott on the 27th July 1951. The Appellants contended that upon the true construction of the said Ordinance that occupation credits and debits were to be set off against each other and could not be used to reduce the pre-occupation credit balance in their favour. Judgment was reserved. Judgment was delivered on the 3rd August 1951 and it was ordered that the action be dismissed with costs.

6. Mr. Justice Abbott in his judgment said as follows :—

“ In the view of this Court it is section 4 (1) and not section 8 of the Ordinance that applies to the present case ”

and after reading section 4 (1) :—

“ In the view of this Court the amounts paid into the account by the Defendant up to and including the 4th January 1943 were paid towards the reduction and the eventual elimination of a pre-occupation debt of \$49,900 and any dealings which the parties had between themselves after that date are not material to the present issue.”

7. From the judgment of Mr. Justice Abbott the Appellants appealed to the Court of Appeal of the Federation of Malaya and after hearing the appeal the Court (Mathew C.J., Murray Aynsley C.J. (Singapore) and Pretheroe J.) by Order dated the 16th August 1952 dismissed the appeal.

8. Chief Justice Mathew in his judgment said as follows :—

“ I would make one general observation. The purpose of the Debtor and Creditor (Occupation Period) Ordinance 1948 is to provide a method of dealing with debts incurred before and during the occupation which operates fairly as between debtor and creditor. I would find it difficult to place an interpretation on section 8 which would have the effect of defeating the clear purpose of the Ordinance ”

and later in his judgment after reading section 8 of the said Ordinance :—

“ This provision has the effect of reversing what is known as the rule in *Clayton's* case as regards the application of certain

payments and withdrawals made in an account during the occupation period. But section 8 has to be read in conjunction with the other provisions of the Ordinance and is complementary to those other provisions. The question to be decided is, in my opinion, determined by the manner in which the payment of \$700 on the 20th February 1942 should be treated. Under section 8 (a) this payment of \$700 is deemed to have been applied first to any debit balance, or, part thereof, which arose during the occupation period and was still outstanding against the Respondent in the account at the time when the payment was made. On the 20th February 1942 there was no debit balance which arose during the occupation period and was still outstanding. 10

Mr. Ramani's contention that the \$700 must await the debit balance of \$900 which arose on the 13th March appears to me to be in direct conflict with the express wording of the section. It seems clear to me that the effect of the payment of \$700 on the 20th February 1942 was to reduce the Respondent's debit balance in the account to \$49,200. The effect of the withdrawal of the \$900 was to increase the Respondent's debit balance to \$50,100 on the 13th March 1942 as there was no occupation period credit balance still outstanding at the time that the withdrawal of \$900 was made, the credit of \$700 having been already applied to the reduction of the balance of \$49,900. The proper application of the Ordinance to this account is that credits or debits are applied first to debit or credit occupation balances still outstanding at the date of payment or withdrawal and where there are none to the pre-occupation balance of the account. 20

"Applying this method to the account, there was on the 31st December 1942 when Malayan and occupation currency ceased to be at parity, a credit balance of \$1,650 in favour of the Appellants. After this date further transactions took place but, applying the provisions relating to revaluation, the Respondent's pre-occupation debt was completely liquidated. In my view nothing is owing by the Respondent to the Appellants, and I would dismiss this appeal with costs here and in the Court below." 30

p. 10.

9. Mr. Justice Pretheroe in his judgment said as follows :—

p. 11, l. 29—p. 12,
l. 17.

"In my view the latter part of Mr. Ramani's submission that occupation credits and debits must be set off against each other and can in no circumstances be used to reduce the pre-occupation credit balance cannot be sustained. The point arises in connection with the very first entry made in the accounts after the beginning of the occupation period for, on the 20th February 1942, the Respondent was credited with the sum of \$700. There was no occupation period debit balance to which it would be applied, so Mr. Ramani argued that the item must await the first entry of such debit balance; he was emphatic that it must not be set off against the pre-occupation balance. In my opinion this submission is based on a wrong construction of section 8 of the Ordinance. In the first place the intention of the Legislature must be considered. In the 40

absence of the section a legal presumption, which is conveniently known as the rule in *Clayton's* case, would have applied. By that rule, when a debtor, who owes more than one debt to the same creditor, makes a payment to that creditor and does not indicate to which debt it shall be applied, it shall be applied to the debt which was first incurred. This procedure would have been most inequitable in respect of the occupation period during which the value of the currency declined at an ever-increasing rate. So section 8 displaces that legal presumption and substitutes a statutory direction which reverses the order of application of payments. But it must be noted that the section applies exclusively to payments and withdrawals made during the occupation period. In other words the rule in *Clayton's* case was reversed by the section in respect of the occupation period only and the rule still remains valid in respect of payments and withdrawals made before and after that period. Section 4 of the Ordinance recognises, and regulates, the discharge of pre-occupation debts during the occupation period and there is no provision that section 8 provides any exception to the general procedure and Mr. Ramani's eloquence failed to persuade me that such an exception must necessarily be inferred. Again, the wording of the Ordinance is against Mr. Ramani. If his submission be correct then either section 4 would provide—

‘ Subject to the provisions of subsection (2) of this section and section 8 of this Ordinance . . . ’

or section 8 itself would read—

‘ For the purposes of this Ordinance, *anything contained in section 4 to the contrary notwithstanding—*’

But the words in italics do not appear and this oversight must not be attributed to the Legislature if any other reasonable interpretation is available.”

10. The Appellants on the 14th December 1953 obtained final leave to appeal to Her Majesty in her Privy Council from the judgment of the Court of Appeal dated the 16th August 1952. p. 17.

11. The Respondent humbly submits that the judgment of the Court of Appeal was right and should be confirmed and that the Appellants' appeal therefrom should be dismissed for the following (among other)

REASONS

(1) BECAUSE on the true construction of the said Ordinance the rule in *Clayton's* case remains applicable only so far as it is thereby expressly varied and where at any time during the occupation period there was no occupation debit balance against which any credit could be set off then such credit is under section 4 (1) of the said Ordinance and in accordance with the said rule to be applied in reduction of the debt outstanding at the commencement of the occupation period.

- (2) BECAUSE the words in section 8 of the said Ordinance “any payment” or “any withdrawal” should not be construed as meaning the sum of all payments and withdrawals but should bear their natural meaning of each payment or withdrawal as and when made.
- (3) BECAUSE the contentions of the Appellants upon the construction of section 8 of the said Ordinance involve the addition of words to reconcile the same with the provisions of section 4 (1) thereof and gives to the words of section 8 (A) an unnatural meaning in that “first” is construed as “exclusively.” 10
- (4) BECAUSE upon the true construction of section 8 (A) of the said Ordinance the words “still outstanding against such person in such account at the time when such payment was made” show that the section is to be applied as and when each payment is made and not after the occupation period to the sum of all payments made during that period.
- (5) BECAUSE the judgment of the Court of Appeal is right and should be affirmed. 20

MILNER HOLLAND.

T. A. C. BURGESS.

In the Privy Council.

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of Malaya.*

BETWEEN
THE FIRM OF A.M.K.M.K. *Appellants*
AND
M.R.M. PERIYANAN CHETTIAR
Respondent.

Case for the Respondent

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