

8

Judgment 8, 1970

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 5 of 1969

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

N. RENGASAMY PILLAI

Appellant

- and -

THE COMPTROLLER OF INCOME TAX

Respondent

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London, E.C.2.

Solicitors of the Appellant.

Solicitors of the Respondent.

UNIVERSITY OF LONDON
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N. RENGASAMY PILLAI

Appellant

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THE COMPTROLLER OF INCOME TAX

Respondent

R E C O R D O F P R O C E E D I N G S
I N D E X O F R E F E R E N C E

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Order granting Conditional Leave to Appeal to H.M. the Yang di-Pertuan Agong	5th August 1968

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

N. RENGASAMY PILLAI Appellant

- and -

THE COMPTROLLER OF INCOME TAX Respondent

R E C O R D O F P R O C E E D I N G S

A

No. 1

In the High
Court

BANKRUPTCY NOTICE

IN THE HIGH COURT IN MALAYA AT PENANG
STATE OF PENANG

BANKRUPTCY NOTICE

(Form No. 5, Section 4; Rule 90)

IN BANKRUPTCY No: 76 of 1967

No. 1
Bankruptcy
Notice,
17th August,
1967.

B

Re: N. Rengasamy Pillai

Ex Parte: Comptroller of Income Tax
Suleiman Building,
Kuala Lumpur.

To: N. Rengasamy Pillai
of 43, Birch Lane, Penang.

Take Notice that within seven (7) days after
service of this notice on you, excluding the day
of such service, you must pay to Comptroller of
Income Tax of Kuala Lumpur, the sum of \$54,826-68

In the High Court

No. 1
Bankruptcy
Notice,
17th August,
1967.
(Contd.)

claimed by him as being the amount due on a final judgment obtained by him against you in the High Court at Penang in Civil Suit No. 113 of 1963 whereon execution has not been stayed, or you must secure or compound for the said sum to the Comptroller's satisfaction or the satisfaction of the Court; or you must satisfy the Court that you have a counterclaim, set-off, or cross demand against the Comptroller of Income Tax which equals or exceeds the sum claimed by the Comptroller and which you could not set up in the action in which the judgment was obtained.

A

Dated this 17th day of August, 1967.

By the Court,

Sd. M. Mahalingam

(L.S.)

Senior Assistant Registrar.

Principal		₹309,660-53	
Less: Tax Discharged by Board of Review ...	₹191,839.20		B
Remission of Penalty	9,591.90		
Payments ...	53,402.75	₹254,833-85	
		<u>₹ 54,826-68</u>	

YOUR ARE SPECIALLY TO NOTE -

That the consequence of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross demand which equals or exceeds the amount claim by the Comptroller of Income Tax in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within seven (7) days apply to

C

3.

the Court to set aside this notice, by filing with the Registrar an affidavit to the above effect.

*

or

A This notice issued out by the Comptroller of Income Tax, Kuala Lumpur in person.

*Name and address of solicitor suing out the notice.

Registered as Bankruptcy Notice
No. 56/67.

Sd. Illegible
Bankruptcy Clerk.

In the High Court

No. 1
Bankruptcy
Notice,
17th August,
1967.
(Contd.)

In the High Court

No. 2

No. 2
Notice by
N. Rengasamy
Pillai,
28th August,
1967.

NOTICE BY N. RENGASAMY PILLAI
UNDER SECTION 3(2) OF BANKRUPTCY
ORDINANCE NO: 20 OF 1959

- To:-
1. The Senior Assistant Registrar,
High Court in Malaya at Penang.
 2. The Official Assignee,
Assistant Official Assignee's Office,
Penang. A
 3. The Comptroller of Income Tax,
Suleiman Building,
Kuala Lumpur.

TAKE NOTICE that the Debtor hereby notifies the Creditor that the Debtor disputes the validity of the above Bankruptcy Notice (without prejudice to his other grounds) on the ground that the sum specified in the said Notice as the amount due exceeds the amount actually due for the following reasons - B

1. The Judgment referred to in the said Notice is a Judgment by Consent;
2. The Consent has been mutually varied by mutual agreement, and as such the said Judgment can no longer stand and ought to be set aside ex debito justitiae;
3. According to the Order of the Income Tax Board Review after its hearings on the 29th and 30th days of June, 1964, the liability of the Debtor to Income Tax was very considerably reduced as confirmed by a letter dated the 16th day of August, 1965, sent by the Penolong Pengawal Hasil Dalam Negeri, and the resultant liability was only \$60,240-45; C
4. The Debtor has since made two payments to account totalling \$10,000-00 through his Solicitors Messrs: Kanda & Co., Penang;
5. There is therefore now due by the Debtor to the Creditor the sum of \$50,240-45 only and no D

5.

more, even according to the figures
supplied by or on behalf of the Creditor;

In the High
Court

6. That therefore the sum of ~~5~~54,826-68 there-
in claimed as the amount due by the Debtor
under the said Judgment is in excess of
any interest validly due and payable by me
thereunder;

No. 2
Notice by
N. Rengasamy
Pillai,
28th August,
1967.

A and on the ground that the said Bankruptcy Notice
is frivolous vexatious and embarrassing to the
Debtor and also does not follow the terms of the
Judgment on which it is founded.

(Contd.)

Dated this 28th day of August, 1967.

Sd. N. Rengasamy Pillai
In Tamil.

Debtor.

Sd. Jag-Jit Singh & Co.

Debtor's Solicitors,
Messrs: Jag-Jit Singh & Co.,
Room 200,
No. 25 Light Street,
Penang.

B

In the High
Court

No. 3

AFFIDAVIT OF MARIMUTHU VADIVELU

No. 3
Affidavit of
Marimuthu
Vadivelu,
5th September,
1967.

AFFIDAVIT

I, Marimuthu Vadivelu of Inland Revenue Department, Suleiman Building, Kuala Lumpur, being of full age, and residing at No. 16 Jalan Seputeh, Klang Road, Kuala Lumpur, do solemnly and sincerely affirm and say as follows:

A

1. I am an Assessment Officer and I am authorised by the Comptroller of Income Tax (hereinafter called the Creditor) to make this affidavit.

2. I am in charge of the collection of tax in this case.

3. I have read what purports to be the affidavit of N. Rengasamy Pillai (hereinafter called the Debtor) affirmed on the 28th day of August, 1967 and filed in support of the Notice of Motion for an order to set aside the Bankruptcy Notice registered as Bankruptcy Notice No. 56/67.

B

4. With regard to paragraphs 2 and 3 of the said affidavit, I say that the said Bankruptcy Notice is valid and the amount stated therein does not exceed the amount actually due for the following reasons:

(a) The Creditor obtained Judgment against the Debtor in Civil Suit No. 113 of 1963 for the sum of \$309,660-53 under the provisions of sections 82 and 86 of the Income Tax Ordinance, 1947. The said amount of \$309,660-53 is comprised of:-

C

(i) Tax for 1958 additional,
1960 additional, and
1961 additional ... \$294,914.85

(ii) Penalty added pursuant
to section 84(1) of the
Income Tax Ordinance,
1947

\$ 14,745.68

D

\$309,660.53

In the High
Court _____

No. 3
Affidavit of
Marimuthu
Vadivelu,
5th September,
1967.
(Contd.)

A

(b) The Judgment was obtained on the 3rd day of July, 1964; and the appeal against the assessment was subsequently heard by the Income Tax Board of Review which reduced the amount of tax payable by the Debtor by ₹191,839.20. Accordingly, a sum of ₹9,591.90 being penalty pertaining to that sum of ₹191,839.20 was remitted; thus reducing the amount of tax and penalty due on the Judgment to ₹108,229-43.

B

(c) Subsequent to the Judgment, the Debtor has made a total payment of ₹40,000. The Debtor was also given a credit amounting to ₹13,402.75 in respect of tax and penalties which had been subsequently discharged and remitted following amendment of his tax for years of assessment other than those referred to in paragraph 4(a).

C

(d) The total amount due now on the Judgment is therefore as follows:-

Original amount of Judgment	...	₹309,660-53
-----------------------------	-----	-------------

Less: Tax discharged by Board of Review	₹191,839-20	
---	-------------	--

Remission of Penalties	₹ 9,591-90	
------------------------	------------	--

Payments plus credit given	₹ 53,402-75	₹254,833-85
----------------------------	-------------	-------------

₹ 54,826-68

5. As regards paragraph 4 of the Debtor's affidavit, it is denied that the Judgment has been mutually varied by mutual agreement.

6. I am advised and verily believe that the said Bankruptcy Notice was valid and does not embarrass

In the High
Court

the Debtor. In the circumstances, I pray that the Debtor's Notice of Motion to set aside the Bankruptcy Notice be dismissed with costs.

No. 3
Affidavit of
Marimuthu
Vadivelu,
5th September,
1967.
(Contd.)

Affirmed on the 15th day of September, 1967
at 2.30 p.m.

9.

No. 4

In the High
Court

ORDER

No. 4
Order,
9th September,
1967.

BEFORE THE HONOURABLE MR. JUSTICE
MACINTYRE, JUDGE, MALAYA

IN OPEN COURT

THIS 9TH DAY OF SEPTEMBER, 1967

ORDER

- A. UPON READING the Notice of Motion dated the 28th day of August, 1967, the affidavits of N. Rengasamy Pillai affirmed and filed herein on the 28th day of August, 1967 the affidavit of M. Vadivelu affirmed on the 5th day of September, 1967 and filed herein on the day of September, 1967 and the Affidavit of N. Rengasamy Pillai affirmed and filed herein on the 6th day of September, 1967 and the exhibits therein referred to,
- B. AND UPON HEARING what was alleged by Mr. Jag-Jit Singh of Counsel for the Debtor and Mr. Au Ah Wah, Senior Federal Counsel for the Creditor, IT IS ORDERED that the Application by the Debtor to set aside the Bankruptcy Notice dated 17th August, 1967 be and is hereby dismissed with costs to be taxed by the proper officer of the Court and be paid by the Debtor to the Creditor.

Dated at Penang this 9th day of September, 1967.

C

(L.S.)

Sd. M. Mahalingam

Senior Assistant Registrar,
High Court,
Penang.

In the High
Court

No. 5

NOTICE OF MOTION

No. 5
Notice of
Motion,
15th September,
1967.

NOTICE OF MOTION APPLYING TO SET
ASIDE BANKRUPTCY NOTICE ON GROUNDS
OTHER THAN THOSE CONTAINED IN
BANKRUPTCY ORDINANCE NO: 20 OF
1959 SECTION 3(1)(i)

A

TAKE NOTICE that on Saturday the 7th day of October 1967, at 10.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard this Honourable Court will be moved by Mr. Jag-Jit Singh of Counsel for the Debtor above-named for -

1. An Order setting aside the Bankruptcy Notice above-mentioned on the grounds -

- (1) that the same is invalid by reason that the sum specified in the same as the amount due exceeds the amount actually due and the Debtor has given notice to the Creditor that he disputes the validity of the same on the ground of such mistake; B
- (2) that the same is void, of no effect and a nullity the same not having been issued and expressed to be issued by the Chief Justice of the High Court in Malaya in the name and on behalf of the Yang di-Pertuan Agong as required by the provisions of Section 7(1) of the Courts of Judicature Act, No. 7 of 1964; C
- (3) that the endorsement thereto has not been signed by the Creditor or on his behalf;
- (4) that the same has not been regularly sued out in that the Request for the same has not been signed personally by the Comptroller of Income Tax, the Creditor or by his Advocate and Solicitor or by any person by virtue of any law entitled to sign on his behalf; D

AND on the grounds set out and appearing from the Affidavit of the Debtor filed herewith and

which will be read in support hereof, and a copy of which is served herewith.

In the High Court

2. An Order declaring that no act of bankruptcy has been committed by the Debtor under the above-mentioned Bankruptcy Notice.

No. 5
Notice of Motion,
15th September, 1967.
(Contd.)

3. Any further or other order that this Honourable Court may deem fit.

Dated this 15th day of September, 1967.

A	Sd. Jag-Jit Singh & Co. Solicitors for the Debtor.	(L.S.)	Sd. M. Mahalingam Senior Assistant Registrar, High Court in Malaya at Penang.
---	---	--------	---

This Notice of Motion was taken out on behalf of the Debtor by his Solicitors Messrs: Jag-Jit Singh & Co., whose address for service is at Room 200, No. 25 Light Street, Penang.

B

- To:-
1. The Comptroller of Income Tax,
Suleiman Building,
Kuala Lumpur.
 2. The Official Assignee,
The Assistant Official Assignee's Office,
Penang.

Filed the 15th day of September, 1967.

In the High
Court

No. 6

AFFIDAVIT OF N. RENGASAMY PILLAI

No. 6
Affidavit of
N. Rengasamy
Pillai,
15th September,
1967.

AFFIDAVIT

I, N. Rengasamy Pillai son of Nagappa Pillai of full age of No. 43 Birch Lane, Penang, do hereby solemnly and sincerely affirm and state as follows:-

A

1. I am the Debtor above-named and have received the above Bankruptcy Notice served on me at about 3.45 p.m. on the 22nd day of August, 1967.

2. I say that the said Bankruptcy Notice is bad in law for the reasons and grounds set forth in the Application to set aside the same and the Notice I have given to the Creditor disputing the validity of the same. I crave leave to refer to the said Notice. I also say that the same is embarrassing inasmuch as it does not follow the terms of the Judgment on which it is founded, and I have so stated in my said Notice to the Creditor.

B

3. I categorically say that the sum of \$54,826-68 therein claimed as the sum due is not due and owing by me to the Creditor on the said Judgment or otherwise and the said sum far exceeds the sum validly due and owing by me to the Creditor.

4. I have given instructions to my Solicitors to commence proceedings to set aside the said Judgment, entered by Consent on the ground that the Consent has been mutually varied and that therefore the said Judgment has become untenable and ought to be set aside ex debito justitiae.

C

5. A Suit, being Penang High Court Civil Suit 1967 No. 304 has already been commenced by me against the Comptroller of Income Tax praying for such relief.

Affirmed on the 15th day of September, 1967 at 3.20 p.m.

D

Filed on the 15th day of September, 1967.

No. 7In the High
CourtAFFIDAVIT OF MARIMUTHU VADIVELUNo. 7
Affidavit of
Marimuthu
Vadivelu,
4th October,
1967.AFFIDAVIT

A I, Marimuthu Vadivelu of Inland Revenue Department, Suleiman Building, Kuala Lumpur, being of full age, and residing at No. 16 Jalan Seputeh, Klang Road, Kuala Lumpur, do solemnly and sincerely affirm and say as follows:-

1. I am an Assessment Officer and I am authorised by the Comptroller of Income Tax (hereinafter called the Creditor) to make this affidavit.

2. I am in charge of the collection of tax in this case.

B 3. I have read what purports to be the affidavit of N. Rengasamy Pillai (hereinafter called the Debtor) affirmed on the 15th day of September, 1967 and filed in support of the Notice of Motion for an order to set aside the Bankruptcy Notice registered as Bankruptcy Notice No. 76/1967.

4. With regard to paragraphs 2 and 3 of the said affidavit I say that the said Bankruptcy Notice is valid and the amount stated therein does not exceed the amount actually due for the following reasons:

C (a) The Creditor obtained Judgment against the Debtor in Civil Suit No. 113 of 1963 on 3rd July, 1964 for the sum of \$309,660-53 under the provisions of sections 82 and 86 of the Income Tax Ordinance, 1947. The said amount of \$309,660-53 is comprised of:-

(i) Tax for 1958 additional,	
1960 additional, and	
1961 additional . . .	\$294,914.85
(ii) Penalty added pursuant	
to section 84(1) of the	
Income Tax Ordinance,	
1947	\$ 14,745.68
	<u>\$309,660.53</u>

D

In the High
Court

No. 7
Affidavit of
Marimuthu
Vadivelu,
4th October,
1967.
(Contd.)

(b) The debtor lodged an appeal on 7th April, 1964 under section 75 of the Income Tax Ordinance, 1947 with the Board of Review against the assessments made upon him, and the appeal against the assessments was subsequently heard by the Board of Review and the amount of tax payable by the Debtor was reduced by ₹191,839.20. Accordingly, a sum of ₹9,591.90 being penalty pertaining to that sum of ₹191,839.20 was remitted; thus reducing the amount of tax and penalty due on the Judgment to ₹108,229.43. A

(c) Subsequent to the Judgment, the Debtor has made a total payment of ₹40,000. The Debtor was also given a credit amounting to ₹13,402.75 in respect of tax and penalties which had been subsequently discharged and remitted following amendment of his tax for years of assessment other than those referred to in paragraph 4(a). B

(d) The total amount now due on the Judgment is therefore as follows:-

Original amount on Judgment	₹309,660.53	
Less Tax discharged by Board of Review ...	₹191,839.20	
Remission of Penalties ...	₹ 9,591.90	
Payments plus credit given	₹ 53,402.75	₹254,833.85
		<u>₹ 54,826.68</u>

C

5. As regards paragraph 4 of the Debtor's affidavit it is denied that the Judgment has been mutually varied by mutual agreement.

6. With regard to paragraph 5 of the Debtor's affidavit I am advised that the Civil Suit filed by the Debtor is devoid of merit.

7. I am advised and verily believe that the said Bankruptcy Notice was valid and does not embarrass

the Debtor. In the circumstances, I pray that the Debtor's Notice of Motion to set aside the Notice be dismissed with costs.

Affirmed on the 4th October, 1967 at 12.45 p.m.

Filed the 5th day of October, 1967.

A

In the High
Court

No. 7
Affidavit of
Marimuthu
Vadivelu,
4th October,
1967.
(Contd.)

In the High
Court

No. 8

AFFIDAVIT OF N. RENGASAMY
PILLAI AND EXHIBITS THERETO

No. 8
Affidavit of
N. Rengasamy
Pillai and
Exhibits
thereto,
6th October,
1967.

AFFIDAVIT

I, N. Rengasamy Pillai son of Nagappa Pillai of full age, Property-Owner of No. 43 Birch Lane, Penang do hereby solemnly and sincerely affirm and state as follows:-

A

1. I am the Debtor above-named and have had read over and explained to me what purports to be an Affidavit affirmed to on the 4th day of October, 1967 by one Marimuthu Vadivelu.

2. There are now produced and shown to me marked respectively "NRP-1", "NRP-2" and "NRP-3" the following -

- (1) Letter dated the 16th day of August 1965, sent by the Penolong Pengawal Hasil Dalam Negeri to my Accountants Messrs: SP. Alagasundaran & Co., showing the sum of \$60,240-45 payable by me;
- (2) Receipt for \$5,000-00 dated the 25th day of April, 1966;
- (3) Receipt for \$5,000-00 dated the 5th day of August, 1966.

B

3. The matter concerned with the assessment of the Income Tax payable by me is a very complicated one by the nature of the business carried on by me on a very large scale, and the matter was also subject to Review by the Income Tax Board of Review.

C

4. It was at my specific request in order to avoid any dispute as to the amount of the Tax finally found and assessed to be payable by me, that the Penolong Pengawal Hasil Dalam Negeri wrote to my Accountants giving the figure. I have referred to this letter and the figure given therein in my Notice 28th day of August, 1967 (which Notice is referred to in paragraph 2 of the Affidavit affirmed to by me and filed herein on the 28th day of August,

D

1967) but the said Affidavit of the said Marimuthu Vadivelu makes no direct reference to it or gives no direct answer to it. In fact I say that the Tax actually due by me is very much less than even the sum of ₹50,240-45 as might at a first reading appear to be due, from the said letter of the 16th day of August, 1965, since he himself states that the figure therein given is "over and above that already paid on the Assessments for 1957 to 1961".

A

5. By reason of the proceedings before the Income Tax Board of Review and the subsequent negotiations made and agreement reached with the Inland Revenue Department I submit that the very basis for the Judgment on which the Bankruptcy Notice herein is based has gone. ~~I am informed by my Solicitors and verily believe that the Writ of Summons at my Suit against the Comptroller of Income Tax (the Creditor) is ready to be filed and will be filed today or tomorrow.~~

B

~~6.---With regard to paragraph 4 of my said former affidavit herein I beg to correct a clerical error therein in the last sentence which must read " . . . therefore the said Judgment has become untenable and ought to be set aside ex debito justitiae."~~

Affirmed on 5-10-1967 at 3.45 p.m.

Re-Affirmed on 6-10-1967 at 10.50 a.m.

Filed the 6th day of October, 1967.

In the High
Court

No. 8
Affidavit of
N. Rengasamy
Pillai and
Exhibits
thereto,
6th October,
1967.
(Contd.)

In the High
Court

EXHIBIT "NRP-1"

No. 8
Affidavit of
N. Rengasamy
Pillai and
Exhibits
thereto,
6th October,
1967.
(Contd.)

Tal: PENANG (61704
(61705
Ketika menjawab pinta
sebutkan:
Bilangan Surat
Kami: NG 111139
Bilangan Surat
Tuan: Tarikh 16hb. Ogos, 1965. A

JABATAN HASIL DALAM NEGERI,
BANGUNAN OVERSEAS CHINESE
BANK, BEACH STREET,
PETI SURAT NO. 660,
PENANG.

Messrs. SP. Alagasundaran & Co.,
57 Church Street,
Penang.

Tuan2,

N. Rengasamy Pillai

I am repeating in writing the figures which
were given you verbally at our recent interview.
The following is the tax over and above that
already paid on the assessments for 1957 to 1961:-

1958	.....	.....	£101,966.00	B
1960	.....	.....	1,109.65	
1961	.....	.....	NIL	
			<u>103,075.65</u>	
Less Overpaid				
1957	.....	£5,142.70		
1959	.....	<u>7,692.50</u>	12,835.20	
			<u>90,240.45</u>	
Paid recently			30,000.00	
			<u>£ 60,240.45</u>	

If you want to know what the payments of tax
before these long enquiries were started consisted
of, they were:-

1955	.....	.....	£ 1,313.50	C
1956	First Assessment		626.80	
1956	Additional		<u>3,581.20</u>	
			5,521.50	
Payments per letter 22.12.64.			<u>30,563.95</u>	
			<u>£ 36,085.45</u>	

Yang benar,
Sd. H.L. Edwards
(H.L. EDWARDS)
Penolong Pengawal Hasil Dalam Negeri,
Pengawai Penyiasat,
Penang. D

HLE/LCI

EXHIBIT "NRP-2"In the High
Court"NRP-2"RESIT RESMI

Borang L

TANAH MELAYU

UNDANG2 CHUKAI PENDAPATAN 1947

A No. 115155

A

No. 8
Affidavit of
N. Rengasamy
Pillai and
Exhibits
thereto,
6th October,
1967.
(Contd.)

Di-terima Daripada	Nombor Pentaksiran	Tarikh	₹ c.
--------------------	-----------------------	--------	------

MR. KANDA & CO. PO BOX 1096 K PENANG	A/C N.RENGASAMY PILLAI NG 111.139.	66 APR 25	5.000.00*
--	--	-----------	-----------

(I.T.6)
(Rev.11/64)Sd. Illegible
b/p Pengawal Chukai Pendapatan

In the High
Court

EXHIBIT "NRP-3"

No. 8
Affidavit of
N. Rengasamy
Pillai and
Exhibits
thereto,
6th October,
1967.
(Contd.)

RESIT RESMI

Borang L

TANAH MELAYU

UNDANG2 CHUKAI PENDAPATAN 1947

A No.195643

Di-terima Daripada

Nombor
Pentaksiran

Tarikh

₹ c.

A

MR.N. RENGASAMY PILLAI
43 BIRCH LANE, PENANG

NG 111.139

66 AUG 5

5.000.00*

(I.T.6)
(Rev-11/64)

Sd. Illegible
b/p Pengawal Chukai Pendapatan

No. 9

In the High
Court

JUDGE'S NOTES OF HEARING

IN THE HIGH COURT IN MALAYA AT PENANG

IN BANKRUPTCY NO. 76 OF 1967

No. 9
Judge's Notes
of Hearing,
7th October,
1967.

Re: N. Rengasamy Pillai, 43 Birch Lane,
Penang

A

Ex Parte: Comptroller of Income Tax, K. Lumpur.

7th October, 1967

Notes of Proceedings

Mr. Fong Kok Wai, A.O.A. for O.A.

Mr. Au Ah Wah, Sr. Federal Counsel for J-Creditor.

Mr. Jag-Jit Singh for J-Debtor.

Jag-Jit Singh: I move (Encl.15) to set aside Bcy-
Notice. Amount claimed in excess of amount
due. Notice of such excess given. In re. A
Debtor (1908) 2 K.B. 684. Bcy. Notice d.
17.8.1967 for \$54,826.68 (Encl. 4).
J-Debtor's affidavit d. 5.10.1967.

B

Au: I was served with the affidavit only this
morning at 9.55 a.m. Affidavit offends against
rule 17 - 2 days.

Jag-Jit: \$50,240.45 \neq due. Not \$54,826.68.
Letter d. 16.8.65 (NRP-1 to Affidavit of
5.10.67). Says debt \$60,240.45 \neq . Since then
2 sums of \$5,000/- each paid. S. 7(1) Courts
of Judicature Act, 1964. (Superseding S. 5(1)
(a) Courts Ord. 1948). Endorsement on the
notice must be signed by the creditor.
Atkins (1st Edn.) Vol. 4 p. 83. Controller
does not include Dy. Controller for purposes
of S. 86(2).

C

Au: In reply. S. 2 - covers Dy. Controller.
Atkins does not apply - r. 92 Bcy. Rules (our

In the High
Court

No. 9
Judge's Notes
of Hearing,
7th October,
1967.
(Contd.)

own Form 5 - no signature required.
S. 7 - Courts of Judicature Act.
Bcy. process different.
Rule 289 Bcy. rules.
S. 82 Income Tax Ord. & S. 86. (1966) 2
M.L.J. 282.
S. 89.

Jag-Jit: in reply.

Ct:- Application dismissed with costs.

A

Sd. Chang Min Tat
Judge.

No. 10

In the High
Court

ORDER

No. 10
Order,
7th October,
1967.

BEFORE THE HONOURABLE MR.
JUSTICE CHANG MIN TAT,
JUDGE, MALAYA

IN OPEN COURT

THIS 7th DAY OF OCTOBER, 1967

ORDER

- A UPON READING the Notice of Motion dated the 15th day of September, 1967 the Affidavit of N. Rengasamy Pillai affirmed and filed herein on the 15th day of September, 1967 the Affidavit of M. Vadivelu affirmed on the 4th day of October, 1967 and filed herein on the 5th day of October, 1967, and the Affidavit of N. Rengasamy Pillai affirmed on the 5th day of October, 1967 (re-affirmed on the 6th day of October, 1967) and filed herein on the 6th day of October, 1967, and the exhibits
- B therein referred to, AND UPON HEARING what was alleged by Mr. Jag-Jit Singh of Counsel for the Debtor and by Mr. Au Ah Wah, Senior Federal Counsel for the Creditor, IT IS ORDERED that the Application by the Debtor to set aside the Bankruptcy Notice dated 17th August, 1967 be and is hereby dismissed with costs to be taxed by the proper officer of the Court and be paid by the Debtor to the Creditor.

C Dated at Penang this 7th day of October,
1967.

Sd. M. Mahalingam
(L.S.)
Senior Assistant Registrar,
High Court,
Penang.

In the
Federal
Court

No. 11

NOTICE OF APPEAL

No. 11
Notice of
Appeal,
6th November,
1967.

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: X 87 OF 1967

Between:

A

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the Matter of In Bankruptcy No. 76
of 1967 in the High Court in Malaya at
Penang

Re: N. Rengasamy Pillai
Judgment-Debtor

Ex Parte: The Comptroller of Income Tax
Judgment-Creditor)

B

NOTICE OF APPEAL

TAKE NOTICE that N. Rengasamy Pillai son of
Nagappa Pillai of No. 43 Birch Lane, Penang, the
Judgment-Debtor/Appellant being dissatisfied with
the decision of the Honourable Mr. Justice Chang
Min Tat given at Penang on the 7th day of October,
1967, appeals to the Federal Court against the
whole of the said decision.

Dated this 6th day of November, 1967.

Sd. Jag-Jit Singh & Co.

C

Solicitors for the Appellant.

To:- The Registrar,
The Federal Court of Malaysia
Law Courts,
Kuala Lumpur.

In the High
Court

No. 12

No. 12
Judgment,
14th November,
1967.

JUDGMENT

IN THE HIGH COURT IN MALAYA AT PENANG

IN BANKRUPTCY NO: 76 OF 1967

Re: N. Rengasamy Pillai Debtor

Ex Parte: The Comptroller of Income Tax,
Kuala Lumpur Creditor

A

JUDGMENT

Arising from the judgment obtained on 3rd July, 1964, by the Comptroller of Income Tax (hereinafter referred to as the creditor) against N. Rengasamy Pillai (hereinafter referred to as the debtor) in Penang High Court Civil Suit No. 113 of 1963, the creditor took out a bankruptcy notice in the form provided in the Bankruptcy Rules, 1897. The bankruptcy notice was issued on the 17th August, 1967, and signed by the Senior Assistant Registrar, High Court, Penang, and sealed with the seal of the High Court, Penang. It was a notice demanding the payment of a sum of \$54,826.68 upon penalty of an act of bankruptcy. Particulars of the sum due which were, properly, set out in the bankruptcy notice are as follows:-

B

Principal	.....	.....	\$309,660.53
Less: Tax discharged by Board of Review	.....	\$191,839.20	
Remission of Penalty		9,591.90	
Payments	.....	53,402.75	254,833.85
			<u>\$ 54,826.68</u>

C

Service of the bankruptcy notice on the debtor was effected on the 22nd August, 1967. On the 28th August, 1967, i.e. within 7 days of the service of the bankruptcy notice, the debtor, by his solicitor, gave notice to the creditor that he disputed the

validity of the said notice on 2 grounds, namely, (1) that the judgment had been varied by consent and, in the exact words of the debtor, "could no longer stand and ought to be set aside ex debito justitiae", and (2) that the sum owed by him was ~~£50,240.45~~ so that the notice was for a bigger sum than the one actually due. The first objection appears in the affidavit of the debtor, and the second in the Notice of Motion seeking to set aside the Bankruptcy notice.

In the High
Court

No. 12
Judgment, ..
14th November,
1967.
(Contd.)

A

I confess myself unable to understand the meaning or the logic of the first ground. If, in fact, a judgment obtained by consent had been varied but not agreed not to be acted upon, then the sum agreed to be still outstanding must, by any manner of thinking, be available to found a writ for seizure and execution or a bankruptcy notice unless, of course, such variation had the effect of an acknowledgment that no debt was due.

B

No such allegation was, in fact, made and, in point of fact, in the same breath, the debtor went on to admit that he owed ~~£50,240.45~~ but not ~~£54,826.68~~. This ground was, however, not pursued at the hearing and I took it as abandoned. In any event, it is, in my view, completely devoid of any merit.

C

The notice to dispute the validity of the bankruptcy notice was given in pursuance of the proviso to Section 3(2), Bankruptcy Ordinance No. 20 of 1959 (now repealed and re-enacted in Section 3(2), Bankruptcy Act No. 55 of 1967), to make the question of an excess a vital issue in the matter.

In his affidavit, the debtor exhibited a letter from H.L. Edwards, Assistant Comptroller of Income Tax, Penang, dated 16th August, 1965, addressed to the debtor's accountants. It was, in its relevant portion, in the following words:-

D

"The following is the tax over and above that already paid on the assessments for 1957 to 1961:-

"1958	.....	£101,966.00	
"1960	.....	1,109.65	
"1961	.....	Nil	£103,075.65
			<hr/>

In the High Court	"Less overpaid -	c/f £103,075.65
No. 12 Judgment, 14th November, 1967. (Contd.)	"1957 £ 5,142.70 "1959 £ 7,692.50	12,835.20
	"Paid recently	£ 90,240.45 30,000.00
		<u>£ 60,240.45</u>

Subsequent to this letter, the debtor paid 2 sums of ~~£5,000/-~~ each. Relying solely on this letter, he submitted that his indebtedness was ~~£50,240.45~~ and in his affidavit he categorically affirmed that the sum of ~~£54,826.68~~ claimed was not due and owing on the judgment or otherwise and far exceeded the sum validly due and owing by him. A

In reply, an Assessment Officer of the Inland Revenue Department gave figures showing how the sum of ~~£54,826.68~~ was arrived at but made no reference whatsoever to the letter from H.L. Edwards or to the figures therein, thus giving rise to a complaint by the debtor and, what is more pertinent to the Court, affording no assistance to me. B

However, the truth of the matter becomes apparent from a consideration of the figures given by the Assessment Officer. According to him, in Civil Suit No. 113 of 1963, the claim against the debtor was for:-

(i) Tax for 1958, additional, 1960, additional and 1961, additional	..... £294,914.85	C
(ii) Penalty - added pursuant to Section 54(1), Income Tax Ordinance, 1947	14,745.68	
	<u>£309,660.53</u>	

which total was given as the principal in the bankruptcy notice.

Subsequent to the judgment and as a result of deliberations before the Board of Review, the amount of

tax payable by the debtor was reduced by ~~₹191,839.20~~ leaving a tax payable in the sum of ~~₹103,075.65~~ as a simple exercise in subtraction will immediately reveal:-

Tax claimed	.....	.....	₹294,914.85
Tax reduced	.....	.....	₹191,839.20
Tax payable	.....	.....	<u>₹103,075.65</u>

In the High
Court

No. 12
Judgment,
14th November,
1967.
(Contd.)

A This is the exact figure given by H.L. Edwards, and, being only the tax, does not include the penalty which it is within the competence and duty of the creditor to levy under Section 84(1) of the Income Tax Ordinance, 1947, and the liability of the debtor to pay.

B I pause here to remark that the inference of fact sought to be drawn by the debtor from the contents of a single letter quoted out of their context in the history of his tax involvements, is a classic example of the error he would induce the Court to fall into by the process known as "suggestio falsi". It is, on the facts, plainly wrong. For myself, I would have thought that the obvious and definitely the cheaper course for the debtor to take, if he were in any doubt, would be to approach the Department of Inland Revenue for a reconciliation of the sum claimed by the creditor. I am not at all convinced that the debtor was in any doubt whatsoever. The writ that was served on him in Civil Suit C No. 113 of 1963 was, in fact, endorsed for a claim in respect of the penalty imposed.

As for the penalty, a sum of ~~₹9,591.90~~ from the penalty of ~~₹14,745.68~~ initially imposed was remitted for that part of the tax payable which had been reduced, leaving a balance of ~~₹5,153.78~~. This penalty must clearly be taken into account. It is nowhere submitted to me that it should not be imposed.

D Further, the debtor was in error and to his disadvantage in not claiming a further sum of ~~₹567.55~~ paid by or allowed to him. He has claimed payments of ~~₹12,835.20~~, ~~₹30,000.00~~, ~~₹5,000.00~~ and ~~₹5,000.00~~ in the total sum of ~~₹52,835.20~~. The creditor has allowed a total payment of ~~₹53,402.75~~

In the High
Court

inclusive of the 2 sums of \$5,000.00 each. This is \$567.55~~¢~~ in excess of what the debtor claims to his credit.

No. 12
Judgment,
14th November,
1967.
(Contd.)

If one, therefore, takes the figure of \$50,240.45~~¢~~ accepted by the debtor, adds thereto the penalty of \$5,153.78~~¢~~ and deducts from the total sum of \$567.55~~¢~~ allowed by the creditor, the net sum is \$54,826.68~~¢~~ as claimed by the creditor.

There is, therefore, no admission in H.L. Edwards' letter that the sum due and payable was less than the \$54,826.68~~¢~~ claimed. A

I find, consequently, that the creditor has not claimed any sum in excess of what is clearly due by the debtor and, on this ground, hold that the bankruptcy notice is not invalidated by any excess claimed.

A further attack was launched against the bankruptcy notice, objections being taken to the form of the notice on the grounds (1) that it offends against Section 7(1) of the Courts of Judicature Act No. 7 of 1964, and (2) that the endorsement thereto had not been signed by the creditor or on his behalf, and (3) that the request for the notice was not signed personally by the Comptroller of Income Tax but by his assistant. B

Section 7(1) of the Courts of Judicature Act, 1964, reads:-

"All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong and shall be signed by a Registrar of such Court; and every such summons, warrant, order, rule, notice and mandatory process shall be sealed with the seal of the Court issuing or making the same" C

and it was urged upon me that the bankrupt notice, not being issued or expressed to be issued by the Chief Justice in the name of the Yang di-Pertuan Agong, was void and of no effect and a nullity. Now, this sub-section is a merger of Section 5(1)(2) of D

the Courts Ordinance, 1948, which it replaced and Order 2 rule 8 of the Rules of the Supreme Court, 1957. Once this is realised, and by the ejusdem generis rule of interpretation the meaning becomes clear. In my view, the word "notices" therein mentioned refers to such mandatory processes as, for example, notices of writ to be served out of jurisdiction, in other words, to processes where the addressee is, by the Chief Justice in the name of the Yang di-Pertuan Agong, commanded to do something upon penalty of having a judgment entered or an order made against him and does not refer to notices purely as such where advice is given to the addressee of a state of affairs. Notices of the latter sort are, in my view, covered by Section 7(2) of the Courts of Judicature Act, 1964, which reads:-

A

"7.

B

(2) All summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of any Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia."

To my mind, a bankruptcy notice is of such a nature and I accordingly hold the bankruptcy notice from the Bankruptcy Rules, 1897, which, by the operation of Section 28 of the Interpretation Act No. 23 of 1967, is prescribed for this purpose, does not offend against Section 7(1) of the Courts of Judicature Act, 1964, and is a perfectly good notice.

C

As for the debtor's other objection, the form provided in the Bankruptcy Rules, 1897, contains no requirements for the signature of the creditor or any person on his behalf. Reliance by the debtor on the English form (See Atkin's High Court Form (1st Edition) Vol. 4 page 83) as the sine qua non of bankruptcy proceedings in Penang is both unrealistic and unfounded.

D

Lastly, the definition of "Comptroller" in Section 2 of the Income Tax Ordinance, 1947, includes a Deputy Comptroller or an Assistant Comptroller. There can be no valid objection to the

In the High
Court

No. 12
Judgment,
14th November,
1967.
(Contd.)

In the High Court

request for a bankruptcy notice being signed by an Assistant Comptroller.

No. 12
Judgment,
14th November,
1967.
(Contd.)

For the reasons above, I was of the view that the debtor's objections were unfounded in fact and in law, and I accordingly dismissed his application with costs.

CHANG MIN TAT,

Judge,
HIGH COURT, MALAYA,
IPOH.

A

Ipoh, 14th November, 1967.

For Debtor: Jag-Jit Singh.
For Creditor: Au Ah Wah, Senior Federal
Counsel.

No. 13

In the Federal
Court

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

No. 13
Memorandum
of Appeal,
18th December,
1967.

CIVIL APPEAL NO: X 87 OF 1967

A Between:

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the Matter of In Bankruptcy No. 76
of 1967 in the High Court in Malaya at
Penang.

Re: N. Rengasamy Pillai
Judgment-Debtor

B Ex Parte: The Comptroller of Income Tax
Judgment-Creditor)

MEMORANDUM OF APPEAL

N. Rengasamy Pillai son of Nagappa Pillai the above-named Appellant appeals to the Federal Court against the whole of the decision of Mr. Justice Chang Min Tat given at Penang on the 7th day of October, 1967, on the following grounds -

C 1. The learned trial judge erred in failing to appreciate that the Appellant disputed the validity of the Bankruptcy Notice on the various grounds contained in his Notice dated the 28th day of August 1967 disputing the validity of the said Bankruptcy Notice, such grounds being without prejudice to his other grounds and not "two grounds only" as the learned Judge decided;

2. The learned trial Judge erred in failing to appreciate that the Appellant did not admit that \$50,240-45/- was due by him to the Respondent, but

In the Federal
Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

be claimed that "according to the Order of Income Tax Board of Review after its hearing on the 29th and 30th days of June 1964 the liability ... to Income Tax was very considerably reduced" and that "even according to the letter dated the 16th day of August 1965 sent by the Penolong Pengawal Hasil Dalam Negeri the resultant liability was only \$60,240-45", and gave proof of subsequent payment of \$10,000-00;

3. The learned trial Judge had failed to appreciate that the Appellant claimed that the Judgment (which gave rise to the debt in question on which these proceedings in Bankruptcy are founded - Hereinafter the said term "Judgment" is used in this sense) having been founded on a consent, the basis for such consent (namely the statutory liability under the Income Tax Ordinance) having been mutually varied by subsequent mutual consent the said Judgment can no longer stand (as having been entered for too much) and ought to be set aside ex debito justitiae. A B

4. The learned trial Judge further erred in law in failing to appreciate that the "indebtedness" of a tax-payer for Income Tax is a statutory liability the precise amount of which has to be ascertained by assessment and that if such assessment on which a judgment is based were subsequently to be varied the judgment debtor was entitled ex debito justitiae to have the said Judgment set aside as having been entered for too much for which there was no liability under statute; C

5. The learned trial Judge failed to give due weight to the Appellant's averment in his affidavit to the effect that he had already commenced a suit against the Respondent seeking an Order setting aside the said Judgment;

6. The learned trial Judge misdirected himself that the Appellant abandoned his contention that \$54,826-68⁴/₁₀₀ was not due, when that was the crux of his objection, as indeed appears from a later paragraph in the Grounds of Judgment itself; D

7. The learned trial Judge misdirected himself that the Appellant was making an admission that \$50,240-45⁴/₁₀₀ was due, whereas the Appellant was

contending that that was the amount shown as due even according to the Respondent's records - Vide Paragraph 4 of the Appellant's Affidavit affirmed on the 5th day of October, 1967 and reaffirmed on the 6th day of October, 1967;

In the Federal Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

8. With regard to the letter dated the 16th day of August, 1965, written by the Penolong Pengawal Hasil Dalam Negeri to the Appellant's accountants -

- A (1) the learned trial Judge failed to appreciate and give due weight to the averment in the Appellant's Affidavit that "it was at his specific request in order to avoid any dispute as to the amount of the Tax finally found and assessed to be payable by him" that the said letter was written to his Accountants giving the figure given in the said letter;
- B (2) the learned trial Judge erred in law in failing to consider the cumulative effect of Sections 106 and 114(g) of the Evidence Ordinance, as, if the learned Judge had considered it, he would have held that the failure of the Respondent to produce -
- C (a) the Amended Assessments;
- (b) order if any containing any definite or ascertained figure by which the Income Tax Board of Review reduced the Original Assessments as contended by the Respondent;
- (c) any Statutory Notice imposing penalty claimed by the Respondent to be due or Statutory Notice of Demand;
- D raised a presumption in the Appellant's favour that no such records existed (as contended by the Appellant) or that if such records existed the production of any one of them would prejudice the Respondent's claim;

7. The learned trial Judge failed to appreciate that the Respondent had failed to show compliance

In the Federal
Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

with Section 84(1)b of the Income Tax Ordinance (which requires a demand note to be served), and that the Respondent can proceed to enforce payment only if such demand has been made and payment has not been made within one month from the date of service of such demand note;

8. The learned trial Judge having held that "An Assessment officer of the Inland Revenue Department gave figures showing how the sum of ~~£54,826-68~~ was arrived at but made no reference whatsoever to the letter from H.L. Edwards or to the figures therein thus giving rise to a complaint by the (Appellant) and what is more pertinent to the Court, affording no assistance to (him)" - (Underlining added) - failed to give any consideration whatsoever to the reason why; on the contrary the learned trial Judge himself embarked on a lengthy and involved calculation based on the very figures given by the said Assessment Officer for which there was not even a scintilla of evidence to establish such figures, which is the Appellant's main objection in these proceedings;

A

B

9. Had the learned trial Judge given due weight to the Appellant's contentions on the facts and figures the learned trial Judge would have held that the Assessment Officer was making the figures given by him by "working backwards" from the amount claimed as due in the Bankruptcy Notice and reconciling it with the amount for which Judgment was entered;

C

10. The learned trial Judge totally disregarded the fact that even though the Appellant had averred in his Affidavits that the Income Tax Board of Review substantially reduced his tax liability he had referred to no order of the said Board specifically reducing the Assessment by any particular, definite or ascertained figure, because there is in fact no such order, and the learned trial Judge failed to appreciate that the Assessment Officer's figure of ~~£191,839-20~~ stated by him to be "the Tax reduced by the Income Tax Board of Review" amounts not only to a suppressio veri but also is a suggestio falsi, since in fact there is no such order which he could produce in order to substantiate what he stated, but the said

D

figure was the resultant of a "working back" by him;

In the Federal
Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

11. The learned trial Judge failed to appreciate that H.L. Edwards (the officer who computed the Amended Assessments of the Appellant) not having referred to any penalty in his very significant letter, or made any qualification as to penalty in the figure given by him as the tax due, it must be deemed that he was exercising the Comptroller's power under Section 84(3) by remitting the whole of any penalty by reason of the fact that the Appellant had succeeded to a considerable extent with his contentions before the Income Tax Board of Review, and the whole lot of the Assessments had to re-opened and the matter ended up in negotiation;
- A
12. The learned trial Judge erred in the appreciation of the evidence in that he held that the Appellant by relying on the said letter was inducing the Court with a "suggestio falsi" whereas it was the Assessment officer who in fact so induced the Court, and on the other hand the Appellant gave a sound reason why he obtained the letter - furthermore the tone of the letter itself lends corroboration to the reason given by the Appellant;
- B
13. The learned trial Judge erred in the appreciation of the evidence when he held that the Appellant "was in error and to his disadvantage in not claiming a further sum of \$567-55" whereas in fact such difference arises as a result of the unsubstantiated, unexplained and ambiguous item of "credit given - \$53,402-75" stated by the Assessment Officer - as a result of the "working back" process;
- C
14. The learned trial Judge erred in law as to the effect of Sections 7(1) and 7(2) of the Courts of Judicature Act, No. 7 of 1964. The learned trial Judge ought to have held that a Bankruptcy Notice is a "notice or other mandatory process" which would be null and void and of no effect unless Section 7(1) is complied with strictly. As to Section 7(2) the Appellant submits respectfully that that Section is wholly irrelevant as it merely lays down that processes of any Court
- D

In the Federal
Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

(having only a "local jurisdiction") may nevertheless have full force and effect and may be served or executed anywhere within Malaysia (and not merely within the "local jurisdiction");

15. With regard to the Interpretation Act No. 23 of 1967, the Appellant respectfully submits that the same does not apply - as laid down in Section 2 thereof - to an Act of Parliament enacted before the 18th day of May, 1967, or to any Subsidiary Legislation "thereunder";

A

16. The learned trial Judge erred in law further in regard to the interpretation because in the Appellant's respectful submission having regard to the provisions of the Interpretation and General Clauses Ordinance No. 7 of 1948 (M.U.), any Subsidiary Legislation (and any Form thereby prescribed) made under a Repealed Law continuing as an "interim measure" will continue only in so far as it is not inconsistent with the substituted provisions", and further, that "any Subsidiary Legislation that is inconsistent with an Act shall be void to the extent of the inconsistency."

B

17. The learned trial Judge failed to appreciate that the Courts of Judicature Act No. 7 of 1964 being in the nature of a "Constitutional Instrument" for Superior Courts, it has been expressly enacted therein (Section 4) that in the event of inconsistency or conflict between the provisions of that Act and the provisions of any other written law other than the Constitution the provisions of that Act shall prevail;

C

18. The learned trial Judge failed to appreciate that under the provisions of Section 3(1) of the Bankruptcy Ordinance No. 20 of 1959 paragraphs (a) to (h) and (j) related to various acts of bankruptcy the committing of each of which in one way or another requires a voluntary act of the debtor, whereas in the case of paragraph (i) - (Bankruptcy Notice) - the creditor forces an act of bankruptcy on the Debtor; - in other words except in the case of paragraph (i) the debtor voluntarily "makes available" some act of bankruptcy, whereas a Bankruptcy Notice is a "Mandatory Process" non-compliance with which attracts the consequence that by the operation of law an act of bankruptcy is deemed to be committed by the debtor;

D

A 19. The learned trial Judge failed to appreciate that Section 2 of the Income Tax Ordinance provides in its very beginning that the various definitions are to apply only "unless the subject or context otherwise requires"; had the learned Judge done so he would have held that Sections 86(1) and 86(2) thereof are subjects or contexts requiring otherwise, particularly so because the Comptroller is to sue in his "official name" (which cannot obviously include that of his Deputy or Assistant") and the Comptroller can "appear" only personally (i.e. not by his Deputy or Assistant) or by Counsel.

In the Federal
Court

No. 13
Memorandum
of Appeal,
18th December,
1967.
(Contd.)

Dated this 18th day of December, 1967.

Jag-Jit Singh

Solicitors for the Appellant.

To:- The Chief Registrar,
Federal Court,
Law Courts,
Kuala Lumpur;

B

And to:

The Senior Assistant Registrar,
High Court in Malaya at Penang;

And to:

The Comptroller of Income Tax or
The Senior Federal Counsel,
Jabatan Hasil Dalam Negeri,
Suleiman Building,
Kuala Lumpur.

C

This Memorandum of Appeal is filed on behalf of the Appellant whose address for service is at the office of his Solicitors Messrs: Jag-Jit Singh & Co., Room 200, No. 25 Light Street, Penang.

In the Federal
Court

No. 14

NOTES OF ARGUMENT OF BARAKBAH L.P.

No. 14
Notes of
Argument of
Barakbah,
L.P.,
16th April,
1968.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT PENANG

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. X 87 of 1967

A

Between:

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the matter of In Bankruptcy No. 76
of 1967

In the High Court in Malaya at Penang

Re: N. Rengasamy Pillai
Judgment-Debtor

B

Ex Parte: The Comptroller of Income Tax
Judgment-Creditor)

NOTES OF ARGUMENT RECORDED BY SYED SHEH BARAKBAH,
LORD PRESIDENT, MALAYSIA

16th April, 1968.

Jag-Jit Singh for App.
Nik Saghir for Resp.

Point about validity of notice.
Pp. 10 & 11.
P. 32.
Grds. 1 - 13.
Cannot issue notice for more than what is due.
Amount due \$50,240/45.
Sec. 3(1)(i) Bankruptcy Act.
Judgment was for \$309,660/53.
Submit written argument.
Pp. 27 - 28.

C

Sec. 114(g) Evidence Ord.
 Courts Ord. 30/1907 S.S. p. 22 Sec. 46.
 Courts Ord. 43/1948 Sec. 5.
 Judicature Act Sec. 7.

In the Federal
Court

No. 14
 Notes of
 Argument of
 Barakbah,
 L.P.,
 16th April,
 1968.
 (Contd.)

Nik Saghir:

2 grds. only - 1. Amount in excess.

2. Bankruptcy Notice not in compliance with Judicature Act.

A Amount due at date of Bankruptcy Notice - P. 22.
 Judgment was for \$309,660/53.
 P. 23.

Subsequent to judgment the matter went to Board of Review.

Amount of Tax reduced by \$191,839/20.

Penalty reduced by \$9,591/90.

P. 26 para. 5.

Burden on debtor to prove the amount not due.

Mr. Edwards only stated the amount of tax due at that time.

B Sec. 86 Income Tax Ord.
 Tax does not include penalty.

P. 25 para. 4 - Debtor requested for amount of tax only - so letter from Mr. Edwards referred to tax only.

Form of notice:

Conforms with Form 5 p. 55 of Bankruptcy Rules.

Sec. 3(2) Bankruptcy Act 1967.

Rule 92.

C Sec. 7 Judicature Act does not apply in this case - applies to Civil and criminal cases - general application.

Bankruptcy proceedings regulated by special procedure provided in the Ordinance and Rules.

Rule 289 Bankruptcy Rules.

Sec. 131 Bankruptcy Ord.

Sec. 72 Judicature Act.

Jag-Jit Singh:

D Evidence of agreement - but no evidence of amount agreed upon.

Burden on Comptroller to substantiate this.

Sec. 72(4) Income Tax Ord.

Sec. 84(b) Income Tax Ord.

No notice served on the Debtor.

No demand notice served.

C.A.V.

Sgd. S.S. Barakbah

16.4.68.

In the Federal
Court

Kuala Lumpur, 13th May, 1968.

No. 14
Notes of
Argument of
Barakbah,
L.P.,
13th May,
1968.
(Contd.)

Cor: Syed Sheh Barakbah, Lord President, Malaysia.
Suffian, Judge, Federal Court.
MacIntyre, Judge, Federal Court.

Palasuntharam (for Jag-Jit Singh) for App.

Ng Mann Sau for Resp.

Suffian F.J. read his judgment.

L.P. and Ismail Khan, Ag. C.J. (Absent) concur.

ORDER: Appeal dismissed with costs. Deposit to
be paid to respondent towards taxed costs.

Sgd. S.S. Barakbah
13.5.68.

A

No. 15

NOTES OF ARGUMENT OF ISMAIL KHAN, AG.C.J.

IN THE FEDERAL COURT OF MALAYSIA AT PENANG

FEDERAL COURT CIVIL APPEAL NO. X 87 OF 1967

In the Federal
Court

No. 15
Notes of
Argument of
Ismail Khan,
Ag. C.J.,
16th April,
1968.

A N. Rengasamy Pillai

v.

The Comptroller of Income Tax

Coram: Lord President, Malaysia,
Ismail Khan, Ag. C.J.
Suffian, F.J.

16th April, 1968

NOTES OF ARGUMENT

Jag-Jit Singh for Appellant.
Nik Saghir bin Mohd. Noor for Respondent.

B J.S. See Bankruptcy Notice p.10 and 11.

Facts of the case, see judgment p. 32 words
"upon penalty for act of bankruptcy".

I take grounds 1 to 13 together.

Law clear. No notice for more than what is
due.

We say amount due was \$50,240.45. Amount
claimed was \$54,826.68.

C Judgment was for \$309,660.53, and in the
events which have happened amount was reduced to
\$54,826.68.

See written submissions, see ground 1, more
claimed than is due.

Bankruptcy Notice should have been issued by
the Comptroller in the name and on behalf of H.M.
the Yang di-Pertuan Agong.

In the Federal Court

First ground, see in re child (1892) 2 Q.B. p. 77 and Re Arunachalam Ex parte Indian Overseas Bank 1968) M.L.J. p. 89.

No. 15
Notes of
Argument of
Ismail Khan,
Ag. C.J.,
16th April,
1968.
(Contd.)

Judgment given on 3.7.64.

Consent given on the basis that he had no defence.

Paragraph 8 is the crux of the case.

A

Letter from Comptroller p. 27 says ₹60,240.45.

After he was informed the amount due was ₹60,240.45 the appellant paid two further sums of ₹5,000 each.

We have referred to the letter p. 27 in our affidavit; no reference was made to such letter.

No suggestion that it was a mistake. Letter was written on behalf of Comptroller.

See p. 35. Judge refers to this omission to refer to such letter of the Revenue Department.

B

Judge refers to section 84 Sub-section 1 but not 84 sub-section 3. See section 84 sub-section 1(b).

Judge made error see p. 33 of the Judgment. We never said the Judgment was varied by consent; what we say is shown on p. 20 paragraph 4.

2nd Ground

See section 7 sub-section 1 of the Courts of Judicature Act, section 7 Sub-section (2).

C

History of the Law, section 7.

Courts Ordinance 30 of 1907. S.C. p. 22, section 46. Courts Ordinance 43 of 1948, section 5. See the difference.

Ordinance 43 of 1948 was repealed and in its place we have the Courts of Judicature Act 1964.

"Words mandatory process whatsoever."

In 1948 law did not require process to be issued in the name of the King as there was now the Agong.

In the Federal Court

A Bankruptcy Notice is a mandatory process.

No. 15
Notes of
Argument of
Ismail Khan,
Ag. C.J.,
16th April,
1968.
(Contd.)

Judge's notes. See Section 28 of the Interpretation Act No. 23 of 1967 section 2, sub-section (2).

A

"See Rule 98 of the Bankruptcy Ordinance".

N.S.

As to the amount; every cent of the amount due at the date of the issue of the Bankruptcy Notice.

Figures of Vadeveloo appear in his affidavit, see p. 22 accepted by the Judge.

B Judgment in Civil Suit 113 of 1965 for \$309,660.53 comprising two items, first \$294,914.85 assessment 1958 not original. Second item represents the penalty under Section 84 sub-section (1) \$14,745.68.

On advice of the Board of Review a sum was agreed. Tax reduced by \$191,839. so the penalty in respect thereof was reduced \$9,591.90.

Evidence of agreement: p. 26 paragraph 5. No figure recorded.

For debtor to prove that figure of \$54,826 not correct.

C

As to the letter p. 27 Edmond only gave facts as to amount due at the time.

One cannot imply penalty was waived. Board of Review can only revise assessment of tax, not penalty. Penalty could only be reduced by the Comptroller or anyone on his behalf. Section 86 of the Income Tax Ordinance refers to tax and penalty.

D

Letter sent at the request of creditor, see p. 25 paragraph 4, does not refer to penalty. As to form of Bankruptcy Notice prescribed by Rules

In the Federal Court

No. 15
Notes of
Argument of
Ismail Khan,
Ag. C.J.,
16th April,
1968.
(Contd.)

of 1897, this conforms to form No. 5. Bankruptcy Ordinance says Bankruptcy Notice to be in prescribed form, Rule 92.

Section 7 sub-section (1) of the Courts of Judicature Act does not apply. It is a general rule in regard to form in civil and criminal cases.

In Bankruptcy, proceedings regulated by special procedure in Bankruptcy Rules.

A

Rule 289 of the Bankruptcy Act 1897.

Assuming that notice offends against section 7 sub-section (1) of the Judicature Act, it does not prejudice the debtor.

Section 131 of Bankruptcy Ordinance.

Section 72 of the Courts of Judicature Act.

J.S.

Evidence of agreement between Comptroller and debtor. But no evidence what figures were given. Nothing in the affidavit of Vadeveloo; section 106 of the Evidence Ordinance.

B

If figure is amended by agreement or otherwise. Section 72 sub-section (4) of the Income Tax Ordinance. Nothing done to comply with section 84 sub-section 1(b) of the Income Tax Ordinance.

Comptroller should serve a demand note. No notice served on the debtor.

When was penalty altered?

No penalty, as no demand made. Section 84 sub-section 1(b).

C

Section 131 of Bankruptcy Ordinance.

Courts of Judicature Act does not speak of form.

C.A.V.

I.K.

No. 16

JUDGMENT

In the Federal
Court

No. 16
Judgment,
13th May,
1968.

IN THE FEDERAL COURT OF MALAYSIA
HOLDEN AT PENANG

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: X 87 OF 1967

A Between:

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the matter of Bankruptcy No. 76 of
1967 in the High Court in Malaya at
Penang

Re: N. Rengasamy Pillai
Judgment-Debtor

B Ex Parte: The Comptroller of Income Tax
Judgment-Creditor)

Coram: S.S. Barakbah, Lord President, Malaysia;
Ismail Khan, Acting Chief Justice, Malaya;
Suffian, Federal Judge, Malaysia.

JUDGMENT OF SUFFIAN, F.J.

C The Comptroller of Income Tax (respondent) served a notice of assessment on the appellant. The appellant did not pay the tax which the notice said he should pay. He appealed against the amount assessed. This, of course, did not affect his liability to pay; section 82 of the Income Tax Ordinance, 1947, provided that notwithstanding the Appeal, the appellant must nevertheless pay within one month. Without this provision, every tax-payer could object and postpone paying for years until the Courts have decided the matter disputed.

The appellant did not pay within one month. So the Comptroller sued him. On 3rd July, 1964, he

In the Federal Court obtained judgment (in Penang High Court Civil Suit No. 113 of 1963) against the appellant in the sum of \$309,660. This judgment was obtained under sections 82 and 86. The sum included \$14,745.68 being 5% penalty under section 84(1) on tax unpaid within one month.

No. 16
Judgment,
13th May,
1968.
(Contd.)

Section 84 provided:

"(1) Subject to the provisions of sub-section (3) of this section, if any tax is not paid within the periods prescribed in section 82 of this Ordinance -

A

(a) a sum equal to five per centum of the amount of the tax payable shall be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax of such sum;

(b) the Comptroller shall serve a demand note upon the person addressed; and if payment is not made within one month from the date of the service of such demand note, the Comptroller may proceed to enforce payment as hereinafter provided;

B

(c) a penalty imposed under this sub-section shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Ordinance.

(2) (Repealed by Ordinance No. 11 of 1948).

C

(3) The Comptroller may, for any good cause shown, remit the whole or any part of the penalty due under sub-section (1) of this section."

After the judgment, the appellant's objection to the assessed tax came up before the Board of Review. We were told from the Bar that the Board asked the Comptroller and the appellant to get together and agree the tax payable. They got together. The Comptroller reduced the tax by \$191,839.20. The penalty under section 84(1) was

D

5% of the unpaid tax; so the Comptroller also reduced the penalty.

In the Federal
Court

Still the appellant did not pay, at least not in full. He said that the matter was complicated by the nature of his business which was on a very large scale.

No. 16
Judgment,
13th May,
1968.
(Contd.)

A There must have been discussions between his accountants and the Comptroller's office. One of them is mentioned in a letter dated 16 August, 1965, from Mr. H.L. Edwards, the Assistant Comptroller in Penang. In it Mr. Edwards confirmed that after taking various matters into account, the tax payable by the appellant on that date was \$60,240.45. Then on 25 April, 1966, the appellant paid \$5,000 and on 5 August, 1966, he paid another \$5,000.

B If what Mr. Edwards said in his letter was correct, the balance due from the appellant would then be \$50,240.45.

Imagine therefore his surprise (so we are led to believe) when 1967 he received a bankruptcy notice dated 17th August, saying that he owed the Comptroller not \$50,240.45 but \$54,826.68.

The law applicable then was the Bankruptcy Ordinance No. 20 of 1959. Section 3(2) thereof provided:

C "A bankruptcy notice under this Ordinance shall be in the prescribed form and shall state the consequences of non-compliance therewith and shall be served in the prescribed manner:

Provided that a bankruptcy notice -

(i) (not relevant);

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake;..."

D

In the Federal
Court

No. 16
Judgment,
13th May,
1968.
(Contd.)

It is undisputed that if the sum specified in the bankruptcy notice exceeds the amount actually due, then it is void (Re Arunachalam, ex parte Indian Overseas Bank Ltd.)⁽¹⁾

Within the time prescribed by section 3(2) the appellant gave notice disputing the validity of the notice.

The Judge held the notice valid and the appellant appeals to this Court.

A

Mr. Jag-Jit Singh argued before us that the notice was invalid for two reasons:

- (a) the notice specified a sum in excess of the amount actually due; and
- (b) the notice was not issued or expressed to be issued by the Chief Justice of the High Court in the name of the Yang di-Pertuan Agong as required by section 7(1) of the Courts of Judicature Act, 1964.

As regards the first ground, in my opinion the amount mentioned in Mr. Edwards' letter was only in respect of tax due. This letter did not, in my judgment, preclude the Comptroller from adding a penalty to the tax.

B

It is important to bear in mind that the Comptroller wants to bankrupt the appellant, not on the notice of assessment but on the judgment. The notice of assessment must have said that payment must be made within a month (section 82) or else pay a penalty also (section 84). Once judgment had been obtained, the liability for tax on the assessment notice and for penalty under section 84 was extinguished and replaced by liability on the judgment alone. So, when subsequent to the judgment the Comptroller agreed that a lesser sum was due by way of tax (the amount due on 16 August, 1965, was confirmed in Mr. Edwards' letter), it was quite proper for him to reduce the penalty as well. What he did was to reduce the penalty which a court had said the appellant must pay. Mr. Jag-Jit Singh submitted that the Comptroller should

C

D

(1) (1968) 1.M.L.J. 89.

first have served a demand note under paragraph (b) of section 84(1) before he could impose a penalty under paragraph (a). The Comptroller was not imposing a penalty for the first time. In my judgment, there was therefore no need for him to serve a demand note on the appellant under paragraph (b) of sub-section (1) of section 84. A demand note is required only when a person has been assessed to tax for the first time, not against a judgment debtor like the appellant.

In the Federal
Court

No. 16
Judgment,
13th May,
1968.
(Contd.)

If penalty could be added to the tax due mentioned in Mr. Edwards' letter, then the amount specified in the bankruptcy notice was the amount actually due. I say so because, for the reasons given by the learned trial judge, the correct amount of penalty had been added. Therefore the first ground of appeal fails.

I now deal with the second ground.

Section 7(1) of the Courts of Judicature Act, 1964, reads as follows:

"All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong and shall be signed by a Registrar of such Court; and every such summons, warrant, order, rule, notice and mandatory process shall be sealed with the seal of the Court issuing or making the same."

That provision is a general provision. Bankruptcy is a special matter and it is dealt with by special law. Because generalalia specialibus non derogant, I hold that the bankruptcy notice, to be valid, need only comply with section 3(2) of the Bankruptcy Ordinance, 1959 (now section 3(2) of the new Bankruptcy Act, 1967). It need not be issued and expressed to be issued by the Chief Justice in the name of the Yang di-Pertuan Agong. This Bankruptcy notice was in the prescribed form and is therefore valid. There is no need for me to consider the effect of the other provisions cited by Nik Saghir, namely, section 131 of the Bankruptcy Ordinance,

In the Federal Bankruptcy rule 289 and section 72 of the Courts of
Court Judicature Act, 1964.

No. 16
Judgment,
13th May,
1968.
(Contd.)

The second ground of appeal also fails.

I would accordingly dismiss this appeal with
costs.

(M. Suffian)

Kuala Lumpur, Federal Judge,
Malaysia.

A

13th May, 1968.

Counsel:

Mr. Jag-Jit Singh for appellant.

Nik Saghir for respondent.

Salinan yang di-akui benar.

Sd/-

Setiausaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur

B

25.7.1968.

No. 17

In the Federal
Court

ORDER

No. 17
Order,
13th May,
1968.

IN THE FEDERAL COURT OF MALAYSIA
HOLDEN AT PENANG

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: X 87 OF 1967

A Between:

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the matter of Bankruptcy No. 76 of
1967 in the High Court in Malaya at
Penang

Re: N. Rengasamy Pillai
Judgment-Debtor

B Ex Parte: The Comptroller of Income Tax
Judgment-Creditor)

Coram: Syed Sheh Barakbah, Lord President,
Federal Court, Malaysia;
Ismail Khan, Acting Chief Justice, High
Court, Malaya;
Suffian, Judge, Federal Court, Malaysia;

IN OPEN COURT

THIS 13th DAY OF MAY, 1968

ORDER

C THIS APPEAL coming on for hearing on the 16th
day of April, 1968 in the presence of Mr. Jag-Jit
Singh Counsel for the Appellant and Mr. Nik Saghir
bin Mohd. Noor Federal Counsel on behalf of the
Respondent;

AND UPON READING the Record of Appeal herein
and UPON HEARING Counsel as aforesaid IT WAS ORDERED

In the Federal Court that this Appeal do stand adjourned for Judgment, AND the same coming on for Judgment this day at

No. 17
Order,
13th May,
1968.
(Contd.)

Kuala Lumpur in the presence of Mr. V.K. Palasuntharam on behalf of Mr. Jag-Jit Singh of Counsel for the Appellant and Mr. Ng Mann Sau of Counsel for the Respondent IT IS ORDERED that this Appeal be and the same and is hereby dismissed AND IT IS ORDERED that the Appellant do pay to the Respondent the costs of this Appeal as taxed by the proper officer of the Court AND IT IS LASTLY ORDERED that the deposit of ₹500.00 (Dollars Five hundred only) paid by the Appellant as security for costs of this Appeal be paid out to the Respondent towards taxed costs.

A

Given under my hand and the Seal of this Court this 13th day of May, 1968.

L.S. Sd. A.W. Au.
Chief Registrar,
Federal Court,
Malaysia.

B

No. 18

In the Federal
Court

ORDER GRANTING FINAL LEAVE TO APPEAL
TO H.M. THE YANG DI-PERTUAN AGONG

No. 18
Order granting
Final Leave to
Appeal to H.M.
the Yang di-
Pertuan Agong,
6th January,
1969.

IN THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

A

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: X 87 OF 1967

Between:

N. Rengasamy Pillai Appellant

- and -

The Comptroller of Income Tax Respondent

(In the matter of In Bankruptcy No. 76
of 1967 in the High Court in Malaya at
Penang,

B

Re: N. Rengasamy Pillai Judgment-debtor

Ex Parte: The Comptroller of Income Tax
Judgment-creditor)

Coram: AZMI, LORD PRESIDENT, FEDERAL COURT OF
MALAYSIA;
SUFFIAN, JUDGE, FEDERAL COURT OF MALAYSIA;

and

GILL, JUDGE, HIGH COURT IN MALAYA

IN OPEN COURT

C

THIS 6th DAY OF JANUARY, 1969

ORDER

UPON MOTION made unto Court this day by Mr. V.K.
Palasuntharam on behalf of Mr. Jag-Jit Singh of
Counsel for the Appellant in the presence of Mr.
Ajaib Singh, Senior Federal Counsel, for the
Respondent:

In the Federal
Court

No. 18
Order granting
Final Leave to
Appeal to H.M.
the Yang di-
Pertuan Agong,
6th January,
1969.

(Contd.)

AND UPON READING the Notice of Motion dated the 22nd day of November, 1968, and the Affidavit of Subash Chandran affirmed on the 30th day of October 1968 and filed herein on the 1st day of November 1968 and the Exhibit therein referred to:

AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave be and is hereby granted to the above-named Appellant to Appeal to His Majesty the Yang di-Pertuan Agong against the whole of the Judgment and Orders of the Federal Court of Malaysia given herein at Kuala Lumpur on the 13th day of May, 1968:

A

AND IT IS ORDERED that the costs of and incidental to this Motion be costs in the cause.

GIVEN under my hand and the Seal of the Court this 6th day of January, 1969.

Sd. AU AH WAH

L.S. CHIEF REGISTRAR
FEDERAL COURT OF MALAYSIA

B

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

N. RENGASAMY PILLAI

Appellant

- and -

THE COMPTROLLER OF INCOME TAX

Respondent

R E C O R D O F P R O C E E D I N G S

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
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STEPHENSON HARWOOD & TATHAM,
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Gutter Lane,
Cheapside,
London, E.C.2.

Solicitors of the Appellant.

Solicitors of the Respondent.