

Judgment
27, 1957

G.M.A.N.G. 12.

No. 17 of 1956.

In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL OF THE SUPREME COURT OF
THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.*

BETWEEN

LIM SIEW NEO (Defendant) *Appellant*

AND

PANG KEAH SWEE (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

SPEECHLY, MUMFORD & CRAIG,
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Solicitors for the Appellant.

SYDNEY REDFERN & CO.,
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Gray's Inn,
London, W.C.1,
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In the Privy Council.**ON APPEAL**

*FROM THE COURT OF APPEAL OF THE SUPREME COURT OF THE
COLONY OF SINGAPORE, ISLAND OF SINGAPORE.*

BETWEEN

LIM SIEW NEO (Defendant)

Appellant

AND

PANG KEAH SWEE (Plaintiff)

*Respondent.***RECORD OF PROCEEDINGS****INDEX OF REFERENCE**

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In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL OF THE SUPREME COURT
OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.*

BETWEEN

LIM SIEW NEO (Defendant)

Appellant

AND

PANG KEAH SWEE (Plaintiff)

Respondent.

10 **RECORD OF PROCEEDINGS**

No. 1.

WRIT OF SUMMONS.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

and

(L.S.) 1. LIM SIEW NEO (f)

2. ANG HENG KIP (w)

20 3. LIM SIEW TECK

Defendants.

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

To (1) Lim Siew Neo of No. 18, Ardmore Park, Singapore, Spinster.

(2) Ang Heng Kip of No. 18, Ardmore Park, Singapore, Widow.

(3) Lim Siew Teck of No. 18, Ardmore Park, Singapore, Gentleman.

WE COMMAND YOU, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

*No. 1.
Writ of
Summons,
14th June
1952.*

*In the
Supreme
Court
of the
Colony of
Singapore.*

to be entered for you in a cause at the suit of Pang Keah Swee of No. 742, Mountbatten Road, Singapore, Chemist, and take notice, that in default of your so doing the Plaintiff may proceed therein to judgment and execution.

*In the
High Court.*

Witness THE HONOURABLE SIR CHARLES MURRAY MURRAY AYNLEY, Knight, Chief Justice, of the Colony of Singapore, the 14th day of June 1952.

No. 1.
Writ of
Summons,
14th June
1952,
continued.

(Sgd.) BRADDELL BROS.,

Solicitors for the Plaintiff.

N.B.—This writ is to be served within twelve months from the date 10 thereof, or, if renewed, within six months from the date of such renewal, including the day of such date, and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the Supreme Court at Singapore.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$2.50 with an addressed envelope to the Registrar of the Supreme Court at Singapore.

THE PLAINTIFF'S CLAIM is for—

20

(A) Damages for wrongfully entering upon the Plaintiff's property from time to time and for injury to his property by the Defendants or one or other of them.

(B) Damages for the 1st and 2nd Defendants or one or other of them wrongfully depositing water dirt and noxious liquids upon the Plaintiff's property and for injury to his property and goods thereby or alternatively damages for injury to the Plaintiff's property and goods by the escape of water dirt and noxious liquids from the 1st Defendant's premises.

(C) Damages for trespass and injury to the Plaintiff's goods. 30

(D) Damages for the 1st and 2nd Defendants or one or other of them wrongfully causing noxious vapours to enter the Plaintiff's premises or alternatively damages for injury to his property caused by noxious vapours from the 1st Defendant's property.

(E) Damages from nuisance by noise from the 1st Defendant's premises caused by the 1st and 2nd Defendants or one or other of them maliciously and with intent to annoy the Plaintiff and his licencees.

(F) An injunction to restrain the Defendants and each of them from wrongfully entering upon the Plaintiff's property and 40 from causing injury thereto and to his goods thereon and from

causing a nuisance noise to the Plaintiff and from depositing water dirt and noxious liquids on the Plaintiff's property or alternatively from permitting water dirt and noxious liquids to escape from the 1st Defendant's property on to the Plaintiff's property.

*In the
Supreme
Court
of the
Colony of
Singapore.*

This Writ was issued by Messrs. BRADDELL BROTHERS, Meyer Chambers, Raffles Place, Singapore, Solicitors to the said Plaintiff who resides at No. 742, Mountbatten Road, Singapore, and is a Chemist.

*In the
High Court.*

This Writ was served by

10 *on
or
the*

*the Defendant
day of*

19

Indorsed the

day of

19

(Signed)

(Address)

No. 1.
Writ of
Summons,
14th June
1952,
continued.

No. 2.

AFFIDAVIT of Chong Sian Guan.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

No. 2.
Affidavit
of Chong
Sian Guan,
16th June
1952.

20 Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

and

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants.

I, CHONG SIAN GUAN of No. 431-D Tampenis Road, Singapore, Shop Assistant, make oath and say as follows :—

30 1. I have been employed as a shop assistant by the above-named Plaintiff Pang Keah Swee at the premises of The Singapore Dispensary at No. 265 Orchard Road, Singapore, for the past six months. I am 20 years of age.

2. Six days out of seven I sleep on the shop premises to act as a watchman and to open the front door when it was locked from the inside to people desiring entry. My bed is placed in the front part of the shop premises. There is usually one other employee sleeping on the premises with me who also sleeps there six days out of seven.

3. I have read through the affidavit of the above-named Plaintiff and am able to speak of my own personal knowledge of nearly all the incidents referred to therein.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 2.
Affidavit
of Chong
Sian Guan,
16th June
1952,
continued.

4. I was present on the occasion of—

(A) the heavy knocking on the door in the early morning when the 1st Defendant brought a policeman to the premises ;

(B) the 1st Defendant opening the main door of the premises at 5.05 a.m. in the morning of the 26th day of March 1952. I saw her close the door and through the window saw her hurrying away. She came back at 7.00 a.m. ;

(C) the 1st Defendant's leaving the said premises on the 28th day of March 1952 at 6.00 a.m. when she left the door open. I closed the door behind her ;

(D) the 1st Defendant's repeating this on the 20th day of April 1952 at 5.30 a.m. I had to get up and close the door ;

(E) the 1st Defendant's visit to the premises on the 12th day of May 1952 at 8.00 p.m. She was alone and went upstairs and threw some liquid down on to the low zinc roofing in the backyard of the ground floor under which my employer stores goods. The window behind my employer's desk at the rear of the ground floor was open and the liquid splashed the curtains which are still discoloured. The discolouration has been shown by my employer to his Solicitor in my presence. The liquid smelt of stale urine mixed with slops and dirty water ;

(F) the 1st Defendant's dragging furniture about on the first floor of the premises at 4.30 a.m. on the 25th day of May 1952 and when she left the premises at 5.30 a.m. leaving the street door open ;

(G) the 1st Defendant's throwing urine down into the back yard from the first floor on the 29th, 30th and 31st days of May 1952 at 7.00 a.m., 6.30 a.m. and 6.45 a.m. respectively. She was the only person upstairs on those occasions. I also heard the 1st or the 2nd Defendant banging on an empty tin at 4.35 a.m. in the early morning of the 30th day of May 1952 ;

(H) the banging and the shifting of furniture at 5.00 a.m. on the 4th day of June 1952. This lasted for half an hour.

5. I have been present on the premises on most of the occasions of the other nuisances deposed to by my employer which began to be serious at the end of the month of March 1952. I only have one day a week away from the shop.

6. On the morning of the 3rd day of June 1952 I was on the premises with another employee named Tan Ser Lin. We had risen and washed and dressed and had got the shop ready for business. The window shutters were down but the street doors were closed and locked with a yale type lock. One of these doors which is a double door was bolted at the top and bottom. At 8.00 a.m. the 1st and 3rd Defendants came to the premises. Only the 2nd Defendant had slept on the premises that night. The 1st and 3rd Defendants let themselves in with a key opening one of the double doors. The 3rd Defendant wore dark glasses. Then the 1st Defendant went up to the first floor. The 3rd Defendant who was then in the shop began to unbolt the other door. I objected and stood against the bolted door because the shop was not open for business. The 3rd Defendant

who is a big robust man took my arm and dragged me aside, unbolted the door and flung it open breaking the glass panel at the rear of one of the show windows by the street door.

7. I went to the telephone to ring my employer's brother Fong (or Pang) Chee Yee and spoke to him and asked him to come over right away.

8. During this time the said Tan Ser Lin stood near the showcase. A European whom I have known a long time as a regular customer and whose name is Mr. Fuller was also in the shop standing by the counter
10 waiting to be served with an inhaler for which he comes every morning.

9. After using the telephone I asked the 3rd Defendant why he had broken the showcase panel. He was then standing near the street door. The 1st Defendant then came downstairs and scolded me and then slapped my face. She then took a carton of "Vim" a pile of which was stacked by a counter near the street door and struck my arms with it many times. I warded off the blows with my arms. In the struggle the 1st Defendant's glasses were knocked off. Many articles of stock were kicked all over the floor of the shop by the 1st Defendant.

10. Meanwhile the 2nd Defendant had appeared on the scene blowing
20 a police whistle and shouting for the police. She went out on to the five foot way blowing her whistle.

11. After the 1st Defendant's glasses were knocked off the 3rd Defendant joined in the struggle and kicked me out on to the five foot way. I was saved from any further harm by the employees of Messrs. Teck Joo & Co. Ltd. next door who had been watching and had seen me kicked out on to the street. The 1st and 3rd Defendants attempted to continue to assault me when I had got to my feet but the spectators held off my assailants.

12. A policeman had earlier come to the premises and warned the
30 1st and 3rd Defendants and myself not to quarrel. He had then gone away. He now came back and arrested all three of us and took us to Orchard Road Police Station where we, the 1st and 3rd Defendants and myself, were charged with disorderly behaviour. We were released on signing a bail bond.

13. The hearing of the charge is fixed for the 18th day of June 1952 in the 2nd Police Court.

14. The 1st Defendant is taller and bigger and altogether stronger than I am. The 3rd Defendant is a strong robust man.

40 Sworn at Singapore this 16th day of } (Sgd.) C. SIAN GUAN.
June 1952.

Before me,

(Sgd.) YAHYA A. RAHMAN,
A Commissioner for oaths.

Filed the 16th day of June 1952.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 2.
Affidavit
of Chong
Sian Guan,
16th June
1952,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

No. 3.

AFFIDAVIT of Pang Keah Swee.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

*In the
High Court.*

Suit No. 596 of 1952.

No. 3.

Affidavit of
Pang Keah
Swee,
16th June
1952.

Between PANG KEAH SWEE

Plaintiff

and

1. LIM SIEW NEO (f.)

2. ANG HENG KIP (w.)

3. LIM SIEW TECK

Defendants. 10

I, PANG KEAH SWEE of No. 742, Mountbatten Road, Singapore,
Chemist, make oath and say as follows :—

1. I am the above-named Plaintiff. I am the sole proprietor of the business of a dispensary carried on on the ground floor of the premises No. 265, Orchard Road, Singapore (hereinafter called "the said premises") under the name or style of The Singapore Dispensary. The said premises are hard by the Pavilion Cinema and almost opposite the Orchard Road premises of the Singapore Cold Storage Company Limited. I have a large custom among the better class residents of the City of Singapore.

2. The said premises consist of a ground floor, first floor and a second floor. The first floor is reached by means of a flight of stairs which rises from the back of the ground floor. There is only one entrance to the said premises and that through the double doors in the centre of the ground floor front on either side of which is a display window in which I exhibit fancy goods toys and proprietary brands of medical and other goods and toilet preparations. There are sliding panels of glass at the rear of each of these display windows. To reach the first and second floors of the said premises, therefore, it is necessary to enter the premises through these said double doors and to pass right through my shop to the back portion thereof to the flight of stairs. 30

3. The ground floor of the premises consists of one large space with a window at the back by which is a door leading into a small scullery. From the scullery a door leads out to a backyard of which I have the exclusive use. The usual offices are reached from the backyard. I use this backyard for storage purposes. This yard is overlooked by the rear windows of the ground and first and second floors which are one above the other. The yard is also overlooked by the rear portion of the first and second floors where lie the kitchen and usual offices of those floors. These rear portions consist of a passageway off which the usual offices open on the one side whilst on the other side the wall is only breast high. 40

4. The double doors at the front of the said premises are locked as to the one door by bolts at the top and bottom and as to the other door with a yale type lock the retainer for the latch of which is affixed to the other bolting door. In addition, there is a staple and hasp type fastening attachment for additional security with the staple on the one door and the hasp on the other. The hasp having been fitted over the staple, an iron retaining pin is dropped through the staple. When this is done, the doors cannot of course be opened from the outside. This method of fastening was used from the time I first occupied the ground floor of the said premises
 10 until the month of March 1952.

5. I do not sleep on the said premises but one and sometimes two of my younger employees do so to act as watchmen and to open the door to the occupiers of the upper floors if necessary. The shop is opened for business at 8.30 a.m. in the morning and is closed at 6.00 p.m. in the evening.

6. The said premises belong to the 1st Defendant to whom they were conveyed by her mother the 2nd Defendant on the 18th day of April 1951.

7. Until the 31st day of March 1951 I was a sub-tenant of the ground floor of the premises of one Tay Wah Eng who was the tenant of
 20 the whole of the said premises of the 2nd Defendant and who lived on the second floor thereof. At that time the first floor was occupied by one Teo Sin Han, another sub-tenant of the said Tay Wah Eng. Both Tay Wah Eng and Teo Sin Han resided on the said premises with their relatives.

8. I had been a sub-tenant of the said Tay Wah Eng since the month of May 1947 and have carried on my business on the said premises since that date under the said name or style of The Singapore Dispensary.

9. The said Tay Wah Eng gave up her tenancy of the said premises by giving to the 2nd Defendant a month's notice to quit the said premises
 30 which expired on the 31st day of March 1951. At the same time the said Tay Wah Eng also gave me a notice to quit the ground floor of the said premises which expired on the said 31st day of March 1951.

10. Tay Wah Eng left the said premises on or about the 31st day of March 1951 leaving empty the top floor thereof. The 1st Defendant thereafter redecorated this floor and occasionally spent the night on the said premises usually alone.

11. On the 31st day of March 1951 Messrs. R. C. H. Lim & Co. as Solicitors for the 2nd Defendant wrote me a letter giving me notice to quit the said premises on the 30th day of April 1951 which letter I received
 40 on the 2nd day of April 1951. The said letter of the 31st day of March 1951 is now produced and shown to me and marked "P.K.S.1."

12. Subsequently and through my solicitors Messrs. Braddell Brothers I carried on negotiations through their solicitors Messrs. R. C. H. Lim & Co. with the 2nd Defendant and later the 1st Defendant for the

*In the
 Supreme
 Court
 of the
 Colony of
 Singapore.*

*In the
 High Court.*

No. 3.
 Affidavit of
 Pang Keah
 Swee,
 16th June
 1952,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

grant to me of a lease of the ground floor of the said premises for three years. The negotiations broke down as a result of the insistence of the 1st Defendant that as a condition of my being granted a lease of the ground floor of the said premises I should sign a notice to quit the same to expire on the date of the expiration of the proposed lease. On the advice of my Solicitors I refused to do this. The negotiations for a lease broke down on or about the 16th day of October 1951.

13. Since the 31st day of March 1951 I have from time to time tendered to the 2nd and later to the 1st Defendant through their solicitors and in cash the amount of the rent I previously paid to Tay Wah Eng. 10
Such rent has always been refused.

14. In November 1951 as a result of the conduct of the 1st Defendant in causing noise and disturbance on the top floor of the said premises both during the day and at night over a period of two or three months the said Teo Sin Han and I made a complaint to the City Police Court Magistrate concerning the 1st Defendant and on the 13th day of November 1951 the three of us appeared before the said Magistrate in Chambers when the 1st Defendant was warned by him. The actual incident which compelled me to make a complaint was the pouring of dirty water on to the top floor which came right through on to my desk. For a time after this there 20
were no further causes for complaint.

15. Teo Sin Han voluntarily quitted the first floor of the said premises at the end of December 1951. Some time after this the 1st Defendant had the first floor repaired and redecorated.

16. Some time in March 1952 the 1st and 2nd Defendants moved into the first floor for residential purposes since when they have been living on the said premises, though from time to time they spent a night or two away therefrom. These Defendants have their permanent residence at No. 1B, Ardmore Park, Singapore, which is the family house where the 3rd Defendant, the son of the 2nd Defendant, also lives. I have 30
been to No. 1B, Ardmore Park on many occasions to negotiate with the 1st Defendant for the grant of a lease of the ground floor of the said premises.

17. Some time during the month of March 1952 at or about 6.00 a.m. in the morning the 1st Defendant came to the said premises and found she could not enter owing to the main doors having been locked on the inside. She struck the doors many times with a heavy instrument to awaken my employees. When they opened the doors the 1st Defendant had disappeared but shortly returned with a policeman. The next day, the 1st Defendant affixed a heavy padlock to the staple and retained the 40
keys thereof so that the hasp and staple attachment can no longer be used at all. These incidents were all seen and heard and reported to me by my employee Chong Sian Guan one of whose duties is to sleep on the ground floor of the said premises.

18. On the 25th day of March 1952 between the hours of 5.30 to 5.50 p.m. in the evening I heard the 1st and the 2nd Defendants or one

or other of them banging furniture and pieces of wood on the first floor. The noise made was excessive and caused a nuisance to me and my staff working in my shop down below and to my customers. I verily believe that the nuisance was deliberate and was caused with malicious intent.

*In the
Supreme
Court
of the
Colony of
Singapore.*

19. The next morning on the 26th day of March 1952 so I am informed by my employee the said Chong Sian Guan who was sleeping on the said premises the 1st Defendant came to the said premises at 5.05 a.m. and opened the main door. Seeing that another employee who was also sleeping on the said premises was sitting on his bed awake the 1st Defendant closed the door and went away again. She returned at about 7.00 a.m.

*In the
High Court.*

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

20. At 5.30 p.m. on the 26th day of March 1952 the 1st Defendant passed through the shop twice carrying a number of empty tins and took them up to the first floor. She was wearing wooden clogs and made an unnecessary and deliberate noise on the wooden staircase. When the 1st Defendant was mounting the staircase for the second time I remonstrated with her and she threw an empty kerosene tin and an empty paint tin down the stairs at me. I took them away.

21. On the 27th day of March 1952 my Solicitors Messrs. Braddell Brothers wrote to the 1st Defendant's Solicitors Messrs. R. C. H. Lim & Co. complaining of these incidents to which letter Messrs. R. C. H. Lim & Co replied on the 3rd day of April 1952. A true copy of my solicitors' letter of the 27th day of March 1952 and Messrs. R. C. H. Lim & Co.'s letter of the 3rd day of April 1952 are now produced and shown to me and marked "P.K.S.2."

22. Since the 26th day of March 1952 I have kept in my diary a day-to-day account of the various incidents which have taken place on the said premises. Of some of these incidents I am unable to speak on my own personal knowledge, to others I depose on information given to me by one or other of my employees sleeping on the said premises. I have refreshed my memory by reference to this diary and set out the various incidents seriatim some at length and some shortly.

23. On the 28th day of March 1952 at 6.00 a.m. so I am informed by the said Chong Sian Guan and verily believe the 1st Defendant left the said premises leaving the front door open and thus exposing my goods to theft. Between 4.00 and 4.15 p.m. on that day furniture was dragged about on the first floor by one or other of the 1st and the 2nd Defendants.

24. On the morning of the 31st day of March 1952 I found water and dust on my desk at the back of the shop. I looked up and saw that a small pencil sized hole had been made in the wooden floor above which had not been there before. That day I had the hole plugged with a cork. On the following morning that is on the 1st day of April 1952 I found the cork had been pushed out and was lying on my desk. I then had the cork put back and retained in place by a piece of tin screwed into the flooring. The next day, that is to say, the 2nd day of April 1952, the cork and the retaining tin had been pushed down. I then had a narrow

*In the
Supreme
Court
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Colony of
Singapore.*

*In the
High Court.*

No. 3.
Affidavit of
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continued.

piece of planking nailed over the hole in the floor strengthened by two vertical pieces of wood attached at each end to the floor joists. The reaction to this was that a hole was driven through the piece of planking which caused it to split. Since then more water and dust has been swept through the hole on to my desk. I have shown the hole and the split plank to my Solicitor. These acts could only have been done by the 1st or the 2nd Defendant since they have been the only persons residing on the said premises at the material times. The making of the holes and the pushing out of the cork has taken place during the night so I am informed by my employee the said Chong Sian Guan and verily believe. 10
On the 25th day of April 1952 after a shower of water and dust had come through on to my desk during the previous night I went to Orchard Road Police Station to see an Inspector there to complain of the conduct of the 1st and 2nd Defendants. He informed me he could do nothing.

25. On the 2nd day of April 1952 between 2.30 p.m. and 2.50 p.m. the 1st and the 2nd Defendant or one or other of them was making a noise on the first floor by banging heavy objects on the wooden floor and moving furniture about.

26. On the 4th day of April 1952 at 11.15 a.m. the 2nd Defendant threw water down from the rear part of the first floor into the back yard 20 behind my shop. Between the hours of 3.30 p.m. and 3.45 p.m. on that day the 1st Defendant was jumping about on the first floor whilst wearing wooden clogs. To the best of my belief the 2nd Defendant does not wear wooden clogs even on the premises whereas the 1st Defendant nearly always does but puts on shoes to go out.

27. On the 8th day of April 1952 between 9.30 a.m. and 10.00 a.m. the 1st or the 2nd Defendant or both of them dragged furniture about on the first floor.

28. On the 9th day of April 1952 the 2nd Defendant again threw water down into the said back yard. She then soaked a dirty broom in 30 water and left it with the head hanging out over the back yard so that the dirty water dripped into the yard over the door leading out of the scullery at the rear of my shop. She recharged the broom with water on several occasions. On other occasions the 2nd Defendant has done the same thing with a sarong hung from a bamboo pole. When it dried she would throw water on to it from a tin so that it dripped continuously.

29. Throughout the afternoon of the 11th day of April 1952 the 2nd Defendant intermittently and with short intervals knocked on the floor over the desk at the back of my shop where I was sitting. The knocking was done with a hammer. She was alone upstairs at the time to 40 my own knowledge the 1st Defendant having gone out and locked the 2nd Defendant in.

30. On the 16th day of April 1952 at intervals during the afternoon the 1st Defendant caused a great deal of noise by jumping on the wooden floor over my shop whilst wearing wooden clogs.

31. On the 17th day of April 1952 at about 4.30 p.m. the 1st or the 2nd Defendant dragged furniture about on the first floor for about ten minutes.

*In the
Supreme
Court
of the
Colony of
Singapore.*

32. On the 18th day of April 1952 from 11.30 a.m. to 11.50 a.m. the 1st Defendant or the 2nd Defendant was banging on the wooden floor over my shop with a hammer for no apparent reason.

*In the
High Court.*

33. At 5.30 a.m. on the 20th day of April 1952 so I am informed by the said Chong Sian Guan and verily believe the 1st Defendant again left the said premises leaving the front door wide open.

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952.
continued.

10 34. On the 22nd day of April 1952 the 2nd Defendant being shut up alone on the first floor intermittently banged on the floor with a hammer throughout the day.

35. On the 25th day of April 1952 as mentioned in paragraph 24 hereof I found that water and dust had poured through the hole over my desk during the previous night.

36. On the 26th day of April 1952 at 11.00 a.m. both the 1st and 2nd Defendants stamped on the first floor for about 15 minutes.

20 37. At about 11.00 a.m. on the 28th day of April 1952 there was placed on the ground floor at the foot of the stairs leading to the first floor by the 1st Defendant (whom I saw) a container of burning gum benzoin which emitted clouds of smoke. This smoke filled my shop and caused my customers to cough and choke. One of my customers, a Mr. Fuller, was a witness of this incident and he spoke to me about it and asked me what was happening. I showed the said Mr. Fuller the source of the smoke which was inaccessible to me as the 1st Defendant has had a door put at the foot of the stairs which she keeps locked. The said Mr. Fuller will depose to this incident in an affidavit to be filed in these proceedings. Another customer one Mrs. Tay Meng Hock also witnessed this incident.

30 38. At 11.30 a.m. the same morning the 1st Defendant who was wearing wooden clogs was playing with a tennis ball and jumping about on the first floor. One of my customers, a Mrs. Tabor, heard the noise and at my request noted the date and time. She will depose to this incident in an affidavit to be filed in these proceedings.

39. At 12.00 midday on the 29th day of April 1952 the 1st Defendant who was wearing wooden clogs was running about on the first floor for about 10 minutes playing with a tennis ball.

40 40. This playing with a ball was repeated on the 30th day of April 1952 between 4.30 p.m. and 4.45 p.m. In addition the 1st Defendant was jumping about on the first floor. Wooden clogs were worn by the 1st Defendant on each occasion.

*In the
Supreme
Court
of the
Colony of
Singapore.*

41. The playing with a ball and jumping was repeated on the 1st day of May 1952 from 3.20 p.m. to 3.40 p.m. and on the 2nd day of May 1952 between 4.00 p.m. and 4.10 p.m. the 1st Defendant was running about on the first floor. She wore wooden clogs on each occasion.

*In the
High Court.*

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

42. The persons who were causing the mischief on the first floor could only have been the 1st or the 2nd Defendant as they were the only people upstairs. Moreover, the 2nd Defendant is an old lady of between 65 and 70 years of age and has a limp and I verily believe that it was the 1st Defendant who was running about and playing with a ball on each occasion. The 2nd Defendant owing to her limp and her age is not sufficiently agile to run about and neither does she wear wooden clogs to the best of my knowledge. To my own knowledge there is no carpet on the first floor and neither is there anything on the first floor which required to be hammered. The space is open except for a few articles of furniture. 10

43. On the 3rd day of May 1952 I went to see Father Becheras of the Church of Saints Peter and Paul in Queen Street, Singapore, where the 1st and 2nd Defendants attend for divine worship and entreated him to speak to the 1st and 2nd Defendants and to ask them not to continue to act in such a manner. Father Becheras was sympathetic to me and promised to do something. Thereafter, the 1st and 2nd Defendants left the said premises for a few days and I suffered no further annoyance from either of them until the 12th day of May 1952. 20

44. On the 12th day of May 1952 at about 8.00 p.m. in the evening so I am informed by my employee the said Chong Sian Guan and verily believe the 1st Defendant visited the said premises alone and threw down a quantity of liquid from the first floor to the back yard. The liquid had a strong sickening smell of stale urine which I personally smelt the next morning, that is to say, on the 13th day of May 1952. I received a headache as a result.

45. On the 15th day of May 1952 at 3.30 p.m. the 1st Defendant banged an empty tin with a hammer on the first floor for about three minutes. At 5.30 p.m. that day the same Defendant was jumping about on the first floor and playing with a ball for some fifteen minutes. She wore wooden clogs. 30

46. On the 16th day of May 1952 the 1st Defendant again played with a ball on the first floor from 12 o'clock midday until 12.10 p.m. The ball which was a tennis ball fell down the stairs and was fetched by the 1st Defendant. I remonstrated with her but she ignored me. She wore wooden clogs all the time.

47. This annoyance was repeated by the 1st Defendant on the 17th day of May 1952 from 12.30 p.m. to 12.45 p.m. accompanied by a banging on the floor. 40

48. On the 22nd day of May 1952 at 10.30 a.m. the 1st Defendant again began to play with a tennis ball and to stamp on the floor with wooden clogs.. After this had continued for some fifteen minutes I could

stand the noise no longer and went upstairs to the first floor (the door having been left open) and asked the 1st Defendant to stop. The 2nd Defendant was there also. Both Defendants abused me, spat at me and chased me downstairs with a broom. The 1st Defendant shouted at me "This is my house. I can do what I like, mind your own business."

*In the
Supreme
Court
of the
Colony of
Singapore.*

49. At 11.00 a.m. on the same morning furniture was deliberately dragged over the floor by the 1st and 2nd Defendants or one or other of them accompanied by a great deal of stamping on the floor with wooden clogs.

*In the
High Court.*

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

10 50. Between 11.20 a.m. and 12.55 p.m. on the same day the 1st Defendant was intermittently skipping on the wooden floor with wooden clogs all over the place.

51. At 2.25 p.m. on that day the 1st Defendant began to play with a tennis ball on the first floor and to jump about wearing wooden clogs.

52. On the 23rd day of May 1952 at 11.20 a.m. the playing with a tennis ball was resumed and continued until 11.35 a.m. At 11.50 a.m. skipping and stamping on the wooden floor started and continued until 12.05 p.m. Wooden clogs were worn all the time.

20 53. At 4.30 a.m. in the early morning of the 25th day of May 1952 so I am informed by the said Chong Sian Guan and verily believe the 1st Defendant began to drag furniture about and to jump on the first floor wearing wooden clogs and at 5.30 a.m. she left the premises leaving the door of the shop wide open.

54. From 1.10 p.m. to 1.25 p.m. on the 28th day of May 1952 the 1st Defendant skipped from one end of the first floor to the other and back again wearing wooden clogs.

30 55. On the 29th, 30th and 31st days of May 1952 so I am informed by my employee the said Chong Sian Guan at 7.00 a.m. 6.30 a.m. and 6.45 a.m. respectively in the morning, the 1st Defendant who was then alone on the first floor of the said premises again threw urine down into the backyard. I smelt it on the three occasions on arriving at my shop.

56. At 4.35 a.m. on the morning of the 30th day of May 1952 so I am informed by the said Chong Sian Guan there was banging on an empty kerosene tin for no apparent reason. At 10.30 a.m. on that morning furniture was dragged from one end of the first floor to the other and back again by the 1st and the 2nd Defendant or one or other of them.

40 57. Between the hours of 4.30 p.m. and 5.15 p.m. on the same day so I am informed by my employee the said Chong Sian Guan and my other employees and verily believe the 2nd Defendant came down into the shop carrying a broom and walked up and down between the counters annoying my customers (who, it being a Saturday afternoon were crowded in the shop) and frightening my employees. She rated and scolded my shop assistants and said in Malay and Teochew "You dogs, I give you one month's time to clear off these premises or you will all get this broom." The 2nd Defendant also warned my customers not to patronise the shop.

*In the
Supreme
Court
of the
Colony of
Singapore.*

One of my assistants Lim Choon San, rang up Orchard Road Police Station but was told, so he told me afterwards and I verily believe, that the Police could do nothing. Another assistant, Fong Chee Yee went to the Central Police Station, so he informed me and I verily believe, but with the same result.

*In the
High Court.*

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

58. On the 1st day of June 1952, at about 10.00 a.m. through an inspection hole in the boards of the first floor over the five foot way outside the ground floor of the said premises, the 2nd Defendant who was alone on the said premises poured water down on to the five foot way outside my shop. She repeated this three times. It being a Sunday morning the shop was open until 1.00 p.m. and there were customers inside at the material time. Two of my customers were nearly wetted. I shouted up to the 2nd Defendant from the backyard and asked her to stop. The 2nd Defendant who was in a fury threw several tins of water at me and abused me. For the rest of the morning the 2nd Defendant dragged furniture backwards and forwards on the first floor of the said premises and persistently knocked on the floor boards with a hammer. This knocking lasted throughout the morning and was done all over the floor. 10

59. At 11.50 a.m. on the same morning the 2nd Defendant poured water through the hole made in the floor boards at the back of the first floor on to my desk. This was after the 2nd Defendant had thrown water at me as related in paragraph 58 hereof. 20

60. At 12.15 p.m. on the same morning seeing that water was dripping on to the five foot way outside the open doors of my shop I went to inspect and saw that a tin with a small hole in it had been placed over the said hole at the front of the first floor and that water was dripping through the hole. A customer Dr. Mallal son of Mr. B. A. Mallal was a witness of the incidents mentioned in this and the preceding paragraphs.

61. At 9.00 p.m. on the said 1st day of June 1952 so I am informed by my employee the said Chong Sian Guan and verily believe, the 1st and 2nd Defendants who were both upstairs persistently banged the whole area of the first floor with a hammer and dragged furniture all over the place. The 1st Defendant then came downstairs and switched off the lights on the ground floor. My employee the said Chong Sian Guan protested to the 1st Defendant but was ignored. She went upstairs and poured water on the floor which came through on to the ground floor and damaged my goods. I saw the damage next morning. Chong Sian Guan telephoned Orchard Road Police Station and a police officer arrived and saw the water dripping through and heard the noise upstairs. The said Chong Sian Guan made a report and signed it. The police officer then called down the 1st Defendant and questioned her. She denied that the water pouring was deliberate. 30 40

62. From about 8.00 a.m. on the 3rd day of June 1952 incidents took place on the premises some of which my customer the said Mr. Fuller was a witness. He has made a statement to my Solicitors in their office and his affidavit will be filed in these proceedings. As to the remainder of the incidents the person concerned namely my employee the said Chong Sian Guan will make an affidavit.

63. I estimate the cost of the damage done to my property and stock on that occasion at between \$50/- to \$100/-.

*In the
Supreme
Court
of the
Colony of
Singapore.*

64. As a result of the incidents my said employee Chong Sian Guan and the 1st and 3rd Defendants are charged with disorderly behaviour in a public place. The charge is to be heard in the 2nd Police Court on the 18th day of June 1952.

*In the
High Court.*

65. The 3rd Defendant is a big robust man and his sister the 1st Defendant though middle aged apparently has the strength of an ox. My employee is a small nervous boy of some 20 years who can only have
10 been trying to do his duty on the morning of the 3rd day of June 1952 and was safeguarding my interests to the best of his ability. The said Chong Sian Guan will be legally defended at my expense and I verily believe he was assaulted by the 1st and 3rd Defendants.

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

66. At 5.00 a.m. on the morning of the 4th day of June 1952 so I am informed by the said Chong Sian Guan and verily believe there was more banging and shifting of furniture on the first floor which lasted for 30 minutes. The 1st and 2nd Defendants were as usual alone up there. At 8.00 a.m. on that morning so I am informed by the said Chong Sian Guan and verily believe the 3rd Defendant again came to the said premises
20 let himself in and again opened the second and bolted door.

67. On the afternoon of the 6th day of June 1952 I handed to my Solicitors a manuscript note of the above incidents as taken from my diary. This was the first time I had consulted my Solicitors on the matter of the behaviour of the Defendants since I instructed them to write their letter of the 27th day of March 1952. Since the 6th day of June 1952 my Solicitors have been engaged in drafting fair copying and going through with me the draft of this my affidavit and also taking statements off my witnesses. They have also inspected the ground floor premises. Since the
30 4th day of June 1952 the last date in the note I handed to my Solicitors other incidents have taken place.

68. On the 9th day of June 1952 at 11.45 a.m. the 1st Defendant wearing clogs was playing with a ball on the first floor for about 10 minutes.

69. This was repeated on the 12th day of June 1952 from 9.30 a.m. to 10.30 a.m. accompanied by jumping about on the floor with wooden clogs.

70. I fully appreciate that the 1st Defendant and her licencees have the right to pass through my shop to reach the staircase to the first floor but I do not believe that any of the user of this right of way by the 1st or 3rd Defendants of which I have given instances in this my affidavit
40 is a genuine and proper user. I do not recall any instances of trouble whilst I was a tenant of the said Tay Wah Eng although at that time many people lived on the first and second floors and I had the main door locked on the inside every night. There is always one and often there are two of my employees sleeping in the front part of the shop to open the doors to any one desiring entry after the locking of the doors from the inside.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

71. The leaving open of the front door in the early hours of the morning by the 1st Defendant was I verily believe a deliberate act which at best is a cause of annoyance and inconvenience to my employees sleeping on the premises and at worst exposes my stock to the risk of theft. I say nothing as to the hours at which the 1st Defendant has on these occasions left the said premises though I believe that that conduct is calculated by her to annoy and to be of malicious intent.

No. 3.
Affidavit of
Pang Keah
Swee,
16th June
1952,
continued.

72. The reason for my objection to the 3rd Defendant's action in coming to the premises before the hours of business and throwing open both doors (quite apart from the deliberate breaking of the glass panel of the showcase adjoining the bolted door) is that people seeing these doors open think that the Dispensary is open for business. On coming inside and finding that this is not the case they tend to be annoyed and to grumble as I verily believe any shopkeeper will confirm. This is bad for business. I do not recall that there was any trouble in this respect before the 1st and 2nd Defendants recovered possession of the upper floors of the said premises. The opening of one of the double doors is more than sufficient to permit entry on to the premises and is all that ever took place before. By insisting on the opening of both doors I verily believe the 1st Defendant through her licencee the 3rd Defendant is committing a wrongful user of the right of way enjoyed by the occupants of the upper floors of the said premises. 10

73. The noise caused by the 1st and 2nd Defendants on the first floor has upset me and all my staff as it can only have been calculated to do. At the time the first floor was occupied by the said Teo Sin Han and his relatives no nuisance from noise at all was caused by their normal enjoyment and user of the first floor premises. The actions of the 1st and 2nd Defendants in causing the noise were at all times deliberately done, with the malicious intent as I verily believe of driving me out of the ground floor of the said premises. 30

74. I do not bring this action with any feeling of rancour and neither do I ask for heavy damages for I do not think that either the 1st or 2nd Defendant is wholly responsible for her action. I am advised, however, by my Solicitors that I am protected by the Control of Rent Ordinance 1947 in my occupation of the said premises and I cannot afford to give them up. For these reasons I pray that this Honourable Court will grant an injunction to restrain the Defendants from continuing their acts of trespass on and nuisance to my premises.

Sworn at Singapore this 16th day of } (Sgd.) P. KEAH SWEE.
June 1952

40

Before me,

(Sgd.) YAHYA A. RAHMAN,
A Commissioner for oaths.

Filed the 16th day of June 1952.

No. 4.

NOTICE OF MOTION.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

*In the
Supreme
Court
of the
Colony of
Singapore.*

Suit No. 596 of 1952.

*In the
High Court.*

Between PANG KEAH SWEE

Plaintiff

and

No. 4.
Notice of
Motion,
16th June
1952.

1. LIM SIEW NEO (f)

2. ANG HENG KIP (w)

10 3. LIM SIEW TECK

Defendants.

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court will be moved on Friday the 20th day of June 1952 at the hour of 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. J. L. P. Harris on behalf of the above-named Plaintiff for an injunction to restrain the Defendants and each of them from wrongfully entering upon the premises of the Plaintiff consisting of the ground floor of the premises No. 265 Orchard Road, Singapore and from causing injury thereto and to the Plaintiff's goods
20 thereon and to restrain the 1st and 2nd Defendants and each of them from causing a nuisance by noise to the Plaintiff and from depositing water dirt and noxious liquids on the Plaintiff's said premises or alternatively from permitting water dirt and noxious liquids to escape from the 1st Defendant's premises on to the Plaintiff's property and for an order that the costs of this application be taxed and paid by the Defendants to the Plaintiff.

Dated this 16th day of June 1952.

(Sgd.) BRADDELL BROS.,

Solicitors for the above-named
Plaintiff.

30

To :

The above-named Defendants.

AFFIDAVIT of Walter Henry Claude Fuller.

*In the
Supreme
Court
of the
Colony of
Singapore.*

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

*In the
High Court.*

Suit No. 596 of 1952.

No. 5.
Affidavit
of Walter
Henry
Claude
Fuller,
19th June
1952.

Between PANG KEAH SWEE

Plaintiff

and

1. LIM SIEW NEO (f)

2. ANG HENG KIP (w)

3. LIM SIEW TECK

Defendants. 10

I, WALTER HENRY CLAUDE FULLER of No. 78 Lorong K, Telok Kurau Road, Singapore, Marine Surveyor, make oath and say :—

1. I am a regular customer of The Singapore Dispensary at No. 265 Orchard Road, Singapore, and have been so for the past two years. I have an account there. I know the above-named Plaintiff as the proprietor of the business.

2. I suffer from sinus trouble and I visit the Dispensary between 7.30 and 8.00 a.m. every morning on my way to the office to buy an inhaler. Also my wife's grocers Messrs. Teck Joo & Co. Ltd. have their premises next door to the Dispensary and I call at the grocers every third day to buy groceries for my wife. On these occasions also I sometimes go into the Dispensary. 20

3. When I go to the Dispensary in the early morning it is closed to customers and it is my custom to knock at the double doors at the front one of which is opened to me by one of the younger members of the staff who appears to sleep on the premises. I now recognise one of these lads who I am told by the above-named Plaintiff is named Chong Sian Guan. The opening of one of the double doors is quite sufficient to permit of easy entry.

4. About 10 days or so ago, when I arrived at the Dispensary at about 7.45 a.m. in my car I saw to my surprise that both the doors of the premises were open and the window shutters on one side of the premises had been taken down. 30

5. I parked my car almost in front of the premises of the Dispensary ; got out and was walking to the door when I heard a crash and the sound of glass splintering. I went inside and saw a tall and robust Chinese man who was wearing dark glasses who is unknown to me. I am now informed by the Plaintiff that this man was Lim Siew Teck the above-named 3rd

Defendant, a brother of the 1st Defendant and son of the 2nd Defendant. Then I noticed the glass screen at the back of one of the display windows in the front of the shop was broken. This display window is on the side of the shop on which the door is not opened to me in the mornings in the ordinary way. It is a door carrying upper and lower sliding bolts of the normal kind used on one of two double doors. The door as I have said was at this time open and touching the glass panel at the back of the display window. I also saw a young employee of the Dispensary who is known to me by sight. He was standing near the entrance to the

10 Dispensary in a terror stricken state, trembling with fear. The tall Chinese was shouting at him in Chinese and waving his fists at him in a threatening manner. At this time I did not know what had broken the glass panel or what the trouble was.

6. The tall Chinese then pushed the young employee and shouted at him again. The tall Chinese then seized the door carrying the bolts, pulled it partially towards its closed position and then violently swung it open when it struck the glass panel and large pieces of broken glass fell out. Then I realised that this was how the glass panel had been broken in the first place.

20 7. Having done this the tall Chinese then turned to me with a look of self-approbation.

8. At this time another employee whom I know by sight was at the telephone, looking very worried. I was standing by a counter watching the scene.

9. Whilst all this was going on an old Chinese nonya of 65 to 70 years of age wearing glasses and having a bunch of keys and a police whistle round her waist came from the back part of the shop; she was blowing on the police whistle and shouting "Police, Police" in English. I am now informed by the Plaintiff that this was Madam Ang Heng Kip

30 the above-named 2nd Defendant.

10. The Chinese nonya went through the front door of the premises out on to the five foot way, still blowing the whistle and intermittently shrilling "Police, Police."

11. Next, a middle-aged Chinese woman in a cheongsam came on to the scene from outside. I know this woman by sight having seen her on the premises before. I am informed by the Plaintiff that this was Miss Lim Siew Neo the above-named 1st Defendant. She spoke to the nonya and to the tall Chinese man. I then left to go to the grocers next door and saw nothing more.

40 12. I come to make this affidavit in the following way.

13. Some months ago when I was in the Dispensary I heard a loud banging from the first floor which continued the whole time I was in the shop, some five minutes, as I made a telephone call from there. There were other customers in the shop.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 5.
Affidavit
of Walter
Henry
Claude
Fuller,
19th June
1952,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 5.
Affidavit
of Walter
Henry
Claude
Fuller,
19th June
1952,
continued.

14. I spoke to the Plaintiff and asked him what the trouble was upstairs and he said "Those are the people upstairs annoying me who I told you about some time ago." I had for a long time been on chatting terms with the Plaintiff who had mentioned to me before this that he was having trouble from some people upstairs who were trying to annoy him. He had said that these people apparently wanted to get him out of the premises and to this end annoyed him and his customers by banging on the floor and causing other nuisances.

15. I said to the Plaintiff "Why don't you prosecute them or do something about them?" He said he had taken some action. I discussed 10 the matter further with the Plaintiff and then told him that if ever I was in the shop and heard this nuisance going on I would be only too happy to give evidence for him. I have suffered myself from landlord trouble and regarded the behaviour of the people upstairs as being childish and unfair.

16. I was on one occasion in the Dispensary at about 10 to 10.30 a.m. in the morning and saw the middle-aged Chinese woman referred to in paragraph 11 hereof walk through the shop carrying an empty bucket. As she walked past the toy counter she banged the bucket against its wooden framework. Her action was in my judgment deliberate. She 20 looked very sullen.

17. Some weeks before the window smashing episode referred to in the earlier part of this my affidavit I called at the Dispensary at about 11.00 a.m. in the morning to buy an inhaler, and to make a telephone call. The air was blue and thick and I inquired of the Plaintiff who was there "What he was cooking up in the dispensary?" The Plaintiff replied that "this is just another little bit of nuisance."

18. The Plaintiff then took me across to the foot of the stairs leading up to the first floor and through the wire of the upper part of the door closing off the stairway from the shop I saw a volume of smoke issuing 30 from what looked to me like a tin lid. Smoke was rising and coming out into the shop and filling the atmosphere. It caused a constriction of my throat and an irritation to my nasal organs and made me cough. There were two or three other customers in the shop at the time.

19. I have on various occasions heard odd noises coming from the first floor; balls bouncing and the sound as of somebody skipping. The Plaintiff has also told me that water has been poured down into the shop premises. One of the girl shop assistants known to me as Lucy told me she was going to leave the shop as one of the women upstairs had threatened to use a broomstick on her. 40

Sworn at Singapore this 19th day of } (Sgd.) W. FULLER.
June 1952.

Before me,

(Sgd.) LOW HOCK KIAT,
A Commissioner for oaths.

Filed the 19th day of June 1952.

No. 6.

AFFIDAVIT of Constance Tabor.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

and

1. LIM SIEW NEO (f)

2. ANG HENG KIP (w)

10 3. LIM SIEW TECK

Defendants.

I, CONSTANCE TABOR of No. 16 Woollerton Park, Singapore, Housewife,
make oath and say :—

1. I am a customer of The Singapore Dispensary at No. 265 Orchard Road Singapore and have had an account there for over a year.

2. I was in the shop on the 28th day of April 1952 at 11.30 a.m. and heard loud intermittent noises coming from upstairs on the first floor which at one period sounded like hammering on the floor. Also there were sounds of the bouncing of a ball and the running backwards and forwards of one or more persons wearing wooden or heavy shoes.

20 3. I also heard the sound of the dragging up and down the wooden floor of furniture. I heard furniture being dragged from one end of the floor to the other and then back again. One had to shout to make oneself heard in the shop. I do not think the noises could have been anything but caused deliberately.

4. The assistants in the shop looked very harrowed.

5. I know the proprietor of the Dispensary by sight and am on chatting terms with him. I discussed the noise with him and offered to give evidence thereof. At his request I thereupon made a note of the time and date of the incident in my shopping book which I have kept.

30 Sworn to at Singapore this 20th day of } (Sgd.) C. TABOR.
June 1952.

Before me,

(Sgd.) C. M. WONG,

A Commissioner for Oaths.

Filed this 20th day of June, 1952.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 6.
Affidavit
of
Constance
Tabor,
20th June
1952.

AFFIDAVIT of Lim Siew Neo.

*In the
Supreme
Court
of the
Colony of
Singapore.*

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

*In the
High Court.*

Suit No. 596 of 1952.

No. 7.
Affidavit
of Lim
Siew Neo,
20th June
1952.

Between **PANG KEAH SWEE**

Plaintiff

and

1. **LIM SIEW NEO (f)**

2. **ANG HENG KIP (w)**

3. **LIM SIEW TECK**

Defendants. 10

I, **LIM SIEW NEO**, of No. 265 Orchard Road, Singapore, Spinster make oath and say as follows :—

1. I am the 1st named Defendant in the above suit. I have read the affidavits of Chong Sian Guan and Pang Keah Swee filed in this matter.

2. As regards the incidents referred to in paragraphs 4 and 5 of the affidavit of the said Chong Sian Guan I shall deal with them more specifically when I come to deal with the affidavit of the said Pang Keah Swee.

3. As regards the incident referred to in paragraphs 6, 7, 8, 9, 10, 11 and 12 I say as follows :—

20

The night of the 2nd and 3rd June 1952 I had spent at No. 265 Orchard Road. I had moved into these premises and has been staying in the 1st and 2nd floors thereof every day and night since the 13th day of May 1952. I did not come in as alleged with my brother at 8 a.m. of the 3rd June 1952. As I was upstairs at the time of the said incident I cannot say what took place between my brother the said Lim Yong Teck and the said Chong Sian Guan. My mother the said Ang Keng Kip went downstairs first and I followed her. When I got to the ground floor I saw my brother standing in the shop near the front door. To the best of my recollection the said Chong Sian Guan then came up to my brother and after abusing him asked him why he had broken the showcase panel. I told my brother to leave the shop to prevent any trouble but the said Chong Sian Guan hold him back and insisted that he should stay until the police and his employer had arrived. He then turned round and abused me calling me a "babi." I lost my temper and raised my hand to strike him when he struck out and knocked off my glasses. I sustained a slight bruise on the bridge of the nose and on the cheek bone. One side of my glasses got broken. As it was difficult for me to see without my glasses I felt around for something to grab and got hold of a tin of "vin."

30

40

But I did not strike the said Chong Sian Guan with it. My brother then came to my assistance and pushed him out of the shop. I did not knock or kick other articles of stock all over the floor of the shop as has been alleged. I deny the allegations contained in paragraph 10. In fact the said policeman who arrested us when he deposed to the facts in Court on the 18th June 1952 was quite certain that he did not see any assault, or articles strewn on the floor of the shop.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

4. As regards the incidents of nuisance referred to in the affidavit
10 of Pang Keah Swee I say as follows:—

No. 7.
Affidavit
of Lim
Siew Neo,
20th June
1952,
continued.

20 In paragraph 14 it is alleged by the Plaintiff that I made noise and disturbances on the top floor of the said premises both during the day and at night thereby implying that this was done deliberately which I deny. For some months after the tenant Madam Tay Wah Eng left the premises on the 31st March 1951 the first floor was left vacant and I occasionally visited it to see that things were in order. In or about the month of June 1951 I caused the 2nd floor to be repaired as it was in a very bad state of disrepair. The repairs took two or three weeks to complete. These repairs caused a certain amount of unavoidable noise in the premises. I occasionally visited the premises and stayed overnight alone and sometimes with my sister-in-law. The floors of the 1st and 2nd floors with the exception of kitchen are constructed of wood planking. It is not possible for a person moving about on the 1st and 2nd floors not to be heard on the ground floor. And the noise and disturbance complained of could not have been greater than one would associate in many of the shop-houses in Singapore where families with children have to live above a shop or business premises.

5. The incident of the pouring of dirty water on to the top floor
30 which is alleged to have penetrated to the ground floor is as follows:—

On the day in question I was washing the floor of the top floor with a damp rag. I had taken every precaution to see that no water penetrated to the 1st floor. I had almost completed the washing and was near the kitchen when I slipped and a certain amount of water from a bucket I was carrying spilled over. This water must have penetrated the floor boards but I immediately got my washing cloth swabbed it up. For this both the occupier of the 1st floor and the Plaintiff made a complaint to the City Police Court Magistrate and I explained the circumstances to him.

40 6. After I had got the 1st floor repaired I moved into the premises.

7. As regards the incident contained in paragraph 17 I say that the Plaintiff not his employee has any right to lock the main door on the inside. As the Plaintiff has already stated in his affidavit (paragraph 2) these doors form the only means of entrance to the 1st and 2nd floors. I am a Roman Catholic and it is my practice to go to Church about six o'clock in the morning to attend the early mass on Sundays and occasionally on week days. On this particular day I had left my veil in the premises

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 7.
Affidavit
of Lim
Siew Neo,
20th June
1952,
continued.

and as I had spent the night at No. 1B Ardmore Park I returned to the premises to obtain the veil. I knocked on the door but no one inside moved although I had waited for more than 10 minutes. I left to make a report in the Orchard Road Police Station and a policeman accompanied me back. The Plaintiff's employee had by that time unfastened the bolt. I was able to gain entrance in the normal way. This was not the first time I had been locked out.

8. In answer to paragraph 18 thereof I say that the items of furniture on the 1st floor consist of one square dining table, two rattan chairs, 2 teak arm-chairs, a tea-trolley, a teak setter, a long shelf, side-board, a small bedside table and a plate rack and an easy chair in the front room. In the rear room these are a wardrobe, bedstead and a cigarette table with a few chairs. My mother who is seventy-three sweeps the floor about once a week and she was doing this on the day in question. She is too infirm to bang the furniture about. She was only moving the chairs. There was no nuisance nor was there any deliberate or malicious act on my mother's part as the Plaintiff has tried to make out. This also applied to the incidents contained in paragraphs 25, 27, 31, 36, 49 the second part of paragraph 56 of the said affidavit. 10

9. With reference to the incidents contained in paragraphs 23 thereof that I left the premises in the early morning without locking the door I say that I have never done so unless I had both my hands filled with goods and the attendant was aware to see me go out. As regards the incident contained in paragraph 24 thereof the hole in the floor board was not made by me or by the 2nd or 3rd Defendants. The hole had been in existence since the days when Madam Tay Wah Eng was my tenant. On the night of the 3rd March 1952 I found the hole blocked. I pushed out the stopper. I again pushed out the stopper the next night when I discovered the hole blocked. After that the Plaintiff caused a plank to be nailed over it and I left it until some night in the month of May 1952. The Plaintiff's employee is in the habit at night of allowing a neighbouring Sikh watchman and other Chinese friends to come into the ground floor premises for the purpose of taking a bath and chatting. Their conversation has on many occasions penetrated to the 1st floor. On this particular night I heard a great deal of talking and shouting going on. I pierced the said plank through the said hole to see who were in the premises. I found that there was a number of men. 30

10. Except for one occasion which will be referred to later no water has penetrated through the said hole to the Plaintiff's desk.

11. I admit the several incidents referred to in the said affidavit when I practised with a tennis ball. These incidents only took place for a short time and I do so for exercise. 40

12. Regarding the incident in paragraph 37 of the said affidavit I admit that I placed a container of burning gum benzoin at the bottom of my stairs but this was done to get rid of a very obnoxious smell which had been coming through from the ground floor. The smell from the said gum benzoin is not obnoxious—on the contrary it is fragrant.

13. I deny the allegation contained in paragraph 44 of the said affidavit. I did not throw any stale urine into the back yard. I would like to repeat here that the bath of the said ground floor is used by a number of people at night.

*In the
Supreme
Court
of the
Colony of
Singapore.*

14. I deny the incident contained in the first part of paragraph 61 of the said affidavit. As regards the latter part I have to say as follows:—
For a number of nights I had suspected that the Plaintiff's employee had been leaving on lights throughout the night. I kept watch for two nights on the bath room light and found that it had been left on from 7 in the evening to 6.30 a.m. the following morning. That was the reason why I switched off the lights on the ground floor. The incident referred to of the water dripping through the floor on this night was the only other incident of water dripping through to the Plaintiff's premises. This was done by my mother accidentally.

*In the
High Court.*

No. 7.
Affidavit
of Lim
Siew Neo,
20th June
1952,
continued.

15. I deny the incident contained in paragraph 66 thereof. No. 265 Orchard Road was built by my father (deceased).

16. When I rented out the whole of the premises No. 265 Orchard Road to Madam Tay Wah Eng I informed her that in the event of her vacating the premises I required them back vacant to reopen the grocery business which my deceased father had carried on before the outbreak of the Second World War. In spite of my wishes she permitted the Plaintiff to occupy the ground floor and to open up his own business. As far back as 1947 I had informed the Plaintiff that I desire the premises for my own use when Madam Tay Wah Eng left. Since then on a number of occasions the Plaintiff has informed me that he would be purchasing his own premises to carry on his business.

17. When Madam Tay Wah Eng vacated the premises in March 1951 I expected the Plaintiff to carry out his promise. I was prepared to give him a lease for three years in order to assist him as much as possible. I gave instructions to my Solicitors to prepare the said lease. The draft had been approved but when the Plaintiff was asked to sign the Notice requiring him to give up the premises to me at the end of the said period he just refused to do so. This immediately disclosed to me the fact that he was not acting in good faith; he had no desire to move from the ground floor or to purchase his own building.

18. The Plaintiff is not in poor circumstances. To the best of my knowledge he has sufficient means to purchase a building. On a number of occasions throughout last year the Plaintiff through various persons asked me to sell the premises No. 265 Orchard Road to him. I refused.

19. When the Plaintiff discovered at the end of 1951 that the occupiers of the 1st floor were about to vacate he came to me and asked me to rent out these premises if he was successful enough in finding the said occupiers alternative accommodation. This is another example of his insincerity.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 7.
Affidavit
of Lim
Siew Neo,
20th June
1952,
continued.

20. When the Plaintiff discovered that I was not prepared to yield to his wishes he devised ways and means to prevent me from using the premises. From the latter end of last year he has instigated his employees to be rude and obstructive to me. They have prevented me from gaining access to the 1st floor of the premises by bolting the front door from the inside. I was eventually compelled to put a heavy padlock on the hook to prevent any recurrence of the said incident.

21. Throughout the tenancy of Madam Tay Wah Eng I paid for water and lighting services and I still continue to pay this. Throughout 1951 the 1st floor was still being occupied by another occupier of Madam Tay Wah Eng. The document now produced to me marked "C.S.N.L. 1" is a bundle of the bills showing the charges and the amounts of electricity consumed on the premises. The amounts for electricity lighting are as follows :—

Electricity lighting—

July	195 units	
Aug.	161	„
Sept.	165	„
Oct.	187	„
Nov.	205	„
Dec.	220	„

In the month of January 1952 the 1st floor was vacant. I was not then staying on the premises yet the units of electricity consumed increased to 261. The Plaintiff has stated that he opens for business at 8.30 a.m. and closes at 6 p.m. Presumably during the day very little lighting would be used. He does not require the light for the use of his business at night. Accordingly it is most difficult to see or explain how so many units of lighting can be consumed in the course of a single month, if it was not done deliberately by the Plaintiff or his employees—the Plaintiff being filled with "rancom" at not being able either to purchase the premises or obtaining the tenancy of the 1st and 2nd floors. (Your deponent craves leave to refer to paragraph 74 of the said affidavit of Pang Keah Swee.)

22. After I had repaired the 1st floor of the premises and fixed a door at the bottom of the stairs leading to the 1st floor I had fixed a staple and harp type fastening attachment upon which I use a "Yale" lock. I first placed the lock in or about the month 1952. After a few days I looked at the lock and found that the hole for the key had been tampered with. I replaced this with a new one. After the lapse of a few days the same thing happened to the second lock. In addition part of the lock was covered in a green acid. The locks are now produced to me and marked "C.S.N.L. 2." The Plaintiff and his employees are the only persons who occupy the ground floor.

23. I intended to start business on the first floor of No. 265 Orchard Road. In or about the month of April 1952 I instructed my Solicitors to

inform the Plaintiff of my intention to do so. I have already ordered goods from abroad which are expected to arrive in Singapore shortly. The Plaintiff has now applied for this injunction to restrain me from entering the ground floor premises a right which I have and thereby intends to prevent me from starting the said business.

In the Supreme Court of the Colony of Singapore.

24. In the circumstances I respectfully submit that the Plaintiff is not entitled to the injunction prayed for.

In the High Court.

Sworn to at Singapore this 20th day of } (Sgd.) LIM SIEW NEO.
June, 1952

No. 7.
Affidavit of Lim Siew Neo, 20th June 1952, continued.

10 Before me,
(Sgd.) C. M. WONG,
A Commissioner for Oaths.

Filed this 20th day of June, 1952.

No. 8.

No. 8.
Order, 20th June 1952.

ORDER.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

Between PANG KEAH SWEE Plaintiff

20 and

(L.S.) 1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK Defendants.

Before The Honourable THE CHIEF JUSTICE. In open Court.

UPON MOTION made unto this Court this day by Mr. J. L. P. Harris of Counsel for the above-named Plaintiff and UPON READING the affidavit of the Plaintiff sworn to and filed herein on the 16th day of June 1952 and the exhibits therein referred to, the affidavit of Chong Sian Guan sworn to and filed herein on the 16th day of June 1952, the affidavit of
30 Walter Henry Claude Fuller sworn to and filed herein on the 19th day of June 1952, the affidavit of Constance Tabor sworn to and filed herein on the 20th day of June 1952 and the affidavit of Lim Siew Neo sworn to and filed herein on the 20th day of June 1952 and the exhibits therein referred to and UPON HEARING Counsel for the Plaintiff and for the above-named Defendants and the Plaintiff by his Counsel undertaking to abide by any order this Court may make as to damages in case this Court shall

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 8.
Order,
20th June
1952,
continued.

hereafter be of the opinion that the Defendants shall have sustained any by reason of this Order which the Plaintiff ought to pay THIS COURT DOTH ORDER AND DIRECT that the Defendants and each of them be restrained and an injunction is hereby granted restraining them and each of them from wrongfully entering upon the premises of the Plaintiff consisting of the ground floor of the building known as No. 265 Orchard Road, Singapore, otherwise than for the purpose of access to and egress from the part of the said building occupied by the Defendants and from causing injury to the said premises and to the Plaintiff's goods thereon And that the 1st and 2nd Defendants and each of them be also restrained 10 from causing a nuisance by noise to the Plaintiff and from depositing water dirt and noxious liquids on the Plaintiff's said premises or alternatively from permitting water dirt and noxious liquids to escape from the 1st Defendant's premises on to the Plaintiff's property And that the costs of and incidental to this application be costs in the cause.

Dated this 20th day of June, 1952.

(Sgd.) TAN THOON LIP,
Registrar.

Filed this 2nd day of July, 1952.

No. 9.
Amended
Statement
of Claim,
6th August
1952.

No. 9.

20

AMENDED STATEMENT OF CLAIM.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

and

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants.

AMENDED STATEMENT OF CLAIM.

30

1. The Plaintiff is and was at all material times the occupier of the ground floor of the building situate and known as No. 265 Orchard Road, Singapore and in possession thereof as the statutory tenant of the 1st Defendant on a monthly statutory tenancy (the said building being hereinafter referred to as "the said building" and the ground floor being hereinafter referred to as "the said ground floor premises"). The Plaintiff has at all material times carried on the business of a dispensary on the

said ground floor premises his hours of business being from 8.30 a.m. to 6 p.m. daily except on Sundays when the hours of business are from 8.30 a.m. to 1.00 p.m.

2. The 1st Defendant is and was at all material times the owner of the said building and in possession of the first and second floors thereof.

3. The said ground floor premises consist of a shop premises and an open yard at the rear thereof. The sole entrance to the first and second floors of the said building from the street is through a doorway at the front of the said ground floor premises closed by double doors and across
10 the said shop premises and by stairway at the rear of the said shop premises.

4. The 1st Defendant is entitled by implication to the right for herself and her licencees and for the purpose of ingress to and egress from the first and second floors of the said building to pass through the doorway at the front of the said ground floor premises and over and across the said shop premises to the foot of the said stairway. The said right is to be exercised only at reasonable times during the day and night and except during the hours of the Plaintiff's business the way of ingress to and egress from the said building namely the front door thereof is at all times to remain closed except for the purpose of passing and repassing and for
20 that purpose (except during the said hours of business aforesaid) only one of the double doors referred to in paragraph 3 hereof is to be used.

5. The Defendants or one or other of them have from time to time committed acts of trespass upon and nuisance to the Plaintiff's said ground floor premises by wrongful user of the said right in paragraph 4 hereof hereinbefore referred to and by wrongful user of the 1st Defendant's right to enjoyment of the first and second floors of the said building and otherwise.

6. The Defendants have in purported exercise of the said right in paragraph 4 hereof hereinbefore referred to done the following acts and things.

30 7. On a date in or about the month of March 1952 the 1st Defendant at about 6.00 a.m. wrongfully hammered on the doors of the said ground floor premises with a heavy instrument and caused a noise and disturbance. Further on the following day the 1st Defendant having entered upon the said ground floor premises wrongfully affixed a padlock to a staple on one of the doors thereby preventing the Plaintiff from using the staple and hasp fastening on the inside of the said doors to lock the same.

8. On or about the 26th day of March 1952 at 5.05 a.m. the 1st Defendant wrongfully opened one of the doors of the said ground floor premises and attempted to enter the same.

40 9. On or about the 26th day of March 1952 the 1st Defendant entered on the said ground floor premises and whilst passing through the same wrongfully kicked over to the ground a chair thereon.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 9.
Amended
Statement
of Claim,
6th August
1952,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

10. On or about the 28th day of March 1952 at 6.00 a.m. the 1st Defendant having entered upon and passed over the said ground floor premises wrongfully left open one of the doors thereof leading to the street.

*In the
High Court.*

11. On or about the 20th day of April 1952 at 5.30 a.m. the 1st Defendant wrongfully entered on the Plaintiff's said ground floor premises and passed through the same and wrongfully left open one of the doors thereof leading to the street. The 1st Defendant repeated the act complained of on the 25th day of May 1952 at 5.30 a.m.

No. 9.
Amended
Statement
of Claim,
6th August
1952,
continued.

12. On or about the 30th day of May 1952 the 2nd Defendant during the hours of the Plaintiff's business entered upon the Plaintiff's said shop premises carrying a broom and wrongfully and in front of his customers walked up and down the said shop premises brandishing the said broom and using threatening language to his said customers and threatening and abusive language to the members of his staff and wrongfully remained on the said shop premises acting as aforesaid for the space of fifteen minutes.

13. On the 1st day of June 1952 the 1st Defendant entered upon the Plaintiff's said ground floor premises and wrongfully switched off the lights thereof.

14. On the 3rd day of June 1952 each of them the 1st, 2nd and 3rd Defendants entered upon the Plaintiff's said shop premises and wrongfully caused a disturbance thereon. The 1st Defendant whilst on the said ground floor premises scattered and damaged the Plaintiff's goods and threatened and assaulted one of the Plaintiff's employees. The 2nd Defendant whilst on the said premises wrongfully caused a disturbance by blowing a police whistle and shouting for the police. The 3rd Defendant whilst on the said premises wrongfully broke open a door leading to the street therefrom and wrongfully broke one of the show windows belonging to the Plaintiff. The said acts complained of or some of them were committed by the Defendants in the sight of one of the Plaintiff's customers. The Plaintiff's said employee attempted to prevent the 1st and 3rd Defendants from acting in the manner complained of and as a consequence the said employee was together with the said 1st and 3rd Defendants arrested and charged with a breach of the peace.

PARTICULARS OF SPECIAL DAMAGE.

Estimated costs of repairing window	\$50.00
Cost of replacement of damaged goods	50.00
Legal expenses for defence of Plaintiff's employee on charge of disorderly conduct	500.00

15. On the 4th day of June 1952 the 3rd Defendant entered upon the Plaintiff's said ground floor premises and whilst therein wrongfully broke open one of the doors thereof leading to the street.

16. By reason of the times of the 1st Defendant's entry or attempted entry on the said ground floor premises mentioned in paragraphs 8 and 11 hereof such entry or attempted entry was in each respective case wrongful.

*In the
Supreme
Court
of the
Colony of
Singapore.*

17. By reason of the matters complained of in the second sentence in paragraph 7 hereof and in paragraphs 9, 10, 11, 12, 13, 14 and 15 hereof, the Defendants and each of them and in any event became trespassers on the said ground floor premises as from the respective times of their respectively entering thereon as aforesaid.

*In the
High Court.*

10 18. The 1st and 2nd Defendants have committed the following acts of trespass on the said ground floor premises otherwise than by use of the said rights in paragraph 4 hereof hereinbefore referred to and of nuisance to the said ground floor premises.

*No. 9.
Amended
Statement
of Claim,
6th August
1952,
continued.*

19. On a date in or about the month of November 1951 the 1st Defendant wrongfully caused or permitted a volume of dirty water to pour from the second floor of the building on to the Plaintiff's desk on the said ground floor premises.

20 20. On or about the 26th day of March 1952 the 1st Defendant wrongfully threw on to the said ground floor premises from the stairway leading to the first floor of the said building an empty kerosine tin and an empty paint tin with intent to strike the Plaintiff therewith, the 1st Defendant's action was committed during the hours of the Plaintiff's said business and in front of his customers and employees.

30 21. During the night of the 30th or the early hours of the 31st day of March 1952 the 1st or the 2nd Defendant wrongfully made a hole in the ceiling of the said shop premises and wrongfully and with malicious intent sent or caused to flow through this hole a volume of water and dust on to the Plaintiff's desk on the said ground floor premises or alternatively wrongfully permitted water and dust to pour from the 1st Defendant's said premises on to the said ground floor premises.

22. The act of trespass or nuisance complained of in paragraph 21 hereof has been repeated on several occasions since the 31st day of March 1952.

40 23. On or about the 4th day of April 1952 the 2nd Defendant wrongfully threw water into the open yard at the rear part of the said ground floor premises. The act complained of was repeated by the 2nd Defendant on the 9th day of April 1952. Further, on or about that date the 2nd Defendant wrongfully and with malicious intent rigged up a dirty broom over the said yard at the rear of the said ground floor premises and charged and afterwards continually recharged the same with water to the intent that dirty water should and with the result that it did drip on to the Plaintiff's property in front of the doorway leading on to the said yard.

24. On other occasions the 2nd Defendant has rigged up a bamboo pole jutting out over the said yard and has hung thereon an article of

*In the
Supreme
Court
of the
Colony of
Singapore.*

clothing and has wrongfully charged and recharged the same with water to the intent that water should and with the result that water did drip on to the Plaintiff's said property in front of the said doorway leading on to the said yard.

*In the
High Court.*

No. 9.
Amended
Statement
of Claim,
6th August
1952,
continued.

25. On or about the 28th day of April 1952 the 1st Defendant wrongfully and with malicious intent and during the hours of the Plaintiff's business discharged from her said property noxious and offensive fumes and smoke and caused or permitted the same to enter the Plaintiff's said shop premises to the intent that the Plaintiff's customers and staff should be and with the result that they were annoyed and inconvenienced thereby. 10

26. On or about the 12th day of May 1952 the 1st Defendant wrongfully threw into the open yard at the rear of the said ground floor premises a volume of noxious liquid.

27. On or about the 29th, 30th and 31st days of May 1952 the 1st or alternatively the 2nd Defendant wrongfully threw into the said yard at the rear of the said ground floor premises volumes of noxious liquids.

28. On or about the 1st day of June 1952 the 2nd Defendant wrongfully and with malicious intent poured water or caused water to drip from the first floor of the said building on to the five foot way outside the door leading from the said ground floor premises to the street thereby causing inconvenience to customers and intended customers of the Plaintiff entering upon and desiring entry to the Plaintiff's said shop premises. Also on the same day the 2nd Defendant on several occasions and with intent to wet the Plaintiff threw water into the yard at the rear of the said ground floor premises. 20

29. Later on the same day the 2nd Defendant wrongfully and with malicious intent poured water on to the Plaintiff's desk on his said shop premises or alternatively wrongfully and with malicious intent permitted water to pour from the first floor of the said building on to the Plaintiff's said shop premises. 30

30. On or about the same day the 1st Defendant wrongfully and with malicious intent poured water on to the Plaintiff's said shop premises or alternatively wrongfully and with malicious intent permitted water to escape from the first floor of the said building on to the Plaintiff's said premises. Thereby the Plaintiff's goods were damaged.

31. The acts of the Defendants hereinbefore complained of and each of them were and was committed with malicious intent and by reason of the said acts the Plaintiff has suffered damage.

32. On or about the 25th day of March 1952 and since that date the 1st Defendant wrongfully and with intent to cause annoyance to the Plaintiff, his customers and staff and to injure the Plaintiff in his business and so to drive the Plaintiff out of occupation of the said ground floor premises caused or permitted grossly excessive noise to come from the 1st Defendant's said property into and about the Plaintiff's said property. 40

33. The source of the noise was the skipping and running on the first floor of the said building of persons wearing wooden shoes, the moving backwards and forwards thereon of articles of furniture, the playing with a ball thereon and hammering on the wooden floor and on empty tins.

34. By reason of the nuisance complained of in paragraphs 32 and 33 hereof the Plaintiff his staff and his customers have been caused annoyance and the Plaintiff has thereby suffered damage.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 9.
Amended
Statement
of Claim,
6th August
1952.
continued.

PARTICULARS OF SPECIAL DAMAGE.

10 The noise has been caused or permitted both during the hours of darkness and daylight. In the first case the nuisance has disturbed the rest and sleep of the Plaintiff's employees sleeping on the said ground floor premises. As a consequence the health of these employees deteriorated and their efficiency fell.

In the second case the noise caused annoyance to and curiosity in the Plaintiff's customers and consequently embarrassed the Plaintiff and his employees and harrowed their feelings. Furthermore both in consequence of this and in any event the nerves of the Plaintiff and his employees have been strained and their health has suffered.

20 35. The Defendants unless restrained by injunction will continue to act as aforesaid.

AND THE PLAINTIFF CLAIMS—

(1) Damages ; and

(2) An injunction to restrain the Defendants and each of them from wrongfully entering upon the Plaintiff's property and from causing injury thereto and to his goods whereon and from causing a nuisance by noise to the Plaintiff and from depositing water dirt and noxious liquids on the Plaintiff's property or alternatively from permitting water dirt and noxious liquids to escape from the 1st Defendant's property on to the Plaintiff's property.

30

Delivered this 6th day of August 1952.

Amended the 15th day of March 1954
pursuant to Order of Court dated
the 5th day of March, 1954.

Re-delivered this 15th day of March, 1954.

(Sgd.) BRADDELL BROTHERS.

Solicitors for the Plaintiff.

FURTHER PARTICULARS.

In answer to the letter of the Plaintiff dated the 1st day of October 1952 the particulars asked for are as follows :—

UNDER PARAGRAPH 2 :

The passage way extends the length of the front part of the ground floor of the said premises from the front door up to and including the two bottom steps of the staircase leading to the first floor thereof with a width of approximately forty-two inches.

The Plaintiff's alleged right of user (if any) of the said front door and passage way is to be implied from the fact (if found) that the Plaintiff is a statutory tenant of the 1st Defendant. 10

UNDER PARAGRAPHS 4 & 5 :

The 1st Defendant found the said front door locked on the inside about four or five occasions between the 1st and 10th of March 1952 between 5.45 a.m. and 6.30 a.m.

The 1st Defendant was kept waiting outside the said premises for about 5 to 10 minutes on each occasion in spite of repeated knocking. She thereby suffered inconvenience. On or about the 10th day of March 1952 the 1st Defendant again called at the said premises about 6 a.m. and found the front door locked. She knocked repeatedly but the front door was not opened. After waiting for more than 10 minutes the 1st Defendant went to the Orchard Road Police Station to make a report. When she returned the front door was opened. 20

UNDER PARAGRAPH 7 :

During and throughout the nights in the month of May 1952 between the 13th and 31st the electric light on the ground floor near the entrance to the staircase was kept alight and for one week immediately prior to the 1st day of June 1952 the electric light in the bathroom was kept burning throughout the night. 30

Since the 1st April 1951 the 1st Defendant commenced paying the Municipal rates and taxes for electric light and water for the premises No. 265 Orchard Road. The obligation arises from the fact that water and electricity are consumed on the premises. There is no agreement between the Plaintiff and the 1st Defendant relating to such obligation.

UNDER PARAGRAPH 9 :

The attack took the form of a loud shout by the Plaintiff to the 1st Defendant—" You are making a noise." The shout so frightened the 1st Defendant that she dropped the said kerosene and paint tins which were then collected and removed by the Plaintiff. 40

UNDER PARAGRAPH 10 :

A strong smell akin to ammonia pervading the atmosphere which penetrated the 1st and 2nd floors of the said premises. The smell usually came through in the early morning at about 6 a.m. but on the 28th April it came through at about 10.30 a.m.

*In the
Supreme
Court
of the
Colony of
Singapore.*

UNDER PARAGRAPH 14 :

The 2nd Defendant was descending the staircase leading to the ground floor.

The 2nd Defendant intended then to leave the premises by going
10 through the ground floor thereof.

The Plaintiff scowled "That mad woman."

*In the
High Court.*

No. 10.
Further
Particulars,
15th
October
1952,
continued.

UNDER PARAGRAPH 20 :

The attack took place when the 3rd Defendant was about to unbolt the front door of the said premises. The said Chong Sian Guan objected to the said action of the 3rd Defendant in opening the said doors and pushed the 3rd Defendant out of the shop. A scuffle then ensued between the said Chong Sian Guan and the 3rd Defendant in the course of which a glass show-case was damaged. A few minutes after the said incident the
20 1st Defendant came down to the ground floor from the 1st floor and was standing in the passage way when the said Chong Sian Guan abused the 1st Defendant by calling her "Babi." The 1st Defendant raised her hand to strike the said Chong Sian Guan when the said Chong Sian Guan struck out and knocked off the 1st Defendant's spectacles.

The 1st Defendant was bruised on the nose and on the cheek bone. The 3rd Defendant was not injured.

Dated the 15th day of October, 1952.

(Sgd.) R. C. H. LIM & Co.,
Solicitors for the Defendants.

Filed this 15th day of October, 1952.

AMENDED DEFENCE AND COUNTERCLAIM.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 11.
Amended
Defence
and
Counter-
claim,
30th
October
1952.

1. The 1st Defendant is the owner of the building known as No. 265 Orchard Road, Singapore. The 1st Defendant denies that the Plaintiff is her statutory tenant of that part of the said building referred to in the Statement of Claim as "the said ground floor premises."

2. The 1st Defendant denies the allegations contained in paragraph 4 of the Statement of Claim and in particular to the allegation that for the purpose of passing and repassing (except during the hours of the Plaintiff's business) only one of the said double doors is to be used. The 1st Defendant will maintain that the Plaintiff is a trespasser of the said premises, or alternatively if the Plaintiff is a statutory tenant of the 1st Defendant, which is denied the Plaintiff has no right of possession to the passage-way leading from the front door to the stairway at the rear of the said ground floor premises, but only by implication to the right for himself and his licensees to use the front door of the said building and the said passage-way for the purpose of access. 10

3. The Defendants and each of them deny the allegations of trespass upon and nuisance to the Plaintiff's said ground floor premises as alleged and set out at length in the Statement of Claim. 20

4. In answer to the allegations contained in paragraph 7 of the Statement of Claim the 1st Defendant states that the Plaintiff by himself or by his servant wrongfully and to the intent of annoying the 1st Defendant caused the front door of the said ground floor premises to be locked on the inside thereby preventing the 1st Defendant from gaining access to her premises. The said doors form the only means of entrance to and egress from the said premises. The said door had been so locked on a number of occasions prior to the alleged incident thereby causing great inconvenience to the 1st Defendant.

5. The said doors are fastened by a "Yale" type lock, which is sufficient for security purposes. But in addition there is a staple and hasp type fastening attachment. On the occasions referred to the Plaintiff or his servant had caused the hasp to be fitted over the staple and dropped an iron retaining pin through the staple. In order to prevent the Plaintiff and his servant from using the said staple and hasp locking device the 1st Defendant affixed a padlock to the said staple. 30

6. The 1st Defendant denies the allegations contained in paragraphs 8, 9, 10, 11 and 16 of the Statement of Claim.

7. In answer to paragraph 13 of the Statement of Claim the 1st Defendant states that for a number of nights before the 1st June 1952 the 1st Defendant had noticed that lights had been left on throughout the whole night and early morning on the said ground floor premises. As the 1st Defendant has to pay the Municipal rates for electricity and water of the whole building the 1st Defendant switch off the said lights. 40

8. In answer to paragraph 19 of the Statement of Claim the 1st Defendant states that she accidentally spilled a small quantity of water on the 2nd floor of the said building, which unfortunately percolated through to the ground floor premises.

9. In answer to paragraph 20 of the Statement of Claim the 1st Defendant states that the relationship between the Plaintiff and the 1st Defendant had been strained for some considerable time. The 1st Defendant was on this occasion carrying the said empty tins up the stairway in which she lawfully was when the Plaintiff seeing her with the said tins attacked her from behind so frightening her that she dropped the said two tins. The 1st Defendant denies that she intended to strike the Plaintiff, as alleged or even attempted to do so.

10. In answer to paragraph 25 of the Statement of Claim the 1st Defendant states that she placed a container of burning gum benzoin at the bottom of the stairs in order to get rid of a very obnoxious smell which had been coming through from the ground floor premises, and denies that such act caused as alleged or could cause any inconvenience to the Plaintiff or his customers.

11. The 1st Defendant denies the allegations contained in paragraphs 20 26, 27 and 30 of the Statement of Claim.

12. The 1st Defendant denies the allegations contained in paragraphs 32 and 33 of the Statement of Claim and states in answer to paragraph 33 that whatever noise has been caused by her in her own premises was not excessive or unreasonable in the circumstances.

13. The 2nd Defendant is the mother of the 1st and 3rd Defendants.

14. The 2nd Defendant denies the allegations contained in paragraph 12 of the Statement of Claim. The 2nd Defendant was about to leave the said premises on the day in question and was at the bottom of the said stairway when the Plaintiff himself barred the 2nd Defendant's way out by holding a bastbroom and for no reason whatsoever abused the 2nd Defendant.

15. The 1st and 2nd Defendants deny that they caused the acts of trespass or nuisance in paragraphs 21 and 22 of the Statement of Claim.

16. In answer to paragraph 23 of the Statement of Claim the 2nd Defendant denies that she wrongfully threw water into the open yard of the ground floor premises as alleged. The 2nd Defendant further denies that she wrongfully and with malicious intent rigged up a dirty broom as alleged therein. The said broom if rigged up which is denied was not dirty nor did the 2nd Defendant continually recharge the same so that dirty water did drop on the Plaintiff property.

17. In answer to paragraph 24 of the Statement of Claim the 2nd Defendant denies that she rigged up a bamboo pole as alleged, and charged and recharged an article of clothing thereon with water so that water dropped on to the Plaintiff's property.

18. If which is denied the incidents alleged in paragraphs 23 and 24 of the Statement of Claim did in fact take place they were done without the 2nd Defendant's knowledge or privity.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 11.
Amended
Defence
and
Counter-
claim,
30th
October
1952,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 11.
Amended
Defence
and
Counter-
claim,
30th
October
1952,
continued.

19. The 1st and 2nd Defendants deny that they caused the acts of nuisance or trespass alleged in paragraphs 26, 27, 28, 29 and 30.

20. The 1st, 2nd and 3rd Defendants in answer to paragraph 14 of the Statement of Claim deny that they have been guilty of any act of disturbance or nuisance or assault as alleged. The said incident was caused solely by the deliberate and wilful act of the Plaintiff's employee one Chong Sian Guan in attacking the 3rd and the 1st Defendants.

21. The Defendants and each of them will object that the said acts of nuisance and trespass alleged in the Statement of Claim do not amount in law to a nuisance or trespass as alleged. 10

22. None of the said acts did in fact create any nuisance to the Plaintiff's business or interfere with the use and enjoyment thereof by the Plaintiff or cause any inconvenience or ill-health to him or his employees and to the customers of the said dispensary.

23. The Defendants and each of them deny that they caused any damage to the Plaintiff's property or that the Plaintiff has suffered damage by reason of the alleged acts of nuisance or trespass.

COUNTERCLAIM

24. The 1st, 2nd and 3rd Defendants repeat the allegation contained in paragraph 20 hereof and the 1st Defendant repeats the statements 20 contained in paragraphs 2 and 4 hereof and the 1st, 2nd and 3rd Defendants COUNTERCLAIM for :

(1) Damages for nuisance caused by obstruction to the 1st, 2nd and 3rd Defendants by the Plaintiff through his servants or agents.

(2) A declaration that the 1st Defendant is entitled to a right of way over the passage way leading from the front door of the said premises No. 265 Orchard Road, Singapore, to the entrance to the staircase at the rear of the said ground floor.

(3) An injunction to restrain the Plaintiff and/or his agents 30 and servants from wrongfully locking the front door of the ground floor of the premises No. 265 Orchard Road, at all times throughout the day or night.

PARTICULARS OF SPECIAL DAMAGE

Legal expenses incurred in defence thereof \$500-00

Dated and Delivered this 30th day of October, 1952.

(Sgd.) R. C. H. LIM & CO.,

Solicitors for the above-named 1st, 2nd
and 3rd Defendants.

Filed the 30th day of October, 1952.

REPLY AND DEFENCE TO COUNTERCLAIM.

1. The Plaintiff joins issue with the Defendants on their Defence.

AS TO THE COUNTERCLAIM.

2. As to so much of the Counterclaim as repeats the allegations contained in paragraph 20 of the Defence and counterclaims damages the Plaintiff will object that in point of law the facts pleaded in paragraph 20 of the Defence do not disclose any right of action against the Plaintiff at the suit of the 1st, 2nd and 3rd Defendants for the damages claimed.

10 3. As to so much of the Counterclaim as repeats the allegations contained in paragraph 2 of the Defence and counterclaims for a declaration the Plaintiff will object that in point of law the facts pleaded in paragraph 2 of the Defence do not disclose any right of action against the Plaintiff at the suit of the 1st Defendant for the declaration claimed.

4. The Plaintiff denies that he is a trespasser on the said ground floor premises. The Plaintiff is the statutory tenant of the 1st Defendant in respect thereof.

20 5. As to paragraph 4 of the Defence repeated in the Counterclaim the Plaintiff denies that he or his servant or servants agent or agents acted wrongfully or with intent to annoy the 1st Defendant her agent or agents licencee or licencees or wrongfully prevented the 1st Defendant her agent or agents licencee or licencees from gaining access to the premises of the 1st Defendant.

Delivered the 4th day of November, 1952.

(Sgd.) BRADDELL BROS.,

Solicitors for the Plaintiff.

Filed this 4th day of November, 1952.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 12.
Reply and
Defence to
Counter-
claim,
4th
November
1952.

No. 13.

INTERROGATORIES.

*In the
Supreme
Court
of the
Colony of
Singapore.*

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

*In the
High Court.*

No. 13. Suit No. 596 of 1952.
Interrogatories,
4th
November
1952.

Between PANG KEAH SWEE Plaintiff

and

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK Defendants. 10

INTERROGATORIES.

On behalf of the above-named Plaintiff for the examination of the above-named 1st and 2nd Defendants :—

1. Is it not the fact that the 1st Defendant became the owner of the whole of the premises No. 265 Orchard Road, Singapore, on the 18th April 1951. That all material times prior to that date the 2nd Defendant was the owner ?

2. Is it not the fact that prior to the 1st April 1951 one Tay Hua Eng was the tenant of the 2nd Defendant of the whole of the premises on a monthly tenancy at the monthly rent of \$250 ? That on the 31st day of March 1951 the said Tay Hua Eng ceased to be a tenant of the 2nd Defendant ? When did the said Tay Hua Eng become such tenant ? 20

3. That there was no term of the tenancy of the said Tay Hua Eng prohibiting sub-letting.

4. Do you the 1st Defendant require the premises of No. 265 Orchard Road for business purposes ?

5. If so, what nature of business do you intend to carry on upon the premises ? Is the business of such a nature that you require the use of the whole of the premises ?

6. When did you first form the intention of carrying on this business at the premises ? 30

7. Have you the necessary capital available for the purpose of carrying on the business on the premises ? If so, when did it become available ? Who is to manage the business ?

8. Did you the 1st Defendant or you the 2nd Defendant ever inform the Plaintiff prior to the month of April 1951 that you required to use the premises for business purposes ?

*In the
Supreme
Court
of the
Colony of
Singapore.*

9. Did either of you ever before that date inform him that you required vacant possession of the ground floor of the premises ? Did either of you ever before that date ask him to give you vacant possession of such ground floor ? Did either of you ever before that date make any offer to him in return for his giving you vacant possession of ground floor of the premises ? If so, on what date or dates did you make such offer
10 or offers ? What was the nature of the offer or offers ?

*In the
High Court.*

No. 13.
Interroga-
tories,
4th
November
1952,
continued.

10. Did either of you ever inform the said Madam Tay Hua Eng prior to the month of March 1951 that you required to use the premises for business purposes ? If so, on what date or dates did you so inform her ?

11. Did either of you ever prior to that date, i.e., March 1951, ask the said Tay Hua Eng to leave the premises ? If so, on what date or dates ? Did she ever before that date agree to leave the premises ? If so, when ?

12. Did either of you on your own behalf or on behalf of your mother
20 ever make any offer or offers to the said Tay Hua Eng in consideration of her giving up possession of the premises ? If so, on what date or dates ? What was the nature of the offer or offers ?

13. Is it not the fact that at all material times prior to the 31st day of March 1951 the first floor of the premises was in the possession of one Teo Sin Han ? That the said Teo Sin Han was a sub-tenant of the said Tay Hua Eng of the first floor of the premises ? What rent did the said Teo Sin Han pay to the said Madam Tay Hua Eng for the first floor of the premises ?

14. Is it not the fact that the aggregate of the rents paid by the
30 Plaintiff and the said Teo Sin Han to the said Tay Hua Eng including any Municipal services paid by the said Tay Hua Eng exceeded the rent paid by the said Madam Tay Hua Eng in respect of the whole of the premises ?

15. Is it not the fact that on the said Tay Hua Eng ceasing to be a tenant of the premises the top floor of the premises thus became vacant. That you the 1st Defendant and you the 2nd Defendant then began to use and occupy the top floor of the premises ?

16. That on or about the 13th day of November 1951 you the
40 1st Defendant appeared before the City Police Court Magistrate on the complaint of the Plaintiff and the said Teo Sin Han ? That you the 1st Defendant on that occasion received a warning from the City Police Court Magistrate ? That the appearance before the said Magistrate followed an incident at the premises when dirty water poured from the top floor thereof right through to the ground floor ?

*In the
Supreme
Court
of the
Colony of
Singapore.*

17. Is it not the fact that subsequent to this complaint the said Teo Sin Han quitted the first floor of the premises at the end of December 1951 ?

The Defendant Lim Siew Neo is required to answer the Interrogatories number 1 to 17.

*In the
High Court.*

The Defendant Ang Heng Kip is required to answer the Interrogatories number 8 to 12 and 15.

No. 13.
Interroga-
tories,
4th
November
1952,
continued.

Dated this 4th day of November, 1952.

(Sgd.) BRADDELL BROS.,

Solicitors for the Plaintiff. 10

To the above-named Defendants and to
their Solicitors Messrs. R. C. H. Lim & Co.

No. 14.

ANSWERS TO INTERROGATORIES.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

Between PANG KEAH SWEE

Plaintiff

and

- 1. LIM SIEW NEO (f)
- 2. ANG HENG KIP (w)
- 10 3. LIM SIEW TECK

Defendants.

No. 14.
Answer to
Interroga-
tories,
15th July
1953.

The answers of the above named 1st, 2nd and 3rd Defendants to the Interrogatories for their examination by the above-named Plaintiff.

In answer to the 1st, 2nd and 3rd of the said Interrogatories, I, the above-named Lim Siew Neo make oath and say as follows :—

In answer to the 1st, 2nd and 3rd of the said Interrogatories, I, the above-named Ang Heng Kip make oath and say as follows :—

In answer to Interrogatory No. 1, I say, yes.

In answer to Interrogatory No. 2, I say that prior to 1st April, 1951, one Tay Hua Eng was a tenant of the 2nd Defendant of the whole of the premises No. 265, Orchard Road, Singapore at the monthly rental of \$250/-.
20

In answer to Interrogatory No. 3, I say that it was an express term of the agreement of tenancy of the said Tay Hua Eng that there should be no sub-letting of the whole of the said premises or any part thereof.

Sworn at Singapore by the above-named
Lim Siew Neo, this 15th day of July, } (Sgd.) LIM SIEW NEO.
1953

Before me,
(Sgd.) H. K. SURI,
30 A Commissioner for Oaths.

Sworn at Singapore by the above-named
Ang Heng Kip this 15th day of July, } (Sgd.) ANG HENG KIP.
1953, through the interpretation of
Sgd. H. K. Sim a Sworn Interpreter of
the Court

Before me,
(Sgd.) H. K. SURI,
A Commissioner for Oaths.

In the
Supreme
Court
of the
Colony of
Singapore.

6th September, 1954.

Coram : WHITTON, J.

In the
High Court.

Harris for Plaintiff.

L. A. J. Smith for Defts.

No. 15.
Court
Notes of
Whitton, J.,
6th
September
1954.

Harris opens :

Asks leave to amend Para. 17 S/C. by deleting words after " premises " and substituting therefor " on occasions aforesaid." Smith objects.

Harris :

10

" Question for Court to decide now injunction only." Smith objects to reference now to injunction only, as Court prejudiced by Harris saying claim for damages has been disposed of. I point out it was Smith himself who has informed Court there has been payment into Court.

In reply to Court Smith refers Court to O.23, r. 6. In reply to Court Smith says to say damages claim has been disposed of means there is a possibility money has been paid into Court. " It would be a very simple way of defeating the rule." If Plaintiff's counsel had procured and got injunction and damages the damages award would have been subject to what payment had been made into Court. By saying damages claim disposed of suggests damages have been paid. *Draper v. Twist*. Court cannot overlook fact statement as to damages has been made. 20

Harris :

To bring in *Draper v. Twist* adds confusion. Object to Smith's suggestion had done something deliberately to gain advantage—if Smith has gained anything by payment into Court still has the advantage. Nothing in rules to say that the Judge being told of payment into Court and its acceptance out an intimation to Court that issue has been disposed of prevents the Judge in question from trying the action. This is more than just payment in—this is situation of payment in and payment out and disposal of part of course of action. Smith attempting to extract every possible interpretation words " disposed of " is capable of. *Draper v. Twist*—Judge has always discretion over matter of depriving party of costs. If Smith considers prejudiced regrets he so feels but considered it right Court should know the position. If Smith asks trial should start " *de novo* " will not object, but does not see why Plaintiff should pay costs. 30

Smith :

Money paid in commonly taken out before trial of action. Reports of Patent Cases Vol. 56 at p. 239. When Harris says matter has been disposed of puts burden on Defence to explain how (I ask Smith why is this necessarily so) grant of injunction will depend on whether this is a case which can be met by damages or not. " Court might not award injunction if it thought amount paid in damages awarded adequate compensation." Must not mention to the Court any settlement which is 40

going to affect the issue. Only reason for mentioning claim for damages disposed of is to justify asking for injunction alone. Maintains injunction and damages inextricably bound up in a case of this description. Defence has to answer why claim for damages has been disposed of. In my view Mr. Harris's statement does not constitute infringement of O. 23, r. 6. I state this view and inform Smith that if he considers his clients' case will be prejudiced by further hearing by me I am prepared to order trial should start " *de novo* " before another Judge, but that I am not prepared to make any order for costs of today's proceedings in the circumstances.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

No. 15.
Court
Notes of
Whitton, J.,
6th
September
1954,
continued.

10 I adjourn Court for 15 minutes for Mr. Smith to consider what line he wishes to take.

(After adjournment for 15 minutes.)

Smith—

" My learned friend considers he would have to give the same information to another Judge and is prepared to take his chances on being correct while I take my chances on his being wrong. So prepared for trial to proceed now."

Harris resumes opening address.

20 Withdrawn application to amend. Essence of actions complained of is that they were done with malicious intent (para. 31).

Plaintiff pleads two kinds of wrongful acts—(1) (para. 5) trespass by user (2) (para. 18) trespass other than by user and nuisance.

As to counter-claim. Not sufficient facts pleaded to support claim for damages, except by reference to para. 20 Statement of Claim. Will submit 2nd and 3rd Defendants no right of action in respect of this being mere licensees.

30 Straight defence to this claim is assertion made in S'D. paras. 2 and 4. No question of nuisance by obstruction if that claim of Deft. 1 is correct. Declaration sought—Deft. 1 says she is in possession—so on face of pleadings this claim for declaration must be bad. As to injunction—only Deft. 1 has complained of this, and in any case she says she has abated the alleged nuisance herself—she cannot get injunction to restrain Plaintiff from doing something she has already restrained him from doing before action brought. Will submit in respect of each of these claims bad in law in the face of the pleadings.

Issues—

(1) Is Plaintiff statutory tenant of Deft. 1 of ground premises or any part thereof?

40 (2) If Plaintiff is, whether he is tenant of whole ground floor with implied right of Deft. 1 and her servants as licensees to pass through doorway at front and over shop premises to stairway at back, or is he merely statutory tenant of part of ground premises i.e. the part excluding passage from front door to stairway at back, with a right to Plaintiff and his licensees to use the door at front and the passage way.

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(3) If Plaintiff statutory tenant of whole ground floor and Deft. 1 only got right of way, is Deft. 1's right subject to being exercisable only during reasonable hours, day and night, or is it otherwise subject to any restrictions?

(4) Has there been any excessive user of right of way by Deft. 1 amounting to wrongful user?

(5) Have Defts. 1 and 2 committed acts of trespass to Plaintiff's property, or have they otherwise exercised their rights of enjoyment of property of Deft. 1 in such a way as to cause damage to Plaintiff, and thus amount to a nuisance? 10

(6) Are any of acts complained of actuated by malice?

On counter-claim two of same issues arise. Plaintiff contends all he complains of has been done with intention of driving him out.

Refers to Agreed Bundle. Offer to pay for light and water (at p. 152).

Now 1 o'clock to 2.30.

(Sgd.) C. H. WHITTON.

Resumed 2.30.

Harris resumes opening address.

Letter p. 165—reference to right of access inconsistent with claim in pleadings has possession of passage across the shop and Plaintiff only 20 right of way.

Is Plaintiff a statutory tenant? He was sub-tenant of principal tenant. That principal tenant not prohibited from sub-letting. If principal tenant was prohibited there was acceptance of rent amounting to waiver i.e. in that Deft. 2 knowing of sub-tenancy accepted through her agent rent for from principal tenant. On 31.3.51 on termination of Madam Tay's notice to quit that tenancy terminated in common law and Plaintiff's sub-tenancy also terminated in common law. Madam Tay gave up possession, whereas Plaintiff remained in possession of ground floor. Submits under S. 27 Control of Rent Ordinance (old Ordinance applies— 30 Section 16 corresponding to Section 27). In this connection rely on *Guan Seng Kee Ltd. v. Buan Lee Seng Ltd.* [1950] 20 M.L.J. 34 (no prohibition against sub-letting in that case). Rely on that case to show we are statutory tenants of Deft. 1.

Next question—whether we can sue for trespass and nuisance. Clerk & Lindsell on Torts 10th Ed. p. 508 S. 2 and top of p. 509. Submits Plaintiff clearly can sue as person in occupation. As to who can sue for nuisance p. 588 S. 12. Statutory tenant can sue his landlord for trespass—*Cruise v. Terrell* 1922 K.B. 664. Also *Barcroft Waggon Ltd. v. Smith* 1951 2 K.B. 496 at 501. Who can be sued for nuisance?— 40 Clerk & Lindsell p. 591 S. 13. P. 593 “When a nuisance . . .” Distinguishing trespass from nuisance—Clerk & Lindsell p. 507 and 508 (507 third para.). Plaintiff maintains water onto his premises deliberate acts of trespass—in cases where alleged water allowed to drip this was done

with malice. So becomes actionable wrong for that reason even if it does not amount to a trespass. Dividing line between trespass and nuisance may be narrow—*Christie v. Davey* 1893 1 Ch. 1893, 316. In *Christie v. Davey* appears to have been no question of any damage proved on behalf of the Plaintiff. *Nicholls v. Ely Beet Sugar Factory Co. Ltd.* 1936 1 Chan. 343. *Crump v. Lambert* L.R. Vol. III Equity Cases 409. Judgment Lord Romilly 411. In our case we say noise deliberate and less degree necessary than in case of factory where noise arises out of a legal user.

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- 10 Trespass by excessive user. Question of fact. (Assuming possession of whole of ground floor and 1st Defendant has right of way for purpose of this argument.) Any restriction on 1st Deft. and her licensees in their user? That must depend what was allowed to former grantees and their implied right—namely to Madam Tay and her licensees. Relevant factors. Ground floor has always been a business premises and first and second floors have always been residential premises, and by conduct of parties certain restrictions appear to have been observed by upstairs occupiers e.g. keeping front of premises closed during non-business hours except for passing and repassing when only one door of premises open, locking of premises from inside at night, and fact persons coming to premises to call would call for premises to be opened up from inside. If these restrictions attached Deft. 1 would be subject to same restrictions as Madam Tay and Section 17 (a) Ord. 25 of 1947.
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Notes of
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continued.

Now 3.55 To 7th September 10.30.

(Sgd.) C. H. WHITTON.

Tuesday, 8th September 1954.
S. 596/52 (Contd.)

Harris resumes address.

- Halsbury 2nd Edn. Vol. XI P. 283 S. 519—creation of easements by
30 implication of law. S. 520. In our case only access to first and second floor through door on ground floor, so there must be a right of way. P. 286—“an easement arising . . .” P. 321—S. 573–574. P. 328—S. 580. The way arose in present case at time Plaintiff, if he is a tenant, was let into ground floor of the premises. Extent of user to be found by circumstances as they existed at time of grant.

—which is purely a matter of evidence. *Milner's Safe Co. Ltd. v. Great Northern & City Rly. Co.* 1907 1 Ch. 208 (Headnote—authority on question of excess of user). P. 336 S. 592. Excessive user gives right of action in trespass to owner of servient tenement.

- 40 Question of injunction. Kerr on Injunctions 6th Ed. pp. 30–33 Section 2. Also p. 139 “If a plaintiff applies . . .” Also p. 656 “In determining . . .” Submits acts complained of here such that it would be difficult to assess adequate sum by way of damages, and also acts taken all in all not by any means trivial. Further nature of acts and motive—Defts. will suffer no hardship by the granting of an injunction. Defts. have behaved towards Plaintiff in unfair and unneighbourly manner

Calls—

EVIDENCE of Pang Keah Swee.

*In the
Supreme
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of the
Colony of
Singapore.*

Plaintiff PANG KEAH SWEE—a.s. in English—Xd.

*In the
High Court.*

*Plaintiff's
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tion.

I live at 742 Mountbatten Road. Chemist. I carry on business of dispensary on ground floor 265 Orchard Road. Called "The Singapore Dispensary." I am sole proprietor. Premises nearly opposite S'pore Cold Storage. Next door a firm of grocers "Teck Joo Co. Ltd." I sell usual things sold in chemists' shop, have dispensing service, toilet articles. I have mostly European customers and better class of Chinese. Ground floor premises consist of a shop and small space at rear, and then an open yard and small space at back of premises. First and second floor above ground floor. Access to first floor by way of stairs at rear of my shop premises. Only means of access to those stairs is through front of shop. Front is closed by double doors. Passage way from front door to stairway is straight from front to back but narrows towards the back. On either side of double doors show windows. There is a back door leading on to a canal—back door usually kept locked. There is a bridge across the canal. (*To Court*: One can go anywhere from back door, but cars could not come up to it.) I first went into these premises in May 1947. I got ground floor tenancy from one Madam Tay at rent of \$220 per month. That was inclusive of light and water. I started chemist's business shortly after getting the tenancy. From May 1947 to end of March 1951 I paid rent to Madam Tay. I used to see Deft. 1 visiting premises when Madam Tay occupied ground floor. Deft. 1 talked to me once at that period. It was when I was getting the premises ready for business and she asked me what business I was going to carry on there. She did not raise any objection to my coming into the premises. She did not say anything to effect I must get out when Madam Tay got out. When I entered premises no arrangement made with Madam Tay as to the length of my tenancy. No time was fixed limiting the period of my occupation. I used to say Deft. 1 from time I went to premises about once a month. Used to see her on the premises. When I went in to premises in 1947 Madam Tay was occupying top floor, and another sub-tenant of Madam Tay occupying first floor. Sub-tenant was living with his family there. No business carried on there. Top floor also used for residential purposes. Madam Tay was a widow and lived with brothers. When I moved in the premises had the same double front doors as it has now. Door had bolts both top and bottom on one side, and yale lock on other side. There was also a hasp type of lock and iron pin for hasp to go through which locked the door from inside. Arrangements with occupiers upstairs that after office hours (6 p.m.) both doors closed, and usually about 11 p.m. one of my assistants would put in the hasp lock. Between 6 p.m. and 11 p.m. both doors locked with yale lock only of which upstairs occupiers had keys. Business commenced at 8.30 in the morning. Doors open through the day. One or two of my assistants usually slept on the premises—even now they do that. They sleep between the counter in front of the shop. Extra locking device at night was for security purposes. These arrangements worked very well at that time and there was no trouble at all. If anyone wished to come in after 11 p.m. they had to knock at the door. It is possible to go through if only one door open. Both doors

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kept closed after business hours because if open customers would want to come and make purchases. Yard at rear overlooked by back room windows and open portion at back. On 31st March 1951 Madam Tay left the premises. Before doing so she had given me a month's notice to quit expiring 31st March. When Madam Tay left top floor was vacant. Front floor occupied by Teo Sin Han, a sub-tenant. He had been there all time since I had first moved in. After notice to quit expired Deft. 1 moved into top floor to use it herself. She had it repaired. Repairs took a few weeks. Repairs commenced soon after Madam Tay left top floor. Mr. Teo left the premises at end of 1951. Before he left there had been a lot of disturbances on the premises. Caused by Deft. 1 dragging furniture about on top floor. She used to do it at all sorts of hours. The dragging would go on for five, ten minutes or longer though not continuously for one period. I don't know what she was doing. I used to hear it both morning and afternoon. Also on one occasion water came from top floor to first floor and then through ceiling of ground floor onto a table in my shop. Quite a quantity. I think it was in November 1951 that occurred. I spoke to Deft. 1 about this. She said she had not done it on purpose—she said she had been washing the floor and bucket got upset. She appeared to be angry. I think she was angry with Mr. Teo. As a result of this Mr. Teo and I made a complaint to a magistrate about this and other incidents. Magistrate sent for Miss Lim and in my presence warned her not to create further trouble. I complained to Magistrate because the disturbances had been getting so bad. After Mr. Teo moved out Miss Lim had first floor repaired and decorated. After that she moved in with her mother, Deft. 2. Repairs took about two months. Floors of first and second floors are timbered wood. Workmen created a certain amount of noise. That in a way caused inconvenience but I suppose they could not help it. A lot of things took place after Deft. 1 and her mother moved in. I heard sounds like the pulling of furniture across the floor. That happened at all sorts of time. Went in for about five minutes or ten minutes on each occasion. (To Court: In 1951 this furniture moving went on for a period of about three months after Madam Tay moved out.) No more disturbance of this kind after that until after Mr. Teo left. It started again after Deft. 1 and her mother occupied first floor in March 1952. It went on for a number of months until some time in June. Then I obtained an interim injunction. Sometimes twice in one day, sometimes no disturbance for a few days, but throughout the period I have mentioned it went on fairly continuously. It sounded as if furniture was dragged from one end of room to other, and in all directions. Other noises at that time like people playing with a tennis ball, and like persons jumping about with wooden clogs. This went on fairly regularly from some time in March up to June. I think it was Miss Lim who caused this noise. I did not actually see her making the noise, but on one occasion tennis ball fell to ground floor and I saw Miss Lim come down and pick up the ball. Sometimes I used to hear skipping sound on floor, and sometimes hammering on the floor. (To Court: All these noises came from the first floor.) The workmen had already finished their work at period in question. I noted down all these incidents in my diary. I have got my diary. I started writing in the diary sometime in March 1952. I made the entries myself. Usually wrote them the same day. I started the diary because I thought I could not stand the

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disturbances much longer and I thought some day I might have to bring action, in which case diary might be useful. Diary covers period end of March to middle of June. On one occasion one of my assistants Chong Siang Guan (*Harris* : "He is being called") made a complaint to me.

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High Court.*

*Plaintiff's
Evidence.*

(*Harris* asks that witness be allowed to refer to his diary.) Smith objects on ground that it was made in contemplation of legal proceedings. States it is a rule of law not admissible. I ask Smith to cite authority. States will do so later. Question of use of diary left in abeyance for time—C. H. W. I know hammering on the floor done by Miss Lim's mother because no one else in house at the time.

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(*To Court* : Hammering on the floor on several occasions. On all these occasions no one upstairs but Miss Lim's mother.) (Smith now states unable to cite authority on diary point. I allow the witness to refer to the diary to refresh his memory. Witness now does so—C. H. W.). The banging of furniture started on 25th March. 5.30 p.m. to 5.50. Miss Lim was doing it. I have that recorded in my diary. On 28th March from 4 p.m. to 4.15 p.m. there was dragging heavy furniture. On 2nd April 2.30 p.m. to 2.50 banging on first floor with heavy object and moving furniture about. On 8th April 9.30 a.m. to 10 a.m. there was dragging of furniture on first floor. On 11th April throughout the afternoon Madam Ang used hammer and knocked on floor directly over my desk at intervals. On 16th April Miss Lim caused a great deal of noise throughout the floor deliberately jumping on the floor with wooden sandals at intervals. On 17th April 4.30 p.m. Miss Lim dragged furniture about the first floor for about ten minutes. On 18th April 11.30 a.m. to 11.50 Miss Lim banged the floor. On 22nd April banging on and off throughout the day on the floor. On 26th April at 11 a.m. stamping on the floor for 15 minutes. (Demonstrates—sort of tap dance but less rhythmical—C.H.W.). On 28th April there was at 11.30 a.m. playing with ball and jumping about. One Mrs. Tabor (being called—C.H.W.) was in shop at time. On 29th April at 12 mid-day there was playing about with a ball which I believed to have been done by Miss Lim. On 30th April 4.30 p.m. to 4.45 jumping about with ball, wooden clogs used. On 1st May 3.20 p.m.—3.40 p.m. playing with ball and jumping about on the floor. On 2nd May 4 p.m.—4.10 p.m. running about on first floor with wooden clogs. On 3rd May I went to see Father Becharas of Sts. Peter & Paul to ask him to use his influence. He promised to see what he could do for me. After 3rd May there were no more of these incidents until 15th May. On 15th May there was a banging and hitting on the wooden floor for about three minutes at 3.30 p.m. At 5.30 p.m. same day there was playing with ball on wooden floor for about 15 minutes causing general disturbance. On 16th May 12—12.10 p.m. playing with ball again. I remonstrated with Miss Lim but she just ignored me. On 17th May 12.30 p.m.—12.45 playing with ball and banging on the floor. On 22nd May 10.30 a.m.—10.45 playing with ball and stamping on floor. I went upstairs to remonstrate. I saw Miss Lim and Madam Ang there. I remonstrated. Both became abusive. One or both spat at me. They turned on me and chased me down the stairs as soon as I remonstrated. I recall Miss Lim saying "Mine your own business. You have no right to be here. This is my house." Madam Ang lifted up broom and threatened me with it after Miss Lim had fetched it. The same

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afternoon I heard dragging of furniture on the floor. I also heard the noise of skipping on the floor. I believed Miss Lim to have done this as the mother could not have skipped. Skipping off and on from 11.25 a.m. to 12.55 p.m. May 23rd 11.20 a.m. to 11.35 a.m. playing with ball. 11.50 a.m. to 12.05 p.m. Skipping and stamping on floor. May 25th Chong Siang Guan reported an incident to me. May 28th 1.10 p.m.—1.25 p.m. skipping from one end of floor to other. May 30 Chong Siang Guan reported another incident to me. On 1st June throughout the morning Madam Ang dragged furniture about and used a hammer to create a din. It was a Sunday Morning. On 4th June Chong Siang Guan made another report to me. On 9th June 11.45 a.m. Miss Lim played with ball about 10 minutes. On 12th June 9.30 a.m. to 10.30 a.m. Miss Lim jumping about on first floor and playing with ball off and on. On 14th June Miss Lim skipping for about half an hour from 10.30 a.m. That is last note I have recorded. There was no carpet upstairs. I was aware of that. This noise had a very bad effect on me—made me very nervous. I used to dread from day to day what sort of a noise might come next. Customers heard the noise. Since interlocutory injunction granted I have heard noise of people walking about upstairs. I have heard no noise beyond noises to be normally expected from occupied floor above since the interlocutory injunction.

Now 12.55 To 2.30.

(Sgd.) C. H. WHITTON.

Resumed 2.30.

Xn. continued.

There were other disturbances like throwing down of water from first floor to ground floor. On other time urine was thrown down to ground floor. There was also one incident when lot of smoke caused by Deft. 1. On one occasion I saw Madam Ang thrown down some water from the back of the house on the backyard. I was in the backyard at the time. I do not know whether she saw me or not. It happened sometime between end of March and middle of June 1952. On another occasion Madam Ang had jar of water which she put over door leading from scullery to backyard. Broom was charged with water which was allowed to drip down. I do not think it was left out to dry. Broom was recharged with water several times. Anyone passing through door from scullery to backyard would get it falling on them. Dirty water. On another occasion she did this with sarong hung on bamboo pole. When sarong got dry it was made wet again. I saw Madam Ang do this. On another occasion on a Sunday Madam Ang was alone upstairs. She was shut in.—Hole over five footway. She threw water down on 5 footway through hole. I went to back and shouted to her. She was very angry and threw down some cigarette tins of water at me. Later same morning she poured water through a hole in her floor onto my desk which was beneath. Later on same morning seeing water still dropping on 5 foot way and looking up saw cigarette tin in which apparently hole had been made and water dropped continually through it onto 5 footway. Another incident reported to me next morning by Chong Siang Guan. I think hole over my desk was made deliberately. On morning coming to office I found water and dust on my desk. I looked

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up and saw hole had been made. There was no hole there before that day. I had hole plugged with cork. Next morning I found cork had been pushed out. I had cork put back and told Chong Siang Guan to fix top of cigarette tin before cork. He did so. Following morning all had been pushed down again. I then had hole covered with planking. Following morning plank had been split. After that on numerous occasions water and dirt on my table. On one occasion particularly bad case of water and dirt on table. I reported at Orchard Road Police Station, but police there told me they could not do anything. More than once—three or four times—stale urine thrown on backyard. On one occasion spoke to Health Officer. 10 He sent someone round to inspect. One occasion Miss Lim lit a tin with benzoine on it which caused a smoke that was not pleasant to smell at foot of stairs. That was during time shop open to customers. It was behind netting door at bottom of steps leading upstairs. This door could be bolted from inside. On one occasion Miss Lim came downstairs in a great hurry and pushed down a small child of customer causing it to fall. Miss Lim just went on, but then had quarrel with the child's mother. On one occasion a customer of mine in shop when Deft. 3 pushed him very hard as he was passing. Then a quarrel between Deft. 3 and myself. As a result Deft. 3 tore my shirt. Deft. 3 brought charge against me in 20 Police Court. I was discharged. Another time some time in March after repairs had taken place and Deft. 1 & 2 moved in Miss Lim came into shop carrying a number of empty tins. She went upstairs making a lot of noise with her clogs. Then she came down and went to car and brought some more empty tins to take upstairs. I went to foot of stairs and shouted at her to stop please making the noise. She got angry and threw empty kerosene tin at me and then an empty paint tin. My employees, Chong Siang Guan and Tan Ser Lim, and also my brother Pang Chee Lim made complaints to me and employees said they might have to leave. Sometimes I was in shop when Deft. 2 came down to it. 30 I was not present on 30th May when incident you refer to (para. 12 S/C—para. 14 S/D—C.H.W.) occurred. It was some time this year incident of child being knocked down occurred. Occasion when Deft. 3 pushed customer was in November 1952. Apart from these two incidents I had not had occasion to complain of incidents since the grant of the interim injunction. I gave evidence in Police Courts in regard to something akin to this matter some time early this year. I was called as a witness by a lady customer. She alleged she had been assaulted by Deft. 3. I was a witness of the incident. Deft. 1 is now carrying on business on first floor. Has been carrying on over a year, I think. Miss Lim lives on the premises 40—not sure whether first or second floor. I have seen Deft. 2 and Deft. 3 go there, but do not know if they live there. I seek this injunction because I have had so much trouble with my landlady and her relatives. I thought there would be no end of these disturbances if I did not get them stopped. As a business man it is impossible to carry on business if one has to put up all the things Defts. did to me in 1951 and 1952. It made me very nervous—I never knew what would happen next. I tried my best to come to some sort of agreement with landlady but I found from experience it is impossible to negotiate with her. I have tried to buy the premises so that I might have the whole house to myself and be free from these disturbances. 50 I had objection to Defts. passing through my premises—they came in at odd times of morning, and left at odd times of morning. I have no objection

to their using in office hours. If they behaved as Madam Tay and Mr. Teo behaved I would have no objection at all to their using the premises in the same way.

Cross-examined.

XXd. Smith :

I got premises as monthly tenant from Madam Tay. I was told no prohibition on sub-letting. Learnt that from Madam Tay's brother. Madam Tay did not tell me personally there was no prohibition on sub-letting. I dealt with her through her brother. I asked him if covenant
10 against sub-letting.

Q. Why did you ask him that ?

A. I did not go out of my way to ask. It was only after trouble started I verified from brother no restriction against sub-letting.

Q. Was that before you went to solicitor or afterwards ?

A. Cannot remember.

Q. Was it on advice of your solicitors or on your own knowledge ?

A. I cannot say.

Q. I suggest to you you realised that question of whether
20 covenant against sub-letting or not important ?

A. My solicitor Mr. Harris told me.

Q. Did you know it was important before Mr. Harris told you ?

A. I made enquiries before from other persons. I don't remember whether it was before or afterwards that Mr. Harris told me.

It may have been during serving of notice to quit that I went and saw Madam Tay's brother. I never spoke to Madam Tay herself on this
30 matter. I agree Madam Tay intended me to go. She may or may not have sincerely intended me to go. No collusion between me and Madam Tay. The shop was partly furnished when it was let to me. I cannot remember whether the schedule to letter of 27th February 1951 was correct list of furniture. Madam Tay had been running the place as a coffee shop. When I first looked at premises I saw some tables and chairs, but cannot say if it had been run as coffee shop or not. (Smith reads first sentence final para. p. 147 C.H.W.). That was written on my instructions. (Letter at p. 147 handed to witness by Smith to read—C.H.W.) I do not know
40 whether the furniture was left there for storage purposes or let to me. I would say some of the furniture was left to me or some left for storage. I agree schedule is comprehensive list of all furniture that was left on the premises. What I meant to say in letter at p. 147 some of furniture let to me and some left for storage purposes. At time I wrote letter at p. 147 I had some of the articles mentioned in the schedule. I agree I had no schedule or inventory of the furniture. I knew the articles I saw there

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had been given to me—those I did not see I did not know whether they had been given to me or not. Not true I did not want to pay for the missing articles. I agree that apart from looking round I had no reason to believe the schedule incorrect. I thought at time I instructed Mr. Harris I thought Madam Tay only wanted these articles she had left there for storage. I also thought she was not asking for all the furniture that she had let to me. There were other articles of furniture she had let to me which do not appeared in the schedule. One or two chairs, some tables—two or three tables. That is all the articles I remember. I am referring to three green painted tables. Put to me I am lying I deny the suggestion. Put to me I pretended the articles were stored knowing they had been rented to me or the other way round I deny the suggestion. 10

Now 4 o.c. To 8th September 10.30.

(Sgd.) C. H. WHITTON.

Wednesday, 8th Sept. 1954.

Contn. Suit 596/52.

PANG KEAH SWEE—*XXn. resumed.*

Suggested to me my letter of 5th March written to suggest letting not a furnished letting I say it would appear to be so. Referred to rent receipts of the \$220 I would only attribute a small portion to the furniture. 20 I later took steps to have water meter put in on my own behalf. Suggested I should have a separate water meter because Miss Lim complained I was using too much water. I made the suggestion through the lawyer. She never spoke to me herself about this subject. She wrote to me through her lawyer. (*To Ct.* : I can't remember what I did with that letter.) I deny an incident occurred when I tried to arrange for water supply. I did not speak to Miss Lim at any time about the water supply. I never took any steps to have my separate water supply. I did not call in a plumber. I called in a plumber to move a sink. The sink not in premises when I went in there. I put the sink in the premises. I did not get permission 30 from landlady to put in the sink. Subsequently I took it out. Did not get permission to take it out. Referred to letter at p. 178 I cannot say if they were taken to Police Station. Sink was removed without landlady's permission. I have never put a water meter in. I was on speaking terms with Mr. Teo Sin Hun. I agree my position on the premises identical with that of Mr. Teo Sin Hun. From 1947 until I got notice to quit from Madam Tay I did not speak to Miss Lim about my position in the premises. I agree that from March up to June 1952 Miss Lim may have been arranging premises upstairs for business premises. I visited first floor when Mr. Teo in occupation but I cannot remember how furniture then arranged. I have 40 been to first floor since Miss Lim move in. I did not go up there apart from occasions I went to make complaints while she was there. I did not notice new shelves had been put in on these occasions. I did not notice shelves near the floor. Noise I heard not similar to noise of shelves being put in. It did not sound like noise for putting in shelves—Madam Ang alone up there—she could not have put the shelves up without workmen.

- I think there is a difference, but I cannot describe it. I think it was caused by a hammer. (*To Ct.* : I quite agree noise of hammer consistent with shelves being put in.) Noises I complain of happened between March and June after repairing work was over and not going on. Noise I heard of moving furniture could have been caused by installation of furniture. I agree first entry relating to noise in my diary was on 25th March 1952. I started that diary because previous disturbances one of which was noise which made me think I might have to go to Court. Alterations upstairs commenced after 1st floor tenant moved out 31st December 1951.
- 10 Miss Lim had already moved into top floor. Repairs went on for two months or so and then Madam Ang and Miss Lim moved in. Repairs in January and February. Repairs soon after Mr. Teo left and went on for about two months. That noise annoyed me to some extent but I thought workmen could not avoid it. That noise quite different from noise of which I subsequently complained. A certain amount of banging when workmen there. I say it was different from banging subsequently. Noise of furniture being moved when workmen there could have been similar to that I complained of later, but I thought intention different. Referred to letter of 10th March 1952 at p. 163 "the good reason to believe" was based on what workmen said. Referred to letter at p. 165 I think it was wrong of Defts. to remove my sign. I agree I did not know my position in law about putting my signboard over front of first floor. I did what other shopkeepers did. I agree I did not want that signboard shifted. I did not consult lawyer when signboard first put up there. I did not consult my lawyer on point part of signboard on Defts.' premises when this point arose. It did not cause any inconvenience. I agree object of letter was to prevent her removing the sign. It was not necessary to remove the sign. I would have taken it down if I had known it was not legal to have it there. I did not tell my lawyer where it was. No agreement
- 30 between myself and Madam Tay as to front door—the use was understood. I agree placing of hasp on door entirely a matter of convenience to me, but also understood I would have persons in the premises who would open the door when I knocked upon. Hasp already there when I went into occupation. I have no idea who put it there. I have no idea Deft. family in this house since 1910. I agree benzoine used for incense. I agree my dispensary emits some unpleasant smells on occasion. My dispensary had definitely not been emitting unpleasant smells when benzoine put there. Defts.' premises too far away to get the unpleasant smell. I agree mop of broom type I referred to is usual to clean a floor. I had never seen the
- 40 mop at the window before day I complained of its use. I had never looked for it before. It was on 9th April. My diary entry reads: "3 p.m. Madam Ang Heng Kip threw water down back of shop, soaked broom with water and allowed this dirty water to drip down to ground floor. Repeated this action several times and caused mischief." By "threw water down" I meant water thrown from a container. A fair amount I saw it. I saw it on the floor. It was a splash. Broom was used. There was never an incident with a mop. It would be possible to put broom out of doors to dry, and they would drip. I cannot say if the brooms were used on the first or the second floor. Broom came out from first floor on 9th April.
- 50 I remember that, though it is not written in the diary. 9th April was a Wednesday. Not necessary if one washes first floor that some should come through to ground floor. Careless person might let water get through.

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tion,
continued.

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tion,
continued.*

I agree possible. (*To Court*: The broom was placed over door leading from scullery to backyard and the water dripped down from the broom would fall directly on doorway. Doorway not visible in the photographs.) (Photographs admitted Ex. D1-D2 by consent—C.H.W.) By “ground floor” in entry of 9th April I meant backyard. There is a lodge at the back. To get to toilet it was necessary to go through the backyard. We had also articles stored in backyard. I do not agree no one inconvenienced by the broom. I agree it is a fact this is not in diary that anyone was inconvenienced. My attention to broom drawn by fact when I passed through the door a drop of water fell on me. I regarded that as a matter of importance. It is regarded among the Chinese as unlucky event if water drops on one from a broom. This happened once. My employees complained of broom being there. I agree I had my staff looking out for unusual incidents which infringed my rights. I agree I saw a broom where I thought it should not be. After the incident I went about my business, but when employees complained I went out to look again. It was quite a long while after I got the drop employees complained to me. The employees complained to me throughout the afternoon about it still being there. I do not recall if I told Madam Ang to remove it. I did not make a note how long the broom was there. I suggest broom “recharged” because dripping was heavier at later stage than at earlier stage of the day. No other occasion on which broom put out—did not do so because had found from experience it was useless to complain, in fact it aggravated them. Other occasion on which I complain water was thrown down. I think it would be wrong to throw out water in that way, either maliciously or not maliciously. I thought it was a wrongful act when the water was thrown down. I thought it was wrong to place the broom there. Ref. the incident in November 1951 (Para. 19 S/C.) I have no evidence to contradict Miss Lim’s statement she had upset a pail of water. I agree that might happen to anyone. I would be angry if in these circumstances someone accused me of doing it maliciously. I accused Miss Lim of doing it maliciously. She was indignant. I have diary entry on April 4 “11.15 a.m. Madam Ang Heng Kip threw water down open space at back of shop.” She threw it from first floor. That is not a guess. I saw Madam Ang on that floor. She threw it out of container. I forget what sort of container. She was not throwing the water at me. I noted down this throwing of water because it was done intentionally. In normal course of events I would not have bothered about such an incident. I meant open space at back of shop in both entries, 4th and 9th April. On night 30th–31st March I had my employees on the premises. No complaint was made about this hole to either Deft. 1 or Deft. 2. No letter written by my solicitors. Not mentioned by me to Defts. before it appeared in S/C. I did regard this as a particularly serious matter. It would have inconvenienced me in exercise of my business. I did not send written protest because I thought it would only make matters worse.

Now 1 o.c. To 2.30.

(Sgd.) C. H. WHITTON.

Resumed—2.30.

I did not see anyone actually make a hole. I never examined to see, but I knew there was no hole there. I blocked it up. Blocking removed.

Similar position with regard to hole over 5 footway except that presence of a hole on 5 footway is common practice for people to see through. Decent people wouldn't sweep dust through that hole. It was one Sunday this happened. On a number of occasions on that Sunday. This was on 1st June. (Referring to diary.) When I complained to Madam Ang she threw tins of water at me. My shop open 8.30 to 1 o.c. on Sunday. I understand Chemist shop exempt from legal requirement of closing one day a week. This happened only one Sunday. An assistant told me about turning off lights on 1st June. Assistant being called. Told me about

10 9 p.m. there was a lot of noise upstairs and later on Miss Lim came downstairs and switched off the light. I interpret use of electric light means reasonable use of electric lights. Lights should have been used in a reasonable way. I was on premises on 1st June during business hours—that was up to 1 p.m. 1st June being a Sunday. I didn't write any letter about this. I don't think water could come down through hole in 5 footway just through windows being opened. I do not remember there having been rain that day. There was no rain that particular day. It was a distressing day for me so I remember. Customers were inconvenienced by that occurrence. Water did not fall on any customer. Some were

20 nearly made wet. They had to avoid it. Customers who nearly got wet must have seen it coming down. Circumvented it. European customers. I am not prepared to say she saw customers coming before letting water come through. The water was dripping through. On three occasions. Customers did complain. I did not take their names—it would be bad for business. I told customers what had happened—I said usual trouble with landlords. Incident on 1st June when Deft. 2 poured water on my desk was at 11.50 a.m. I did not complain to Madam Ang. Miss Lim not there. I did not write a letter about it. First informed Defts. in Statement of Claim that I objected to this. Report of Deft. 2 very same

30 thing later same day was given me by assistant. That was on June 2nd. I put down note of report on loose sheet of paper because space in my diary for 1st June filled up. (Witness has got it but I do not let him use it as Smith questions its validity—C.H.W.). I did not note in my diary which incident I witnessed personally and which was reported to me, but I would know by looking at time of incident as stated in diary whether I was present or not, and I would also know from memory. Referred to incident 26th March (Para. 20 S/C—C.H.W.) I said Miss Lim throw these articles down. I was standing at foot of stairs. I was there to ask her to stop making a noise with wooden clogs going up the stairs. I would

40 expect her to wear shoes. Objected to clogs for simple reason they caused disturbance. I haven't noticed what sort of footwear Madam Ang now wearing. I shouted at Miss Lim "Don't make such noise." I would not call that scolding her. I must agree I was annoyed. I did not intend to show annoyance. I thought I had every right to tell her stop doing what she was doing. Miss Lim is not much older than I am. I agree she is owner of the premises. I agree she is an educated woman. I did not shout at her in same way as if she was a coolie woman. I am not able to say if she got a start. Miss Lim is always in a hurry, I had not opportunity to remonstrate with her. I did not know she was going to do some painting

50 —as far as I knew premises already decorated. If she preferred to wear clogs it was her own affair. From my point of view I was only concerned with the noise. I objected to her wearing clogs because they do make a

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noise. Miss Lim very noisy when she wore clogs. 3rd June was a Tuesday. (Para. 14 S/C.) Incident did not start because Deft. 1 said I was trespasser at place. I was not present. I was present in shop on 30th May. Incident of Dft. 2 entering my premises carrying a broom on 31st May, not 30th. I was not present when it occurred. I am going to suffer by door being left open at 6 a.m. (Para. 10 S/C.) Way I would suffer was if caretakers not aware door left open someone might have slipped into shop and stolen something. An employee will give evidence to that. Practice of putting hasp on stopped when Miss Lim padlocked the hasp so it cannot be used. Miss Lim removed this through which I used to put hasp and threw it away. She put padlock instead. One of things I complain of is I want to use the pin—for security purposes. I was merely objecting to the door not being closed by Miss Lim after she went out. I say 5.30 a.m. is unreasonable time to want to go out. Not unreasonable to want to out to Church to worship at 6 a.m. Referred to para. 8 S/C. I say 5.05 incident according to report from Chong Siang Guan Deft. 2 opened the door, peeped in and then went away. Deft. 1 said on many occasions she would use every means to get me out of the premises. 10

Now 4 p.m. To fresh date to be fixed by Registrar. (*Habeaus Corpus* proceedings tomorrow C.J.'s Court in which Smith appearing.) 20

(Sgd.) C. H. WHITTON.

True Copy.

(Sgd.) KWEK CHIP LENG,
Private to Judge, Court No. 3,
Supreme Court, Singapore.

3rd November 1954.

Resumed.

PANG KEAH SWEE, on former affirmation, *XXn. resumed.*

Referred to paragraphs 32 and 33 S/C. I say skipping on quite a number of occasions—cannot say how many. Skipping sometimes in morning, sometimes in afternoon. Between March and June 1952. Miss Lim was skipping. I did not see her, but was satisfied she was skipping. 26th May was one occasion on which there was skipping—11.30 a.m. to 12.55 p.m. It was a Thursday. I did not ask her to stop. (Witness gives this date and time after referring to diary—C.H.W.) Another occasion was 23rd May 11.50 a.m. to 12.05 p.m.—skipping and stamping the floor. I did not ask her to stop. 28th May a further occasion, 1.10 p.m. to 1.25 p.m., skipping from one end of floor to other. I did not ask her to stop. June 14th another occasion—skipping for about half an hour from 10.30 a.m. I did not ask her to stop. I agree position cannot say if other occasions unless I go through my diary. I went through diary at time I saw Mr. Harris to prepare claim. I did not specifically ask Miss Lim to stop the skipping. I refer to Miss Lim only as necessary in para. 33 S/C. Sometimes I objected even to walking when excessive noise made. 40

Q. When did she run ?

A. I have to refer to my diary. (Does so—C.H.W.)

On 29th April at 12 midday she was running about and playing with ball about ten minutes. I did not complain on that occasion. I am not sure without referring to the diary. It might have been the first time. On 2nd May another instance. I cannot say whether April 29th first instance or not. On 2nd May 4 p.m. to 4.10 p.m. there was running about on the first floor. No ball-playing on this occasion. No mention of wooden clogs on either of these occasions. I did not protest on 2nd May. I made several protests against this sort of thing. I cannot say when I first protested, even after reference to diary. I protested on 22nd May after there was 10 skipping on the floor and playing with ball—I ran upstairs and remonstrated with mother and daughter. They became abusive, spat at me and used a broom to chase me down. The ball-playing stopped after I made that protest. There was ball-playing on many occasions subsequently. At 2.25 p.m. the same day the ball-playing started again. On 23rd May from 11.20 a.m. to 11.35 a.m. there was ball-playing again. On 9th June at 11.45 a.m. Miss Lim played ball for about ten minutes. On 12th June 9.30 a.m. to 10.30 a.m. Miss Lim jumping about on first floor and Miss Lim playing ball off and on. These were occasions Miss Lim played ball. At 12.30 p.m. on 17th May to 12.45 p.m. there was playing with ball, and 20 banging on floor. On 16th May 12 p.m. to 12.10 p.m. playing with ball, and ball fell downstairs.

I remonstrated with landlady but she just ignored complaint. On 15th May 5.30 p.m. playing with ball on wooden floor for about 15 minutes and causing general disturbance. By general disturbance I meant she was a nuisance by playing with the ball. May 1st 3.20 p.m. to 3.40 p.m. playing with ball and jumping about the floor. No protest. 30th April 4.30 p.m. to 4.45 p.m. again playing with ball and jumping about first floor. No protest. The ball a tennis-ball, and it sounded as if it was being bounced against the wall. It is unusual for people to play with tennis-ball in their 30 house. After working hours this practice would not have been objectionable. I think this ball game should never be played in these premises. I am not able to say whether I know of instance ball-playing since 14th June 1952. I have no independent recollection of it, and not in diary. (*To Court*: The last entry in my diary is 14th June.) It is correct that last entry in relation to the ball-playing was 12th June. I do not agree with suggestion that after I complained about moving of furniture they stopped moving furniture. I cannot remember when I first complained about furniture moving. I do not remember making any particular complaint regarding the movement of furniture. I have independent 40 recollection of the hammering on empty tins. I remember on one occasion hearing the banging of a tin on the first floor for a few minutes. I do not know who was banging I did not see. It might have been either Miss Lim or her mother—could not have been both. It sounded like empty kerosene tin. As far as I remember only one occasion that happened. I did not complain. The hammering on the wooden floor was not consistent with fixing of book-shelves. It was done on several occasions. I made a note in my diary. The “hammering on the wooden floor” I refer to in para. 33 S/C was sometimes with a piece of wood and sometimes with a hammer. First occasion was 25th March there was banging 5.30 p.m. to 5.50 p.m. 50 Banging of furniture and pieces of wood on first floor. I asked Mr. Harris about this incident, but I did not make personal protest about it. Referred to this letter (p. 166—CHW). My diary says 5.30 to 5.50.

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Q. You will observe colour of ink of 5.50 different. Was the 5.50 put in subsequently ?

A. It might have been put in subsequently.

Q. If it had been put in subsequently it would have been for purpose of evidence in this case ?

A. Yes.

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(Court observes diary. It appears entry of "to 5.50" might have been made later from colour of ink, but I am unable to form firm impression on the point—C.H.W.)

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I suggest by banging that she might either have thrown it down or 10
dropped it. It was a big bang. There were several bangs. Referred to
my diary entry 26th March this information given me by my employees.
At that date 26th March I think Miss Lim had already moved into the
premises. She was sleeping there off and on by that date. By "banging
the stairs" in letter of 27th March I was referring to running up the stairs
with wooden clogs. I was concerned with the noise—not how she made it.
I did want to give my solicitor impression that she was out to make a
noise. I did not deliberately suppress from my solicitor the noise
made by wooden clogs. I still say she deliberately threw down the
kerosene tin. On April 11th there was a using of a hammer on the floor 20
throughout the afternoon. Madam Ang Heng Kip used a hammer to knock
at the floor directly over the desk where I was sitting. No protest. The noise
was such as to worry me. Did not protest because complaining was of
no use. I agree I made no protests and when I had accounted enough
instances I came to Court. I made a number of protests. I cannot
remember when first. Put to me first time I did anything about noise
at all was in letter of 27th March, I agree it was first written protest but
it was not first verbal protest. Prior to 25th March there were verbal
protests. I cannot remember when they were. They were in relation to
her general behaviour. I cannot recall any occasions before 25th March when 30
I made verbal protest about hammering on wooden floor. No hammering
on wooden floor prior to 25th March. Prior to 25th March no ball-playing.
Prior to 25th March Miss Lim did wear her wooden clogs while walking
round first floor of premises. She never ran in there. They did move
furniture before 25th March. No skipping prior to 25th March. I did
not hear any hammering of tins prior to 25th March. Prior to 25th March
there was the banging of furniture, but no other kind of noise to complain
of. I did not complain about walking about in clogs before 25th March.
I had complained in 1951 about the dragging of furniture by Miss Lim.
Even in 1951 the causing of noise by dragging furniture by Deft. 1 and 2 40
in 1951. I complain about the noise from the top floor in 1951 as well
as from the first floor later. (*To Court*: I had no complaint to make of
noise on first floor before March 1952.) I cannot remember when I
complained in 1951. I did not go to a solicitor about it. The noises
made in 1951 were not so bad. I do not agree it was no worry to me at
all. At first I tried to negotiate with Miss Lim.

Q. I put it to you you were prepared to put up with the noise provided Miss Lim would recognise you as her tenant ?

A. Yes.

Q. If she had done that you would not have complained of the noise ?

A. If she had done that she would not have made the noises.

I was prepared to make concessions—I was prepared to pay more rent. I was prepared to pay about \$250. I did not communicate the offer directly to Deft. I think I spoke to Mr. Harris about it. I tried to negotiate through relatives, but she was unwilling to have me as tenant.

Q. You were not prepared to leave the premises under any circumstances ? Not unless you were thrown out by an order of Court ?

10

A. That is so.

I told Mr. Harris there was no covenant against sub-letting. I did know that. I agree Madam Teh gave me a notice to quit. I think Madam Teh gave me a notice to quit because of legal formality. Not just that landlord could get vacant possession. I agree I was prepared to negotiate with a view to Deft. recognising me as tenant. I agree by March 25th it appeared that negotiations would not be successful.

Q. After you went to see your lawyer you started keeping a diary of events ?

20

A. Yes.

I agree Mr. Harris had been acting for me in relation to these premises prior to 25th March. I was prepared to forget about the noises if she would recognise me as a tenant. I decided to keep this diary of my own accord—not on suggestion of Mr. Harris. Red ink entry in Chinese for 14th June was written by my brother. Diary not left on my table for people to write in instances of incidents. Chinese characters on 9th June written by my brother. I was not present at incidents 5 a.m. and 9 a.m. to which entry in diary on 4th June. Not present at incident 4.30 a.m. 25th May. Referred to entry 23rd May I agree that entry was altered. Originally 11.25—the ball playing went on again after I thought it had stopped and went on till 11.35. Why word “ ball ” added in the entry was I did not think squash appropriate. I corrected it at the time. I cannot remember when I corrected. (Diary admitted as defence exhibit D.3—C.H.W.) Referred to entry May 15th “ banging empty tin with hammer ” I thought it was Miss Lim.

30

Now 12.55 To 2.30.

(Sgd.) C. H. WHITTON.

Resumed 2.30.

XXn. resumed.

40

Referred to diary April 12th I see entry made for that day. It was made same day. I crossed it out later when I saw it had nothing to do with the case. Referred to entry 31st March I wrote in Monday because it was misprint on part of printers. Referred to entry 27th March entry relating to Miss Lim crossed out not by me—I cannot offer explanation. I sometimes use pen, sometimes pencil to make ordinary entries. By

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tion.

“ Thursday night ” I mean night of Thursday-Friday. So entry opposite 24th April would have been made on Friday. Referred to entry 1st May and asked to explain why I crossed out what I had originally written I originally wrote the entry on 1st May at the time 10.30 a.m., and I crossed it out because I found there was a loose sheet. I read out at Counsel's request entry on loose sheet. I say it must have been a separate incident. My explanation is I crossed out original entry because I wanted to write it out on a new sheet. Put to me true explanation is I did not write out entry as to incident as time I say that is not so. It is possible to insert loose sheets in the diary. I deny inserting loose sheet there—it was there when I got the diary. Piece of paper attached to entry 1st June was written out the following morning. By putting date 1st June I meant to say incident took place on 1st June, not that I wrote entry on 1st June. It is possible to wash the first floor without water coming through. I was not there during the night.

Re-examined.

I took furnished letting from Madam Tay. Furniture in premises—when I went in not suitable for client's business. Madam Teh knew I was going to start chemist's business. I used some of the furniture in the letting for my business—chairs, etc. Rest of furniture I did not use I stored at the back. Between 1st March 1951 and issue of writ in these proceedings Deft. 1 started proceedings against me for possession. I was served with some sort of document, but later was told proceedings in question had been withdrawn. Proceedings I refer to are those in file you now produce. I say now no action was taken to get me out of possession of these premises before September 1952. The proceedings started in September 1952 were discontinued by notice in December 1952. Not true I had plumber on premises for purposes of installing my own water supply. Permission not required to put in or take out a sink. Miss Lim did not recognise me as tenant at time I had the sink taken out. I am not complaining of hammering at any time when workmen were on the premises. The hammer was used directly on the floor boards. (*To Court* : I say that because it sounded like that.) Noise I dread was not the noise of a hammer on a nail going into wood. Hammering I heard was done over whole floor off and on throughout the day. One favourite spot was part of floor above my desk. My solicitors first came to know of the existence of the diary in June 1952. It was a bit before the issue of the writ in these proceedings diary handed to my solicitors. One time in 1951 water came through onto my desk—that was occasion I went to the Magistrate. I never got dust or water through the hole in the floor prior to the occasion about which I related in evidence at previous hearing. I think water and dust brought on to my desk deliberately. It was on Sunday 1st June water came through to five foot-way. It could not have been due to Madam Ang just sweeping up rain water. It was not raining that day. I don't think my user of light and water any different from time I was sub-tenant of Madam Teh. I told customers whenever they remarked about the noise upstairs. I swore affidavit in support of injunction in these proceedings. The affidavit related to matters complained of in this suit. My affidavit sworn on 16th June 1952. Miss Lim was wearing wooden clogs when she was playing with the tennis ball.

(*To Court* : I say that because I have seen Miss Lim going upstairs wearing wooden clogs, and the sound was like the sound of wooden clogs.) On 22nd May when she chased me down Miss Lim wearing clogs. When ball came downstairs and when she went after the ball on 16th May she was wearing wooden clogs. (*To Court* : She came right down to the foot of the stairs onto the ground floor.) Sometimes when noise started I put down time right away and then later made a note when it stopped. Sometimes I made a mental note when they started and when I was free wrote down time it started and stopped. It usually was my assistant
 10 Chong Sian Guan who told me about the hammering at night. My tenancy with Madam Teh a monthly verbal tenancy. I was not told by my solicitor in March 1951 there were no grounds on which I could be held to be a statutory tenant—I was told to the contrary. Subsequent correspondence related to grant of a lease. I do not think actions of three Defts. I complain of due to lack of consideration—I think the motive was to get me out.

(Sgd.) C. H. WHITTON.

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EVIDENCE of Teo Syn Hun.

No. 17.
Teo Syn
Hun,
Examina-
tion.

20 P.W.2 TEO SYN HUN—a.s. in English—*Xd.*

I live at 10 Pheng Geck Avenue, Sennett Estate. Clerk. I attend today under sub-pœna. I previously lived in premises 265 Orchard Road. Paid rent for that occupation. To Madam Tay. Moved in early 1947. Occupied top floor. At that time occasionally saw Miss Lim on premises. I presume she saw me. I subsequently moved down to first floor. About a year or two after I had moved into the premises. I occupied whole of first floor. Paid rent to Madam Tay. I used to see Miss Lim on first floor. I also saw Madam Ang, Deft. 2, when I was occupying first floor. I was given notice by Madam Tay to vacate first floor on 31st March 1951.

30 Notice given February 1951. I did not vacate. I wrote to Madam Ang letter in February. (p. 145 of AB—C.H.W.) I got a reply. Not favourable. (p. 148 of A.B.—C.H.W.) I received notice from Messrs. R. C. H. Lim to vacate. To vacate within one week. After Madam Tay left in March 1951 Miss Lim used to come to top floor a few days a week. I don't know what for. Repairs were carried on there. Repairs started short time after Madam Tay left premises. I would say they took a few weeks. I moved out of the premises in December 1951. Left because I found alternative accommodation. I found alternative accommodation because a lot of disturbance in the house. (*To Court* : I found the place unpleasant to
 40 stay so I looked out for another place.) By disturbance I mean people walked about the top floor with wooden clogs. Miss Lim and her people then occupying the top of floor. Noises went on right up to midnight. In early morning chopping of coconuts and all that sort of thing. That was in kitchen at back. That was at 5 or 6 in the morning. Sometimes water was allowed to trickle onto empty tins in the early morning. I think the walking about with clogs was deliberate, not just due to lack of consideration. I spoke to Miss Lim about this noise. She said that if I

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did not like that sort of thing I did not have to stay there. Nothing but this noise which caused me to search for other premises. I and my family complained to the police on one occasion when I found water trickling down from top floor through the ceiling onto my sister's bed. I had spoken to Miss Lim about it. She replied she had to wash a floor. I complained pleasantly. She just yelled back. She did not say she had upset a bucket. Mr. Pang also reported with me to the Police. We saw the City Magistrate in the presence of Miss Lim. Reported at Central Police Station because thought only way to stop further recurrence of this kind. Did not want repetition. Apprehended repetition because Miss Lim 10 had expressed no regret for what had happened.

Now 4.10. To 4th November 10.30.

(Sgd.) C. H. WHITTON.

Thursday, 4th Nov. 1954.

10.30 Contd. S. 596/52.

TEO SYN HUN—*Xn. resumed.*

“Obnoxious practices” in letter at p. 156 8.9.51 refers to disturbances and screening of space between first and second floor. Also a dustbin was put behind screen and rubbish kept there by Miss Lim for days without being removed. Usual domestic rubbish. For instance prawn shells 20 and fishbones. The smell of the shells becomes awful after day or two. Sometimes rubbish kept there as long as a week. Also rubbish was swept from top floor down the stairs. The dust came through wire netting and came into my sitting room. When Miss Lim put up the screen I could not reach the switch to turn on the light in our sitting room. When she got charcoal she had it put on one side of the partition. (*To Court*: Screen I refer to of expanded metal.) Charcoal received once or twice a month. (*To Ct.*: For light in sitting room at night I had to depend on light from bedroom.) I complained to Miss Lim, but she said house was hers and she could do what she liked, and she admitted she was doing all this to force 30 us out. I complained to her each time I saw dust on the floor and when the dustbin became too smelly. Usually no immediate action taken with regard to the dust-bin. I also wrote to the Commissioner of Police. In September 1951 I was served with a summons in District Ct. at instance of Miss Lim. (P. 155 of A.B. refers—C.H.W.) That case never came for trial. I left the premises at end of December 1951. I paid \$360 rent. District Court proceedings did not cause me to leave the premises. When I was on middle floor, Madam Tay on top and Plaintiff on ground floor I had key from Madam Tay which gave me access to the premises through 40 the main front door. After 11 p.m. an attachment was put on inside, so I knocked at the door and someone would come and open it. I had no difficulty at any time in getting in. Front doors closed at usual closing time of the shop. When shop closed both front doors closed, and if I wanted to get in I used the key. Sometimes from 6 p.m. onwards half a door open. I was not worried by the noise made by workmen.

Cross-examined.

Cross-
examina-
tion.

I am a bachelor. I believe my rent \$40 p.m. I have receipts, but none with me. I have destroyed receipts so long since I left the premises.

I have never lived in S.I.T. flat. I was connected with application for one in 1951. By that I mean I applied for S.I.T. flat. In my own name. In 1951. Referred to letter at p. 145 of A.B. I say I was sub-tenant not guest of Madam Tay. I used the word "staying" because I was not being careful with my words. Only reason I have for saying I was sub-tenant is that I paid rent. I was introduced to Madam Tay. Not friend of hers before I went into occupation. My right to stay in premises personal to me, my sisters and cousins. I agree I was not acquiring rights I could pass over to someone else. I agree I made no suggestion in letter of 19th February that I was sub-tenant. I agree I made no mention that I had been paying rent. I agree no suggestion made I had any particular part of premises. Shown letter at p. 156 of A.B. I agree I saw it. I agree I never replied to this letter. Not true Madam Tay took us in as guests. It would not be correct to say either Madam Tay took us in until we could find other accommodation. I don't know the rent of the whole premises. I did not know landlord could get possession against chief tenant when rent from sub-tenants exceeded seventy-five per cent. of approved rent. I don't think I had anything to conceal. I did not know in Control of Rent Ordinance provision for eviction on breach of covenant against sub-letting. Madam Tay never showed me rent receipts. In using words "staying with" in letter at p. 145 A.B. I just used first words which occurred to me, I agree reasonable interpretation of this letter that I had no legal rights in the premises but hoped to get tenancy. I deny that was impression I wished to convey. I had not told Madam Aug how I came to be in the premises. I did not know if Madam Tay had done so. I agree that in this letter I did not say I was a sub-tenant. I agree letter does not say I was. I agree that in that letter I was applying for a tenancy on your client's terms and conditions. I agree whole suggestion of the letter is that if my application for the tenancy unsuccessful I would have to go.

Q. At time you wrote that letter had you any intention of going?

A. If Miss Lim did not grant it we would ask for time and do something about it.

Q. When you wrote that letter did you intend to leave at end of Madam Tay's tenancy if your request refused?

A. We would have to stay on if we did not get alternative accommodation.

Put to me I intended to give impression we were sort of people who would go if not allowed to stay on I say I was trying to get accommodation but could not get it. Madam Tay's tenancy came to end at end of March 1951. She gave me notice to quit too. Document produced is original notice (Admitted Ex. D.4—C.H.W.) Madam Tay told me before 19th February I would have to go. I told her I would approach Miss Lim to try and get a tenancy. Did so because she was owner of the house. Madam Tay did mention to me who was house owner. I don't remember the occasion on which she told me who owner was. I got letter of 2nd April 1951 at p. 148 of A.B. I cannot remember if I gave any instructions to reply to it. I agree I started looking for alternative accommodation. I agree I started

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Cross-
examina-
tion,
continued.

looking for alternative accom. when Madam Tay gave me notice. I agree that was so even after I had seen a lawyer. I found alternative accommodation towards end of December 1951. I had received Writ of Summons in September. The alternative accommodation was in Kay Poh Road. I do not know its number—it was my cousin's place. Not a cousin who had stayed with me in Orchard Road. Remained there a couple of years. My sisters and one cousin moved in with me. Other cousins went to stay with friends. Cannot say if they went as tenants. These two cousins men. After two years moved in present house in Pheng Geck Avenue. I have bought that house. I vacated Orchard Road premises some time in December 1951. I did not pay anything to my cousin to stay with him. I agree it was impossible to get another tenancy at \$40 per month without paying "tea money." I agree position was your client's intended to proceed with order for my eviction unless I got out of premises, and that I did so. Miss Lim did speak to me. She did say about getting us out. I agree attitude in para. 3 of letter at p. 156 A.B. a reasonable one. I did not deny the suggestion Miss Lim had been most considerate as far as Mr. Teo concerned. None of my cousins wore clogs when we were in 265 Orchard Road. I think people ought not to wear clogs in premises like that. They should not wear clogs on wooden floor. I think Miss Lim wore clogs to annoy me. If I wore clogs I would not make as much noise as Miss Lim did—she made deliberate noise with them. I agree Miss Lim made noise as anyone else would with clogs. I say she made unnecessary noise with clogs. When I say "unnecessary" noise I think Miss Lim did more than merely use them carelessly. I complained about general noise and disturbance—not about clogs specifically. Put to me I did no complaining at all I say I did. Put to me I vacated premises on 31.12.51 because I knew that in nine days' time Court order against me I deny that. I came to know Plaintiff after he moved into the premises. Still a friend of his. I did not like Madam Ang.

Re-examined.

Re-
examina-
tion.

I first heard about this present case two or three months ago, when I was with William Jacks. Might have been in April. Later I was served with subpoena. I received reply to letter of 19th February 1951 from Messrs. R. C. H. Lim & Co. When I said it was "more than that" in reply to question about wearing clogs "carelessly" I say from times and frequency she did it. She would do it at 1 o.c. or 2 o.c. in night time. She would walk backwards and forwards.

(Sgd.) C. H. WHITTON.

—Provisionally released—CHW— 40

No. 18.

EVIDENCE of Walter Henry Fuller.

P.W.3 WALTER HENRY FULLER—a.s. in English—*Ad.*

- I live at 25 Moon Crescent, Changi. Prison Officer. I know Singapore Dispensary, 265 Orchard Road. I know Plaintiff as proprietor of it. I came to know the dispensary by being a customer. In 1948. I used to go to dispensary practically daily at one time. That was before I went to live in Changi. In June 1952 living at Telok Kurau. At that time I went to the dispensary practically daily. I was then employed by
- 10 Harbour Board. Used to go to dispensary nearly every morning at 7.15. One morning about 7.40 in 1952 I drove my car there, and after I got out of my car to go to dispensary I heard noise of glass being broken. I also saw the door of the shop open, which was most unusual at that time. My usual practice to tap on the door and purchase an inhaler. When I saw door open on morning referred to I mean half door open. I walked in. I saw one of the shop assistants at the telephone looking very worried, and the other was standing just inside open door. Nobody took any notice of me. I saw a rather burly Chinese threatening one of the assistants. Burly Chinese I refer to Deft. 3. He was wearing dark glasses.
- 20 I did not understand what he was saying. He was shouting in Chinese at the young assistant. No one else in the shop at that particular time. Near the door a large glass pane from back of shop window. This was shattered. (*To Court*: Pieces on floor. Still in frame a large number of jagged pieces.) The assistant who appeared to be frightened pushed by the burly Chinese, partly pulled it back, flung it back, and then more glass fell out. Assistant near door I refer to very small undersized type. I did not see anyone touch anyone else. Assistant was not obstructing the burly Chinese in any way. I saw an elderly Chinese "nonya" type come from back of the shop after this was all over. She went through the
- 30 shop with very quick steps and called out "Police, Police" and blew whistle, but her voice faint. I notice she had bunch of keys at her waist. She was shouting "Police" in English. I identify Deft. 2 as woman I refer to. About same time as this woman blew whistle another Chinese woman came from outside. She is Deft. 1. (*To Court*: She came from the street.) I do not know what she said to Deft. 2 but she spoke in Chinese. Both women then went into the shop and disappeared. I had quite often seen the two assistants I refer to previously. I did not see either of them being cheeky or impudent. Plaintiff once told me of his troubles with people upstairs. A long time afterwards when I went to
- 40 get cheque cashed at cashier's office I saw some blue smoke in the shop. I asked Mr. Pang what it was. He replied it was "a little agitation" or words to that effect, and took me along to show me where it was. He showed me stairs near cashier's desk leading up to other stairs. Gate was locked. Door of expanded metal. Through it I could see a tin lid from which something smouldering and which was causing the blue smoke. This smoke caused an irritating feeling in my throat. There was some sort of smell from the smoke, and not a very pleasant one. An acrid sort of smoke. Once I was in the shop there was a noise overhead as of someone jumping or bumping something heavy. Noise more or less in
- 50 one spot. It lasted all the time I was in the shop—a minute or so. One

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day I was in the shop Deft. 1 came in with an empty bucket. She looked sullen and appeared to me deliberately to bring the bucket against a showcase as she walked by. I recall swearing an affidavit on 19th June 1952 in connection with this application.

Cross-examined.

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continued.

I don't think the fumes were incense. Not church incense. Incident appeared to me to be over when Police called. Incident in my view was trivial—too trivial to call Police. Possibly old lady like Deft. 2 might not think same way about it. Glass I refer to was glass at rear of window. I heard glass broken, did not see it. I was only customer at time, and not done in my sight. I do not remember seeing any articles scattered on floor. Would have noticed it if not trivial. No disturbance caused by Deft. 2. It was not hammering I heard—it was a sort of irregular bumping. I would not agree it was too slight a noise to affect anyone. If the noise was only for a few minutes not serious—no point in making it. 10

Cross-
examina-
tion.

No Exn.

(Sgd.) C. H. WHITTON.
(Provisionally released—C.H.W.)

Now 1 o.c. To 2.30.

No. 19.
Constance
Tabor.
Examina-
tion.

No. 19.
EVIDENCE of Constance Tabor.

20

2.30 resumed.

P.W.4 CONSTANCE TABOR a.s. in English—*Xd.*

Married woman. I live at 16 Woolerton Park. I am customer Singapore Dispensary, 265 Orchard Road. Regular customer. Since early 1952. I have been to the premises in the morning often. One morning I went there I saw broken window. Nothing else that I noticed except that on morning 28th April 1952 there was a very loud noise which sounded like hammering on the ceiling. I could not make myself heard. I asked Mr. Pang what noise was. He said lady upstairs creating a noise. I said “You will have to do something about it because you will not get any customer if this noise continues.” Plaintiff asked me to stay for a few minutes because I told him that I did not think anybody could do that deliberately, but after waiting for about ten minutes I realised that it was noise made deliberately. It sounded like hammers being used, and heavy objects being thrown from one side of room to other. Then all would be quiet and a ball would be bounced—a heavy ball, something like a football. When hammering stopped I heard the noise of the ball. I could hear noise of people running from one side of room to other in what sounded like wooden shoes. Did not seem like sound of furniture just being moved—noise of heavy objects being thrown about. This incident at 11.30 a.m. I did not notice if any other customer in the shop at the time. I noticed shop assistants there. They reacted to the noise—it made work quite impossible, so they were just leaning on the counter. I thought their 30 40

faces looked rather harrassed. I recall date because Mr. Pang asked me if he had to take the matter further would I be prepared to tell what I heard, and, if so, would I make a note of it. I did so, I swore affidavit 20th June 1952 in these proceedings.

Cross-examined.

No suggestion was made to me they were going to be asked to stop the noise. I did not see Mr. Pang note anything in his diary. Very crowded shop.

No Rxn.

10

(Sgd.) C. H. WHITTON.

(Released—C.H.W.)

No. 20.

EVIDENCE of Pang Kiah Joo.

P.W.5 PANG KIAH JOO—a.s. in Teo-chew—*Xd.*

I live at 271 Orchard Road. Salesman. I am younger brother of Plaintiff. I am employed by him in Singapore Dispensary, 265 Orchard Road. I have been so employed for about seven years past. Prior to 1951 I had seen Miss Lim on the premises. I have seen her speaking to my brother. Soon after we went into occupation. This was immediately before we started the dispensary business. I heard Miss Lim asking my brother what business he was going to do. I heard my brother reply dispensing business. No objection raised by Miss Lim. I have slept on the premises. Always. Started doing so soon after business started and continued until September 1951, when I stopped. Between time Madam Tay left premises and time I ceased sleeping in there there was a lot of disturbances. The owner came and created disturbances. As I could bear disturbances no longer I moved out. During time I slept on premises I had to get up to open front door for people. For all those staying upstairs. Apart from the lock I used to put in a pin about midnight, and at 7 a.m. I or one of my assisants would remove it. Occasionally I had to go down after midnight or before 7 a.m. to let occupants of upper portion of house in. About a month after Mr. Teo moved out Defts. 1 and 2 moved into first floor. We used to get a lot of disturbance during day with things like furniture being dragged about. I do not know about nights as I no longer slept there. At times I heard sounds just like jumping with wooden sandals on. Also noise as if tennis ball being hit on floor rapidly. Also heard noises made by hammers hitting the floor. Sometimes water would be poured down from upstairs. Sometimes got the smell of urine. At other times I heard noises made by hefty tins being banged on the floor. Referred to the water I saw sometimes water in front part of premises, and sometimes water which dripped onto my brother's desk which came from a hole which I think made after Deft. 1 had come into occupation—I did not see it before. Smell of urine in the backyard, near window next to my brother's desk. I did not see how it got there. I used to see all three Defendants on the premises. I have seen our salesgirls bumped into by Defts. 1 and 2. Some of the small children of our customers

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Examina-
tion,
continued.*

actually knocked down at times. On one occasion when I was in the shop I saw Deft. 1 knock down a European child. (Smith objects to this evidence. This is only evidence of character. Harris submits relevant as subsequent act, showing course of conduct and intent to cause the Plaintiff to remove from the premises by injuring his customers. I exclude this evidence—C.H.W.) On one occasion Madam Ang came down to our dispensary with a broom, abusing our employee as dogs and thieves. (Smith objects to this evidence. Harris—pleaded para. 12 statement of Claim. I hold it admissible—C.H.W.) Plaintiff not present at the time. It was Madam Ang's broom. She showed it to the employees and at 10 same time said "You are all dogs and all thieves. I will give you a month's notice, and you will have to quit." (*To Court*: This incident was a Saturday in 1952—I cannot place the month. A number of customers were in the shop.) I recall present proceedings commenced sometimes in June 1952. This incident before the proceedings commenced. I cannot remember how long before. I recall my brother keeping a diary on the premises. I cannot remember date he started keeping. That incident occurred after the diary kept. Deft. 2 remained inside the shop for nearly an hour. I heard her speak to two of her customers in Malay. "Ini tempai 20 punya barang busok busok jangan beli sini" were words I heard her use. Another of employees Mr. Lim phoned up the police. No police came. I then went to Central Police Station, to try and get help. Police would not come since no fight. I became nervous as result of the constant noise. Another employee Chong Sin Yen was also detailed to sleep there. He is also known as Chong Siang Guan.

Cross-examined.

*Cross-
examina-
tion.*

I owe my livelihood to Plaintiff, my brother. My brother kept diary Ex. D.3 in shop. I can write English. I do not know if object of this diary to note incidents objected to. On occasions I saw my brother write incidents he objected to in this diary. I knew my brother was keeping 30 this diary to record incidents. I have partly refreshed my memory from this diary. (Smith reads out Para 12 S/C. C.H.W.) What I say is correct—I went to Police Station and when I came back she was still in the shop. I cannot say if she remained the whole time in the shop. I went after about ten minutes to go to Pol. St. and when I got back she was there. My brother not present when this incident occurred. Chong Siang Guan reported the incident, and I also told my brother.

Q. Can you explain discrepancy in diary giving time 45 minutes and Para 12 S/C giving time 15 minutes?

A. I cannot explain.

40

Suggested me whole of this incident was that Deft. 2 waited for about 15 minutes in the shop for her car to arrive I say that is not true. It is untrue we employees started jeering at her. I did not see Miss Lim collect Deft. 2. She went upstairs. I deny she went out through front door.

(*Harris*—Basis of my S.C. is affidavit sworn by my clients. I inform Harris I cannot accept statement from the bar on the point. Should call evidence if he wishes to—C.H.W.)

No Ræn.

(Sgd.) C. H. WHITTON.

No. 21.

PANG KEAH SWEE Examined.

(Harris asks leave to recall Plaintiff on the point he has just raised.

I allow the application—C.H.W.)

Plaintiff recalled—Xd. Harris.

I recall giving instructions to Messrs. Braddell Bros. in connection with these proceedings. I recall swearing lengthy affidavit containing various dates and time. Mr. Harris drafted the affidavit. I think I had some sort of notes to supply Mr. Harris with necessary information. Note
10 handwritten. Notes not typed before handed to Mr. Harris. I made the notes from the diary. I think I still have the notes in my possession. I think I could produce them this morning.

Now 4.10 To 5th November 10.30.

(Sgd.) C. H. WHITTON.

5.11.54.

S.596/52 (Contd.)

PANG KEAH SWEE—on former affirmation—*Xd. further.*

I produce notes I referred to yesterday afternoon (marked Ex. p1 for id.—C.H.W.) I wrote the notes. I handed the notes to my solicitors.
20 How I came to write these notes was I went to my solicitors' office to discuss what had happened and showed him my diary. He asked me to prepare notes from the diary in an orderly way so that he could use them more easily. As far as I know these notes follow the diary. I read out entry for 30th May 1952 (Reads—C.H.W.) I read out for 31st May 1952 (Reads—C.H.W.) I have never given instructions regarding Madam Ang other than those in these notes. I took the notes back after going through the affidavit with my solicitor. Affidavit sworn on 16th June. Facts stated in original statement of claim—I do not know how prepared. With ref. to para. 12 S/C. my solicitors not instructed by me as period
30 of "fifteen minutes." I cannot personally explain this discrepancy between my notes and the S/C.

Cross-examined further Smith.

All part of notes in pencil written at same time. Ink entries were made after checking the notes with my solicitors. They refer to two incidents. I had not originally mentioned to Mr. Harris. I had diary for my own record. I did enter them in the diary. The notes were for Mr. Harris as well as for myself. I added the ink entries after Mr. Harris handed pencil notes back. I agree I added to some extent for sake of completeness. Not true I added quite recently.

40 *Re-examined.*

I cannot remember exact date I handed this MS. note to my solicitors —sometime in early part of June. From my memory it took a few days

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to prepare the affidavit. Notes were with Mr. Harris during these few days. The pencil notes when completed were at time up to date record of what I had in the diary. Incidents did occur after I handed over the diary. I recorded them in the diary. I recorded them also in these notes. I did mention in my affidavit handing over the notes to the solicitor. (Harris—para. 67 Affidavit.)

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High Court.*

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Swee
(recalled).
Re-
examina-
tion,
continued.

(By Smith with leave of Ct. as to para. 67.) Referred to last sentence of para. 67 of my Affidavit it is not correct these last two entries not added after 16th June. (*To Ct.*: I cannot remember date I wrote the two final entries. When Mr. Harris asked me had any further incidents occurred 10 I told him the further incidents and he made note of them, and I then wrote the ink entries to make my notes complete.) It was soon after the incidents I wrote the ink entries. I stick to that. I cannot remember if it was before I swore the affidavit.

(Sgd.) C. H. WHITTON.

No. 22.
Cheong
Seng Wah.
Examina-
tion.

No. 22.

EVIDENCE of Cheong Seng Wah.

P.W. 6 CHEONG SENG WAH—a.s. in Teo-chew—*Xd.*

I live at 431-D Tampenis Road. Shop assistant. I am employed by Plaintiff. At Singapore Dispensary. Have been employed approx, three 20 years there. In addition to working on the premises by day I was to keep watch on the premises at night. I slept on the premises six nights a week. With another employee of the business. I slept in the front portion of the shop. I slept in the passage between the distance I point out from show cases (about 15 feet—C.H.W.) I know what these proceedings are about. Many things happened on premises after closing hours. Sometimes Miss Lim dragged chairs and tables along the floor, sometimes she poured water on the floor, and allowed the water to drip through on to the goods downstairs. Sometimes she left the front door open on leaving the premises. Sometimes urine was thrown on the zinc covering of the air 30 well. Sometimes noises of hammering came from floor above. These are the things I can think of at the moment. I started to sleep on the premises from time employed there about three years ago.

Q. Do you remember swearing an affidavit ?

(Smith objects to the question "Making of affidavit not a relevant fact." As question is merely to assist witness in recollecting dates I do not think it is objectionable—C.H.W.)

A. Before whom ?

Q. In this Court ?

A. I cannot remember.

40

Usually I reported these incidents to my employer the day after. He used to make a record of them in the diary lying on his table. I have seen

him writing in the diary. Ex. D.3 is the diary. These records were made the day after the occurrences. I do not know if anyone else made reports to my employer. I do not think it was anybody's duty to report incidents which occurred during the day time. If I was present when incident occurred during the day I would myself report to my employer on his return. I say it was Miss Lim who dragged furniture about because she was alone upstairs, her mother having left the premises. Sometimes it happened quite early in the evening. Sometimes past 4 in the morning. I was aroused by the noise. It would go on sometimes for 10 or 15 minutes, sometimes as long as half an hour. One occasion it went on for very long between 4 a.m. and 5 a.m. Noises sounded like dragging pieces of furniture from one corner to corner—noise came from all over the upper floor. I also heard noise of clogs both day and night. Also heard noise of drumming of kerosene tins. Usually about 5 a.m. By drumming I mean noise made by stick on kerosene tin. It was very loud. This noise happened on many occasions. Water coming on to goods below I have referred to happened at night. About 9 o.c. p.m. I am not certain what day of the week—I think a Saturday. (*To Ct.*: It happened many times.) It happened on a Sunday. On one of the days, I think a Sunday, on which a water-dripping incident Miss Lim came down to switch off the lights and did so. I cannot recall which of these incidents happened first. I protested to Miss Lim, and in reply she said "This is my house and I can do what I like. It is not your business to interfere." I rang up Pol. St. at Orchard Road and made a complaint about the water. About 15 minutes later Police Inspector came to premises. When he came the water still dripping from upper floor. Miss Lim upstairs when Police officer came. After Inspector had knocked at door at foot of staircase for long time and disclosed his identity Miss Lim came down. I heard Inspector speak to her for considerable time, but did not hear what he said as I was some distance away. I did not hear clearly Miss Lim's reply. When I discovered the water dripping down on that occasion I called out from downstairs. Complaining about the water, but I received no reply. Nothing further so far as my memory goes happened that evening. A lot of water. Much of the goods downstairs wetted by this water. I cannot remember any other incident earlier that evening either apart from the two I have mentioned. On that particular day I was on duty when shop open (between 8.30 and 1). During business hours of that day water was poured through hole in floorboard just above five foot way. As a result of that Plaintiff went to complain about this. I was with him. Miss Lim's mother was upstairs looking over the parapet at the back of the building. She started scolding Mr. Pang, saying, "Penchuri." She also started throwing water with a cigarette tin at Plaintiff. I saw that happen. We were in backyard. Mr. Pang and I both ran into shop. A while later we heard voices from upstairs and a hammering noise. Loudest of the noises came from a spot directly above Mr. Pang's table. I saw Madam Ang holding the tin and throwing the water out—I am not quite definite it was a cigarette tin, but it looked that sort of tin. Miss Lim was not present at the time of this incident. It was not raining that day. I cannot remember the day or the month these incidents occurred. I am certain it was a Sunday. The throwing of urine on the zinc covering occurred once at night as far as I remember, and on other occasions in the morning before business began.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

*Plaintiff's
Evidence*

No. 22.

Cheong
Seng Wah.
Examina-
tion,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

*Plaintiff's
Evidence.*

No. 22.

*Cheong
Seng Wah.
Examina-
tion,
continued.*

I heard the noise of the splash of liquid on the covering and after that there was a smell of urine. I knew Miss Lim did it because I saw her mother go out that night. When I say that I refer to all the occasions. I reported these incidents to the Plaintiff. I saw him make a report of them in his diary. I had occasion to get up to open the front door for members of family originally living on top floor. I had trouble on several occasions when Miss Lim came about 5 o.c. in the morning knocking very loudly at this door. It awakened me. I used to open the door. I saw no one on opening the door.

(Smith objects to the line questions being put are taking. In my view 10
examination not open to criticism. Inform Counsel accordingly—C.H.W.)

A little while later I saw Miss Lim coming with a policeman. Number of my identity card taken and the policeman left without saying anything. I did not speak to Miss Lim. The policeman spoke to me. In front of Miss Lim. He asked me why I had not opened the door. I said I had but found nobody there on opening. I cannot recall what Miss Lim then said to the policeman. On occasion Miss Lim on leaving the premises she just left the door open, or she slammed it hard. She was empty-handed when she left the door open. I recall incident involving breaking of showcase. I recall customer being there. This was about 8 a.m. 20
This is the customer (Mr. Fuller—identified—C.H.W.) That was before shop open. Before the shop opened that morning Miss Lim came from outside with her brother. She was followed by her brother. Miss Lim proceeded upstairs while the brother after entering the premises tried to open second shutter of front door. By brother I mean Deft. 3. I told him our premises not yet open. Deft. 3 pulled me forcibly from where I was, and opened that side of door with such force that it banged on the showcase breaking it. Then I telephoned brother of my employer, and asked him to come to premises at once as something had happened. While I was telephoning I saw customer I have just identified coming into the 30
premises. Another employee, Tan Soo Lim, was in the shop at the time. After telephoning I came back to Deft. 3 and asked him why he broke the showcase. While argument was going on Miss Lim came from upstairs. She joined in argument and started scolding. She slapped me on the face and then seized hold of carton and started striking me with it. I warded off her blows. In this her glasses fell to the ground. Then Deft. 3 came up and started punching and kicking me. I cannot say when Mr. Fuller left the premises.

Now 1 o.c. To 2.30.

(Sgd.) C. H. WHITTON. 40

Resumed at 2.30.

Xn. resumed.

At a certain stage Madam Ang appeared suddenly—I do not know from where—and I noticed her blowing a police whistle. Miss Lim's glasses came off near front door. Inside the premises. Deft. 3 came out to 5 footway and kicked me there. Employees of neighbouring shop intervened. I did not assault Deft. 1 or Deft. 3 on that occasion. I was not rude to either of them. One evening I was irritated by noises from

upper floor. I looked round and saw what happened to be a turn-screw coming through the ceiling just above Mr. Pang's table. Both Miss Lim and her mother were upstairs at the time. After short while turn-screw withdrawn, and a little after dust and water came through the hole. This was round about 10 p.m. I think I was alone on the premises at the time. Before this incident there had not been talking or shouting on the ground floor of the premises. Water and dust came through that hole on several occasions subsequently. I saw water on Mr. Pang's table at intervals of a few days subsequently for more than a month. I cannot remember
 10 date I first saw the hole. I cannot say if this incident before or after Mr. Pang started to keep diary—the diary was on the table not exclusively for purpose of recording these occurrences. I pointed out the hole, dust and water to Mr. Pang when he came to the shop the following morning, and Mr. Pang instructed me to stop it and seal it with adhesive tape. On following night I found cork I had placed to stop the hole together with the tape on Mr. Pang's table again. I pointed out the cork to Mr. Pang when he came. He instructed me to insert cork in hole again and this time to seal it with zinc held to ceiling by means of two small screws. Following
 20 night cork and piece of zinc came down again. After I pointed them out to Mr. Pang again he instructed me to stop the hole with a piece of wood nailed to the ceiling. I put that there at night. Next morning I found piece of wood and dust came through crevice on to Mr. Pang's table. The stopper remained on the ceiling on this occasion. Very often dust and water came through the split stopper after that. It is a Chinese belief or superstition that anybody struck by a broom would incur very bad luck. It is an insult to wave a broom at anybody.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

*Plaintiff's
Evidence.*

No. 22.
Cheong
Seng Wah.
Examina-
tion,
continued.

Cross-examined :

- 30 Q. Did you or anyone else complain about occasion or occasions obnoxious fluid was thrown down ?
- A. I complained to Mr. Pang.
- Q. You don't know if anyone complained to anyone of these Defendants ?
- A. On occasion I heard Mr. Pang complaining to Miss Lim about throwing of urine, and she made no reply.
- Q. When ?
- A. As she was leaving the premises.
- Q. What day ?
- A. I cannot remember.
- Q. What month ?
- 40 A. May.
- Q. First half or second half of May ?
- A. Towards the end.
- Q. Was it May 31st ?
- A. It was sometime between 25th and end of month.

Cross-
examina-
tion.

*In the
Supreme
Court
of the
Colony of
Singapore.*

Q. What time of the morning ?

A. About eight o.c. in the evening.

Q. That incident is not mentioned in the diary. Are you suggesting you told Mr. Pang about that incident ?

A. Yes.

*In the
High Court.*

Q. Are you suggesting it is about this incident Mr. Pang spoke to Miss Lim in my presence ?

*Plaintiff's
Evidence.*

A. Yes.

No. 22.
Cheong
Seng Wah.
Cross-
examina-
tion,
continued.

Q. Apart from this incident are you suggesting no other incident regarding which Mr. Pang made complaint to Miss Lim 10
in your presence ?

A. That is quite so.

Q. As far as you know every complaint you made to Mr. Pang about that time was noted in the diary ?

A. I can't say if he noted down every time I made a complaint.

Q. Have you at any time previously told Mr. Pang about throwing urine down at night ?

A. I complained the morning after the incident.

Q. Did you also tell Mr. Pang of this incident on the morning 20
after it had occurred, and no other time ?

A. I don't remember mentioning it on any other occasion beyond following morning.

(Smith refers affidavit of witness at page 4 and reads para. 4 (g)—C.H.W.) I do not know why this incident not included in that paragraph of my affidavit.

(Interpreter reads para. 4 (g) of Affidavit to witness at Smith's request—C.H.W.) That is a fact—it was urine mixed with dirty water. That is the incident I have been referring to as happening at 8 o.c. in the evening. Put to me that is first half of month I say the interpreter has become confused. As to knocking at door incidents I quite agree I don't care being 30
aroused about five in the morning to open the door for anyone. I slept close to the door—no delay in opening it. On occasion policeman called banging lasted only short time. As soon as I was roused I went and open the door. I heard several bangs in rapid succession and got up. No one in sight when I went to door. I merely put my head out and when I saw no one I closed the door again. It did not strike me what might have happened is that whoever knocked on door had knocked for long time and then gone away—as soon as I heard the noise I got up.

(Smith reads paras. 8 and 9 of Affidavit at page 5—C.H.W.) 40

Q. Am I right in supposing the hitting with Vim carton, struggle in which glasses broken, articles of stock knocked over—all these three things—happened before Madam Ang went out and blew the police whistle ?

A. It was after Miss Lim struck me and glasses fallen off, and after third Deft. started kicking me I noticed Madam Ang blowing the whistle.

Q. Mr. Fuller present throughout ?

A. That morning I first saw Mr. Fuller was when I was using the telephone. After using the telephone I did not see Mr. Fuller again. I did not notice when he left.

10 I say there was another occasion when Madam Ang used a police whistle. On that other occasion no glass case broken. On that other occasion nothing broken. Both occasions happened in morning about same time. On the occasion nothing broken Deft. 3 not there. Put to me it has never been suggested by Plaintiff, his solicitor or any of these other witnesses there were two occasions on which Madam Ang blew the police whistle I did not tell Mr. Pang about occasion in which no damage done but Madam Ang went out to blow the police whistle. When Miss Lim assaulted me and her glasses fell off Deft. 3 joined in. Not quite correct to say my glasses knocked off in struggle. I cannot say glasses knocked off by Deft. 1 or herself. I delivered no blows myself. By "in the
20 struggle" in the Affidavit I mean the warding off the blows.

(Now 4.15 XXn. Adjourned to fresh date to be fixed.)

(Sgd.) C. H. WHITTON.

True Copy.

(Sgd.) KWEK CHIP LENG.

Private Secretary to Judge,
Court No. 5,
Supreme Court, Singapore.

Wednesday 19th January 1955.

CASE FOR PLAINTIFF.

30 Smith states does not wish to XXn. witness Cheong Seng Wah further. Harris does not wish to re-examine.

No. 23.

COURT NOTES of Whitton, J.

Smith opens.

As to law—in all cases quoted by Harris on subject of nuisance person sued not the landlord. Tenant can probably sue landlord for trespass in proper case, but subject to terms of contract. Where landlord has to pass through premises conditions of contract clearly most important. This very important in this case. Plaintiff claims he holds by virtue of

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*In the
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*Plaintiff's
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No. 22.
Cheong
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tion.
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No. 23.

Court Notes
of Whitton,
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1955.

*In the
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statutory protection—contract with his previous landlord governs the matter, but has not called previous landlord. Limitation on movements of landlord through premises either day or night not reasonable in circumstance in which parties lived.

*In the
High Court.*

No. 23.
Court Notes
of Whitton,
J. 19th
January
1955,
continued.

Plaintiff's right to maintain this action at all is based on his establishing his position as a statutory tenant. He has to succeed on the strength of his title if he is to succeed. Submits nothing in evidence for Plaintiff to prove he is a statutory tenant. Submits also is not statutory tenant under the Ordinance in view of fact previous tenant gave Plaintiff notice to quit. S. 14 (1) (e) Ord. 25/47. Under Section 15 position of sub-tenants dealt with. S. 15 (1r) (2) subject of Privy Council appeal—submits question to be decided whether statutory tenant or not by circumstances of case whether matter taken to Court and made subject of order or not. Assuming covenant against sub-letting (and will submit there was) this would give Deft. right to effect eviction, enforceable against the sub-tenant. Suggest covenant cannot be waived—though breach of it may. In waiver must be not only knowledge of breach but also act acknowledging. New tenancy not created where person stays on after notice to quit by mere fact of payment of rent. 10

Position in Rent Ordinance 25/47 applies as regards covenant against sub-letting. Under that Ordinance could only get possession under S. 14 (1) (b) for breach. Breach of covenant against sub-letting would come within that section. 14 (1) (j).

Cannot rely to prove waiver that (1) landlord knew of sub-letting (2) accepted rent, because must also prove (3) knew there was a payment exceeding aggregate seventy-five per cent. So no waiver established in present case as rent paid by sub-tenant did not exceed seventy-five per cent.

Waiver has not been pleaded in any event. Deft. 1 has not accepted any rent whatever from Plaintiff up to date. 30

15 (1)—Landlord to be preferred to sub-tenant in situation in which when there is a breach of covenant by tenant against condition of tenancy prohibiting sub-letting, irrespective of position of sub-tenant otherwise.

Substantial issue in this case is whether Plaintiff statutory tenant or not, and whether then he has any rights to possession.

Injunction—essential for Plaintiff to state clearly terms of injunction sought. Not going to be made on long argument of facts. Perpetual injunction a serious matter—in effect would hear Defts. could no longer live there. Damages might be the appropriate remedy. No case cited of injunction granted where persons living together. Grant of injunction in case of this nature matter requiring very careful consideration. 40

Calls—

EVIDENCE of Lim Siew Neo.

Deft. 1—LIM SIEW NEO (f) a.s. in English—*Xd.*

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
High Court.*

*Defendant's
Evidence.*

*No. 24.
Lim Siew
Neo.
Examina-
tion.*

- Spinster. I am owner of premises in dispute. Previously owned by my mother. After war my mother let the premises through me to Madam Tay. She said she wanted the premises for two years. She promised to give premises back at end of tenancy. She wanted to use the premises for a café. (Now speaks in Teo-chew—C.H.W.) I told her she would not be allowed to sub-let, and she said she would not sub-let. That was
- 10 important to me. Book produced is counterfoils of rent receipts for rent paid by Madam Tay and others. (Admitted Ex. D5—C.H.W.) In 1945 I made out rent receipts on separate sheets of paper. Book now produced also rent receipts 1946 to 1948 (Ex. D6—D7—D8—C.H.W.) All receipts issued by me in 1946, 1947 and 1948 of this type. I bought five or six books at a time. First purchased this type of receipt book beginning 1946. Receipts given to payers. Madam Tay received receipts as stated in the counterfoils of these books. Madam Tay's café business not a success. Premises then became a chemist's shop. Before it appeared I asked Madam Tay for return of premises. She said she still wanted to use them herself.
- 20 That was in 1947. Her two years were up then. She said she would return premises to me when she had no further use for them. That was in January and February 1947. Chemist's shop appeared in May or June 1947. When I went to collect rent from Madam Tay I asked her about chemist's shop and she told me she was in partnership. No talk about sub-letting then. I questioned her whether she had sub-let the premises. She told me she had not and I could make any other enquiries. She mentioned four partners in the business by surnames. I made enquiries and found that to be correct. The premises were transferred to me by mother in April 1951. I had collected the rent for my mother from
- 30 Madam Tay. First went to live at 265 Orchard Road in June or July 1951. I did not live on the premises between 1947 and 1951. I went to live there then because it had always been our intention to go and live on the premises as place we had been living was too far away. Madam Tay gave notice of intention to quit to Deft. 2, my mother. I have not got that notice in my possession now. The notice was given to Deft. 2 personally. (Copy of notice admitted by consent Ex. D9—C.H.W.) I became the owner of the premises in April 1951. Near the middle of April. (Counsel agreed 18th April—C.H.W.) Plaintiff has been in possession of premises since that time up to now. I have not accepted any rent whatsoever from
- 40 Plaintiff during that period. I have not been offered. By that it has not been offered to me personally—may have been offered through my lawyer. I expected premises to be empty for me on 1st April. Ground and first floor not vacated. When I saw Singapore Dispensary still in possession of ground floor I went to see my lawyer. I also saw Plaintiff after I had seen my lawyer. I told him to avoid troubling each other and offered him a three-year lease until 1954. He said he would like lease for three years, and then be able to renew. I told him we would require the premises for business after further three years. I also saw lawyer about Mr. Teo, occupying first floor. He claimed to be a sub-tenant in correspondence

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*In the
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*Defendant's
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Examina-
tion,
continued.

with my lawyer. Did not so claim in conversation with me. I was aware before I got letter at p. 145 of A.B. other people than Madam Tay living on first floor. Spoke to Madam Tay about the matter. She said they were guests—friends of hers. On expiry of notice to quit I expected to get possession of whole place. I later took out summons for possession against Mr. Teo. Eventually he left—just before case to be heard. If he had not left I would have gone on with my action against him. I wanted to take action against Singapore Dispensary for possession. Prior to 31st March I did not know if Plaintiff paying any rent, or if he was what rent, to Madam Tay. When I offered Plaintiff 3 year lease I had been informed that he had been paying \$220 per month by my solicitor at the time. That was first time I knew Plaintiff paying any rent. I had been paid \$250 for whole house by Madam Tay—\$225 as rent, and \$25 for hire of furniture. Madam Tay paid the water and light bills. I did not gather from my solicitor whether the \$220 paid by Plaintiff included light or water or not. I have been paying Municipal bills since 1951. He claimed that Madam Tay was responsible for payment of water or not. I understand from my solicitor Mr. Boswell the \$220 per month included water and light. Furniture was returned at time Madam Tay vacated, although a few pieces missing which we did not trouble about. One desk, four chairs and a small dining-table were missing. Plaintiff as far as I can see has no intention of leaving premises. It was after notice of intention to quit from Madam Tay had expired that Plaintiff for first time claimed to me that he was a statutory tenant entitled to stay. I have sworn in these proceedings there was an agreement between me and Madam Tay she would not sub-let. Madam Ang my mother also wants return of premises. Before war these premises used as provision store. My father then alive and sole proprietor of firm on the premises Yong Heng & Co. My father died before the war. He left the business to Deft. 2. My idea after the war was to start business but I was prepared to let Madam Tay have premises until 1947. Business before the war our sole livelihood. My mother now 75, I am 52, my brother 54. I had intention to revive pre-war provision business. In June 1951 I went to live on premises. I used first and top floor as dwellings. My mother and I—not my brother—moved in in middle of 1951. Between April and June 1951 I repaired the top floor. Some of the furniture was broken and patchy. I had it cleaned up. Floor scrubbed. Ceiling cleaned. Did not put up shelves. Brought in furniture—a few chairs, clothes-rack, wardrobe, bed. It contained three bedrooms. Kitchen at back of top-floor. I got possession of first floor 1st January 1952. Did no business on top floor second half of 1951. I carry on wholesale and retail provision business on first floor. It does not look very like a shop. One bedroom at back of first floor. It is occupied by me. I sleep in it. At back a kitchen and bathroom. I eat on first floor. I have desk on first floor. It is just one open space now with room at rear, as I had partitions removed. In October 1952 I started business. Between January and August 1952 I carried out decorations to these premises. Put in shelves along the walls. Two shelves. Teak shelves. One about height I show (about 4 feet long—C.H.W.) and one about one foot high. Also along the walls shelves made of packing-cases. Shelves just one side of the room. Teak shelves on one side, packing-cases on another, and show-cases on third side. Each showcase measures about 4 feet in length and there are three in all, and also a sideboard. Show-cases were put in between January and

August. Put in by me. Show cases brought from outside and varnished by me on premises. A few of shelves required banging in. That is to put them in correct shape.

Now 12.55. To 2.30.

(Sgd.) C. H. WHITTON.

Resumed 2.30.

Xn. continued.

*In the
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Court
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*In the
High Court.*

*Defendant's
Evidence.*

*No. 24.
Lim Siew
Neo.
Examina-
tion,
continued.*

Shelves not screwed or nailed into floor. Assembled by me on first floor. Nails used in the construction. Brought into place by me. I did not drag furniture around into top floor apart from moving when sweeping necessary. I recall incident of bucket of water being overturned—it was accidental. Plaintiff did not complain to me about the incident—only first floor people. I was sent for by Magistrate. Some of furniture too heavy to lift so I had to drag. I did play with a tennis-ball. Purpose to take exercise. Squash tennis. I wear wooden clogs. Always have. I skip. Not true I played with ball, used clogs, skipped maliciously to drive Plaintiff out. I had pain while in England and I was advised to do exercises. I used hammer to smooth kerosene tins—to smooth jutting edges. I have kerosene tins for storing water. No water if water turned on by ground floor people.

I recall Plaintiff complaining to me about playing ball—he came up and threatened me. I agree I abused Plaintiff on that occasion, because I was frightened. I told him he had no business to be there.

I think my mother did wave the broom at him. If my mother wants to move chair she drags—she cannot carry. Not true I ever threw urine down. Not true I ever threw water down. I put out broom to dry. I deny putting it out for express purpose of making water drop down. I put out sarong on bamboo pole to dry. There was already hole over Mr. Pang's desk when I went there. I pushed out the cork. It was to shout down to them to tell them to turn off the water. I agree I split the plank. I did not push dirt and water through the hole. I did not throw out stale urine. I put down some incense—because there was a terrible smell from the chemist's shop. Time I came in with empty tins I did not make noise with clogs deliberately. I agree Plaintiff shouted at me. So a tin dropped. It gave me a shock. I was not present on day water came through onto 5 footway. I did not make a noise with clogs with intent to annoy Mr. Tao Syn Hun. I did not stamp around in clogs. Incident to which P.W.3 refers—pane broken by accident, not deliberately. P.W.6 Cheong Seng Wah hit me. He is, I would say, about 18 or 20. He started the incident by stopping my brother opening the door. My brother D.W.3 was going out to the car about 7.45 a.m. I was following with some parcels. P W.6 pushed my brother to one side when latter tried to open the door. I first heard commotion when I was still upstairs. When I came on scene I saw P W.6 trying to stop my brother opening the door. Suddenly one of his hands struck and my glasses fell on the ground. P W.6 spoke to me rather abusively. I reply he was a dog. I did not hit him. I got bruise on eye as result. Court proceedings in consequence. I incurred lawyer's expenses \$500 in connection with these proceedings. I go to Church. I get up at 4.30 a.m. to go to an early mass at 5.45.

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Court
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Do that very often. Two or three times a week. I go out at night a good deal. Sometimes I return 10 a.m., sometimes 12 midnight, sometimes 2 a.m.

Cross-examined Harris.

*In the
High Court.*

*Defendant's
Evidence.*

*No. 24.
Lim Siew
Neo.
Examina-
tion,
continued.*

As far as I knew when Madam Tay went Plaintiff was also to vacate the premises. I say that because Madam Tay said in her notice of intention to quit she would be vacating whole of the premises. If I was told in 1951 Plaintiff entitled to remain by virtue of Control of Rent Ordinance I would not have behaved differently in respect of first and second floors. I was not pleased in March 1951 to find Plaintiff had remained on in spite of 10 Madam Tay's notice. Because I required these premises for myself.

Q. Why then did you enter into negotiations with Plaintiff to grant him three years' lease of premises ?

A. I took pity on him.

*Cross-
examina-
tion.*

I agree on 31st March my solicitors R. C. H. Lim & Co. gave Plaintiff a month's notice to quit. I agree they had given week's notice to Mr. Teo. I agree on 2nd April Plaintiff's solicitors told me Plaintiff relying on Control of Rent Ordinance and staying there. I agree I was then aware Plaintiff claimed to have legal to stay on by virtue of Control of Rent Ordinance. I was told cash as rent was enclosed in that letter of April 2nd. I cannot 20 recall if I ever saw that letter. I think I was shown a copy of the letter. I cannot remember when. It was only after I had instructed my solicitors to start negotiations with Plaintiff for a lease that I saw the letter. I now say I was shown copy of letter before offer of lease for term of three years was made. From time I was shown copy I came to know rent paid by Plaintiff to Madam Tay. I agree it was before the negotiations commenced I learnt how much rent Plaintiff had been paying to Madam Tay.

Q. When you first started negotiations you offered Plaintiff one year only ?

A. I don't remember that.

30

Q. And you subsequently offered three years ?

A. That is the term I do remember.

(Harris refers to p. 151 A.C. para. A. Read to witness—C.H.W.)
I now agree I was prepared to grant him a year at the outset.

Q. Your willingness to sign lease was conditional on Plaintiff being willing to give written undertaking to sign notice to quit the premises on expiry of the time ?

A. Yes.

Q. And this was in your mind, under legal advice, a most important condition ?

40

A. Yes.

Q. Because you believed on expiry of time if Plaintiff failed to get out you had power by producing this written undertaking to get the rent in spite of Control of Rent Ordinance ?

A. Yes.

Q. You had been advised in absence of such an undertaking a tenant protected by Control of Rent Ordinance ?

A. Yes.

Q. And that if he signed the notice to quit that would provide a ground under the Ordinance to get him out ?

A. Yes.

Suggested to me I offered this lease to put myself in a better position in relation to Plaintiff's occupation there on expiration of Madam Tay's
10 tenancy I say I did so to make sure he would go out at the expiry of the term. Plaintiff would not sign such an undertaking. I did not grant him the lease. I said that when he refused to sign this undertaking to quit I doubted his "bona fides." (Harris refers to letter at p. 158—C.H.W.)

Q. Having this view of the matter why did you not take action against Plaintiff ?

A. I did so, and I think writ of summons was issued and served.

(Nothing was served Miss Lim until 25th September 1952—Harris.)

Well my instructions were to take action against Mr. Pang. I do
20 not know why there was this delay.

Q. And this action when it was commenced was discontinued by your new solicitors after three months ?

A. Yes.

Q. Did you know your new solicitors say Plaintiff had been licensee of Mr. Tay ?

A. Yes.

Q. Do you know why they referred to him as licensee ?

A. Because there was a prohibition against sub-letting between myself and Mr. Tay.

30 I own other property apart from these premises. Five or six other properties. All let.

Now 4.15. To 20th January 10.30.

(Sgd.) C. H. WHITTON.

Thursday 20th Jan. 1955.

Contn. S.596/52.

10.30 a.m.

Deft. 1 XXn. resumed.

I did not carry on business at premises at all during Japanese occupation. During occupation a tailor occupied the premises. He paid rent
40 to my mother. He paid \$150 for whole premises. He left February 1942. Premises then empty for a few months. Then occupied by the

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High Court.*

*Defendant's
Evidence.*

*No. 24.
Lim Siew
Neo.
Cross-
examina-
tion,
continued.*

*In the
Supreme
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Cross-
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tion,
continued.*

Japanese. Occupied by Japanese until September 1945. They paid my mother \$250 rent. Madam Tay entered the premises about October 1945. I came to meet her through her aunt whom I knew. I had at that time decided to restart business in the premises, but not until 1947. No particular month of 1947 in mind—when it became easy to get things from Europe I would commence the business. Madam Tay became a widow in 1947. Her husband was living on the premises. (*To Court*: He died in Formosa, but she had moved into the premises then.) He lived at times in the premises. He was a Formosan. I told Madam Tay, her husband and aunt in 1945 I was going to recommence business. I 10 told her when it became easy to get goods from Europe. I said immediately I got the premises back from her. She said he wanted the premises for two years. I agreed to two years. I then thought at end of two years I could get the premises back. (Does not answer question—“At that time did you know she might be able to hold on to the premises under the pre-war Ordinance?”—C.H.W.) I did not take steps to get Madam Tay out in 1947 because I pitied her as she had lost her husband. I did not consider her legal position then. In 1947 I did not know about legal restrictions on obtaining possession. I agree that in October 1945 I did not know about any legal restrictions. I thought in October 1945 20 that if I let premises to someone for two years I would get them back again vacant. I did tell her in 1945 not to sub-let. I told her that because we never allowed people to sub-let. Rent I was charging Madam Tay \$250 including furniture. Madam Tay does not read English. I took no deposit from Madam Tay as distinct from advance of rent. Shown Ex. D5 and Ex. D8 Madam Tay could not read note at top of counterfoil because in English (adds) her brother could. I agree Ex. D.5 different stock from Ex. D.8. I explained to her what was on the Ex. D.5 receipts when she asked me. I asked for premises back in January or February 1947 because owing to number of persons on premises 30 I thought she might be sub-letting, but she told me there was no sub-letting. At that time ground floor was empty except for some furniture. I knew at that time she had become a widow. I understand Madam Tay had been left a lot of money, as a result of enquiry how she would be able to pay the rent as a widow without sub-letting. It was about April or May I saw preparations for opening chemist's shop. Madam Tay's husband had died in February. I was satisfied when Madam Tay told me she was holding on to the premises. I complained about her not returning the premises, and she said she must do some business to live since her husband had died. Madam Tay told me Plaintiff was one of the partners. 40 When I first saw Mr. Pang engaged in repairing shelves I asked him was he Mr. Pang, but he did not reply. I did not enquire from him was he one of Madam Tay's partners. I did not realise he was running the premises. I saw name K. H. Khoo on cases of medical supplies and Madam Tay told me that was name of one of partners. I did not think Plaintiff was any more in charge than any of the other partners. I learnt through Mr. Boswell that Mr. Pang sole proprietor, probably after Madam Tay had vacated. I did not apply in 1947 to Rent Conciliation Board for increase of rent of these premises. In 1948 or 1949 I applied to Rent Board to fix rent at \$225 and furniture \$25. It was granted. 50 Rent Board's order merely confirmed rent I had already been receiving. Did so on advice of lawyer.

Q. Did you apply to Rent Board with view to getting a higher rent? Smith objects question irrelevant. I ask Harris how relevant. After discussion on suggestion of Court Harris puts question "Before you made this application did you still believe the other people occupying to be just guests."

*In the
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Court
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A. Yes. Harris proposes to put original question. I ask how relevant. *Harris*: "I think it goes to credit as to previous answer." I do not allow that particular question—C.H.W

*In the
High Court.*

Put to me it was not until 1947 I ever told Madam Tay I required the
10 premises for my own business I say I did tell her before that. Referred to
letter at p. 156 A.C. I agree that letter referred to Mr. Teo Syn Hun on
first floor. I agree that letter refers to his occupation of the first floor. I
agree the letter suggests it was only in 1947 I told Madam Tay I wanted
the whole premises for my business. Suggested to me that letter states
the true position I say Madam Tay had promised to move out after two
years. My view was I did not mind what part of 1947 Madam Tay and her
husband got out provided they returned the premises to me some-time in
1947. Not true I asked Mr. Pang what business he was going to carry on
there. I swore affidavit in connection with application for an interlocutory
20 injunction. I agree I swore is that I have read affidavits Pang Keah Swee
and Cheong Seng Wah. I agree Plaintiff swore in his affidavit he was
sub-tenant of Madam Tay. I agree Para. 16 of my affidavit does not
mention any specific period of letting. I agree as far as sub-letting is
concerned all I say in that paragraph is I wanted the premises back.
When I spoke to Mr. Pang and asked him was he Mr. Pang also I said to
him I did not know he was operating on his own and all the time was under
impression he was partner of Madam Tay. That was in 1947 when he was
arranging the premises before they were opened for business. I now
say all I said was he Mr. Pang and was it true he was in partnership.
30 (Interpreter says may have misunderstood last witness of statement—
C.H.W.) I did tell the Plaintiff in 1947 I wanted the premises for my own
use. That was when he was arranging bottles. It was after bottles
arranged but before premises opened. I told him that just to let him
know. It was not until 1951 I came to know Plaintiff running his own
business. I knew him to be there before 1951 and believed him to be
there in partnership. Madam Tay vacated the premises in the middle of
March. I first became aware after that ground floor still occupied when
Plaintiff and Plaintiff's younger brother came to my house—I think that
was after Madam Tay gave notice of intention to quit but before she moved
40 out. The younger brother said Plaintiff would like to have the tenancy
from me. I said no, we required premises for our own use. They told me
the Plaintiff was a sub-tenant of Madam Tay. I was surprised. I asked
whether they had been in partnership, to which the reply was Madam Tay
had been partner but had not contributed anything to partnership.
Referred to para. 16 of my Affidavit I agree it suggests I did not wish Madam
Tay to let Plaintiff occupy ground floor.

*Defendant's
Evidence.*

—
No. 21.
Lim Siow
Neo.
Cross-
examina-
tion,
continued.

Q. You agree nothing in affidavit about letting Madam Tay in 1945 to be no sub-letting?

50 *A.* There was verbal agreement to that effect made in presence
of Madam Tay, her husband and uncle.

*In the
Supreme
Court
of the
Colony of
Singapore.*

Q. Nothing in the affidavit about it ?

A. No.

Suggested to me all I said is what we stated in para. 16 I say I made verbal agreement with her she was not to sub-let.

*In the
High Court.*

Q. When Plaintiff and his brother called on you was that first time you knew they proposed to carry on with chemist's shop business on ground floor after Madam Tay's departure ?

A. Yes.

I think Madam Tay paid water and light bills—I did not pay

Q. Did you say in para. 21 of your affidavit "throughout 10 tenancy of Madam Tay I paid for water and light services" ?

A. Yes. (adds) That is incorrect. I meant to say I started to pay for water and light services after Madam Tay had vacated.

Q. So you never paid for water and light during Madam Tay's tenancy ?

A. That is so.

I have no knowledge of arrangements made between Madam Tay, Plaintiff and other occupiers of the premises before I moved in. It was not the practice to bolt the door at the beginning after I moved in. They began doing that in March 1952—I give that as approximate date. Until 20 March 1952 I was able to go in and out of the premises without any trouble at all. I agree I put big padlock on so that inside bolt could not be used. That was sometime in 1952—cannot remember exactly when. I admit one morning in March 1952 some time past 6 a.m. I came from outside and tried to open door with latchkey but found door secured from inside, I then started knocking first with my knuckles, and after waiting for five minutes for door to be opened with starting handle of the car. Nobody came. I then went to Pol. St. to report. That was first time I had been unable to get into the premises. I had often entered premises prior to that without trouble. It was after two or three similar occurrences that 30 I put in the padlock. Prior to incident which I have described occupants did not use inside hasp. Absolutely untrue I was in habit of coming in early in the morning and leaving the door open. I only left door open if some one coming behind me. Up to March 1952 I was only occupying top floor. During these three months no repairs were being carried out to first floor. The repairs started after two or three months. I had workmen in to do some of these repairs. Two or three months after I recovered possession of first floor, which was in January. Either one or two months or two or three. Mr. Teo vacated on 31st December 1951. Workmen did their repairs to first floor before I started putting in show- 40 cases. They took approximately three weeks. I cannot remember when it was these three weeks.

Now 1 o.c. To 2.30.

(Sgd.) C. H. WHITTON.

*Defendant's
Evidence.*

No. 24.
Lim Siew
Neo.
Cross-
examina-
tion,
continued.

2.30—*XXn. resumed.*

Repairs on first floor were February and March 1951. Colour-washing, painting, removal of partitions. Three or four workmen at a time. That work carried out in day. There would have been a certain amount of hammering. Only one table on first floor when workmen working there. When they had finished whole of first floor one open space. It was in May or June I started putting in shelves and bookcases. Still waiting for goods from Europe. I did not bring in any furniture except the shelves and cases until 1953. After workmen finished brought down shelves and sideboard from top floor. Also armchairs. This furniture was from the shop. All the shelves I fixed were on one side of the room. They were made of teak. Packing cases later—I think in September. They were not already assembled. They were assembled some with screws some with nails. I did that myself. I did it in the open space on first floor. Did not nail them on bench—did so on floor. Sometimes I had to straighten nails and to that I would have to hammer them on floor. I cannot say how long that hammering went on for. It was in 1931 and 1932 my back was injured in England. Since that time I have been skipping every day. I have not been skipping since the injunction. I have tried skipping without wooden clogs—it hurt my feet. I tried with rubber shoes—that was all right. Clogs I wear ordinary sort with one band over them. I agree easy to lose wooden clogs when running. My mother sometimes may have used hammer to hammer her clogs. If she hammered she would be just repairing clogs. She might be also knocking together joints of shaky chairs. Three or four very shaky ones. I have dragged furniture about on first floor. Not only for dusting but for re-arranging. Referred to evidence of P W.4 of noise like heavy objects being thrown from one side of room to other I suggest it may just have been noise of the fixing of the shelves she so described. As soon as objects fixed I might think it necessary to exercise with tennis ball. I used a tennis and a squash racket. Hammering on tins would have been on wooden floor. Stone kitchen at the back. It would knock off the cement to hammer on that. It did not occur to me that noise would inconvenience anyone because up to that time no one had complained about it. Later I received a letter of complaint through Mr. Boswell. Referred to letter at p. 166 A.C. I agree that is a complaint about banging. I did not keep diary but if Mr. Pang has it in his diary that on 15th May I made hammering noise with tin I suppose it is right. I admit I hung out sarong to dry. I was in the custom of hanging out clothes on pole to dry. My mother may have sprayed the clothes with water as they were drying to reduce the creases. Spraying would be done by dipping finger into water and sprinkling. Nothing insulting in hanging sarong over somebody's yard—there were zinc awnings over first floor. Water thrown from first or second floor could not hit anybody standing below because of the awning. Hanging out of broom by Madam Ang customary. There was no question of her rechanging the broom, but she may have taken it in used it and put it out again on occasion. It was put out after it had been washed subsequent to use. Hole in floor—I first plugged it up myself but I then kept it open to shout through when they were noisy downstairs. Perhaps dust and water would go through it if I washed my floor. Not dust if I swept. I put in cork originally to prevent dust falling through. Put to me it

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tion,
continued.

*In the
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Cross-
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tion,
continued.

would be alright to keep cork in and take it out to shout down I say cork got lost. I admit later I swept the floor regardless of the existence of the hole. I took care to avoid the hole when washing floor to see no water dropped through. If water came on to Plaintiff's desk it might have been rain which had come in and been swept, and it might also have been water which was used for washing the floor. I admit I sometimes threw water on awning for purpose of cooling the unbearable heat coming up from the awning but it was always clean water. Never threw any dirty water or slops down there. One day I went to rear of premises. I saw object looked to me like cat. I pushed it. It fell down below. I then realised it was a tin. It may have contained something which caused Plaintiff to make complaint to Health Officer. I agree a Sanitary Inspector did come and speak to me shortly after this happened. I don't remember what he had to say to me. He made complaint to me. I do not remember if I told him about the tin. I do not remember what day of the week 1st June 1952 was. I switched off light as measure for retaliation for water being turned off. I first came down and turned off the water so that I could get on upper floors, and then went upstairs and turned off the lights. I switched off lights simply as matter of retaliation. I do not think P W 6 saw me turn off the taps. One occasion I switched off the lights twice—I cannot remember date—first as retaliation and second for reasons set out in S D. (i.e. they were using too much light—C.H.W.) I think it was very same night bucket of water fell over. I tripped as I was taking bucket of water up to my mother on top floor. In consequence water fell onto premises below. I tried to mop up the water. I agree Plaintiff's employee got Police officer to come—I am sure it was I dropped the water.

Now 4 o.c. To 21st—10 o.c.

Friday, 21st Jan. 1955.

Contn. Suit. 596/52.

10.00 a.m.

X X n. Deft. 1 resumed.

Referred to para. 16 of my affidavit the last sentence is not quite correct—I meant to say I was taking water up to my mother and I accidentally upset the bucket. I agree Affidavit sworn 20th June 1952—19 days after the incident. I still say last sentence of para. 16 is incorrect. Breaking of showcase glass—I don't think it was my brother's fault. I saw the door banging against the pane myself, and the glass then breaking. Suggested to me I was not downstairs when that happened I say on hearing shouts I looked down from foot of staircase and saw the incident from there. Referred to para. 3 of my affidavit "as I was upstairs at time of the incident I cannot say etc." I meant to say I saw the breaking of the glass pane but I did not see what happened between my brother and witness Cheong before pane broken. I agree my affidavit does not suggest I saw the breaking of the glass. I repeat I was there and saw pane broken. Door banged against the pane once. I saw witness Cheong struck me—it was because I tried to strike him first. He was not merely warding off blows. I don't quite know what my brother was doing when incident started—he was just standing there. I have not

R. C. H. Lim's bill for \$500. Cannot remember if I ever had it. I was not prepared to allow Teo Syn Hun to stay there until he got alternative accommodation. I was anxious from beginning he should get out.

*In the
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Court
of the
Colony of
Singapore.*

Q. I want to know to what extent you have been inconvenienced, if at all, since the granting of this interim injunction?

(Smith objects on ground question completely irrelevant. I ask Harris on what ground relevant. Harris—"my learned friend has said if injunction granted other than injunction to pass through the premises his clients would have to leave." I suggest that statement of Smith is immaterial. Harris leaves the point—C.H.W.)

*In the
High Court.
Defendant's
Evidence.*

I agree it would be reasonable for only one side of door to be open when business premises closed—except when it was desired to bring large parcels through.

*No. 24.
Lim Siew
Neo.
Cross-
examina-
tion.
continued.*

Re-examined.

Tay Wah Hai, who is Madam Tay's younger brother, my sister-in-law and myself went together to see Mr. Boswell when I went to give instructions re proceedings against Singapore Dispensary. I heard clerk taking statement from Tay Wah Hai in Hokkien. I could not recognise writing of the statement. I have acted on legal advice throughout these proceedings. I have always told my lawyers there was a condition against sub-letting. I have told my lawyers premises not sub-let. I said in reply to Interrogatories there was covenant against sub-letting.

*Re-
examina-
tion.*

(Sgd.) C. H. WHITTON.

Smith—

I propose only to call Mr. Boswell. Do not propose to call Deft. 2 or Deft. 3.

Now 11.10. Adj'd. 10 minutes for Smith to enquire position re Boswell's availability.

(Sgd.) C. H. WHITTON.

Resumed at 2.30 after both counsel saw me this morning in Chambers and adjournment until this afternoon approved.

(Sgd.) C. H. WHITTON.

EVIDENCE of Rodney Stephen Boswell.

*In the
Supreme
Court
of the
Colony of
Singapore.*

D.W.2 RODNEY STEPHEN BOSWELL—s.s.—

*In the
High Court.
—
Defendant's
Evidence.*

No. 25.
Rodney
Stephen
Boswell.
Examina-
tion.

Advocate & Solicitor. 4A Second Avenue, Bukit Timah Road. Firm R. C. H. Lim & Co. I acted for Deft. 1 when I was with Rodyk & Davidson in 1947 in connection with premises 265 Orchard Road. She came in that year to see whether Madam Ang for whom Deft. 1 was acting as agent could recover possession of these premises. She explained to me how she had let the premises to Madam Tay Wah Eng. She informed me she had originally rented the premises to a Madam Tay through either an aunt or other relative of her own. She told me she had said Madam Tay could use the premises, according to the instructions I received from Miss Lim at the time. (Harris objects to instructions given by Deft. 1 to the witness in 1947. Objectionable on ground as to what his client instructed him in 1947 with regard to something that had happened previously—two years previously. Smith submits admissible on ground that fact of party telling her solicitor in 1947 she had entered in covenant against sub-letting is a fact which renders probable the point in issue whether there was a covenant against sub-letting or not. Hearsay admittedly as to what had transpired between Deft. 1 and Madam Tay, but fact of her telling Mr. Boswell such and such a thing in 1947 a relevant fact showing Deft's state of mind as to whether covenant against sub-letting or not and also as showing her state of mind whether she had waived her legal rights or not. As regards whether evidence can be called when Deft. herself has not been examined in 1947 that at best is only a technical objection. Harris in reply—Would say the relevant question is at what stage she made this statement. Court rules that the evidence in question is admissible as indicating Deft.'s state of mind when she instructed Mr. Boswell in 1947 as to existence or otherwise of covenant against sub-letting, but that it is without value as to what actually transpired between Deft. and Madam Tay in 1945—C.H.W.) Deft. 1 told me Madam Tay had been told she could have use of the premises provided she did not sublet. Deft. 1 came to see me because she had discovered a few months earlier ground floor premises by a dispensary. She suspected there was a sub-letting. I considered her position, but advised her that as there was only a verbal arrangement about sub-letting she might find it difficult to prove successfully her case in Court of law. At that time I did not consider there was sufficient evidence of sub-letting to advise Deft. to take action. I had no idea then whether Singapore Dispensary paying rent. In 1951 or 1952 Deft. 1 came to consult me again, and by this time I was with firm of R. C. H. Lim & Co. Ground floor and first floor still occupied. I was consulted with view to obtaining possession of ground and first floor. Up to time letter at p. 148 A.C. written I had no evidence Plaintiff a sub-tenant. Miss Lim instructed me to write this letter on behalf of Madam Ang. I was concerned with negotiations for a lease. That was done with intention of settling matters without recourse to Court. I produce my file relating to the matter (Admitted Ex. D.10—C.H.W.) The only document in file in handwriting is in my handwriting, taken 13.10.52 from Mr. Tay Wah Hai. These are the instructions I took

from him. (Harris objects to contents of statement being admitted. Smith submits relevant (1) as showing what was said to Mr. Boswell from whom he got material for Statement of Claim and (2) as statement from person with whom Plaintiff negotiated when he went into occupation. I express doubt on admissibility. Smith leaves the matter.) I asked Mr. Tay as to how Singapore Dispensary came to occupy the premises. I understand he was the person who had negotiated with Mr. Pang. (Smith submits evidence as to what Mr. Tay told witness admissible as evidence of an agent as to the title to the land. S.21 Ev. Ord. I inform 10 Smith I do not consider admissible. Smith does not wish to press the matter.) I took proceedings against Plaintiff alleging he was licensee on information given to me by Mr. Tay. Apart from what Mr. Tay told me I had no information as to legal status of Plaintiff or of Singapore Dispensary in these premises. Miss Lim did not know. Statement of Claim was based mainly but not exclusively on contents of statement by Mr. Tay. I formed view that originally Mr. Pang was licensee. I formed same view as to position of Mr. Teo Syn Hun.

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Court
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*In the
High Court.*

*Defendant's
Evidence.*

No. 25.

*Rodney
Stephen
Boswell.
Examina-
tion,
continued.*

Cross-examined

20 Referred to para. 3 S.C. Ex. 10 that referred to Madam Tay's "de facto" notice to quit. Referred to para. 4 I think I got information he was sole proprietor from search I made of Registry of Business Names. I had received information in course of getting my instructions which suggested he was not sole proprietor. My para. 5 S./C. based on instructions—I had not seen letter at p. 146 A.C. I considered inclusion of provision in proposed leave for Plaintiff to sign notice to quit at end of lease would give us a chance of recovering possession under Control of Rent Ordinance (Section 14 1 (e) old Ordinance). When Plaintiff refused to sign such notice matters came to an end. I do not agree my client was hoping to get into better position than she was at the expiration of Madam Tay's 30 tenancy by lease with notice to quit at expiry. I agree she wanted premises back for her own use. Nevertheless she was prepared to grant further lease, because Singapore Dispensary had been there for a few years. She was still prepared to extend the period—on my advice. The suggestion came from me. As far as I remember it was about October 1947 Madam Lim came to see me. I think she came to see me because the name had just been put over the shop—Singapore Dispensary. She did mention the name of Mr. Pang Keah Swee. She mentioned he had been carrying on business previously in South Bridge Road and had now moved his business to ground floor 265. She had no definite information about the 40 partners of the Singapore Dispensary—she was still trying to find out. I cannot remember if she said she had spoken to Mr. Pang. She was not satisfied at that time what the position was. I gave her advice if only verbal sub-letting I doubted if worthwhile to proceed to Court proceedings. I was taking all the circumstances of her case into consideration when I expressed doubt whether it would be wise to take the matter to Court. Deft. 1 suggested there might be a partnership. At end of her enquiries she had not got complete information either as to subletting or as to the tenancy. I did not give notice to quit at p. 148 just in case. Cannot recall now why one month's notice to Plaintiff and 7 days to Teo Syn Hun.

*Cross-
examina-
tion.*

In the *Re-examined :*

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examina-
tion.

I was not here when Madam Tay went into occupation. In 1947 Deft. 1 mentioned to me four persons as being spoken of as probable partners. I agree in 1947 on question of sub-letting it might have been one word against another while in 1951 it would just have been one word as Plaintiff not Madam Tay would then have been party against whom action taken and he had not been partner to original transaction.

C. H. WHITTON.

Now 4.20 To 22nd Jan. 9.30.

Saturday, 22nd Jan. 1955.

Contn. S.596/52.

10

No. 26.

COURT NOTES of Whitton, J.

No. 26.

Smith addresses Court.

Court Notes
of Whitton,
J. 22nd
January
1955.

As to incidents—things came to this—(1) Miss Lim made noise with clogs, both during and outside business hours. Breach of covenant of quiet enjoyment during business hours only—(2) skipping—similar position—(3) Hanging out clothes to dry—nothing that can be objected to these in conditions of life in Singapore—(4) Banging on tins—isolated incident—(5) Bucket of water upset—might happen anytime—(6) banging on floors, 20 probably even now, but perhaps breach of covenant during business hours—(7) moving of furniture, must be allowed. Damages in any event just as effective a remedy as injunction in circumstances of this case. Deft. 2 is 75—should not be injunction against woman of that age, with consequent situation of being jeopardy of going to gaol for breach. In any event not sufficient grounds on the evidence for granting injunction against her. Deft. 3—only involved in incident broken showcase, which scarcely gives ground for injunction.

Do not agree at all Plaintiff has right of occupation. Not enough to say occupier and then complain. In this case Plaintiff either a statutory 30 tenant or a very wilful trespasser. Submits Plaintiff must prove statutory tenant if he is to succeed. Plaintiff moved into premises in 1947. What he got then was a share of the accommodation, that is if he had acquired any right at all. That was *not* protected by the Ordinance as it then stood—the law amended by new section 18 (a) (added 1949—supplement 1.4.49) to cover this point. *Helman v. Horsham and Worthing Assessment Committee* 1948 2 A.E.R. 1949—590 “As I understand those cases . . .” Also p. 592 top paragraph. “Presumption” as stated by Goddard L.C.J. corrected by Court of Appeal 1949 1 A.E.R. (Lord Evershed’s judgment). Consequently “onus” on tenant in case where landlord lives on his premises 40 to prove he is a tenant. *Booker v. Palmer* 1942 2 A.E.R. *Errington v. Errington* 1952 1 A.E.R. 149—Headnote and at 154 to 155. *Cobb and anor. v. Lane* 1952 1 A.E.R. 1199 at 1200 E. Also at 1202 C. Suggests that Madam Tay gave Plaintiff license to run his dispensary on these premises, but that she did not give him any tenancy. In any event onus on Plaintiff to prove it was Madam Tay’s intention to give him interest in the land which he could assign, sub-let or part with to someone else.

Teo Syn Hun's evidence "I used the word 'staying' etc." Clear indication on his own admission he never had position or interest in land which he could pass on. Plaintiff says he had same interest as Teo Syn Hun.

- Next point, even if Plaintiff was tenant which submits he was not, is question of waiver. Megarry 7th Ed. p. 250. In English Acts sub-letting is actual ground for getting possession—under local law cannot get possession, in my submission, for mere sub-letting. *Hyde v. Pinley* 1952 2 A.E.R. 102 at 103 (as to (a) Sch. I vide Megarry p. 239) to end of judgment. Waiver—if you know breach, and you are aware of it, you can
- 10 under English law (either Common Law or Rent Act) re-enter, but this right does not exist under our local law and therefore failure to seek re-entry is not exercise of waiver under local law. Local cases—*Indo-Australian Trading Co. v. Png Lim Chua* 1954 20 M.L.J. 155. *Guan Seng Kee Ltd. v. Buan Lee Seng* 1954 20 M.L.J. 34. (Submits person can only claim protection of Rent Protection Ordinance if in lawful possession.) "It is common ground" (p. 34). Submits authority for proposition that word "tenant" in first line of S. 15 (a) includes "sub-tenant." Admittedly this case states against his "immediate" landlord. In this connection definition of "landlord" in the Ordinance. Sub-tenant can
- 20 have immediate landlord and overall landlord. Submits could not have been intention of Ordinance if persons came within our provisions under which landlord can get possession and tenant moves out that landlord should then be put in a worse position against a sub-tenant. Court's look at matter with commonsense view of the matter.

Harris—

Case has really become an issue as to whether at outset there was a condition not to assign. Certainly no covenant as no deed. (*Nagappa v. Chew Chi Ya* 1949 M.L.J. 272—"The principle").

- Next question whether entitled to relief even if not statutory tenant.
- 30 Submits against Defts. 2 and 3 at any rate entitled to relief from mere occupation of ground floor. Say that both in respect of trespass and nuisance.

We cannot be trespassers unless original entry wrongful. Clerk and Lindsell 10th Ed. p. 510 "A person"

Submits Plaintiff protected under the Ordinance even where there has been a breach of covenant against sub-letting. Submits *Guan Seng Kee Ltd.* supports this proposition by reason of construction given to section 16 in that case.

- On question of fact whether agreement not to sub-let. Burden of
- 40 proof on shoulders of S.4 who asserts it. S.107 Ev. Ord. Megarry Ed. 7 p. 413 "The burden is on the landlord" Deft. 1 should have called Madam Tay to prove. In 1945 Deft. 1 had no knowledge of Rent Restriction Ordinance. Breach *qua* breach would enable Deft. 1 to recover under S.14 (1) (b) if she brought matter to Court against both Madam Tay and Plaintiff, although Court would probably not make order against Plaintiff without hearing him, but no such Court proceedings have in fact been taken. Affidavit of Deft. para. 16 also has bearing on this issue of fact. Suggests she is talking of situation when it occurred (1947). Evidence

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of Deft. 1 regarding speaking to Plaintiff in 1947—Plaintiff's evidence on the point not subjected to cross-examination. When proceedings eventually taken they were taken on basis Plaintiff had been licensee.

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Waiver. If burden to show condition against sub-letting on Deft. then admittedly burden on Plaintiff to establish waiver e.g. by acceptance of rent and acknowledgment Plaintiff a sub-tenant. No question of accepting rent in present case. Did Miss Lim know a sub-tenant. Submits on appearances must have been quite clear Plaintiff was a sub-tenant. Submits exclusive possession e.g. between complete strangers may still, consistently with the recent English decisions on the point of inference to 10 be drawn from exclusive possession, be proof of tenancy. This important in connection with Singapore conditions. *Odhermal v. Tan Cheng Lock & ors.* 1953 M.L.J. 43. What the parties have said has a great deal to do with question whether tenant or licensee. Deft. 1 had no possible ground for thinking the Plaintiff in this shop was anything but a sub-tenant. Submits that acceptance of rent by Deft. 1 from Madam Tay combined with the knowledge of the sub-tenancy constitutes waiver. (Smith suggests evidence of Tay Wah Hai's statement should be admitted as evidence of what he said of it. I inform Smith I still hold inadmissible—C.H.W.) Boswell's evidence to effect it was never settled what the legal 20 position was. *Pocock v. Carter* 1912 1 Ch. 663.

If Court holds there was sub-letting contrary to agreement and no knowledge submits Plaintiff still protected by the Ordinance. Plaintiff protected by Section 16 against Madam Tay, and thus becomes a statutory tenant. Section 15 no application in this case because no proceedings against Madam Tay, and nothing in Ordinance except Section 15, which says protection of sub-tenant is only extended if he is lawful sub-tenant. English Act (Section 5 (5)) refers to lawful sub-tenant. *Vide* also Section 15 of English Act, where sub-tenant must be lawful. Opposite to lawful in English Act is unlawful, not merely unauthorised. Our 30 section 15 of 1947 follows to large extent English 5 (5) but nothing corresponding to English 15 (3) (English 1920 Rent Restriction Act) dealing with position of sub-tenancy on termination of head tenancy by means other than judgment. In that situation we have to fall back on our section 16 which Privy Council has held to protect a sub-tenant in an action by the head landlord for recovery of possession on determination of head-lease and sub-lease. No suggestion in that Privy Council judgment object of Ordinance to protect lawful sub-tenants only.

As to incidents themselves—Deft. 1 had admitted allegations in large measure. These are clearly the sort of incidents with which injunctions 40 intended to deal with. No objection to injunction against Deft. 2.

With regard to costs (Smith asks that the question be not dealt with at that stage. Harris—Court has to make a finding on the question whether injunction granted or not. Smith withdraws objection on understanding he will have right of reply). Asks moneys paid into Court and disposed of claim for damages. Money paid in with denial. Payment in does not affect the Deft.'s defence. Plaintiff took the money out, so that part of case disposed of. But owing to relevant Rule Plaintiff could

not tax his costs (O. 23 r. 3). Wishes Court to deal with question of whether Plaintiff was entitled to damages. If Court makes finding counsel then can come to arrangement as to costs.

Smith—Most improper application. Plaintiff had said at beginning of case matter of damages has been disposed of. Asks Court to ignore this application. Plaintiff not entitled to any finding as to whether Plaintiff was entitled to damages or not.

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10 Judgment reserved.

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(Sgd.) KWEK CHIP LENG
Private Secretary to Judge
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No. 27.

JUDGMENT.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

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20 Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

And

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants.

30 The present proceedings arise out of a claim by the Plaintiff, who is the occupier of the ground floor of premises No. 265 Orchard Road, for an injunction in respect of alleged wrongful entry upon the premises and nuisance on the part of the Defendants. There is a counterclaim by the Defendants arising out of the same matters.

The following facts, which are not in dispute, constitute the background to the case. The second Defendant, who is now an old lady of 75, was the owner of the premises 265 Orchard Road. The first and third Defendants, who are respectively her daughter and son, are both in their early fifties. At all material times the first Defendant conducted all business transactions relating to the premises, which have belonged to the

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family since before the second world war, on behalf of her mother or latterly on her own behalf, as in April 1951 the ownership was transferred to her. In 1945 shortly after the liberation the first Defendant, Miss Lim, agreed to allow a certain Madam Tay to go into occupation of the building which at that time was empty. In May 1947 the Plaintiff occupied the ground floor for business purposes with the acquiescence of Madam Tay, and started a chemist's business. About the same time a man called Teo Sin Hun went into occupation of the first floor, also with the acquiescence of Madam Tay. Madam Tay herself was at that period occupying the top floor. She vacated the premises on 31st March 1951. Mr. Teo vacated at the end of the same year. The Plaintiff has continued to carry on his business there until the present time. 10

Now turning to the occurrences which have led to the present proceedings, I have heard in great detail the Plaintiff's allegations of objectionable conduct on the part of the three Defendants. Some of these allegations seem to me to provide good ground for the granting of the relief sought, if in all the circumstances this is a case for such relief being granted, others seem to me merely to be further evidence of what is, unfortunately, very obvious—that much bad feeling has existed for the last three years or more between the parties. In the former category I would place the allegations relating to the banging on the floor, the moving of furniture, and the playing with the tennis ball; in the latter such isolated incidents, however annoying if true, as the burning of the material which is said to have caused an unpleasant smell and the turning off of the lights. As to the banging on the floor, the moving of the furniture and the playing with the tennis ball the first Defendant does not deny she did these things but says she did them either in the course of normal activities reasonable to a householder, or, as far as the skipping and playing with the ball were concerned, for the sake of exercise, which she took on medical advice. The Plaintiff suggests these activities were all part of a campaign to drive him out. I have no doubt that the Plaintiff's suggestion is substantially correct. He gave his evidence in a convincing and straightforward manner which favourably impressed me, and I am satisfied that Miss Lim created the noises complained of, or at all events the greater part of them, with the express purpose of annoying the Plaintiff. It seems to me there is ample material to support this conclusion, but I would mention certain specific points in the evidence which to my mind are of particular significance. Firstly there is the independent testimony of Mrs. Tabor, which I accept, that one morning when she went to the Plaintiff's shop there was such a loud noise from upstairs she could not make herself heard, and after waiting about ten minutes she realised the noise was being made deliberately. Secondly the incidents relating to the hole above the Plaintiff's desk through which water and dust fell onto the desk, incidents Miss Lim does not deny, although she does deny her motives were malicious, can reasonably only be explained in my view by the existence of an intention to annoy the Plaintiff. Thirdly there seems to me to have been no inducement for the Plaintiff in his position to institute proceedings of this nature without some good cause. 20 30 40

Before turning to the legal aspects of the Plaintiff's occupation I shall state my conclusions on the merits of the Plaintiff's case considered simply in the light of the Defendant's conduct. It is well known that for 50

the past fifteen years or so the Legislature has seen fit to impose statutory restrictions on the rights of landlords to get possession of their premises. However galling to landlords this position may be in some cases the Courts clearly cannot countenance courses of conduct, if such conduct involves violation of tenants' legal rights, designed to get round the landlord and tenant legislation. In the case of Miss Lim herself I doubt if an award of damages against her would have the desired effect in view of her evident deep resentment of the Plaintiff's retention of the premises ; and I consider that if the Plaintiff is entitled to relief such relief should take the form of an injunction. Mr. Smith suggests an injunction in the case of the second Defendant would, in view of her age, be inappropriate. I am not prepared to say no women of seventy-five could be capable of conduct which merited an injunction, but I am satisfied from personal observation of Madam Ang that, whatever her physical powers were nearly three years ago when the greater part of the conduct complained against occurred, she is now fairly feeble, and I do not think I should grant an injunction as far as she is concerned. With regard to the third Defendant I have formed the view that from time to time he clearly lent active support to the campaign for causing the Plaintiff annoyance, and in his case I think it would be right to grant an injunction.

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I now turn to consider the legal aspects of the Plaintiff's occupation of the premises upon which, in my view, any right on the part of the Plaintiff to an injunction must in any event depend. I think it is clear the burden of proof that he is entitled to the relief sought rests upon the Plaintiff, and that the burden of proof there was a covenant or condition between the second Defendant and Madam Tay against sub-letting, an allegation on which the Defence strongly rely, rests upon the Defendants. Now it is not questioned that the Plaintiff from 1947 to 1951 paid Madam Tay rent at the rate of \$220 per month inclusive of light and water. He enjoyed, as far as Madam Tay was concerned, exclusive possession of the ground floor. It seems moreover hardly likely he would have embarked on the organisation and outfit requisite for a chemist's business unless he felt satisfied he would enjoy some security of tenure. All these facts, regard also being had to the point we are dealing with transactions which took place in Singapore, establish, I think, that a sub-tenancy was created between the Plaintiff and Madam Tay. On the other hand in the circumstances of this case I do not consider the fact Madam Tay lived in the same premises is strong enough to upset that conclusion. I also think on the authority of *Guan Seng Kee Ltd v. Buan Lee Seng Ltd* (1954 M.L.J. 34) it follows that, if Madam Tay was not prohibited from sub-letting by the terms of her tenancy, the Plaintiff would in 1951 have become a statutory tenant by reason of section 16 of the now repealed Control of Rent Ordinance, 1947, the provisions of which are applicable to this case. On this important matter as to whether there was a prohibition against sub-letting the Plaintiff has not—it may well be because he could not—brought any evidence. As I have said the Defendant asserts there was such a prohibition. In the circumstances the evidence in support of this assertion has had my very careful consideration. In the first place Miss Lim states that when she entered into the verbal agreement for the letting with Madam Tay in 1945 she told Madam Tay that she would not be allowed to sub-let and that Madam Tay had said that she would not sub-let. She

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also states Madam Tay had intimated she wanted the premises for two years, her intention being to run a café. According to Miss Lim she wished herself to resume eventually a pre-war family grocery business which had been conducted there. Now it would, of course, be easy for Miss Lim to tell the Court all this, even if none of it was true, and in this connection I would say in passing that I do not think the printed condition against sub-letting in Miss Lim's rent receipts is of significance in view of the fact the earliest relevant ones are of the year 1947, but in point of fact I do think the circumstance she went in 1947 to consult her then solicitor, Mr. Boswell, whose careful testimony I accept unreservedly, about recovery of the premises provides substantial corroboration that the arrangements made in 1945 were as she has told the Court. Moreover if it is accepted—and I see no reason to doubt it—she was hoping to commence a business of her own as soon as Madam Tay was finished with the premises it seems quite likely she would be careful to stipulate there was to be no sub-letting. In taking this view one need not ascribe to her any acquaintance with the provisions of the Rent (Restriction) Ordinance, 1939, which was then still in force. Miss Lim's assertion is further supported by Mr. Boswell's evidence to the effect that when she consulted him in 1947 she told him she had informed Madam Tay she could use the premises provided she did not sub-let, evidence admissible in my opinion not as to what had been said in 1945 but for its circumstantial value as to Miss Lim's state of mind with regard to the existence of a prohibition against sub-letting when she sought legal advice in 1947. I appreciate that at first sight Miss Lim's course of action when she took legal steps against the Plaintiff in 1951 might be taken as indicating she believed he had legal rights of occupation, but I think the correct view of this part of the evidence is that the course of action was determined by legal advice as to the most expedient tactics to be pursued in dealing with the intricacies of rent restriction. At any rate this evidence does not cause me to alter the impressions I have formed as to Miss Lim's state of mind in 1947 regarding the existence of a prohibition against sub-letting. The balance of probabilities are, in my view, that there was a prohibition against sub-letting in the oral contract between the second Defendant and Madam Tay, and I find accordingly.

The next matter to require examination is the submission on behalf of the Plaintiff that, even if the Court were to find there existed a prohibition against sub-letting, there had, nevertheless, been waiver of the breach of such prohibition on the part of the second Defendant, or to put the matter exactly by Miss Lim in her capacity of agent for her mother, the second Defendant. Now as to Miss Lim's knowledge or otherwise of the existence of the sub-tenancy, she says that when the Plaintiff commenced the chemist's business in 1947 she believed he was in partnership with Madam Tay and that she continued to believe so up to 1951. I was not so favourably impressed by Miss Lim's demeanour in the witness-box that I am prepared to accept her unsupported word on any of the material points in issue. After consideration in the light of events which are not in dispute of what she has said about the matter I think it not unlikely she did believe in 1947 the Plaintiff had taken over the ground floor as a partner of Madam Tay, but I also think that probably for a considerable time before 1951 she realised he was not a partner but a sub-tenant. On the first point Miss Lim's evidence as to being given the names of the four partners

and making enquiries that appeared to confirm the matter rings to my mind true. But on the second point I consider it improbable in the circumstances that Miss Lim, being a Chinese lady of considerable business shrewdness in my estimation, and interested in recovering possession of the whole premises from at least 1947 onwards, had not discovered long before Madam Tay vacated the top floor that the relation between Madam Tay and the Plaintiff was not one of partnership; and I find accordingly. The question then arises, did it constitute waiver on the part of the second Defendant when she continued to accept rent from Madam Tay after

10 she knew of the existence of this sub-tenancy? For the defence it is urged that such acceptance did not amount to waiver because, whereas under the English acts sub-letting in breach of prohibition is an actual ground for the landlord's recovery of possession, under our local law a breach of such prohibition does not, so it was submitted, create a right of re-entry and, therefore, to continue to accept rent, even with knowledge of such a breach, is not an exercise of waiver. I have considered this proposition carefully but I do not think it is correct as far as our local law is concerned. It seems to me that a prohibition against subletting is an obligation of a tenancy not inconsistent with the Control of Rent Ordinance and the

20 breaking of such prohibition a breaking of such obligation both within the meaning of section 14 (1) (b) of the Ordinance. If I am right in this view, which, I may say, I formed originally on my reading of our Ordinance, but support for which I think is to be found in the English authority of *Dick v. Jacques* (1920) 36 T.L.R. Ch., the present case appears on the findings I have stated to be one in which the landlord had at least a "prima facie" right to recover, at the time she first knew of the breach possession both against the tenant and the sub-tenant since it falls within the class in which Section 15 does not automatically protect the sub-tenant. I should make it clear I only cite *Dick v. Jacques* on the point

30 that a condition against sub-letting is an obligation of a tenancy—the rights arising in the event of breach are not identical in the English and in the local law. Assuming then that the second Defendant had grounds for successful application to the Court for re-entry by reason of this breach, did the continued acceptance of the rent from Madam Tay with knowledge of this breach constitute waiver?

To deal with the point it is necessary first to reach a conclusion as to when Miss Lim in her capacity of agent for her mother first became aware of the sub-tenancy. There is no very reliable evidence as to this if Miss

40 Lim's own statements about the matter are, as I think they should be, treated with reserve, but bearing in mind the various established aspects of the situation, Miss Lim's keenness from 1947 onwards to recover possession which led no doubt to an interest in any information she might get about its occupiers; the fact that the occupancy of the middle floor was of a nature to arouse suspicions of sub-letting; and above all the fact to which I have already referred, that I do not believe Miss Lim is a type who would be long left in ignorance as to the actual relationship between Madam Tay and the Plaintiff—I feel it is not unfair to hold Miss Lim knew of the sub-tenancy for at least over a year before Madam Tay vacated in March 1951. I appreciate that this is a somewhat arbitrary finding as far as the

50 date is concerned on a point on which proof is difficult to obtain, but since the issues require that I must come to a finding I would say that this

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estimate approximates in my view most closely to the probabilities of the matter. In the absence of local authority I think one may accept the proposition which appears well established by English cases that the question whether acceptance of rent with full knowledge of a breach amounts to waiver is in each case a question of fact to be determined in the light of its particular circumstances (*vide* Megary, *The Rent Acts* 7th Edn. pp. 238-9). Now it is established that Miss Lim consulted her solicitors in 1947 regarding the recovery of possession, and it appears that after that she did not take legal advice again until Madam Tay had left in 1951. She may have been advised in 1947 against taking legal proceedings for the recovery of the premises, but, at all events, for the next four years she apparently took no active steps. This may have been because she thought it would avail her nothing to do so. But I think an at least equally plausible explanation is that her keenness to open her own business had, temporarily at least, waned somewhat and that she was content to go on receiving a satisfactory rent from Madam Tay. It is, perhaps, noteworthy in this connection that Madam Tay's eventual vacation of the portion of the house she was occupying seems to have been on her own initiative. Whatever is the true explanation I consider Miss Lim acquiesced in the situation of the sub-tenancy after she became aware of its existence and I think her continued acceptance of rent from Madam Tay, without at least some intimation that acceptance was without prejudice to any rights of recovery she might otherwise have, must be held to constitute waiver of the breach by her as her mother's agent.

I shall now consider the legal effect of the findings I have stated. It seems plain on the authority of *Guan Seng Kee Ltd. v. Buan Lee Seng Ltd.* (1954) 20 M.L.J. 34, that, as I have suggested earlier, had the original sub-letting by Madam Tay to the Plaintiff been lawful, the Plaintiff would have become on Madam Tay's vacation of the premises a statutory tenant within the meaning of section 16 (a) of the 1947 Control of Rent Ordinance. The present question then is whether the effect of the waiver on the part of the second Defendant was to place the Plaintiff in that same position. Putting the matter another way "the principle underlying the Ordinance," to quote the words of Sir Lionel Leach in *Buan Lee Seng's* case, "is the protection of those who have obtained lawful possession of premises whether as tenants or sub-tenants," and so the question is does this principle extend to the case where a sub-tenant has obtained possession unlawfully but where there has subsequently been waiver of the breach which rendered the obtaining of the possession originally unlawful. As no judgment was obtained against Madam Tay it follows it can only be Section 16 (a) which has any application to this point. Now the authorities on waiver seem to be agreed that once there has been waiver the effect is to wash out, if I may use the phrase, the original breach. I think, therefore, that when Miss Lim waived the breach the legal consequence was to place the Plaintiff's sub-tenancy on the same footing as if there never had been a prohibition against sub-letting. If this view is correct it appears to follow, on the authority of *Guan Seng Kee v. Buan Lee Seng* that when the interest of Madam Tay ceased and the Plaintiff remained in possession he became in the circumstance the statutory tenant of the landlord.

I conclude, then, the Plaintiff's occupation of the ground floor of the premises has legal sanction. It remains to consider whether his status as a tenant and the actions of the Defendants entitle him to the relief he seeks, in whole or in part.

There is one part of the Plaintiff's case which to my mind has not much to support it, namely the seeking of an injunction in connection with the passing through the ground floor by the Defendants in circumstances said to amount to excessive user. Putting this complaint at its highest for the Plaintiff it amounts to little more than an allegation of user at
 10 unreasonable hours. It would be extremely difficult, even if it was desirable, to lay down limits either as to the times or the frequency with which a landlord living at the top of a house might during the night hours use the passage through the ground floor when this provided the only access to his quarters. It is, of course, true that if only an element of sweet reasonableness were to pervade the situation it would not be difficult for Miss Lim to come in or go out at any hour she wished by means of a latch-key without causing disturbance to the Plaintiff or his employees.

I now turn to the matter of the noise from the first floor. I am satisfied that for a period of two or three months in 1952 prior to the
 20 granting of the interim injunction there was created by the second Defendant, sometimes on several occasions in a week, for periods extending up to twenty minutes at a time or intermittently a degree of noise much in excess of what the occupier of the ground floor could, having regard to the amount of noise ordinarily to be anticipated in a Chinese-occupied house of this type, be reasonably expected to tolerate. Now it is clear that there is no absolute standard to be applied as to what constitutes a nuisance. "A nuisance of this kind, to be actionable, must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference with something of
 30 abnormal sensitiveness does not of itself constitute a nuisance" (Clerk and Lindsell on Torts 10th Edn. 548). Applying that criterion to the present case I am of the opinion the second Defendant's conduct constituted a nuisance. I think the noise in question constituted a nuisance irrespective of motive, but as it appears from *Christie v. Davey* (1893 1 Ch. 316) the question of motive may sometimes have a bearing on the issue of nuisance I would add I have no doubt that a great proportion of this noise was made maliciously. Mr. Smith for the Defendants queried a tenant's right to sue his landlord for nuisance. I think the correct view is that when a
 40 nuisance is caused by a mode of user of a premises the occupier is *prima facie* liable (*vide* Clerk and Lindsell p. 593), and that in the present case it is not really in her capacity of landlord but in her capacity of occupier of the first floor that relief is sought against Miss Lim. I expressed the view earlier that I doubted if an award of damages against Miss Lim and the third Defendant would achieve the desired effect. I consider there are grounds for apprehension of frequent repetition of this nuisance if Miss Lim is freed from the present restraint. As it should be no great hardship on Miss Lim and her brother to be confined to making only that amount of noise which by the standards of a Chinese household are reasonable, and as no interests of third parties are involved, I do not think any
 50 factors exist which would render the grant of this relief undesirable.

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Accordingly I hold the Plaintiff is entitled to an injunction in respect of this nuisance against the first and third Defendants.

The next matter for me to consider is the claim for an injunction in respect of water, dirt and noxious liquids. Of the various allegations made in support of this particular claim the most serious is probably that in respect of the hole over the Plaintiff's desk. He testified that on coming to office one morning he found water and dust on his desk. He looked up and saw a hole in the ceiling which had not been there the day before. The Plaintiff had the hole plugged with cork. Next morning he found the cork had been pushed out. He got one of his employees to put back the cork and fix the top of a cigarette tin below the cork. On the following morning this contraption had been pushed out. The Plaintiff then had the hole covered with the planking. On the following day he found the planking had been split. Subsequently on numerous occasions he found water and dirt on his desk. Miss Lim in her evidence admitted these incidents except that she denied she had pushed dirt and water through the hole, and gave the explanation that she wished to be able to shout down to the people below when she wanted them to turn off the water. I have no doubt, whether the dirt and water was put through the hole by Miss Lim or by one of the other members of the household, that this conduct was engineered for the sole purpose of annoying the Plaintiff. Other allegations of a similar nature were that from time to time water was allowed to drip from brooms or sarongs suspended from the scullery of the portion of the house occupied by the Defendants onto the backyard used by the Plaintiff and his employees, and that on one occasion urine was thrown down onto the ground floor. Now whether all these things were done deliberately or not, I am satisfied that they occurred. I am also satisfied that at least a proportion of them occurred as a result of one or other of the Defendants deliberately causing them to happen. To send dirty water or other noxious liquids into your neighbour's premises in such circumstances is, I think, clearly trespass. As long as the Plaintiff occupies the ground floor—at any rate as long as he occupies it with legal sanction—I consider he is entitled to be protected against this sort of annoyance, and accordingly I grant an injunction against the first and third Defendants restraining them from depositing water, dirt or noxious liquids on the Plaintiff's premises or from permitting water, dirt or noxious liquids to escape from their property on to the Plaintiff's property.

The first Defendant asks by way of counterclaim for a declaration that she is entitled to a right of way over the passage way leading from the front door of the premises to the entrance to the staircase at the rear of the ground floor. I do not think this claim can be questioned, and I made the declaration asked for.

The first Defendant also asks for an injunction to restrain the Plaintiff, his servants and agents from wrongfully locking the front door of the ground floor. This is a matter, as I have said earlier, which could best be settled by the adoption of a reasonable attitude by both sides. I advise the Plaintiff to have a sound Yale lock fixed to the front door, and to supply a key of it to Miss Lim. I also advise him not to use any other bars or bolts for securing the door during the night hours. Should he consider a Yale lock will not provide sufficient protection he could continue his practice of getting some of his employees to sleep on the premises.

I reserve the question of costs generally. As to the application of Mr. Harris for an expression of the Court's view whether the Plaintiff was entitled to damages so that a point relating to costs not directly connected with issues now before the Court might more easily be determined, I do not think it would be appropriate for me to do so.

(Sgd.) C. H. WHITTON,
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True Copy

10 (Sgd.) QWEK—
Private Secretary to Judge,
Court No. 2.
Supreme Court, Singapore.

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ORDER.

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IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Suit No. 596 of 1952.

Between PANG KEAH SWEE

Plaintiff

20

And

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants.

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30 THIS ACTION coming on for trial on the 6th, 7th and 8th days of September and the 3rd, 4th and 5th days of November 1954 and the 19th, 20th, 21st and 22nd days of January 1955 before the Honourable Mr. Justice Cuthbert Henry Whitton in the presence of Counsel for the Plaintiff and for the Defendants and upon reading the pleadings filed herein and upon hearing the evidence adduced and what was alleged by Counsel for the Plaintiff and Counsel for the Defendants. It Was Ordered that this action do stand for judgment and the same coming on for judgment on the 23rd day of February 1955 in the presence of Counsel for both parties and after further hearing on the 25th day of April 1955 THIS COURT DOTH ORDER AND DIRECT that the 1st Defendant be perpetually restrained and an injunction is hereby granted perpetually restraining the 1st Defendant from making in or upon

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1955,
continued.

any part of the building No. 265 Orchard Road, Singapore occupied by the 1st Defendant excessive noise so as to cause a nuisance to the Plaintiff in his occupation of the ground floor of and yard at the back of the said building so long as he is in occupation thereof as a statutory tenant AND THIS COURT DOTH FURTHER ORDER AND DIRECT that the 1st Defendant be perpetually restrained and an injunction is hereby granted perpetually restraining the 1st Defendant, so long as the Plaintiff is in occupation of the ground floor of and yard at the back of the said building as a statutory tenant thereof, from depositing water, dirt and noxious liquids on the said ground floor of and yard at the back of the said building or from permitting water, dirt and noxious liquids to escape from any part of the said building occupied by the 1st Defendant on to the said ground floor of and yard at the back of the said building AND THIS COURT DOTH DECLARE that the 1st Defendant as occupier of the first and top floors of the said building is entitled to a right of way over the ground floor of the said building from the front door of the said building abutting on to Orchard Road aforesaid to the foot of the staircase at the rear of the said ground floor leading to the said first and top floors of the said building AND THIS COURT DOTH FURTHER ORDER that the Defendants do pay to the Plaintiff his whole costs of this action up to the date of the payment into Court on the 9th day of April 1953 including the costs of payment out AND THIS COURT DOTH FURTHER ORDER that the 1st Defendant do pay to the Plaintiff his costs of this action after the date of payment in aforesaid including the costs of the trial except so far as such costs may be found by the Registrar on taxation to be attributable to proceedings against the 2nd and 3rd Defendants after the date of payment in aforesaid AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the 3rd Defendant such part of the costs of the 3rd Defendant after the date of payment in aforesaid as are found by the Registrar on taxation to be attributable to his own defence AND THIS COURT DOTH FURTHER ORDER that there be no order as to the costs of the Plaintiff and of the 2nd Defendant of the proceedings between these two parties after the date of payment in aforesaid AND THIS COURT DOTH LASTLY ORDER that the said costs be taxed on the lower scale.

Entered this 18th day of June 1955 at 12.30 p.m. in Volume LXVII
Page 81 to 83.

(Sgd.) TAN THOON LIP
Registrar. 40

Filed this 18th day of June, 1955.

No. 29.

MEMORANDUM OF APPEAL.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

In the Court of Appeal.

Between PANG KEAH SWEE Plaintiff-
Respondent

And

1. LIM SIEW NEO (f)
10 2. ANG HENG KIP (w)
3. LIM SIEW TECK Defendants-
Appellants.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 29.
Memo-
randum of
Appeal,
2nd May
1955.

Lim Siew Neo, Ang Heng Kip and Lim Siew Teck the Defendants/ Appellants appeal to the Court of Appeal in Singapore against those parts of the judgment of the Honourable Mr. Justice C. H. Whitton delivered on the 23rd February 1955 mentioned in the Notice of Appeal on the grounds following :—

1. The learned Trial Judge was wrong in law and in fact in holding that there had been any waiver of the covenant against subletting to
20 sub-tenants.

2. The learned Trial Judge erred in law and in fact by holding that Madam Lim Siew Neo knew that the premises occupied by the Respondent had been sublet to the Respondent as a sub-tenant.

3. There was no evidence that Madam Lim Siew Neo knew that the Respondent was a sub-tenant of the premises and any such finding was against the weight of the evidence.

4. The learned Trial Judge's finding " I feel it is not unfair to hold Miss Lim knew of the sub-tenancy for at least over one year before Madam Tay vacated in March 1951 " was completely unsupported in
30 evidence and is acknowledged by the learned Trial Judge to be so in his immediate remark " I appreciate that this is a somewhat arbitrary finding as far as the date is concerned on a point of which proof is difficult to obtain."

5. The learned Trial Judge was wrong in law in holding that apart from the question of waiver your first Appellant was not entitled to possession as a Notice to Quit had been given by the tenant of the premises through whom the Respondent claimed and there was a covenant against subletting and in these circumstances the landlord is entitled to possession by the terms of the Control of Rent Ordinance.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 29.
Memo-
randum of
Appeal,
2nd May
1955,
continued.

6. The learned Trial Judge in finding that a tenancy had been created between the Respondent and Madam Tay so found because he considered that the Respondent had exclusive possession of the ground floor as far as Madam Tay was concerned and because "it seemed moreover hardly likely he would have embarked on the organization and outfit requisite to a chemist's business unless he felt satisfied that he would enjoy some security of tenure."

7. The learned Trial Judge by the said remark showed an erroneous appreciation of the difference between a Licence and a Tenancy as either could provide the same security of tenure apart from the Control of Rent Ordinance and it was the relationship created apart from the Control of Rent Ordinance which the learned Trial Judge had to consider. 10

8. The learned Trial Judge was further wrong in law in considering that either one or the other or both of the said reasons was the proper principle to apply in determining the question whether the Respondent was a tenant or not. The proper principle to have been applied was did the parties intend to create an estate or interest in land or to confer a personal privilege.

9. The learned trial Judge's finding "on the other hand in the circumstances of this case I do not consider the fact that Madam Tay lived in the same premises is sufficient enough to upset that conclusion" showed an erroneous view of the proper inference that should have been drawn from the fact that Madam Tay lived on the premises and showed an erroneous view of where the onus of proof that the Respondent was a tenant lay once having found that fact. 20

10. The proper inference to draw as a matter of law from the fact that Madam Tay lived on the premises was that she did not intend to create an estate or interest in land but only to confer a personal privilege. The onus of proof was thereupon transferred to the Respondent to prove that it was Madam Tay's intention to grant an estate or interest in land and no evidence was offered of this. The Respondent purported to offer some evidence by claiming that Teo Syn Hon who occupied the first floor was a tenant and relied on acts done in relation to Teo Syn Hon to prove a system or course of conduct against tenants on the premises. 30

11. The evidence in relation to Teo Syn Hon showed conclusively that Teo Syn Hon was not a tenant but a mere licensee.

12. The learned Trial Judge also erred in law in considering that the onus of proof that the Respondent was not a tenant lay on your Appellants. Your Appellants will contend that even if in the case of a possession action by a landlord against persons residing on rent controlled premises the onus of proof that the persons residing thereupon are not tenants is on the landlord no such consideration applies to a case where an action is brought against a landlord by a party residing on the premises whether the premises are rent controlled or not. 40

13. The learned Trial Judge was wrong in law in granting an injunction restraining the first and third Appellants from permitting water, dirt or noxious liquids to escape from the first Appellant's premises on to the Respondent's premises without defining the limits of the said injunction.

*In the
Supreme
Court
of the
Colony of
Singapore.*

14. Further no injunction was sought against the third Appellant from permitting or depositing water, dirt or noxious liquids to escape from the first Appellant's premises on to the Respondent's premises.

*In the
Court of
Appeal.*

15. Further the said injunction purported to be an injunction restraining a nuisance and if any injunction could have been given at all it would have been only in respect of a breach of contract.

No. 29.
Memo-
randum of
Appeal,
2nd May
1955,
continued.

16. The learned Trial Judge was wrong in law in granting an injunction which is incapable of elucidation. The particular injunction complained of is against your first Appellant and the third Appellant from making only that amount of noise which by the standards of a Chinese household are reasonable.

17. The learned Trial Judge was wrong in law in holding that irrespective of whether the relationship of landlord and tenant existed the Respondent was entitled to an injunction restraining your first and third Appellants from making only that amount of noise which by the standards of a Chinese household are reasonable since a trespasser is not entitled to require that the land on which he remains is free from noise whether excessive or not and if the Respondent was not a statutory tenant he was a trespasser and the first Appellant was justified in endeavouring to remove a trespasser.

18. No such injunction was sought against your third Appellant and the only injunction which could have been granted against your first Appellant was in respect of a breach of contract.

19. The purported grant of an injunction without being satisfied whether the action complained of amounted to a nuisance or a breach of contract is wrong in law as different considerations apply depending on the cause of action and the limits of the injunction are incapable of definition.

20. The learned Trial Judge was wrong in law in holding that the Respondent was entitled to any of the relief asked for on his findings of fact which did not contain a finding of fact that any particular action had been done by any particular person or deliberately with intention to harm that person.

Dated at Singapore this 2nd day of May, 1955.

(Sgd.) DONALDSON & BURKINSHAW.

Solicitors for the above-named
Defendants/Appellants.

NOTES OF ARGUMENT of Taylor, J.

*In the
Supreme
Court
of the
Colony of
Singapore.*

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

In the Court of Appeal.

*In the
Court of
Appeal.*

Suit No. 596 of 1952.

No. 30.
Notes of
Argument
of
Taylor, J.

Civil Appeal No. 5 of 1955.

Between PANG KEAH SWEE . . .

Plaintiff-
Respt.

and

10

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants-
Appellants.

Coram : TAYLOR, J.
STORR, J.
KNIGHT, J.

20th June, 1955.

Smith for Appellants.

Harris for Respondent.

20

Smith hands in the formal Order omitted from the Record.

Injunctions against 3rd Appellant have been withdrawn and are no longer in question.

Agreed that injunction should be limited to the period while the Plaintiff is a statutory tenant.

Occupier is entitled to an injunction, generally but not if a trespasser—orig.

Memo. of Appeal.

Para. 13—now out.

14— do.

15—not pressed if fail on other points.

30

Para. 16. Excessive as to the wearing of clogs (See Order).

17. Stands—only necessary if he is *not* a statutory tenant.

18. Settled and withdrawn.

19. Not pressed.

20. Not pursued.

Was he justified in finding that she was ? (blank in m.s.).

In 1945. D2 let to Mme Tay for 2 years—on condition of no subletting arranged by D.1.

1945—47 Coffee shop on ground floor—Tay.

47—Changed to Chemist.

No suggestion of subletting before 1947.

May 47. Chemist shop established.

Earlier—Mme Tay's friends occupied 1st floor.

Mme Tay—top floor.

10 D.1 did enquire whether this was subletting.

Previous Ordinance then in force.

After October 47—75% rule.

As there was a condition against subletting she could have recovered possession of the whole and ejected subtenant.

Concealment of subtenancies.

Mme Tay said not subtenants—but partners.

Trial Judge accepted it.

Supported by Boswell—accepted evidence.

Tay was agent for Mme Tay.

20 was Trial Judge accepts as a fact that D.1 did not know in 1947 that there a subletting but he accepts her evidence as to partners etc.

No evidence by Plaintiff that subtenancy communicated to D.1.

Trial Judge concludes that sometime before 1951 she found out—no evidence—no basis for that inference.

No evidence that she is of business shrewdness—Never in it—only wanted to start.

Cannot infer that she will know relation between landlord and occupier.

Had she known of subtenancy she would have acted—

30 Submit shews the opposite.

Submit no inference properly drawn.

Never any suggestion of collusion as to the Notice to quit.

Possession iden with Teo.

Not a tenant—personal to self and sisters.

Suspicion of subletting.

Not relied on fact of occupation.

Helman v. Horsham Asst. (1949), 1 A.E.R. 776 at 784.

*In the
Supreme
Court
of the
Colony of
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Court of
Appeal.*

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

*In the
Supreme
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Facts.

Mme Tay lived on the premises with two other sets of people—not subtenants but licensees.

Proper inference for her (and Trial Judge to draw) is that they were licensees.

*In the
Court of
Appeal.*

A fortiori for an outsider.

Cobb v. Lane (1952) 1 A.E.R. 1199, 1202.

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

Question of intention.

Landlord not residing on the premises there.

Proper inference is, not tenant. 10

Test is intention to create an interest in land—or personal privilege.

How could she know their intention unless they declared it ?

Pang tried to prove himself a tenant.

Control of Rent Ordinance not relevant.

Determine the relationship apart from it—then apply it.

c.f. Helman at p. 773/4.

Payment of rent is equivocal.

Exclusive possession—not the test.

Ground floor not strictly exclusive.

Submit—Trial Judge approached backwards. 20

Landlord on premises starts with control.

If he retains it they are licensees.

Pang did not give evidence to counter.

Could not call Mme Tay.

Submit—for Pang to shew he was a tenant.

As to whether she could have known the relationship.

Pang in Chief—

She asked me, before 1947, what business he was going to do ?

Fact of subletting was deliberately concealed. 30

(She said he was a partner).

Up to 1951 he never said anything to her about his status on the premises.

Case is not waiver—but that there was no covenant—no plea of waiver.

No question of subtenancy—I am staying with—

Trial Judge did not rely on this.

You cannot rely on a notice to quit as to whether tenancy or not.

In 1951 there was a claim that he was a subtenant.

Till tomorrow

21st June 1955.

Cor : TAYLOR, J.

STORR, J.

KNIGHT, J.

Civil Appeal 5/55. *Resumed.*

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

10 *Smith (continuing)*

There was actually no evidence that she had knowledge—but we tried to shew she had none.

Trial Judge found that, at that time she was told, and did think—it was a partnership—not a sub-letting—

This was accepted.

She really and reasonably thought they were partners.

No material to infer that she suddenly became aware of a relationship which had been concealed.

First mention of subtenancy.

20 No evidence that she knew subtenancy or even that it was separately sublet.

As to waiver—Requires full knowledge.

No acceptance of rent after knowledge.

No evidence from which one could infer.

Unless he proves waiver he was never a person to be protected. It was found as a fact that there was a condition against subletting.

Helman (D.C.) 1949. 1 K.B. 62, 66.

C.A. 1949 2 K.B. 335 at 349.

Cobb v. Lane 1952. T.L.R. 1037.

30 Trial Judge's 3 reasons insufficient for tenancy.

Here—onus on Plaintiff.

Trial Judge has found a tenancy.

Trial Judge has found that waiver was on the tenant (*sic*).

On the covenant against subletting—plus the Notice to quit from Mme Tay—we are entitled to possession as against everybody.

(waiver apart)

*In the
Supreme
Court
of the
Colony of
Singapore.*

P.C. Intention of Ordinance to protect those Lawfully in occupation.

Guan Seng Kee v. Buan Lee Seng (P.C.) 1954 M.L.J. 34.

Benmax v. Austin Motors 1955 M.L.J. XIV.

Harris :

*In the
Court of
Appeal.*

Evidence—9½ days.

Found Acts intended to annoy and drive out.

Was he entitled to occupy the premises.

Clear that Trial Judge accepted that Plaintiff's occupation had legal sanction—therefore entitled to remedy in nuisance.

Grounds of Appeal 17—It was held his occupation legal—statutory 10 tenant.

Short facts—

Mme. Tay—who was tenant of the whole—gave notice to quit—determining that tenancy as from 31 March 1951.

Having received vacant possession from Mme. Tay—Miss Lim's solicitors.

Why one month's notice if we were trespassers.

Submit at that time Mme. Ang knew we had gone in as a subtenant of Mme. Tay.

Plaintiff remained—negotiated for a lease

20

—subject to a notice to quit expiring at end of term.

—which Boswell thought would give ground of recovery of possession.

Why should she offer a 3 year lease.

? Pity.

Boswell said—long time there—on my advice.

It fell through because Plaintiff would not sign the notice to quit.

Submit—Reason for the offer of lease was that she thought his existing rights were good—submit the only possible reason—(she said she had been deceived).

Lease fell through in March 1952.

30

She came into possession of upper floor end year. She would not have done it if she had thought there was any other way of getting us out.

[If true, is it an answer ?]

Intld. E.N.T.

Only possible inference—she was faced with his security.

No suggestion of any covenant against subletting—We had never, up to June 1952, heard of it.

Waiver not pleaded—

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

Statement of Claim—statutory tenant Defence—denied it, 20 Sept. 1952.

Covenant against subletting never mentioned in her affidavit.

25 Sept. 1952 for first time she sought to recover ground floor—in those proceedings she alleged Pang only a licensee of Mme. Ang.

Discontinued in December 1952.

Now learn that ? (blank in m.s.)

Never suggested to, or put to, Pang that he was a partner of Mme. Tay.

10 No part of her case here that Pang was anything more than a licensee by reason of fact that Mme. Tay lived in the premises.

No part of her case that Pang was a partner

but Attempt to put in Boswell's file to prove it.

Evidence that she did not know is of no value and contradicted by her own witness.

Plaintiff's case—that he was tenant of Mme. Tay.

Interrogatory—put that no covenant against subletting.

Reply :—There had been a covenant against subletting premises or any part.

20 If she was going to prove a covenant—now first heard of by Pang—then he would prove waiver—by acceptance of rent by Lim, from Tay, with knowledge of the breach

Norman v. Simpson (1946) 1 A.E.R. 74.

—Waiver of the prohibition—or rather of the right of re-entry for breach.

Followed in *Hong Cheok Lau v. Ong Sing Mai* 1951 M.L.J. 34.

If he could prove acceptance with knowledge—there was waiver of the covenant.

Onus was on Plaintiff.

30 No question that Lim accepted rent from Tay—seeing us on premises from 1947 to 1951.

Question is—did she know Pang was a tenant ?

Was Pang a tenant ?

Trial Judge held he was a tenant.

1947—Miss Lim's reaction was to suspect subletting.

Pure question of fact.

Could he find Pang was a tenant ?

Common for upper floors different occupation.

Would Pang want a tenancy.

Surely entitled to hold a tenancy.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

*In the
Supreme
Court
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Colony of
Singapore.*

As to *Helman*—Rating case—
House—distinction between severance and non-severance.
Here—a shop—
Denning L.J.—at page 353.

*In the
Court of
Appeal.*

Not a lodger for Rent Act.
Evershed 345/6—not concerned.

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

Why does fact that landlady lives on premises alter tenants burden of proof.
Trial Judge has found a tenancy.
Unless—it is said no evidence of a tenancy see why should his finding 10
be disturbed.

Cobb v. Lane. Exclusive occupation not inconsistent with license.
—family case—

He could hold Pang was a tenant.
Facts show that she believed we were a tenant ?
She knew the facts of Pang's occupation.
Teo may have known of the covenant.
Other explanations.

Because premises filling up she suspected subletting.
Whole of ground floor including the back yard. 20

Till 2.30.

Harris continues :

Evidence of occupation of ground floor supports a finding of knowledge by D.1 that Pang was a subtenant—to support finding of waiver.

Pang's evidence :

Occupation—saw her on premises.
XXn.—no suggestion of partner with Mme. Tay.
No question as to what was ever said to him by D.1.

As result of Plaintiff's contn. of waiver—she thought she must meet inferences from occupation—She tried to do so by saying she thought she 30
was a partner—She was to give evidence of a state of mind to rebut inference
of knowledge from seeing him there. She said, as to her own state of
mind, she believed he was a partner—inspired by Mme. Tay—objected
to but admitted—doubtful probative value—cannot be XXd. to—

“ —ring of truth.”

D.1 said :—she left premises in 1945—she stipulated for no subletting,
“ or any part.”

Two years up Jan. Feb. 1947.

Her first request to recover was early 1947.

Chemist appeared May–June.

*In the
Supreme
Court
of the
Colony of
Singapore.*

XXn. :

As to letting in 45.

Term certain to expire in October 1947.

She did not go to Boswell till then.

If 2 years certain why ask in February 1947.

10 Boswell said October 1947—she wanted to recover she had never mentioned the visit—said happy to leave Mme. Tan there.

She suspected subletting.

View formed in Oct. 1952.

Miss Lim had formed the view there was a subtenancy, long before
Conversations in June pure invention.

Question of partnership did not arise till 1947.

In light of Boswell's evidence—*her* own evidence of her state of mind is valueless.

Entirely inconsistent evidence about the time when (the partnership discussed) took place—cannot accept her evidence—

20 Boswell speaks of period after Oct. 1947.

D.1 „ „ „ May–June 1947.

Boswell's evidence valueless unless as corroboration of D.1.

Boswell does not say he believed her state of mind says she was undecided.

Occupation :

Nothing more done for 4 years.

Then offered a lease for 3 years provided we signed a notice to quit.

When this fell through she tried to drive Pang out—because she was advised she could not prove a condition against subletting.

30 No evidence of covenant against subletting.

Could not reasonably find it.

[Smith. This seeking a variation of the judgment—for which there must be a cross appeal—which there is not.]

Ruled :

We will hear the argument and consider formal leave and costs later.
Intld. E. N. T.

*In the
Court of
Appeal.*

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

Harris continuing :

She was testifying as to what happened in 1945.

He was not prepared to accept her without reserve.

Treated with reserve.

*In the
Court of
Appeal.*

Not her unsupported word.

He discounts the rent receipts.

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

Evidence of Boswell inadmissible to prove anything at all.

Concede. There is evidence (hers).

But the corroboration—on his view of her evidence—is insufficient.

Submit. Evidence—he probably could find a sub-tenancy—evidence 10
of that—equally as to D.1.

She could and must infer a subletting *unless* she could show some other
relationship—as she tried to do.

She has not shewn belief in other relationship.

The evidence on which she sought to do so is inconsistent with Deft's
evidence.

Facts from October 1947 lead only to inference that if there was a
covenant against subletting, she waived it.

Smith (in reply). As to partnership, not put—he did not xxn. 20
either.

Events not in dispute—she did believe—

Helman's case } —the passages to deal with the law of Landlord and
& *Cobb v. Lane* } Tenant.

The Dispensary could never lock up—

They asked for an injunction to restrain excessive use of right of way—

No exclusive use of ground floor.

Boswell not attacked below.

[He was not here].

Found that in late 1947—she reasonably believed partners.

Waiver needs full knowledge—nothing here by suspicion. 30

As to first mention of subletting—knows the Pltff. could have written
to Deft. or Mme Tay and—

[Too fast to be recorded].

Gist is that Plaintiffs are determined to stay at all costs.

“ Faced with security of tenure.”

One reason they did not rush into Court was Consulted with a view
to getting possession.

As to Ground 17—page 107

If not a statutory tenant he is a trespasser—in this case—

Term of 2 years—Monthly tenancy with a time limit—

As to waiver—only the facts of occupation.

At commencement he undertook onus—

Whitton, J., not in Singapore in 1947–1951 and not qualified to say what conditions were then.

Finding in favour of

C.A.V

10

(Intld.) E. N. T.

Friday, 1st July 1955.

For Judgment.

Civil Appeal 5/55.

Coram : TAYLOR, J.

STORR, J.

KNIGHT, J.

Counsel as before.

Dismissed with costs.

Deposit to Respondent's solicitors.

20

(Sgd.) E. N. TAYLOR.

True Copy

(Sgd.) ENG SEONG HOOL.

Private Secretary to Judge,

Court No. 3

Supreme Court, Singapore.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 30.
Notes of
Argument
of
Taylor, J.,
continued.

NOTES OF ARGUMENT of Storr, J.

Coram : TAYLOR, J.

STORR, J.

KNIGHT, J.

20th June, 1955.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 31.
Notes of
Argument
of
Storr, J.

L. A. J. Smith for Appellants.

Harris for Respondent.

Smith :

No injunction was asked for against 3rd Defendant. Withdrawn by 10 consent.

Order : injunction only so long as Plaintiff statutory tenant.

Point in issue : A mere occupier is entitled to an injunction, but that does not include a trespasser, but as parties wish end of litigation, I do not press this point.

p. 107—omit paras. 13, 14 and 15.

omit para. 16—clogs—Excessive Noises, Order.

Para. 17—will argue that if Pltff-Respondent a trespasser, then any amount of noise could be made. Respt. was not a statutory tenant.

Paras. 18, 19 and 20—omit.

20

Whether learned Judge was justified in finding that 1st Deft. owner since 1951—agent for owner 2nd Deft. her mother before that.

Tenancy with Madam Tay arranged with 1st deft.

Before May, 1947—coffee shop.

During 1947 changed to chemist's shop.

No suggestion of any sub-letting before 1947.

Madam Tay—top floor.

Relatives—1st floor.

Chemist—ground floor.

Evidence is 1st deft. approached Madam Tay as to sub-letting, as 30 she had stated there was to be no sub-letting.

Madam Tay said Chemist's shop in partnership with her.

p. 98—Judgment.

p. 91—Boswell's evidence in chief. Mr. Tay agent for Madam Tay.

Judge accepts as a fact that 1st Deft. did not know Respondent was a sub-tenant, but he was a partner. No evidence at all from which Judge could find 1st Deft. knew of sub-tenancy by 1951.

p. 99—Judgment.

pp. 99, 100 ,,

p. 148—Notice to quit.

pp. 64, 65—XXn. of Teo Syn Hun.

pp. 55, 56—XXn. of Respt.

pp. 64, 65—XXn. of Teo Syn Hun.

Madam Tay lived on premises with other people ; they were not sub-tenants, but licensees.

10 *Helman v. Horsham & Worthing Assessment Committee* (1949), A.E.R. 776 (C.A.) at 783 bottom and 784.

Submits : Accurate statement of law.

Proper inference for 1st Deft. to draw was that people on premises were occupiers ; learned Judge should have inferred the same ; he was wrong in taking the view he did without any direct evidence.

Cobb v. Lane (1952), 1 A.E.R. 1199 ; 1202 sec. C.

Did Madam Tay intend to give Pltff.-Respt. a tenancy and interest in premises or a personal privilege to be there.

Impossible to fathom intention of Madam Tay, so Court should have inferred that he was only a licensee and occupier.

20 p. 97—Judgment.

Onus was on Pltff.-Respt. to show he was a tenant.

1st Deft. could not possibly have known whether there was a sub-tenancy between Pltff. and Madam Tay.

p. 48—evidence of Pltff.-Respt.

p. 48— do.

p. 53—XXn. of Pltff.

pp. 53, 54, 55, 60, 61.

pp. 64, 65—Teo Syn Hun.

p. 145—letter sent by Teo Syn Hun.

30 p. 146.

p. 148—Notice to quit to S'pore Dispensary.

To 10.30 a.m. (21-6-55).

(Sgd.) PAUL STORR.

21st June, 1955.

Counsel as before.

Smith continues : 1st Deft.'s evidence.

1st Deft. went out of way to show that there was no knowledge, whereas there was no evidence at all of any knowledge.

*In the
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No. 31.
Notes of
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Storr, J.,
continued.

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p. 79—1st Deft.'s evidence. 1st Deft. thought Madam Tay was carrying on chemist's business in partnership with Respt. and 2 others.

p. 80—sublet.

pp. 84 & 85—sublet; evidence of partners in Chemist's shop.

*In the
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pp. 85 & 86—1st Deft. did not know of relationship between Respt. and Madam Tay. First time Respt. says he was a sub-tenant was after he was asked to go.

No. 31.
Notes of
Argument
of
Storr, J..
continued.

p. 91—Boswell's evidence; Respt. a licensee

No suggestion anywhere that 1st Deft. ever knew that premises were sub-let to Respt. She never had any knowledge. No question that 10 1st Deft. had full knowledge that Respt. was a sub-tenant.

(? Knowledge that he was a licensee.)

Found as fact there was a covenant against sub-letting. Unless waived, can be proved any sub-tenant can never be a sub-tenant.

Madam Tay, the principal tenant, never gave up complete control of premises to Respt.

Helman's case (1949) 1 K.B. 62. Goddard, L.C.J. judgment at 65–66 to 69.

C.A. 1949, 2 K.B. 335—at p. 349 sec. 2.

Cobb v. Lane, 1952—1037

20

Judge found that on the facts Respt. was tenant *prima facie*. Onus of waiver.

On covenant against sub-letting and notice to quit by Madam Tay: Appellants entitled to possession under Control of Rent Ordinance.

Guan Seng Kee Ltd. v. Buan Lee Seng Ltd. (1954 (20) M.L.J. 34 at 35 para. 4).

p. 100 last para. (Judgment).

Refers to Ordinance 1953 & 1947.

If waiver, then Respt. has to prove it.

1955 M.L.J.

30

Benmax v. Austin Motor Co., 1955, 1 A.E.R. 326.

C.A. can take a different inference from fact to that of trial Judge.

11.45 a.m.

Harris for Respt. :

Whitton, J. took 9 days to hear witnesses. Whether Pltff.-Respt. entitled to relief clearly depends on his right to occupation of the premises. Trial Judge found he was and was entitled to remedy for nuisance on the premises.

Judge found Respt. entitled to injunction because he was entitled to occupy the premises and was in fact a statutory tenant of the 1st Deft. 40

2nd Deft. owner of premises ; 1st Deft. agent of 2nd Deft. and his acts can be taken as 2nd Deft.'s. 2nd Deft. received notice to quit from Madam Tay on 31.3.51.

p. 148—Notice to quit to Respt.

If a trespasser, extremely difficult to see why a month's notice to quit was given to Respt.

Submits : 2nd Deft. or 1st Deft. knew at that time we were in lawful possession of premises, having gone in as sub-tenant to Madam Tay.

10 Pltff. thereafter remained in possession and entered into negotiations for a lease for 1 year and then 3 years, subject to signing a notice to quit at expiry of lease. Why should 1st Deft. offer us a lease for 3 years? She said they took pity on Pltff. as he had been there a long time.

pp. 45 and 46 (2) and (3)—Boswell XXn.

20 Lease fell through because Pltff. refused to sign notice to quit. C.A. can draw inference that the reason for the offer of the lease was because she thought his existing rights were good under the Ordinance. That is the only possible inference to draw because 1st Deft. had said she had been cheated and wanted the premises for her own use. 1st Deft. was an educated lady ; she came into possession of top floor. Impossible to believe she would have carried out the course of conduct if she thought there was any other way of getting possession of premises.

Trial Judge was aware that that was the reason for her conduct.

At that time (June 1952), nothing was heard of any covenant against sub-letting. Waiver was not pleaded ; it was stated in S/C Pltff. was statutory tenant and that was denied in defence.

p. 28—Statement of Claim—para. 1.

p. 36—Defence—1 and 2.

Defence delivered on 20.9.52 ; no mention of covenant against sub-letting.

30 On Sept. 25th, 1952, 1st Deft. took proceedings against Pltff. for recovery of possession. In these proceedings, Pltff. was said to be a licensee of Madam Tay. Pltff. surprised he was called a licensee. Proceedings not proceeded with in Dec. 1952.

In XXn. of Pltff. it was never put to him that he was ever a partner of Madam Tay. No part of 1st Deft.'s case that Pltff. ever a partner of Madam Tay. Case was that as Madam Tay remained in possession Pltff. only licensee.

40 Pltff.'s case—tenant of Madam Tay. Pltff. put interrogatory against Deft. that there was no covenant against subletting and reply was there had been a covenant against subletting premises or any part thereof.

Pltff. said if 1st Deft. was going to prove a covenant against sub-letting, then Pltff.'s case was that there was a waiver by the acceptance of rent from her tenant Madam Tay with the knowledge of the breach.

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On these points, on the authority of *Norman v. Simpson* (1946, 1 A.E.R. 74) (1946 K.B. 158), there was a waiver of the right of re-entry which arose from the breach of the prohibition against subletting ; followed by C.J. in *Hong Cheok Lam v. Ong Sing Mai* (1951 M.L.J. 34).

*In the
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Onus on Pltff. No question 1st Deft. accepted rent from Madam Tay and she said Pltff. in premises from 1947 to 1951. All important question : whether Miss Lim (1st Deft.) knew Pltff. was a tenant.

Whether or not there was knowledge on 1st Deft. can be inferred by the whole of the evidence and not only that given by the Pltff.

No. 31.
Notes of
Argument
of
Storr, J.,
continued.

1st question : was Pltff. a tenant of the ground floor of the premises. 10

Judgment—p. 97.

Reaction of Miss Lim to our occupation of the ground floor was there was a subletting ; she said so and so did Boswell.

Judge entitled to draw inference he did that there was a tenancy.

pp. 48 and 49—plenty of evidence that there was a tenancy. *Helman v. Horsham* was a rating case and nothing else. That was a house—no severance. Here shop premises with a business carried on. *Helman's* case at p. 353. Denning, L.J. Evershed, L.J. p. 345—bottom to 347. Evershed does not express any opinion on Denning, L.J.'s remarks.

Can't see why because a landlady lives in premises an occupier should 20 have great difficulty in proving he is a tenant. Learned Judge's findings should not be disturbed.

Cobb v. Lane cannot have any bearing on strangers ; there it was family. Pltff. had whole of back yard ; in fact exclusive use of ground floor.

To 2.30 p.m.

(Sgd.) PAUL STORR.

2.30 p.m. Appeal contd.

Submits that the fact that Pltff. was occupier of ground floor will support inference of knowledge on 1st Deft. and will support that Pltff. 30 a sub-tenant.

pp. 48.

p. 53—XXn. of Pltff. No suggestion that there was no sub-letting by Madam Tay.

p. 54—apart from question, there was no other question to Pltff. as to what was said to him by 1st Deft.

Miss Lim for some reason best known to herself thought there should be some conversation between her and Pltff. She therefore had to say she asked him if he was a partner to show a state of mind at the time. She said she believed Pltff. a partner and that belief was prompted to show 40 a state of mind.

Evidence as to what Madam Tay said is of doubtful probative value ; it cannot be xxd.

I will submit that there was no evidence from which learned Judge could have found there was a prohibition against subletting.

Smith :

No cross appeal.

Harris :

The matter is open ; no need for cross appeal.

pp. 79–80. 1st Deft.'s evidence. " I asked Madam Tay for return of premises." That was after 2 years—time was up. 1st time Miss Lim asked for premises back—1947. Chemist's shop opened in 1947 June.

10 p. 82. XXn.

p. 84. In October, 1947, there was a term certain—2 years. In Oct. 1947 I went to Boswell to get possession later. Nothing about speaking to Pltff. was put to him in XXn.

p. 85. Not a word of that was put to Pltff. in XXn.

pp. 85, 86. Never put to Pltff. about Madam Tay being a partner.

p. 90. Boswell's evidence.

p. 91. View of Boswell formed in 1951.

Miss Lim formed a view that there was a sub-tenancy a long time before ; the evidence supports that ; then at the end of Madam Tay's tenancy
20 Pltff. offered a 3 year lease.

Only possible view to be taken is that all these conversations as to partnership by the 1st Deft. pure imagination. Probative value of Miss Lim's evidence or state of her mind is worth nothing.

Judgment—pp. 98, 99—wrong finding of Judge ; Miss Lim's evidence cannot possibly have been true. Boswell's evidence does not corroborate Miss Lim. He speaks after October 1947 and she in May or June of that year. Nothing done at all until 4 yrs. after 1947 and then Pltff. offered a lease if he signed Notice to Quit. Negotiations fell through and Miss Lim tried to get Pltff. out by other means. No evidence from which Judge
30 could find that there was a covenant against subletting. pp. 97, 98.

Smith :

This is seemingly asking for a variation of the judgment and there must be a cross appeal.

Court :

We will hear this and if necessary give a judgment on it later.

Whole finding is based on Miss Lim's evidence.

pp. 98, 99, 100—comments on Miss Lim's evidence.

pp. 97, 98—evidence of Boswell was entirely unable to corroborate Miss Lim's evidence of what took place in 1945.

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Submits :

Facts and evidence were such that Judge could find there was a subtenancy. The evidence available to Judge was equally available to Miss Lim and therefore she could have and must have inferred a subletting unless she, as she endeavoured to do, could show belief in another relationship, because evidence on which she sought to do so is so inconsistent with that of Mr. Boswell that it must be wholly discounted.

Facts from October 1947 lead to one inference only and that is, if there was a covenant against subletting, Miss Lim waived it.

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Notes of
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of
Storr, J.,
continued.

Smith in reply :

10

pp. 98, 99 —partnership—learned Judge's findings.

Proof of sub-tenancy.

Cobb v. Lane.

Helman v. Horsham.

Both cases lay down tests.

Singapore Dispensary could never have exclusive possession ; everybody in premises had key.

For waiver, there must be knowledge proved—suspicion is not knowledge.

Madam Tay not called ; Pltff. could have called her ; did not ; 20 Defts. thought she was outside country.

p. 90 —Boswell's evidence.

p. 91 do.

Ground 17—p. 101. Clerk & Lindsell, p. 593. In this case, if Pltff. not a statutory tenant he is a trespasser and has no rights.

C. A. V.

(Sgd.) PAUL STORR.

Certified True Copy.

(Sgd.) A. GEORGE,
Secretary to Judge,
Supreme Court, J. Bahru.

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1.5.56.

NOTES OF ARGUMENT of Knight, J.

Coram : TAYLOR, J.
STORR, J.
KNIGHT, J.

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Knight, J.

Smith.

Harris.

Smith—

Two injunctions against 3 Appellants have now been withdrawn by
10 consent. Paragraphs 13, 14, 15, 16, 18, 19 and 20 Memorandum of Appeal
withdrawn.

Prior to 1951 Madam Lim was agent of her mother. 1945 Madam
Ang let to Madam Tay—premises for 2 years—no subletting and tenancy
to be handed back at end of 2 years. Coffee shop then on ground floor
under Madam Tay. May '47 coffee shop changed into chemist shop.
No subletting before '47. Early '47 some relatives of Madam Tay moved
into first floor—Madam Tay was occupying top floor. Madam Lim
approached Madam Tay to see if there had been subletting which was
prohibited by their agreement. Madam Tay said they were not sub-tenants
20 but Singapore Dispensary were partners of hers—page 98—Madam Lim
believed they were partners—also page 91 (Tay was agent for Madam Tay).

Whitton accepted Madam Lim's evidence that she thought Singapore
Dispensary was in partnership with Madam Tay. Plaintiff never said that
he or Madam Tay had ever communicated the subtenancy to Madam Lim.
Whitton, however, concluded that she found out before 1951—pages 98, 99.
No evidence that Miss Lim is a "shrewd business woman." Even if she
was how could she know relationship between these people. If she had
known of a breach of her agreement i.e. subletting surely she would have
taken action? Also pages 99, 100—no evidence about this at all.

30 Page 54. Plaintiff's position identical with Teo also pages 64, 65—
clearly indicates Teo was not a sub-tenant.

Madam Tay lived in these premises with 2 other sets of people—latter
licences—this is what Miss Lim rightly supposed.

Helman v. Worthing 1949 1 A.E.R. 776 (784).

1949 1 K.B. 62.

Appeal 1949 2 K.B. 335 (349).

Cobb v. Lane 1952 1 A.E.R. 1199 (1202).

Did Madam Tay intend to give Plaintiff a personal privilege to be
there or give him an interest in land? How could Miss Lim know what
40 passed between Madam Tay and Plaintiff?

Page 97—none of these are conclusive facts.

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Right of control over premises. Plaintiff had to give some evidence on this point and he failed to do so. Plaintiff said he knew Madam Tay was in Singapore but wouldn't give us her address. He should have called her.

Page 48. "She asked me what business I was going to carry on there." This in 1947—Miss Lim informed that Plaintiff was partner of Madam Tay—subletting deliberately concealed so Whitton found.

Pages 53, 54, (55), (60), 61, 65—letter at page 145—why not say "I am a sub-tenant" ? But see (146)—this not conclusive.

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Notes of
Argument
of
Knight, J.,
continued.

Court rises.

10

(Intld.) C. K.

5/55 (*continuing*)

Smith—

Page 79. Whitton found that Miss Lim was carrying on business in partnership—80 Miss Lim knew for first time of payment of rent in March '51. 84 Again Whitton accepted this. 85 How could Miss Lim have knowledge of a relationship which was deliberately concealed ? 91 (already read). Whitton accepted Boswell's evidence. How could Miss Lim have known then Plaintiff was a sub-tenant when her lawyer thought to the contrary.

20

First requisite of waiver is full knowledge. No evidence at all on which Whitton could find that Miss Lim knew Plaintiff was a sub-tenant in 1950. No evidence that Miss Lim ever wished to give up control or Miss Tay did.

Whitton found that the facts established a tenancy—submit prima facie there was not (Helman)—waiver, onus on Plaintiff. Apart from waiver Notice to quit and covenant against sub-letting—we were entitled to possession from Madam Tay and all those under her.

Guan Seng Kee v. Buan Lee Seng Ltd. 1954 M.L.J. 34.

Harris—

30

Judge found Defendant had tried to drive Plaintiff out.

Question—Was Plaintiff entitled to occupy the building.

Judge found he was i.e. he was Statutory Tenant of D.1.

Notice to quit expired 31.3.51—Miss Lim's solicitors sent letter 148. How could we have been trespassers if we were given 30 days notice ? Madam Ang or Miss Lim knew that she could do little to get us out as we had gone into premises as a sub-tenant of Madam Tay. Thereafter Plaintiff—Miss Lim entered into negotiations for a lease—one condition that we should sign a notice to quit at end of term. This Boswell thought would give Miss Lim possession on expiry of lease. Why should Miss Lim offer a 3 year lease when she wanted the premises ? She says she took pity on us—Boswell says "Well they'd been there a long time—it was on my advice" (Page 91). Lease fell through because Plaintiff not prepared

40

to sign notice to quit. Lease offered solely because Miss Lim knew of our security of tenure or thought that we had such tenure. Why did Defendants throw water etc. and annoy Plaintiff—simply because they knew of Plaintiff's security of tenure. Until June '52 we had heard nothing of covenant against sub-letting—(S/C). Plaintiff said to be Statutory Tenant in Statement of Claim—denied in Defence.—In September '52 said for first time Plaintiff was licensee—proceedings discontinued in December '52. Now suggested to Plaintiff that he was a partner of Madam Tay in cross-examination.

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- 10 Plaintiff's case is that he was tenant of Madam Tay. Plaintiff put an interrogatory to Defendant 1 that there was no covenant against sub-letting—the reply—that there had been such a covenant. We said that if there was such a covenant which we heard of for the first time—there had been waiver of it by acceptance of rent by Miss Lim from her tenant with knowledge of our presence in the house.

No. 32.
Notes of
Argument
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continued.

Norman v. Simpson 1946 1 A.E.R. 74.

Waiver of right of re-entry which arose following the breach of this covenant. C.J. reluctantly followed *Norman's* case in.

Hong Cheok Lam v. Ong Sing Mai 1951 M.L.J. 34.

- 20 Onus of proving waiver on Plaintiff. Miss Lim undoubtedly saw us on premises from 47/51 and accepted rent from Madam Tay. All important question did Miss Lim know Plaintiff was a tenant—firstly was Plaintiff a tenant? Judge found that he was (97)—purely question of fact—

Miss Lim suspected subletting in 1947. In Singapore shop houses are commonly occupation ground floor different from that of upper floor. Judge entitled to say “would Plaintiff open a chemist shop if he had only a personal privilege to use premises”—wouldn't he want tenancy thus protection under Rent Control Ordinance. Pages 48 & 49. Judge quite entitled to hold there was a tenancy on this evidence—his decision

- 30 should not be disturbed.

(*Helman's* was a rating case—see page 353—judgment of Denning and 346.)

- Page 53. Never suggested that he and Madam Tay were partners 54, 55. Nothing else put to Plaintiff about Miss Lim said to him. Miss Lim's belief that Plaintiff was a partner of Madam Tay inspired by what Madam Tay told her—this, at the time, I objected to as inadmissible—Court allowed. In any event doubtful value—can't be cross-examined. Miss Lim said she'd let premises in 1945 stipulating no subletting. Pages 79, 80. First asked for premises back in February '47—chemist 40 shop opened May/June '47—82, 83, 84—Term of lease to Madam Tay was to expire in October '47. Why did Miss Lim ask for possession in February '47 when lease given to October '47—answer at page 84. If Miss Lim suspected subletting why didn't she speak to Pang? She says she did not (page 84)—not put to Pang in cross-examination nor was page 85—including his alleged admission of being a partner. 91. Miss Lim had found now there was a subtenancy and consulted Boswell. Question of partnership only arose in 1947.

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As to subletting (after objection from Smith O.55 r. 7) Miss Lim talking in 1947 as to what happened in 1945. Judge says twice (98, 99) he is not prepared to accept Miss Lim's uncorroborated testimony. Boswell did not prove Miss Lim accurate (98).

*In the
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Evidence sufficed for Judge to find there was a subtenancy. Such evidence equally available to Miss Lim who clearly inferred a subletting unless she could show some other relationship which she could not do. Facts lead to only one inference that if there was a covenant for subletting—Miss Lim waived it.

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Notes of
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of
Knight, J.,
continued.

Smith—

10

As to cross-examination of Plaintiff see page 99 (A2). *Helman* and *Cobb* authorities upon which this matter rests. Ground of Appeal 124. Fixed term of 2 years not fixed.

C.A.V.

(Intld.) C.K.

20/6/55.

True Copy.

(Sgd.) HENG PENG HOE,
Private Secretary to
the Hon. the Chief Justice,
Supreme Court,
Singapore, 6.

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4.5.56.

No. 33.

JUDGMENT of Knight, J.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.
In the Court of Appeal.

Suit No. 596 of 1952.

Appeal No. 5 of 1955.

Between PANG KEAH SWEE

Plaintiff—
Respondent

10

And

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants—
Appellants.

Coram : TAYLOR J.
STORR J.
KNIGHT J.

*In the
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*In the
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No. 33.
Judgment
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1st July,
1955.

There are two points in this appeal which have caused me some concern—firstly the Respondent's statement in the Court below that he always considered himself to be in the same position as the licensee, Mr. Teo, and secondly, that there is a doubt—albeit an insignificant doubt—that he had a sub-tenancy and in resolving that doubt in his favour this Court automatically provides him with an artificial protection against his landlord which neither the Common law nor equity would afford to him.

I personally believe that neither Madam Tay nor the Respondent had the faintest idea what legal rights the one was giving or the other receiving, when the latter entered these premises; but I agree with the learned President that in fact a sub-tenancy was created and I think that the Respondent was thus wrong in considering his position to be similar to that of Mr. Teo who was clearly a licensee. As to the second point above, however displeasing it may be to resolve a doubt in his favour and then apply the artificial provisions of the Control of Rent Ordinance to protect the Respondent, that Ordinance is on our statute book and I am left no choice in the matter. I too would dismiss the appeal with costs.

(Sgd.) CLIFFORD KNIGHT,

Singapore, 1st July, 1955.

Judge.

Certified true copy.

(Sgd.) HENG PENG HOE,
Private Secretary to Judge,
Court No. 1,
Supreme Court, Singapore,

40

15.7.55.

No. 34.

JUDGMENT of Taylor, J.

*In the
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IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

In the Court of Appeal.

*In the
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Suit No. 596 of 1952.

No. 34.

Appeal No. 5 of 1955.

Judgment
of
Taylor, J.,
1st July,
1955.

Between PANG KEAH SWEE

Plaintiff-
Respondent

And

10

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants-
Appellants.

Coram : TAYLOR J.
STORR J.
KNIGHT J.

This appeal arises indirectly out of the Control of Rent legislation.

The Plaintiff, a retail chemist, occupies the ground floor of a shop-house. The Defendants are the owner and members of her family but certain issues have been disposed of and they may now be treated as one. The Defendant lives on the upper floor ; she wished to obtain vacant possession of the ground floor but was advised that she had no clear grounds for an action of ejection. She then began to make unreasonable noises, to throw rubbish on to the Plaintiff's desk and the like, seeking by sustained petty persecution to drive the Plaintiff out. The trial judge granted an injunction restraining these practices. The Defendant appeals. 20

The Plaintiff claims to be a statutory tenant. The landlord says that he was licensee, that his license was terminated so that he became a trespasser, in which case she was entitled to drive him out. 30

The main question therefore is whether the Plaintiff is a tenant or not and it is necessary to find how the occupation began and what the legal relationship of the parties now is.

In 1945 the Plaintiff let the whole building to a Madame Tay who used the ground floor as a café but the venture did not flourish and she arranged to vacate the shop so that the plaintiff could establish his business there. She continued to live over the shop and allowed another family, named Teo, to occupy the second floor. The Teos may well have been licensees but they vacated some time ago and the point is not material. Madame Tay terminated her tenancy and left, apparently on her own initiative. The landlord then moved into the two upper floors as a residence. The Plaintiff continued his business on the ground floor. He lived elsewhere but one or two of his employees slept in the shop. 40

It is clear that Madame Tay was a contractual tenant of the whole building and that during her tenancy the landlord did not occupy any part of it. The tenancy was oral and the only point now in controversy is whether there was a prohibition against subletting. The only direct evidence on this issue was given by the landlord who said (p. 79) :—

“Madame Tay wanted to use the premises for a café. I told her she would not be allowed to sublet and she said she would not sublet.”

This Defendant was obviously a biased witness ; it was material to her case, as she well understood at the date of the trial, to show that there was a prohibition. She was recounting a conversation which took place some nine years previously. There are many indications that she was not a reliable witness and the learned trial Judge said, at p. 98, that he was not prepared to accept her unsupported word on any of the material points in issue. He accepted her evidence, on this important point because he thought it was corroborated but here, I think, he misdirected himself on the fact. The only other evidence on this point was that of her former solicitor who said, at p. 90, that in 1947 she informed him that she had originally rented the premises to Madame Tay through either an aunt or other relative of her own. Later, at p. 91, he added that the landlord herself did not know what the legal status of the Plaintiff was but that he had formed the view that the Plaintiff was a licensee on the basis of information given to him by one Tay Wah Hai, who was not called ; apparently he was a brother of Madame Tay. In any event the opinion of the solicitor, on the issue for decision, was not admissible. A good deal of evidence was adduced with a view to showing the state of mind of the landlord at various times but even if this was technically admissible it was too remote to have any value. Her state of mind in 1947 and later is not evidence of her state of mind in 1945 and the question was not what she then thought but what was actually conveyed to the tenant. Madame Tay was not called ; the Defendants had lost touch with her so no presumption arises that her evidence would have been adverse to the landlord but there the matter rests ; the parties must stand or fall by the evidence actually given. On this issue there was the bare statement of the unreliable witness already quoted. The Solicitor was called with a view to reinforcing this by proving that she had made the same statement to him in 1947 but he did not say so. What he, in fact, said was that in 1947 she told him that she let the house through an intermediary, p. 90, and that Madame Tay had been told that she could have the premises provided that she did not sublet, p. 90. The Solicitor's evidence therefore came to this—that in 1947 the landlord stated that the prohibition had been conveyed to Madame Tay by an unnamed intermediary. This did not, in any sense, corroborate the landlord's own evidence that she had personally conveyed the prohibition to Madame Tay. On the contrary it tended directly to contradict that evidence. On the record therefore there is no acceptable evidence that Madame Tay was prohibited from subletting and the finding that she was prohibited cannot stand.

Counsel for the Appellant submitted that since there was no cross-appeal the Respondents were precluded from contending that a finding of fact was erroneous. This point was not fully argued and it is therefore

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not desirable to express an opinion as to the construction or scope of the rule. It suffices to say that in the circumstances of this case, a cross-appeal was not necessary but the Court will consider the point in relation to costs.

*In the
Court of
Appeal.*

In the absence of a prohibition, Madame Tay was entitled to sublet but it does not follow that she did sublet ; it is now necessary to consider whether the rights of occupation in fact granted by Madame Tay to the Plaintiff and enjoyed by him amounted in law to a subtenancy or only to a license.

No. 34.
Judgment
of
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1955,
continued.

The building was an ordinary shophouse. At the front, a double door gave access directly from the five-foot-way of the street to the Plaintiff's shop ; this door had a yale lock of which the Plaintiff and the occupiers of the upper floors each had a key. On the inside, that door was fitted with a hasp and a staple through which a bolt could be put for additional security at night. There was an open passage, without partitions, through the shop from the front to the foot of a staircase, near the rear, which was the only means of access to the upper floors. At the foot of the stairs there was a wire mesh door which could be bolted on the inner, or upstairs, side. Further to the rear there was a small open yard and beyond that a door leading to the back lane which was not accessible to vehicles ; this outer back door was usually kept locked and was seldom used by anyone. 10 20

During shop hours the street door stood open and the occupants of the upper floors could walk freely through the shop between their stairs and the street. After shop hours they had the same access, using their latch keys, up to about 11 p.m. Anyone returning home after that hour would knock and the assistant who slept in the shop would lift the inside security bolt to let him in. These arrangements work satisfactorily throughout Madame Tay's tenancy. Such arrangements are not unusual in Singapore. There is no suggestion that Madame Tay reserved or exercised any right of supervision of the ground floor or that she, or any other occupant of the upper floors, ever had anything whatsoever to do with the shop, beyond walking through it, to and from the street door. 30

It is improbable that a shopkeeper, especially a chemist, would willingly consent to a stipulation or practice which entitled his landlady to have general access to the inside of his shop or to exercise any control over it. He paid \$220 p.m. for the shop inclusive of water and light. Madame Tay paid \$250 for the whole house, including some furniture. In my opinion the natural inference from these facts is that Madame Tay granted exclusive occupation of the ground floor to the Plaintiff, subject only to the reservation of the right of herself and her licensees to pass and re-pass between the stairs and the street door. But for that reservation the Plaintiff would have had a "lock-up shop." 40

In order to ascertain the status of an occupant it is unsound to consider the provisions of special statutes, whether relating to franchise, rating or rent control, or to speculate as to whether or how such provisions may have influenced the parties. The better method (where the letting was oral) is to ascertain the physical facts, to deduce from them what the status was at Common Law and then to apply the particular statute to those findings.

The facts which have been stated are sufficient to show that what Madame Tay granted to the Plaintiff was a sub-tenancy and this inference is supported by a letter, p. 146, from Madame Tay's solicitors to the Plaintiff which states in terms that he held of her as monthly tenant.

*In the
Supreme
Court
of the
Colony of
Singapore.*

The Appellant argued that because Madame Tay resided in the house the proper inference is that the other occupants were not tenants, citing *Helman v. Horsham Assessment Committee* (1949) 1 K.B. (Div. Ct.) p. 62, especially at p. 68 and (1949) 2 K.B. 335 (C.A.) especially at p. 349. This case is not any the less in point because it is a rating case but state-
10 ments of the law in a judgment, though expressed in general terms, are not to be understood in their apparent generality; they are to be read as governed and qualified by the facts of the case in which they occur, *Quinn v. Leatham*, 1901 A.C. 504. What Evershed, L.J., actually said in *Helman's* case was that where a landlord lets rooms in his house, the proper inference is that the other occupier is a lodger. He was dealing with purely residential occupation. He went on to say that where there is evidence of further facts the Court is unfettered. There is no legal presumption. Counsel also cited *Cobb v Lane* (1952) 1 T.L.R. 1037,
20 where it was held that the sole occupier of a house was a licensee, but the real ground of the decision was that he entered under a family arrangement which did not contemplate any legal relationship whatever. It is beyond question that Madame Tay and the Plaintiff made a business contract.

*In the
Court of
Appeal.*

—
No. 34.
Judgment
of
Taylor, J.,
1st July,
1955,
continued.

For all these reasons I am of opinion that the finding that the Plaintiff was a sub-tenant was correct. It follows that he is now a statutory tenant.

At the trial the main contest was on the issues relating to the persecution and the remedial injunctions. The main decisions on this part of the case are not challenged. The wisdom and skill of their counsel has enabled the parties to adjust certain minor differences and in this Court the contest was not as to whether the Plaintiff was entitled to
30 retain his injunctions, on the merits, but as to whether he had a legal right of occupancy on which to base his claim. The issue of tenancy or license was pleaded, contested and decided at the trial and fuller examination of this issue shews that the decision was correct though it is supported by somewhat different reasons. No new point was taken on appeal and the argument to which exception was taken did not add appreciably to the length of the case.

In these circumstances I am of opinion that the appeal fails and should be dismissed with costs.

E. N. TAYLOR,

Judge.

40 Singapore, 1st July, 1955.

Certified true copy,

(Sgd.) ?

Private Secretary to Judge,

Court No. 3,

Supreme Court, Singapore.

No. 35.

JUDGMENT of Storr, J.

*In the
Supreme
Court
of the
Colony of
Singapore.*

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

*In the
Court of
Appeal.*

Suit No. 596 of 1952.

No. 35.
Judgment
of
Storr, J.,
1st July,
1955.

Appeal No. 5 of 1955.

Between PANG KEAH SWEE

Plaintiff-
Respondent

And

1. LIM SIEW NEO (f)

10

2. ANG HENG KIP (w)

3. LIM SIEW TECK

Defendants-
Appellants.*Coram* : TAYLOR J.

STORR J.

KNIGHT J.

I am also of the opinion that this appeal should be dismissed and I do not think I can add to the reasons which have been so well expressed by the learned President and with which I entirely agree.

PAUL STORR, 20
Judge.

1st July, 1955.

Certified True Copy.

(Sgd.) A. GEORGE,
Secretary to Judge,
Supreme Court,
Johore Bahru.

No. 36.

JUDGMENT.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

In the Court of Appeal.

Suit No. 596 of 1952

Appeal No. 5 of 1955

Between PANG KEAH SWEE

. Plaintiff-
Respondent

10

. And

(L.S.)

1. LIM SIEW NEO (f)
2. ANG HENG KIP (w)
3. LIM SIEW TECK

Defendants-
Appellants.

1st July, 1955.

THIS APPEAL coming on for hearing on the 20th and 21st days of June 1955 before the Honourable Mr. Justice Evan Nuttall Taylor, President, the Honourable Mr. Justice Paul Storr and the Honourable Mr. Justice Clifford Knight in the presence of Counsel for the Defendants/ Appellants and for the Plaintiff/Respondent and upon reading the Record of Appeal filed herein and upon hearing Counsel for the Defendants/ Appellants and for the Plaintiff/Respondent IT WAS ORDERED that this appeal do stand for judgment and the same coming on for judgment this day before the Honourable Mr. Justice Evan Nuttall Taylor, President, the Honourable Mr. Justice Paul Storr and the Honourable Mr. Justice Clifford Knight IT IS ADJUDGED that this appeal be dismissed and that the Judgment of the Honourable Mr. Justice Cuthbert Henry Whitton made herein and dated the 23rd day of February 1955 do stand AND

30 IT IS FURTHER ADJUDGED that the costs of and incidental to this appeal be taxed on the Higher Scale of taxation and paid by the Defendants/Appellants to the Plaintiff/Respondent AND IT IS LASTLY ADJUDGED that the sum of \$500/- deposited in Court as security for the costs of this appeal be paid out to the Plaintiff/Respondent or to his solicitors Messrs. Braddell Brothers to account of the taxed costs herein.

Entered this 16th day of July, 1955, at 11 a.m. in Volume LXVII Pages 188 & 189.

(Sgd.) T. KULASEKARAM,

Dy. Registrar.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 36.
Judgment,
16th July,
1955.

No. 37.

AMENDED PETITION for Leave to Appeal to Her Majesty in Council.

In the
Supreme
Court
of the
Colony of
Singapore.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

In the Court of Appeal.

In the
Court of
Appeal.

Civil Appeal No. 5 of 1955.

No. 37.

Suit No. 596 of 1952.

Amended
Petition
for Leave
to Appeal
to Her
Majesty in
Council,
14th
January
1956.

Between PANG KEAH SWEE Plaintiff/Respondent

and

1. LIM SIEW NEO (f) 10
2. ANG HENG KIP (w)
3. LIM SIEW TECK Defendants/Appellants.

and

IN THE MATTER of Section 28 of the Courts Ordinance
(Cap. 10)

and

IN THE MATTER of Order LVII Rules 3 and 4 of the Supreme
Court.

To the Honourable the Judges
of the Court of Appeal.

(Amended pursuant to Order of
Court dt. 16th Dec. 1955.) 20

THE HUMBLE PETITION of LIM SIEW NEO, the above-
named 1st Defendant/Appellant

SHEWETH :—

1. Your Petitioner desires to obtain leave to appeal to Her Majesty's Privy Council from a Judgment of the Court of Appeal of the Colony of Singapore delivered on the 1st day of July 1955 which dismissed with costs an appeal from a judgment of the High Court of the Colony of Singapore dated the 23rd day of February 1955 whereby the Respondent was given Judgment for an injunction restraining the Petitioner from making in or upon the premises 265 Orchard Road Singapore, occupied by the Petitioner, excessive noise so as to cause a nuisance to the Respondent in his occupation of the ground floor of and yard at the back of the said building so long as he is in occupation thereof as a statutory tenant and further injunctions. The matter in dispute on the intended appeal to Her Majesty in Council involves a question respecting the ground floor of No. 265 Orchard Road Singapore. The Plaintiff (Respondent) alleges that he is a statutory tenant of such ground floor and your Petitioner contends that he is not a statutory tenant but is a trespasser. The amount of the value of the subject matter of the action is— 30

(A) \$150,000/- being the value of No. 265 Orchard Road Singapore without there being a statutory tenant of the ground floor now occupied by the Plaintiff (Respondent); or, alternatively, 40

(B) \$2,640/- being the equivalent of one year's rental of the ground floor of No. 265 Orchard Road Singapore according to the allegation of the Plaintiff (Respondent).

The said house belongs to your Petitioner and is in a shopping centre of Singapore and if it could be sold without there being a statutory tenant of the ground floor it would realise not less than \$200,000/-. A sale with a statutory tenant of the ground floor would mean that the house could not be sold for more than \$150,000/- at the very most.

10 The Plaintiff/Respondent claims to be the statutory tenant of the said ground floor at a rent of \$220/- a month which amounts to \$2,640/- a year.

Your Petitioner respectfully says that in view of the aforesaid value of the subject matter, and also having regard to the various circumstances hereunder set out, the case is from its nature a fit and proper one for appeal to Her Majesty in Council.

2. On the 14th day of June 1952 the Plaintiff herein issued a Writ against the Defendants claiming damages for wrongfully entering upon the Plaintiff's premises from time to time and for certain other relief as contained in the endorsement to the Writ herein. Subsequently, the Plaintiff by his solicitors filed a Statement of Claim in which he claimed *inter alia* an injunction restraining the Defendants and each of them from wrongfully entering upon the premises and causing injury to his goods.

3. On the 30th day of October 1952 the Defendants filed an Amended Statement of Defence and Counterclaim denying that the Plaintiff was a statutory tenant of the ground floor of No. 265 Orchard Road and alleging that the Plaintiff was a trespasser of the said premises or alternatively, if the Plaintiff is a statutory tenant of this Petitioner, which was denied, the Plaintiff had no right of possession of the passageway leading from the front door to the stairway at the rear of the said ground floor premises and claiming an injunction restraining the Plaintiff from wrongfully locking the front door of the ground floor of the premises at all times throughout the day or night.

4. The said action came on for trial on the 6th, 7th and 8th days of September and on the 3rd, 4th and 5th days of November 1954 and the 19th, 20th, 21st and 22nd days of January 1955 before the Honourable Mr. Justice Cuthbert Henry Whitton when Judgment was reserved and later delivered on the 23rd day of February 1955 and an order was made which reads as follows :—

40 “ THIS ACTION coming on for trial on the 6th, 7th and 8th days of September and the 3rd, 4th and 5th days of November 1954 and the 19th, 20th, 21st and 22nd days of January 1955 before the Honourable Mr. Justice Cuthbert Henry Whitton in the presence of Counsel for the Plaintiff and for the Defendants AND UPON READING the pleadings filed herein AND UPON HEARING the evidence adduced and what was alleged by Counsel for the Plaintiff

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 37.
Amended
Petition
for Leave
to Appeal
to Her
Majesty in
Council,
14th
January
1956,
continued.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 37.
Amended
Petition
for Leave
to Appeal
to Her
Majesty in
Council,
14th
January
1956,
continued.

and Counsel for the Defendants IT WAS ORDERED that this action do stand for Judgment and the same coming on for Judgment on the 23rd day of February 1955 in the presence of Counsel for both parties and after further hearing on the 25th April 1955 THIS COURT DOTH ORDER AND DIRECT that the 1st Defendant be perpetually restrained and an injunction is hereby granted restraining the 1st Defendant from making in or upon any of the building No. 265 Orchard Road, Singapore, occupied by the 1st Defendant excessive noise so as to cause a nuisance to the Plaintiff in his occupation of the ground floor of and yard at the back of the said building so long as he is in occupation thereof as a statutory tenant AND THIS COURT DOTH FURTHER ORDER AND DIRECT that the 1st Defendant be perpetually restrained and an injunction is hereby granted perpetually restraining the 1st Defendant, so long as the Plaintiff is in occupation of the ground floor of and yard at the back of the said building as a statutory tenant thereof, from depositing water, dirt and noxious liquids on the said ground floor of and yard at the back of the said building or from permitting water, dirt and noxious liquids to escape from any part of the said building occupied by the 1st Defendant on to the said ground floor of and yard at the back of the said building AND THIS COURT DOTH DECLARE that the 1st Defendant as occupier of the first and top floors of the said building is entitled to a right of way over the ground floor of the said building from the front door of the said building abutting on to Orchard Road aforesaid to the foot of the staircase at the rear of the said ground floor leading to the said first and top floors of the said building AND THIS COURT DOTH FURTHER ORDER that the Defendants do pay to the Plaintiff his whole costs of this action up to the date of payment into Court on the 9th day of April 1953 including the costs of payment out AND THIS COURT DOTH FURTHER ORDER that the 1st Defendant do pay to the Plaintiff his costs of this action after the date of payment in aforesaid including the costs of the trial except so far as such costs may be found by the Registrar on taxation to be attributable to proceedings against the 2nd and 3rd Defendants after the date of payment in aforesaid AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the 3rd Defendant such part of the costs of the 3rd Defendant after the date of payment in aforesaid as are found by the Registrar on taxation to be attributable to his own defence AND THIS COURT DOTH FURTHER ORDER that there be no order as to the costs of the Plaintiff and of the 2nd Defendant of the proceedings between these two parties after the date of payment in aforesaid AND THIS COURT DOTH LASTLY ORDER that the said costs be taxed on the lower scale.”

5. The 1st, 2nd and 3rd Defendants were dissatisfied with the Judgment and Order delivered and made by the Honourable Mr. Justice Cuthbert Henry Whitton as recited in Paragraph 4 hereof and on the 7th day of March 1955 they gave Notice of Appeal to the Court of Appeal against the whole of the Judgment and Order recited in Paragraph 4 hereof.

6. On the 2nd day of May 1955 the said 1st, 2nd and 3rd Defendants filed their Memorandum of Appeal of the said proceedings and therein set out the grounds of appeal.

*In the
Supreme
Court
of the
Colony of
Singapore.*

7. The appeal came on for hearing on the 20th and 21st days of June 1955 before the Honourable Mr. Justice Evan Nuttall Taylor, President, the Honourable Mr. Justice Paul Storr and the Honourable Mr. Justice Clifford Knight when Judgment was reserved and later delivered on the 1st day of July 1955 and an Order was made which reads as follows :—

*In the
Court of
Appeal.*

No. 37.
Amended
Petition
for Leave
to Appeal
to Her
Majesty in
Council,
14th
January
1956,
continued.

10 “ THIS APPEAL coming on for hearing on the 20th and 21st days of June 1955 before the Honourable Mr. Justice Evan Nuttall Taylor, President, the Honourable Mr. Justice Paul Storr and the Honourable Mr. Justice Clifford Knight in the presence of Counsel for the Defendants/Appellants and for the Plaintiff/Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel for the Defendants/Appellants and for the Plaintiff/Respondent IT WAS ORDERED that this appeal do stand for Judgment and the same coming on for Judgment this day before the Honourable Mr. Justice Evan Nuttall Taylor, President, the Honourable Mr. Justice Storr and the Honourable Mr. Justice Clifford Knight IT IS ADJUDGED that this appeal be dismissed and that the Judgment of the Honourable Mr. Justice Cuthbert Henry Whitton made herein and dated the 23rd day of February 1955 do stand AND IT IS FURTHER ADJUDGED that the costs of and incidental to this appeal be taxed on the higher scale of taxation and paid by the Defendants/Appellants to the Plaintiff/Respondent AND IT IS LASTLY ADJUDGED that the sum of \$500/- deposited in Court as security for the costs of this appeal be paid out to the Plaintiff/Respondent or to his solicitors Messrs. Braddell Brothers to account of the taxed costs herein.”

20

30 8. I am advised and humbly submit that the said Order of the Court of Appeal is erroneous and ought to be reversed on the following grounds :—

(1) The Court of Appeal was wrong in law and acted contrary to the evidence produced before the learned Trial Judge in dismissing this Petitioner's appeal.

(2) The learned Trial Judge was wrong in law and in fact in holding that there had been a waiver of the covenant against sub-letting to sub-tenants and the Court of Appeal should have held that the learned Trial Judge erred in that respect.

40 (3) The learned Trial Judge erred in law and in fact by holding that this Petitioner knew that the premises occupied by the Respondent had been sublet to the Respondent as a sub-tenant and the Court of Appeal should have ruled that the learned Trial Judge had so erred.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 37.
Amended
Petition
for Leave
to Appeal
to Her
Majesty in
Council,
14th
January
1956,
continued.

(4) There was no evidence that this Petitioner knew that the Respondent was a sub-tenant of the premises and any such finding by the learned Trial Judge and the Court of Appeal was against the weight of evidence.

(5) The Court of Appeal should have held that the learned Trial Judge was wrong in holding that apart from the question of waiver your Petitioner was not entitled to possession.

(6) The Court of Appeal should have held that the learned Trial Judge did not draw the proper inference that should have been drawn from the fact that Madam Tay (the tenant through whom the Respondent claimed) lived at the same premises. 10

(7) The Court of Appeal wrongly reversed the Learned Trial Judge's finding of fact that there was a covenant against sub-letting in whole or part and wrongly decided that the evidence given by Mr. Boswell was in the main inadmissible.

(8) The Court of Appeal having after objection indicated to Counsel for your Petitioner that they would hear Counsel for the Respondent on the learned Trial Judge's finding of fact with regard to the covenant against sub-letting and would then if it was considered by them to be a point of substance rule whether the point could be taken by Counsel for the Respondent in the absence of a cross appeal did not so rule and in the absence of any such ruling the Court of Appeal were wrong in deciding a point which your Petitioner humbly submits was not open to the Court of Appeal to decide. 20

YOUR PETITIONER therefore humbly prays for leave to appeal to Her Majesty in Council against the said Judgment of the Court of Appeal and for a certificate that as regards value this case is a fit one for appeal to Her Majesty in Council. 30

AND your Petitioner will ever pray.

(Sgd.) LIM SIEW NEO,

Dated this 14th day of January, 1956.

Petitioner.

(Sgd.) DONALDSON & BURKINSHAW,

Solicitors for the Petitioner.

It is intended to serve this Petition upon the Plaintiff/Respondent's solicitors Messrs. Braddell Brothers.

The Petitioner's address for service is No. 9, Mercantile Bank Chambers, Singapore.

No. 38.

AFFIDAVIT of Lim Siew Neo.

I, LIM SIEW NEO of No. 1A, Ardmore Park, Singapore, the Petitioner, make oath and say that the contents of the foregoing Petition are to the best of my knowledge and belief in all respects true.

Sworn at Singapore this 14th day of } (Sgd.) LIM SIEW NEO.
January, 1956.

Before me,

(Sgd.) M. V RAJARAM,
A Commissioner for Oaths.

10

Filed this 16th day of January, 1956.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 38.
Affidavit of
Lim Siew
Neo,
14th
January
1956.

No. 39.

ORDER Granting Leave to Appeal to Her Majesty in Council.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

In the Court of Appeal.

Civil Appeal No. 5 of 1955.

Suit No. 596 of 1952.

(L.S.)

20 Between PANG KEAH SWEE

Plaintiff/Respondent

and

- 1. LIM SIEW NEO (f)
- 2. ANG HENG KIP (w)
- 3. LIM SIEW TECK

Defendants/Appellants.

and

IN THE MATTER of Section 36 of the Courts Ordinance
(No. 14 of 1955)

and

IN THE MATTER of Order LVII Rules 3 and 4 of the Supreme
Court.

30

Before THE HONOURABLE THE CHIEF JUSTICE OF THE COLONY OF
SINGAPORE, THE HONOURABLE MR. JUSTICE TAYLOR and THE
HONOURABLE MR. JUSTICE KNIGHT.

In Open Court.

UPON the adjourned and amended Petition of the above-named
1st Defendant/Appellant Lim Siew Neo preferred unto this Court on the
3rd day of April 1956 pursuant to Order of this Court dated the 16th day

No. 39.
Order
granting
Leave to
Appeal to
Her
Majesty
in Council,
3rd April
1956.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Appeal.*

No. 39.
Order
granting
Leave to
Appeal to
Her
Majesty
in Council,
3rd April
1956,
continued.

of December 1955 for a certificate that as regards value this case is a fit one for appeal to Her Majesty in Council from the judgment of the Court of Appeal given herein on the 1st day of July 1955 AND UPON READING the said Petition and the affidavit of the said Lim Siew Neo sworn to on the 14th and filed herein on the 16th day of January 1956 verifying the said amended Petition AND UPON HEARING Counsel for the Petitioner and for the above-named Plaintiff/Respondent THIS COURT DOTH CERTIFY that as regards value this case is a fit one for appeal to Her Majesty in Council AND THIS COURT DOTH GRANT to the above-named 1st Defendant/Appellant leave to appeal herein to 10 Her Majesty in Council AND IT IS FURTHER ORDERED that the above-named 1st Defendant/Appellant do pay to the Plaintiff/Respondent the costs thrown away on her Petition dated the 15th day of December 1955 and preferred unto this Court on the 16th day of December 1955 such costs to be taxed on the higher scale.

Dated this 3rd day of April, 1956.

(Sgd.) T. KULASEKARAM,
Dy. Registrar.

Filed this 24th day of April, 1956.

EXHIBITS.

Defendants'
*Exhibits.***D4.—LETTER, Tay Wah Eng to Teo Syn Hun.**

Tay Wah Eng,
265 Orchard Road,
Singapore, 9.

27th February, 1951.

Mr. Teo Syn Hun,
265 Orchard Road,
(1st floor),
Singapore, 9.

10

Dear Sir,

I hereby give you notice to quit and deliver up possession of the 1st floor of the house known as No. 265 Orchard Road Singapore, which you hold as monthly tenant, on the 31st day of March 1951 next.

I beg to inform you that on the said 31st day of March next, I will take possession of and remove my furniture from the said premises.

I further inform you that I have given notice to my superior landlord terminating the tenancy of the said house on the said 31st day of March next.

Yours faithfully,

(Sgd.) in Chinese.

20

D9.—LETTER, Elias Brothers to Ang Heng Kip.

Copy

Ref : 664/TEN.

Madam Ang Heng Kip,
No. 1A Ardmore Park,
off Tanglin Road,
Singapore.

23rd February, 1951.

D9.
Letter
Elias
Brothers
to Ang
Heng Kip,
23rd
February
1951.

Dear Madam,

We act for Miss Tay Wah Eng of No. 265 Orchard Road, Singapore.

30

We hereby give you notice on behalf of our client that she intends on the 31st day of March, 1951 to quit and deliver up possession of the premises known as No. 265 Orchard Road, Singapore, in respect of which she is now your tenant.

Yours faithfully,

(Sgd.) ELIAS BROTHERS.

AGREED BUNDLE OF CORRESPONDENCE.

*Agreed
bundle of
corres-
pondence.*

No sub-letting allowed and recognised without the written consent of the landlord.

No. 1.
Rent
Receipt.

No. 1.—RENT RECEIPT.

Date 8th March 1949.

No. B 1.

Received from M/s. Singapore Dispensary the sum of Dollars Two hundred and twenty only being the rent furniture, Electric & Water for ground floor of House No. 265, Orchard Road, for the period from 1st February 1949 to 28th Feb., 1949.

\$220-00

Stamp 4 cts.

8/3/49.

Intld.

10

No. 2.
Rent
Receipt.

No sub-letting allowed and recognised without the written consent of the landlord.

No. 2. RENT RECEIPT.

Date, 8th March 1949.

No. B 2.

Received from M/s. Singapore Dispensary, the sum of Dollars Two hundred and twenty only being the rent furniture, Electric & Water for ground floor of House No. 265, Orchard Road, for the period from 1st March 1949 to 31st March 1949.

\$220-00.

Stamp 4 cents

8/3/49.

Intld.

No. 3.
Rent
Receipt.

No sub-letting allowed and recognised without the written consent of the landlord.

No. 3.—RENT RECEIPT.

Date, Feb. 3, 1951.

No. C 14.

Received from M/s. Singapore Dispensary, the sum of Dollars Two hundred and twenty only being the rent furniture, Electric & Water for ground floor of House No. 265, Orchard Road, for the period from 1st February 1951 to 28th February 1951.

\$220-00.

Stamp 4 cents

3.2.51.

Received with thanks.

Intld.

30

No. 4.—LETTER, Teo Syn Hun to Madam Ang Heng Kip.

Mr. Teo Syn Hun,
c/o M/s. Wm. Jacks & Co. (M) Ltd.,

19th February, 1951.

Madam Ang Heng Kip,
1A Ardmore Park,
Singapore.

Dear Madam,

The writer and his sisters and cousins are staying with Madam Tay
10 Wah Eng, the tenant of your house No. 265 Orchard Road.

Madam Tay intends giving up the tenancy in the near future after due notification to you to the effect and the purpose of this letter is to request you kindly to consider my application for the tenancy of the first floor of the premises No. 265, Orchard Road, subject to your own terms and conditions on the termination of Madam Tay's Tenancy.

Before considering my application you no doubt wish to be acquainted with our background. To begin with there are six of us—myself, two sisters and three cousins. I am a clerk with the above-mentioned firm. My sister, Miss G. C. Teo is a teacher in the Singapore Chinese Girls School
20 and another sister is studying in the same school. One of my cousins Teo Sin Boon is with Messrs. W. H. Day & Co., and another one is with Messrs. Champion Motors Ltd. My third cousin, a girl, takes charge of the household.

On the question of references you have only to get in touch with our respective employers and in the case of my sister, the principal of the school.

I am glad to inform you that we have a mutual friend, Mr. Lim Choo Kok who has known us ever since the days when Mr. H. R. S. Zehnder looked after the legal aspect of my grandfather's estate.

30 I sincerely hope that you will consider my application sympathetically taking into account the difficulty of looking for immediate alternative accommodation.

I shall be glad to discuss the matter further if you will kindly let me know by telephone at the nos. given on the attached, when you are free to see me.

Thanking you in anticipation,

Yours faithfully,

(Sgd.) TEO SYN HUN.

*Agreed
bundle of
corres-
pondence.*

No. 4.
Letter,
Teo Syn
Hun to
Madam
Ang Heng
Kip,
19th
February
1951.

*Agreed
bundle of
corres-
pondence.*

No. 5.—LETTER, Elias Brothers to Singapore Dispensary.

6A, Raffles Place,
Singapore.

27th February 1951.

No. 5.
Letter,
Elias
Brothers to
Singapore
Dispensary,
27th
February
1951.

The Singapore Dispensary,
No. 265, Orchard Road,
Singapore.

Dear Sir,

We act for Miss Tay Wah Eng.

We hereby give you notice on behalf of our client to quit and deliver ¹⁰ up possession of the ground floor of the house known as No. 265 Orchard Road, Singapore, which you hold of our client as monthly tenant, on the 31st day of March 1951 next.

We are instructed to inform you that on the said 31st day of March next our client will take possession of and remove her furniture (as detailed in the schedule hereto) from the said premises.

We are further instructed to inform you that our client has given notice to her superior landlord determining her own tenancy of the said house on the said 31st day of March next.

Yours faithfully,

20

(Sgd.) ELIAS BROS.

THE SCHEDULE.

6 chairs (wooden seats).	1 glass & teak almeirah.
4 chairs (ratan seats).	1 angular sideboard.
1 chair (bentwood).	1 three-shelf rack.
1 round table with marble top.	1 electric ceiling fan with regulator.
1 zinc top table.	1 spade.
1 long wooden table.	

No. 6.—LETTER, Braddell Brothers to Elias Brothers.

5th March 1951.

*Agreed
bundle of
corres-
pondence.*

Messrs. Elias Bros.,
Singapore.

No. 6.
Letter,
Braddell
Brothers to
Elias
Brothers,
5th March
1951.

Dear Sirs,

Your ref. 664/TEN
Ground floor 265 Orchard Road
Miss Tay Wah Eng
and

10

The Singapore Dispensary

Your letter of the 27th February written on behalf of Miss Tay Wah Eng and addressed to our clients The Singapore Dispensary giving notice to quit the above premises on the 31st March 1951 has been handed to us with instructions to reply thereto.

Owing to the difficulty of finding alternative accommodation our clients will be unable to vacate the premises on the 31st March and will have no alternative but to rely on the protection afforded them by the Control of Rent Ordinance.

As regards the furniture which was stored by your client in our clients' premises we are to say that your client may attend at any reasonable time by appointment to collect this furniture. We are also to say that in some respects the schedule appended to your letter is incorrect and our clients do not admit to having been handed by your client for storage purposes all the articles of furniture mentioned in this schedule.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

*Agreed
bundle of
corres-
pondence.*

No. 7.—LETTER, R. C. H. Lim & Co. to Singapore Dispensary.

31st March 1951.

Dear Sirs,

No. 7.
Letter,
R. C. H.
Lim & Co.
to
Singapore
Dispensary,
31st March,
1951.

Re : No. 265, Orchard Road.

We act for Madam Ang Heng Kit, the owner of the above premises which were let out to a certain Madam Tay Wah Eng who has now relinquished the tenancy and vacated the premises.

We are instructed that you are in occupation of the ground floor.

We are instructed by our client to give you notice to quit and deliver up vacant possession of the premises by the 30th of April, 1951, failing 10 which, our client will take such further action in the matter as she may be advised.

Yours faithfully,
(Sgd.) R. C. H. LIM & CO.

Singapore Dispensary,
265, Orchard Road (Ground Floor),
Singapore.

No. 8.
Letter,
R. C. H.
Lim & Co.
to Oehlers
& Company,
2nd April
1951.

No. 8.—LETTER, R. C. H. Lim & Co. to Oehlers & Company.

Richard Chuan Hoe Lim & Co.
1st Floor,
34 Market Street,
Singapore.

20

2nd April, 1951.

RSB/AD

Dear Sirs,

Re : No. 265, Orchard Road.

We act for Madam Ang Eng Kit who has handed us your letter of the 31st of March, 1951, enclosing the sum of \$40.— in cash being rent for the first floor of the above premises for the month of April, 1951.

Our client denies that your client is or has ever been her tenant and 30 we have it on record that your client was never the tenant or even the sub-tenant of the above premises. In the circumstances, we return the sum of \$40.— the receipt of which kindly acknowledge.

We have already given your client notice to remove from the premises within a week's time.

Yours faithfully,

Messrs. Oehlers & Company.

Encls. : \$40.— in cash.

No. 9.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

2nd April, 1951.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your ref. RSB/AD

Re 265 Orchard Road.

Your letter of the 31st March addressed to the Singapore Dispensary and written on behalf of Madam Ang Heng Kit has been handed to us with instructions to reply thereto.

10 Our clients regret that they are unable to comply with your client's notice to quit and deliver up these premises on the 30th April as they have no other accommodation and will be obliged to rely on the provisions of the Control of Rent Ordinance.

We are instructed by our clients to tender to you on behalf of your client the April rent in respect of the premises and we enclose cash for \$220.— in that respect. Will you please let us have your client's rent receipt in due course.

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

20

No. 10.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

27th April, 1951.

Messrs. R. C. H. Lim & Co.
Singapore.

Dear Sirs,

Your ref. RFB/AB

re No. 265 Orchard Road—Singapore Dispensary.

30 With reference to our letter of the 2nd April and to our telephone conversation yesterday morning with Mr. Boswell we confirm that our clients have been handed by your client Miss Lin who, you say, is now the owner of the above premises a draft lease of the ground floor of the premises now occupied by our clients, Singapore Dispensary, on a monthly verbal tenancy for approval by them. Our clients handed us this draft lease which we understand was prepared by you and we confirm the arrangement between us when it was agreed that the draft should be returned to you by us with amendments and comments. We have had a copy made of the draft lease which we now enclose on behalf of our clients approved as amended in red. Please let us hear from you in due course whether these amendments are acceptable to your client.

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

40

*Agreed
bundle of
corres-
pondence.*

No. 9.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
2nd April
1951.

No. 10.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
27th April
1951.

No. 11.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

3rd May, 1951.

*Agreed
bundle of
corres-
pondence.*

Messrs. R. C. H. Lim & Co.

No. 11.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
3rd May
1951.

Dear Sirs,

Your ref. RFB/AB

Singapore Dispensary—265 Orchard Road.

On behalf of our clients the above-named we enclose cash for \$220.— being in respect of the rent of the above premises for the month of May. Will you please let us have your clients' rent receipt for this payment.

10

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 12.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

4th May 1951.

No. 12.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
4th May
1951.

Dear Sirs,

Your ref. JLPH/AR

Singapore Dispensary—265 Orchard Road.

We acknowledge the receipt of your letter of the 3rd instant.

Our instructions are to return the enclosed sum of \$220 tendered as rent for the above premises for the month of May, 1951.

20

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers.

Encl.

No. 13.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

5th May, 1951.

No. 13.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
5th May
1951.

M/s. R. C. H. Lim & Co.

Dear Sirs,

Your ref. RSB/AD

Singapore Dispensary—265 Orchard Road.

We thank you for your letter of the 4th May returning \$220— in cash which we tendered in our letter of the 3rd May.

30

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 14.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

10th May, 1951.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Re : No. 265 Orchard Road (Ground Floor).

No. 14.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
10th May
1951.

We have for acknowledgment your letter of the 27th of April last upon which we have taken our client's instructions.

Our client does not agree to the amendments made to her draft. Our client is prepared :

10 (A) To grant a lease to PANG KEAK SWEE for one year at a monthly tenancy of \$220—.

(B) The tenant undertaking to keep the entire ground floor and the sanitary and water apparatus in good and tenantable repair and condition.

(C) Not to make any alterations etc. to the said building.

(D) To permit the landlord to use the staircase leading to the first and second floors.

(E) Not to assign underlet or part with the possession thereof unless with the written consent of the landlord.

20 (F) Not to permit the premises to be used so as to cause a nuisance etc.

Our client does not agree to provide at her own cost a good and sufficient supply of water and electric light to the tenant for the ground floor but says that if the tenant wishes to have his own meter he can do so but not at the expense of reducing the rent.

These terms, we are instructed, were agreed to by your client who informed us that he was making every effort to find other premises. If at the end of the first year he is unable to find other premises, our client is prepared to consider a renewal.

Yours faithfully,

30

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers.

No. 15.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

12th May, 1951.

*Agreed
bundle of
corres-
pondence.*Messrs. R. C. H. Lim & Co.
Singapore.No. 15.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
12th May
1951.

Dear Sirs,

Your ref. RSB/AD

No. 265 Orchard Road (ground floor).

We thank you for your letter of the 10th May upon which we are taking our clients' instructions and will let you hear from us in due course.

10

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

No. 16.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

17th May, 1951.

No. 16.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
17th May
1951.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your Ref. RSB/AD

No. 265 Orchard Road (ground floor)

We have now had an opportunity of taking our clients' instructions upon your letter of the 10th May.

20

We are instructed to say that our client Mr. Pang Keak Swee has never agreed to being granted a lease of the above premises by your client on the terms mentioned in your letter and he is unable to accept these terms as they stand.

However, our client will, provided your client is agreeable in granting to him a lease of the premises for three years with an option of renewal for a further three years, agree to the rent being fixed at \$220/- a month exclusive of water and electric light. Our client would in these circumstances instal his own meters at his own expense.

As regards the other terms (B) to (F) mentioned in your letter our client is agreeable generally to accepting these terms subject to the following amendment :—

(B) excepting structural repairs and save and except fair wear and tear and damage by fire and white ants ;

(E) such consent not to be unreasonably withheld.

Will you please let us hear if your client is prepared to grant a lease on the above terms, the lease to be granted in the name of Pang Keak Swee trading as The Singapore Dispensary.

Yours faithfully,
(Sgd.) BRADDELL BROTHERS. 40

No. 17.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

25th May, 1951.

Dear Sirs,

Re : No. 265 Orchard Road
(Ground floor).

*Agreed
bundle of
corres-
pondence.*

No. 17.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
25th May
1951.

We have for acknowledgment your letter of the 17th of May.

As a number of amendments have had to be made, we submit a fresh draft for your approval with the following remarks.

10 (A) Our client is not prepared to extend the said term beyond 3 years.

(B) Nor does she desire now to allow your client to have a separate meter installed for water and light.

(C) The ceiling to the ground floor was constructed without her knowledge or consent and it might be that the wood used is of inferior quality. She cannot be liable for any damage caused thereby or by the timber used in the construction of a shed to the rear of the premises.

20 She informs us that recently your client started to put up a new covering to the open yard making it very dark for the tenants using the staircase. Will you kindly ask your client to refrain from such action and to remove whatever present structure he has put up.

The signing of the lease is subject to your client signing a letter giving our client notice to quit the premises on the 30th of April, 1954. The said draft is enclosed herewith.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers,
Singapore.

Encs. :

30 To :

Madam Catherine Lim Siew Neo,
1B Ardmore Park,
Singapore.

Dear Madam,

Re : No. 265 Orchard Road
(Ground Floor)

I hereby give you notice that I will quit and deliver up vacant possession of the above premises to you on the 30th of April, 1954.

Yours faithfully,

No. 18.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

8th June, 1951.

*Agreed
bundle of
corres-
pondence.*

No. 18. Messrs. R. C. H. Lim & Co.,
Letter, Singapore.
Braddell
Brothers to
R. C. H.
Lim & Co.,
8th June
1951.

Dear Sirs,

Your Ref. RSB/AD

265, Orchard Road (Ground Floor).

We have now taken our client's instructions on your letter of the 25th May with its enclosed fresh draft Lease and form of Notice to Quit.

We have on the instructions of our client made several amendments in red ink to the draft Lease, which we return approved subject to these amendments being accepted by your client. 10

We note from your letter that your client does not desire now to allow our client to have a separate meter installed for water and light, and we have accordingly amended the draft Lease to include the provision by your client of a water and electric light and power supply.

With regard to the third paragraph of your letter the only covering in the open area which our client has erected is purely of a temporary nature which has been put up for the protection of his stocks and which he cannot see his way to remove. If your client's only objection is that the erection darkens the staircase may we not suggest that an electric light be installed on the staircase, which would be a very simple way of overcoming the objection. After all our client must have some freedom in the use of his premises. 20

Our client will not agree to signing the Notice to Quit.

May we hear from you in due course whether your client will accept the amendments made to the draft Lease ?

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

Encl. :

30

No. 19.—SUMMONS.

CIVIL DISTRICT COURT SINGAPORE.

Court House at Singapore.

Summons No. 1834 of 1951.

Between C. S. N. LIM (Spinster)

Plaintiff

and

TEO SYN HUN

Defendant.

To : Teo Syn Hun.

The above-named Defendant living or having a place of business
10 or employed at 265 Orchard Road, Singapore (1st Floor)

YOU ARE HEREBY SUMMONED to appear either in person or
by your Solicitor before this Court at the Court House in Singapore, on
the day of 1951, at o'clock of
the forenoon, to answer a claim against you by the above-named Plaintiff :

TAKE NOTICE that in default of such appearance judgment may be
given against you.

Dated at Singapore this day of September 1951.

Clerk of the Court.

20 N.B.—This Summons is to be served within twelve months from the date
thereof or, if renewed, within six months from the date of such
renewal, including the day of such date and not afterwards.

The Plaintiff's claim is against the Defendant for possession of the
premises known as first floor of No. 265, Orchard Road, Singapore.

2. The Defendant is in occupation of the said premises without the
authority and/or consent of the Plaintiff.

3. The Plaintiff further claims damages at the rate of \$40— per month
for the use and occupation of the said premises from the 1st day of April,
1951, till delivery of possession to the Plaintiff, and costs.

(Sgd.) R. C. H. LIM & CO.

30

Solicitors for the Plaintiff.

This summons was issued by Messrs. RICHARD CHUAN HOE LIM & Co.
1st Floor No. 34 Market Street, Singapore, Solicitors on behalf of the said

*Agreed
bundle of
corres-
pondence.*

—
No. 19.
Summons,
September
1951.

*Agreed
bundle of
corres-
pondence.*

Plaintiff, who resides at No. 1A Ardmore Park, Singapore, and is a spinster.
The Address for service No. 34 Market Street, Singapore.

No. 19.
Summons,
September
1951,
continued.

This Summons was served by me on
the Defendant, personally at
on the day of 19 at m.

(Signed)

Endorsed the day of 19

(Signed)

Filed this day of September 1951.

No. 20.
Letter,
R. C. H.
Lim & Co.
to Depart-
ment of
Social
Welfare,
8th
September
1951.

No. 20.—LETTER, R. C. H. Lim & Co. to Department of Social Welfare

10

Richard Chuan Hoe Lim & Co. 1st Floor,
34 Market Street,
Singapore.

8th September 1951.

Attention of Mr. B. L. Dunsford.

Sir,

Re : No. 265, Orchard Road,
1st Floor.

We act for Miss C. S. M. Lim, the owner of the above property,
who has handed to us your letter of the 25th of August last for attention. 20

1. Our client informs us that after receipt of your letter she saw your
Mr. B. L. Dunsford and explained the position to him. Our client, as
early as 1947, had made it clear to the previous tenant that she required
the premises to reopen her previous business. Madam Tay, the previous
tenant, was fully aware of this and promised our client she would in no
circumstances sublet any part of the premises. In spite of this Mr. Teo
and his family went into occupation. They also knew at the time that
our client desired the premises for her business. Madam Tay thereafter
assured our client that they were taken in as guests until they could find
other accommodation. 30

2. We do not understand or appreciate your reference to obnoxious
malpractices. Our client has been most considerate as far as Mr. Teo is
concerned. If he is prepared to give our client an assurance that he will
quit by a certain date our client might be disposed to allow him to continue
in occupation.

We have the honour to be, Sir,

The Secretary,
Department of Social Welfare,
Singapore.

Your obedient servants.

No. 21.—LETTER, Oehlers & Co. to R. C. H. Lim & Co.

21, Bonham Building,
Singapore.

2nd October, 1951.

Oehlers & Company.

FBO/CK/L.

Messrs. Richard Chuan Hoe Lim & Co.,
Singapore.

*Agreed
bundle of
corres-
pondence.*

No. 21.
Letter,
Oehlers &
Co. to
R. C. H.
Lim & Co.,
2nd
October
1951.

Dear Sirs,

10 Re : No. 265, Orchard Road.

Further to our letters to you of the 3rd April, 1st May, 2nd June, 2nd July and 4th September, our client has deposited with us the further sum of \$40-00 being the rent for October, 1951.

We have now in our hands the sum of \$280-00 being the rents for April, May, June, July, August, September and October.

We will forward the rents to you when we hear from you that your client is willing to accept same.

Yours faithfully,
(Sgd.) OEHLERS & CO.

20 No. 22.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

12th October, 1951.

Messrs. R. C. H. Lim & Co.,
Singapore.

No. 22.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
12th
October
1951.

Dear Sirs,

Your ref. : RSB/AD.

265, Orchard Road (Ground Floor).

We are instructed by our clients to tender to you as Solicitors for Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$220/- in cash being in respect of rent of the above premises for October 1951. Please send us your client's rent receipt.

30

The rents for the previous months namely May, June, July, August and September, 1951, amounting to \$1,100- have been deposited with us by our clients which said sum will be sent to you on application to us.

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

No. 23.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

16th October, 1951.

*Agreed
bundle of
corres-
pondence.*No. 23.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
16th
October
1951.

Dear Sirs,

Re : Ground Floor of No. 265, Orchard Road.

We acknowledge receipt of your letter of the 12th instant sending us cash for \$220/-. We are instructed to return the same.

With reference to your letter of the 8th June last, as your client does not agree to the signing of the Notice to Quit, our client does not intend to enter into the said Lease as it clearly shows that your client has no desire to comply with the terms thereof.

10

We are instructed to commence proceedings. Will you please let us know if you have instructions to accept service.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers.

Encls. :

No. 24.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

19th October, 1951.

No. 24.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
19th
October
1951.

M/s. R. C. H. Lim & Co.

Dear Sirs,

Your ref. RSB/AD.

20

Ground floor of No. 265 Orchard Road.

We have received your letter of the 16th October with its enclosed cash for \$220/-.

We are instructed to accept service of any proceedings which your client may see fit to take.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 25.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

21st December, 1951.

Messrs. R. C. H. Lim & Co.,
Singapore.

Dear Sirs,

Your Ref. RSB/AD.

No. 265 Orchard Road (Ground Floor).

We are instructed by our clients to tender to you as Solicitors for Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$440— in cash being in respect of rent of the above premises for November and December, 1951. Please send us your client's rent receipt in due course.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

*Agreed
bundle of
corres-
pondence.*

No. 25.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
21st
December
1951.

No. 26.—LETTER, Oehlers & Co. to R. C. H. Lim & Co.

Oehlers & Company

21, Bonham Building,
Singapore.

31st December, 1951.

FBO/CK/L.

Messrs. Richard Chuan Hoe Lim & Co.,
Singapore.

No. 26.
Letter,
Oehlers &
Co. to
R. C. H.
Lim & Co.,
31st
December
1951.

Dear Sirs,

D.C. Summons No. 1834/1951

C. S. N. Lim—Spinster

vs.

Teo Syn Hun.

Re No. 265, Orchard Road.

We are informed by our client that he has removed from the above premises and are instructed to send you, herewith, the key of the premises.

We also send you, herewith, a cheque for \$360-00 being the rents from April to December, 1951. Kindly acknowledge receipt.

In view of the above, the above Summons need not go on to trial.

Kindly inform the District Judge accordingly so that the case may be mentioned at 2.15 p.m. on the 9th January, 1952, and struck out.

Yours faithfully,

(Sgd.) OEHLERS & CO.

No. 27.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

Agreed
bundle of
corres-
pondence.

2nd January 1952.

Dear Sirs,

Your Ref : JLPH/TBC

Re : 265 Orchard Road (Ground Floor).

No. 27.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
2nd
January
1952.

With reference to your letter of the 21st of December, 1951, we are instructed to return herewith the \$440/- enclosed in your said letter, the receipt of which kindly acknowledge.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO. 10

Messrs. Braddell Brothers.

Encls :

.

No. 28.—LETTER, R. C. H. Lim & Co. to The Civil District Judge.

No. 28.
Letter,
R. C. H.
Lim & Co.
to The
Civil
District
Judge,
3rd
January
1952.

3rd January 1952.

RSB/TBC

Sir,

C. C. Summons No. 1834 of 1951

C. S. N. Lim *vrs.* Teo Syn Hun.

We have the honour to inform you that we act for the Plaintiff in the above matter and Messrs. Oehlers & Co. act for the Defendant. 20

The Defendant has now vacated the premises and has paid all mesne profits up to date and accordingly the above summons will not proceed to trial.

The case has been fixed for hearing on the 9th instant at 2.15 p.m. which afternoon will be available for another case. We shall mention the same at the appointed time.

We have the honour to be,

Sir,

Your obedient servants,

His Honour,
The Civil District Judge,
Singapore.

30

No. 29.—LETTER, R. C. H. Lim & Co. to Oehlers & Co.

4th January 1952.

*Agreed
bundle of
corres-
pondence.*

RSB/TBC

Dear Sirs,

D.C. Summons No. 1834/51

Re : No. 265 Orchard Road

No. 29.
Letter,
R. C. H.
Lim & Co.
to Oehlers
& Co.,
4th
January
1952.

We acknowledge the receipt of your letter dated the 31st December, 1951, and enclose herewith our receipt for \$360.— in payment of damages for the above premises.

10 As requested we have written to the Civil District Judge and will attend in Court for mention on the 9th instant at 2.15 p.m.

Yours faithfully,

Messrs. Oehlers & Co.
Singapore.

Encl :

No. 30.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

17th January 1952.

No. 30.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
17th
January
1952.

Messrs. R. C. H. Lim & Co.,
Singapore.

20 Dear Sirs,

Your ref : RSC/AD

re : No. 265 Orchard Road (Ground Floor)

We thank you for your letter of the 2nd instant together with its enclosed cash for \$440/—.

We are instructed to tender to you as solicitors for Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$220— in cash being in respect of rent of the above premises for January 1952. Please send us your client's rent receipt in due course.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

30

*Agreed
bundle of
corres-
pondence.*

No. 31.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

19th January, 1952.

No. 31.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
19th
January
1952.

Dear Sirs,

Re : No. 265 Orchard Road (Gr. Floor)

We acknowledge the receipt of your letter of the 17th instant enclosing the sum of \$220.— cash as payment of rent for January 1952.

As we have no instructions to accept such rent the same is hereby returned. Kindly acknowledge receipt.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO. 10

Messrs. Braddell Brothers,
Singapore.

Encl. : \$220.— cash.

No. 32.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.
18th
February
1952.

No. 32.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

18th February, 1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your Ref. RSC/AD

re : No. 265 Orchard Road (Ground Floor)

We are instructed by our client to tender to you as solicitors for 20 Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$220/— in cash being in respect of the rent of the above premises for February 1952. Please send us your client's rent receipt.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 33.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

19th February, 1952.

Dear Sirs,

Re : No. 265 Orchard Road (Gr. Floor)

We acknowledge the receipt of your letter of the 18th instant with enclosure.

As advised we have no instructions to accept tender of rent in respect of the above premises and the sum of \$220.— cash is hereby returned. Kindly acknowledge receipt.

10

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers,
Singapore.

Encl. : \$220.— cash.

*Agreed
bundle of
corres-
pondence.*

No. 33.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
19th
February
1952.

No. 34.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

10th March, 1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your ref : RBB/

No 265 Orchard Road

The Singapore Dispensary and
Miss Lim Siew Neo

20

Our clients have just informed us that they have good reason to believe that your client proposes

(A) to have removed from the stairway leading from the ground floor of the premises to the first floor the panelling which enclose the stairway from the shop premises ;

(B) to have the front of the premises whitewashed and for that purpose to remove our clients' shop sign ;

30

(C) to make certain alteration to the street door.

We are instructed to inform you that if our clients are correct in their belief they object to the proposal of your client for the reason that they constitute an unwarrantable interference with our clients' right as tenants of your client.

If the stairway panelling is removed during business hours our clients will be greatly inconvenienced for obvious reasons. Moreover, our clients

No. 34.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
10th March
1952.

*Agreed
bundle of
corres-
pondence.*

No. 34.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
10th March
1952,
continued.

have stacked as they are entitled to do business stocks up against the panelling and they have the alternative of leaving their stocks where they are when they would most certainly be damaged by the workmen or removing them at inconvenience to themselves and placing them in some other position which will be a nuisance to our clients in the carrying on of their business.

Our clients can see no reason why your client should remove their business sign and they will certainly not consent to any action proposed to be taken by your client to alter the street door.

We are to inform you that if your client notwithstanding this request 10 to her to desist from carrying out her proposal, does in fact do so, then our clients will take other action at law which is open to them against your client.

We are further to inform you that any proposed alteration which your client wishes to carry out and which will affect our clients' enjoyment of their part of the premises will require our clients' consent to prevent your client's action from being treated as those of a trespasser.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 35.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
12th March
1952.

No. 35.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

20

12th March, 1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your Ref. RSC/AD.

re : No. 265 Orchard Road.

We are instructed by our clients to tender to you as solicitors for Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$220— in cash being in respect of the rent of the above premises for March, 1952. Please send us your client's rent receipt.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

30

No. 36.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

15th March, 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Re : 265 Orchard Road (Gr. Floor).

We acknowledge the receipt of your letter dated the 12th instant and return herewith the sum of \$220.— cash enclosed therein as we have no instructions to accept the same. Kindly acknowledge receipt.

No. 36.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
15th March
1952.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

10 Messrs. Braddell Brothers,
Singapore.

Encl. : \$220.— cash.

No. 37.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

20th March, 1952.

No. 37.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
20th March
1952.

Dear Sirs,

Your Ref. : JLPH/AR.

No. 265, Orchard Road.

We acknowledge the receipt of your letter of the 10th instant upon which we have received our client's instructions.

20 Our client has at no time recognised your client as our client's tenant.

As regards the allegation contained in paragraph (A), we are informed that the panelling enclosing the stairway from the shop premises was not removed.

As regards (B), our client is entitled to have the front of the first floor of the premises whitewashed. Your client originally had its shop sign on hinges placed lower than its present position and our client has put it back to its original position.

As regards (C), our client has made no alteration to the street door. Your client has on several occasions locked this door and prevented our
30 client from gaining access to the premises and our client has had on occasions to call the Police to effect entrance.

*Agreed
bundle of
corres-
pondence.*

The stairway to the first floor and second floor is within the shop and your client has no right to disturb our client's right of access. Our client has placed a lock on the inside hook of the latch to prevent the bolt from being locked.

No. 37.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
20th March
1952,
continued.

We have to give you further notice that our client will be using the first floor of the premises for her own business and that she is expecting her goods to arrive in the month of May, 1952.

As regards any inconvenience claimed by your client caused to its said business, we have to draw your client's attention to the fact that it was informed 4 years ago that these premises were required for the re-establishing of our client's own business and to which your client paid no attention. Our client has in the circumstances suffered much greater hardship. 10

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers.

No. 38.
Letter,
Braddell,
Brothers to
R. C. H.
Lim & Co.,
27th March
1952.

No. 38.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

27th March, 1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

re : 265 Orchard Road.

Your ref. RSB/AD.

Our client has just called upon us and informed us that (A) your client on the 25th March last was banging furniture and pieces of wood on the first floor of the premises at 5.30 p.m. and (B) your client on the 26th March at 5.05 a.m. came and opened the front door of the premises and when she was seen by our clients' employee she hurriedly went away. On the same day at 5.30 p.m. your client was banging the stairs leading to the first floor and the first floor itself and when our clients remonstrated with her your client hurled a kerosene tin and an empty paint tin down the stairs at him. On her way out of the shop your client kicked down a chair deliberately. 30

Your client may not like to face the legal situation that our client is your client's statutory tenant. Your client however should not evince her displeasure in such a manner as we have mentioned above and we are sure you will agree with us. Will you kindly advise your client not to behave as she has been behaving since our client cannot suffer this conduct any further. Unless we receive an assurance that this conduct will cease and does cease our client will be reluctantly compelled to apply for an injunction to restrain your client from further behaviour such as this. 40

May we please hear from you.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 39.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

3rd April, 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Re : 265, Orchard Road.

No. 39.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
3rd April
1952.

We have seen our client on your letter of the 27th ultimo.

She denies that on the 25th of March last, she was banging furniture and pieces of wood on the first floor of the premises as alleged in para-
graph (A). She also denies that the following day at 5 a.m. she opened
the front door of the premises and when she was seen by your client's
10 employees she hurriedly went away.

Our client, on the 25th of March, was going about her normal duties in cleaning and sweeping the furniture and floor of the first floor. She is not in the habit of banging her furniture about or pieces of wood for the purpose, presumably as implied in the allegation, of annoying your client. These premises have wooden floors and a certain amount of noise must be expected when persons move about. Our client does not often go to these premises and your client or his servants presumably take it for granted that they are entitled to absolute silence from the upper floors.

As regards (B), our client opened the premises at around 5.30 a.m.
20 to get her belongings from the first floor when she remembered that she had forgotten the keys of the first floor. She quickly closed the premises and went away.

The description of the incident on the staircase as given by your client is quite misleading. Our client was removing a kerosene tin and an empty paint tin and taking them up the steps when your client who presumably is seeking every opportunity to pick a quarrel with our client saw her coming up the steps with these two tins and shouted at her. Our client was taken unawares and frightened by the shout she dropped both tins. Your client then picked them up and took them to the rear of the
30 ground floor.

If your client desires to make an annoyance of himself to our client he must take the necessary consequences. From the reports made by your client it is quite evident that he is determined to create an atmosphere in which he appears the aggrieved party and our client the one who is persecuting him.

We have to inform you that our client has in the past and all along displayed extreme self-control and the incidents relied upon are in themselves trifling.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

40

Messrs. Braddell Brothers.

*Agreed
bundle of
corres-
pondence.*

No. 40.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

2nd May, 1952.

No. 40.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
2nd May
1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Your Ref. RSB/AD.

re : No. 265 Orchard Road.

We are instructed by our clients to tender to you as solicitors for Miss Catherine Lim Siew Neo, the owner of the above property the sum of \$440— in cash being in respect of the rents of the above premises for April and May, 1952. Please send us your client's rent receipts in due 10 course.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 41.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
5th May
1952.

No. 41.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

5th May, 1952.

Dear Sirs,

Your Ref. : JLPH/TBC.

Re : 265 Orchard Road.

We acknowledge the receipt of your letter dated the 2nd instant.

As already advised we have no instructions to accept the rent tendered 20 in respect of the above premises, the sum of \$440— cash enclosed therein is herewith returned. Kindly acknowledge receipt.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers,
Singapore.

Encl. : \$440.— cash.

No. 42.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

20th September 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Re : No. 265, Orchard Road

We have been instructed by Madam Lim Siew Neo to institute proceedings for the recovery of portion of the ground floor premises of No. 265 Orchard Road now occupied by your client.

Will you kindly let us know if you have instructions to accept service.

No. 42.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
20th
September
1952.

Yours faithfully,

10

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers,
Singapore.

No. 43.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

4th October 1952.

Messrs. R. C. H. Lim & Co.

No. 43.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
4th October
1952.

Dear Sirs,

Your ref. RSB/YKT

re : 265 Orchard Road.

We thank you for your letter of the 2nd October upon which we are taking our client's instructions.

Meanwhile, we are writing the proper authorities for a copy or copies of your client's report or complaint as we may find that it is necessary to advise our client that your client was not justified in taking action of a nature more proper to be taken when an offence against the criminal laws of the Colony has been committed. Nothing in your letter suggests that any such offence was committed on the 30th September and it may be that your client was attempting to set the law in motion on false information.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 44.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

1st October, 1952.

*Agreed
bundle of
corres-
pondence.*

No. 44.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
1st October
1952.

Messrs. R. C. H. Lim & Co.,
Singapore.

Dear Sirs,

Your Ref : RB

Suit No. 596 of 1952

Pang Keah Swee *v.* Lim Siew Neo & Ors.

Will you please furnish the following particulars of the Defence :—

UNDER PARAGRAPH 2 :—

10

Of the passage-way leading from the front door to the stairway at the rear of the ground floor premises and of its boundaries and extent.

Of the facts or circumstances from which the Plaintiff's alleged right of user of the front door and passage-way is to be implied.

Of the terms of the alleged implied right of user of the front door and passage way.

UNDER PARAGRAPH 4 :—

Of the number of occasions on which the Plaintiff is alleged wrongfully to have locked the front door and of the dates and times thereof. 20

Of the inconvenience caused to the 1st Defendant and of the nature thereof.

UNDER PARAGRAPH 5 :—

Of " the occasions referred to " and of the dates and times thereof.

UNDER PARAGRAPH 7 :—

Of the " number of nights before the 1st June 1952 " and of the dates thereof.

Of the allegation that the 1st Defendant has to pay the Municipal rates. 30

Of whether the obligation is implied or expressed.

Of any agreement between the Plaintiff and the 1st Defendant relating to such obligation and of the terms thereof.

UNDER PARAGRAPH 9 :—

Of the Plaintiff's alleged attack on the 1st Defendant and of the nature and circumstances thereof.

Of the exact location of the alleged attack.

Of the 1st Defendant's injuries.

*Agreed
bundle of
corres-
pondence.*

No. 44.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
1st October
1952,
continued.

UNDER PARAGRAPH 10 :—

Of the dates and times when the very obnoxious smell was alleged to have come from the ground floor premises.

UNDER PARAGRAPH 14 :—

10 Of the exact position on the premises occupied by the 2nd Defendant when it is alleged the Plaintiff abused her.

Of the meaning of the words " the 2nd Defendant's way out "

Of the abuses alleged to have been given by the Plaintiff and of the words used.

UNDER PARAGRAPH 20 :—

Of the alleged attack on the 1st and 3rd Defendants by Chong Sian Guan and of the nature and circumstances thereof.

Of the exact location of the attack.

Of the injuries of the 1st and 3rd Defendants.

20 Will you please cause the particulars to be filed in Court within 7 days and serve us with a copy thereof.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 45.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

2nd October, 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Re : 265 Orchard Road.

No. 45.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
2nd
October
1952.

We have been instructed by our client Miss C. S. N. Lim to write to you as follows :—

Towards the end of last month your client caused a bolt to be fitted on the inside of the front door of the ground floor of the above premises and on the 30th ultimo at about 10.10 p.m. when our client returned to the said premises she could not open the said front door with her key. 10

After knocking for some time and finding that nobody within would open the said front door our client proceeded to Orchard Road Police Station to make a report. She was then asked to make a complaint at the Central Police Station at South Bridge Road which she did.

She returned to the said premises with a police escort and after the police had knocked on the door a number of times it was opened by one of your client's employees and our client eventually got into the premises at about 12.30 a.m.

Our client takes a serious view of such action by your client's employee which was apparently done with the deliberate intention of annoying her 20 and putting her to a great deal of inconvenience.

We are instructed to give your client notice that any repetition of such action will be instantly dealt with. Your client is fully aware of our client's right in the premises.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers,
Singapore.

No. 46.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

16th October, 1952.

Messrs. R. C. H. Lim & Co.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Suit No. 596 of 1952.

Pang Keah Swee *v.* Lim Siew Neo & ors.

We thank you for serving us with a copy of the further Particulars filed by you on the 15th October.

No. 46.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
16th
October
1952.

You have omitted to give the particulars following :—

10 UNDER PARAGRAPH 2 :—

Of the boundaries of the passage way.

Of the terms of the alleged implied right of user of the front door and passage way.

UNDER PARAGRAPH 9 :—

Of the exact location of the alleged attack.

UNDER PARAGRAPH 10 :—

Of the dates when the very obnoxious smell was alleged to have come from the ground floor premises.

UNDER PARAGRAPH 20 :—

20 Of the exact location of the attack.

In view of the particulars given under paragraph 9 we propose to take out an application to strike out the word “ attack ” where it appears in paragraph 9 of the Defence unless you yourselves care to amend the Defence by taking out this word within seven days. Will you please let us know whether you are prepared to do so ?

You have not taken steps to amend the counterclaim as requested by us in our letter of the 30th September. Unless you take out an application within the next 72 hours we shall be obliged to take our own steps on behalf of the Plaintiff.

30 Will you be kind enough to let us have the following further and better particulars of the Particulars delivered :—

Of the further particulars under paragraph 20. Of the place where the “ scuffle then ensued.”

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 47.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

24th October, 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Suit No. 596 of 1952.

Pang Keah Swee *v.* Lim Siew Neo & ors.

No. 47.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
24th
October
1952.

We acknowledge receipt of your letter of the 16th instant and send you herewith the particulars asked for.

As regards the application to strike out the word "attack" where it appears in paragraph 9 of the Defence we propose to leave it to the decision of the Court. 10

UNDER PARAGRAPH 2 :

The 1st Defendant is unable to give any further particulars than the particulars already supplied of the boundaries of the passage way.

The right of user of the front door and passage way is to be implied in law.

UNDER PARAGRAPH 9 :

The attack took place at the lower steps of the stairway leading from the ground floor to the 1st floor of the premises when the 1st Defendant was mounting the same.

UNDER PARAGRAPH 10 :

20

The 1st Defendant is unable to give further particulars of the dates when the very obnoxious smell came from the ground floor.

UNDER PARAGRAPH 20 :

The first attack took place at the front door of the ground floor of the said premises.

The second attack relating to the scuffle took place in the said passage way.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Brothers.

30

No. 48.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

27th October, 1952.

*Agreed
bundle of
corres-
pondence.*

Messrs. R. C. H. Lim & Co.

— —
No. 48.

Dear Sirs,

Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
27th
October
1952.

Your ref. RB

Suit No. 596 of 1952

Pang Keah Swee v Lim Siew Neo & ors.

We thank you for your letter of the 24th October with the particulars therein set out.

10 We cannot accept the particulars you have given under paragraph 2 of the Defence in reply to our request for particulars of the terms of the alleged implied right of user of the front door and passage way. You have told us that the right of user is to be implied in law. With that proposition we agree as we do not know how else it could be implied but we do want to know what are the terms which your clients say are incidental to this implied right of user.

May we please hear from you on this point ?

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 49.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

28th October, 1952.

*Agreed
bundle of
corres-
pondence.*Messrs. R. C. H. Lim & Co.,
Singapore.No. 49.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
28th
October
1952.

Dear Sirs,

Your Ref : RB

Suit No. 596 of 1952

Ground Floor of 265 Orchard Road.

With reference to your application for leave to amend the Counterclaim and with particular reference to the declaration which the 1st Defendant will be asking for in her amended pleading, we would like to put on record that our client the Plaintiff has never denied that your client is entitled to a right of way over the passageway leading from the front door of the above premises to the entrance of the staircase at the rear of the ground floor. Further, so far as our client or ourselves know it has never been suggested by your client the 1st Defendant that she has not been allowed a clear right of way over the said passageway. We had understood that it was acknowledged by your client that she had always been allowed a clear right of way. In the circumstances it is not understood why a declaration is sought.

20

In this connection, we have obtained a copy of a police report made by your client at Orchard Road Police Station (not at the Central Police Station) at 10.40 p.m. on the 30th September last and have taken our client's instructions on your letter of the 2nd October.

We are informed by our client that there were three of his employees on the ground floor that night and their account of the events that happened differs in material respects from your client's account. Our client relies for his living on the business he carries on on the premises. His right to carry on this business depends entirely on the protection afforded him by the Control of Rent Ordinance and not on the grant or will of your client. Surely the last thing that he would do or permit to be done on the premises is something which would annoy your client his landlord and so jeopardise the protection afforded him by the Ordinance. Our client is not an ignorant person and he has at all times been advised by us not to do anything at all which could possibly antagonise your client. Our client's natural inclination is to do everything to placate your client but the one thing he cannot do is to leave the premises.

30

Our client is forced to the conclusion that the aim of your client's actions on the night of the 30th September was to prepare the way for an amendment of the Counterclaim by way of inclusion of the declaration to be asked for. The fact of the inconsistency between this relief by way of declaration and the facts pleaded in the second sentence of paragraph 2 of the Defence would seem to justify our client's conclusion.

40

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

No. 50.—LETTER, R. C. H. Lim & Co. to Braddell Brothers.

6th November, 1952.

*Agreed
bundle of
corres-
pondence.*

Dear Sirs,

Suit No. 596 of 1952.

Ground Floor of No. 265 Orchard Road.

We acknowledge receipt of your letter of the 28th ultimo. We do not at this stage propose to go into a lengthy discussion as to who is wrong or right in this matter.

We can only observe that your client's conduct so far does not bear
10 out what you state in the latter part of your letter.

The only material point is whether the door was locked on the inside on the night in question.

Yours faithfully,

(Sgd.) R. C. H. LIM & CO.

Messrs. Braddell Bros.,
Singapore.

No. 50.
Letter,
R. C. H.
Lim & Co.
to Braddell
Brothers,
6th
November
1952.

No. 51.—LETTER, Donaldson & Burkinshaw to Braddell Brothers.

1st June, 1953.

Messrs. Braddell Brothers,
20 Singapore.

No. 51.
Letter,
Donaldson
& Burkin-
shaw to
Braddell
Brothers,
1st June
1953.

Dear Sirs,

Re : Singapore Dispensary.

We are instructed by the owners of the premises where the Singapore Dispensary carries on business, to enquire by what right your client's claim to be justified in making alterations to the front window of the premises.

Yours faithfully,

(Sgd.) DONALDSON & BURKINSHAW.

No. 52.—LETTER, Braddell Brothers to R. C. H. Lim & Co.

18th November, 1952.

*Agreed
bundle of
corres-
pondence.*No. 52.
Letter,
Braddell
Brothers to
R. C. H.
Lim & Co.,
18th
November
1952.

Messrs. R. C. H. Lim & Co.

Dear Sirs,

Suit No. 596 of 1952.

Pang Keah Swee *v.* Lim Yong Teck & ors.

Our client called upon us yesterday evening and informed us that on the 7th November at about 1.30 p.m. your client Mr. Lim Yong Teck whose habit it is to pass through the shop at least twice every day rudely pushed one of our client's customers out of his way. The act was deliberate 10 so we are informed and our client followed Mr. Lim and asked him why he had acted in such a way. Words were exchanged and in the result your client Mr. Lim grasped our client's shirt and tore it.

We imagine that Mr. Lim must have realised that this was rather unfortunate conduct having regard to the injunction in force since our client has now been served with a summons for assault issued on the complaint of Mr. Lim. There were a number of witnesses of the occurrence.

We are informed further that on some date during last week when a plumber and his mate employed by our client were on the premises removing a sink belonging to our client, Mr. Lim came downstairs and on to our 20 client's premises and upbraided the plumber and his mate seizing the mate and asking him to go to the police station. We are instructed that there were witnesses of this occurrence.

We have been instructed to take the necessary proceedings against Mr. Lim for breach of the injunction and we are preparing the affidavit and papers to lead to these proceedings which we will arrange to have served upon your client as soon as possible.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

No. 53.—LETTER, Donaldson & Burkinshaw to Braddell Brothers.

16th June, 1953.

*Agreed
bundle of
corres-
pondence.*

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Re : Singapore Dispensary.

No. 53.
Letter,
Donaldson
& Burkin-
shaw to
Braddell
Brothers,
16th June
1953.

We refer to our letter to you of the 1st inst., and your acknowledgment of the 9th inst.

We still await the receipt of your client's explanation of how he claims
10 to be justified in altering the window of the premises. We would ask you to supply us with the explanation without further delay.

Yours faithfully,
(Sgd.) DONALDSON & BURKINSHAW.

No. 54.—LETTER, Braddell Brothers to Donaldson & Burkinshaw.

2nd July, 1953.

No. 54.
Letter,
Braddell
Brothers to
Donaldson
& Burkin-
shaw,
2nd July
1953.

Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

Singapore Dispensary.

We have taken our clients' instructions on your letters of the
20 1st and 16th June. Our clients have not made alterations to the front window of the premises.

Yours faithfully,
(Sgd.) BRADDELL BROTHERS.

*Agreed
bundle of
corres-
pondence.*

No. 55.—LETTER, Donaldson & Burkinshaw to Braddell Brothers.

8th July, 1953.

No. 55.
Letter,
Donaldson
& Burkin-
shaw to
Braddell
Brothers,
8th July
1953.

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Re : Singapore Dispensary.

We are in receipt of your letter of the 2nd instant, in which you state that your clients have not made alterations to the front window of the premises. Our client is extremely surprised to hear that your clients deny this in view of the fact that a portion of the woodwork has been removed and our client has actually in her possession some pieces of the actual wood which formerly formed part of the window. We suggest that you refer this matter to your clients again. 10

Yours faithfully,

(Sgd.) DONALDSON & BURKINSHAW.

No. 56.
Letter,
Donaldson
& Burkin-
shaw to
Braddell
Brothers,
8th July
1953.

No. 56.—LETTER, Donaldson & Burkinshaw to Braddell Brothers.

8th July, 1953.

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Suit No. 596 of 1952.

20

Pang Keah Swee *v.* Lim Siew Neo and two others.

We thank you for your letter of the 2nd inst.

We have re-read the Interrogatories which you have delivered on the 4th November last and they appear to have no bearing at all on what remains of the dispute. We, therefore, cannot advise our clients to answer.

Yours faithfully,

(Sgd.) DONALDSON & BURKINSHAW

No. 57.—LETTER, Braddell Brothers to Donaldson & Burkinshaw.

15th September, 1953.

Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

Suit No. 596 of 1952.

We are instructed to put on record that on the 14th inst. your client, the third Defendant, in breach of the injunction restraining him from so doing assaulted one of our client's lady customers in our client's premises.

10 We are instructed that this lady is taking criminal proceedings against your client, and in the circumstances our client will wait until the conclusion of those proceedings before considering his own remedies against your client.

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

*Agreed
bundle of
corres-
pondence.*

No. 57.
Letter,
Braddell
Brothers to
Donaldson
& Burkin-
shaw,
15th
September
1953.

No. 58.—LETTER, Donaldson & Burkinshaw to Braddell Brothers.

17th September, 1953.

Messrs. Braddell Brothers,
Singapore.

20 Dear Sirs,

Re : Suit No. 596 of 1952.

We are in receipt of your letter of the 15th inst.

We are instructed that there is not a word of truth in the allegation that the 3rd Defendant assaulted a lady customer. According to our instructions, the truth of the matter is that your client has for some time past been trying to create an incident and has been endeavouring to provoke all the Defendants into doing something which would amount to a breach of the interim injunction. Our clients have had to put up with a number of insults and annoyances and evidence of these will be

30 given at the trial.

In view of your statement that criminal proceedings are pending at the instance of the lady customer referred to in your letter, the matter must be regarded as "sub judice" for the time being and we, therefore, refrain from comment except to repeat that the allegation is denied.

Yours faithfully,
(Sgd.) DONALDSON & BURKINSHAW.

No. 58.
Letter,
Donaldson
& Burkin-
shaw to
Braddell
Brothers,
17th
September
1953.

No. 59.—LETTER, Braddell Brothers to Donaldson & Burkinshaw.

18th September, 1953.

*Agreed
bundle of
corres-
pondence.*

No. 59.
Letter,
Braddell
Brothers to
Donaldson
& Burkin-
shaw,
18th
September
1953.

Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

Your Ref. CHS/MK/13482.

Re : Suit No. 596 of 1952.

We thank you for your letter of yesterday's date.

We are instructed to deny your clients' allegations. We agree that
the matter is sub judice.

10

Yours faithfully,

(Sgd.) BRADDELL BROTHERS.

In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL OF THE SUPREME COURT OF
THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.*

BETWEEN

LIM SIEW NEO (Defendant) *Appellant*

AND

PANG KEAH SWEE (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

SPEECHLY, MUMFORD & CRAIG,
10 New Square,
Lincoln's Inn,
London, W.C.2,
Solicitors for the Appellant.

SYDNEY REDFERN & CO.,
1 Gray's Inn Square,
Gray's Inn,
London, W.C.1,
Solicitors for the Respondent.