

10

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 26 of 1972

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :	GIAN SINGH & COMPANY LIMITED	<u>Appellants</u> (Plaintiffs)
	and	
	BANQUE DE L'INDOCHINE	<u>Respondents</u> (Defendants)
A N D BETWEEN:	BANQUE DE L'INDOCHINE	Appellants
	and	
	GIAN SINGH & COMPANY LIMITED	Respondents
	(By Cross Appeal)	

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

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LEGAL STUDIES
- 4 JAN 1975
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De L'Indochine

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N: GIAN SINGH & COMPANY LIMITED Appellants
(Plaintiffs)
- and -
BANQUE DE L'INDOCHINE Respondents
(Defendants)
AND BETWEEN : BANQUE DE L'INDOCHINE Appellants
- and -
GIAN SINGH & COMPANY LIMITED Respondents

(By Cross-Appeal

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT OF SINGAPORE</u>		
1.	Writ of Summons and Statement of Claim	27th September 1968	1
2.	Defence	28th January 1969	3
3.	Further and Better Particulars of paragraph 5 of Statement of Claim	17th December 1970	4
4.	<u>Court Notes of evidence and Counsel's speeches</u>		
	Plaintiff's Counsel's opening speech	3rd March 1971	5
	<u>Plaintiffs' evidence</u>		
	<u>Balwant Singh</u>		
	Examination	3rd and 4th March 1971	10
	Cross-examination	4th March 1971	17
	Re-examination	4th March 1971	25
	<u>Chua Seck Kang</u>		
	Examination	4th March 1971	26
	Cross-examination	4th March 1971	28

No.	Description of Document	Date	Page
4.	<u>IN THE HIGH COURT OF SINGAPORE</u> (continued) <u>Plaintiffs' evidence (continued)</u> <u>Robert James Guthrie</u> Examination Cross-examination Re-examination	5th March 1971 5th March 1971 5th March 1971	28 30 31
	<u>Defendants' evidence</u> <u>Patrick Louis Wintrebert</u> Examination Cross-examination Defendants' Counsel's closing speech Plaintiffs' Counsel's reply	5th March 1971 5th March 1971 5th March 1971 5th March 1971	31 33 38 42
5.	Reasons for judgment of Chua J.	11th March 1971	45
6.	Formal judgment	22nd March 1971	57
	<u>IN THE COURT OF APPEAL</u>		
7.	Notice of Appeal	8th April 1971	57
8.	Petition of Appeal	15th May 1971	58
9.	<u>Judgment of the Court of Appeal</u> Wee Chong Jin C.J. Tan Ah Tah J. Choor Singh J.	11th February 1972 11th February 1972 11th February 1972	60 63 65
10.	Formal Order of the Court of Appeal	1st March 1972	77
11.	Order of the Court of Appeal granting the Appellants and the Respondents leave to appeal to the Judicial Committee of the Privy Council	15th May 1972	78

Exhibit No.	Description of Document	Date	Page
AB	Bundle of Miscellaneous Documents	Various	

Exhibit No.	Description of Document	Date	Page
<u>Plaintiffs' Exhibits</u>			
AB4,5 and 6 (also D3)	Application for irrevocable Letter of Credit	22nd April 1968	79
AB8, 9 and 10	Letter of Credit No. 2693	24th April 1968	82
AB.11	Letter, Gian Singh & Co. Ltd. to Banque De L'Indochine	6th May 1968	84
AB.14 (also P.1)	Note, P.L. Wintrebert to Balwant Singh	(undated)	85
AB.15 (also P.1)	Cheque No. ST.103073 drawn by S.Mehar Singh & Sons on United Commercial Bank Limited in favour of Banque De L'Indochine	17th May 1968	85
AB.18 (also D.2)	Certificate purported to be signed by Balwant Singh	25th June 1968	86
AB.19	Invoice No. TLS 0485 of Thai Lung Ship Machine Manufactory	28th June 1968	87
AB.20	Front of draft for US \$45,000.00 drawn by Thai Lung Ship Machine Manufactory	28th June 1968	88
AB.21	Reverse of draft for US \$45,000.00 exhibit AB.20	28th June 1968	88
AB.22	Provisional Certificate of Singapore Registry in respect of "Wu Ching No.6"	6th July 1968	90
AB.25 AB.26 and AB.27	Letter, Messrs. Drew & Napier to Banque De L'Indochine	10th July 1968	91
AB.28 and AB.29	Letter, Messrs. Donaldson & Burkinshaw to Messrs. Drew & Napier	12th July 1968	93
AB.31 (also P.3)	Cable, Thai Lung Ship Machine Manufactory to Gian Singh & Co. Ltd.	13th July 1968	95
AB.32 and AB.33	Letter, Messrs. Drew & Napier to Banque De L'Indochine	13th July 1968	95

Exhibit No.	Description of Document	Date	Page
<u>Plaintiffs' Exhibits (continued)</u>			
AB.43 AB.44 and AB.45	Report No. A/19139/68 made by Balwant Singh at Central Police Station	22nd July 1968	97
AB.54 and AB.55	Letter, Messrs. Drew & Napier to Passport Officer, Immigration Department	21st September 1968	100
AB.56 and AB.57	Letter, Messrs. Drew & Napier to Controller of Immigration	21st September 1968	101
P.1 also AB.14 and AB.15	Note, P.L. Wintrebert to Balwant Singh and Cheque No. ST 103073 drawn by S. Mehar Singh & Sons on United Commercial Bank Limited in favour of Banque De L'Indochine	undated 17th May 1968	85 85
P.3 also AB.31	Cable, Thai Lung Ship Machine Manufactory to Gian Singh & Co.Ltd.	13th July 1968	95
<u>DEFENDANT'S EXHIBITS</u>			
D.1	Uniform Customs and Practice for Documentary Credits (printed separately)	October 1971	
D.2 also AB.18	Certificate purported to be signed by Balwant Singh	25th June 1968	86
D.3 also AB.4 AB.5 and AB.6	Application for irrevocable Letter of Credit	22nd April 1968	79
D.4	Cable, Banque De L'Indochine to First Bank Taipei	10th July 1968	103
D.5	Cable, First Bank Taipei to Banque De L'Indochine	11th July 1968	104

Exhibit No.	Description of Document	Date	Page
	<u>Documents not transmitted to the Privy Council consequently not included in the Record</u>		
	<u>IN THE HIGH COURT</u>		
1.	Notice of service	8th November 1968	
2.	Memorandum of Appearance	18th November 1968	
3.	Notice of entry of appearance	18th November 1968	
4.	Plaintiffs' notice of discovery of documents	8th April 1969	
5.	Defendant's notice of discovery of documents	9th April 1969	
6.	Notice of trial	9th April 1969	
7.	Plaintiffs' list of documents	8th February 1971	
8.	Defendant's list of documents	10th February 1971	
9.	Affidavit of Sachi Saurajen	27th February 1971	
10.	Summons No. 398 of 1971	27th February 1971	
11.	Affidavit of Sachi Saurajen	1st March 1971	
12.	Order	1st March 1971	
	<u>IN THE COURT OF APPEAL</u>		
13.	Direction	1st April 1971	
14.	Certificate for security for costs	8th April 1971	
15.	Accountant General's receipt	12th April 1971	
16.	Affidavit of Balwant Singh	25th April 1972	
17.	Appellants' Notice of Motion for leave to appeal to the Judicial Committee of the Privy Council	25th April 1972	
18.	Affidavit of Antony Purdon Godwin	27th April 1972	
19.	Respondents' Notice of Motion for leave to appeal to the Judicial Committee of the Privy Council	27th April 1972	
	<u>Exhibits</u>		
P.2	Passport No. E13276 of Balwant Singh		

1.

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 26 of 1972

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :-

GIAN SINGH & COMPANY LIMITED

Appellants
(Plaintiffs)

- and -

BANQUE DE L'INDOCHINE

Respondents
(Defendants)

A N D B E T W E E N :-

BANQUE DE L'INDOCHINE

Appellants

- and -

GIAN SINGH & COMPANY LIMITED

Respondents

(by Cross-Appeal)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

In the High
Court of
Singapore

The Plaintiff's Claim is for a declaration that the Defendants have wrongfully debited the Plaintiff's account with the sum of \$139,496.43 and that the said sum, and interest thereon at 8½ per centum per annum from the 16th day of July, 1968, is owed by the Defendants to the Plaintiff.

No. 1

Writ of Summons
27th September
1968

STATEMENT OF CLAIM

Statement of
Claim

10 1. At all material times the Plaintiff was a customer of the Defendants and had a banking account at the Defendants' bank at 63 Robinson Road, Singapore.

2. On or about the 24th April, 1968, the Plaintiff applied to the Defendants for the opening of an irrevocable Letter of Credit in

In the High Court of Singapore

No. 1
Writ of Summons
Statement of Claim
27th September 1968
(continued)

favour of Thai Lung Ship Machine Manufactory of No. 51, 3rd Chung Chen Road, Keelung, Taiwan for the sum of US\$45,000.00.

3. The Defendants duly opened an irrevocable Credit upon the Plaintiff's aforesaid application, and the conditions thereof will be referred to at the trial of this action for their full term and effect.

4. It was a specific condition, inter alia, of the said Credit that a certificate signed by Balwant Singh holder of Malaysian Passport No. E.13276 and countersigned by the Defendants certifying that the motor ship or vessel "WEI CHING NO.6" had been built according to specifications and was in a fit and proper condition to sail, would be produced to the Defendants' agents in Taiwan as a condition precedent to the payment of the said Credit.

10

5. On or about the 16th day of July, 1968 the Defendants wrongfully and without the Plaintiff's authority debited the Plaintiff's account in the sum of \$139,496.43, being the equivalent of US\$45,000.00 in the absence of a certificate signed by Balwant Singh as aforesaid being presented in accordance with the aforesaid stipulation of the Credit.

20

6. The Plaintiff claims a declaration that the Defendants have wrongfully debited the Plaintiff's account with the said amount and that the said sum of \$139,496.43, plus interest thereon at the rate of 8½% per annum from the 16th day of July, 1968 to judgment or payment, is due and owing by the Defendants to the Plaintiff.

30

Delivered the 27th day of September, 1968.

Sd. Drew & Napier

Solicitors for the Plaintiff.



3.

No. 2

DEFENCE

In the High
Court of
Singapore

No. 2

Defence
28th January
1969

1. Paragraph 1 of the Statement of Claim is admitted.

2. Subject to production of the said application and of the said Letter of Credit, paragraphs 2 and 3 of the Statement of Claim are admitted.

10

3. Save and except that the Defendants deny that it was a condition of the said Letter of Credit that the certificate referred to was to be countersigned by the Defendants, paragraph 4 of the Statement of Claim is admitted.

4. The Defendants admit that they debited the Plaintiff's account in the sum stated in paragraph 5 of the Statement of Claim but deny that such debit was wrongful. A certificate in full compliance with the terms and conditions of the said Letter of Credit was furnished to the Defendants' correspondents in Taiwan.

20

5. In the alternative, if which is denied, the said certificate was not in compliance with the terms and conditions of the said Letter of Credit as alleged in paragraph 5 of the Statement of Claim, the Plaintiff is estopped and/or in equity precluded from relying on any alleged defect therein.

PARTICULARS

30

The said Balwant Singh acting on behalf and with the authority of the Plaintiff, signed the Certificate referred to in paragraphs 4 and 5 of the Statement of Claim with his own name and placed a rubber stamp reading

"Gian Singh & Co., Limited,
Director"

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around the said signature; the Plaintiff thereby knowingly tendered the said Certificate signed as aforesaid to the Defendants' correspondents and agents in Taiwan as being in compliance with the relevant term of the said Letter of Credit,

In the High
Court of
Singapore

No. 2

Defence
28th January
1969

(continued)

and the Plaintiff thereby knowingly induced the Defendants to act thereon to their detriment which the Defendants did by honouring the said Letter of Credit through their said correspondents and agents in Taiwan.

6. Save as is hereinbefore expressly admitted the Defendants deny each and every allegation of the Statement of Claim herein as if the same were set forth herein seriatim and specifically traversed.

10

Dated and delivered this 28th day of January, 1969.

Sd. Donaldson & Burkinshaw

Solicitors for the Defendants.

To: The abovenamed Plaintiff
and its Solicitors,
Messrs. Drew & Napier,
Singapore.

No. 3

Further and
better
particulars of
paragraph 5 of
the Statement
of Claim
17th December
1970

No. 3

FURTHER AND BETTER PARTICULARS OF
PARAGRAPH 5 OF THE STATEMENT OF CLAIM
FURNISHED PURSUANT TO REQUEST CONTAINED
IN LETTER FROM DEFENDANTS' SOLICITORS
TO PLAINTIFF'S SOLICITORS DATED THE
8th DECEMBER, 1970

20

What purported to be a certificate signed by Balwant Singh was not, in fact, signed by Balwant Singh, the signature "Balwant Singh" being a forgery. Further, or in the alternative, even if the said signature was genuine, which is not admitted, the certificate was given, or countersigned, by the Plaintiff and was not given by Balwant Singh, as called for by the Letter of Credit.

30

Delivered the 17th day of December, 1970

Sd. Drew & Napier

Solicitors for the Plaintiff.

COURT NOTES OF EVIDENCE

In the High Court of Singapore

Coram: CHUA, J.

No. 4

Wednesday, 3rd March, 1971

Court notes of Evidence
3rd March 1971

Sachi Saurajen for plaintiff.
Godwin for defendant.

SS. Reads Statement of Claim.

Plaintiff's Counsel's opening speech

Further and Better Particulars of para. 5 of Statement of Claim furnished on 17th December, 1970.

10 (Godwin: "Defendants" in 6th line should I think be "Plaintiff").

SS. I agree, I ask for leave to amend it.

Court: Leave granted.

Reads Defence.

20 Para 4 of defence - one main question is whether a certificate in full compliance with the terms and conditions of the Letter of Credit was furnished to the defendant's correspondents in Taiwan. We maintain such a certificate was not furnished at all.

Plaintiff will contend that (1) the signature appearing on the certificate is not that of Balwant Singh; (2) if the signature is that of Balwant Singh (which is denied) the plaintiff will contend that there was nonetheless non-compliance with the conditions of the Letter of Credit.

Agreed Bundle Ex. AB.

Exhibit AB

Reads AB.

Originals of AB.14 and 15 put in - Ex. P.1.

Exhibits AB 14 & 15.
Exhibit P.1.

30 AB.18 - purports to be the Certificate which Balwant Singh says he did not sign. It is our

Exhibit AB 18

In the High Court of Singapore

No. 4

Court notes of Evidence 3rd March 1971

(continued)

case that AB.18 contained a forged signature of Balwant Singh. The plaintiff will show that the particulars appearing on the face of the document are not accurate in so far as the date of issue of the Passport. The plaintiff contends that this Certificate was not issued by Balwant Singh even if the signature is not forged but by Gian Singh & Co. Ltd.

(G. As to date of Passport, never been raised before and not pleaded).

10

Exhibit AB.19

AB.19 - Invoice issued by the beneficiary to the Letter of Credit. This accompanied the Letter of Credit, so also AB. 20, 21 and 22.

Exhibits AB.20 21 and 22 Exhibit AB.29

AB.29 3rd line "Moreover, as you

Uniform Customs & Practice for Documentary Credits - I tender it at request of counsel for defendant. We never concede that they became a party to or were bound by the Uniform Customs & Practice for Documentary Credits (Ex. D.1).

Exhibit D.1

Exhibit AB.31

AB.31 - cable received by plaintiff from beneficiary.

20

Plaintiff's Case

Events immediately preceding the plaintiff's application for credit facilities with defendant are these:

Balwant Singh is at all material times the Managing Director of plaintiff Company and at all material times plaintiff has been a client of defendant's bank since 1952. In or about April 1968 the Managing Director of plaintiff - Balwant Singh - received a call from a man Lee Koh Poo. Balwant Singh has known Lee Koh Poo for a year and Balwant Singh is satisfied he is a broker. Lee Koh Poo had had dealings with Balwant Singh in lands before.

30

Lee Koh Poo came with two others - Chinese. Lee Koh Poo told Balwant Singh that they had ordered the construction of two fishing vessels by a Taiwan Shipyard and they required financial assistance. Balwant Singh asked if plaintiff was

40

prepared to establish a Letter of Credit plaintiff would get a commission. Balwant Singh informed Lee that plaintiff would be placed in funds before establishment of Letter of Credit. Plaintiff prepared to establish Letter of Credit. Balwant Singh telephoned defendant and approached them to extend credit facilities. Contact was with Wintrebert of the bank. Bank agreed to grant credit on certain terms.

In the High Court of Singapore

No. 4

Court notes of Evidence 3rd March 1971

Plaintiff's Counsel's opening speech (continued)

10 - Adjourned to 2.15 p.m. -

2.15 Hearing resumed.

SS. continues:

Law:

Overseas Union Bank Ltd. v. Chua Teng Hwee (1964) M.L.J. 165.

Here Gian Singh & Co. Ltd. different from Balwant Singh holder of Malaysian Passport E 13276.

20 The paying bank owes a duty to the applicant/plaintiff to refuse any document which does not conform with the terms of the instructions given by the applicant/plaintiff.

Gutteridge & Megrah, The Law of Bankers' Commercial Credits. 3rd Ed. p.67, 4th Ed. p.86 "This question of tenders"

English, Scottish & Australian Bank v. The Bank of South Africa (1922) 13 Ll. L.Rep.21, 24, l.c. "Before dealing"

2 Hals. 217 para 402.

30 Uniform Customs & Practice for Documentary Credits Ex. D1. I submit this "Uniform Customs & Practice for Documentary Credits" was never made part of the terms governing the relationship between the applicant and the issuing bank, defendant.

Exhibit D.1

(G. to Court: I rely on Art. 9 read with Articles 7 and 8).

(G.: Art. 7 clearly does absolve a bank....)

In the High Court of Singapore

No. 4

Court notes of Evidence 3rd March 1971 Plaintiff's Counsel's opening speech (continued)

Exhibit D.1

Exhibit D.1

Court will hear that Uniform Customs was never discussed between plaintiff and defendant and during negotiations no reference made that Uniform Customs bind the plaintiff.

I submit D.1 could only govern the relationship of the issuing bank vis-a-vis the negotiating bank and the plaintiff's conduct never accepted D.1 as governing its relationship with the defendant

Paget's Law of Banking 7th Ed. 613 "For the past 30 years (614) the beneficiary". No reference to the applicant. Quite clear an applicant to a Letter of Credit does not become a party to D.1.

Even assuming, without conceding, that D.1 governs the relationship between the applicant and the issuing bank, I submit Art. 9 cannot afford a defence to this action. In the interpretation of Art. 9 I submit the Court should look on the Code D.1 as a whole and the Court should avoid placing a construction on Art. 9 which is incompatible with the other provisions of the Code.

Look at Art. 7: Art. 7 clearly places an obligations on banks to examine with care to ascertain that terms and conditions of the credit have been complied with. Any interpretation of any article in the Code which seeks to relieve the bank of this duty must necessarily clash with Art. 7.

Art. 9 - I submit Art. 9 does not exempt the bank from liability in a case where because of inadequate compliance with Art. 7 a wrongful payment was made. To give a construction that Art. 9 relieves the bank of all liabilities would mean that the bank never had an obligation to ensure that the conditions of credit were satisfied. This would make utter nonsense of the system of Letter of Credit. I submit, if at all anything, at the most a bank might become exempted from liability which otherwise would accrue but for lack of genuineness. Even if, in the present case, the defendants are able to show the document is not forged but that of Balwant Singh, Article 9 does not help the defendant. Article 9 cannot relieve the bank from making a distinction between

Ex. D.1

Ex. D.1

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a Company and an individual. The Letter of Credit must and can only be construed as emphasising the distinction between Balwant Singh and Gian Singh & Co. Ltd. The crux of the matter is that the defendant from the outset felt that Article 9 would exempt them from liability. Ab.29 - defendant obviously had Article 9 in mind.

Ex.
AB.29

10 Paget 7th Ed. 619 "Generally, credits (620) and possession the beneficiary." If this is the law I submit a negotiating bank never entitled to assume that the person presenting the credit is the beneficiary. The negotiating bank is under a duty to ensure due compliance with the conditions of the Letter of Credit. I submit it is no answer that the person who presented the credit must necessarily be the beneficiary.

20 If Court accepts that is the law then that would be inconsistent with an interpretation on Article 9 which seeks to absolve the bank from liability.

On the contrary Article 7 reinforces the law and repeats that obligation on the negotiating bank to ensure due compliance with the terms of the Letter of Credit and therefore I submit, looking at D.1 as a whole, the Court ought not to place a construction on Article 9 which will relieve the defendant of its obligation to ensure due compliance.

30 Forgery - I say there was forgery, we will adduce forgery. Even if there was no forgery the defendant is not relieved as nevertheless it has to ensure that the conditions have been complied with.

If there was forgery and Balwant Singh's forged signature stood alone then perhaps Article 9 can be construed to exempt the defendant provided Article 7 is complied with in that the certificate was in the form required by the condition.

Calls -

P.W. 1 Balwant Singh - s.s. (in English):-

Xd. by Mr. S. Saurajen:

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
3rd March 1971

Plaintiff's
Counsel's
opening speech
(continued)

Exhibit D.1

Plaintiff's
evidence
Balwant Singh
Examination

In the High Court of Singapore

No. 4

Court notes of Evidence 3rd March 1971 Plaintiff's evidence Balwant Singh Examination (continued)

Managing Director of Gian Singh & Co. Ltd. at 30-1 Raffles Place, residing at 82 Meyer Road.

I am fully conversant with the plaintiff's claim in this case.

In about middle April 1968 when I was in my office Lee Koh Poo came to see me with two other Chinese men. I had known Lee for approximately one year. Previously he had come to see me regarding some land transactions.

Lee was the spokesman and he introduced me to the two Chinese men. Lee said they had entered into a contract with a shipyard in Taiwan for the construction of 2 new vessels each costing US. \$45,000 and that would I help them in arranging the necessary letter of credit through any bank. I was also shown at that time what purported to be a Letter of Credit in a large sum of money opened through the Overseas Union Bank Ltd., Singapore. For the banking facilities which were required from my Company they were prepared to pay a commission. Before I could entertain any proposal for a Letter of Credit it was essential for me to sound out my bankers to see whether they would accept the proposal to open a Letter of Credit. I felt it was impossible for me to open at one time a full letter of credit for U.S. \$90,000 and it was proposed to me would I help to secure a letter of credit for U.S. \$45,000.

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I spoke to Mr. Wintrebert of the defendant bank. I gave him brief particulars of what was required and also mentioned at the same time that a specific clause would be added on into the Letter of Credit by which means both my Company and the defendant bank would be fully protected. After hearing me he confirmed the willingness of the defendant bank to establish such a letter of credit subject to the manager's last say on the matter.

30

On the 22nd April, 1968, the application for the Letter of Credit was duly prepared and sent to the defendant bank on the same day. AB.4 the application.

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Exhibit AB.4

- Adjourned to tomorrow 10.30 -

Sgd. F.A. Chua.

Thursday, 4th March, 1971

P.W.1 Balwant Singh - o.h.f.a. s (in English):

Xd. by Mr. S.S. (Contd.)

In the High
Court of
Singapore

No. 4

Ex. The application AB.4 was sent to the defendant
AB.4 bank in pursuance of the conversation which I had
had with Wintrebert.

Court notes
of Evidence
4th March 1971

10 The following day, the 23rd April 1968, I
went to the bank, the Letter of Credit application
was with Wintrebert. He and I went to the
Manager's room with the application. The Manager
was Cronier. There was a discussion between
Cronier, myself and Wintrebert. Although I had
explained the position to Wintrebert, Cronier
questioned me as to how I came to apply for a
letter of credit for a fishing vessel. I told
Cronier I was acting as an agent in the trans-
action and was earning a commission. Cronier then
asked me what commission. I replied \$5000.
20 Cronier then asked me about the special conditions
and asked me if I would be going to Taiwan to
identify myself to the correspondent bank with my
passport and I replied that at the right time I
would be certainly doing so. Alternatively my
understanding with the principals here was that I
would be paid the full sum of the Letter of Credit
which I would pay to the defendant bank and then
only would I request the bank to release the
30 specific condition laid down in the Letter of
Credit. This understanding was acceptable to the
bank but Cronier still insisted that the counter-
signature of the defendant bank should also appear
on the certificate signed by me. To this I had
absolutely no objection because the bank in safe-
guarding its interest was at the same time
safeguarding the interest of my Company.

Plaintiff's
evidence
Balwant Singh
Examination
(continued)

The Letter of Credit was duly established on
24th April, 1968.

(SS. AB.8).

Exhibit AB.8

AB.8 is the Letter of Credit established.

40 I did not contemplate that the special condition
could be complied with without my going to Taiwan
to inspect the vessel, to identify myself to the

In the High
Court of
Singapore

No. 4

Court notes
of evidence
4th March 1971

Plaintiff's
evidence
Balwant Singh
Examination
(continued)

Exhibit AB.11

correspondent bank and issue the necessary certificate so as to enable the bank to negotiate the Letter of Credit. In fact that was the understanding I had with the defendant bank.

In fact I drafted the special condition. I did that to safeguard the interest of my Company.

Subsequently there was an alteration in the special condition.

Lee Koh Poo came to see me in the early part of May 1968. He said he had come from Taiwan, that the Letter of Credit bearing the countersignature of defendant bank was unacceptable to Thai Lung and that he would request the deletion of the countersignature of the defendant bank.

My Company wrote a letter on 6th May, 1968, requesting the deletion of the countersignature of the bank and to establish my bona fide and sincerity I took along with me my Malaysian Passport E 13276 and handed it over to Wintrebert along with the letter. AB.11 the letter.

I handed my passport as a sign of good faith in two ways. First, without the passport I could not travel to Taiwan and secondly if I could not travel to Taiwan I could not identify myself to the correspondent bank with the passport and issue the certificate.

Court: Then you could never issue the certificate, the special condition could not be complied with.

I was to receive money from my principals to cover the Letter of Credit and to pay that to the bank and then request the bank to delete the specific condition once the defendant bank is put in funds. In that way, the Letter of Credit could be negotiated in Taiwan.

Action was taken by the defendant bank on the 14th May 1968 on my letter of 6th May. The countersignature of the defendant bank was deleted from the special condition after the bank had said they would take my signature, have it attested by the official of the defendant bank and sent it to the correspondent bank. The

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passport was returned to me.

My signature was never taken and attested as far as I am aware.

I was asked by the defendant bank to reduce my trust receipt figures outstanding with the bank.

I heard no more of this transaction from the defendant bank until the 9th July, 1968.

10 On that day I received a telephone call from Wintrebert at about 5 p.m. He asked me whether I was aware that the Letter of Credit for U.S. \$45,000 had been drawn. I received the call at my office, I replied I most certainly was not aware because I had not given any certificate at all nor had I gone to Taiwan and identify myself to the correspondent bank. Wintrebert said the Letter of Credit had been negotiated and I had better call at the bank right away.

20 It must have taken a better part of 5 minutes to reach the bank but I was there. Wintrebert then took me to Cronier's room and showed me documents pertaining to this Letter of Credit. Immediately when sighting the documents I pointed out to the bank officials that the signature "Balwant Singh" was not mine and was a forgery. The bank officials brought in a lot of documents on which my signature appeared to try and tally with the signature "Balwant Singh" on the certificate given.

30 After comparing the signatures they conceded that the signature could very well not be mine but remonstrated how was the correspondent bank in Taiwan to know what my exact signature was. To this I replied that the bank had undertaken to send my specimen signature through banking channels and that had they done so this perpetration of forgery could not have taken place. I then pointed out to both the bank officials that the purported certificate attached to the documents was that of my Company since the rubber stamped
40 appeared on top of the forgery. I mentioned to the bank that a certificate purportedly issued by the Company over its rubber stamp did not meet the requirements of the Letter of Credit which very specifically asked for a certificate of

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
4th March 1971

Plaintiff's
evidence
Balwant Singh
Examination
(continued)

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Examination (continued)

Balwant Singh, a person and holder of Malaysian Passport E - 13276. I begged the bank on that alone they could reject the documents and that they should cable the reimbursing bank in America to stop payment of the funds drawn against the Letter of Credit as the terms of the Letter of Credit had not been complied with. The bank made no attempt whatsoever to comply with my request by either stopping the payment or informing the reimbursing bank on the documents, that they were unclear, they should ask the monies from the paying bank in that the compliance of the Letter of Credit had not taken place. Cronier flatly refused to do this and I had no alternative but to leave the bank with a very heavy heart.

10

On arrival at my office I tried to contact Mr. Grimberg of Drew & Napier to seek his advice but he had left for home. I then contacted him from my residence that night and he asked me to go and see him the next morning at 8.30 which I did.

20

I produce my passport (Ex. P.2) - E 13276.

Exhibit AB.18

AB.18 was the certificate which I was shown when I called at the defendant bank.

(G: I have the original of AB.18 (marked as Ex. D.2))

Exhibit D.2

Ex. D.2 was the certificate I saw. The signature "Balwant Singh" was not signed by me, nor does it resemble my signature. The certificate shows that Balwant Singh held a passport issued on 11th November 1964 but my passport Ex.P.2 was issued on 18th September 1964.

30

I acknowledge that Ex. D.2 appears to be written on plaintiff Company's letter-head. I really do not know how this came about.

Exhibit D.2

To Court: The rubber stamp does not appear to be the one used by my Company but I cannot be sure.

In any case Ex. D.2 is a certificate from my Company not from me.

40

Exhibit AB.25

(SS: AB.25).

This letter was written by my solicitors to the defendant bank.

In the High Court of Singapore

Ex. AB.31

(SS: AB. 31)

No. 4

Ex. P.3

This is a cable received by my company. I produce the original cable (Ex. P.3). I received it from the beneficiary of the Letter of Credit on 13th July, 1968 at 9.50 a.m. The endorsement of the date and time made by me on right top of Ex. P.3. Neither the plaintiff Company nor myself have had any correspondence with Thai Lung. The cable mentioned a Mr. Chew, holder of Singapore passport 16746 arrived at Taipeh on 29th June and he had tendered the forged certificate along with the forged passport to Thai Lung. If Court will look at the certificate, it was dated 25th June 1961. Another important point is that all the documents negotiated against the Letter of Credit No. 2693 have been negotiated already on 28th June, 1968. If documents were drawn on 28th June at the very utmost it would take not more than 3 days for the arrival of the documents in Singapore. It would go to show that as result of my solicitors' letter to defendant bank on 10th July

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Examination (continued)

10

20

On the advice of my solicitors I made a report to the police on 24th July and also lodged a photostat copy of the report with the Commercial Crimes.

30

(G: I object to this bit of evidence. S. 158 Evidence Ord., it is a self-serving statement. Same objection would apply to letters to Passport Officer and Immigration Office. Facts in question brought to attention of this witness on 9th July and it was not until 24th July that he made the police report. The object of putting it in is no doubt to corroborate his own evidence.

40

S. 158 "at or about the time when the fact took place".

As far as police report is concerned it is some 23 days. Letter to Passport Officer and Immigration Office sent on 21st September.

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Examination (continued)

Sarker on Evidence 11th Ed. 1336 - S. 157 "At or about the time"

S.S.: The objection to police report I submit a vital distinction has to be drawn between admissibility of a particular statement and the weight to be attached to it. I submit S. 158 contemplates 2 types of things (1) a statement which was made at or about the time when the fact took place and (2) a statement made before any authority legally competent to investigate the fact. If the statement was made to an authority not competent to investigate the fact then it would have to be made "at or about the time" when the fact took place. I submit the 2nd limb to S. 158 clearly enables this statement to be admitted and it is not a condition precedent to admissibility of statement that it should have been made at the time or about the time the fact took place.

10

20

Sarkar's passage cited by my learned friend has connotation of the phrase "at or about the time".

My submission equally applies to the letters to the Immigration Office.

I submit my learned friend's objection is misconceived.

30

G: I have nothing more to say.

Court: I rule it is admissible.)

Exhibits AB.43 - 45

AB.43 - 45 is the copy of my report I made to the police.

Exhibits AB.54 & 55

AB.54, 55 my letter sent to Passport Officer.

Exhibits AB.56 & 57

AB.56, 57 my letter sent to Controller of Immigration.

I tried to trace the whereabouts of Lee Koh Poo by going to Watten Trading Co. 147 Rochere Road on many occasions by phone and also by at

40

least two personal visits. I was not able to get him on the phone or when I visited his Company.

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Examination (continued)

10 Subsequently, quite by accident, I met Lee Koh Poo at the Chinese Swimming Club, on a Sunday. I asked him if he was aware that the Letter of Credit had been drawn against and he said he knew nothing about it. I then informed him that according to the bank that Letter of Credit had been negotiated and I invited him and the two Chinese men he had introduced me to come and see at my office the next day but there was no response to my request.

I saw Chua Seck Kang of the Immigration Office.

20 Efforts were made with the view to getting the fishing vessels to Singapore by all the parties concerned without prejudice to their positions in this case. These efforts were not fruitful as the Singapore Certificate of Registration for these vessels had expired. Lee Koh Poo in whose name the vessels were registered did not authorise any one to take delivery of the vessel.

To Court: It was subsequently discovered that these were not newly built vessels but they were 14 years old. A fraud has been perpetrated on me.

XXd. by Mr. Godwin:

Cross-examination

30 I have been a businessman since 1935. I have carried on business principally in textile. Apart from this case I have never had dealings in fishing vessels or ships.

Yes in the course of my business career I have applied for thousands of letters of credits, yes from defendant bank as well as other banks.

Yes I knew that an application for a Letter of Credit is a formal document which is intended to have legal consequences.

40 Q. Is an application to establish an irrevocable letter of credit a

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

Exhibit AB.20

Exhibit AB. 5

request by the applicant to the bank to establish a credit on the terms and conditions contained in the application?

A. That is so.

Q. When the bank agrees to the application a contract arises between you?

A. Yes.

(G: The application AB. 4, 3rd para. "Available against me/us".)

Ex. AB.4

Yes "us" means the plaintiff Company.

10

Yes in due course the draft on AB.20 was drawn on the plaintiff.

(G: AB.5 "In consideration).

Yes we have agreed to term 1. All the six terms agreed by the plaintiff.

(G: Look at the 6th term?)

My understanding of term 6 is that it is a binding clause for documentary credits by the opening bank and the receiving bank and does not bind the applicant with the local bank. This is the general knowledge among business people.

20

Q. Can you explain why that is contained in the application which had nothing to do with the negotiating bank?

A. This term 6 would be a governing term as between a bank which establishes a letter of credit and a receiving bank.

Q. Why should it be in the application?

A. If business were to be conducted on the basis of why each and every word is put on a letter of credit with the hyphens and colons, then it would be impossible to conduct any such business.

30

Yes I had known Lee Koh Poo for one year prior to April 1968, yes in connection with land

transactions, one or two transactions. It is not fair to say I hardly knew him. I did not know the other two men who came with him.

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

Q. The defendant bank warned you against financing such a venture?

A. The defendant bank did exercise prudence and caution but when saw the specific conditions put in the application they were satisfied but there was no warning by the bank.

10

Q. Did Cronier warn you against financing such a venture?

(The witness would not answer the question, he keeps on saying that Cronier asked him how he a textile merchant was going into this venture and he explained the circumstances to him.)

Q. I put it to you that Cronier warned you but you insisted and the bank eventually agreed?

20

A. My answer to that is I made a request for the opening of a letter of credit. It is the banks' right either to open it or reject my request. As a result of discussions over the financing of this fishing vessel I could not and was not in a position to insist. I could only make a request and it was on basis of request alone that the bank with sufficient guarantee opened the Letter of Credit.

30

I was not reckless, with due regard to the special condition.

I signed the application in my office.

- Adjourned to 2.15 -

Sgd. F. A. Chua.

2.15 Hearing resumed.

P.W.1 Balwant Singh - o.h.f.a. s (in English):

XXd. by Mr. Godwin (Contd.)

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

Yes I drafted the special condition.

(G: AB. 4 "A specific").

Ex. AB.4

Yes I used the word "signed".

Q. Where does it say Balwant Singh must personally go to Taiwan?

A. It does not say on the Letter of Credit but that was the understanding derived from our conversation.

Q. If that was the understanding why was it not in the condition?

10

A. It is not embodied in the Letter of Credit.

It is incorrect to say that it was not contemplated that I would go to Taiwan.

Yes I said the intention was that I would go to Taiwan, inspect the vessel, identify myself to the bank, sign the certificate. I had informed the bank official that I would use the services of an expert to inspect the vessel and when fully satisfied only then would I issue the certificate. Yes I would rely on a marine surveyor, but it would still be necessary for me to go so as to identify myself to the bank and produce my passport.

20

Q. There was no need for you to go and produce your passport, any person armed with your certificate and passport would be adequate?

A. This is a difficult question to answer but the facts are I had to go to Taiwan to identify myself to the bank and satisfying myself as to the vessel and then only issue the necessary certificate in person.

30

Q. If you arrive personally the No. of passport would not be necessary to be inserted in the condition?

A. The reason why the passport number has

been put is to make doubly sure that Balwant Singh the person having Malaysian Passport No. E 13276 is the person identifying to the bank along with his passport and issuing the certificate. It would conclusively establish the fact that I have one passport and that it was essential for me to be there in Taiwan to go and show that passport to the Bank and identifying myself before the Letter of Credit is negotiated. May I draw Court's attention to "In the absence of such not to be allowed "Negotiation".

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

10

At that time what was set out in the Condition was felt to be adequate.

The taking of my signature to be sent to Taiwan was said by Wintrebert.

20

Q. What was the point of that, you were going there yourself?

A. It would be recalled that the defendant's Manager had asked that the counter-signature of the bank be added as another integral part in the Letter of Credit. Now that a request for deletion of that countersignature was sought by my Company the defendant bank wanted an additional safeguard and requested that my signature be sent to Taiwan.

30

It was meant as a safeguard to the bank, as well as my Company.

It is not true that Wintrebert did not say about my signature to be sent to Taiwan, not true I made this up.

(G: 9th July).

Yes I told them that day that they should have sent my signature to Taiwan. Had the signature been sent the forgery would not have taken place.

40

Yes I saw Mr. Grimberg on 10th July and he wrote a letter to the bank. Yes AB. 25 to 27.

Exhibits AB.25 to 27

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

Q. No where in that letter was a complaint made of the failure by the bank to send your signature to Taiwan?

A. May I see the letter (Reads the letter). It doesn't appear to be there.

I think this letter was dictated by Mr. Grimberg in my presence. I was under the impression that this had been embodied in the letter but as my mind was disturbed at that time I might not have been able to get the full significance of the letter.

10

A copy of the letter was sent to my Company later.

No subsequent letter was sent by my solicitors of the failure by the bank to send my signature to Taiwan. It is not my invention, it is the correct fact.

Q. There are two grounds on which you say the bank should give you back the US. \$45,000, (1) the signature is a forgery (2) if not a forgery the signature is not that of Balwant Singh but of the plaintiff Company.

20

A. It is not right.

Q. What other grounds?

A. I am not seeking to get US. \$45,000 from the bank. All that I am requesting is that the debit they made against my Company.

Yes the two grounds on which I base my claim are those already stated by Counsel for the defendant bank.

30

(G: Ex. D.2 the Certificate, 2nd para. "I Balwant Singh I agreed Messrs. Thai Lung Yours faithfully, I, Balwant Singh")

Q. Assuming that this is not forgery, how can you stand there and say this is not your signature?

A. The certificate is the certificate of the plaintiff Company.

Q. Why?

A. Gian Singh & Co. Ltd. by its director has signed the certificate.

(G: Look at the rubber stamp).

The rubber stamp has the word "Director".

(G: There is no "per pro"?)

10 The word there is "Director" and it is a certificate given by the plaintiff Co. not by the individual Balwant Singh.

Q. Is it still not a signature of Balwant Singh?

A. Assuming it is genuine, it is signed for the plaintiff Co.

Q. Signed by whom for the Co?

A. By Balwant Singh; if it is not a forgery it is signed by me.

20 Q. The condition calls for a certificate signed by you?

A. The Letter of Credit specifically asks for the signature of Balwant Singh, holder of Malaysian Passport No. E-13276.

Q. You are the holder of that passport?

A. Yes.

Q. If it is a genuine signature, I put it to you that condition has been satisfied?

30 A. That is not so. Here is a certificate tendered by the Co. and not by the individual.

Q. The rubber stamp only described your capacity?

A. No.

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued)

Q. Your other defence is that it is a forgery?

A. Yes.

Q. It is on your Company's letter head?

A. Yes, apparently.

(G: Letters to Passport Officer and Controller of Immigration AB. 54 to AB.57 - last para. on AB.54, AB.56 "In fact Mr. Balwant Singh passport never signed any such certificate.")

Exs. AB.54 to AB.57 10

That is so.

Q. It follows that you did not use your passport to travel outside Singapore?

A. Yes.

I deny that I gave my passport to Peter Chew or somebody else to go to Taiwan. In fact I know of no Peter Chew. I deny the signature on Ex. D.2 is my signature.

Exhibit D.2.

When I got information that the bank was prepared to establish the Letter of Credit I received the commission of \$5000 then and there from Lee Koh Poo and the two Chinese men. In fact if the Letter of Credit had not been drawn against I would still be entitled to that commission as that was the understanding. Yes I understood from Lee Koh Poo that I would be put in funds for the full amount. I have not refunded the \$5000 or any part of the \$5000.

20

There was a written agreement between me and Lee Koh Poo.

30

I do not know what rate of commission the Taiwan bank would get to negotiate this credit.

Q. Assuming it was 1/4 to 1/2% would you expect bank in Taiwan to assume responsibility for forged signature for that commission?

A. Whatever the rate of commission may be, it has nothing to do with the good ethics and morals. If it is a fraudulent signature all the commission in the world should not allow a bank to be induced to part with monies especially when the documents tendered are not in order?

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Balwant Singh Cross-examination (continued) Exhibit D.2

Q. Answer the question?

A. Yes, I would expect.

10 Yes my Co. were the applicants of this credit and also the drawees under the credit.

Q. Assuming the signature in Ex. D.2 is genuine I suggest to you that your Co. tendered this certificate as being in compliance with the specific condition in the credit?

A. No.

20 Q. I suggest the Taiwan Bank acted on that representation i.e. on the representation that the certificate was in compliance with the credit?

A. Assuming that the signature is not a forgery the plaintiff Co. never made any representation to any bank in Taiwan nor did it induce any bank to part with money. It is still a fraudulent tender by someone who had got hold of the letter head.

RXd: by Mr. S.S.:

Re-examination

30 There was no warning as such by Cronier. He was interested to know how I came to apply for a Letter of Credit for a fishing vessel which was outside my usual business. I told him I was making a commission and that the specific condition was a safeguard that the principals would pay me the money and I would bring it to the bank and then release the specific condition.

(SS: Ex. D.1 - Uniform Customs.)

Exhibit D.1

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
4th March 1971

Plaintiff's
evidence
Balwant Singh
Re-examination
(continued)

Chua Seck Kang
Examination

Exhibits AB.54
AB.56

Exhibit P.2

Exhibit P.2

Exhibit P.2

The first time I saw this "Uniform Customs" was yesterday. I am not conversant with the contents of the Uniform Customs.

Sgd. F. A. Chua.

- Adjd. -

P.W.2 Chua Seck Kang - a.s. (in English):-

Xd. by Mr. S. Saurajen:

Dy. Assistant Controller of Immigration,
Singapore.

(SS: AB. 54, AB. 56).

I received the original of both letters.

10

I caused investigation to be made into the matter. In the course of investigation I took possession of Passport No. E 13276. Ex. P.2 is the passport produced to me by P.W.1, holder of the passport.

Ex. P.2 is a genuine passport. Looking at the passport Balwant Singh had not been to Taiwan in 1968. The last overseas trip according to the passport made by Balwant Singh was to India on 10th March, 1967 and he left India on 26th April 1967, his plane was in transit in Bangkok on 26th April and he arrived in Singapore on 26th April, 1967. After that he did not leave Singapore.

20

The date of issue of Ex. P.2 is 18th September, 1964. It is not possible for another passport issued on another day to bear the same number. Our system is such that I do not think we would issue another passport with the same number.

As a result of complaints made to me and as a result of my interview with Balwant Singh I

30

caused investigation to be made in relation to Singapore Passport No. 16746.

According to our records passport No. 16746 issued on 28th November 1966 belongs to Mr. Chew Ghee Song; there was no Western name given in the application form. We were unable to contact this person for an interview. The department therefore issued a directive to our field officers to keep watch for this person and that he should be given a special pass to report to our Head Office and his passport should be retained.

10

On 11th March, 1970 Mr. Chew Gee Song arrived from K.L. by the midnight flight. He was then using a Singapore Restricted Passport. His Restricted Passport was retained and he was issued with a special pass to report to our Head Office but he failed to turn up.

Recently i.e. on 1st February 1971, the Criminal Records Office, C.I.D. had requested our Department for the subject's I.C. No. and his address in Singapore. On furnishing the facts we have also asked them to give us information as to when subject may be leaving Hong Kong. In their minutes to C.R.O. it was stated that subject was arrested in Hong Kong on 27th January 1971 for theft. In this report we have asked them to give us information on the likely date subject might leave Hong Kong for Singapore. So far we have not received any reply. We also informed our Commissioner in Hong Kong to try and locate subject and to forward the passport to us. We are also awaiting the result of our request.

20

30

When subject applied for passport on 16th November, 1966, he gave his address as No. 3 Jalan Teliti, Singapore, 19, describing himself as a merchant.

In the course of investigation I went to No. 3 Jalan Teliti but subject was not living at that address. We were told he had gone to Malaysia and we were told that subject would be told to call at our office if he were to come back to Singapore, but subject did not report to us.

40

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
4th March 1971

Plaintiff's
evidence
Chua Seck Kang
Examination
(continued)

In the High Court of Singapore

No. 4

Court notes of Evidence 4th March 1971

Plaintiff's evidence Chua Seck Kang Cross-examination

XXd. by Mr. Godwin:

At that period I was concerned with cases of this kind. No case of forged passport had been referred to me personally. This was the first one.

It is not likely that we would issue two passports with the same number. This has never happened before.

RXd. Nil.

(Witness Released).

Sgd. F. A. Chua.

10

- Adjourned to 10.30 tomorrow -

Sgd. F. A. Chua.

5th March 1971

Friday, 5th March, 1971

Hearing resumed.

SS: The next witness has to be subpoenaed.

Robert James Guthrie Examination

P.W.3 - Robert James Guthrie - s.s. (in English):

Xd. by Mr. S. Saurajen:

Asst. Manager, Chartered Bank, Singapore, in charge of Import & Export Dept. of my bank.

I have experience in the negotiation of letters of credit. I have had to take decision whether to negotiate the documents and decide whether or not to ask for an indemnity from the beneficiary before negotiating the documents.

20

Exhibit AB.8
Exhibit AB.9

(SS: AB. 8 and in particular to the Special Condition at AB. 9. I would like you to assume that the portion requiring the countersignature of the defendant has been deleted and I ask you to proceed on that basis. I now show you Ex. P.2, a certificate. Will you tell the Court if you as a banker were to take a decision on the strength of this document, would you consider it prudent as a banker to negotiate or

30

Exhibit P.2

allow negotiation of the letter of credit?

(G: This evidence is inadmissible.)

This certificate is signed by one Balwant Singh signing as a director of Gian Singh & Co. Ltd. and as such it does not conform with the special instruction contained in the Letter of Credit.

10 Whether I would allow negotiation would depend on the circumstances. I would have to be satisfied that the signatory, i.e. the Balwant Singh who has signed the certificate, is the holder of the Malaysian Passport as this is a specific requirement in the credit. By this I mean I would require to compare the signature on the certificate with that in the passport.

20 I would require Balwant Singh to identify himself by means of the passport. The signing in my presence might not be necessary but I have to be satisfied that the signature on the document is the signature of Balwant Singh, the holder of the passport.

Q. If I came along with passport of Balwant Singh, would you have accepted this certificate?

A. Who is the opener of the credit?

Q. Gian Singh & Co. Ltd.

30 A. We have a difficulty here. In practice a discrepancy of this nature, provided I was satisfied that the signature of Balwant Singh was the same as that in the passport specified there, I would call for an indemnity for the fact that the rubber chop "Gian Singh & Co. Ltd." has been added to the certificate. However, the special instruction does say in the absence of such a certificate the Letter of Credit is not allowed negotiation. Therefore an indemnity would not be relevant in this case.

40

Q. An outright rejection?

In the High Court of Singapore

No. 4

Court notes of Evidence
5th March 1971

Plaintiff's evidence
Robert James Guthrie
Examination
(continued)

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Plaintiff's evidence Robert James Guthrie Examination (continued)

Cross-examination

A. No. I would require confirmation from the opening bank before negotiating.

Q. What is the discrepancy you referred to?

A. Any minor department from the terms of any Letter of Credit can in the discretion of the negotiating bank be acceptable to them on receiving an indemnity. However, I would not consider this to fall in that category. I would not consider this a minor discrepancy in the situation you have mentioned, a 3rd party bringing in the passport. The prudent course would be to telegraph the opening bank for authority to negotiate.

10

XXd. by Mr. Godwin:

(G: Subject to my submission that this evidence is inadmissible under S.45 of the Evidence Ord. I would like to ask a few questions.)

20

Yes everything I have just said is my own opinion.

(G: Look at Ex. D.2, 2nd para. "I Balwant Singh", last para "I agreed", right bottom corner "I Balwant Singh". Did you notice these when you were giving evidence?)

Yes.

Q. Yet you say presence of rubber stamp altering the quality of the signature of Balwant Singh?

30

A. I recognise that the presence of the rubber stamp makes the signatory to this certificate different from Balwant Singh.

Q. Why?

A. To me it is signed by

Q. Why?

A. Because of the presence of the rubber stamp.

It indicates to me that Balwant Singh is signing as director of Gian Singh & Co.

The Letter of Credit calls for a certificate signed by Balwant Singh.

Q. It is signed by Balwant Singh?

A. Yes.

10 I can't see how the rubber stamp further identifies Balwant Singh.

Q. Because it relates to Gian Singh & Co., the opener of the Letter of Credit, does it not do so?

A. It appears to do so but the negotiating bank as a negotiating bank I would not normally know whether Balwant Singh was a director of Gian Singh & Co.

Q. Would you agree another banker might take a different view?

20 A. Yes.

RXd:

I would consider there was a discrepancy if I was not positively able to connect the signature of the certificate with the holder of the passport specified.

Sgd. F. A. Chua.

- Case for the plaintiff -

Defence: Godwin: I will call my only witness and then address the Court.

D.W.1 Patrick Louis Wintrebert - s.s. (in English):

Xd. by Mr. Godwin:

Living at No. 98 Binjai Park; acting Manager of defendant bank.

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Plaintiff's evidence Robert James Guthrie Cross-examination (continued)

Re-examination

Defendant's evidence

Patrick Louis Wintrebert Examination

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Defendant's evidence Patrick Louis Wintrebert Examination (continued)

I arrived in Singapore on 21st December, 1967 and I joined the defendant bank as Asst. Manager.

I know Balwant Singh (P.W.1).

On 6th May, 1968, Balwant Singh came to the bank and asked for the provision of the counter-signature of the bank to be removed completely. He saw me. He handed me a letter AB.11. He offered me his passport, I refused to take it. Ex. AB.11

I never told P.W.1 that I would take a specimen of his signature, have it authenticated by an officer of the bank and send it to Taiwan. There would be no purpose to send a specimen signature to Taiwan. 10

The holder of the passport has to sign and I considered the bank was adequately protected.

There was no understanding between bank and Balwant Singh that the latter would have to go personally to Taiwan.

Q. If he does not go to Taiwan how would the document be negotiated? 20

A. By presentation of the certificate and the passport by a 3rd person. The passport would be the means of identification.

There is nothing in the credit saying that the passport and the certificate must be presented by Balwant Singh personally.

Exhibit D.2

(G: Look at Ex. D.2).

I consider it to be in compliance with the credit. 30

The negotiating bank's commission would depend on the schedule of commission. From what I know the maximum would be 1/2%.

Exhibit AB.4
Exhibit D.3
Exhibit D.1

(G: AB.4 - application, I have photostat copy of the original - Ex. D.3 - "In consideration Clause 6 - Ex. D.1.)

Exhibit D.1

To my knowledge since I have been in Singapore all Letters of Credit are made subject to Ex. D.1

In this case the plaintiff is the opener and the drawee under the credit. As such I consider plaintiff was a party to the credit.

In the High Court of Singapore

No. 4

XXd: by Mr. S. Saurajen:

Court notes of Evidence
5th March 1971

Been in the banking business 7 years. Before I came to Singapore I had been working in other branches of the defendant bank as Asst. Manager.

Defendant's evidence
Patrick Louis Wintrebert
Examination (continued)
Cross-examination

Yes I have brought the bank's file relating to this matter.

10 On 6th May, 1968 the plaintiff wrote to the Bank but the passport was not attached to the letter. The passport was not sent to the bank, it was brought by Balwant Singh. He went with the letter, probably he tendered the letter with the passport but I don't remember. I can remember the passport was rejected. I rejected the idea of giving the passport to the bank, I rejected the offer. I rejected it in writing, I put a note on
20 the letter. I did communicate verbally to Balwant Singh that I rejected the offer.

I have the photostat copy of the letter of the 6th May and on this copy my note rejecting appears. My note is not dated. (Counsel saw the letter).

(SS: Events of 9th July 1968).

30 I remember telephoning Balwant Singh on 9th July 1968 sometime in the afternoon. Yes I informed him that the Letter of Credit had been negotiated, we had received the documents. I did not ask him, if he had signed the certificate. Balwant Singh did not tell me that he had not signed the certificate. Balwant Singh said only one thing on the telephone, he would call at the bank and see the documents.

It may have been $\frac{1}{2}$ to $\frac{1}{4}$ hour later that he came to the bank. He came after my phone call as he did very often.

I did not have the impression that he hurried to the bank.

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
5th March 1971

Defendant's
evidence
Patrick Louis
Wintrebert
Cross-
examination
(continued)

Yes if everything was in order there was no need for him to call at the bank that afternoon. He said to me on the telephone that he would go to the bank and see the documents. He did not mention to me over the telephone that he had not signed the certificate.

I asked him to come and see us to solve this matter.

Q. To solve what matter?

A. The payment.

10

Balwant Singh mentioned to us that he would remit the full amount of the money as soon as the documents arrived.

I showed him the documents, on seeing the documents he said he did not sign the certificate, had he signed it it would have been the managing director of Gian Singh & Co. who signed.

Yes in short he said it was a case of forgery.

Yes this was said in the presence of Cronier the Manager.

20

Balwant Singh did not say that as it was a forgery we should see that the reimbursing bank did not make payment to the negotiating bank.

Of course not, when Balwant Singh said it was a forgery I did not accept it; I told Balwant Singh that that was irrelevant. Cronier did not agree that the signature on the certificate was a forgery.

I agree the plaintiff has been customers of my bank for many years. Yes during the years there had been many letters to the bank signed by Balwant Singh. When Balwant Singh said it was a forgery no attempt was made to compare the signatures of Balwant Singh with the signature on the certificate. Looking at the signature on certificate we thought it was his. To my mind there was no possibility of a forgery. Yes that was the attitude of Cronier as well. I do not think that Cronier conceded that it might be a forgery. Yes when Balwant Singh maintained it was

30

40

10 a forgery Cronier conceded that there was a possibility that it was a forgery. There was no evidence of forgery. How could we investigate the possibility of forgery? Yes it was wise for the bank to look into the matter and see if it was a forgery or not. I agree at that stage the reimbursing bank in New York had not yet made settlement with the negotiating bank in Taiwan. Yes if it had been a forgery it was open to us to instruct the New York bank not to make payment to the Taiwan bank. The Taiwan Bank had sent the documents to us and asked us to reimburse them in New York.

Yes Balwant Singh asked us to protect his interest, he asked us not to pay.

Yes Balwant Singh pointed to us that the certificate was executed by Gian Singh & Co. Ltd., yes that was another reason for his asking us not to pay the negotiating bank.

20 We did not pay the negotiating bank. We first cabled the negotiating bank in Taiwan asking them how negotiation of documents had occurred and whether they could shortly describe their action and they replied Yes I have the cable, I produce a copy (Ex. D.4).

Yes in my cable I raised two matters, I raised it for Balwant Singh as he was our customer. Our contention was that the adding of the chop was irrelevant.

30 Of course not, I would not clear a cheque on the Company's account without the signature of the Co.

Yes on 10th July the plaintiff's solicitors wrote to us.

Q. If Gian Singh & Co. were to issue a cheque signed only by Balwant Singh would the cheque be cleared?

40 A. The cheque would be cleared but might be rejected by the drawee saying chop missing and we would contact Gian Singh & Co. for their chop.

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Defendant's evidence
Patrick Louis Wintrebert
Cross-examination
(continued)

Exhibit D.4

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Defendant's evidence Patrick Louis Wintrebert Cross-examination (continued)

Q. If Balwant Singh personally had an account and a cheque of Balwant Singh had a chop of Gian Singh on it similarly the cheque would not be cleared?

A. Balwant Singh would be phoned and he could clear the cheque saying it was his mistake.

The Taiwan bank replied to my cable. I have the reply, a copy (Ex. D.5).

Yes the Taiwan bank has been reimbursed.

My bank never refused to reimburse the Taiwan bank.

Yes on the face of the certificate the person Balwant Singh holds himself out as a director of Gian Singh & Co. I don't think the Taiwan Bank knew that Balwant Singh was a director of Gian Singh & Co. Why should they have known. I don't think it was important for the Taiwan bank to be told. It is of no importance that Balwant Singh was the director of Gian Singh & Co. In the case of the cheque we were the drawee bank. In this case the Taiwan bank was the negotiating bank.

Ex. D.5 10

20

Yes it is the bank's view that even if the signature is forged the bank is not liable.

Q. What do you consider is the obligation of the negotiating bank to ensure that the conditions of credit are being complied with?

A. Check the documents presented.

Q. You want to see that the entity who signed the certificate is the same entity who is obliged to sign under the condition of the Letter of Credit.

30

A. Yes.

Exhibit AB. 8

(SS: Letter of Credit AB. 8, Special Instruction).

I agree that the condition refers to an individual.

Q. When the application was made did you discuss the Uniform Customs with Balwant Singh?

A. We have 200 applications for Letters of Credit every day and it is not possible for us to discuss with each applicant. I did not discuss the Uniform Customs with Balwant Singh.

10 printed form of the bank. Yes the bank is relying
Ex. on Art. 9 of D.1
D.1

20 Yes the bank inquired into the nature of the business transaction of the plaintiff in this case as the plaintiff are textile merchants. At first we refused to deal with it. Yes it was subsequently explained that the purpose was for the plaintiff to earn a commission. Yes the bank was told that the plaintiff would be put in funds before the Letter of Credit was negotiated in
30 Taiwan. It was mentioned to me by Balwant Singh. Yes he told me once the plaintiff's account with our bank was placed in funds to the amount of the credit the bank would no longer have any further interest in the credit. I don't agree the bank would cease to have further interest.

I agree if the bank had been put in funds to the full value of the Letter of Credit then there would be no reason for the bank to reject any application of the opener to delete the special
30 condition.

Q. Balwant Singh told the bank "The plaintiff Co. will put the bank in funds then it would not be necessary for me to go to Taiwan. If I cannot go to Taiwan personally then I will apply for deletion of the special condition."

A. No, he did not say that.

40 Not true Balwant Singh during the negotiation said to me several times that it was necessary for him to go to Taiwan. He never told me anything about a 3rd person presenting his passport in Taiwan. We never discussed this specific question.

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Defendant's evidence Patrick Louis Wintrebert Cross-examination (continued)

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
5th March 1971

Defendant's
evidence
Patrick Louis
Wintrebert
Examination
(continued)

Balwant Singh showed us the contract between plaintiff and Watten Trading Co. and he took it back. He did not leave it with me for a few days; he handed it to me but I did not read it and gave it back to him. That was the occasion when he first came to talk about the Letter of Credit and I refused.

I do not know if Cronier asked for a copy of the agreement.

- Adjourned to 2.15 -

Sgd. F. A. Chua.

10

D.W.1 - o.h.f.s. s (in English):

XXd. by SS. (Contd.)

I don't remember if I asked for a copy of the contract between plaintiff and Watten Trading Co. Balwant Singh brought it along with him to the bank. I did not want to see it, we were only dealing with Balwant Singh as a customer. Yes the bank was not concerned with the soundness of the transaction between plaintiff and Watten Trading Co. 20 There was a warning by the bank regarding this transaction in that we told Balwant Singh that he was a textile merchant and not a ship merchant. We told him that ship transaction was very difficult and we were not conversant with it.

I did not ask for a copy of the Watten Trading Co. contract. Not true that at my request the plaintiff deposited a copy of the contract.

RXd. (Nil).

Sgd. F. A. Chua.

30

- Case for the defendant -

Defendant's
Counsel's
closing speech

Godwin: Issues are clear (1) was the signature of Balwant Singh on D.2 a forgery: (2) if not did the signature comply with the conditions of the credit having regard to the rubber stamp that was used.

The burden of proof on plaintiff to prove the forgery, heavy burden. Phipson on Evidence 11th

Ed. para. 122 "(a) Generally

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
5th March 1971

Defendant's
Counsel's
closing speech
(continued)
Exhibit D.3

Exhibit AB.18

Ex.
D.2

How has the plaintiff sought to prove the forgery? They have put Balwant Singh in the box and got him to say it is a forgery. That is sum total of the evidence in support of the allegation. Statement of an interested party whose evidence was highly unsatisfactory in all respects. There is no handwriting expert called, no witness who said "I am familiar with signature of Balwant Singh and in my opinion the signature on D.2 is a forgery." and no specimen of his signature admitted by him as genuine has been put in evidence. The appearance of signature in D.3 in my submission is very much like the signature on AB.18. There is no case of an obvious glaring forgery even if there was one. Even if there were it is not conclusive as a man can disguise his own signature which a handwriting expert could detect which has been done in other cases.

20

The use of the plaintiff's letter head on D.2 has not been explained. I therefore submit there is no evidence on which the Court can hold that the burden of proof has been discharged.

Exhibit D.2

2nd ground relied on by plaintiff that the signature of Balwant is not signature of Balwant Singh, assuming that it was not forged, but it is the signature of the plaintiff Co. because of the use of the rubber stamp.

30

AB. 9 special instruction, "signed by" not "produced by" or "issued by". Quite clear what that calls for, a certificate bearing the signature of Balwant Singh the holder of Malaysian Passport E.13276. It contains nothing to indicate a restriction on the capacity in which Balwant Singh signs nor does it contain anything whereby Balwant Singh himself had to present his passport in Taiwan.

Exhibit AB. 9

40

It does not cease to be Balwant Singh's signature because of the rubber stamp which appears around it. No words "for and on behalf of Gian Singh & Co. Ltd." or "per pro" or anything like that appears. Even if it did it would still be Balwant Singh's signature. To suggest it ceases to be his signature within the meaning of the credit because of the rubber stamp becomes in my

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
5th March 1971

Defendant's
Counsel's
closing speech
(continued)

Exhibit D.1.

Exhibit D.1.

Exhibit D.1.

Exhibit AB. 25

submission even more astonishing when one looks at paras. 1 and 2 and the typewritten words "I, Balwant Singh", "I".

Assuming, without conceding, that the rubber stamp somehow converts the signature of Balwant Singh into signature of the plaintiff Co. then I submit that the plaintiff cannot rely on the point and they are estopped from doing so.

Dealing with Balwant Singh's evidence: Unsatisfactory witness. Where his evidence differs from evidence of D.W. 1 and from the documentary evidence, the evidence of Balwant Singh should be rejected. Balwant Singh did not want to admit D.1 applied to his Co., in cross-examination he was asked what he thought clause 6 of the application was there for, he said he thought D.1 only governed relations between the two banks and the beneficiary. That was at the time he signed the application. In re-examination he said he only saw D.1, on Wednesday in Court. His evidence as to how he got involved in this transaction is extraordinary. Mystery of Peter Chew, forged passport not solved. His evidence as to request to delete the countersignature provision and Balwant Singh' evidence D.W.1 said he would send specimen signature to Taiwan duly authenticated by the bank - he said this would not have happened if his signature had been sent to Taiwan and he thought bank's failure to do so was a vital element in facilitating the fraud. When he was asked why early the next morning in the letter AB. 25 he made no mention of this vital point the best he could do after some hesitation was to say his mind was troubled and he did not appreciate the implication of the letter. His mind appears to be troubled up to 21st September when the letters to the immigration authorities were written. First we heard of this specimen signature is when he gave evidence. 10 20 30

The plaintiff found itself in position that it had lost US. \$45,000 and it is trying its best to make defendant bear that loss. 40

As to the rubber stamp, and on the assumption that signature is not a forgery, plaintiffs are estopped from taking this point. Estoppel pleaded in para. 5 of Defence in these terms (reads).

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Defendant's Counsel's closing speech (continued)

10 Plaintiff applicant to this credit and it was the drawee under the credit and eventually it was plaintiff who had to pay in the ordinary course of business. Plaintiff therefore by submitting a certificate in that form represented that it the drawee regarded that certificate as complying with the requirement of the credit and the defendant and defendant's agent did act on reliance of that certificate and did pay the money under the credit. How can plaintiff now say it was not signed by Balwant Singh but signed by Gian Singh & Co. Ltd.?

Central Newbury Car Auctions Ltd. v. Unity Finance Ltd. (1956) 3 All E.R. 905; 909 F - G "Seeing that here decided cases."

Spencer Bower Estoppel by Representation, 2nd Ed. p. 86 para 96; p. 89 para. 99.

20 If signature is a forgery I cannot say there had been representation by plaintiff. But assuming the genuineness of the signature then this would be a classic example of estoppel.

Consequences of forgery, if plaintiff should have succeeded in proving forgery, would, in my submission, be these:

Davis on Law Relating to Commercial Letters of Credit p. 146 3rd Ed. "A question documents."

30 Where the holder of a genuine draft and plaintiff does not say this draft is not genuine, tenders it to the negotiating bank accompanied by forged documents, the duty of the bank is to exercise care in the examination of the documents and if on such examination he is satisfied as to their genuineness he may pay the draft and debit the buyer or the drawee.

Paget on Banking 7th Ed. 643 "Forged documents But payment in good faith credit." That is common law position.

Here we have Uniform Customs D.1 made a term of the Contract.

Exhibit D.1

40 Woods v. Thiedemann - 158 E.R. 973, 978 "We are all of opinion board"; 979 "I am of the same opinion 980"

In the High Court of Singapore

Basse & Selve v. Bank of Australasia, 90 L.T. 618; 620 l.c. "What was the mandate

No. 4

Court notes of Evidence 5th March 1971

Defendant's Counsel's closing speech (continued)

Our transaction - we know by clause 6 that credit is subject to D.1. But plaintiff says he never read it and bank did not discuss it and the first time he saw it was last Wednesday and he thought it controlled somebody else not him. My learned friend said look at Paget pp. 613 and 614. Paget deliberately left out D.1 so D.1 cannot bind the plaintiff. Paget was leading to Letter of Credit and not to the application. Matter is set out clearly in Chitty on Specific Contract 23rd Ed. paras. 430, 431 clearly D.1 governed the contract between the plaintiff and the defendant.

Ex. D.1

Ex. D.1 10

Ex. D.1

Exhibit D.1

D.1 p.6 (a); Articles 7 and 8; Article 9 "genuineness", "falsification".

Exhibit AB. 32

AB. 32 2nd para. - offer and acceptance on the application.

In the result unless it can be shown that the Taiwan bank failed to use reasonable care to examine the documents to ascertain on their face they appeared to be in accordance with the credit, as to which I submit there is no evidence at all, and even if signature is a forgery the plaintiff cannot recover by reason of D.1 and by reason of the common law referred to.

20

Exhibit D.1.

1964 case cited by my learned friend refers to description of goods and cannot be relied on in a case like ours - rubber stamp over signature of Balwant Singh.

30

Plaintiff's Counsel's Reply

S.S.: Court should see how the parties behave. It is clear from the evidence that plaintiff became a victim of a fraud, the perpetration of which would not have been possible if the defendant or its agent had ensured that the condition of credit had been complied with. (Outlines background to the transaction.) On face of it it may appear to be an unusual transaction but it should not be viewed out of context but look at the potential commission the plaintiff would earn. Looking at that light I submit there was nothing unusual at all in the transaction.

40

Ex.

D.1 Balwant Singh opened discussion with D.1 to open letter of credit. 3 factors foremost in mind of Balwant Singh: (1) defendant must first agree in principle to extend credit facilities to plaintiff; (2) the credit facilities must be sufficient to cover the requirements of the purchaser of the vessels and (3) an important aspect would be that sufficient safeguards must be provided for whereby not only the defendant would be protected but the plaintiff as well. It is with these safeguards that we are mainly concerned. Evidence of Balwant Singh consistent with these objections. I submit it was within contemplation of parties that Balwant Singh should go to Taiwan.

10

It is plaintiff's case that the passport of Balwant Singh was in fact forwarded under cover of letter. Without the passport Balwant Singh would not be able to go to Taiwan to submit the certificate.

20

I submit it was also contemplated between the parties that once bank had been put in funds Balwant Singh could go to Taiwan or apply to bank to delete the requirement of a certificate. This would bring conclusion of the contract without difficulty.

30

It is quite clear from evidence that some other person other than Balwant Singh presented a certificate in Taiwan on or about 28th June. This is borne out by the evidence of the Immigration Officer - that Balwant Singh could not have gone to Taiwan.

40

9th July is significant. Conduct of Balwant Singh testifies to his good faith. He went to the bank at the first opportunity. I submit Balwant Singh did say over the telephone that he did not submit the certificate. Balwant Singh went to the bank to solve matters. On seeing the certificate he immediately maintains it is a forgery. That is not denied by defendant. Balwant Singh followed it up by visiting his solicitors the very next day and his solicitors protested and said there was a forgery.

From the evidence of immigration officer it would appear that a man called Chew is involved in this matter. Cable AB. 31 supports the contention that Chew was involved. Chew is a criminal and he

In the High
Court of
Singapore

No. 4

Court notes
of Evidence
5th March 1971

Plaintiff's
Counsel's
Reply
(continued)

Exhibit AB.31

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Plaintiff's Counsel's Reply (continued)

perpetrated this fraud.

I submit the totality of the evidence clearly bears out the plaintiff's contention that there was a forgery of the signature. On the evidence there can only be one conclusion - the signature on certificate was forged. Once it is established certificate is false this case resolves itself into a simple issue. Court can clearly say no question of estoppel can arise and only issue Court will have to deal with is the effect of the forgery having regard to D.1

10 Ex. D.1

On D.1 my learned friend has cited a number of cases at common law. He said position at common law is reflected in Article 9. While that may be so, one has to bear in mind all the cases cited by my learned friend dealing with forgery simpliciter no chop in those cases.

Exhibit D.1

Exhibit D.1.

I submit (1) D.1 would not bind the relationship between plaintiff and defendant. (2) not in contemplation of parties that D.1 should bind them. (3) Even if D.1 applies Art. 9 cannot possibly absolve the defendant from liability, it would lead to monstrous results. Article 9 would then be used to overrule an entire line of cases which have been governing relationship between the opener and the issuing bank.

20

Rubber stamp with signature and signature alone - Chapman v. Smithurst (1909) 1 K.B. 927.

Alexander v. Sizer L.R. Ex. 102.

30

As a matter of law there is difference between Balwant Singh and Balwant Singh signing for Balwant Singh & Co.

Evidence of P.W. 3 - it quite shows in circumstances of this case the negotiating bank not entitled to negotiate the Letter of Credit.

Estoppel: It must be shown that the plaintiff sought to derive an improper benefit by improper conduct. That must be done by evidence. No evidence of improper behaviour on part of plaintiff much less improper benefit.

40

My learned friend said about Taiwan bank

using reasonable care. On evidence of P.W. 3 plaintiff should succeed.

The certificate contains the endorsement of the Co. They have failed to use reasonable care to ascertain it was in accordance with the credit.

1964 case would equally apply to a certificate and not only to description of goods.

- C. A. V. -

Sgd. F. A. Chua.

In the High Court of Singapore

No. 4

Court notes of Evidence 5th March 1971

Plaintiff's Counsel's Reply (continued)

10

No. 5

REASONS FOR JUDGMENT OF CHUA, J.

Reasons for Judgment of Chua, J. 11th March 1971

The plaintiff in this case is a firm of textile merchants and was the customer of the defendant and had a banking account at the defendant bank. The managing director of the plaintiff firm is Mr. Balwant Singh. The plaintiff's claim is for a declaration that the defendant has wrongfully debited the plaintiff's account with the sum of \$139,496.43 and that the said sum plus interest is owed by the defendant to the plaintiff.

20

The undisputed facts are shortly these. On or about the 24th April, 1968, the plaintiff applied to the defendant for the opening of an irrevocable Letter of Credit in favour of Thai Lung Ship Machine Manufactory of Keelung, Taiwan, for the sum of US \$45,000. The defendant duly opened an irrevocable Letter of Credit on the 24th April, 1968, upon the plaintiff's aforesaid application. The subject matter of the Letter of Credit was a fishing vessel. It was a specific condition of the Letter of Credit that a certificate signed by Balwant Singh, holder of Malaysian Passport No. E.13276, and countersigned by the defendant, certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail, would be produced to the defendant's agent in Taiwan as a condition precedent to the payment of the Letter of Credit.

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In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

On the 1st May, 1968, the plaintiff requested the defendant to delete the stipulation that the Certificate was to be countersigned by the defendant and to extend the validity of the Letter of Credit by a further month to the 22nd July and offered the passport of Balwant Singh to the defendant for safe-keeping. The defendant complied with the plaintiff's request and the Letter of Credit was duly amended and defendant's agent in Taiwan was informed. The defendant did not keep Balwant Singh's passport. 10

On the 9th July, 1968, Balwant Singh was informed on the telephone by the defendant that the Letter of Credit had been negotiated. Balwant Singh called at the bank that same day and on being shown the documents Balwant Singh said that he did not sign the Certificate (Ex. D.2).

The Certificate was typed on the letter-head of the plaintiff and was in this form:

" Reference to the Letter of Credit No.2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING NO. 6" Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood. 20

I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail. 30

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,

I, Balwant Singh,
Passport No. E-13276
issued at 11th Nov. 1964

GIAN SINGH & CO. LIMITED 40

Sgd. Balwant Singh
DIRECTOR. "

The defendant subsequently debited the plaintiff's account with \$139,496.43 being the equivalent of US. \$45,000.

Those are the undisputed facts.

10 Balwant Singh gave evidence and related how the plaintiff came to open the Letter of Credit. His evidence was to this effect. In April, 1968, one Lee Koh Poo came to the office with two male Chinese. He had known Lee Koh Poo, a land
 20 broker, for about one year with whom he had had land dealings. Lee Koh Poo told him that the three of them had ordered the construction of two new fishing vessels by Thai Lung Ship Machine Manufactory each costing U.S. \$45,000 and that they were unable to finance the construction of these vessels and they were seeking financial assistance. Lee Koh Poo asked if he would assist them to arrange for the plaintiff to establish a Letter of Credit through any bank and said that
 30 for this assistance a commission of \$5000 would be paid. Lee Koh Poo also said that the plaintiff would be placed in funds to the extent of the credit before the credit was negotiated. He told them that it was not possible for the plaintiff to open at one time a Letter of Credit for US. \$90,000 and it was proposed that the plaintiff arranged for a credit of US. \$45,000.

30 He then went to see Mr. Wintrebert, the Asst. Manager of the defendant bank, and discussed the matter and later a formal application for a Letter of Credit was submitted to the defendant by the plaintiff. The following day he went to the bank and Wintrebert took him to see Mr. Cronier, the Manager, who asked him if he would be going to Taiwan to identify himself to the defendant's agent with his passport and he replied that at the right time he would certainly be doing so. He also told Cronier that his understanding with
 40 Lee Koh Poo was that the plaintiff would be paid the full sum of the credit before the credit was negotiated and that the plaintiff would then pay it to the defendant and only then would the plaintiff request the bank to release the specific condition. The Letter of Credit was duly established.

He did not contemplate that the specific

In the High Court of Singapore

No. 5

Reasons for Judgment of Chua, J.
 11th March 1971
 (continued)

In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

condition could be complied with without his going to Taiwan to inspect the vessel and to identify himself to the defendant's agent and issue the necessary certificate so as to enable the bank to negotiate the credit. In fact that was the understanding he had with the defendant.

Early in May Lee Koh Poo came to see him. Lee Koh Poo said that he had been to Taiwan and that Messrs. Thai Lung would not accept the Letter of Credit so long as it was a condition that the certificate was to be countersigned by the defendant. Lee Koh Poo asked him to get the defendant to delete that condition. On the 6th May the plaintiff wrote to the defendant to that effect and offered his passport to the defendant for safe-keeping. He brought the letter to Wintrebert and handed over his passport. He handed his passport as a sign of good faith so that the defendant would be assured that he would not go to Taiwan and identify himself there and issue the certificate and thus enabling the Letter of Credit to be negotiated. His understanding with Lee Koh Poo was that the plaintiff would be paid the full sum of the credit before the credit was negotiated and when the plaintiff received the money it would be paid to the defendant and he would then ask the defendant to delete the specific condition and in that way the Letter of Credit could be negotiated in Taiwan and there was no need for him to go to Taiwan.

10

20

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He had a discussion with Wintrebert who said that the defendant would agree to the deletion and that a specimen of his signature (Balwant Singh's) would be taken and authenticated by an official of the bank and sent to the defendant's agent in Taiwan. His passport was returned to him. The Letter of Credit was duly amended and the validity of the credit was extended to the 22nd July. However, he was not asked for a specimen of his signature.

40

He heard no more of this matter until the 9th July when he received a phone call from Wintrebert at about 5 p.m. Wintrebert asked him if he was aware that the Letter of Credit had been negotiated in Taiwan. He replied that he most certainly was not aware since he did not issue a certificate and he had not gone to Taiwan to identify himself to the defendant's agent. Wintrebert said that he had better call at the bank right away.

He was at the bank within a matter of minutes where he was shown the documents. Immediately on sighting the documents he pointed out to Wintrebert and Cronier that the signature "Balwant Singh" on the Certificate was not his signature and that it was a forgery. The bank officials then brought in a number of documents on which his signature appeared and compared them with the signature on the Certificate. After comparing the signatures 10 Wintrebert and Cronier conceded that the signature on the Certificate could very well not be his but remonstrated and asked how was the defendant's agent to know what his exact signature was. To this he replied that if the defendant had sent his specimen signature to the defendant's agent, as they had said they would do, the forgery could not have been perpetrated. He then pointed out to them that the Certificate was a certificate of the 20 plaintiff, since the rubber stamp of the plaintiff appeared on the top of the forged signature, and that it was not a signature signed by Balwant Singh as required by the specific condition and that the Letter of Credit should not have been negotiated. He begged the two bank officials to cable the reimbursing bank in America to withhold reimbursement but they refused and he left the bank.

He then consulted the plaintiff's solicitors and correspondence passed between the plaintiff's 30 solicitors and the defendant's solicitors.

In response to a cable sent by the plaintiff to Messrs. Thai Lung the latter replied by cable, which was received by the plaintiff on the 13th July, to the effect that the passport of Balwant Singh was handed to them by a Mr. Chew holding Singapore Passport No. 16746 who arrived in Taipoh on the 29th June. On the same day the plaintiff wrote to Messrs. Thai Lung informing them that the 40 Certificate was a forgery and that a fraud had been perpetrated on the plaintiff and requested them to refund to the bank the amount which was paid to them but the money was never refunded.

He then made a report on the 22nd July, 1968, to the police and the plaintiff's solicitors placed the matter with the Controller of Immigration in September, 1968.

In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

He tried to contact Lee Koh Poo but without success. Subsequently by accident he met Lee Koh Poo who said that he knew nothing about the Letter of Credit having been negotiated. He asked Lee Koh Poo to bring the two male Chinese to his office the following day but Lee Koh Poo never turned up.

Inquiries were made about the vessel the subject of the Letter of Credit and it was found that it was not a newly built vessel but 14 years old. 10

Chua Seck Kang, the Dy. Asst. Controller of Immigration gave evidence and told the Court the result of his investigations. He took possession of Balwant Singh's passport No. 13276. It is a genuine passport and according to the passport the last overseas trip made by Balwant Singh was to India on the 10th March, 1967, and he left India on the 26th April, 1967, and arrived in Singapore the same day. The date of issue of Balwant Singh's passport was the 18th September, 1964. It is not possible for another passport issued on another day to bear the same number. 20

He investigated into Singapore Passport No. 16746. This was a passport issued on the 28th November, 1966, to one Chew Ghee Song of No. 3, Jalan Teliti. He was unable to contact this person for an interview and was informed that the subject had gone to Malaysia. A watch was kept for the subject. On the 11th March, 1970, the subject arrived in Singapore from Kuala Lumpur by air. He was then using a Restricted Passport which was retained by the Immigration Officer and he was told to report to the Immigration Office but he failed to turn up. On the 1st February, 1971, the police were making inquiries about the subject who had been arrested in Hong Kong on the 27th January, 1971, for theft. The police was asked as to the likely date when subject might leave Hong Kong for Singapore but so far no information has been forthcoming. The Singapore High Commissioner in Hong Kong was also asked to locate subject and get hold of his passport but so far there has been no result. 30 40

Wintrebert, who is now the Acting Manager of the defendant bank, gave evidence which was to

10 this effect. During the negotiations for the opening of the Letter of Credit Balwant Singh did not say that it would be necessary for Balwant Singh to go to Taiwan, nor did Balwant Singh say anything about a third person presenting his passport in Taiwan. There was no discussion of such matters and there was no understanding between the defendant and Balwant Singh that the latter would have to go personally to Taiwan and identify himself to the defendant's agent. But Balwant Singh did mention to him that the plaintiff would be put in funds before the Letter of Credit was negotiated.

On the 6th May when Balwant Singh came and handed the passport to him he refused to take it as it was not necessary for the bank to keep it to protect itself.

20 On the 9th July, 1968, he telephoned Balwant Singh and told him that the Letter of Credit had been negotiated and that the defendant had received the documents. He denied that he asked Balwant Singh if Balwant Singh had signed the Certificate. There is no truth in Balwant Singh's allegation that Balwant Singh told him that he did not sign the Certificate. It is true that he asked Balwant Singh to come to the bank and that was to talk about the repayment of the credit. As to the conversation which took place at the bank on the 9th July, Cronier did concede
30 that there was a possibility that the signature on the Certificate was a forgery but no attempt was made to compare the signature on the Certificate with the signature of Balwant Singh on letters which Balwant Singh had written to the defendant.

40 The defendant's agent had sent the documents to the defendant and asked the defendant to make reimbursement in New York. The defendant did not at first pay the agent but sent a cable asking the agent how the negotiations of the documents had taken place and the agent replied: "When negotiation we checked carefully the signature signed on certificate by Balwant Singh and found complying with presented Malaysian Passport E-13276."

I now come to deal with the evidence of

In the High Court of Singapore

No. 5

Reasons for Judgment of Chua, J.
11th March 1971
(continued)

In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

Balwant Singh. I find that he is a most unsatisfactory witness. In the application for credit (AB. 4) which was signed by Balwant Singh the applicant by Clause 6 agreed that, in consideration of the defendant issuing the credit, the credit was subject to Uniform Customs and Practice for Documentary Credits (1962) Revision I.C.C. Brochure No. 222 (Ex. D.1) (hereinafter referred to as U.C.P.). When Balwant Singh was cross-examined he did not want to admit that U.C.P. applied to him or the plaintiff and said that what he thought was that U.C.P. governed the relationship between the opening bank and the negotiating bank and it did not bind the applicant. In re-examination, however, he said that the first time he saw U.C.P. was on the first day of the hearing of this suit. Balwant Singh in evidence said that when he went to the bank in the afternoon of the 9th July he protested that the forgery could never have been perpetrated if the defendant had sent his specimen signature to Taiwan as Wintrebert had said the defendant would do. When he was asked in cross-examination why early the next morning the plaintiff's solicitors in their letter (AB. 25) made no mention of this vital point, he said that he thought that the letter was dictated by the solicitor in his presence and he was under the impression that that point was embodied in the letter but as his mind was disturbed at that time he might not have been able to get the full significance of the letter. This point was not mentioned by the plaintiff in any of the correspondence that are in the Agreed Bundle and the first time that the specimen signature was mentioned was in Court when Balwant Singh gave evidence.

As I have said I find Balwant Singh to be an unsatisfactory witness and where his evidence differs from the evidence of Wintrebert I reject his evidence.

The first question for my consideration is, "Is the signature of Balwant Singh on the Certificate (Ex. D.2) a forgery?"

The burden of proof is on the plaintiff to prove that the signature is a forgery. What then is the standard of proof required? A summary of this matter is to be found in Phipson on Evidence,

11th Edn. paras. 122 and 123. The accuracy of these passages is not in doubt. Paras. 122 and 123 read:

In the High Court of Singapore

No. 5

Reasons for Judgment of Chua, J.
11th March 1971
(continued)

10 " 122 (a) Generally. The standard of proof required in civil cases is generally expressed as proof on the balance of probabilities. "If the evidence is such that the tribunal can say 'we think it more probable than no,' the burden is discharged, but if the probabilities are equal it is not."

20 The degree of probability which must be established will vary from case to case. "The degree depends upon the subject matter. A civil court when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court even when considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion. Likewise a divorce court should require a degree of probability which is proportionate to the subject matter. "

30 " 123 (b) Proof of criminal offences in civil proceedings. The standard of proof required to prove a criminal offence in civil proceedings is no higher than the standard of proof ordinarily required in civil proceedings. However, "the more serious the allegation the higher the degree of probability that is required." "The gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. 40 The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. "

How has the plaintiff sought to prove that Balwant Singh's signature on the Certificate is a forgery? Only Balwant Singh was called to say

In the High Court of Singapore

No. 5

Reasons for Judgment of Chua, J. 11th March 1971 (continued)

that it is a forgery. No specimen of his signature admitted by him to be genuine has been put in evidence by the plaintiff. A signature of Balwant Singh appears in his Passport No. E 13276 (Ex.P.2) but to me the signature in the passport is like the signature on the Certificate. No handwriting expert has been called to say that the signature on the Certificate is a forgery. In fact no one who is familiar with Balwant Singh's signature has been called to say that the signature on the Certificate is a forgery. Evidence was adduced that Balwant Singh could not have gone to Taiwan but this does not prove that the signature on the Certificate is a forgery. Balwant Singh admitted that the Certificate is on the plaintiff's letter-head and he was not able to explain how this came about. So the sum total of the evidence adduced by the plaintiff is the statement of Balwant Singh in evidence that the signature on the Certificate is not his signature. The defendant has put in evidence the photostat copy of the application of the plaintiff for the credit (Ex.D.3). The signature of Balwant Singh appears on Ex. D.3. The appearance of the signature on the Certificate is to me much like the signature on Ex. D.3. There is, therefore, no evidence whatever on which I can find that the plaintiff's burden of proving forgery has been discharged.

The plaintiff submits that even if the signature of Balwant Singh on the Certificate is genuine the Certificate was given by the plaintiff and was not given by Balwant Singh as called for by the Letter of Credit. The argument of counsel for the plaintiff is this. The plaintiff, Gian Singh & Co. Ltd., is different from Balwant Singh the individual. The Letter of Credit calls for a certificate signed by the individual Balwant Singh and not a certificate signed by the plaintiff.

I have already set out the specific condition of the Letter of Credit. After studying it, it seems clear to me that it calls for a certificate bearing the signature of Balwant Singh the holder of Malaysian Passport No. E 13276. It contains nothing to indicate a restriction on the capacity in which Balwant Singh signs nor does it contain anything whereby Balwant Singh himself had to present his passport in Taiwan. When one studies the Certificate one sees that the opening words of

the second para. are: "I, Balwant Singh certify", and the third paragraph begins "I, agreed", and the Certificate was signed "Yours faithfully, I, Balwant Singh."

In the High
Court of
Singapore

No. 5

Reasons for
Judgment of
Chua, J.
11th March 1971
(continued)

10 I am of the view that the signature does not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing round it or because the Certificate was typed on the plaintiff's letter-head.

20 It is submitted by the defendant that, assuming that the rubber stamp does convert the signature of Balwant Singh into the signature of the plaintiff Company, the plaintiff cannot rely on that point as it is estopped from doing so. The argument is that the plaintiff was the applicant for this credit and it was the drawee under the credit and so eventually it was the plaintiff who was obliged to pay in the ordinary course of business. Therefore, the plaintiff, by submitting the Certificate in that form and representing that it, as the drawee, regarded the Certificate as complying with the requirements of the credit and knowingly induced the defendant to act thereon to its detriment which the defendant did by honouring the Letter of Credit through its agent in Taiwan, cannot now say that the specific condition was not complied with and that the Certificate was not signed by Balwant Singh but 30 that it was signed by the plaintiff. Authorities were cited in support of this submission. It is not necessary for me to go into them. All I need say is that I agree with this submission.

40 If the plaintiff has succeeded in proving that the Certificate is a forgery what then would be the duty of the negotiating bank? The duty of the bank would be to exercise care in the examination of the document, and if, on such an examination, it is satisfied as to its genuineness it may pay the draft and debit the buyer with the amount of it. The bank does not warrant the genuineness or irregularity of the document. (See p.146, Davis, The Law Relating to Commercial Letters of Credit, 3rd Ed. p. 146; and Basse & Selve v. Bank of Australasia (1904) 90 L.T. 618). That is the common law position.

In the High Court of Singapore

No. 5

Reasons for Judgment of Chua, J. 11th March 1971 (continued)

In our present case it is clear, from the plaintiff's application for the credit and from the Letter of Credit that U.C.P. governed the contractual relationship between the plaintiff and the defendant.

Article 7 of U.C.P. provides:

" Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit." 10

Article 9 of U.C.P. provides:

" Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents

So the position is that unless the plaintiff can show that the defendant's agent failed to use reasonable care to examine the Certificate to ascertain that on its face the Certificate appeared to be in accordance with the condition of the credit and, even if the signature on the Certificate is a forgery, the plaintiff cannot recover by reason of the common law and of Article 7 and Article 9 of U.C.P. The plaintiff has failed to do this. 20

In the result the plaintiff's claim must be dismissed with costs.

Sd. F. A. Chua

JUDGE.

Dated this 11th day of March, 1971

30



FORMAL JUDGMENT

This 11th day of March, 1971

In the High
Court of
Singapore

No. 6

Formal
Judgment
22nd March 1971

10

THIS ACTION having been tried before the Honourable Mr. Justice Chua on the 3rd, 4th and 5th days of March, 1971 IT WAS ORDERED that this Action do stand adjourned for Judgment And Upon the same coming on for Judgment this day IT IS ADJUDGED that the Plaintiff's claim herein be dismissed AND IT IS FURTHER ORDERED that the costs of this Action as taxed between party and party be paid by the Plaintiff to the Defendants.

Entered this 22nd day of March, 1971 in Volume CXIII Page 71 at 12.00 noon.

Sd. Tan Kok Quan

ASST. REGISTRAR

No. 7

In the Court
of Appeal

No. 7

NOTICE OF APPEAL

Notice of Appeal
8th April 1971

20

TAKE NOTICE that the Appellants being dissatisfied with the decision of the Honourable Mr. Justice Chua given at Singapore on the 11th day of March, 1971, appeal to the Court of Appeal against the whole of the said decision.

Dated the 8th day of April, 1971

Sd. Drew & Napier

Solicitors for the Appellants.

To

The Registrar, Supreme Court.

The Respondents, and to its Solicitors,
Messrs. Donaldson & Burkinshaw.

The address for service of the Appellants is the office of Messrs. Drew & Napier of Nos. 30-35, Chartered Bank Chambers, Battery Road, Singapore.

In the Court
of Appeal

No. 8

PETITION OF APPEAL

No. 8

Petition of
Appeal
15th May 1971

To

The Honourable the Judges of the Court of
Appeal.

The Petition of the
abovenamed Appellants

Showeth as follows:

1. The appeal arises from a claim by the Appellants for a declaration that the Respondents have wrongfully debited the Appellants' account with the sum of ₹139,496.43 and that the said sum and interest thereon at 8½ per centum per annum from the 16th day of July, 1968, is owed by the Respondents to the Appellants. 10
2. By Judgment dated the 11th day of March, 1971, Judgment was given in favour of the Respondents whereby it was adjudged that the Appellants' claim be dismissed with costs.
3. Your Petitioners are dissatisfied with the said Judgment on the following grounds: 20
 1. That the learned Judge erred in preferring the evidence of Patrick Louis Wintrebert to that of Balwant Singh.
 2. That the learned Judge erred in finding that the only evidence supporting the Appellants' allegation of forgery was the testimony of Balwant Singh.
 3. That the finding of the learned Judge that the certificate was not a forgery was against the weight of evidence and was wrong. 30
 4. That the learned Judge was wrong in law in holding that the certificate was in accordance with the terms of the letter of credit.

5. That the learned Judge was wrong in law in holding that the Appellants were estopped from contending that the certificate was not in accordance with the terms of the letter of credit.

In the Court
of Appeal

No. 8

Petition of
Appeal
15th May 1971
(continued)

10

6. That the learned Judge was wrong in law in holding that the burden of proving that the negotiating bank had failed to exercise due care in the negotiation of the letter of credit lay upon the Appellants.

7. That the finding of the learned Judge that a lack of due care on the part of the negotiating bank in the negotiation of the letter of credit had not been established was against the weight of evidence and was wrong.

20

8. That the learned Judge erred in that he should have held that the Respondents ought not to have reimbursed the negotiating bank.

9. That the Judgment of the learned Judge was wrong and ought to be reversed or alternatively a new trial should be ordered.

30

4. Your Petitioners pray that such Judgment may be reversed and that Judgment may be entered in the abovementioned action for the Plaintiffs for the declaration prayed for, or that a new trial be heard and costs of the said action to be taxed.

Dated the 15th day of May, 1971.

Sd. Drew & Napier

Solicitors for the Appellants.

In the Court
of Appeal

No. 9

JUDGMENT OF THE COURT OF APPEAL

No. 9

Judgment of
the Court of
Appeal
11th February
1972

JUDGMENT OF WEE CHONG JIN, C.J.

Coram: Wee Chong Jin, C.J.
Tan Ah Tah, J.
Choor Singh, J.

Wee Chong Jin
C.J.

The facts relevant for the determination of this appeal have been fully set out in the judgment of Choor Singh J. but although I am in entire agreement with him that the trial judge ought, on all the evidence, to have held that the appellant had proved that the certificate in question was a forgery, I am unable to agree with him that the certificate produced to the negotiating bank in Taiwan was not in strict compliance with the condition stipulated in the Letter of Credit.

10

The condition is that there was to be produced to the negotiating bank in Taiwan "a certificate signed by Balwant Singh holder of Malaysian Passport E. 13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the Letter of Credit is not to be allowed negotiation". The certificate that was produced to the bank in Taiwan was typed on the letter-head of the appellant and was in the following terms:-

20

" Reference to the letter of credit No. 2693, U.S. dollars forty-five thousand, issued by the Bank of Banque de L'Indochine Singapore, covering shipment of one Fishing Boat 'M/V Wei Ching No. 6' Gross tonnage 80 tons, Main engine 5 cylinders diesel engine, Horsepower 220, built in wood.

30

I, Balwant Singh, holding the Malaysian Passport No. E.13276, certify that, the fishing boat had been inspected and built according to the specifications and in the fit and proper conditions to sail.

40

I, agreed Messrs. Thai Lung Ship Machine

Manufactory, No. 51, 3rd Chung Cheng Road,
Keelung, Taiwan to Negotiate the Letter of
Credit No. 2693 without any objection.

In the Court
of Appeal

No. 9

Yours faithfully,

I, Balwant Singh,
Passport No. E.13276
Issued at 11th Nov.1964

Judgment of
the Court of
Appeal
11th February
1972

GIAN SINGH & CO., LIMITED.

Sd. Balwant Singh

Wee Chong Jin
C.J.
(continued)

DIRECTOR.

"

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It is settled law that where a Letter of Credit calls for the production of specific documents, its requirements in that regard must be exactly and strictly complied with, there being no room for any degree of inexactitude. The negotiating bank in Taiwan must therefore conform strictly to the instructions which it receives.

20

In the present case, it is necessary in the first place to determine what the condition stipulated in the Letter of Credit means exactly and having done so to determine whether the certificate produced to the negotiating bank in Taiwan complied exactly and strictly with the exact meaning of the condition. In my judgment the condition laid down in the Letter of Credit means exactly that the bank could only allow negotiation of the Letter of Credit if there is produced to the bank a certificate certifying that the vessel described in the Letter of Credit has been built according to the specifications and is in fit and proper condition to sail and which certificate is signed by a person whose name is "Balwant Singh" and who holds a Malaysian Passport E.13276.

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The certificate that was produced to the bank contained everything that was required by the condition but in addition it was typed on a piece of paper which is a letter paper of the appellant and it had the words "Gian Singh & Co. Ltd." and the word "Director" stamped on it by means of a rubber stamp. By reason of the letter-head and the additional stamped words appearing in the certificate, it is contended by the appellant that

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Wee Chong Jin
C.J.
(continued)

the certificate was not in strict and exact compliance with the condition stipulated by the appellant in the Letter of Credit. It is submitted that the letter-head and the additional words rendered the certificate that was produced to the bank a certificate of Gian Singh & Co. Ltd. and not the certificate of Balwant Singh. In my judgment, this argument is fallacious because the requirement is not the production of a certificate of Balwant Singh but the production of "a certificate signed by Balwant Singh" (the underlining is mine). Looking at the certificate that was produced to the bank there can be no doubt at all that to the question "Is this certificate signed by Balwant Singh?" the answer must be in the affirmative. It seems to me that had the condition stipulated in the Letter of Credit required "a certificate signed by Balwant Singh in his personal capacity" there would be much force in the contention put forward on behalf of the appellant or, had the condition required "a certificate of Balwant Singh", it would be difficult, having regard to the authorities referred to in the judgment of Choor Singh J. to hold that the certificate produced to the bank complied strictly with the condition in the Letter of Credit.

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In my opinion the condition stipulated in the Letter of Credit authorises the bank to allow negotiation if there is produced to the bank the requisite certificate signed by a person whose name is "Balwant Singh", and who is the holder of Malaysian Passport E.13276. The condition, on its proper construction, does not and is clearly not intended to mean that the only acceptable and valid certificate is a certificate signed by Balwant Singh, holder of Malaysian Passport E.13276 in his personal capacity and in no other capacity. In other words, it is the identity of the person who is to certify which is of importance and this requirement must be strictly adhered to.

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In my judgment the certificate that was produced complied exactly and strictly with the condition stipulated in the Letter of Credit and the bank conformed strictly to the instructions it received. Accordingly I am of the opinion that the trial judge was right in dismissing the

appellant's claim and I would dismiss the appeal with costs.

Sd. WEE CHONG JIN

CHIEF JUSTICE,

SINGAPORE.

JUDGMENT OF TAN AH TAH, J.

Coram: Wee Chong Jin, C.J.
Tan Ah Tah, J.
Choor Singh, J.

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Wee Chong Jin
C.J.
(continued)

10 In this appeal which concerns, inter alia, the
signature on a certificate which was produced to
the defendant bank's agent in Taiwan in connection
with a letter of credit, it is contended by counsel
for the plaintiff company that the signature which
purported to be that of Balwant Singh was a forgery
and that the trial judge erred in finding that the
signature was not a forgery. It is abundantly
clear from the surrounding circumstances that a
fraud was perpetrated on the plaintiff company and
20 that Balwant Singh was an innocent party in the
transaction. In my view, the finding of the trial
judge that the signature was not a forgery was
against the weight of evidence. I have reached
the conclusion that the plaintiff company has
proved that the signature on the certificate was a
forgery.

Tan Ah Tah J.

30 However, the fact that the signature on the
certificate was not the genuine signature of
Balwant Singh does not avail the plaintiff company
as in the circumstances of this case the defendant
bank's agent in Taiwan i.e. the paying bank was in
no position to be aware of the forgery.

The crucial question to be decided in this
appeal is whether the certificate which was
tendered to the paying bank complied with the
terms of the letter of credit.

40 One of the special conditions contained in the
letter of credit was that there was to be produced
to the paying bank in Taiwan "a certificate signed
by Balwant Singh holder of Malaysian Passport

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Tan Ah Tah J.
(continued)

E.13276 certifying that the vessel had been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the Letter of Credit is not to be allowed negotiation."

The certificate which was duly produced to the paying bank in Taiwan was typed on the letter-head of the plaintiff company and was in this form:-

" Reference to the Letter of Credit No. 2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING NO. 6" Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood.

10

I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail.

20

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,

I, Balwant Singh,
Passport No. E-13276
issued at 11th Nov.1964

GIAN SINGH & CO., LIMITED

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Sgd. Balwant Singh

DIRECTOR.

"

The name "Gian Singh & Co., Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp. The signature "Balwant Singh" was in writing.

In the judgment of Choor Singh, J. a number of cases are referred to in which it has been laid down that the law requires strict and exact compliance with the stipulated conditions in a letter of credit. It is contended by counsel for

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10 the plaintiff company that the certificate does not comply with the special condition in this case in that the certificate although bearing the signature "Balwant Singh" should be regarded in law as the certificate of Gian Singh & Co., Ltd. and not that of Balwant Singh. In view of this argument put forward by counsel for the plaintiff company, it is necessary to remind oneself that the stipulated condition requires a certificate signed by "Balwant Singh holder of Malaysian Passport E.13276." The reference to the passport number means that the certificate is to be signed by that particular person named Balwant Singh who is the holder of Malaysian Passport E.13276 and not any other person whose name happens to be Balwant Singh.

20 When the certificate and passport were produced to the paying bank in Taiwan it would have been clear and obvious, in the view of the officers of that bank, that the certificate had been signed by Balwant Singh holder of Malaysian Passport E.13276. In my opinion, the fact that the name "Gian Singh & Co., Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp does not lead to the conclusion that the certificate was not signed by Balwant Singh holder of Malaysian Passport E.13276. It follows that there has been strict and exact compliance with the special condition contained in the letter of credit.

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I would accordingly dismiss the appeal with costs.

Sd. TAN AH TAH

JUDGE.

Singapore, 11th February, 1972.

JUDGMENT OF CHOOR SINGH J.

Coram: Wee C.J.
Tan Ah Tah J.
Choor Singh J.

This appeal concerns the tender of documents by a beneficiary under a Letter of Credit and the

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Tan Ah Tah J.
(continued)

Choor Singh J.

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

main point in issue before the trial judge was whether or not a stipulated document, on the face of it, conformed to the instructions given for the opening of the credit.

The facts are these. The plaintiff company requested the defendant bank to open an irrevocable Letter of Credit in favour of Thai Lung Ship Machine Manufactory of Taiwan for a sum of U.S. \$45,000/-. The credit was required to meet the purchase price of a fishing vessel to be constructed by the beneficiary. It was a specific condition of the Letter of Credit that a certificate signed by Balwant Singh, holder of Malaysian Passport No. E.13276 and countersigned by the defendant bank, certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail must be produced to the defendant's agent in Taiwan before payment could be made under the Letter of Credit. Later at the insistence of the beneficiary the plaintiff requested the defendant to delete the stipulation that the certificate was to be countersigned by the defendant. This was done by the defendant and the defendant's agent in Taiwan was informed of it. The Letter of Credit was negotiated in due course and the defendant debited the plaintiff's account with the sum of \$139,496.13 being the equivalent of U.S. \$45,000/-. The plaintiff commenced this action, claiming a declaration that the defendant had wrongfully debited the plaintiff's account with the said sum and that the said sum was due and owing by the defendant to the plaintiff.

Before the High Court, the plaintiff's case was that the stipulated certificate produced to the defendant's agent in Taiwan was not signed by Balwant Singh. This contention was based on two grounds, first, that the purported signature of Balwant Singh was a forgery and secondly, that the said signature was the signature of Gian Singh & Co., Ltd. and not of the individual Balwant Singh as required by the terms of the Letter of Credit. The trial judge found for the defendant on both grounds. He held that the signature was not a forgery and that the signature "did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing around it or because the certificate was typed on the plaintiff's letter-head."

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In my view the trial judge's finding on the issue of forgery was clearly against the weight of evidence. First, there was the evidence of Balwant Singh who maintained that the signature was a forgery and his evidence was the only primary evidence on this issue. Secondly there was conclusive evidence before the court that the passport of Balwant Singh produced to the defendant's agent in Taiwan together with the certificate in question was a forged passport. Thirdly, the certificate and the forged passport were produced by a person of known criminal character who was wanted by the Singapore Immigration Authorities. Furthermore the certificate was supposed to be in connection with a newly constructed vessel but the evidence shows that the vessel sold by the beneficiary was in fact 14 years old. The surrounding circumstances and all the known and undisputed facts indicate that a fraud was perpetrated on the plaintiff to which Balwant Singh could not have been a party and that the defrauder, who undoubtedly used a forged passport, also utilised a forged certificate. In my opinion the plaintiff successfully proved that the certificate in question was a forgery but that fact alone is not of much assistance to the plaintiff because the paying bank i.e. the defendant's agent in Taiwan, had no knowledge of the forgery and it was entitled to assume that the certificate was genuine when there was nothing on the face of it to indicate anything to the contrary.

The main issue before the trial court was, as in this appeal, whether the certificate tendered was in accord with the terms of the Letter of Credit. It is therefore necessary to examine the law relating to the imposition and compliance therewith of specific conditions in a Letter of Credit.

The right of a customer to impose terms or special conditions and to have them complied with precisely by the bank establishing the credit was explained by Goddard L.J. (as he then was) in Rayner & Co., Ltd. v. Hambros Bank Ltd. (1942) 2 All E.R. 694 at page 703:-

" There are three people concerned where a banker's credit is in question: there is

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

the person who requests the bank to establish the credit, there is the bank who establishes it, and there is the beneficiary who has the opportunity of drawing on the credit. The person who requests the bank to establish the credit can impose what terms he likes ... The bank, if it accepts the mandate to open the credit, must do exactly what its customer requires it to do If the bank wants to be reimbursed by the customer, it must show that it has performed its mandate. "

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It is settled law that where a Letter of Credit calls for the production of a specific document, its requirements in that regard must be "strictly" and "exactly" complied with. In Equitable Trust Company of New York v. Dawson Partners Ltd., 27 LL.L.R.49, Viscount Sumner said at page 52:-

"..... It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima facie they were right in refusing to take them"

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And Rowlett J. was of the same view in South Africa Reserve Bank v. M. Samuel & Co. Ltd., 39 LL.L.R.87, where he observed, at page 93:-

"..... It is, of course, abundantly clear that the plaintiff bank must fulfil with perfect literalness and accuracy the terms of the letter of credit; it will not do to

say, as has been pointed out many, many times - Sir John Simon reminded me of one of the many passages - that they did something which was just as good; but that does not mean that, when one is considering whether such and such a document, or such and such an operation, is or is not within the meaning of the letter of credit, one cannot consider whether a restriction which is suggested is not entirely devoid of commercial importance. He never meant to rule that out. One has always to look at it sensibly; but when one has discovered what exactly the letter of credit means, then I think the person acting under it is bound to act under it quite literally

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

Strict compliance by a bank with the instructions was emphasised again by Devlin J. in Midland Bank Ltd. v. Seymour (1955) 2 LL.L.R. 147, at page 151:-

"..... There is, of course, no doubt that the bank has to comply strictly with the instructions that it is given by its customer. It is not for the bank to reason why. It is not for it to say: "This, that or the other does not seem to us very much to matter." It is not for it to say: "What is on the bill of lading is just as good as what is in the letter of credit and means substantially the same thing." All that is well established by authority. The bank must conform strictly to the instructions which it receives. "

There is further emphasis at page 153:-

"..... In my judgment, no principle is better established that when a banker or anyone else is given instructions or a mandate of this sort, they must be given to him with reasonable clearness. The banker is obliged to act upon them precisely. He may act at his peril if he disobeys them or does not conform with them. "

Similarly, in English, Scottish and Australian Bank Ltd. v. Bank of South Africa (1922) LL.L.R. 21 Bailhache J. said:

"..... It is elementary to say that a

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened. "

This doctrine is enunciated in many American cases as well. In Lamborn v. Lake Shore Banking & Trust Co., Smith J. said:

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" A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become available, and, if he does not, and the bank refuses to honour his draft, he has no cause of action against the bank. "

The cases show that the doctrine of strict compliance with the terms of the letter of credit is rigidly enforced by the courts. In Equitable Trust Co. of New York v. Dawson Partners Ltd. (supra), it was held that a certificate by an expert was not sufficient where one by "experts" was required. In Rayner v. Hambros Bank Ltd. (supra) the credit called for documents covering a shipment of Coromandel groundnuts; the bill of lading tendered evidenced a shipment of machine-shelled groundnut kernels. Hambros Bank Ltd. refused to pay and their attitude was upheld by the Court of Appeal although it was established that anyone in the trade would have known that the two descriptions meant the same thing. The court declined to accept that this made any difference. In Bank Melli Iran v. Barclays Bank (1951) T.L.R. 1057, McNair J. held that documents evidencing a shipment of "100 new, good, Chevrolet trucks" was not a good tender under a credit calling for "new" trucks. In Overseas Union Bank Ltd. v. Chua Teng Hwee, (1964) M.L.J. 165, the court held that there was no strict or exact compliance with the terms of the letter of credit which required an inspection certificate evidencing shipment of seaweed (tongusa) because the certificate submitted was only of seaweed with the qualifying word "tongusa" missing. It was argued for the defendant that the omission

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of the word "tongusa" was of no consequence as "tongusa" was the Japanese word for seaweed. The court rejected this argument, holding that it was quite irrelevant to consider what the word "tongusa" meant and that the buyers were entitled to get the stipulated document certifying that the goods were in fact seaweed (tongusa) whatever "tongusa" may mean. In Donald H. Scott & Co. Ltd. v. Barclays Bank Ltd. (1923) 2 K.B. 1, a credit called for a full set of bills of lading and the tender of two out of a set of three was held to be a bad tender.

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

The decisions show that the first characteristic feature of the irrevocable credit is its independence of the contract of sale and of the contract between the banker and the buyer. The second important feature is the duty of strict compliance. Only a perfect tender may be safely accepted by the banker.

Furthermore it has been held in Equitable Trust Co. of New York v. Dawson Partners Ltd. (supra) and in English Scottish and Australian Bank Ltd. v. Bank of South Africa, (1920) 13 LL.L.R. 21, that a banker is not entitled to disregard, and has no discretion to deviate from, the instructions of his customer. Even the rule, that de minimis non curat lex does not apply to documentary credits. In Moralice (London) Ltd. v. E.D. & F. Man, (1954) 2 Lloyd's Rep., 526, a documentary credit covered a shipment of 500 metric tons of sugar, packed in heavy single bags, of 100 kilogrammes each. The quantity actually shipped was 300 kilogrammes short of the 500 tons. One of the questions which the court had to determine was whether documents evidencing the shipment of 499.7 tons were a good tender. McNair J said:

"..... I have been referred to no authority, and I have found none, in which this (de minimis) rule has ever been applied as between a buyer and his bank, or between a confirming bank and the beneficiary seller, and there are indeed quite definite indications that the rule should not be so applied."

This decision does not leave any room for discretion.

In the present case one of the special conditions of the Letter of Credit was that there was to be produced to the negotiating bank in

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

Taiwan "a certificate signed by Balwant Singh holder of Malaysian Passport E.13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the Letter of Credit is not to be allowed negotiation".

The certificate, produced to the defendant's agent in Taiwan, was typed on the letter-head of the plaintiff and was in this form:-

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" Reference to the letter of credit No. 2693, U.S. dollars forty-five thousand, issued by the Bank of Banque De L'Indochine Singapore, covering shipment of one Fishing Boat "M/V Wei Ching No. 6" Gross tonnage 80 tons, Main engine 5 cylinders diesel engine, Horsepower 220, built in wood.

I, Balwant Singh, holding the Malaysian Passport No.E.13276, certify that, the fishing boat had been inspected and built according to the specifications and in the fit and proper conditions to sail.

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I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,

I, Balwant Singh

Passport No.E-13276

Issued at 11th Nov. 1964

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GIAN SINGH & CO., LIMITED

Sd. Balwant Singh

DIRECTOR.

"

The words "Gian Singh & Co., Ltd." and the word "Director" were stamped on the certificate by means of a rubber stamp. The signature "Balwant Singh" was in writing.

The crucial point for decision in this appeal is whether or not the certificate produced complied strictly and exactly with the condition stipulated

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in the Letter of Credit. Counsel for the appellants submits that the certificate was not in accord with the terms of the Letter of Credit and his submission is based on two grounds. First, it is contended that there was no evidence before the paying bank in Taiwan that the certificate produced was in fact signed by Balwant Singh, holder of Malaysian Passport E.13276. Counsel submits that the only way in which the bank could have been satisfied on that point was for the holder of the specified Passport to appear before an officer of the bank and either sign the certificate in the presence of the officer or admit to the officer that the signature on the certificate was his. Counsel argued that the production of a signed certificate together with the specified passport was insufficient and that consequently there was no strict or exact compliance with the requirement that "a certificate signed by Balwant Singh holder of Malaysian Passport E.13276" should be produced before payment is made. In my opinion the production of the stipulated passport was sufficient assurance to the paying bank that the certificate produced was in fact signed by the holder of the passport produced to the bank together with the certificate. The bank took for purposes of record a photostat copy of the passport produced to it. They had no reason to believe that the passport or the certificate was a forgery and in the circumstances they were entitled to assume that the certificate was signed by the person whose passport was produced to them.

The second ground on which it is contended that the certificate produced was not the certificate required under the Letter of Credit relates to the signature on the certificate. It is submitted that the certificate was required to be signed by Balwant Singh whereas the certificate produced is signed by Gian Singh & Co., Ltd. Assuming that the signature "Balwant Singh" is not forged, the certificate is in one sense, i.e. physically, signed by Balwant Singh. And that is the sense in which the trial judge regarded the matter for he states in his judgment, that the signature "did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing around it or because the certificate was typed on the plaintiff's letter-head."

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

The substantial point for decision in this appeal, therefore, is whether the trial judge was right in his approach to the question whether or not the certificate was signed by Balwant Singh within the meaning of the Letter of Credit. The answer to this question depends, in my opinion, on the true meaning of the expression "a certificate to be signed by Balwant Singh holder of Malaysian Passport E.13276" in the context of the Letter of Credit. In my opinion the Letter of Credit, properly construed, required a certificate bearing the signature "Balwant Singh" without any other qualification. In other words the certificate was to be signed by Balwant Singh on his own behalf and not in any representative capacity. To put it in yet another way the certification was to be by a person named Balwant Singh holder of Malaysian Passport E.13276 and not by any other individual or company. If the certification was to be by Gian Singh & Co. Ltd. the Letter of Credit would have so stated. I have no doubt at all that the certificate was required to be signed by Balwant Singh in his personal capacity and not in any representative capacity.

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Counsel for the respondent submits that the Letter of Credit did not place any restrictions on the signature of Balwant Singh. Counsel goes so far as to suggest that even if Balwant Singh had signed the certificate as President of the Indian Chamber of Commerce with the rubber stamp of the Indian Chamber of Commerce above his signature and the word President below it, such a certificate would still comply with the requirements of the Letter of Credit. I am unable to accept this submission. The expression "a certificate signed by Balwant Singh" must be given its ordinary natural and sensible meaning and as stated earlier it means a certificate signed by the individual Balwant Singh in his personal capacity and not in any representative capacity.

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The signature on the certificate in question appears within the rubber stamp of Gian Singh & Co., Ltd. Such a signature is the very signature of the said company ordinarily used in its business. In my opinion the certificate prima facie appears and would be taken by any ordinary person to be signed by Gian Singh & Co., Ltd. The certificate in question, properly construed, is in the eyes of

the law, signed by Gian Singh & Co. Ltd. Anyone reading the certificate would at once say that it is signed by Gian Singh & Co. Ltd. However, it is submitted that nevertheless it is also signed by Balwant Singh and therefore it complies with the requirements of the Letter of Credit. I am unable to accept this submission. A certificate signed as already described and one bearing the signature "Balwant Singh" without any other qualification is not one and the same thing. The certification in the certificate is by Gian Singh & Co., Ltd. and not, as required, by Balwant Singh.

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

Was the paying bank entitled to ignore the rubber stamp of Gian Singh & Co., Ltd. which qualified the signature of Balwant Singh? The cases show that the omission or addition of a single qualifying word in a stipulated document can render the document unacceptable. The law requires strict, exact and precise compliance with the stipulated condition in a Letter of Credit. In my opinion, the paying bank in Taiwan was not entitled to ignore the rubber stamp of Gian Singh & Co. Ltd. which covered the signature "Balwant Singh". The said rubber stamp clearly indicated that the certificate was signed by Balwant Singh as director of Gian Singh & Co., Ltd. for and on behalf of Gian Singh & Co., Ltd. The essence of a documentary credit transaction is that documents must strictly comply with the specified requirements. Bankers are not in a good position to judge what is a fundamental deviation from their instructions and what is not. And when they see any deviation or any unusual feature it should serve as a "red flag" directing the bank to scrutinise the document with extra care. A deviation justifies rejection. If in doubt the bank should refer the matter to the buyer. In my opinion the paying bank in Taiwan should have either refused to accept the certificate or should have referred to matter to the defendant before negotiating the Letter of Credit. The paying bank was not entitled to ignore the rubber stamp of Gian Singh & Co., Ltd. which qualified the signature of Balwant Singh. The said rubber stamp was not entirely devoid of commercial importance. It should have been apparent to the paying bank that the signature on the certificate was, by virtue of the rubber stamp, the signature of Gian Singh & Co., Ltd. The paying bank acted at

In the Court
of Appeal

No. 9

Judgment of
the Court of
Appeal
11th February
1972

Choor Singh J.
(continued)

its own risk in accepting a certificate signed by
Gian Singh & Co., Ltd. when it was under a binding
obligation to obtain a certificate signed by
Balwant Singh on his own behalf.

Professor Ellinger in his book "Documentary
Letters of Credit" has at page 327 summarised the
position very clearly regarding the tender of a
certificate:-

" Often, to obtain an additional security,
the documentary credit stipulates for the
tender of a certificate. There are various
types of certificates

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The purpose of all these certificates
is to render the bank and buyer less
dependable on the honesty of the seller.
There is, therefore, a necessity for strict
compliance in the certificates or, to be
more accurate, each certificate must confirm
and certify that for which it is issued.
Moreover, since the identity or character
of the person or firm selected for certifi-
cation is of importance, it must be strictly
adhered to. "

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The underlining is mine but the authority for this
statement is the decision in Equitable Trust Co. of
New York v. Dawson Partners, Ltd. (1927) 27 LL.L.R.
49. In the present case the person selected for
certification was Balwant Singh. But the certifica-
tion in the certificate produced was by Gian Singh
& Co., Ltd. The character in which Balwant Singh
signed the certificate did not comply with the
requirements of the Letter of Credit because he
signed it in his representative capacity, to wit,
as Director of Gian Singh & Co., Ltd. for and on
behalf of Gian Singh & Co., Ltd. As the
certification was by Gian Singh & Co., Ltd. and
not as required by Balwant Singh, the certification
requirements of the Letter of Credit were not
strictly adhered to and the certificate was there-
fore not a perfect tender and should not have been
accepted. In holding that the certificate which
was produced complied exactly and strictly with
the condition stipulated in the Letter of Credit,
the trial judge in my opinion did not give suffic-
ient consideration to the case law on this subject
which requires a perfect tender. The certificate

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tendered could not by any means be said to be a perfect or faultless tender.

In the Court of Appeal

No. 9

Judgment of the Court of Appeal 11th February 1972

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The banker's right of reimbursement depends on his accepting from the seller a faultless tender. "There is really no question here of diligence or of negligence or of breach of a contract of employment to use reasonable care and skill," per Viscount Sumner in Equitable Trust Co. of New York's case. The banker must, in other words, strictly adhere to the terms of the application form. If he accepts faulty documents from the seller, he does so at his own risk.

Choor Singh J. (continued)

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In my judgment the certificate accepted by the bank was not the certificate called for under the Letter of Credit. The defendant failed to perform its mandate and is not entitled to be reimbursed by the plaintiff. The plaintiff who is the appellant in this appeal is therefore entitled to succeed in this action and to have judgment in terms of its claim. I would therefore allow the appeal.

Dated this 11th day of February, 1972.

Sgd. Choor Singh

J U D G E.

No.10

No.10

FORMAL ORDER OF COURT OF APPEAL

Formal order of the Court of Appeal 1st March 1972

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF JUSTICE, SINGAPORE

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THE HONOURABLE MR. JUSTICE TAN AH TAH, JUDGE, SUPREME COURT, SINGAPORE

THE HONOURABLE MR. JUSTICE CHOOR SINGH, JUDGE, SUPREME COURT, SINGAPORE.

IN OPEN COURT

This 11th day of February, 1972.

THIS APPEAL coming on for hearing on the 29th and 30th days of September 1971 and the 1st day of

In the Court
of Appeal

No.10

Formal order
of the Court
of Appeal
1st March 1972
(continued)

October 1971 in the presence of Mr. J. Grimberg of Counsel for the abovenamed Appellants and Mr. A.F. Godwin and Mr. R. Sharma of Counsel for the abovenamed Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the appeal do stand adjourned for judgment and upon the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that this Appeal be dismissed with costs AND IT IS FURTHER ORDERED that the sum of \$500.00 ledged in Court as security for the costs of this Appeal be paid out by the Accountant-General to the Respondents or their Solicitors, Messrs. Donaldson & Burkinshaw.

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GIVEN under my hand and the seal of the Court this 1st day of March, 1972.

Sd. Teo Keng Bian

ASST. REGISTRAR
SUPREME COURT
SINGAPORE.

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No.11

Order of the
Court of Appeal
granting the
Appellants and
Respondents
leave to appeal
to the Judicial
Committee of
the Privy
Council
15th May 1972

No. 11

ORDER OF COURT OF APPEAL GRANTING
LEAVE TO APPELLANTS AND RESPONDENTS
TO APPEAL TO JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

CORAM:

THE HONOURABLE THE CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE WINSLOW

THE HONOURABLE MR. JUSTICE TAN AH TAH

Upon Motion made unto the Court this day by Counsel for the Appellants and Counsel for the Respondents and upon reading the affidavits of Balwant Singh and Antony Purdon Godwin filed on the 25th and 27th days of April, 1972, and upon hearing Counsel as aforesaid IT IS ORDERED that the Appellants be at liberty to appeal to the Judicial Committee from the whole of the Judgment of the Court of Appeal dated the 11th day of February, 1972, AND IT IS ORDERED that the Respondents be at liberty to appeal to the Judicial Committee from that part of the Judgment

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of the Court of Appeal dated the 11th day of February, 1972, as reverses the finding of fact of the learned trial Judge that the signature appearing on the Certificate dated the 25th day of June, 1968 (Exhibits D.2 and AB.18) was a forgery AND IT IS ORDERED that the said appeals be consolidated and heard together on one printed Case on each side and on the same Record of Appeal AND IT IS ORDERED that the Record of Appeal be sent to the Registrar within two (2) months after the index is settled.

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Dated the 15th day of May, 1972

Sd. Teo Keng Bian

ASSISTANT REGISTRAR.

In the Court of Appeal

No.11

Order of the Court of Appeal granting the Appellants and the Respondents leave to appeal to the Judicial Committee of the Privy Council
15th May 1972
(continued)

PLAINTIFF'S EXHIBITS

Exhibit AB.4

APPLICATION FOR IRREVOCABLE LETTER OF CREDIT

To:

BANQUE DE L'INDOCHINE, L/C No. 2693

(INCORPORATED IN FRANCE WITH LIMITED LIABILITY)

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Plaintiff's Exhibits

Exhibit AB.4

Application for irrevocable letter of credit
22nd April 1968

Please open by air in favour of M/s. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Chen Chang Road, Keelung, Taiwan, China
an irrevocable documentary credit, without recourse against the drawer.

Valid until: 22/6/1968
for an amount of US \$45,000/- (U.S. dollars Forty-five thousand only) FOB.

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Available against presentation of draft at
sight drawn on me/us and marked "drawn under Banque De L'Indochine Singapore Credit No.".

Accompanied by the following documents to be surrendered to me/us against payment:

Plaintiff's Exhibits

Signed Commercial invoices in duplicate No. 5757

Received 22 APR 1968

Exhibit AB.4

Application for irrevocable letter of credit 22nd April 1968 (continued)

Certificate of origin: Taiwan Built Answered

AB.4 - AB. 5

SPECIAL NOTES:-

Exhibits AB.4 and AB.5 (D.3) 22nd April 1968

A specific condition of this L/C is that a Certificate signed by Balwant Singh holder of Malaysian Passport E-13276 and countersigned by Banque de L'Indochine Singapore certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a Certificate the L/C is not to be allowed "NEGOTIATION".

10

Covering shipment of: One Fishing Boat "M/V WEI CHING No.6" Gross Tonnage 80 Tons Main Engine 5 Cylinders Diesel Engine, Horsepower 220.

20

At the latest on 22/6/68 from Keelung Port to Singapore. Partial shipment is not allowed. Transshipment is not allowed. This credit is to be advised to the beneficiaries. All charges for our account.

In consideration of your issuing the above Credit I/we agree:

Exhibits AB.5 and AB.6 (D.3) 22nd April 1968

AB.5 - AB. 6

1. To accept and pay upon presentation all bills drawn in accordance with this Credit even should the goods not arrive or be refused landing through any act of War or restrictions imposed by Government Ordinance.
2. To hold BANQUE DE L'INDOCHINE harmless because of any damage to merchandise shipped or deficiency or defect therein or in the documents above described.
3. That the said documents or the merchandise

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covered thereby, and insurance shall be held by you as collateral security for due acceptance and payment of all or any drafts drawn under this Credit, with power to the pledgee to sell in case of non-acceptance or non-payment of the drafts to them attached, without notice at public or private sale and after deducting all expenses including commissions connected therewith, the net proceeds to be applied towards payment of the said drafts. The receipt by you of other collateral merchandise or cash, now in your hands, or hereafter deposited, shall not alter your power to sell the merchandise pledged and the proceeds may be applied on any indebtedness by me/us to the Bank due or

Plaintiff's
Exhibits

Exhibits AB.5
and AB.6 (D.3)
22nd April 1968
(continued)

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AB.6

to become due, and to pay you the amount of any deficiency on such sale or insurance together with all charges and expenses incidental thereto or otherwise.

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4. On no account shall any claim be made against the Bank after the draft is retired.
5. Margin, full payment and fixing of exchange may be claimed at any time.
6. This credit is subject to uniform customs and practice for documentary credits (1962) revision I.C.C. Brochure No. 222.

Date

Yours faithfully,

Air mailed

GIAN SINGH & CO., LIMITED,

30 Entry typed:

Sd. Balwant Singh

24 APR 1968

MANAGING DIRECTOR.

Stamp of
Singapore.

Plaintiff's
Exhibits

Exhibit AB.8

Letter of
Credit No. 2693
24th April 1968

AB. 8

LETTER OF CREDIT No. 2693

BANQUE DE L'INDOCHINE

Office Copy

Credit No. 2693
transmitted through: Singapore, 24th April, 1968

Bank of Taiwan,
Taipei.

In favour of:

M/s. Thai Lung Ship Machine
Manufactory,
No. 51, 3rd Chung Chen Road,
Keelung,
Taiwan.

10

US \$ 45,000.00

For account of: M/s Gian Singh & Co. Ltd.,
30-1 Raffles Place, Singapore.

We open in your favour an irrevocable documentary
credit without recourse against the drawer valid
until 22nd June, 1968 for an amount of US \$45,000.00
F.O.B.

Available against presentation of draft at sight
drawn on the order party and marked "drawn under
Banque de L'Indochine Singapore Credit No. 2693"
accompanied by the following documents:

20

_____ Signed commercial invoices
in duplicate

CONFIRMATION
OF OUR CABLE

_____ Certificate of origin: Taiwan
Built

dated 23 APR 1968

EXHIBITS AB.8 - AB. 9

Exhibits AB.8
and AB.9
24th April 1968

Covering shipment of: One Fishing Boat "M/V WEI
CHING No. 6" Gross Tonnage
80 Tons, Main Engine 5
Cylinders Diesel Engine,
Horsepower 220.

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Special Instructions

A specific condition of this L/C is that a Certificate signed by Balwant Singh holder of Malaysian Passport E-13276 and countersigned by Banque de L'Indochine Singapore certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a Certificate the L/C is not to be allowed "NEGOTIATION".

Plaintiff's
Exhibits

Exhibits AB.8
and AB.9
(continued)
24th April 1968

10 At the latest on 22nd June, 1968 from Keelung Port to Singapore.

Partial shipment not allowed. Transshipment not allowed.

All charges for account of drawees. Negotiation under this credit must be endorsed on the reverse.

We hereby agree with the drawers, endorsers and bona fide holders of drafts to honour their drafts upon presentation if drawn in compliance with the terms of this credit and accompanied by documents specified above.

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Exhibits AB.9
and AB.10
24th April 1968

Yours faithfully

BANQUE DE L'INDOCHINE

Sd. Illegible.

This credit is subject to uniform Customs and practice for documentary credits (1962 Revision) ICC Brochure No. 222.

INSTRUCTIONS TO TRANSMITTING BANK

Kindly forward us the documents by two different airmails and reimburse yourselves by:

30

_____ debiting our account with French American Banking Corp., New York

sending them your certificate that all the conditions of the credit have been complied with.

Plaintiff's
Exhibits

EXHIBIT AB.11

Exhibit AB.11

LETTER, Gian Singh & Co. Ltd. to
The Banque De L'Indochine

Letter, Gian
Singh & Co.Ltd.
to The Banque
De L'Indochine
6th May 1968

GIAN SINGH & CO. LTD.

IMPORTERS & EXPORTERS

Singapore 1, May 6, 1968

The Manager,
The Banque De L'Indochine,
Singapore.

No. 7159
Received 14 MAY 1968
Answered

10

Dear Sir,

Letter of Credit No. 2693 dated 24/4/68
for US \$45,000/-

Please remove the words:-

"and counter-signed by Banque De
L'Indochine Singapore"

as Beneficiaries have objected to same; and
instead of my own free will and accord; I hand you
my Malaysian Passport No. E-13276 for safe-keeping.

20

After receipt of the full amount of the above-
said L/C concerned; the Passport may kindly be
returned to me.

You will appreciate the above said L/C cannot
be drawn without my passport; and therefore all
interests as arranged are fully protected.

Please extend validity of the L/C by a further
one month and send both these amendments by cable.

Thanking you,

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ENTRY TYPED

15 MAY 1968

Yours very truly,
GIAN SINGH & CO. LIMITED

Sd. Balwant Singh
DIRECTOR

85.

EXHIBIT AB.14 (P.1)

Note, P.L. Wintrebert to Balwant Singh

Mr. Balwant Singh

53,000 instead of 67,500!!!

This is Manager's last word.

We will cable the amendment on the 17th May when sending back the cheque to you, that means when equivalent sum paid by clearing T/Rs during the next week.

10 If you accept this, cable your party in Taiwan that the amendment of the clause will be received on 17th or 18th of May.

WINTREBERT

EXHIBIT AB.15 (P.1)

Cheque No. ST 103073 drawn by S.Mehar Singh & Sons on United Commercial Bank Ltd. in favour of The Banque De L'Indochine

90-40-01

NO. ST 193073

17-5-1968

20

Stamp Duty Paid

THE UNITED COMMERCIAL BANK LTD.

Incorporated in India with limited liability
Raffles Place (Main Office)
SINGAPORE.

BAYAR ATAU PEMBAWA
PAY TO M/S. Banque De L'Indochine OR BEARER

RINGGIT FIFTY-THREE THOUSAND ONLY \$53,000.00
DOLLARS

30 A/C. No. 1227-6

S. MEHAR SINGH & SONS
Signed: Balwant Singh
Partner

Plaintiff's Exhibits

Exhibit AB.14 (P.1)
Note, P.L. Wintrebert to Balwant Singh (undated)

Exhibit AB.15 (P.1)
Cheque No. ST 103073 drawn by S.Mehar Singh & Sons on United Commercial Bank Ltd. in favour of The Banque De L'Indochine 17th May 1968

Plaintiff's Exhibits

Exhibit AB.18 (D.2)
Certificate purported to be signed by Balwant Singh
25th June 1968

EXHIBIT AB.18 (D.2)

Certificate purported to be signed by Balwant Singh

GIAN SINGH & CO. LTD.
IMPORTERS & EXPORTERS

SINGAPORE 1, 25th June, 1968

C E R T I F I C A T E

Reference to the Letter of Credit No. 2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING No. 6" Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood. 10

I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51 3rd Chung Cheng Road, Keelung, Taiwan, to Negotiate the Letter of Credit No. 2693 without any objection. 20

Yours faithfully,
I, Balwant Singh,
Passport No. E-13276
issued at 11th Nov. 1964
GIAN SINGH & CO. LIMITED,
Sd. Balwant Singh
DIRECTOR

Stamp of Thai Lung Ship Machine Manufactory, Keelung, Taiwan.

30

Sd. Chen Chung Chow

Plaintiff's Exhibits

EXHIBIT AB.20

Exhibit AB.20

Front of Draft for US\$45,000.00 drawn by Thai Lung Ship Machine Manufactory

Front of Draft for US\$45,000.00 drawn by Thai Lung Ship Machine Manufactory 28th June 1968

Draft No. TLS-0485

Taipei, Taiwan 28th June 1968

Exchange for US\$45,000.00

At sight of this FIRST of Exchange (Second of the same tenor and date being unpaid) Pay to the order of

THE FIRST COMMERCIAL BANK OF TAIWAN
The sum of US DOLLARS FORTY FIVE THOUSAND ONLY.

10

Value received

Drawn under Letter of Credit No. 2693 dated April 24, 1968

Issued by BANQUE DE L'INDOCHINE SINGAPORE.

To

M/S.Gian Singh & Co., Ltd.,
30-1, Raffles Place,
Singapore.

Stamp of

20

THAI LUNG SHIP MACHINE
MANUFACTORY,
KEELUNG TAIWAN.

Sd. Chen Chung Chow.

Exhibit AB.21

EXHIBIT AB.21

Reverse of draft for US\$45,000.00 drawn by Thai Lung Ship Machine Manufactory 28th June 1968

Reverse of Draft for US\$45,000.00 drawn by Thai Lung Ship Machine Manufactory

(ON REVERSE)

Pay to the order of
Banque De L'Indochine

30

THE FIRST COMMERCIAL BANK OF TAIWAN
HEAD OFFICE

Sd. Illegible.

Sd. Illegible

Authorised Signatures

Stamp of
Banque de L'Indochine
Singapore

Stamp of
Singapore

Stamp of
Taiwan

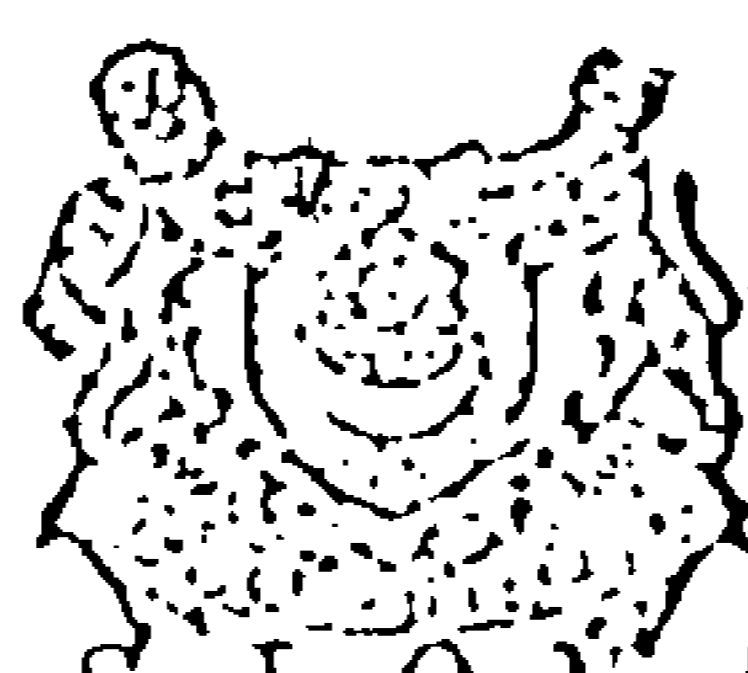
RECEIVED PAYMENT
BANQUE DE L'INDOCHINE
Sd. Illegible
Chief of Bills Dept.

Plaintiff's
Exhibits

Exhibit AB.21

Reverse of
Draft for
US\$45,000.00
drawn by Thai
Lung Ship
Machine
Manufactory
28th June 1968
(continued)

Provisional Certificate of Singapore Registry dated 6th July 1968 in respect of "Wei Ching No.6"



PROVISIONAL

CERTIFICATE OF SINGAPORE REGISTRY

ISSUED under the provisions of section 526 of the Merchant Shipping Ordinance (Chapter 207)

PARTICULARS OF SHIP Expiring on or before the 5th January, 1969. (See footnote below).

Plaintiffs Exhibits

Exhibit AB 22

Provisional Certificate of Singapore Registry 6th July 1968 in respect of "Wei Ching No.6"

Table with 4 columns: Official Number, Name of Ship, No. Year and Port of Registry, No. Year and Port of previous Registry. Includes details for "WEI CHING NO. 6" registered in 1968/Singapore, built in Taiwan.

Table titled 'PARTICULARS OF PROPELLING ENGINES, &C. (IF ANY), as supplied by Builders, Owners, or Engine Makers'. Details one Diesel Engine with 220 BHP.

Table titled 'PARTICULARS OF TONNAGE'. Shows Gross Tonnage of 80.00 and Register Tonnage.

NOTE 1 - The tonnage of the engine-room spaces below the upper deck is ... tons, and the tonnage of the total spaces framed in above the upper deck for propelling machinery and for light and air is ... tons

NOTE 2 - The undermentioned spaces above the upper deck are not included in the cubical content forming the ship's register tonnage.

NOTE 3 - The location and tonnage of the boatswain's store rooms are as follows:

I, the undersigned, Registrar of Singapore Ships, hereby certify that the Ship, the Description of which is prefixed to this my Certificate, has been duly surveyed, and that the above Description is obtained from the owner...

Table with 2 columns: Name, Residence, and Occupation of the Owner; Number of Sixty-fourth Shares. Owner: LEE KCH. POO of 30-B, Keong Saik Street, Singapore 2 - Merchant. Shares: Sixty four shares.

Dated at Singapore, the 6th day of JULY One thousand nine hundred and sixty eight (1968)



NOTE: A Certificate of Registry is not a document of Title. It does not necessarily contain notice of all changes of ownership, and in no case does it contain an official record of any mortgages affecting the ship.

NOTE: This provisional certificate of registry, issued under the provisions of section 526 of the Merchant Shipping Ordinance (Chapter 207) continues in force only until the 5th day of January, 1969, or until the ship completes her voyage from KEELUNG, Taiwan, to Singapore, whichever is the earlier date.

Registrar of Singapore Ships under

EXHIBIT AB.25

Letter, Messrs. Drew & Napier to Banque
De L'Indochine

Ref. JG/PP/178/68

10th July, 1968

Banque De L'Indochine,
Nanyang Building,
SINGAPORE.

Dear Sirs,

10 We have been consulted by Messrs. Gian Singh & Co. Ltd. and also by Mr. Balwant Singh, its Managing Director. By an application dated the 24th April, 1968, our Clients, Messrs. Gian Singh & Co. Ltd., requested the opening of a Letter of Credit in favour of Thai Lung Ship Machine Manufactory of Taiwan for the sum of US\$45,000/-.

20 The Letter of Credit called for the production, inter alia, of a certificate signed by our Client, Mr. Balwant Singh, to the effect that a vessel, the subject matter of the Credit, had been built according to specifications and was in a fit and proper condition to sail.

We are instructed that Mr. Balwant Singh received a telephone call from you yesterday, when he was told that the drawees had been paid the amount of the Letter of Credit. This news came as

a considerable surprise to Mr. Balwant Singh because he had not issued a certificate in the above or any terms.

30 He immediately called on you and was shown what purports to be a certificate given by Messrs. Gian Singh & Co. Ltd.

We understand that you conceded yesterday that the signature appearing on the so-called

Plaintiff's
Exhibits

Exhibit AB.25

Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
10th July 1968

Exhibits AB.25
and AB.26
Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
10th July 1968
(continued)

Plaintiff's
Exhibits

Exhibits AB.25
and AB.26
Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
10th July 1968
(continued)

certificate is not that of Mr. Balwant Singh and is a forgery, quite apart from the fact that the certificate purports to have been given by Messrs. Gian Singh & Co. Ltd., and not by Mr. Balwant Singh, as called for in the Credit.

Mr. Balwant Singh, on realising this, asked you to take immediate steps to ensure that your correspondent bank did not make payment to the drawees but was informed that this had already been done.

10

The purpose of this letter is to inform you that our Clients, Messrs. Gian Singh & Co. Ltd., do not, in the circumstances, consider themselves

Exhibits AB.26
and AB.27
10th July 1968
(continued)

liable to reimburse you with the amount of the Credit, and you will no doubt inform your correspondents that payment should not have been made on the strength of the documents presented. Even assuming that the signature on the so-called certificate was not a forgery, it is clear law that the terms of a Letter of Credit must be strictly complied with, and where documents are required to be submitted that they must be in the exact form stipulated. Here the certificate purports to have been given by Messrs. Gian Singh & Co. Ltd., and not by Mr. Balwant Singh, as called for in the Letter of Credit.

20

Yours faithfully,

Sd. Drew & Napier

c.c. Clients

EXHIBIT AB.28

Letter, Messrs. Donaldson & Burkinshaw
to Messrs. Drew & Napier

DONALDSON & BURKINSHAW

Our Ref: HMD/MIC/B
Your Ref. JG/PP/178/68

12th July, 1968

Messrs. Drew & Napier,
Singapore.

10 Dear Sirs,

Messrs. Gian Singh & Co. Ltd.

Your letter dated 10th July 1968 addressed to the Banque de l'Indochine has been handed to us for attention.

20 We are instructed that the contents of the first three paragraphs of your letter correctly describe the events that have taken place. However, at no time has any person in the Bank conceded that the signature appearing on the Certificate in question was a forgery. Mr. Balwant Singh on maintaining that it was not his signature was informed by the Manager of the Bank that in view of his statement it may be possible that it was a forgery.

30 We think the other point raised in the fourth paragraph of your letter is fallacious as it is quite apparent that the special instructions endorsed on the issuing Bank's Instructions to the negotiating Bank have been complied with, that is to say, the Certificate in question has (or purports to have) the signature of Mr. Balwant Singh, the holder of Malaysian Passport E 13276. We would in passing emphasize that the instructions of the issuing Bank are of course the instructions of Mr. Balwant Singh, the Managing Director of Messrs. Gian Singh & Co. Ltd. Moreover, as you may be aware, under the uniform Customs and Practice for documentary credits which are standardized and

Plaintiff's
Exhibits

Exhibit AB.28
Letter, Messrs.
Donaldson &
Burkinshaw to
Messrs. Drew &
Napier
12th July 1968

Exhibits AB.28
and AB.29
Letter, Messrs.
Donaldson &
Burkinshaw to
Messrs. Drew &
Napier
12th July 1968
(continued)

Plaintiff's
Exhibits

Exhibits AB.28
and AB.29
Letter, Messrs.
Donaldson &
Burkinshaw to
Messrs. Drew &
Napier
12th July 1968
(continued)

currently made use of by Banks throughout the world no bank accepts or assumes liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or for the general and/or particular conditions stipulated in the documents or super-imposed thereon.

We have further been given to understand that the instructions to the Bank to open Letters of Credit for the purchase of the vessel emanated from Mr. Balwant Singh himself, whose signature appears

10

Exhibit AB.29
Letter, Messrs.
Donaldson &
Burkinshaw to
Messrs. Drew &
Napier
12th July 1968
(continued)

in all correspondence and accompanying documents surrounding the purchase of this vessel. Moreover, your client's company has maintained an account with our clients for many years and Mr. Balwant Singh is the principal person who operates the account.

Whether or not Mr. Balwant Singh's signature on the document in question is a forgery quite clearly depends on the facts, but regardless of whether it is or is not a forgery the Bank are entitled to treat the whole transaction as being bona fide and in consequence your clients' account with the Bank will be duly debited with the equivalent of US\$45,000/-.

20

Yours faithfully,

Sd. Donaldson & Burkinshaw

c.c. Banque de L'Indochine,
Singapore.

30
30

95.

EXHIBIT AB.31 (P.3)

Cable, Thai Lung Ship Machine
Manufactory to Gian Singh & Co. Ltd.

M. VENDASALAM

12 JUL 68

Plaintiff's
Exhibits

Exhibit AB.31
(P.3)
Cable, Thai Lung
Ship Machine
Manufactory to
Gian Singh &
Co. Ltd.
13th July 1968

54352

NNNNZCZC TUP681 TAX397 NB1530/B1227

RSSE HL CNTA 042
TAIPEI LT 42 12 1513

Stamp of
TELECOMS EXTERNAL

C

13 JY 68

SINGAPORE.

10

LT

BAJAJ SINGAPORE

REFER CREDIT 2693 ISSUED BY INDOCHINE SINGAPORE
CERTIFICATE AND PASSPORT OF BALWANT SINGH WAS
HANDLED TO US BY MR CHEW HOLDING SINGAPORE PASSPORT
16746 ARRIVAL TAIPEI 29TH JUNE PLEASE CLARIFY AND
EXPLAIN FORGED CERTIFICATE INFORMED BY INDOCHINE
BANK THAILUNG

20

EXHIBIT AB.32

Letter, Messrs. Drew & Napier to
Banque De L'Indochine

Exhibit AB.32
Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
13th July 1968

Ref: JG/PP/178/68
Your Ref. 0665/IMP/JPA/1f

13th July, 1968

Banque De L'Indochine,
Nanyang Building,
SINGAPORE.

30

Dear Sir,

L/C No. 3145 for £3185. 0. Od.
favouring Albert Dahan, Casablanca

Plaintiff's
Exhibits

Exhibit AB.32
Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
13th July 1968
(continued)

We have been consulted by Messrs. Gian Singh & Co. Ltd. in connection with your letter to our Clients of the 12th July concerning the above Letter of Credit.

Our Clients applied to you in the usual way for this Letter of Credit and their application was accepted.

As a result of your acceptance a Letter of Credit was duly established, and our Clients' suppliers were informed accordingly.

10

We have advised our Clients that it is not open to you to keep the Letter of Credit "in abeyance for the time being", or at all.

Exhibits AB.32
and AB.33
Letter, Messrs.
Drew & Napier
to Banque De
L'Indochine
13th July 1968
(continued)

We hope you will reconsider the position, but you must appreciate that in the event of our Clients suffering any loss or expense as a result of your present attitude, they will have to look to you for reimbursement.

We understand that the reference to our Clients' limits having been exceeded implies that you intend debiting our Clients with the amount of the Letter of Credit referred to in our letter to you of the 10th July. As we have already told you this would under no circumstances be acceptable to our Clients.

20

We set out as follows the contents of a cable our Clients received from Messrs. Thai Lung Ship Machine Manufactory in response to a cable our Clients sent:-

" REFER CREDIT 2693 ISSUED BY INDOCHINE
SINGAPORE CERTIFICATE AND PASSPORT OF
BALWANT SINGH WAS HANDED TO US BY MR CHEW
HOLDING SINGAPORE PASSPORT 26746 ARRIVAL
TAIPEI 29TH JUNE PLEASE CLARIFY

30

AND EXPLAIN FORGED CERTIFICATE INFORMED
BY INDOCHINE BANK. "

Plaintiff's Exhibits

We enclose a copy of a letter we have written to Thai Lung Ship Machine Manufactory today, which speaks for itself.

Exhibit AB.33
Letter, Messrs. Drew & Napier to Banque De L'Indochine
13th July 1968
(continued)

Yours faithfully,
Sd. Drew & Napier

EXHIBIT AB. 43

10

Report No. A/19139/68 made by Balwant Singh at Central Police Station

Exhibit AB.43
Report No. A/19139/68 made by Balwant Singh at Central Police Station
22nd July 1968

For	SINGAPORE	Station of	Report	Printed
Police	POLICE	Origin	No.A/19139/68	serial
use	FORCE	Central		number
only		Police		
above	COPY OF A	Station	Station	
this	REPORT	Singapore	Diary No.	310363
line				
		Duplicate	Time and date when	
		passed for	this report was made	
20		action to:	1740 hrs a.m. 22.7.68	
			p.m.	

	Full name	Address
Particu-	Balwant Singh	30-1 Raffles Place
lars of		
Informant	Occupation Sex Age Race Lang-	N.R.I.C. No.
	Merchant Male 50 Singa- uage	1101275
		pore English

30

Brief details (including date, time and place at which the offence occurred). The report shall be signed by the informant.

I am the Managing Director of Gian Singh & Co. Ltd. of 30-1 Raffles Place Singapore 1. On 9th July 1968 at above 4 pm. I received a phone call from the Banque de L'Indochine. I had opened an L/C through this Bank No. 2931 in the sum of US\$45,000/-. One of the Salient points in this L/C was that a Certificate had to be signed by Balwant Singh holder of Passport E 13276 that the

Plaintiff's
Exhibits

Exhibits AB.43
and AB.44
Report No.
A/19139/68 made
by Balwant
Singh at
Central Police
Station
22nd July 1968
(continued)

Vessel in question had been built according to specifications; and was in a fit and proper condition to sail. In the absence of such a Certificate signed by me; the L/C was not to be negotiated against.

The Banque De L'Indochine told me on the phone; that the above L/C had been negotiated and wanted to know whether I had issued a Certificate to that effect. I was completely amazed and stunned by the news because I had not issued any such certificate or any Certificate at all. I told this to the Bank; they advised me to call to the Bank and I was there 5 minutes earlier.

10

I was shown certain Documents there; and what purported to the relevant Certificate. This Certificate had been signed by someone as Balwant Singh but was a FORGED SIGNATURE and no where resembled my signature; and the Bank verified this fact and conceded this as there were hundreds of documents signed by me which were in the Bank's possession. The said Certificate was apparently signed by Gian Singh & Co. Ltd. as a Rubber Stamp had been affixed of that Company and the person who had signed and forged my signature had signed as Director of the Company. On 13th July 1968 (Saturday) my Company received a cable from Thai Lung Ship Manufactory reading: "Refer Credit 2693 issued by Indochine Singapore Certificate and Passport of Balwant Singh was handed to us by Mr. Chew holding Singapore Passport 26746 arrival Taipei 29th June

20

30

Exhibits AB.44
and AB.45
Report No.
A/19139/68
made by Balwant
Singh at
Central Police
Station
22nd July 1968
(continued)

please clarify and explain forged Certificate informed by Indochine Bank."

I rushed the original of this cable to my Reference No. 310363

Lawyers M/S: Drew & Napier; to help me on this very serious and crucial matter.

From the cable received from TAIPEI it would appear that one Mr. Chew has a forged passport No. E13276 (because the original is still with me) a very serious offence; and he has handed the relevant Certificate purported to have been signed by me - but which is a complete forgery.

My lawyers advice to me has also been to make a complaint to the Police which I now do.

Signed: Balwant Singh

22.7.68

10

Plaintiff's Exhibits

Exhibits AB.44 and AB.45
Report No. A/19139/68
made by Balwant Singh at Central Police Station
22nd July 1968
(continued)

Signature of officer recording the report	Rank No.	Signature of interpreter (if any)
---	----------	-----------------------------------

Typed and checked by me	Certified true copy of a Report entered in a book kept under Section 114(5) of the Criminal Procedure Code.
-------------------------	---

Signature	Sd. Illegible Crime Clerk "A" Division Central Police Station Singapore (1)	Signature	Sd Illegible Officer-in-charge "A" Division Central Police Station Singapore (1).
-----------	---	-----------	---

Date	24/7/68	Date	24/7/68
------	---------	------	---------

Plaintiff's Exhibits

EXHIBIT AB.54

Exhibit AB.54
Letter, Messrs.
Drew & Napier to
Passport Officer
Immigration
Department
21st September
1968

Letter, Messrs. Drew & Napier to
Passport Officer, Immigration Department

Ref. JG/PP/178/68

21st September, 1968

The Passport Officer,
Immigration Department,
SINGAPORE.

Dear Sir,

We act for Mr. Balwant Singh of No. 82 Meyer Road, Singapore. 10

Our Client is the holder of a valid Singapore Passport No. E.13276.

In April this year our Client entered into a banking transaction with the Banque De L'Indochine. Specifically he applied to that bank for a Letter of Credit to cover the shipment of a fishing boat from Taiwan to Singapore, and it was a term of that Letter of Credit that the draft would not be negotiated otherwise than upon production of a certificate signed by our Client, Mr. Balwant Singh, who was described as "Holder of Malaysian Passport E.13276." 20

Apparently, someone called Peter Chew, whose Passport number is said to be 26746, (16746) called at the Correspondents of the bank in Taiwan, and presented a Passport purporting to be the Passport

Exhibits AB.54
and AB.55
Letter, Messrs.
Drew & Napier to
Passport Officer,
Immigration
Department
21st September
1968
(continued)

of Balwant Singh together with what purported to be the certificate called for under the Letter of Credit and signed by Mr. Balwant Singh.

In fact Mr. Balwant Singh's Passport was at all material time in Singapore and he never signed any such certificate. It would appear, therefore, that a forged Passport, purporting to be that of Mr. Balwant Singh, is in circulation. 30

Our Client considers that this is a matter that merits investigation and in fact made a report at the Central Police Station on the 22nd July last, on which report no action appears to have been taken.

10 We consider that this is a matter that should be brought to your attention for your action, and you may agree that a useful first step would be to require an explanation from the Peter Chew referred to above. Perhaps this is a matter upon which you should seek the advice of the Deputy Public Prosecutor.

If there is any assistance that our Client can give he would be only too ready to do so and he may be contacted at 82 Meyer Road, or at 30-1 Raffles Place, his home and office respectively, the telephone numbers of which are 441197 and 92440.

20 Incidentally, Mr. Balwant Singh's Passport to which we have referred above was issued in Singapore when Singapore was part of Malaysia.

Yours faithfully,

Sd. Drew & Napier

EXHIBIT AB.56

Letter, Messrs. Drew & Napier to
Controller of Immigration

Ref. JG/PP/178/68

21st September, 1968

30 The Controller of Immigration,
Immigration Department,
SINGAPORE.

Dear Sir,

We act for Mr. Balwant Singh of No. 82 Meyer Road, Singapore.

Our Client is the holder of a valid Singapore Passport No. E.13276.

Plaintiff's
Exhibits

Exhibits AB.54
and AB.55
Letter, Messrs.
Drew & Napier to
Passport Officer
Immigration
Department
21st September
1968
(continued)

Exhibit AB.56
Letter, Messrs.
Drew & Napier
to Controller
of Immigration
21st September
1968

Plaintiff's
Exhibits

Exhibit AB.56
Letter, Messrs.
Drew & Napier
to Controller
of Immigration
21st September
1968
(continued)

In April this year our Client entered into a banking transaction with the Banque De L'Indochine. Specifically he applied to that bank for a Letter of Credit to cover the shipment of a fishing boat from Taiwan to Singapore, and it was a term of that Letter of Credit that the draft would not be negotiated otherwise than upon production of a certificate signed by our client, Mr. Balwant Singh, who was described as "Holder of Malaysian Passport E.13276".

10

Apparently, someone called Peter Chew, whose Passport number is said to be 26746, (16746) called at the Correspondents of the bank in Taiwan, and

Exhibits AB.56
and AB.57
Letter, Messrs.
Drew & Napier
to Controller
of Immigration
21st September
1968
(continued)

presented a Passport purporting to be the Passport of Balwant Singh together with what purported to be the certificate called for under the Letter of Credit and signed by Mr. Balwant Singh.

In fact Mr. Balwant Singh's Passport was at all material time in Singapore and he never signed any such certificate. It would appear, therefore, that a forged Passport, purporting to be that of Mr. Balwant Singh, is in circulation.

20

Our Client considers that this is a matter that merits investigation and in fact made a report at the Central Police Station on the 22nd July last, on which report no action appears to have been taken.

We consider that this is a matter that should be brought to your attention for your action, and you may agree that a useful first step would be to require an explanation from the Peter Chew referred to above. Perhaps this is a matter upon which you should seek the advice of the Deputy Public Prosecutor.

30

If there is any assistance that our Client can give he would be only too ready to do so and he may be contacted at 82 Meyer Road, or at 30-1 Raffles Place, his home and office respectively, the telephone numbers of which are 441197 and 92440.

Incidentally, Mr. Balwant Singh's Passport to which we have referred above was issued in Singapore when Singapore was part of Malaysia.

Yours faithfully,

Sd. Drew & Napier

Plaintiff's Exhibits

Exhibit AB.57
Letter, Messrs.
Drew & Napier
to Controller
of Immigration
21st September
1968
(continued)

DEFENDANT'S EXHIBITS

EXHIBIT D.4

Cable, Banque De L'Indochine to
First Bank, Taipei

Defendant's Exhibits

Exhibit D.4
Cable, Banque
De L'Indochine
to First Bank
Taipei
10th July 1968

10 BANQUE DE L'INDOCHINE

C A B L E

1st COPY

Sent to FIRSTBANK TAIPEI
on 10 July 1968 1200 h

No. /

OUR No. 505

URGENT

FIRSTBANK

TAIPEI

YOUR BB14138 JULY 4TH AMERDOLS 45.000 OUR LC2693

20 FIRSTLY CERTIFICATE SIGNED BY GIAN SINGH ANDCOLTD

INSTEADOF BALWANT SINGH HOLDER OF MALAYSIAN

PASSPORT E13276 SECONDLY ACCOUNTEE CLAIMS

CERTIFICATE IS FORGED STOP PLEASE CONTACT

TAIWANBANK FOR IDENTIFICATION THIS CABLE

INDOCHINE

Sd. Illegible.

104.

EXHIBIT D.5

Defendant's Exhibits

Exhibit D.5
Cable, First Bank Taipei to Banque De L'Indochine
11th July 1968

Cable, First Bank Taipei to Banque De L'Indochine

BANQUE DE L'INDOCHINE

T E L E G R A M

COPY

RECEIVED from FIRSTBANK TAIPEI
on 11/11 July 1968 at 1320 hr

No. /

OUR No. 706

URGENT

10

RYT TENTH JULY

CREDIT 2693 OUR BB14138

WHEN NEGOTIATION WE CHECKED CAREFULLY THE
SIGNATURE SIGNED ON CERTIFICATE BY BALWANT SINGH
AND FOUND COMPLYING WITH PRESENTED MALAYSIAN
PASSPORT E-13276

STOP

WE ARE CONTACTING SHIPPER

STOP

PLEASE HOLD DOCUMENTS AND CLARIFY URGENTLY
CERTIFICATE IS FORGED

20

FIRSTBANK

