8

8 of 1975

No. 22 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM
THE COURT OF APPEAL IN SINGAPORE

BETWEEN

1. WAH TAT BANK LIMITED

2. OVERSEA-CHINESE BANKING CORPORATION LIMITED

(Plaintiffs) Appellants

- and -

CHAN CHENG KUM

(Defendant) Respondent

RECORD OF PROCEEDINGS

COWARD CHANCE,
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Solicitors for the Appellants

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Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL — No. 22 of 1973

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

B E T W E E N :-

1. WAH TAT BANK LIMITED

2. OVERSEA -CHINESE BANKING CORPORATION LIMITED

(Plaintiffs) Appellants

- and -

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(Defendant) Respondent

RECORD OF PROCEEDINGS

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No. 22 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N   A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

1. WAH TAT BANK LIMITED

2. OVERSEA -CHINESE BANKING CORPORATION LIMITED

(Plaintiffs) Appellants

- and -

CHAN CHENG KUM

(Defendant) Respondent

RECORD OF PROCEEDINGS

In the High Court of Singapore

No. 1

Writ of Summons 30th September 1961

No. 1

WRIT OF SUMMONS dated 30th September 1961

Suit No. 1284 of 1961

BETWEEN:

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

... Plaintiffs

And

10

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited

... Defendants

ELIZABETH II, BY THE GRACE OF GOD OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF HER OTHER REALMS AND TERRITORIES QUEEN HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH

In the High Court of Singapore

No. 1

Writ of Summons 30th September 1961 (continued)

TO: 1. Chan Cheng Kum
16 Winchester House
Singapore.

2. Hua Siang Steamship Company Limited,
16 Winchester House,
Singapore.

WE COMMAND YOU, that within Eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a Cause at the Suit of Wah Tat Bank Limited a company incorporated in Sarawak with limited liability and having its registered office in Sibu, Sarawak and Oversea-Chinese Banking Corporation Limited a company incorporated in Singapore with limited liability and having its registered office at China Building, Chulia Street, Singapore.

AND take notice that in default of your so doing, the 1st & 2nd Plaintiffs may proceed therein to judgment and execution.

WITNESS, The Honourable Sir Alan Edward Percival Rose, K.C.M.G. Chief Justice of the State of Singapore, the 30th day of September, 1961.

(Sd.) Allen & Gledhill

Solicitors for the 1st and 2nd Plaintiffs

The First and/or Second Plaintiffs claim delivery up of rubber and/or pepper delivered to the First Defendant and/or Second Defendant for carriage on board the First Defendant's Motor Vessels "Hua Heng" and "Hua Li" in May and June 1961 or the value thereof, and damages for breach of contract and/or duty and/or for wrongful detention and/or conversion in connection therewith.

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

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Singapore.

In the High Court of Singapore

No. 1

Writ of Summons 30th September 1961 (continued)

A Defendant appearing personally may, if he desires, enter his appearance, by post and the appropriate forms may be obtained by sending a Postal Order for $5.50 with an addressed envelope to the Registrar of the High Court at Singapore.

We accept service on behalf of the second defendant in this suit and we undertake to enter appearance in due course.

(Sd.) Laycock & Ong

10 Solicitors for the 2nd Defendant.

Dated 2nd October 1961

No. 2

Further Further Amended Statement of Claim December 1963

No. 2

FURTHER FURTHER AMENDED STATEMENT OF CLAIM dated December 1963

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

20 ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited

... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian

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3. Lee Teow Keng
4. Lee Peng Koon

... Third Parties

1. The First Plaintiffs are and were at all material times a bank having its head office at Sibu Sarawak and incorporated in accordance with the laws of Sarawak.

In the High Court of Singapore

No. 2

Further Further Amended Statement of Claim December 1963 (continued)

2. The Second Plaintiffs were at all material times acting as the agents of the First Plaintiffs.

3. The First Defendant is and was at all material times the owner of the motor vessels "Hua Heng" and "Hua Li".

4. Further or alternatively the Second Defendants were at all material times the charterers of the "Hua Heng" and "Hua Li" or alternatively persons who had booked space therein.

5. From time to time in the course of business and at the request of Tiang Seng Chan (Singapore) Limited (hereinafter called the Shippers) it was verbally agreed between the First Plaintiffs and the Shippers that the First Plaintiffs would and the First Plaintiffs did finance shipments of the goods of the Shippers for carriage to Singapore by negotiating against the Shippers' Bills of Exchange and/or notes in favour of the Second Plaintiffs and against "Mate's Receipts" on the condition that the goods were consigned to the Second Plaintiffs as agents for the First Plaintiffs. The said goods were thereupon to be be pledged or treated as having been pledged to the First Plaintiffs as security for the said financing by the First Plaintiffs of such shipments.

6. In pursuance of such an agreement the Shippers delivered to the First Defendants or alternatively the Second Defendants at Sibu 20 consignments of rubber and/or pepper for carriage on board the "Hua Heng" and the "Hua Li" to Singapore and delivery thereto to the Second Plaintiffs or their order, and there were issued by or on behalf of the First Defendant or alternatively the Second Defendants 20 receipts entitled "Mate's Receipt" which acknowledged receipt of the said consignments in apparent good order and condition and named the Second Plaintiffs as consignees. The Plaintiffs will refer to the said receipts as may be necessary for their full terms particulars and effects. Particulars of the said consignments and receipts are set out in the Schedule delivered herewith.

7. In further pursuance of the said agreement the First Plaintiffs paid to the Shippers various sums and the Shippers gave to the First Plaintiffs bills of exchange or Notes drawn on the head office

in Singapore of the Shippers and payable to the order of the Second Plaintiffs and the Shippers delivered the said receipts to the First Plaintiffs. Particulars of the said payments and bills of exchange or notes are set out in the said Schedule.

8. The First Plaintiffs forwarded the said bills of exchange or notes, together with the said receipts, to the Second Plaintiffs for collection. The Shippers and their head office at Singapore have failed and/or refused to honour and/or accept any of the said bills of exchange or notes and have failed and/or refused to pay the sums due thereunder or any sums.

8A. It is a custom of merchants and ships dealing and plying between Sarawak Ports and Singapore that goods are accepted for shipment without the issue of a bill of lading but against Mate's Receipt only which is regarded as a document of title and goods are only delivered against its production. All the "Mate's Receipts" issued by the First and/or Second Defendants to the Shippers were in fact issued by the First and/or Second Defendants having regard to and in cognisance of the custom above stated and without any bills of lading being requested or issued. Alternatively it was at all material times a custom of merchants and ships dealing and plying between Sarawak Ports and Singapore that Mate's Receipts were treated as documents of title and goods only delivered against their production to or to the order of the consignee named in such Mate's Receipts unless (in exceptional cases) bills of lading were requested and issued, in which event it was a custom as aforesaid only to issue such bills of lading against production and surrender of the corresponding Mate's Receipts.

9. In the premises the First and/or Second Plaintiffs are and were at all material times the owners and/or pledges and/or persons entitled to the immediate possession of the said consignments.

10. In breach of their duty as bailees and/or carriers the First and/or Second Defendants have failed and refused to deliver the said consignments to the First and/or Second Plaintiffs and have delivered the said consignments to or cause or permitted the same to come into the possession of some person or persons, whom neither of the

In the High Court of Singapore

No. 2

Further Further Amended Statement of Claim December 1963 (continued)

Plaintiffs are at present able to identify, without the authority of the Plaintiffs or either of them and without the production by such person or persons of the said receipts or alternatively have appropriated the said consignments to their own use.

11. Further or alternatively by letters dated 15th September 1961 the Second Plaintiffs on behalf of the First Plaintiffs and/or on their own behalf demanded from the First Defendant and the Second Defendants respectively delivery up of the said consignments but the First and/or Second Defendants have wrongfully refused and/or failed to deliver up the said consignments or any of them and have wrongfully detained the same.

12. By letter dated the 22nd day of September 1961 written on behalf of both Defendants by their Solicitors Messrs. Laycock & Ong it is alleged that the first Defendant is the owner of the said Motor Vessels "Hua Heng" and "Hua Li"; that he is in no way concerned with their operation and that it is the Second Defendants who operate the said Motor Vessels. It is further alleged that the goods were delivered strictly in accordance with the instructions of the Consignors and that the said goods are no longer in the possession of the Second Defendants.

13. Further or alternatively the First and/or Second Defendants by dealing with the said consignments and acting in relation thereto in the manner alleged in paragraph 10 hereof have wrongfully converted the same. Further or alternatively the First and Second Plaintiffs will rely upon the detention alleged in paragraph 11 hereof as evidence of such conversion.

14. By reason of the matters alleged in paragraphs 10 to 13 hereof the First and/or Second Plaintiffs have suffered damage in the sum of M$623,186.66 being the value of the said consignments as ~~set~~ out in the said Schedule.

And the First and/or Second Plaintiffs claim:

(1) Delivery up of the said consignments or M$623,186.66 their value;

(2) Damages;

(3) Interest.

Dated and Re-delivered this day of December 1963.

Sd.

Solicitors for the 1st & 2nd Plaintiffs

In the High Court of Singapore

No. 2

Further Further Amended Statement of Claim December 1963 (continued)

No. 3

Schedule referred to in paragraphs 6 and 7 of the Further Further Amended Statement of Claim 15th October 1963

No. 3

THE SCHEDULE REFERRED TO IN PARAGRAPHS 6 and 7 OF THE FURTHER FURTHER AMENDED STATEMENT OF CLAIM dated 15th October 1963

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Date	Vessel	Voyage	Mate's Receipt Number	Description of Goods
15.5.61	"Hua Li"	9/61	03782	250 bundles Rubber Dry R.S.S. No. 3 350 piculs
15.6.61	"Hua Li"	9/61	03781	100 bundles Milled Bark Scrap 70 - piculs
16.5.61	"Hua Li"	9/61	03786	190 bundles Rubber Dry RSS-3. 266 piculs.
16.5.61	"Hua Li"	9/61	03787	(6 bundles White (Pepper (8.40 piculs (9 bundles Black (Pepper (10.80 piculs
17.5.61	"Hua Li"	9/61	03791	190 bundles Rubber Dry R.S.S. No. 3 266 piculs
17.5.61	"Hua Li"	9/61	03795	(190 bundles Rubber (Dry RSS-3 (266 piculs (60 bundles Rubber (Dry RSS-3. (84 piculs

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In the High Court of Singapore

No. 3

Schedule referred to in paragraphs 6 and 7 of the Further Further Amended Statement of Claim 15th October 1963 (continued)

Date	Vessel	Voyage	Mate's Receipt Number	Description of Goods
19.5.61	"Hua Li"	9/61	0101	250 bundles Rubber Dry R.S.S. No. 3 350 piculs
6.6.61	"Hua Heng"	10/61	03879	270 bundles Rubber Dry R.S.S. No. 3 378 piculs
7.6.61	"Hua Heng"	10/61	03881	400 bundles Rubber Dry R.S.S. No. 3 560 piculs
12.6.61	"Hua Heng"	10/61	03893	500 bundles Rubber Dry R.S.S No. 3 700 piculs
12.6.61	"Hua Heng"	10/61	03894	370 bundles Rubber Dry .R.S.S. No. 3 518 piculs
12.6.61	"Hua Heng"	10/61	03887	70 bundles Rubber Dry R.S.S. No. 3 98 piculs
13.6.61	"Hua Heng"	10/61	2602	(200 bundles Rubber (Dry R.S.S. No. 3 (280 piculs (110 bundles Milled (Bark Scrap (77 piculs
20.6.61	"Hua Li"	11/61	0133	100 bundles Rubber Dry R.S.S. No. 3 140 piculs
20.6.61	"Hua Li"	11/61	0134	100 bundles Rubber Dry R.S.S. No. 3 140 piculs
20.6.61	"Hua Li"	11/61	0137	140 bundles Rubber Dry R.S.S. No. 3 196 piculs
20.6.61	"Hua Li"	11/61	0138	120 bundles Rubber Dry R.S.S. No. 3 168 piculs
22.6.61	"Hua Heng"	11/61	2607	100 bundles Milled Bark Scrap 70 piculs

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Date	Vessel	Voyage	Mate's Receipt Number	Description of Goods
28.6.61	"Hua Heng"	11/61	2619	160 bundles Rubber Dry R.S.S. No. 3 224 piculs
29.6.61	"Hua Heng"	11/61	2629	280 bundles Rubber Dry R.S.S. No. 3 392 piculs

In the High Court of Singapore

No. 3

Schedule referred to in paragraphs 6 and 7 of the Further Further Amended Statement of Claim 15th October 1963 (continued)

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PARTICULARS OF PAYMENTS AND BILLS OF EXCHANGE OR NOTES

Bill of Exchange/Note No.	Date	Payment
3758	19.5.61	$20,000.00
3768	19.5.61	$40,000.00
3769	19.5.61	$40,000.00
3770	19.5.61	$40,000.00
3771	19.5.61	$40,000.00
3777	19.5.61	$10,000.00
3814	13.6.61	$40,000.00
3815	13.6.61	$60,000.00
3816	13.6.61	$35,000.00
3817	13.6.61	$40,000.00
3818	13.6.61	$25,000.00
3819	13.6.61	$30,000.00
3820	13.6.61	$30,000.00
3821	13.6.61	$10,000.00
3833	20.6.61	$20,000.00
3834	20.6.61	$20,000.00
3835	20.6.61	$15,000.00
3836	29.6.61	$15,000.00
3837	29.6.61	$15,000.00
3838	29.6.61	$20,000.00
3839	29.6.61	$10,000.00
3853	29.6.61	$10,000.00
3854	29.6.61	$ 5,000.00
3856	29.6.61	$ 5,000.00
	Total	$595,000.00

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To: The First Defendant and/or his Solicitors

Messrs. Laycock & Ong,
Singapore.

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In the High Court of Singapore

No. 3

Schedule referred to in paragraphs 6 and 7 of the Further Further Amended Statement of Claim 15th October 1963 (continued)

To: The Second Defendants and/or their Solicitors

Messrs. Laycock & Ong,
Singapore.

To: The Third Parties and their Solicitors,

Messrs. Boswell, Hsieh & Lim,
Singapore.

Further Further Amended as underlined in purple ink pursuant to Order of Court dated the day of December 1963.

Dated this day of December 1963 10

Dy. Registrar.

Further Amended as underlined in green ink pursuant to Order of Court dated the 11th day of October 1963

Dated this 15th day of October 1963

(Sd.) T.C. Cheng

Dy. Registrar.

Amended as underlined in red ink pursuant to Order of Court dated the 11th day of May 1962.

Dated this 19th day of May 1963 20

(Sd.) T.C. Cheng

Dy. Registrar.

No. 4

FURTHER FURTHER AMENDED DEFENCE dated 4th November 1963

In the High Court of Singapore

No. 4

Further Further Amended Defence 4th November 1963

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

... Plaintiffs

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And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited

... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon

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... Third Parties

1. The Defendants admit Paragraph 1, 3, 4 and 12.

2. The Defendants have no knowledge of the matters alleged in Paragraph 2, 7 and 8 cf the Statement of Claim and put the Plaintiffs to proof thereof.

3. As to Paragraph 6 of the Statement of Claim the Defendants admit that Tiang Seng Chan (Singapore) Limited (hereinafter called "the Shippers") delivered to the Second Defendant at Sibu 20 consignments of rubber and/or pepper for carriage on board the "Hua Heng" and the "Hua Li" to Singapore.

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The Defendants have not nor ever have had knowledge of the alleged agreement referred to in the first line of Paragraph 6 of the Statement of Claim and do not admit that the deliveries of the said 20 consignments were in pursuance of any such agreement.

In the High Court of Singapore

No. 4

Further Further Amended Defence 4th November 1963 (continued)

The Defendants admit that the Second Defendant issue 20 receipts entitled "Mate's Receipts" which acknowledged receipt of the said consignments in apparent good order and condition and named the Second Plaintiffs as consignees. All the said "Mate's Receipts" were incapable of negotiation and bore a printed notice that they were not negotiable. ~~The Second Defendant are common carriers and all the Mate's Receipts referred to in the Statement of Claim were issued whilst the Second Defendants were acting as common carriers. All the consignments and shipments referred to in the Statement of Claim were received by the Second Defendants while acting as common carriers.~~

The goods the subject of Mate's Receipts numbered 03781, 03786 and 03795, as set out in the Schedule to the Amended Statement of Claim were not for delivery to the Second Plaintiff only but were for delivery to "Oversea-Chinese Banking Corporation Limited /Tiang Seng Chan (S) Limited."

3A. The person or persons on board the vessels "Hua Li" and "Hua Heng" who actually issued the Mate's Receipts referred to in the Amended Statement of Claim and the person or persons who delivered the goods referred to in the said Mate's Receipts at the Port of Singapore were (a) employed by the Second Defendant and not by the first Defendant and (b) had no authority to act on behalf of the First Defendant or to bind the First Defendant in any way.

4. The Defendants have no knowledge of the matters alleged in paragraph 5 of the Amended Statement of Claim and do not admit the same and put the Plaintiffs to proof thereof.

5. The Defendants deny that there is or was at any material time such a custom as is alleged in paragraph 8A of the Amended Statement of Claim. Even if the alleged custom exists or existed (which is denied) it was expressly excluded from the contract of carriage the subject of this action by reason of the fact that each and every Mate's Receipt relied on by the Plaintiffs bore on the face of it and them the words "Not Negotiable". The Defendants deny that all or any of the said Mate's Receipts were issued having regard to or in cognisance of the alleged (but denied) custom.

In the High Court of Singapore

No. 4

Further Further Amended Defence 4th November 1963 (continued)

A Mate's Receipt is never regarded as a document of title either by custom or otherwise. Even if such custom exists (which is again denied) it has never been applicable to the vessels of the Second Defendant plying between Sarawak Ports and Singapore. The Defendants at the trial of this action will object that evidence of the alleged custom is inadmissible.

~~Alternatively, if such alleged custom exists or~~
10 ~~existed at any relevant time (which is denied) then such custom is or was unreasonable uncertain and contrary to law.~~

6. All the said 20 consignments were received by the Second Defendant subject to the right of the shipper to alter its directions as to delivery of the said consignments. On each and every occasion that the 20 consignments were shipped the shippers did in fact alter their directions as to delivery. The shippers in respect of each of the twenty con-
20 signments directed the Second Defendants to deliver the goods comprised therein to the shippers themselves at the Port of Singapore and the Second Defendants duly complied with the said directions.

6A. Further or alternatively, on divers occasions during a period of several years prior to the shipment of the said consignments the first and/or second Defendants had carried goods by sea from Sibu to Singapore, which goods were shipped by the Shippers and in respect whereof Mate's Receipt in
30 the form of the Mate's Receipts hereinbefore mentioned were issued to the Shippers. The said Mate's Receipts recorded, in particular, that such goods were consigned to the second and/or first Plaintiffs. On arrival at Singapore the said goods were invariably delivered to the Shippers without prior production by the Shippers or anyone else of the Mate's Receipts relating thereto. The first and second Plaintiffs, while well knowing at all material times of this course of dealing, at no
40 time complained to the first or second Defendants, and at no time laid claim to the goods so delivered. In the premises the Plaintiffs impliedly authorised the Defendants to deliver goods shipped as aforesaid to the Shippers; alternatively in the premises the Plaintiffs held out the Shippers as their authorised agents to take delivery and the Defendants acted upon such holding out by delivering

In the High Court of Singapore

No. 4

Further Further Amended Defence 4th November 1963 (continued)

to the Shippers as set out in paragraph 6 hereof. In the premises the Defendants are under no liability to the Plaintiffs as alleged or at all, and the Plaintiffs are estopped from denying that the Shippers were authorised by them to take delivery of the consignments referred to in paragraph 6 hereof.

PARTICULARS

Particulars are in the Schedule annexed hereto.

7. The Second Defendants did not at any material time have any knowledge express or implied of any interest by the Plaintiffs or either of them in the said goods.

8. The Defendants deny that the First and/or the Second Plaintiffs were at any material time the owners and/or pledgees and/or persons entitled to the immediate possession of the said consignments.

9. The Second Defendant was in contractual relationship with the shippers and such contract was not assigned and was not capable of assignment. The Defendants owed no duty to any party other than the shippers.

10. The Defendants deny that they have committed any breach of duty either as carriers or bailees. They admit that the Second Defendants have refused to deliver the said consignments to the First or Second Plaintiffs and say that such refusal was in answer to a demand made long after the goods in such consignments had arrived at the Port of Singapore. No stop notice was ever received from the Plaintiffs or either of them. The Defendants say that the Second Defendants deliver the said consignments to the shippers in compliance with directions to that effect received from the shippers. Further or in the alternative the goods referred to in the three Mate's Receipts which named the consignees as "Oversea-Chinese Banking Corporation Limited/Tiang Seng Chan (S) Limited" were delivered to the consignees, namely, to Tiang Seng Chan (S) Limited.

11. The Defendants admit the receipt of the letters referred to in paragraph 11 of the Statement of Claim and admit that they have not delivered

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the said 20 consignments to the Plaintiffs but they deny they have wrongfully refused or failed to make such delivery or that they have wrongfully detained the said consignments.

12. The Defendants deny that they or either of them have wrongfully converted the said consignments or that they or either of them have detained the said consignments.

13. The Defendants deny that they or either of them are responsible for the damage which the Plaintiffs allege they have suffered. The Defendants do not admit that the Plaintiffs or either of them have in fact suffered the damage alleged in the Statement of Claim. The Defendants deny that the value of the said consignments was the sum of $595,000/-. The Defendants do not admit the descriptions of the goods as set out in the Schedule to the Statement of Claim are correct descriptions. The Defendants deny that the Plaintiffs are entitled to the relief claimed in the Statement of Claim or at all.

14. Save as is herein expressly admitted or denied the Defendants deny each and every the allegations contained in the Statement of Claim as though the same had been set out in detail and specifically denied.

Dated and re-delivered this 4th day of November 1963.

(Sd.) Laycock & Ong

Solicitors for the Defendants.

FURTHER FURTHER AMENDED as underlined in blue ink pursuant to Order of Court dated the 11th day of October 1953.

Dated this 4th day of November 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

In the High Court of Singapore

No. 5

Particulars delivered under Paragraph 6A of the Further Further Amended Defence Undated

No. 5

PARTICULARS DELIVERED UNDER PARAGRAPH 6A OF THE FURTHER FURTHER AMENDED DEFENCE (Undated)

Vessel	Description of Goods	Shipper	Consignee	Date of Shipment	Goods delivered to	Mate's Receipt Endorsed By
M.V. "Hua Heng"	300 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	12.1.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	100 bundles Smoked Rubber RSS3	"	"	"	"	"
"	50 Bags Black Pepper	"	"	"	"	"
"	130 bundles Smoked Rubber RSS3	"	"	5.2.1959	"	"
"	100 bundles Smoked Rubber RSS3	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	280 bundles Smoked Rubber RSS3	"	"	"	"	"
"	100 bundles Smoked Rubber RSS3	"	"	23.2.1959	"	"
"	150 bundles Milled Bark Scrap	"	"	"	"	"

In the High Court of Singapore

No. 5

Particulars delivered under Paragraph 6A of the Further Further Amended Defence Undated

Vessel	Description of Goods	Shipper	Consignee	Date of Shipment	Goods delivered to	Mate's Receipt Endorsed By
M.V. "Hua Heng"	200 bundles Milled Bark Scrap	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	11.3.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	50 bundles Smoked Rubber RSS3	"	"	"	"	"
"	250 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	150 bundles Smoked Rubber RSS3	"	"	"	"	"
"	70 bundles Milled Bark Scrap	"	"	"	"	"
"	300 bundles Milled Bark Scrap	"	"	26.3.1959	"	"
"	60 bundles Smoked Rubber RSS3	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	50 bundles Smoked Rubber RSS3	"	"	"	"	"

Vessel	Description of Goods	Shipper	Consignee	Date of Shipment	Goods delivered to	Mate's Receipt Endorsed By
M.V. "Hua Heng"	240 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B.C. N/O:- Tiang Seng Chan (S) Ltd.	24.5.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	270 bundles Smoked Rubber RSS3	"	"	11.6.1959	"	"
"	150 bundles Milled Bark Scrap	"	"	"	"	"
"	400 bundles Smoked Rubber RSS3	"	"	"	"	"
"	300 bundles R.S.S. No. 3	"	"	3.6.1959	"	"
"	450 bundles Smoked Rubber RSS3	"	"	"	"	"
"	500 bundles Milled Bark Scrap	"	"	"	"	"
"	500 bundles Milled Bark Scrap	"	"	18.7.1959	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"

Vessel	Description of Goods	Shipper	Consignee	Date of Shipment	Goods delivered to	Mate's Receipt Endorsed By
M.V. "Hua Heng"	345 bundles Smoked Rubber	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	18.7.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	300 bundles Milled Bark Scrap	"	"	7.8.1959	"	"
"	150 bundles Smoked Rubber RSS3	"	"	"	"	"
"	100 bundles Smoked Rubber RSS3	"	"	"	"	"
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	220 bundles Smoked Rubber RSS3	"	"	"	"	"
"	120 bundles Milled Bark Scrap	"	Hongkong & Shanghai Banking Corporation O/N: Tiang Seng Chan (S) Ltd.	20.11.1959	"	Tiang Seng Chan (S) Ltd.

In the High Court of Singapore

No. 5

Particulars delivered under Paragraph 6A of the Further Further Amended Defence Undated (continued)

Vessel	Description of Goods	Shipper	Consignee	Date of Shipment	Goods delivered to	Mate's Receipt Endorsed By
M.V. "Hua Heng"	120 bundles Milled Bark Scrap	Tiang Seng Chan (S) Ltd.	Hongkong & Shanghai Banking Corporation O/N:- Tiang Seng Chan (S) Ltd.	9.12.1959	Tiang Seng Chan (S) Ltd.	Tiang Seng Chan (S) Ltd.
"	500 bundles Milled Bark Scrap	"	O.C.N.C. O/N:- Tiang Seng Chan (S) Ltd.	13.1.1960	"	"
"	154 bundles Milled Bark Scrap	"	"	6.9.1960	"	"
"	200 bundles Milled Bark Scrap	"	"	29.1.1960	"	"
"	120 bundles Milled Bark Scrap	"	"	6.1.1961	"	"
"	200 bundles R.S.S. No. 3	"	"	26.3.1961	"	"
"	200 bundles R.S.S. No. 3	"	"	8.4.1961	"	"
"	200 bundles Milled Bark Scrap	"	"	24.4.1961	"	"
"	200 bundles Milled Bark Scrap	"	"	13.6.1961	"	"

No. 6

FURTHER FURTHER AMENDED REPLY
dated 3rd April 1964

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

10

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon

20 ... Third Parties

1. The Plaintiffs join issue with the Defendants on their Defence save in so far as the same consists of admissions.

2. The Defendants are estopped from saying that they have no knowledge of the matters alleged in paragraphs 5, 7 and 8 of the Amended Statement of Claim and from denying the Plaintiffs' right to have the goods delivered to them or to their order by reason of the following facts.

30 Particulars of Conduct raising Estoppel

The 1st and/or 2nd Defendants issued the said "Mate's Receipts" stating that the goods were consigned to the 2nd Plaintiffs and/or to their order thus representing that the goods thereby covered were consigned and deliverable only to the 2nd Plaintiffs and/or to their order and/or only

In the High Court of Singapore

No. 6

Further Further Amended Reply 3rd April 1964 (continued)

against the delivery up of the said Mate's Receipts". The 1st and/or 2nd Defendants made this representation knowing that both Plaintiffs were banks and that money would or might be advanced or allowed to remain outstanding on the faith of this representation and in reliance upon the possession of the said "Mate's Receipts". The 1st and/or 2nd Defendants intended that this representation should be relied upon and the 1st and 2nd Plaintiffs did in fact rely upon this representation and upon the possession of the said "Mate's Receipts" ~~and did in fact advance~~ by advancing money to the Shippers as set out in the Schedule to the Further Amended Statement of Claim and/or allowing such money to remain outstanding.

3. Further and/or in the alternative when the "Mate's Receipts" were delivered to the 1st and 2nd Plaintiffs as the 1st and/or 2nd Defendants at all times realised would or might happen in the ordinary course of business of the Shippers and the consignees named therein the 1st and/or 2nd Defendants impliedly attorned to the 1st Plaintiffs as principals of the 2nd Plaintiffs and/or to the 2nd Plaintiffs in respect of the goods and in the premises held them as bailees for the 1st and/or 2nd Plaintiffs and not otherwise.

4. Further or alternatively the 1st and/or 2nd Defendants acted wrongfully in delivering the said goods to the Shippers (a) without production of the "Mate's Receipts" and (b) without the knowledge or consent of the 1st or 2nd Plaintiffs of whose interest in the goods the Defendants had notice by reason of the facts that:-

(i) the "Mate's Receipts" expressly consigned the said goods to the 2nd Plaintiffs or to their order;

(ii) all or virtually all prior "Mate's Receipts" issued by the Defendants in this form and ultimately returned to the Defendants by the Shippers bore the stamp of the 1st Plaintiffs and the endorsement of the 2nd Plaintiffs;

(iii) the Defendants knew or ought to have known when delivering the said goods to the Shippers without the production of the

In the High Court of Singapore

No. 6

Further Further Amended Reply 3rd April 1964 (continued)

"Mate's Receipts" that the "Mate's Receipts" covering the said goods were held by the 1st or 2nd Plaintiffs; and

(iv) the Defendants knew at all material times that the 1st Plaintiffs were the Bankers of the Shippers in Sibu.

In the premises the 1st and 2nd Defendants cannot rely upon the said wrongful delivery as a ground for failing to deliver the said goods to the 2nd Plaintiffs when the 2nd Plaintiffs demanded their delivery as set out in paragraph 11 of the Further Further Amended Statement of Claim.

Dated this 3rd day of April, 1964.

(Sd,) Allen & Gledhill

Solicitors for the 1st and 2nd Plaintiffs

To: the abovenamed Defendants and their Solicitors

Messrs. Laycock & Ong,
Singapore.

To: the abovenamed Third Parties and their Solicitor,

S. K. Lee, Esq.,
Singapore.

Amended as underlined in red ink pursuant to Order of Court dated the 11th day of October 1963.

Dated this 15th day of October 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

In the High Court of Singapore

No. 7

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants 31st October 1961

No. 7

INTERROGATORIES ON BEHALF OF THE PLAINTIFFS FOR THE EXAMINATION OF THE DEFENDANTS dated 31st October 1961

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

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And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

Interrogatories on behalf of the above-named First and Second Plaintiffs for the examination of the abovenamed First and Second Defendants.

1. Is it not a fact that the First Defendant Chan Cheng Kum as at the respective dates when the goods forming the subject matter of this action were shipped on board the Motor Vessels Hua Heng and Hua Li, namely the 19th day the 13th, 20th and 29th June, 1961, was the owner of the said motor vessels?

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2. Is it not a fact that the First Defendant Chan Cheng Kum was the owner of the said motor vessels when the goods forming the subject matter of this action were discharged from the said motor vessels in Singapore?

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3. (a) On what dates were the said goods respectively discharged in Singapore;
   (b) To whom were they respectively delivered; and
   (c) Upon whose instructions?

4. (a) Is it not a fact that the goods were not delivered to the Oversea-Chinese Banking Corporation Limited as the consignee named in the Mate's Receipts issued in respect of the said goods?

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In the High Court of Singapore

No. 7

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants 31st October 1961 (continued)

(b) Why were the goods not delivered to the Oversea-Chinese Banking Corporation Limited?

5. (a) What is the relationship between the First Defendant and the Second Defendant?

(b) Are there charter parties or other agreements of hire of the said motor vessels between the First Defendant and the Second Defendants?

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(c) When were the said charter parties or other agreement of hire if any made and were they made verbally or in writing?

6. Were the goods delivered against any letter of indemnity or shipping guarantee?

7. Is it not a fact that the First Defendant now or formerly carried on business under the name of Hua Siang Steamship Company?

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8. (a) Is it not a fact that the following Mate's Receipts were issued at Sibu in the name of Hua Siang Steamship Company in respect of the goods therein mentioned shipped on board the motor vessel Hua Heng for shipment to Singapore consigned to Oversea-Chinese Bank Order/notify Tiang Seng Chan (S) Ltd.?

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	Mate's Receipt Number	Date
1.	03879	6th June 1961
2.	03881	7th June 1961
3.	03887	12th June 1961
4.	03893	12th June 1961
5.	03894	12th June 1961
6.	2602	13th June 1961
7.	2607	22nd June 1961

(b) Do these Mate's Receipts bear the signature of the Chief Officer of the Motor Vessel Hua Heng and if not whose signature do they bear?

(c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do.

In the High Court of Singapore

No. 7

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants 31st October 1961 (continued)

(d) Is it not a fact that these Mate's Receipts were issued for and on behalf of the First Defendant.

(e) If the answer to the last mentioned interrogatory is in the negative then for and on whose behalf were these Mate's Receipts issued?

9. (a) Is it not a fact that the following Mate's Receipts were issued at Sibu in the name of Hua Siang Steamship Company Limited in respect of the goods therein mentioned shipped on board the motor vessel Hua Heng for shipment to Singapore consigned to Oversea-Chinese Bank Order/notify Tiang Seng Chan (S) Ltd.? 10

	Mate's Receipt No.	
1.	2619	28th June 1961
2.	2629	29th June 1961

(b) Do these receipts bear the signature of the Chief Officer of the motor vessel Hua Heng and if not whose signature do they bear?

(c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do? 20

(d) On whose behalf were they so signed and issued?

10. (a) Is it not a fact that the following Mate's Receipts were issued at Sibu in the name of Hua Siang Steamship Company in respect of the goods therein mentioned shipped on board the motor vessel Hua Li for shipment to Singapore consigned to Oversea-Chinese Bank Order/notify Tiang Seng Chan (S) Ltd.? 30

	Mate's Receipt Number	Date
1.	03782	15th May 1961
2.	03787	16th May 1961
3.	03791	17th May 1961
4.	0101	19th May 1961
5.	0133	20th June 1961
6.	0134	20th June 1961
7.	0137	20th June 1961
8.	0138	20th June 1961

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In the High Court of Singapore

No. 7

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants 31st October 1961 (continued)

and that the following Mate's Receipts were issued at Sibu as aforesaid consigned to the Oversea-Chinese Bank/Tiang Seng Chan (S) Ltd.

	Mate's Receipt Number	Date
1.	03781	15th May 1961
2.	03786	16th May 1961
3.	03795	17th May 1961

(b) Do all the abovementioned eleven Mate's Receipts bear the signature of the Chief Officer of the motor vessel Hua Li and if not whose signature do they bear?

(c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do?

(d) Is it not a fact that these Mate's Receipts were issued for and on behalf of the First Defendant Chan Cheng Kum?

(e) If the answer to the last mentioned interrogatory is in the negative then for and on whose behalf were these Mate's Receipts issued?

11. Is the Chief Officer or other the person signing the Mate's Receipts in the name of Hua Siang Steamship Co. the servant of the First Defendant or of the Second Defendants?

12. Is the Chief Officer or other the person signing the Mate's Receipts in the name of Hua Siang Steamship Co. Ltd. the servant of the First Defendant or of the Second Defendants?

Dated and Delivered the 31st day of October 1961.

(Sd.) Allen & Gledhill

Solicitors for the 1st & 2nd Plaintiffs

The First Defendant is required to answer all the above interrogatories.

In the High Court of Singapore

No. 7

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants 31st October 1961 (continued)

The Second Defendants are required to answer all the above interrogatories by their Managing Director or other their proper officer to the best of his knowledge information and belief.

To: The First Defendant and/or his Solicitors, Messrs. Laycock & Ong, Singapore.

The Second Defendant and/or their Solicitors, Messrs. Laycock & Ong, Singapore.

No. 8

Defendants' answers to the Plaintiffs' Interrogatories 22nd November 1961

No. 8

DEFENDANTS' ANSWERS TO THE PLAINTIFFS' INTERROGATORIES sworn 22nd November 1961

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Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

20

The answers of the abovenamed First and Second Defendants to the interrogatories for their examination by the abovenamed Plaintiffs.

In answer to the said interrogatories I, the abovenamed Chan Cheng Kum, both in my personal capacity and as Managing Director of the Second Defendants affirm and say as follows:-

To the first Interrogatory I say, yes.

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To the second Interrogatory I say, yes.

To the third Interrogatory I say

In the High Court of Singapore

No. 8

Defendants' answers to the Plaintiffs' Interrogatories 22nd November 1961 (continued)

(a) A few days after the date when each respective consignment was shipped.

(b) To Tiang Seng Chan (Singapore) Limited.

(c) On the instructions of Tiang Seng Chan (Singapore) Limited.

To the fourth Interrogatory I say

(a) and (b) The goods were not delivered to the Oversea-Chinese Banking Corporation Limited because prior to the arrival or on arrival of each respective consignment at Singapore the shippers, the said Tiang Seng Chan (Singapore) Limited had ordered that the goods should be delivered to themselves.

To the fifth Interrogatory I say

(a) The First Defendant is the Managing Director of the Second Defendant.

(b) There is an agreement by which the two motor vessels are hired by the First Defendant to the Second Defendants.

(c) Such hiring agreement was made verbally at the date when the Second Defendants were incorporated.

To the sixth Interrogatory, I say, yes.

To the seventh Interrogatory I say that prior to the incorporation of the Second Defendants, but not subsequent thereto, the First Defendant carried on business under the name of Hua Siang Steamship Company.

To the eighth Interrogatory I say

(a) The printed form of Mate's Receipts bore the name of Hua Siang Steamship Company but the shippers Tiang Seng Chan (Singapore) Limited, were fully aware that the contract of carriage was made between them and the Second Defendants. The goods were consigned to Oversea-Chinese Bank Order/Notify Tiang Seng Chan (Singapore) Limited but subsequent to shipment and before or on the arrival of the vessel at Singapore the said Tiang Seng Chan

(Singapore) Limited ordered the Second Defendants to deliver the goods to the said Tiang Seng Chan (Singapore) Limited.

(b) Yes

(c) Yes

(d) No

(e) On behalf of the Second Defendants.

To the ninth Interrogatory I say

(a) Yes

(b) Yes

(c) Yes

(d) On behalf of the Second Defendants.

To the tenth Interrogatory I say

(a) The Printed form of Mate's Receipts bore the name of Hua Siang Steamship Company but the shippers Tiang Seng Chan (Singapore) Limited were fully aware that the contract of carriage was made between them and the Second Defendants. The eight shipments were consigned to Oversea-Chinese Bank/ Notify Tiang Seng Chan (S) Limited but subsequent to shipment and on or before the arrivals of the vessel at Singapore the said Tiang Seng Chan (Singapore) Limited ordered the Second Defendants to deliver the said goods to the said Tiang Seng Chan (Singapore) Limited. The three shipments were consigned to Oversea-Chinese Bank /Tiang Seng Chan (S) Limited but subsequent to shipment and on or before the arrivals of the said vessels at Singapore the said Tiang Seng Chan (Singapore) Limited ordered the Second Defendants to deliver the said goods to the said Tiang Seng Chan (Singapore) Limited.

(b) Yes

(c) Yes

(d) No

(e) On behalf of the Second Defendants.

In the High Court of Singapore

No. 8

Defendants' answers to the Plaintiffs' Interrogatories 22nd November 1961 (continued)

To the eleventh Interrogatory I say the Chief Officer signing the Mate's Receipts in the name of Hua Siang Steamship Company is the servant of the Second Defendants.

To the twelfth Interrogatory I say that the Chief Officer signing the Mate's Receipts in the name of Hua Siang Steamship Company Limited is the servant of the Second Defendants.

10 Sworn to at Singapore this 22nd day of November 1961.

Before me,

(Sd.) M.J. Namazie

A COMMISSIONER FOR OATHS.

No. 9

Interrogatories on behalf of the Defendants for the examination of the Plaintiffs 23rd November 1961

No. 9

INTERROGATORIES ON BEHALF OF THE DEFENDANTS FOR THE EXAMINATION OF THE PLAINTIFFS dated 23rd November 1961

Suit No. 1284 of 1961

BETWEEN

20 1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

Interrogatories on behalf of the abovenamed
30 First and Second Defendants for the examination of the abovenamed First and Second Plaintiffs.

1. (a) Have the First Plaintiffs either directly or through their agents received any payments to account of the alleged advances totalling $595,000/- which are set out in the Statement of Claim?

In the High Court of Singapore

No. 9

Interrogatories on behalf of the Defendants for the examination of the Plaintiffs 23rd November 1961 (continued)

(b) If the answer is in the affirmative what payments have been received?

2. (a) Have the First Plaintiffs either directly or through their agents received any security for the alleged indebtedness to them of Tiang Seng Chan (Singapore) Limited?

(b) If the answer to the last mentioned interrogatory is in the affirmative what security have the First Defendants or their agents received? (sic)

3. (a) Have the First Plaintiffs either directly or through their agents received any guarantee or indemnity by a third party for the payment of the indebtedness of the said Tiang Seng Chan (Singapore) Limited? 10

(b) If the answer to the last Interrogatory is in the affirmative who gave such guarantee or indemnity and what is the date of it?

4. Do the Memorandum and Articles of Association of the First Plaintiffs authorise the First Plaintiffs to make advances on the security of Mate's Receipts? 20

5. On what dates did each of the Mate's Receipts referred to in the Statement of Claim come into the possession of the First Plaintiffs?

6. On what dates did each of the Mate's Receipts referred to in the Statement of Claim come into the possession of the Second Plaintiffs?

7. Has Tiang Seng Chan (Singapore) Limited either in Singapore or in Sarawak or elsewhere paid any moneys or assigned any securities to the First Plaintiff or its agents either before or after the commencement of this action? 30

8. If the answer to the last interrogatory is in the affirmative what payment or payments were made and what security or securities were assigned?

9. Has Tiang Seng Chan (Singapore) Limited either in Singapore or in Sarawak or elsewhere paid any moneys or assigned any securities to the Second Plaintiff or its against either before or after the commencement of this action? (sic) 40

In the High Court of Singapore

No. 9

Interrogatories on behalf of the Defendants for the examination of the Plaintiffs 23rd November 1961 (continued)

10. If the answer to the last interrogatory is in the affirmative what payment or payments were made and what security or securities were assigned?

Dated this 23rd day of November 1961.

(Sd.) Laycock & Ong

Solicitors for the First and Second Defendants

The First Plaintiff is required to answer interrogatories numbers 1 to 5 inclusive and numbers 7 and 8 by their Managing Director or other their proper officer to the best of his knowledge information and belief. The Second Plaintiff is required to answer interrogatories numbers 6, 9 and 10 by their Managing Director or other proper officer to the best of his knowledge information and belief.

No.10

Plaintiffs' answers to the Defendants' Interrogatories Sworn 4th and 6th December 1961

No. 10

PLAINTIFFS' ANSWERS TO THE DEFENDANTS' INTERROGATORIES sworn 4th December 1961 and 6th December 1961

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

The answers of the abovenamed First and Second Plaintiffs to the respective interrogatories for their examination by the abovenamed Defendants.

In answer to the said interrogatories required to be answered by the First Plaintiffs I Chew Geok Lin the Managing Director of the said First Plaintiffs

In the High Court of Singapore

No.10

Plaintiffs' answer to the Defendants' Interrogatories Sworn 4th and 6th December 1961 (continued)

affirm and say as follows:-

To the first interrogatory I say, no.

To the second interrogatory I say, No.

I object to answer the third interrogatory as to do so would amount to a breach of secrecy of the relationship of banker and customer.

To the fourth interrogatory I say, Yes.

To the fifth interrogatory I say as follows:

(a) Mate's Receipts numbered 0101, 03781, 03782, 93786, 03787, 03791 and 03795 came into the possession of the First Plaintiffs on the 20th day of May 1961. 10

(b) Mate's Receipts numbered 2602, 03879, 03881, 03887, 03893, and 03894 came into the possession of the First Plaintiffs on the 14th day of June 1961.

(c) Mate's Receipts numbered 01333, 0134, 0137 and 0138 came into the possession of the First Plaintiffs on the 21st day of June 1961. 20

(d) Mate's Receipts numbered 2619 and 2629 came into the possession of the First Plaintiffs on the 29th day of June, 1961.

(e) Mate's Receipt numbered 2607 came into the possession of the First Plaintiffs on the 30th day of June 1961.

To the seventh interrogatory I say, No.

In answer to the said interrogatories required to be answered by the Second Plaintiffs, I, Ong Seng Chew an officer of the Second Plaintiffs 30 being duly authorised by the said Second Plaintiffs to answer the said Interrogatories for and on their behalf affirm and say as follows:-

To the sixth interrogatory I say as follows:-

(a) Mate's Receipts numbered 0101, 03781, 03782, 03786, 03787, 03791 and 03795

In the High Court of Singapore

No.10

Plaintiffs' answer to the Defendants' Interrogatories Sworn 4th and 6th December 1961 (continued)

came into the possession of the Second Plaintiffs on the 23rd day of May 1961.

(b) Mate's Receipts numbered 2602, 03879, 03881, 03887, 03893 and 03894 came into the possession of the second Plaintiffs on the 16th day of June 1961.

(c) Mate's Receipts numbered 0133, 0134, 0137 and 0138 came into the possession of the Second Plaintiffs on the 22nd day of June 1961.

10

(d) Mate's Receipts numbered 2607, 2619 and 2629 came into the Second Plaintiffs' possession on the 3rd day of July 1961.

To the ninth interrogatory I say, No.

Sworn to at Sibu, Sarawak by the abovenamed Chew Geok Lin this 4th day of December 1961) (Sd.) Chew Geok Lin

Before me,

(Sd.) Illegible

Magistrate

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Seal of District Court

Sibu

Stamp $2.50

Sarawak

Sworn to at Singapore by the above named Ong Seng Chew this 6th day of December, 1961) (Sd.) Ong Seng Chew

Before me,

(Sd.) N. Niranjan Singh

A Commissioner for Oaths

In the High Court of Singapore

No.11

Letter, Plaintiffs' Solicitors to Defendants' Solicitors requesting Further and Better Particulars of Defence 4th May 1962

No. 11

LETTER, PLAINTIFFS' SOLICITORS TO DEFENDANTS' SOLICITORS REQUESTING FURTHER AND BETTER PARTICULARS OF DEFENCE dated 4th May 1962

MK/DO/652/61

CHS 4th May, 1962.

Messrs. Laycock & Ong,
Singapore.

Dear Sirs,

Suit No. 1284 of 1961
Wah Tat Bank & anor. v. Chan Cheng Kum & anor. and Tiang Seng Chan (Singapore) and three others

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We write to inform you that we will shortly be making an Application to Court for an amendment to the Statement of Claim herein.

In the meantime, we shall be obliged if you will in accordance with Order 20 rules 7 and 8 furnish us with further and better particulars of paragraph 4 of the Defence as follows:

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1) Whether the alleged altered directions as to delivery were given by the Shippers orally or in writing, and, if orally, when and by whom on behalf of the Shippers and to whom they were given.

2) Who on behalf of the 2nd Defendants complied with the alleged altered directions.

We shall be obliged if the above particulars are delivered to us in the form of pleadings within seven days from the date of this letter.

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Yours faithfully,

(Sd.) Allen & Gledhill

In the High Court of Singapore

No.12

Particulars of paragraph 6 of the Further Amended Defence 8th October 1963

No. 12

PARTICULARS OF PARAGRAPH 6 OF THE FURTHER AMENDED DEFENCE dated 8th October 1963

Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

... Plaintiffs

And

1. Tiang Seng Chan (Singapore) Limited
2. Hua Siang Steamship Company Limited

... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon

... Third Parties

1. The said altered directions were given by the Shippers orally to the Second Defendants. Such altered directions took the form of a request by the Shippers sometimes orally over the telephone and sometimes at a direct personal meeting requesting delivery of the goods to the Shippers. Such altered directions were given by Mr. Lee Chin Tian or by Mr. Lee Teow Keng to Mr. Chan Cheng Kum or to Mr. Chan Kim Yam and were given shortly before the goods arrived at Singapore or about the time of such arrival.

2. The said directions were complied with by Mr. Chan Kim Yam, the Manager of the Second Defendant Company on behalf of the Second Defendants and who issued the relevant delivery orders.

Dated and delivered this 8th day of October, 1963.

(Sd.) Laycock & Ong
Solicitors for the Defendants

No. 13

In the Federal Court of Malaysia holden at Singapore (Appellate Jurisdiction)

No.13

Order of Court of Appeal 7th July 1967

FEDERAL COURT CIVIL APPEAL NO. Y2 OF 1966

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Ltd. ... Appellants

And

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. ... Respondents

(In the Matter of Suit No. 1284 of 1961 in the High Court in Singapore 10

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Ltd. ... Plaintiffs

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. ... Defendants

And

1. Tiang Seng Chan (Singapore) Ltd.
2. Lee Chin Tian 20
3. Lee Teow Keng
4. Lee Peng Koon ... Third Parties)

CORAM: The Honourable Mr. Justice Wee Chong Jin, Chief Justice, Singapore;

The Honourable Mr. Justice Tan Ah Tah, Judge, Federal Court, Malaysia; and

The Honourable Mr. Justice Frederick Arthur Chua, Judge, High Court, Singapore.

IN OPEN COURT

This 7th day of July 1967 30

O R D E R

THIS APPEAL coming on for hearing on the 6th, 7th, 8th, 13th, 14th, 15th, 16th, 20th, 21st, 22nd and 23rd days of February 1967 in the presence of Mr. M.R.E. Kerr, Q.C., and Mr. M. Karthigesu of

In the Federal Court of Malaysia holden at Singapore (Appellate Jurisdiction)

No.13

Order of Court of Appeal 7th July 1967 (continued)

Counsel for the abovenamed 1st and 2nd Appellants and Mr. R.A. McCrindle, Q.C. and Mr. C.H. Smith of Counsel for the abovenamed 1st and 2nd Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. M. Karthigesu of Counsel for the abovenamed 1st and 2nd Appellants and Mr. J.F. McWilliam of Counsel for the abovenamed 1st and 2nd Respondents IT IS ORDERED that the Appeal by the abovenamed 1st and 2nd Appellants be allowed and the judgment of the Trial Judge set aside AND IT IS ADJUDGED that judgment be and is hereby entered for the abovenamed 1st and 2nd Appellants against the abovenamed 2nd Respondents for damages to be assessed by the Registrar AND IT IS FURTHER ORDERED that the remaining issue as to whether the abovenamed 1st Respondent is also liable in conversion be remitted for a re-trial AND IT IS FURTHER ORDERED that there be a stay of execution limited only to the damages until the abovenamed 1st and 2nd Respondents shall have applied to this Honourable Court for leave to appeal to the Judicial Committee of the Privy Council AND IT IS FURTHER ORDERED that the costs of this Appeal and in the Court below be taxed and paid by the abovenamed 1st and 2nd Respondents to the abovenamed 1st and 2nd Appellants AND IT IS FURTHER ORDERED that there be a Certificate of two Counsel for the abovenamed 1st and 2nd Appellants AND IT IS FURTHER ORDERED that the sum of $500/- lodged in Court as security for costs of this Appeal be paid out by the Accountant-General to the abovenamed 1st and 2nd Appellants or their Solicitors Messrs. Allen & Gledhill AND IT IS LASTLY ORDERED that the abovenamed 1st and 2nd Appellants shall have liberty to apply.

GIVEN under my hand and the seal of the Court this 7th day of July 1967.

REGISTRAR,
FEDERAL COURT,
MALAYSIA.

In the Judicial Committee of the Privy Council

No.14

Order
29th March 1971

No. 14

ORDER

AT THE COUNCIL CHAMBER WHITEHALL

The 29th day of March 1971

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by virtue of the Republic of Singapore (Appeals to Judicial Committee) Order 1966 there was referred unto this Committee the matter of an Appeal from The Federal Court of Malaysia Holden at Singapore (Appellate Jurisdiction) between (1) Chan Cheng Kum and (2) Hua Siang Steamship Company Limited Appellants and (1) Wah Tat Bank Limited and (2) Oversea-Chinese Banking Corporation Limited Respondents (Privy Council Appeal No. 6 of 1969) and likewise the humble Petition of the Appellants setting forth that in October 1961 the Respondents instituted proceedings in the High Court of Singapore by writ of Summons against the Appellants: that the Appellants joined Tiang Seng Chan (Singapore) Limited and Lee Chin Tian and Lee Teow Keng and Lee Peng Koon as Third Parties in the said action but the Third Party proceedings were compromised in the course of the trial: that on the 30th December 1965 the Court gave Judgment dismissing the Respondents' claim with costs: that the Respondents appealed to the Federal Court of Malaysia Holden at Singapore which by Order dated the 7th July 1967 gave Judgment allowing the Appeal with costs entering Judgment for the Respondents against the 2nd Appellants for damages to be assessed and ordering that the issue whether the 1st Appellant was also liable in conversion be remitted for re-trial: that the Appellants were granted leave to appeal to the Judicial Committee of the Privy Council from the said Order of the 7th July 1967: And humbly praying the Lords of the Judicial Committee of the Privy Council to take the Appeal into consideration and that the said Judgment Order of the Federal Court of Malaysia Holden at Singapore dated 7th July 1967 be reversed altered or varied and for further or other relief:

THE LORDS OF THE COMMITTEE in obedience to the said Order have taken the Appeal and humble

Petition into consideration and having heard Counsel on behalf of the Parties on both sides Their Lordships do dismiss this Appeal and affirm the Order of the Federal Court of Malaysia Holden at Singapore dated the 7th July 1967 save that the provision therein as to the payment of costs is set aside and there is substituted therefor a provision that there be paid by the Appellants to the Respondents two-thirds of their costs of the proceedings in the said High Court and of the Appeal to the said Federal Court and Their Lordships do further direct that there be paid by the Appellants to the Respondents two-thirds of their costs of this Appeal incurred in the said Federal Court and the sum of £4,909.84 being two-thirds of their costs thereof incurred in England.

E.R. MILLS,

Registrar of the Privy Council

In the Judicial Committee of the Privy Council

No.14

Order 29th March 1971 (continued)

No. 15

NOTES TAKEN AT HEARING BY WINSLOW J.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Issue in Suit No. 1284 of 1961

BETWEEN

1. Wah Tat Bank Ltd.
2. Oversea-Chinese Banking Corporation Ltd. ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. ... Defendants

Coram: Winslow J.

NOTES OF ARGUMENT

Lesquesne Q.C. with Karthigesu for plaintiffs
Parker Q.C. with Grimberg for defendants.

Le Quesne Q.C. opens:-

In the High Court of Singapore

No.15

Notes taken at hearing by Winslow J.

Notes of argument of Counsel

6th March 1972

In the High Court of Singapore

No.15

Notes taken at hearing by Winslow J.

Notes of argument of Counsel

6th March 1972 (continued)

Claim for conversion of rubber Sibu to Singapore.

T.S.C. are shippers.

Goods shipped by T.S.C. on vessel owned by 1st defendant.

2nd defendant is Co. controlled by 1st defendant. Extend of relationship between 1st and (sic) 2nd defendant involved in issue before Court.

1st plaintiff pledgees of goods entitled to goods. 10

Ship delivered goods to T.S.C. Privy Council held this to be conversion.

Main issue in previous trial was whether mate's receipt marked "Not Negotiable" was by custom equivalent of Bill of Lading.

One feature - when ship delivered goods to T.S.C. in Singapore they took indemnity.

Previously this practice had been followed as in this case.

In this case ship released on indemnity of T.S.C. alone not indemnity of bank. 20

In 1961 1st defendant began to have doubts then took indemnities from 3 other persons (director of T.S.C.) as well in this case.

T.S.C. and 3 others were third parties and settled with both the defendants.

Record of Appeal Vol. I.

<u>Page 6 Further Further Amended Statement of Claim</u>.

Reads paras. 1-8, omits 8A, continues with 10, 12, 13. 30

<u>Page 16 F.F. Amended Defence admits 1, 3, 4, 12</u>

Reads 3, 3A, 4, 6.

Para. 6 - alteration of direction as to delivery. Consigned to O.C.B.C. or order - O.C.B.C./order.

Shippers held by P.C. not entitled to alter directions since goods were already pledged to O.C.B.C.

Para. 8.

Page 29 Reply (issues no longer arise).

Page 33 Claim against 3rd parties by 2nd defendant para. 3A on page 34.

10 Page 36 Defence of 3rd parties in due time, charges of fraud withdrawn on settlement.

Page 43 Reply and defence of 2nd defendants to defence and counterclaim of 3rd parties.

Kulasekaram J. dismissed claim of plaintiffs rejected custom - even if proved not universal.

Didn't deal with how liability of defendants should be decided.

Federal Court decided:

1. Custom proved and valid.
2. that defendants were estopped. (20)
3. Valid pledge.

F.C. allowed appeal -

See (1967) M.L.J. Vol. 2, 263 at 265.

LHC 265 C which defendant liable? or both?

RHC 265 C.F.

p. 273 RHC I. Judgment against 2nd resp.

Retrial whether 1st resp. also liable.

Formal Order of F.C. will be provided.

30 Retrial ordered as to 1st respondent's liability.

Pending P.C. decision damages were assessed 29th May 1968 by Registrar in sum of $551,876/88.

In the High Court of Singapore

Notes taken at hearing by Winslow J.

Notes of argument of Counsel

6th March 1972 (continued)

20th June 1969 on appeal Choor Singh J. allowed and increased award to $570,500/-.

P.C. March 1971 decided custom proved though not valid, valid pledge of goods - unnecessary to decide estoppel etc. - confirmed F.C. order.

Proceedings now on order of F.C. for retrial as confirmed by P.C.

Scope of retrial:-

265 R.H.C. at "C" - was 1st defendant responsible. 10

F.C. didn't decide issue as it was said to involve credibility.

Which of the respondents is liable - F.C. said at 265 C (R.H.C.).

273 R.H.C. column - inconsistent with 265. Formal Order of P.C. confirms F.C. F.C. judgment may be against wrong defendant.

It is no bar to this Court giving judgment against 1st defendant.

(R.H.C. 265 displays true intention of F.C. 20 Parties before F.C. agreed 2nd defendant was charterer).

Parker Q.C.: I don't agree that it is no bar.

How this matter developed -

T.S.C. delivered 4 parcels of goods to both vessels owned by 1st defendant at Sibu.

P.C. held this completed pledge to Bank and gave them special ppty. in goods sufficient to found claim in trover.

Deliveries in Singapore to T.S.C. were 30 conversions.

Actual deliveries constituting conversion could not be physically committed by 2nd defendant Co. which could only act through its servants or agents nor has it been alleged or could it be that

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Notes of argument of Counsel

6th March 1972 (continued)

delivery constituting conversion was committed by 1st defendant.

To make either defendant liable - acts of master and crew - one is into realm of joint feasors.

Either

Defendants or one of them is vicariously liable for acts of Master & Crew.

Or Having established v.l. against one, the other could be held also liable because a party to some form of concerted action ...

10

The Koursk (1924) L.R.P.D. 140 @ 142

See p.155 "The substantial question is ... concerted with the other".

It is first alleged 1st defendant owned vessel and that 2nd defendant were charterers or had booked space. Para. 6 of S. of C. Goods were delivered to 1st or 2nd defendant.

Para. 10 of S.C., para. 13 says mis-delivery was to 1st and/or 2nd defendant.

20

Para. 3 of Defence, delivery to 2nd defendant is admitted.

At para. 3A 2nd defendant says that delivery was by persons not employed etc. by 1st defendant.

This is dealt in record of trial ctd. in record before P.C. - p.57 line 13 - most importantly line 20.

Page 60 line 24 "Which of 2 defendants liable"

Record page 207 before Privy Council used hereafter (not record before F.C.) McGrindle: Line 34. (sic)

30

Page 208 line 30 - 35, 36.

Kerr replies p. 353 Chap.X

Line 30 p. 353 to line 12. p.354 Kerr submits Chan is liable as owner unless there is bare-boat

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Notes of argument of Counsel

6th March 1972 (continued)

charter.

Thence to foot 355 he examines and says Chan has failed to prove bare boat charter.

p. 356 Line 6.

page 371 - F.C. judgment (MLJ p.264 LHC below E.)

Line 31 of p. 371

F.C. found delivery at Sibu to 2nd resp. Co.

p.372 line 23

p. 373 line 29. 10

p. 375 line 27.

p. 397 line 31.

Nothing else C.J. could find other than liability of company i.e. 2nd defendant.

Suggest - Either agreement between parties was

F.C. could determine issue of Co's liability and it was only 1st defendant's liability which was to be reserved.

Or Although both parties agreed both should be reserved F.C. found it possible to hold 2nd defendant liable. 20

M.L. Friends asked for judgment against 2nd defendant in formal order.

This Court only has to find whether Mr. Chan is also liable.

They have accepted Mr. Chan's answer to case against him.

Costs at 1st instance and F.C. total taxed costs $116,822.21 cts.

Costs paid by Co. to plaintiffs.

Agreed Bundle: AB

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Notes of argument of Counsel

6th March 1972 (continued)

See AB3.

AB6 Co. paid by cheque. AB8.

Damages increased on appeal against Registrar by plaintiffs to $570,500. (sic)

AB19 they demand payment. AB20 unable to pay.

Privy Council varied 2/3rd costs only

£7,634.706.

Bank became entitled to £4,909.

1/3rd costs = $38,940.75: There is a balance due back to Co. = £500.

Plaintiffs already have unsatisfied judgment for $570,500.

Now they ask Court to reopen the whole thing.

They are wholly precluded:-

1. At Common Law no doubt judgment against one of 2 or more joint tortfeasors discharges others even if judgment is unsatisfied (Le Quesne accepts that).

Salmond - latest Ed. - 15th - p.593 foot

Koursk p. 148 - top 150.

Wimpey's case (1955) A.C. 180 (mid.page).

Is plaintiff's claim preserved for him by s.11 Civil Law Act (s.10 Civil Law Ord.) p.545 1970 Edn.

id. with English L.R. M.W. & J.T. Act, 1935.

s. 11(1)(a) and (b).

11(1)(a) not apt to cover one action against 2 where judgment is recovered from one - here "if sued" does not apply (a) only applies to somebody not yet sued.

This plaintiff is seeking 2 judgments in one action. How do you apply this? For what sum will

judgment be given? (Broome v. Cassel).

Unique situation never has arisen.

Glanville Williams "Contributory Negligence and Joint Tortfeasors" - p.68 mid-page.

Wimpey p.180 "s.6(1)a etc."

p.194 Lord Keith "In this matter ...."

1 - 2.30

2.30 Parker Continues -

Plaintiff's counsel asked for judgment against 2nd defendant Co. Therefore there can be no criticism of F.C. judgment. 10

p.194 of Wimpey after break.

Wording of section 6 (our s.11), dicta in H.L., if plaintiff sues 2 joint tortfeasors and takes judgment against one he cannot thereafter pursue the other.

Plaintiff is in control of the position - judgment cannot be given against one only save by plaintiff asking for it or consenting to it.

What could plaintiffs have done? Having obtained interloc. judgment for damages to be assessed they could have waited for Chan's liability to be determined. Then there would be one final judgment against both. 20

If I am wrong that action against Chan is finally barred - then I say bare-boat charter point is not open because it would be attempt to re-open F.C. finding.

I submit that this trial if it is to proceed must be restricted to second method - that he was a party to some concerted action with the company. 30

1st defendant was party to 1st judgment. He is barred as were 2nd defendant and plaintiffs (?).

One one conversion. Was Chan liable for that conversion as well as the company.

I ask Court to hold this action fails because of s.11 or to rule that proceedings are limited i.e. by exclusion of bare-boat charter point.

Le Quesne:-

s.11 Civil Law Act.

Frequently one judgment admits liability. Nothing unusual in plaintiffs signing judgment. Similarly if other judgment do not appear etc.

Intention of Parliament in removing rule in
10 Brinsmead v. Harrison.

What "sued" in s.11(a) means - "Liable" means "held liable in judgment" -

Wimpey's case p.178 Viscount Simonds "It appears ..."

p.188 Lord Reid - last para.

Lord Tucker - p.191 "My Lords, I understand ... must mean ..." held liable".

Lord Keith - foot 195 - liable in (a) and (c) means "found liable".

20 By "sued" is meant something where a man can be held liable in judgment.

Mere issue of writ cannot result in any man being held liable in judgment. Must be institution of action and pursuit of action.

Sued means "sued to judgment" see where one defendant admits and other joint defendants do not. The latter are not sued within meaning of "sued to judgment" if judgment is obtained against defendant who admits.

30 Damages have been assessed against both defendants. AB17.

If Chan is liable - he will be liable for the sum assessed.

No reason why damages should not be assessed against all defendants and entered only against one.

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6th March 1972 (continued)

Unlikely legislature intended interpretation for which M.L.F. contends.

Wimpey 1955 A.C. 169 headnote.

Re. bare boat charter point

F.C. judgment (1967) 2 M.L.J. 264F L.H.C. and 264 R.H.C. at C.

Isaacs & Sons v. S. 1916 2 K.B. 139 @ 142. Judgment Ct. Appeal 148, 149 "The dy. judge etc." (see p.152 top - "if therefore ... same."

Here not same cause of action against Chan as against Co. 10

Continues, Pickford L.J. at p.153; Bankes L.J. 154.

4 p.m.

Sgd. A.V.W.

7th March 1972

Tuesday, 7th March, 1972

10.35 a.m. Le Quesne continues:-

Isaac & Sons case

Proposition:- A party who has obtained judgment against A for some relief for what A is not liable is not precluded by that judgment from seeking and obtaining judgment for same relief against someone else. 20

Bare-boat charter party

Types of charter. Charter for term or voyage.

Charter by demise may be with or without m and crew. In latter case it would be a bare boat demise i.e. ship alone. Then charterer will have to engage his own m & c.

Here, bare-boat charter party is said to have been oral. This is unusual but not impossible. 30

Question is whether I should be allowed to argue issue of bare-boat oral charter.

Inferentially acc. to Parker F.C. has found an oral B.B.C.P.

This is only basis on which Co. could be liable.

I am not precluded from seeking a judgment against Chan for conversion of the same goods.

May be inconsistent in that both judgments will be on the basis of who employed m. & c.?

(In answer to me - for clarification.

10 We asked for costs, before P.C. result, of the trial and F.C. appeal. They paid. We asked for damages also before P.C. Judgment and costs have not been fully satisfied by 2nd defendant.)

Parker says I am estopped from saying (denying?) there was an O.B.B.C.P.

What estoppel is produced by .F.C. judgment.

My submission is that F.C. judgment does not estop plaintiffs from denying existence of O.B.B.C.P.

Isaac's case:

20 Lush J. p.143 "There is ... party"

Atkin J. p.144 "I think that that in person.

Swinfen Eady L.J. 152 "If therefore ... really liable"

Pickford L.J. p.153 "But, assuming ... firm"

Bankes L.J. 155 "If this test ... brothers."

On authority of Isaac's case I am not barred as against 1st resp.

Chan for this part of argument is not necessarily a joint tortfeasor. He must be regarded as 30 separate just like Julius Salbstein.

Parker says we seek to retain judgment against 2nd defendant. If so, this was equally the position in Isaac's case.

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7th March 1972 (continued)

We are not "hanging on" to judgment against 2nd defendant.

Does mere existence of judgment against 2nd defendant preclude me from getting judgment against 1st defendant.

What is ambit of inquiry referred to this Court.

Interpretation of F.C. order 4 - after considering reasons in judgment - whole issue is liability on either of 2 grounds of 1st defendant.

Parker says claim against Chan inconsistent with their submission that judgment against Co. is only sustainable on existence of B.B.C.P. 10

M.L.F. says that by taking judgment against 2nd defendant - accepting what was offered to us by F.C. - plaintiffs precluded themselves from taking the B.B.C.P. point further.

See Isaac: p.149. "The writ was issued ... trespass". Conduct alleged against 1st defendant - similar in that case - execution.

See p.151 "In Lechmere v. Fletcher notwithstanding - Next para. - "If therefore ... same". 20

Identity of the cause of action.

Precise way of describing cause of action 154 (Bankes L.J.).

"Cause of action has been held to mean every material fact to prove the plaintiffs' claim.

Lush J. p.143 "But there is no ground ... two different causes of action".

Atkin J. p.144 "The proposition ...

Swinfen Eady L.J. p.152 "The cause of action is not the same." 30

Pickford L.J. p.153 "If the liability is joint ... judgment". "If S.B. and the defendants are ... action."

I am trying to show that Chan is sole tortfeasor

because there was no B.B.C.P.

If (sic)therefore follows that if F.C. judgment is a finding binding on plaintiffs that Co. was a tortfeasor and that Chan was not a sole tortfeasor then I am barred from the B.B.C.P. point.

Judgment of F.C. is not a judgment to that effect which is binding on plaintiffs so as to produce estoppel.

At most, it is inconsistent with judgment I am now seeking. Isaacs case shows inconsistency is no bar.

I am not relying on the same cause of action as might have justified the Federal Court.

Another authority which applies Isaac principle to tort.

<u>Freshwater v. Bulmer 1933 1 Ch. 162</u>

Luxmoore J. p.174 "What is the position ... There is no actual decision ... liable ... 175 ... 176 ...

p.188 Lawrence L.J. "The second point ... p.189 ...

Subject to estoppel, if you have recovered in tort against person not liable that is no bar to subsequent action against person who is liable.

M.L.F. says defendant in second action was not party to 1st action. Here Chan was a party to F.C. judgment. Therefore estoppel operates not only between plaintiffs and 2nd defendants but also as between plaintiffs and Chan.

What is estoppel to which F.C. judgment gives rise? Estoppel by record.

"And it is adjudged ... And it is further ordered ... re-trial.

M.L.F. says I am estopped from denying there was B.B.C.P.

Beyond actual terms of actual record one has

In the High Court of Singapore

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Notes taken at hearing by Winslow J.

Notes of arguments of Counsel

7th March 1972 (continued)

to be very careful to see that ground is perfectly clear.

Harriman v. Harriman 1909 p.123 at 132.

Vaughan Williams L.J.

134 "It occurred to me ..."

p. 134 "Moreover ... Alison's case."

p. 135.

Yesterday we considered grounds of F.C.'s written judgment.

Parker suggested what Court decided if one looks at its judgment. 10

"Goods delivered at Sibu to 2nd defendant and by 2nd defendants in Singapore" Federal Court judgment 371. Line 14 - line 31, p.372 line 23. Treated by F.C. as undisputed facts but they were always in dispute - not in the agreed facts.

1.00 - 2.30.

2.37

Le Quesne continues -

p.373-5 F.C. intended to leave question of which defendant liable undecided - line 39 on p.373. 20

375 lines 5-8
lines 26 - 32.

397 lines 34 - 39.

I refer to these in support of my submission that the estoppel should not be regarded as extending to the grounds unless the grounds can be clearly discovered from the judgment itself.

Form of order in record results from confusion.

p.134 Harriman's case. 30

From the written judgment of F.C. it cannot be clearly discovered that there was either a finding

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Notes of arguments of Counsel

7th March 1972 (continued)

or an admission that there was B.B.C.P.

Wrong to hold that plaintiffs are estopped from denying B.B.C.P.

The appellants' representative at some stage asked F.C. for judgment against 2nd resp. This must have been done in moment of confusion or without thinking - see p.375.

Is 1st defendant "also liable" in formal judgment consistent with written judgment but inconsis-
10 tent with pages 373-375.

Clear intention of Court should be followed in preference to the letter of the formal order which does not express that intention properly.

I am not asking Court to say Co. is not liable. I am only asking for judgment that Chan is liable. There will be 2 judgments but - only one action. In Isaacs case 2 actions.

Position at present falls within s.11(1)(a) Civil Law Act. No bar plaintiffs' claim against
20 1st defendant.

Existence of unsatisfied judgment against 2nd defendant does not bar plaintiffs from contending that there was no B.B.C.P.

In conclusion, comparative consequences of decisions in this case.

If M.L.F's objection is valid plaintiffs' claim against 1st defendant or at least that claim in so far as it is based on contention that 1st defendant was employer of crew will fail without
30 ever being considered by the Courts even though it was properly pleaded and supported by evidence.

If I succeed -

(1) 1st defendant may win on facts - in which case he will have nothing to complain.

Alt. (2) He may lose on facts. He will be left bearing a liability which is justly his.

In the High Court of Singapore

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7th March 1972 (continued)

Parker Q.C. in reply:-

Not confusion on the part of F.C. but confusion on part of plaintiffs' counsel or whoever attended on judgment.

No. It comes from experienced commercial counsel (Kerr) who asked for judgment.

That there is only one ground on which Co. could be held liable is conceded by M.L.F. No other possible ground.

Plaintiffs say that confused and inattentive Mr. Kerr had lapse of memory before a confused P.C. 10

M.L.F. talks of justice.

He is saying that judgment which he asked for is now to be ignored.

Isaacs case - defendant in first action was perhaps fictitious.

1st Defendant from outset specifically alleged that M. & C. were not his servants or agents and that he was not responsible for their acts. 20

Defence para. 3A p.12 of P.C. Record M. & C. employed by 2nd defendant not by 1st defendant.

(Ground was B.B.C.P. in existence).

Joint defence.

2. Plaintiffs at outset put that in issue by para. 1 of Reply.

3. At trial Kerr contended that Co. could only be held liable at all if B.B.C.P. succeeded - p.356 line 7. Position taken by Kerr and maintained by M.L.F. here. 30

4. In that situation in order to obtain judgment against Co. it was necessary either it had to be found against plaintiff in favour of Chan that his allegation in para. 3A was established.

Or it had to be admitted by plaintiffs that M. & C. were servants of Co. and not of Chan.

Kerr was well aware of this when case went to F.C. and it could not be suggested ...

4.15 to 10.30.

Sgd. A.V.W.

Wednesday, 8th March, 1972

10.33

Parker continues -

Kerr well aware before F.C.that only way he could get judgment against Co. was on

10 (a) finding or
(b) admission.

that para. 3A of Defence was true i.e. M. & C. were servants of Co. and not of Chan i.e. to say that there was a B.B.C.P.

5thly at commencement of appeal to F.C. it was agreed that liability should be left open

BUT at some stage, not (no one knows) exactly when, Kerr deliberately asked Court to give judgment against Co. This was in Feb. 1967.

20 6. It follows that in asking for that judgment he was either admitting or inviting Court to find para. 3A allegation.

7. Court in July 1967 gave judgment for which Kerr asked and stated with absolute accuracy the consequence of that judgment that only remaining issue was whether Chan also liable.

8. Accuracy of that consequence is of course admitted and demonstrates incontrovertibly that F.C. far from being confused were clearly aware of
30 what they were asked to do and what in fact they had done.

9. It is said on behalf of plaintiffs despite clarity of order and last para. of Written Reasons the real intention was to leave over the whole question of liability and thus to reject Kerr's request of

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8th March 1972 (continued)

judgment against Co. and to direct a re-trial not on issue directed but on following issue:-

Are both defendants liable and, if not both, is only one and if so which?

10. To say that this is what F.C. really intended when in fact (1) they expressly found Co. liable and (2) also expressed their opinion whether Chan was also liable is to attribute to F.C. either confusion or loss of memory or total insanity or both. 10

11. Possibly but highly unlikely that Kerr was confused and inattentive when he so asked for judgment and did not realise consequences. Even if that be true, unlikely as it is, it makes not slightest difference. Sometimes counsel makes submission or admission full conseq. of which he does not realise. That does not affect position.

12. Even if poss. to attribute confusion to Kerr absolute impossible to attribute confusion to F.C. for this is expressly admitted they got the 20 consequences of complying with Kerr's request completely right i.e. only remaining issue was whether Chan was also liable.

13. F.C. having correctly etc., plaintiffs went on to take out formal order as in last answer of W. Judgment.

14. Not suggested that when that happened in July that Kerr's momentary confusion continued to exist.

15. Having obtained interloc. judgment and 30 order for retrial of sole remaining issue plaintiffs proceeded to tax costs, have them paid by Co. and assess damages and have them paid by Co.

16. It is said damages were assessed against both defendants - on basis of AB17 - "defendants/resps." used in order - plural defendants.

(Le Quesne - this was the natural and regular thing to do in the circumstances.)

To assess damages against 1st defendant is odd 40 suggestion.

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Notes of arguments of Counsel

8th March 1972 (continued)

17. Bad point and unworthy point for plaintiffs to take, 4 reasons.

(1) F.C. order applied to assessment of damages against Co. and no one else. Page 397 last para. 2nd sentence. Formal Order "And it is adjudged ... against 2nd resp. for damages to be assessed".

(2) Not possible to assess damages against someone whose liability has not yet been established.

(3) The order relied on at AB17 includes capital sum, interest @ 6% from judgment. Not right to award interest against Chan from date of judgment.

(4) The Summons on which Order was made is quite clear, AB13. It was summons for assessing damages against 2nd resp.

They are now trying to get out of it. Unworthy point.

AB11 "resps" used in plural though referring to 2nd resp. alone. Para. 2 "resps" refers only to Hua Siang Co. Ltd. In the face of AB11 (letter from Plaintiffs' sol.) it is quite unworthy to take point that assessment was against both 1st and 2nd resp. and this Court should reject it out of hand.

18. Having assessed damages against Co. having had costs paid by Co. and no one else they ask P.C. to affirm F.C. and they succeed - p.16 of Respondents' case in Record - p.8.

19. They now seek to contend in this court 6 impossible things -

(1) that this Court should not try remaining issue that Chan is also liable. Court cannot ignore F.C. order.

(2) that this Court should try further issues not directed by F.C. Impossible. This Court's jurisd. stems from F.C. order.

(3) that F.C. judgment - for which they asked and obtained costs and assessment damages and upheld by P.C. - is wrong. That is impossible.

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8th March 1972 (continued)

(4) that this Court can give judgment against Chan on a basis which is entirely inconsistent and conflicting with judgment in these proceedings against Co.

There will be 2 conflicting judgment(sic) against joint feasors. That is impossible. There can be only one judgment in action for joint tort.

(5) Final effrontery, judgment of lower Court should be preferred, i.e. what they suggest is that this Court could give judgment against Chan which would be on a basis which directly conflicted with F.C. judgment and they then suggest that if this Court did do that this Court's judgment should be preferred.

(6) As a final piece of confusion - they say if this Court gave such a judgment and Chan paid - it would not harm him in any way because he would have a right of contribution against Co. No question of contribution could arisen (sic) if such judgment were given. Chan would be deprived of accrued right under F.C.'s judgment.

If this Court say - Chan is <u>also</u> liable then he would have accrued right.

If this Court finds him solely liable he can recover contribution from no one else.

M.L.F. concedes Co. can only be liable if M. & C. were <u>solely</u> its employees. M.L.F. says Chan could still be liable as joint tortfeasor on the concerted purposes basis.

What Le Quesne desires is to show that M. & C. were not servants of Co. at all but servants alone of Chan.

F.C.'s judgment is perfectly clear.

First, <u>s.11 Point</u> then B.B.C. Point under same headings i.e. <u>Salbstein</u>, <u>Freshwater</u> etc.

<u>Section 11 Point</u> - Whether judgment recovered against Co. and interest and damages is a complete BAR to all further proceedings against Chan.

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Notes of arguments of Counsel

8th March 1972 (continued)

I submitted in opening that at Common Law Chan is discharged completely (Brinsmead) Plaintiffs can only go on against Chan if they can take advantage of s.11(1)(a) of Civil Law Act.

Reason for cola discharge is that judgment has been recovered against one common tortfeasor.

If sued means someone not yet sued - conceded(?).

Is Chan a person who has been sued?

In order to escape from cola discharge plaintiffs must establish that Chan has not been sued within meaning of section - that is common ground.

I contend he has been sued. It is conceded if Chan has been sued within the meaning of s.11(1)(a) further proceedings are barred.

Statutory construction - works must be given ordinary and natural meaning unless special reason is shown to depart from that meaning.

Facts relevant: Writ issued
Pleadings
Interloc. matters
Trial 35 days
Claim dismissed
Appeal - 11 days
Retrial on Chan's liability.

If anyone were asked "Has Chan been sued for conversion" what would answer be? Answer - in view of its ordinary meaning - is obviously "yes".

Prima facie plaintiffs are barred.

Le Quesne says "sued" means "sued to judgment". Chan was sued to judgment in his favour once. Not enough to say "sued" means "sued to judgment" - must say "sued to judgment against which no appeal exists".

Plaintiffs say Chan can only escape by saying he has been sued to final judgment. This would rob s.11(1)(a) of any meaning.

1.00 - 2.30

In the High Court of Singapore

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Notes of arguments of Counsel

8th March 1972 (continued)

3.20

Parker hands up agreed position on Section 11 point = Ex. PD1.

Parker continues reply:

Sued must bear its ordinary and natural meaning. Does not bear the meaning "sued to final judgment".

2ndly, s.11(1)(a) presupposes no suit at all. It preserves right of action against persons who have not been sued but who if they had been sued would have been held liable.

What would have happened if sued? Hypothesis. 10

Plaintiffs say what actually happened - this is contrary to draftsmanship of s.11(1)(a).

Passages in judgments in Wimpey's case: they use ordinary meaning of "sued". Wimpey (1955) A.C. 178.

Lord Simonds - "liable" = "held liable"

"suit the condition of liability"

Last para. @ foot p.180 Lord Porter
p,188 Lord Reid
p.191 Lord Tucker 20
P.195 Lord Keith "The words 'if sued' Headnote p.170.
p.184 foot "The party sued ..."
P.188 "It is therefore ..."
foot p.189
p.196 "The date to be attached ..."

"Sued" refers to institution of suit. 30

S.11(1)(c)

Conversion of Interl. Judgment of F.C. into final judgment by assessment of damages.

Intention of Parliament -

Action against Chan must be dismissed in toto.

The so-called Bare-boat Charter Party Point

We will submit agreed position tomorrow.

4.00 to 10.30

Thursday, 9th March, 1972

10.40 a.m.

Parker:-

Agreed Statement on B.B.C.P. - Ex.P.D.2

B.B.C.P. Point arising if I fail on s.11 point.

May I set out essential simplicity of the point:

10 1. Kerr in asking for judgment against Co. necessarily either admitted that M/C were servants of Co. and not of Chan.

Or invited F.C. to reach a conclusion on that question.

2. F.C. specifically stated in its reasons that the goods were released by Co.

3. In so stating F.C. can only have been doing one of two things -

either making a finding
20 or giving effect to an admission.

It is probable that they were giving effect to an admission because they said that the facts were never in dispute.

4. Plaintiffs seek to escape from that position by saying that F.C. were mistaken in saying that the facts were never in dispute. Even if that be right it cannot possibly affect the matter because the statement is there in the judgment and must be given its full effect.

30 5. In any event F.C. gave judgment pursuant to Kerr's request which as appears from PD2 could only have been given on the basis that it was

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9th March 1972 (continued)

proved or admitted that M/C were servants of Co. and not of Chan i.e. there was a B.B.C.P.

6. F.C. demonstrated its clear understanding of what it was doing and its clear intention by directing that remaining issue was whether Chan was also liable.

7. Subject to s.11 which if successful bars all further proceedings this Court can try the issue whether Chan is also liable but not any other issue. 10

8. If as plaintiffs suggest this Court were to investigate the question whether M/C were in truth servants of Co. and if this Court came to the same result as F.C. no great harm would be done except that time and money would be wasted and there would be litigation again of a matter which had already been determined.

9. If on the other hand this Court were to conclude differently from that in F.C.'s order there would be an impossible situation for 4 reasons 20

(i) Those 2 judgments in one action in respect of a joint tort which is against one judgment rule;

(ii) Those 2 judgments would directly conflict;

(iii) If Judgment of this Court were to be of any assistance to plaintiffs it would mean that it over-ruled judgment of F.C. in these proceedings;

and

(iv) it would involve that the estoppel which admittedly exists between plaintiffs and defendant Co. did not exist as between plaintiffs and defendant Chan notwithstanding defendant Chan was also a party to F.C. proceedings and was the person vitally concerned with the question whether Co. was liable. Plaintiffs say no estoppel as between plaintiffs and Chan. 30

Le Quesne: Not quite accurate.

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9th March 1972 (continued)

Imp. q. re. estoppel was - to what extent does F.C. judgment raise estoppel.

My submission was estoppel did not extend to grounds. I didn't argue it applies to one but not the other of defendants.

Parker - It would be open to Co. to contend that it was never the employer and therefore Co. is not bound.

Developing Estoppel point:

10 M.L.F. answer based on Harriman case p.123 (1909P)

Foot of 123 - facts "The parties were married" - desertion - held by magistrate to be true.

Section 4 of S.J. (M.W.) Act 1895.

There was no allegation of cruelty in the issues between parties. s.5 Act 1895 (a).

This is the only way cruelty came in.

Master of Rolls at p. 131 (middle & foot).

At 132 he says "The utmost effect ..." No complaint
20 of cruelty.

Vaugham Williams L.J. 133 mid. imp. 134 "The answer by the A.G. ...." Fletcher Moulton L.J. p.137 "But he points out ..." - 138 p.141 after break.

p.142 imp: evidence in Divorce Court "proved" means proved as fact and not merely inter partes

"But, although ..."

Farwell L.J. mid-p.144
Buckley L.J. p.147.
30 Kenedy L.J. p.154 (mid.)

peculiar functions of Divorce Court.

Estoppel rule in civil cases as against divorce cases.

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9th March 1972 (continued)

Reliance was made on cruelty.

5 L.J.'s.

Division of opinion. Majority in civil case estoppel would apply. Unanimous that way out was by statute. Fletcher Moulton L.J. estoppel binding in civil cases. Farwell L.J. did not doubt this (p.137, p.144).

Determination or admission in F.C. Estoppel applies.

p.134 foot "Moreover ..." is in my favour. 10

From the grounds of judgment - clear.

2. F.C. specifically stated that goods were released by defendant Co. which necessarily involves prop. that M/C were Co's servants.

3. By specifying only remaining issue whether Chan also liable they made their meaning plain.

Le Quesne says F.C. mistaken; i.e. "They wrongly stated facts never in dispute".

Even if they were mistaken - never in dispute goods were delivered by Co. Kerr's request for judgment against Co. made dispute cease to exist. 20

Now to turn to Para. 11 of P.D.2

M.L.F. says Court of Appeal did not intend judgment against Co. when F.C. say "the appellants are entitled to judgment etc."

p.375 line 25 - 30 has no effect.

Simple answer - Section 11(1)(a) - has Chan been sued. Result, dismiss action. BB.C.P.: (1) did F.C. understand that in saying that plaintiffs were entitled to judgment against Co. it was finding Co. liable. There is no doubt about that. 30

(2) When F.C. ordered retrial of issue whether Chan also liable did it mean to direct not whether Chan also liable but whether Chan or the Co. liable and if the Co. liable whether Chan also liable.

Answer - no doubt about that - Result, B.B.C.P. point not open.

1 - 2.30

Sgd. A.V.W.

2.30

Parker -

Salstein case is substantially the only matter left for me to deal with.

(1916) 2 K.B. 1916, 139.

10 1st para. of Headnote -

I accept Judgment against A in one action against A is no bar to action against B in another in respect of same subject matter provided -

1. That B was not a party to 1st action.

2. That there is no question of Joint liability.

Isaac Case does not help plaintiffs in present proceedings -

(1) Chan was a party to proceedings in which P.C. gave J.

20 (2) Here we have same action - not subseq. action.

(3) Joint tort does arise.

(4) On B.B.C.P. - only bar to B.B.C.P. point.

Re 3rd point - See 1st 4 paras. of P.D.1

1 & 3

We are dealing with a J-T situation.

Central fallacy for which M.L.F. relied on this case i.e. Bankes L.J. @ p.154 quoting from Brett J. - "Cause of action" etc.

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9th March 1972 (continued)

Assume M. and C. were Co's servants and complete stranger had agreed with M. & C. that misdelivery should be made.

(1) M. & C. would be liable as tortfeasors.

(2) Co. would be liable as joint feasors because they were employers of M. & C.

(3) Stranger would be liable as having been a party to agreement to convert by M. & C. They are all Joint-Tortfeasors.

Thus different facts would be proved against each of the three groups. 10

Bankes L.J. cannot be precisely right when dealing with joint torts.

Certain facts are common i.e. misdelivery of somebody else's goods.

One misdelivery - only one tort. Other facts establish who is responsible for one tort.

The Koursk 1924 P Meaning of tortfeasors - Bankes L.J. "I think not ..." at p.151.

Scrutton L.J. p.155, after break. p.156 "I am of opinion ...". 20

p.157 "Injuria"

p.157 "What constitutes cause of action is injuria?"

p.159.

Salbstein at p.142 Lush J. break.
p.144 5 lines from foot - estoppel.
p.145 "judgment is conclusive between the parties".

p.150 midpage.
p.153 "But, assuming ..." mid.
That case is of no avail to M.L.F.

Freshwater (1933) 1 Ch. 162 last line "The principle of merger ... (p.163) then".

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9th March 1972 (continued)

p.185 foot "Where judgment ... (186) ..." not feasors but they committed successive torts.

Back to simplicity - P.D.1

Para. 9.

Q. Has Chan been sued.
A. Yes.

Result - dismiss claim.

P.D.2 para. 11

Q. Did F.C. understand what it was doing when judgment against Co.
A. Yes.

Q. Did F.C. intend to refer which 2nd defendant or both liable when referring only 2nd.
A. No. Result B.B.C.P. not applicable.

I ask action be dismissed.

Alt.:- if after 10 years Chan is to be sued B.B.C.P. point is not available.

Le Quesne - Re. M.L.F. "Joint Tort specifically does arise". This does not provide a valid ground.

4.00 p.m. to Monday 13th March for decision on preliminary objections by Parker.

Sgd. A.V.W.

13th March 1972

Monday, 13th March, 1972

10.35 Counsel as before.

Answer to both preliminary points in favour of the defendant Chan. Action in any case against defendant Chan, at end of trial, will be dismissed.

Sgd. A.V.W.

In the High Court of Singapore

No.15

Notes taken at hearing by Winslow J.

Notes of arguments of Counsel

13th March 1972 (continued)

Le Quesne continues his opening address:-

1. B.B.C.P.

Who is responsible in law for acts of M. & C.?

Acts constituting conversion (by delivery) were acts of M. & C .

S/C page 4 record paras. 3, 4.

Defence - p.11 under its para. 3 of S.C. i.e. Chan was owner.

para. 3A of defence - 2nd defendant employed M. & C. not 1st defendant. 10

Burden of proof on this point is on Defendants.

s.103 Evidence Act.

Defendants ask Court to believe the particular facts in para. 3A.

Chan is admitted owner - presumed to have been employer of M. & C. unless there was some other arrangement.

It follows, conversion having been proved, in the absence of other arrangement evidence, plaintiffs would be entitled to judgment against Chan. 20

2 preliminary matters:-

1. Up to end of 1960, these 2 vessels were owned and operated by Chan - trading under style of "Hua Siang Steamship Co." (without "Ltd."). Chan was sole proprietor of this Co.

2. Defendants say there was O.B.B.C.P. from 1st defendant to 2nd defendant covering the relevant period.

Scrutton on Charter Parties 17th Ed. Art. 2 @ p.4, 5. 30

Nature & Effect of a C.P.

B.B.C.P. = charter by demise without M. & C.

p.4 note (e) Doubtful if charter by demise can be constituted except by document in writing.

Cory & Son v. Dorman, Long & Co. 1936 41 Com. Cas. 224

Slesser L.J. 235.

Romer L.J. 239.

O.B.B.C.P. is an exceedingly unusual arrangement.

Documents re. demise of these vessels. Arrangements @ 1st Board Meeting of 2nd defendant Co. 31st Dec. 1960 Co. had been incorp. the day before.

10

Apart from 2 subscription shares the first lot of shares 600 were allotted to defendant Chan in Nov. 1961, 60 to one of his sons and 40 to another son.

At all times 2 directors - Chan who was Chairman Managing Director and his son Chan Kim Yam.

Resolution - Part II of F.C. App. Record p.336 - 338. (p.3 of original seen in minute book). That is the critical resolution.

20

Statement of Facts agreed between parties at first trial D14.

Goods covered by 20 Mate's Receipts P4A,B.C.D..

Only P4D Receipts Nos. 2619, 2629 - of 28th and 29th June 1961 - are the only ones bearing the word "Limited" after "H.S.S.C." All receipts - 15 May 1961 to 29th June 1961.

See 71 similar receipts, P7A to D - from 3rd Jan. 1961 to 24th April 1961, all are receipts of "H.S.S.C."

30

4 Delivery Orders were exhibited - D10 dated 24th May 1961, 20th June 1961, 26th June 1961, 4 July 1961. Only the one of 4th July 1961 has the word "Limited" after "H.S.S.C." Each order is signed for H.S.S.C. (Printed).

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13th March 1972 (continued)

Indemnities

Agreed Bundle of Documents marked 'X' pages 156 - 194. 3 Jan. 1961 to 7 June 1961. All addressed to H.S.S. Co. 196, 198 have "Limited" added to H.S.S.C.

Blank Application for Port Clearance D12 (p.335 of P.C.A. Pt.II).

P.C. Record p.320 - Agreed matters at foot of page.

Agreed Bundle of Corres. marked A, p.6 & 8 signed by Chan for "H.S.S.Co." (ABC"A"). 10

p.10 of 24 June 1961 - H.S.S.Co. incorporated.

At end of June 1961 defendants began to be concerned about adding "Limited".

Page 5 of ABC "A". Not clear what happened to ships.

Articles of Ships - some are headed H.S.S. Co. and some H.S.S.Co. Ltd. No particular significance.

I have referred to all contemporary documents which bear upon this question.

Up to end of June 1961 defendant Chan traded as H.S.S. Co. 20

Resolution was that -

Ships were to be operated and maintained by defendant Co. (2nd defendant).

D14 to a certain extent bears this out (they paid wages and repairs). "It has never accounted to anyone for such receipts and payments".

Dealings with T.S.C. seem to have been carried on in name of H.S.S.C. and not H.S.S.C. Ltd.

P.320 of P.C. record - names of charterers left blank on port clearance forms. 30

Defendant Co. was Defendant Chan's creature.

Whatever Defendant Co. was doing in the way of managing ships up to end of June 1961 the position was ill defined.

Not possible on this evidence to be entirely satisfied that operation of ships had been handed over to 2nd defendant Co., or that there was a demise of ships or that 2nd defendant had replaced 1st defendant - as employer of M. & C.

Plaintiffs entitled to judgment against 1st defendant.

2nd Issue of Fact

Is 1st defendant a joint tortfeasor in conversion of goods by delivery to T.S.C. a person not entitled to possession.

Delivery was by Members of Crew as employees of 2nd defendant Co. is tortfeasor.

1st defendant was jointly concerned with Co. in delivery to T.S.C.

He was privy. He procured delivery of goods by Co. to T.S.C.

He is joint tort feasor with Co. and both are liable in conversion.

Scrutton L.J. Koursk 1924 P. p.155 - definition of joint tortfeasors. Suggestion is individual and Ltd. Co. acted in concert.

In what cirs. can a Co. and its managing director be said to be acting in concert?

Rainham Chemical Works Ltd. v. Belvedere Fish Guano Co. Ltd. (1921) 2 A.C. 465.

p.476 Lord Buckmaster - if Co. commits tort at express direction of its two directors then the two are responsible as individuals jointly with the Co.

to 2.30

Sgd. A.V.W.

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13th March 1972 (continued)

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Notes of arguments of Counsel

13th March 1972 (continued)

2.33

Le Quesne continues his opening address:-

Performing Right Soc. Ltd. v. Cyril Theatrical Syndicate (1924) 1 K.B.D. 2.

Atkin L.J. @ p.14/15 "If the directors ... impliedly (top 15).

Question is:- Did defendant Chan expressly or impliedly direct or procure commission of the act? If he did - he was privy to the act.

The act is delivery of goods to T.S.C. 10

No guilty state of mind required.

Winfield 7th Ed. Tort p.535 "Honest but mistaken belief that defendant had right is no defence."

p.183 L.H.C. B2 ... Foot L.H.C. p.181, 1 M.L.J. 1971.

Q. Did defendant Chan in any sense expressly or impliedly direct or procure delivery of goods to T.S.C.?

Court should find answer "Yes". 20

Admission by defendant Chan s.17(1) Evidence Act. Cap. 5.

S.18(1)
S.21
S.31

Evidence given by defendant Chan at trial before Kula J. does suggest inference that he procured delivery of or delivered goods to T.S.C. It is admission by him under S.17, 18. He may not have desired the inference drawn but that makes no difference. 30

p.209 P.C. Record 1.26-34.
p.210 line 36 "When ... " line 44.
p.212 line 13 "It happens ..." to line 31.
p.216 line 31
p.223 line 3 ... see p.26 (para. 3A), line 21-23.

p.224.
p.238 line 19 'xxn of Chan resumed) to 239 1.7
p.246 1.31-37.

Choo's evidence

p.247 1.9 - 248 1.20.
p.249 line 15 - line 42.
p.256 xxn. by Court line 336 - 41.

Effect of Chan's evidence

Up to 1960 2 vessels operated on Chan's instructions.

2. Up to 1960 every shipment by T.S.C. consigned to O.C.B.C. was in fact delivered at Singapore to T.S.C. on arrival.

3. In 1961 until action started things happened as before.

4. Up to 1960 it was H.S.S.Co's policy resulting from personal decision of defendant Chan to deliver to T.S.C.

5. After incorp. of 2nd defendant Co. defendant Chan was managing director and policy did not change (249).

6. Early in 1961 when delays were occurring it was dt.Chan who went to T.S.C. and made new arrangements for delivery i.e. 3 individuals were to be personally liable on T.S.C.'s indemnities, 216-7, 223.

7. In July 1961 when he discovered T.S.C. were not paying for goods defendant Chan told or advised his son not to deliver goods to T.S.C. without production mate's receipts (p.246 and evidence of Choo).

8. In his evidence relating to 1961 Chan used 1st person singular "I had to deliver" "I went to see" Son dealing with deliveries for 3 years from 1961 to 1964.

Remarkable that even after 3 years Chan was still using 1st person singular.

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Son C.K.Y. and Cheah dealt with deliveries.

Son in discretion released goods against docs. or indemnities 210, 212, 216, 238, 249.

When the evidence is read as a whole - the utmost it shows in favour of defendants is that Chan Kim Yam was dealing with deliveries from day to day but he was doing so subject to decision taken by defendant Chan and subject to practice established by defendant Chan that shipment by T.S.C. consigned to O.C.B.C. should at request of T.S.C. be delivered to T.S.C. at Singapore. 10

Decision to deliver T.S.C. was originally taken by defendant Chan - this was before incorp. of defendant Co.

Defendant Chan goes to see T.S.C.

July 1961 defendant tells his son to change practice to insist on production of mate's receipts. Still uses "I" in relation to this period.

Defendant Chan was still the dominant influence and he procured delivery to T.S.C. of goods consigned by them to O.C.B.C. incl. goods subject of this action. 20

In 1961, the previously established practice (i.e. established by defendant Chan was not to be altered without defendant Chan's approval - he impliedly procured the act of the Co. in delivering to T.S.C.

4 to 10.30

Sgd. A.V.W. 30

14th March 1972

Tuesday, 14th March 1972

10.34

Le Quesne continues -

Wigram V.C. in Cory's case - not much in it more than in bald statement quoted.

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Notes of Plaintiffs further evidence

Choo Chew Sing Examination 14th March 1972

Calls:-

P.W.1 Choo Chew Sing a.s. Hokkien
28 Upper Lanang Road Sibu

Now Managing Director Wah Tat Bank, Sibu - Head Office.

In 1961 I was manager.

Managing Director in 1960 was my father.

In 1961 I knew Chan Cheng Kum (id.). As Manager of Bank in 1961 I knew about shipment of goods by T.S.C. to Singapore.

I knew about their pledge to my Bank.

Early July 1961 I remember travelling by plane to Singapore. It was 9th July.

I made that journey, after consulting my father, on account of late payments by T.S.C.

I met Chan on plane(Kuching to Singapore). We sat side by side.

I mentioned to him that this time T.S.C. had been late towards (his) payment.

Chan replied proprietor of T.S.C. Lee Chia Tian was an old and pious man. He also said he was trustworthy and would no doubt make payments - he told me to approach him slowly and not to rush him since he was an old man.

Lee Chia Tian was then already 80 years old. (Counsel says he died by time of trial in 1964).

Next morning I went to see L.C.T. at his office. He had not turned up yet. I saw Chan there. We both waited for L.C.T.'s arrival. When he arrived L.C.T. suggested that we go to his house - there were many people in the office.

We went to L.C.T.'s house and sat in the hall. Only the three of us.

Chan spoke first. He told Lee to pay our Bank $190,000 being value of previous shipment.

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Notes of Plaintiffs further evidence

Choo Chew Sing Examination (continued) 14th March 1972

Lee told Chan to allow him to await the arrival of the next shipment and to take delivery of that shipment when he would pay the Bank.

Chan disagreed with this suggestion.

I told Lee to pay $190,000 first after which I would be prepared to grant overdraft facilities with Bank in Sibu.

Lee disagreed because he was not able to make such payment.

Since there was no agreement on the subject Chan was annoyed and spoke to Lee in a loud voice saying Lee was a pious and religious man and should not make things difficult for others. 10

Lee remained silent.

This conversation was carried on in Hokkien.

Chan went to the telephone which was in the rear portion of hall.

I could hear what Chan said on telephone.

He asked for his son, Kim Yam. 20

He spoke to his son in mixture of Hokkien and Teochew - mainly Teochew which I understand.

I understood what Chan said.

He said henceforth there should be no delivery without the proper documents.

Q. This was 10 years ago - can you give words he used?
A. "In future if there was no proper documents he should not allow delivery without proper documents." 30

He hung up the receiver after this.

We all went home.

Cross-examination

<u>Xxn. Parker</u>

This was a long time ago but I don't agree

my memory not very good. My memory is good.

There were only 3 of us present.

I remember giving evidence previously in this case.

Q. Remember saying Chan's youngest son was also present (p.66 of P.C. Record).
A. At Lee's office my father in law and Chan's youngest son were present.

Can't remember if I said at p.t. (previous
10 trial) that Chan's son accompanied us to Lee's house. This is not very important - so I don't remember.

It is true then Chan mentioned $190,000.

Q. At previous trial you said there was no mentioned of the amount. Was that true?
A. I did mentioned the amount of $190,000.

Not true I did not mention the sum of $190,000 at previous trial.

(Le Quesne: p.74 line 33 - witness did
20 mention $190,000/-).

Telephone was behind partition extending from floor to ceiling.

I was in main hall.

I heard the conversation.

Not true somebody afterwards told me about conversation.

Q. Can you hear through bricks and mortar?
A. Partition was of brick but there were two passages, one on either side of partition. Telephone
30 was in middle. I could hear.

Q. At previous trial you said partition was wood (p.74 P.C.R. line 43) That wasn't right.
A. I remember it was made of brick.

Q. Why say it was wood?
A. (no answer) ... I remember I said bricks not wood.

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Notes taken at hearing by Winslow J.

Notes of Plaintiffs further evidence

Choo Chew Sing Cross-examination (continued) 14th March 1972

Re-examination

Not true I said wood to explain how it was that I heard.

Re-xn. Le Quesne:

The distance between us (Chan & I) was about 15 feet (as it is now - points).

True that brick partition was floor to ceiling but not wall to wall. There were passages.

To Court

I have not visited Lee's premises since last trial. 10

The telephone was placed on a sideboard. I could see it and Chan at the telephone through the passage into the place where he was. He was audible at that distance. Since he was annoyed he spoke in a loud voice.

Le Quesne:-

I formally put in the record of evidence of Chan Cheng Kum given at the previous trial - passages which I have read earlier and set out in P21. 20

Sgd. A.V.W.

Case for Plaintiff.

Parker: I call no evidence.

(O.35 r.4 sub-rule 3)

Notes of Counsels closing speeches 14th March 1972

12.40

Le Quesne addresses Court first in accordance with O.35 r.4(3):

1. Admitted in pleadings that Chan owned ships - and M. & C. were employees of 2nd defendant.

I ask Court to find burden of proof is on defendants (a) S.103 Evidence Act (b) owner presumed to be employer. 30

By choosing not to call evidence defendant

leaves Court with no evidence other than documents.

Impossible to find on docs. either demise of ship or 2nd defendant replaced 1st as employers of M. & C.

S.114 Evidence Act illustration (g).

Evidence could have been produced to explain why it was that up to end June 1961 these transactions were still being carried on in name of H.S.S.Co. It was not produced. No explanation.
10 Evidence could have been produced of new contracts re. M. & C. were made with 2nd defendant instead of first.

Evidence could have been produced of demise of ship instead of merely arrangement for their operation only.

Within knowledge of Chan himself - at least of his staff in the Ltd. Co.

Court should draw presumption in s.114 (illustration (g)) - adverse inference.

20 Not shown on balance of probabilities that there was any bare boat C.P. 2nd defendants never replaced 1st defendant as employers of M. & C.

No satisfactory evidence that 2nd defendant ever became employers of M. & C.

It follows from admitted fact that 1st defendant was owner - that he was employer of M. & C.

Joint Tortfeasors

Evidence of P.W.1 - Choo.

30 Parker pointed out discrepancies - re (1) son's presence at Lee's house (2) partition of wood, now he says brick.

No suggestion son took part in conversation between Chan, Lee & Choo - not Kim Yam. No ground for regarding him as unreliable witness.

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Notes of Counsels closing speeches

14th March 1972 (continued)

(2) Material of which partition was made - discrepancy. Chan not very far away from Choo. Perfectly easy for Choo to hear conversation whether partition was made of brick or wood or 6 inches thick. There was space at each end.

Accuracy of man's observations is not indication as to his reliability as witness.

Passages in Chan's evidence - p.246 line 31 et. seq. - he admitted the fact of conversation and that they were talking about the same thing. 10

Proper inference from Ex. P21 - Chan's evidence.

What I said yesterday is reinforced by 2 new considerations -

1. In July 1961 Chan told C.K. Yam what to do about delivery.

2. S.114 Evidence Act Evidence could have been given here by Chan about the matters relating to delivery e.g. he could have said the question of delivery was left entirely in the hands of his son C.K.Y. 20

Cheah Wee Hock could have been called to say that delivery was entirely in hands of C.K.Y.

Deliveries to T.S.C. old customers of Chan - deliveries were always to T.S.C. when goods got to Singapore.

C.K.Y. given complete discretion says defendant in the face of evidence that in 1961 the son did not exercise his discretion to make any change. It was Chan who went off to see T.S.C. about delivery without M.R. Proper inference is that decision to deliver goods consigned to O.C.B.C./ T.S.C. was taken by defendant Chan. Chan described it as a policy adopted by him. C.K.Y. could not change this policy. 30

Chan procured delivery of goods by Co. to T.S.C.

That being evidence and total lack of contradictory evidence - I ask that 1st defendant be

found to be a Joint Tort feasor with 2nd defendant.

1 - 2.15

Sgd. A.V.W.

2.15

Parker replies -

We assume B.B.C.P. is still at large.

Burden on Chan's part (by M.L.F.) that there was a B.B.C.P. that M. & C. were not his but Co.'s servants.

10 Burden not on Chan.

Act of conversion was act of M. & C. of vessel. They are Tortfeasors.

Plaintiff has to establish responsibility. If he desires to prove M. & C.were servants of Chan it is for him to prove it.

Idle to rely on para. 3A of Defence - that is denial of allegation necessary to plaintiff's case - without which plaintiff cannot succeed. S.114 does not assist plaintiff.

20 Plaintiffs say if we cannot rely on s.103 then ownership is admitted therefore Chan employed M. & C. No such presumption.

I accept that he is entitled to say there is agency by holding out - that is not the case for 3 reasons:-

(i) No allegation in pleadings of reliance on M. & C. or holding out.

(ii) Letter 5 in Bundle A to O.C.B.C. from Chan as Managing Director of Co. - printed circular - disposes of presumption.

30 (iii) Plaintiffs did not deal with ship at all - they did not load ship or take Mate's Receipts.

Burden is on plaintiffs to show M. & C. were employed by Chan.

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Notes of Counsels closing speeches

14th March 1972 (continued)

If wrong on this, I move to -

I accept - Chan was owner of vessel.

Up to end of 1960 Chan operated vessels under old name of firm.

Oral C.P. is rarity.

Against that, it is species of a shipping arrangement for long time (Scrutton - note (d) on p.4

Meeting of Co. put in b. p.336 - 338 Part II of F.C. (not available) but Court sees original minute book containing minutes of 1st meeting of Co. - (marking it D13 as was number for copy of exhibit now obscure). 10

1. M.L.F. says phrase is "Bareboat charter fee" and that it is not a resolution for a bare-boat charter.

2. Page 5 of Bundle A "Assets" included "vessels".

3. D14 - agreed facts. I rely on "after 8/2/61 ... payments". 20

"The old firm did not trade after 31/12/60.

4. F.C. judgment, though not conclusive estoppel -

Harriman - p.144, 155. Farwell L.J. points out even Divorce Court can act on it though not bound.

M/C in F.C. judgment were not servants of defendant Chan but of defendant Co.

Up to end June 1961 "H.S.S.Co." not "H.S.S. Co. Ltd." used - inference is Chan was until end June 1961 operating under old firm name - that is what plaintiff submits. 30

No reliance can be placed by plaintiffs on all these documents.

Was it perhaps because Kerr realised that effect of resolution coupled with P5 Agreed Bundle.

D14 agreed facts could only lead to conclusion that there was B.B.C.P. that led him in F.C. to abandon the issue and ask for judgment. Plaintiffs are trying now to go back on agreed facts put in before Kula J.

Hence I called no evidence on this point. No room for adverse inference.

Shipowners meant what they did when they used Bareboat charter - in resolution.

10 Joint Tortfeasor Point

Starting point is M/C were servants of Co. and not of defendant Chan.

Co. responsible for acts of M/C vicariously.

Can defendant Chan Managing Director of defendant Co. be held jointly liable with Co. M.L.F. concedes he can only be held so liable if he ordered or procured commission of wrongful conversion.

From Delivery Orders put in by M.L.F. 3 signed by Cheah, one by C.K.Y. (Chan's son).

20 Hence question really becomes - did Chan order (o) or procure (p) Cheah & C.K.Y.? None has suggested that he o. or p. M. and C.

Law

Rainham case: p.475/6 "If Co. was trading independently ..." Lord Buckmaster.

Lord Parmoor 488 "In order" after 2nd break ... up to "sham procedure".

p.472, 3, 4, 5 and P. 476.

F. & P. were given personal rights - governing
30 directors, Co. their agents yet H.L. say no liability of F. & C. as J-Tortfeasors.

This case is a fortiori case.

Performing Right Soc. case - p.14 Lord Atkin - "Prima facie ... to page 15 5th line". I ask Court to read on up to "tortious act".

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Notes of Counsels closing speeches

14th March 1972 (continued)

p.2 "The managing director ..."

He was not privy to tort.

Stress must be made of "knowledge".

Analogy of mag. dir. of bank whose employee accepts a cheque improperly (?) - All mag. dir. of bank would be liable if m.l.f. is right.

Specific act must be authorised.

"The ship knew" in P.C. judgment - ship means the Co. Does not avail m.l.f.

Evidence 10

Delivery of goods against indemnities is basis of case. M.L.F. said commonplace.

Therefore this is of no importance.

Choo P.W.1 was only witness called - to prove Chan rang up his son not to make any more deliveries. Balloon had gone up. Any director would say "Stop doing this. We are at risk."

What else do plaintiffs rely on?

Burden is on plaintiff.

So-called Admissions 20

Before P.C. it was agreed case could not be decided in view of credibility question.

Here they base case on Chan's admissions.

What they now tender, fairly construed, are not admissions.

Statements by Chan which go both ways. Court is invited by plaintiffs to reject Chan's evidence when he said he gave discretion to his son but to accept other parts of his evidence. Trial judge who has seen Chan in box can do that 30 but that cannot be done on the record. Credibility cannot be dealt with on the record. Unless they are admissions they are inadmissible.

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Notes of Counsels closing speeches

14th March 1972 (continued)

Of 8 points made by m.l.f. on effect of Chan's evidence 1, 2 and 4 are irrelevant as preceding formation of Co. (Up to 1960).

3 & 5 In 1961 things went on as before.

6. para. 3A of S.C. against 3 Party - Co. taking ordinary precaution - indemnity signed only by shippers. Asking for personal guarantees.

7. I have dealt with.

8. M.L.F. stressed first person singular
10 ("I this", "I that") - overlooked D14.

It makes one wonder if in truth delivery was wholly in the son's hands says m.l.f. - Only wondering can't get one very far.

Far less than Rainham and Performing Right cases which were thrown out.

Re. Cheah & C.K.Y. - like bandmaster in Performing Right case.

I am at a loss to understand how Chan can be said to have procured delivery.

20 Whole issue depends on credibility.

Why should I call Chan to say what has already been put in. C.K.Y. and Cheah could have been called by plaintiff.

If C.K.Y. was in charge of delivery, decision to deliver these goods was his decision.

Policy adopted by his father before formation of Co. has nothing to do with it. It is pure speculation to say he could not have changed policy of his father without father's approval.

30 Suggestion that Chan procured delivery of these parcels is untrue. If he did then Rainham and Performing Right cases were wrongly decided - where evidence was far more.

F. & P. did everything. Co. they formed could not do anything except by virtue of agreements they made. They were in full control yet they

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were held not liable.

Chan after 10 years will be relieved by a positive finding that he did not procure.

Le Quesne -

Delivery to T.S.C. arose from policy of Chan originating from his personal decision.

Parker -

Original policy decision made by Chan before incorporation cannot be used against him in this action or the formation of the Co. has no effect. 10

That concludes the matter but in view of Court's ruling the claim against Chan must be dismissed with costs.

I ask Court to say action is dismissed with costs with reasons to be given later. O.59 r.4 to certify for 2 counsel.

Le Quesne:

I don't oppose certificate. But preliminary objections and argument on fact. If I succeed on fact then proper order should be that I should pay 20 the proper proportion of costs by estimating time spent on these two matters. Until Court has arrived at findings of fact no order should be made re. costs.

Both counsel agree I should apportion costs if plaintiff succeeds on fact, though Parker at first formally opposed the application.

C.A.V.

Sgd. A.V.W.

30

No. 16

JUDGMENT OF WINSLOW J.

In the High Court of Singapore

No.16

Judgment of Winslow J.

24th July 1972

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1284 of 1961

BETWEEN

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Plaintiffs

10 And

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Defendants

Coram: Winslow J.

JUDGMENT

I shall assume for the purposes of this judgment that I need not set out in detail the reasons why the Judicial Committee of the Privy Council found itself able to reach the conclusion that the shipment of 20 certain goods, the subject matter of this action for conversion was a delivery to the vessels, "Hua Heng" and "Hua Li", owned by the 1st defendant and chartered by the 2nd defendant, as bailees for the plaintiffs so that thereby the pledge of the said goods to them was completed and the plaintiffs given the possessory title, on which they relied, entitling them to succeed in their claim for conversion.

The Privy Council accordingly dismissed the appeal of the two defendants herein against the 30 judgment of the Federal Court in favour of the plaintiffs against the 2nd defendants herein for damages to be assessed by the Registrar and confirm the order that the remaining issue as to whether the 1st defendant was also liable in conversion should be remitted for a re-trial.

This issue eventually came before me for re-trial on 6th March 1972, damages having been finally assessed, on an appeal from the Registrar, on 20th

June 1969 in the sum of $570,500/- which the 2nd defendants have been unable to pay although they have paid slightly more than the total taxed costs and still have £500 due back to them on that score.

The parties were represented by Mr. Le Quesne, Q.C. with Mr. Karthigesu for the plaintiffs and Mr. Parker, Q.C. with Mr. Grimberg for the defendants.

Mr. Le Quesne opened his case for the plaintiffs with a brief account of the previous history of the proceedings in this action culminating in the order of the Federal Court for the present re-trial of the issue as confirmed by the Privy Council as already stated. Whilst he was in the process of making submissions on what he considered to be the proper scope of the re-trial he ventured to submit that the Federal Court's judgment might be against the wrong defendant but that that was, nevertheless, no bar to this Court's giving judgment against the first defendant. Mr. Parker, who seemed to have been anxious to be heard on certain preliminary objections, immediately took his cue from Mr. Le Quesne's submissions at this stage to state quite emphatically that he did not agree that the judgment of the Federal Court was no bar to my giving judgment against the first defendant.

From then on until 4.00 p.m. on Thursday, 9th March, 1972, as recorded on page 35 of my notes, I heard argument from both counsel on two preliminary points of objection. In the course of that argument Mr. Parker handed up two sets of documents, Ex. PD1 and PD2 setting out the agreed position between the parties on each of these points.

It may be useful at this stage to set out in full the agreed position as stated in these exhibits:-

Exhibit PD1 reads as follows:-

"THE SECTION 11 point

1. It is accepted by both parties that under common law final judgment against one joint tortfeasor operates as a complete bar to all

further proceedings against any other joint tortfeasor whether in the same action or otherwise.

2. It is accepted by the Defendant Chan that the Federal Court judgment, being only interlocutory, is not by itself a complete bar to all further proceedings against the Defendant Chan under the common law.

3. It is accepted by the Plaintiffs that the Federal Court judgment, coupled with the assessment of damages thereunder, constitutes a final judgment and is a complete bar at common law to all further proceedings against the Defendant Chan.

4. It therefore follows that the Plaintiffs' claim against the Defendant Chan is now barred and that the claim against him must be dismissed unless the common law rule has been altered by statute.

5. It is for this reason that section 11(1)(a) of the Civil Law Act becomes relevant. The Plaintiffs contend that that section has altered the common law rule so that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan.

6. It is accepted by both parties that section 11(1)(a) does alter the common law rule so that final judgment against one joint tortfeasor is no longer a bar to an action against any other joint tortfeasor if, but only if, he has not been "sued" within the meaning of that sub-section.

7. The Plaintiffs contend that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan because they contend that "sued" in section 11(1)(a) means "sued to final judgment", and since Mr. Chan has not been sued to final judgment, there is no complete bar to further proceedings against him.

8. If this contention is upheld this Court is free to consider and decide upon the Plaintiffs'

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claim against the Defendant Chan within whatever may be held to be the proper scope of the re-trial ordered by the Federal Court.

9. The Defendant Chan contends that the final judgment already given in this case is a bar to all further proceedings against the Defendant Chan because "sued" in section 11(1)(a) bears its ordinary and natural meaning and the Defendant Chan, who is a Defendant in the same action in which the final judgment has been given against the Defendant Company, has been "sued" within such ordinary and natural meaning. 10

10. If this contention is upheld then all further proceedings against the Defendant Chan are completely barred and the Plaintiffs' claim against the Defendant Chan must be dismissed."

Exhibit PD2 reads as follows:

"<u>THE SO-CALLED BARE-BOAT CHARTERPARTY POINT</u>

1. This point only arises if the Defendants fail on the s.11 point. It would then be necessary to decide what is the proper scope of the re-trial ordered by the Federal Court. 20

2. It was from the outset alleged by both the Defendant that the Master and crew were the servants of the Defendant Company and not of the Defendant Chan.

3. The sole ground upon which the two Defendants sought to establish this allegation was that there was an oral bare boat charterparty in existence between the Defendant Chan (the owner of the vessels on which the goods were carried) and the Defendant Company. 30

4. It is accepted by the Plaintiffs that, if there was a bare boat charterparty in existence, then the Master and crew were the servants of the Defendant Company and not of the Defendant Chan.

5. It is accepted both by the Plaintiffs and by the Defendant Chan that the Master and crew were employed either by the Defendant Company or by 40

the Defendant Chan and that they were not employed jointly by both Defendants.

6. It is accepted by the Plaintiffs that the only basis upon which judgment could have been given against the Defendant Company is that the Master and crew were the servants of the Defendant Company and not of the Defendant Chan.

7. It is further accepted by the Plaintiffs that if the Master and crew were the servants of the Defendant Company and not of the Defendant Chan, the only remaining issue would be whether the Defendant Chan is also liable, that is to say whether he is liable as a joint tortfeasor with the Company.

8. The Plaintiffs contend that it is open to the Court to investigate and decide upon the question whether the Master and crew were the servants of the Defendant Company or of the Defendant Chan and to hold that the Master and crew were the servants of the Defendant Chan and not of the Defendant Company, that is to say that there was no bare boat charterparty in existence.

9. The Defendant Chan contends that such matters are not open to this Court having regard, principally, to the fact that the Plaintiffs asked for the judgment in fact given, which judgment is admittedly sustainable only on the basis that the Master and crew were the servants of the Defendant Company and not of the Defendant Chan, that is to say that there was a bare boat charterparty in existence.

10. The Defendant Chan further contends that since, in the last paragraph of the written judgment of the Federal Court and in the formal order pursuant thereto, the only issue ordered to be retried is the issue whether the Defendant Chan is also liable, it is not open to this Court to investigate or decide upon the question whether the Defendant Company was in truth liable, that is to say whether the Master and crew were in truth the servants of the Defendant Company at all.

11. The Plaintiffs contend that the intention of

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24th July 1972 (continued)

Federal Court is shown by the whole of their written judgment to be that the whole issue which of the Defendants is liable or whether both are liable for the conversion of the goods, should be retried and that this Court should give effect to that intention notwithstanding the terms of the last paragraph of the written judgment, the terms of the formal order, and the other matters relied upon by the Defendant Chan." 10

When the Court adjourned at the end of the sitting on Thursday, 9th March, 1972 I indicated that I would give my decision on both these points on Monday, 13th March, 1972. A decision on the first point in favour of the 1st defendant would have resulted in the dismissal of the action but it was agreed by both counsel that no matter what I decided with regard to these two preliminary points on Monday the 9th, the action would proceed as ordered by the Federal Court on the issue 20 whether the 1st defendant was also liable in conversion like the 2nd defendants who had already been found so liable by the Federal Court judgment as confirmed by the Privy Council.

On Monday, 9th March, 1972 I answered both questions on the preliminary points in favour of the 1st defendant, i.e. in favour of Mr. Parker's contentions. I then proceeded to hear the case on the basis that, in any case, the action would, at the end of the trial, be dismissed. 30

Mr. Le Quesne then continued his opening address, called one witness, P.W.1, Mr. Choo Chew Sing, now Managing Director of the 1st plaintiffs. He also formally put in the record of evidence of Mr. Chan Cheng Kum, the 1st defendant, given at the previous trial, i.e. those passages which he had read out earlier, as set out in Ex. P21. He then concluded his case for the plaintiffs.

Mr. Parker called no evidence on behalf of the 1st defendant. 40

Both counsel concluded their addresses by Tuesday evening and I reserved judgment indicating that I would deliver a considered judgment incorporating not only my decision on the issue at retrial but also my reasons for upholding the preliminary objections.

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24th July 1972 (continued)

I now proceed to do so.

I should like to say at the very outset that this is not the usual kind of action which comes before the High Court, especially on a re-trial of an issue such as the one before me. Secondly, it is certainly unusual to be faced with two preliminary objections in the midst of an opening address by counsel for the plaintiffs before one has had an opportunity of becoming better acquainted with the facts involved.

I have accordingly had to rely largely on the addresses of both counsel in the course of argument on the two preliminary points and to those portions of the record before the Privy Council to which they saw fit to draw my attention. Fortunately, Exhibits PD1 and PD2 stating the agreed positions between the parties have to some extent helped to narrow down the areas of dissension on questions of fact as well as questions of law.

Although I had previously read through the judgments of the original trial Judge, the Federal Court and the Privy Council and the pleadings in so far as they seemed to me to fall within the ambit of the issue before me on the re-trial, I have so far as possible read only those portions of the record to which one counsel or the other drew my attention in the course of argument.

So far as the actual hearing of the re-trial is concerned, that is after I had decided in favour of the contentions on behalf of the 1st defendant, I have here again had to rely, apart from the only evidence in this case which I actually heard, that is the evidence of Mr. Choo Chew Sing (P.W.1), only on those portions of the record to which counsel again drew my attention. So far as submissions on relevant legislation and cases cited by counsel are concerned I have so far as possible considered not only those portions thereof to which my attention was particularly drawn but have also permitted myself the liberty of some further reading. In view of the assurances of Mr. Le Quesne and Mr. Parker that I did not have to indulge in any intensive research, however, I have so far as possible tried to limit my reading to the authorities cited by them.

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24th July 1972 (continued)

Before giving my reasons for upholding the two preliminary objections, it will, I think, be more useful for me to deliver my judgment first on the issue ordered to be re-tried, regardless of whether I am right or wrong on the preliminary issues, on the basis that, in any case, whatever my findings may be on the re-trial, the claim in this action will be dismissed in so far as it requires a finding whether the 1st defendant is also liable for conversion. 10

First Issue at Re-trial: Was there in fact a Bare-boat Charter?

Assuming that the bare-boat charter point is still at large, the first question to be decided is whether the 1st defendant as owner of the vessels was the employer of the master and crew thereof or whether the 2nd defendants were the employers of the master and crew of each of these vessels as bare-boat charterers, i.e. as charterers of these vessels without master or crew. 20

With regard to the order for re-trial of the issue before me, I should have thought that I am bound by the findings of the Federal Court that the 2nd defendants were liable in conversion on the basis that they were bare-boat charterers of the vessels concerned. However, since I have been asked to determine whether there was in fact a bare-boat charter in respect of these vessels to the 2nd defendants, I have come to the conclusion that there was. 30

As Scrutton on Charterparties and Bills of Lading, 17th Edition at page 4 provides:

"A charter may operate as a demise or lease of the ship itself, to which the services of the master and crew may or may not be superadded."

The footnote explains that a charter by demise of a ship without master or crew is sometimes called a "bareboat" or "net" charter. Scrutton proceeds:

"The charterer here becomes for the time the owner of the vessel; the master and crew become to all intents his servants, and through them the possession of the ship is in him." 40

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24th July 1972 (continued)

A footnote explains that the language in the text is that of Cockburn C.J. The footnote then goes on to cite Lord Esher in Baumvoll v. Gilchrist & Co. (1892) 1 Q.B. 253 at p.259 as follows:-

"the question" (whether an owner was liable for acts of the captain of his ship) "depends, where other things are not in the way, upon this: whether the owner has by the charter, where there is a charter, parted with the whole possession and control of the ship, and to this extent, that he has given to the charterer a power and right independent of him, and without reference to him to do what he pleases with regard to the captain, the crew, and the management and employment of the ship. That has been called a letting or demise of the ship. The right expression is that it is a parting with the whole possession and control of the ship."

This view was approved by the House of Lords on appeal.

The footnote goes on to cite Cory & Son v. Dorman Long & Co. (1936) 41 Com. Cas. 224 for the proposition that it is doubtful if a charter by demise can be constituted except by a document in writing. Slesser L.J. in that case at page 235 stated -

"A preliminary difficulty arises in this case upon which I do not think it necessary to express any final opinion. It is whether, on any view, William Cory and Son, Limited, can be said here to be charterers. In contradistinction to all the cases that have been considered, there is no document in writing in this case of any kind transferring any of the rights, upon which William Cory and Son, Limited, rely, from the Lighterage Company to William Cory and Son, Limited, which can be said to be in the nature of a charter. It has been said on the authority, solely, so far as I know, of an observation of Wigram V.C. in Lidgett v. Williams that the rights in a ship can be transferred by charter orally. That passage is quoted in several of the text-books. There is a passage for example in Carver to that effect, but when the text book is looked at on that particular point, the only authority is that case. For myself, I wish to leave the matter open."

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Slesser L.J. continued,

"I do not think it necessary, however, in this case to express a final opinion upon the point which might contradict the opinion expressed by Wigram V.C. for this reason, that there is here in my opinion upon the finding of the learned Judge nothing to constitute a transference of the ownership of the ship, either by charterparty in writing, or orally." Romer L.J. in the same case shared the doubts expressed by Slesser L.J. but did not wish to express a final opinion on the point. 10

Mr. Le Quesne submitted to me that an oral bare-boat charterparty was an exceedingly unusual though not impossible arrangement. He said that the only documents relating to the demise of these vessels were records of the first Board meeting of the 2nd defendants on 31st December, 1960, after the company had been incorporated the day before, which recorded a critical resolution taken by the 20 Chairman of the Board of Directors and his son (who was also a director) as follows (see page 3 of Ex. D13):-

"That the vessels shall remain the properties of Mr. Chan Cheng Kum, but the limited company undertakes to operate the said vessels along the same lines as previously, maintaining them in good condition and repair, in consideration of which a fee termed "Bare-boat Charter" of M$500.00 per vessel per month shall be payable to the said 30 Chan Cheng Kum."

Mr. Chan Cheng Kum was the Chairman of the Board of Directors of the 2nd defendants and the first resolution recorded on the same page of Ex. D13 states:-

"That Hua Siang Steamship Co. Ltd." (i.e. the 2nd defendants) "takes over the former business of Mr. Chan Cheng Kum then trading as Hua Siang Steamship Co. and shall be responsible for book debts of the old company as at 31st December 1960 40 and shall carry on the existing business as shipowners, shipping Agents and Merchant."

Mr. Le Quesne also referred to the 20 Mate's Receipts, Ex. P4A, B. C & D, to the Agreed

Statement of Facts at the first trial, Ex.D14, to certain delivery orders, to pages 156 to 194 of the Agreed Bundle of Documents marked 'X' (containing the indemnities) and also to the Agreed Bundle of Correspondence marked 'A' and in particular to pages 6 and 8 thereof.

He relied on these documents to show that the 1st defendant traded as Hua Siang Steamship Co. up to the end of June 1961, but it is quite clear from Ex.D13 and the Agreed Statement of Facts at Ex.D14, to say nothing of letter 5 in bundle 'A' from Chan as Managing Director of the 2nd defendants to the Overseas Chinese Banking Corporation that, notwithstanding the other documents on which Mr. Le Quesne relied for his proposition that the 1st defendant operated his vessels until the end of June 1961 under his old firm name, the 1st defendant as Managing Director of the 2nd defendants notified by means of a printed circular, not only the 2nd plaintiffs but presumably others as well that his old firm had been incorporated as a limited liability company and that the latter had taken over all assets and liabilities of the former firm and was carrying on the existing business under the same management as shipowners, shipping agents and merchant.

Furthermore, in my view, the Agreed Statement of Facts at Ex. D14 is extremely important and, in particular, that portion of it which Mr. Parker stressed, as follows:-

"After 8/2/61, all outgoings (such as repairs, wages, and Central Provident Fund contributions of crews, lighterage, insurance, docking dues, port dues, ship's stores, bunkers, stevedorage, etc., as well as office wages and overheads) were paid by the company out of its own bank accounts. The company has since its incorporation been paid or credited with all earnings by the vessels, and has discharged or been debited with all outgoings relating to them. It has never accounted to anyone for such receipts and payments."

Towards the end of that Agreed Statement occurs a significant agreed fact to the effect that the old firm did not trade after 31st December, 1960. In view of this agreed fact I find it difficult to understand why it has been contended by the plaintiffs

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that the old firm was in fact trading after that date until towards the end of June 1961 when, it was submitted by Mr. Le Quesne, the word "Limited" appeared for the first time in documents after the name of the old firm.

Moreover, as Mr. Parker pointed out, the Federal Court judgment, though not conclusive, can amount to an estoppel inter partes. As Farwell L.J. pointed out in Harriman v. Harriman (1909) P. 123 @ 144: 10

"I do not doubt that as between the parties, the ordinary doctrine of estoppel applies ... but estoppel is only a rule of evidence and the duty imposed on the judge by section 29 which emphasises by expressed enactment the necessity for the Court being satisfied as required by section 31 is not restricted by any such rule. Neither the consent nor the admission of the parties justify the Court in granting a decree although such consent or 20 admission is acted on continually in ordinary civil suits, and, by parity of reasoning, no rule of evidence which prevents a party as against the other litigant from giving evidence of the truth can bind the Court to shut its eyes, if it is not satisfied that all the truth is before it. It is plain that the King's Proctor, if he intervenes, can give evidence to shew that the decree for judicial separation (on the hearing of which he had no power to intervene) was improperly 30 obtained, if it forms one of the grounds on which divorce is asked, and that he or any other person intervening between the decree nisi and the decree absolute can do the same; and it would be strange if the Court cannot mero motu declare that it is not satisfied by the former decree, even although it may, as a general rule, think fit to act on it: the Court is at liberty, but is not bound, to accept it."

I accept what Mr. Parker said in his 40 concluding remarks on the bare-boat charter issue at the re-trial, that it was because, perhaps, Mr. Kerr (as he then was) realised the effect of the resolution in Ex. D13, coupled with page 5 of the Agreed Bundle marked 'A' and the Agreed Facts in Ex. D14 which led him in the Federal Court to abandon the issue and ask for judgment against the 2nd defendants and that the plaintiffs are now

trying to go back on the Agreed Facts put in before the original trial Judge.

That concludes what I have to say about the bare-boat charter point. From the material before me at this trial,notwithstanding the doubts expressed in the Cory & Son's case about oral charterparties, the better view would seem to be that, there was indeed a bare-boat charter of the vessels to the 2nd defendants and that the plaintiffs have not succeeded in establishing as it was their duty to do, if they sought to saddle the 1st defendant with responsibility for conversion by the master and crew of each of these vessels, that the 1st defendant as owner of these vessels was ipso facto in whole possession and control of these vessels so as to be vicariously liable for the acts of the master and crew thereof.

Mr. Le Quesne relied on section 103 of the Evidence Act (Cap. 5) as well as on a presumption, which he contended existed, that the owner was the employer of the master and crew and he invited me to draw an adverse inference, from the failure of the 1st defendant to give evidence, citing section 114, illustration (g) of the Evidence Act in support of this contention which reads:-

"The Court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it." This presumption is based on the principle that if a man withholds evidence which he could give every presumption to his disadvantage consistent with the facts admitted or proved will be adopted (See Parker on Evidence, 11th Edition page 995 citing Williamson v. Rover Cycle Co. 1901 2 I.R. 619.)

On the facts before me as presented by the plaintiffs I do not feel justified in adopting any presumption to the 1st defendant's disadvantage from his failure to give evidence since to do so would be to draw an inference inconsistent with the facts before me.

Mr. Parker contended that there was no such presumption that an owner was necessarily the employer of the master and crew and that the burden was on the plaintiffs to establish responsibility and that if the plaintiffs desired to prove that the

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master and crew were servants of the 1st defendant it was up to them to prove it.

Assuming that he was wrong, he proceeded to emphasise the other matters which I have already dealt with relating to Ex.D13 and page 5 of Bundle 'A', especially the meaning of the word "assets" which he submitted included vessels. He also stressed the Agreed Facts at Ex. D14 and, in particular, the last sentence thereof providing that the old firm did not trade after 31st December, 1960. He also relied on the Federal Court judgment which though not conclusive, was in effect an estoppel. 10

I should perhaps stress one further fact, namely, that in Ex. D14, it has been agreed that the 2nd defendants credited the current account of the 1st defendant, which he kept with the 2nd defendants, with a sum of $18,000 per annum for hire of the vessels chartered to the 2nd defendants.

On all the evidence before me I am satisfied on a balance of probabilities that it was more probable than not that the 1st defendant had parted with the whole possession and control of these vessels retaining the mere shell of ownership thereof. If I am right in this, then there can be no question but that the 1st defendant cannot be held to be vicariously liable for the acts of the master and crew of each of these vessels. I am satisfied on the evidence that the 1st defendant took a decision to stop trading under his old firm name with effect from 31st December, 1960 and that the limited company, for whose incorporation he was responsible, commenced to trade as stated in the Agreed Facts with effect from 1/1/61. 20 30

This is not the first time that a sole proprietor of a trading firm has decided to convert his old firm into a private limited company and, however sinister his motives for so doing may appear to be to the plaintiffs there was no reason why he could not lawfully have done so. There has been no submission that the whole thing was a sham. There may have been some slackness on the part of the 2nd defendants in not adding the word "Limited" to the headings on correspondence in so far as the old firm name appears thereon and in other documents. This is not the first time that such instances of the 40

omission of the word "Limited" after the incorporation of a trading concern have taken place and each case must be considered on the basis of the gravity of the omissions relied upon.

The fact remains that he did announce to the 2nd plaintiffs that the old firm had been incorporated as he said in page 5 of the Agreed Bundle marked 'A'.

There was no evidence before me, apart from some of these documents containing the omission of the word "Limited" after the old firm name, that the plaintiffs were in anyway misled into believing that the 1st defendant was in fact trading under his old firm name or that the old firm name was used in order to lull traders into the belief that the old firm was still conducting business as before or that the 2nd defendants did not in fact commence trading and carry on the business of the old firm as shipowners, shipping agents and merchants as stated quite categorically in the documents to which I have referred.

As the original trial Judge found as a fact as sustained by the Federal Court to which their Lordships in the Privy Council attached importance, all parties knew what was going on. The mere fact that the 1st defendant has been sued as an individual and that the 2nd defendant have been sued as the firm which he incorporated on 30th December, 1960 speaks for itself. To my mind, the suggestion that the 1st defendant carried on business as before under the old firm name after 1st January 1961 is untenable and is contradicted by the agreed facts.

Second Issue at Re-trial: Was 1st Defendant a Joint Tortfeasor?

I now turn to the second aspect of this matter which was argued before me at the re-trial, i.e. whether the 1st defendant is also liable in conversion like the 2nd defendants quite independently of the bare-boat charter issue which I have just decided. Was the 1st defendant a joint tortfeasor with the 2nd defendants in the conversion of the goods in question as a result of their delivery by the ships to the shippers who were persons not entitled to possession?

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The master and members of the crew of each vessel were undoubtedly tortfeasors. The 2nd defendants had already been found to be vicariously liable for the tort committed by the master and crew of each of these vessels.

Before proceeding further, it is important to have clearly in one's mind what is meant by the expression "joint tortfeasors". As Scrutton L.J. said in The Koursk (1924) P.155, one way of answering this question is by asking another "Is the cause of action against them the same?" He then proceeded: 10

"Certain classes of persons seem clearly to be 'joint tortfeasors'; The agent who commits a tort within the scope of his employment for his principal, and the principal; the servant who commits a tort in the course of his employment, and his master; two persons who agree on common action, in the course of, and to further which, one of them commits a tort. These seem clearly 20 joint tortfeasors; there is one tort committed by one of them on behalf of, or in concert with another."

He emphasised that the same damage does not mean the same tort and therefore does not mean the same cause of action. The two elements of damage and injuria must both be present before joint liability for that tort can arise. He went on to say that in order to "make the tort, you want a wrongful act causing damage (i.e. the injuria); and to make the tort the same cause of action, both elements must 30 be the same."

Bearing these important factors in mind, for the purposes of the particular case before me, I have to decide whether the 1st defendant has been shown to have been acting in concert with the 2nd defendants in the commission of the tort of conversion, i.e. was there concerted action to a common end in furtherance of a common design? The actual tortfeasors were the masters and crew of these vessels. There is no direct evidence of any kind 40 tending to show that the 1st defendant personally directed the crew to make wrongful delivery. Counsel for the plaintiffs accordingly proceeded to explore the proposition as to the circumstances in which a limited company and its managing director can be said to be acting in concert so as to make

both of them joint tortfeasors. That was the question, and Mr. Le Quesne proceeded to cite two authorities,

Rainham Chemical Works Ltd. v. Belvedere Fish Guano Co. (1921) 2 A.C. 465 and

Performing Right Society v. Ciryl Theatrical Syndicate (1924) 1 K.B.2

Mr. Le Quesne submitted that the question was: did the 1st defendant expressly or impliedly
10 direct or procure the commission of the acts and that if he did so then he was privy to those acts, the acts being the acts of delivery of the goods to the shippers.

For this proposition he placed reliance on Atkin L.J's pronouncement in the latter of these two cases at page 14/15 as follows:-

"Prima facie a managing director is not liable for tortious acts done by servants of the company unless he himself is privy to the acts, that is to
20 say unless he ordered or procured the acts to be done. That is authoritatively stated in Rainham Chemical Works v. Belvedere Guano Co., where it was sought to make a company liable for an explosion upon their works in the course of manufacturing high explosives. The company were held liable on the principle of Rylands v. Fletcher. It was also sought to charge two directors with liability. They were eventually held responsible because they were in fact occupiers of the works. It was con-
30 tended that they were liable on the ground that they were managing directors of the company, that the company was under their sole control as governing directors, and that they were responsible for the work done by their servants. Lord Buckmaster said: 'I cannot accept either of these views. If the company was really trading independently on its own account, the fact that it was directed by Messrs. Feldman and Partridge would not render them responsible for its tortious acts unless, indeed, they
40 were acts expressly directed by them. If a company is formed for the express purpose of doing a wrongful act or if, when formed, those in control expressly direct that a wrongful thing be done, the individuals as well as the company are responsible for the consequences, but there is no evidence in

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the present case to establish liability under either of these heads 'Perhaps that is put a little more narrowly than it would have been if it had been intended as a general pronouncement without reference to the particular case; because I conceive that express direction is not necessary. If the directors themselves directed or procured the commission of the act they would be liable in whatever sense they did so, whether expressly or impliedly." 10

Obviously, the 1st defendant did not order or procure the crew of these vessels to commit the tort which they did. Mr. Parker submitted that the question really was: Did the 1st Defendant order or procure his co-director son, Chan Kim Yam and Cheah Wee Hock to act as they did? These were the two persons in the limited company who signed the delivery orders relating to the goods in question thereby authorising the wrongful delivery. The crew merely carried out these orders. 20

Mr. Parker also made the point made by Lord Parmoor at page 488 in the Rainham case that governing directors of a company cannot, merely by virtue of holding such office, be held personally liable for the acts of the company as their agents in the absence of evidence that the company is a sham or that the relationship between the directors and the company is either abnormal or based on a sham procedure. It should be remembered that Lord Buckmaster at page 475 said that it may be 30 established by evidence that in its operations it does not act on its own behalf as an independent trading unit, but simply for and on behalf of the people by whom it has been called into existence. With regard to this Mr. Le Quesne emphasised that the company was the 1st defendant's "creature".

The plaintiffs relied on the admissions made by the 1st defendant in the course of his original trial as set out in Ex. P21. It was submitted that the 1st defendant's evidence at that trial does 40 suggest the inference that the 1st defendant procured the delivery of the goods to the shippers. Reliance was placed on sections 17 and 18 of the Evidence Act amongst others.

The plaintiffs rely on P21, being extracts from the evidence of the 1st defendant at the

previous trial, as admissions suggesting the inference that he procured delivery of the said goods to the shippers.

It should be borne in mind that I have not, however, had the opportunity of hearing the 1st defendant give evidence and accordingly whatever inferences can be drawn from Ex.P21 are inferences which have nothing to do with the credibility of the witness as assessed by a Judge who has an opportun-
10 ity of observing him whilst giving evidence and of making his own assessment of his credibility. Subject to this, I nevertheless was enabled to draw certain inferences from the salient facts which emerged from Ex.P21:-

1. The 1st defendant was the owner of the vessels concerned before 1961 and had been sole managing proprietor of the old firm which he later incorporated;

2. When cargo arrived in Singapore somebody
20 presented the shipping documents and asked for delivery of the cargo. The 1st defendant said that he normally never saw these documents when presented and that his son and Cheah Wee Hock dealt with these documents;

3. He said that sometimes persons claiming the cargo were unable to produce shipping documents. In such cases, he said, they were asked for indemnities and goods were then delivered to them. He said that his co-director, Chan Kim
30 Yam, decided whether cargoes should be released against indemnities and that whenever people applied for release of cargoes against indemnities he referred them to Chan Kim Yam. He merely looked after the finance, freight rates and repairs to vessels;

4. His son, Chan Kim Yam and Cheah looked after the delivery department. He said that, as managing director, he had not given them any specific instructions and that the matter was
40 in the discretion of Chan Kim Yam whether to release any cargo on the indemnity;

5. Early in 1961, Chan Kim Yam reported to the 1st defendant that there was delay between delivery and the receipt of the shipping

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documents. The 1st defendant said that, as a result, he arrived in Singapore and saw "the old towkay", Lee Chin Tian at the office of the shippers. He said that he was concerned because the Mate's Receipts might have been exchanged for Bills of Lading. He admitted that he was personally concerned about the delay in the return of shipping documents;

6. At page 223, the 1st defendant refers to an agreement he made with the shippers that each of the directors should, in addition, be personally liable to him. That he said was the promise of "Uncle" Lee Chin Tian. This was the time when the 1st defendant admitted becoming personally involved in negotiations with the 3rd Parties, i.e. the shippers, to submit not only indemnities signed on behalf of the shippers as a limited company but to submit personal indemnities by each of the directors thereof including Lee Chin Tian. It was because of this personal arrangement with the 3rd Parties that he went on delivering against indemnities without production of Mates Receipts.

7. It is significant that in this portion of his evidence at the original trial he does use the first person singular in relation to the arrangements he made after having extracted a promise from Lee Chin Tian to make himself and his co-directors personally liable, quite apart from the indemnities issued by the shippers as a limited company (N.B. "I went on delivering"). He then made a significant statement that even if he had not got this personal promise of the 3rd Parties he would have continued to deliver unless other parties claimed. It may well be asked why then did he extract the promise at all?

8. It would appear that the procedure which had existed prior to the formation of the 2nd defendants as a limited company continued afterwards, i.e. what the 1st defendant had personally instituted as a procedure to be observed in relation to the release of the goods and the taking of indemnities without the production of Mate's Receipts went on as before with one important difference for which

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he alone was responsible. It seems to me quite clear from this that, notwithstanding what the 1st defendant said before the trial Judge in the earlier proceedings about leaving the matter in the discretion of Cheah Wee Hock and his son, Chan Kim Yam, he was personally taking more than an ordinary interest in the matter for a person who claimed that his duties were confined to finance, freight rates and repairs.

9. He was getting himself personally involved in seeing that deliveries were being effected as they had been done prior to the incorporation of the old firm as a limited company with the added difference that he was personally getting somewhat restive about the fact that his son had complained of delays between the delivery of goods against indemnities and the actual surrender of Mate's Receipts. Hence the personal indemnities. He said more than once (see line 30 page 223) that even if he had not got their personal promise, he would have continued to deliver as before without the production of a Mate's Receipt and without any indemnity signed by a bank. At the top of page 225 he said, in answer to a question why he was concerned about the delay in returning the shipping documents after delivering the goods, that he was concerned that Bills of Lading might have been issued and he was thinking in terms of precaution.

10. The 1st defendant for the first time, at page 246, line 31, suddenly admitted that it was true that on 10/7/61 he realised that the shippers (T.S.C.) could not pay Wah Tat Bank and that he advised his son over the phone not to release further shipments to T.S.C. without Mate's Receipts.

11. At page 247, the 1st defendant, when queried about why he did not insist on the production of Mate's Receipts or Bills of Lading, replied rather naively that he had no reason to do so because he acted on instructions of the shippers and that, on demand, he had to deliver goods to them on the usual indemnity by the shippers even without the additional personal indemnities by the co-directors which

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he had personally procured should be submitted on the promise of the old towkay ("Uncle" Lee Chin Tian.)

12. At page 249, the 1st defendant admitted that he controlled the policy of the firm before it was incorporated and that after incorporation of the 2nd defendants this policy did not change.

13. He said that, after 1960, the matter was in the discretion of Chan Kim Yam who was one of the directors. He said he did not give him that discretion. Then he said that he went and saw Lee Chin Tian because Chan Kim Yam was busy in the office. In my view, the inference here is almost irresistible that he dictated the new policy with regard to deliveries which Chan Kim Yam should follow, as in fact he had previously done on matters of policy involving his own personal decision.

14. At page 256, in answer to the Court, he said that he never asked whether the shippers had exchanged the Mate's Receipts for Bills of Lading. He merely accepted the letters of indemnity. He said that if he got an answer there was no means of checking on it.

Mr. Le Quesne summarised the effect of Chan's evidence and stressed -

(a) the fact that early in 1961 when delays were occurring the 1st defendant personally made the new arrangements;

(b) that in July 1961 when the 1st defendant discovered that the shippers were not paying for the goods, he told or advised his son not to deliver goods to the shippers without production of the Mate's Receipts;

(c) the veracity of the evidence of the only witness called in this case, Mr. Choo Chew Sing, the present managing director of the 1st plaintiffs with which I shall deal later;

(d) the use of the first person singular in the 1st defendant's answers even after three years from 1961;

(e) the decision to deliver to the shippers was subject to the practice established by the 1st defendant and subject to his decision even before the incorporation of the 2nd defendants;

(f) the personal visit made by the 1st defendant to the shippers and in particular his instructions to his son to insist on Mate's Receipts.

Mr. Le Quesne concluded by saying that the 1st defendant was still the dominant influence and that
10 he procured delivery to the shippers of goods, consigned by them to the 2nd plaintiffs, including goods which were the subject matter of this action. He said that, even if the 1st defendant could not be shown to have expressly procured the wrongful acts in question, he, at least, impliedly procured those acts of the 2nd defendants in delivering the goods to the shippers.

I now turn to the evidence of Choo Chew Sing. He said that he was manager of the 1st plaintiffs
20 in 1961. He said he knew the 1st defendant and he knew about the shipment of goods by the shippers to Singapore and about their pledge to the Bank. He remembered travelling to Singapore in early July 1961, and that the reason why he made the journey was because of the late payments by the shippers. He met the 1st defendant on the aeroplane in which they sat side by side. Next morning, 10th July 1961, he went to see Lee Chin Tian and also met the 1st defendant. They all proceeded to Lee Chin Tian's
30 house for a discussion as there were too many people in Lee Chin Tian's office.

This witness said that the 1st defendant asked Lee Chin Tian to pay the 1st plaintiffs $190,000, being the value of the previous shipment. Lee Chin Tian apparently told him to allow him time to await the arrival of the next shipment and to take delivery of that shipment when he would pay the Bank. With this suggestion the 1st defendant disagreed. Choo then said that he himself told Lee to
40 pay the $190,000 first, after which he would be prepared to grant overdraft facilities with the Bank in Sibu and that Lee disagreed as he was unable to make such payment.

Apparently the 1st defendant then became annoyed and spoke to the old man in a loud voice.

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He said that the 1st defendant then went to the telephone and he heard him speaking to his son, Chan Kim Yam. He said that he could hear and understand what the 1st defendant said to his son. He said that the 1st defendant told his son that in future there should be no delivery without the proper documents.

He was not seriously shaken in cross-examination. When questioned whether he could hear through bricks and mortar he said that the partition might have been made of brick but that there were some passages on either side of the partition and that the telephone was in the middle and that he could hear. In answer to me, he replied that the telephone was placed on a side-board and that he could see it and the 1st defendant at the telephone through the passage into the place where he was. He said that the 1st defendant was audible at that distance which was about 15 feet and that, since he was annoyed, he spoke in a loud voice.

I accept the truth and correctness of what he said, though there may have been some inconsequential discrepancies. I am quite certain that he could hear the whole of the telephone conversation or at least that part of it consisting of what the 1st defendant said over the telephone to his son. I have no reason whatsoever for doubting the truth of what this witness said before me in evidence and I accept it.

Mr. Parker for the 1st defendant said that this was a far weaker case than the Rainham and Performing Right Society cases which were thrown out, and was at a loss to understand how the 1st defendant could be said to have procured delivery and that the whole issue depended on credibility. He also submitted that there was no need for him to call the 1st defendant to say what had already been put in in evidence and he said that Chan Kim Yam and Cheah Wee Hock could have been called by the plaintiffs. He submitted that if Chan Kim Yam was in charge of delivery the decision to deliver these goods was his alone and that the policy adopted by his father before the formation of the company had nothing to do with it.

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On the evidence before me as adduced by the plaintiffs and in the absence of any evidence by or on behalf of the 1st defendant I am satisfied that, notwithstanding the decisions in the Rainham and Performing Right Society cases which went the other way on their own facts, there is material before me on which I can find that the 1st defendant was also liable in conversion with the 2nd defendants and that both the 1st defendant and 2nd defendants were joint tortfeasors. On this second isue I consider that I am entitled to draw an adverse inference from the failure on the part of the 1st defendant to give evidence.

It is true that I refused to draw any adverse inference against him in relation to the first of the two issues argued during the re-trial, that is the issue relating to the bare-boat charter point. On that issue I was of the opinion that there was no sufficient evidence at the conclusion of the plaintiffs' case to show that he retained possession and control of these vessels at the material dates so as to make him responsible for the tortious acts of the master and crew thereof as his servants or agents and that there was some evidence of a bare-boat charter of the vessels to the 2nd defendants which relieved him of the duty to rebut any presumption against him because none arose. I did find at the conclusion of the case for the plaintiffs that there was evidence pointing in that direction and also that the plaintiffs were virtually estopped by the Federal Court judgment from denying that there was in fact a bare-boat charter to the 2nd defendants. On that issue during the re-trial I did not therefore draw any adverse inference with regard to the failure of the 1st defendant to give any evidence. (See Williamson v. Rover Cycle Co. above).

On the present issue however the plaintiffs' case points to the conclusion that he did in fact procure the wrongful delivery of the goods concerned. I therefore consider myself entitled to draw an adverse inference from his failure to give or call evidence.

There was, moreover, no evidence before me, not even an assurance from the Bar, that Chan Kim Yam, the son, and Cheah Wee Hock were not available to give evidence before me. All these witnesses

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including the 1st defendant could have thrown considerable light on the second issue and at least given me some assurance, which I do not at the moment possess, that the decision to make deliveries resulting in the conversion was taken by Chan Kim Yam as his own personal responsibility as a director of the 2nd defendants. As I have already said, it seems clear to me that Chan Kim Yam was dominated by his father whose brain-child the limited company which he called into being was and for whose protection from liability he considered himself personally responsible. Hence the directions to his son which I have found he gave quite apart from his own admission relating thereto. The delivery by the crew was wrongful. Merely taking personal indemnities from the co-directors of a shipping company in financial difficulties would not right that wrong. In my opinion, the construction placed by Mr. Parker on the direction by the 1st defendant to his son viz., "Stop doing this, we are at risk." is not the construction to be placed on what he said. By insisting on mate's receipts on 10th July, 1961 he was confirming, at least by necessary implication, that he knew that delivery to the shippers as opposed to delivery to the consignees was wrongful notwithstanding his own efforts to rectify the position by taking personal indemnities to avoid the consequences of such delivery. There may have been sympathy and trust. The fact that there was such trust does not absolve a wrongdoer from liability even if he was hoping that by paying the Banks the shippers would save him from the consequences of his own wrong-doing in the first place.

That disposes of the two issues before me during the re-trial as to whether the 1st defendant Chan Cheng Kum is also liable. On the first issue, assuming the bare-boat charter point is still open, I find that there was in fact a bare-boat charter of the vessels to the 2nd defendants by the 1st defendant who, at all material times, was their owner. On that finding, the 2nd defendants would be, as the Federal Court has already held, liable in conversion but the 1st defendant is not, if the matter were allowed to rest there.

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24th July 1972 (continued)

On the second issue, however, whether the 1st defendant was a joint tortfeasor with the 2nd defendants in that conversion, by virtue of concerted action towards a common end resulting in the same damage in the same cause of action, I find that he was and that he is accordingly also liable in conversion together with the 2nd defendants.

In view of my upholding the first preliminary objection before the re-trial began that section 11(1)(a) does not avail the plaintiffs so as to alter the common rule which bars the remedy they seek against the 1st defendant, judgment must be entered in favour of the 1st defendant with costs as to the proper apportionment of which I shall hear argument in due course.

Reasons for Upholding Preliminary Objections

I now turn to the reasons for my upholding the two preliminary objections raised by counsel for the 1st defendant as set out in Exhibits PD1 and PD2.

As Mr. Parker said, a unique situation, the like of which has never arisen before either in the United Kingdom or elsewhere in the Commonwealth has presented itself for resolution, in circumstances which, if he is right, the draftsman of section 6 of the English Law Reform (Married Women and Tortfeasors) Act 1935 which is reproduced in section 11 of our Civil Law Act (Cap.30) never envisaged, not that he hasnot left himself open to criticism on other grounds.

My first reaction to the preliminary objections raised in the middle of the opening address by counsel for the plaintiffs was that someone was trying to indulge in a leg-pull or, as the more enterprising denizens from the land of the pilgrim fathers have expressed it in somewhat picturesque language, trying to "take somebody for a ride". My "terms of reference" or jurisdiction have already been clearly defined by the order of the Federal Court as confirmed later by the Privy Council and I thought that I had to deal only with one problem, namely, whether the 1st defendant was also liable. Little did I expect to be asked to decide what exactly the Federal Court meant by its judgment or to investigate whether it meant to say something

In the High Court of Singapore

No.16

Judgment of Winslow J.

24th July 1972 (continued)

other than that which the clear terms of the formal order convey.

Furthermore, it seemed to me strange that neither of these matters was ever raised or argued earlier either in the Federal Court or before the Privy Council. Hence the queries which I put to both counsel - see Ex. PD3, the answers to which are of no assistance to me whatsoever.

One matter is as clear as daylight, i.e. that the plaintiffs converted the interlocutory judgment which they asked for and obtained against the 2nd defendants into a final judgment before the date of the Privy Council hearing. 10

Here was a glorious opportunity which was somehow missed to appraise the Privy Council of the facts giving rise to the unique situation which has now arisen for consideration, not by the appellate tribunals concerned as one would have expected, but by the High Court at the re-trial! I do not have the slightest doubt that these matters 20 have been ventilated now in order that somehow they can, if necessary, be taken to the self-same appellate tribunals to which these matters should perhaps originally have been addressed, but for some reason, which is not quite clear to me, were not.

I do not propose to set out in detail the full arguments addressed to me by both counsel on each of these objections since I have taken a very detailed note of what they said as can be seen 30 from my notes of evidence and arguments.

<u>The Section 11(1)(a) Point</u>

Section 11(1)(a) of the Civil Law Act provides:-

"11. - (1) Where damage is suffered by any person as a result of a tort (whether a crime or not) -

(a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable 40 as a joint tortfeasor in respect of the same damage;"

Both parties have already set out their agreed position on this point in Ex. PD1 which I have reproduced earlier.

I found that Section 11(1)(a) has not altered the common law rule, which the plaintiffs conceded bars their claim against the 1st defendant, so far as the present case is concerned. The plaintiffs had already converted the interlocutory judgment given by the Federal Court in their favour against
10 the 2nd defendants into a final judgment which remains unsatisfied.

Both the parties accepted the position that such a final judgment against the 2nd defendants, though unsatisfied, was no longer a bar to an action against the 1st defendant as a joint tort-feasor if and only if he had not been "sued" within the meaning of sub-section (1)(a).

The plaintiffs contended that "sued" in this sub-section means "sued to final judgment" and that
20 because the 1st defendant had not been sued to final judgment they were not barred.

The 1st defendant, on the other hand, contended that "sued" in this sub-section bears its ordinary and natural meaning and that the 1st defendant, being a defendant in the same action in which final judgment had been given against the 2nd defendants, has already been sued within such ordinary and natural meaning and that he was accordingly not a person who had not been "sued" within the meaning
30 of this sub-section.

Mr. Parker contended that the plaintiffs were seeking two judgments in one action and that this was contrary to the single judgment rule in respect of joint tortfeasors. He said that this sub-section was not apt to cover one action against two joint tortfeasors where judgment has already been recovered from one of them.

As Glanville Williams says in Joint Torts and Contributory Negligence at page 68:-

40 "The rule was developed that judgment against one joint tortfeasor barred an action against another. The effect of this rule was that a plaintiff could not get more than one judgment

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No.16

Judgment of Winslow J.

24th July 1972 (continued)

against joint tortfeasors whether he sued them in successive actions or in the same action.

But, it may be asked, has not this rule now been abolished by the Tortfeasors Act? The answer is that the rule in its application to successive actions has been abolished, but that in its application to co-defendants in a single action it seems not to have been abolished. The wording of s.6(1)(a) of the Tortfeasors Act is not apt to cover the case where both joint tortfeasors are sued in the same action (cp. the words in paragraph (a): 'shall not be a bar to an action against any other person who would, if sued, have been liable'). Also, the sub-section clearly intends to accompany the new rule stated in paragraph (a) by the safeguard stated in paragraph (b), which makes the first judgment fix the upper limit of recoverable damages; yet the safeguard in paragraph (b) does not apply to cases where two tortfeasors are sued in a single action. It applies only where 'more than one action is brought'. On the whole it appears to be the better view, therefore, that the provision does not apply where tortfeasors are sued in a single action, and the former rule limiting the plaintiff to a single judgment still prevails."

It seemed to me, after carefully chewing and, so far as possible, trying to digest the argument put forward by Messrs. Le Quesne and Parker on this point, that there was considerable substance in the view stated in the portion which I have just cited from Professor Glanville Williams. Although he expressed that opinion some considerable time ago, the better view would seem to be that sub-section (1)(a) has not in fact succeeded in abolishing altogether the single judgment rule in so far as it relates to joint tortfeasors in a single action however unjust and arbitrary in its result its application may be, though technically correct. As the learned professor has pointed out the safeguard stated in paragraph (b) does not apply to two tortfeasors who are sued in a single action.

I was also considerably impressed by the submissions of Mr. Parker on the meaning to be attached to the word "sued". After carefully considering the contending views on what it means, whether

In the High Court of Singapore

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Judgment of Winslow J.

24th July 1972 (continued)

"sued" means "sued to final judgment" or whether it ought to be given its ordinary and natural meaning unless some special reason is shown to depart from that meaning I reached the conclusion for which Mr. Parker contended. Mr. Parker had also submitted that to interprete "sued" in the manner advocated by Mr. Le Quesne would rob sub-section (1)(a) of any meaning and that it was not enough to say that "sued" means"sued to final judgment" as the 1st defendant had already been sued to judgment in his favour once before, i.e. at the original trial.

I am aware that in giving my reasons now I must bear in mind that when I did give my decision on the first preliminary objection relating to the Section 11(1)(a) point I had not yet heard the case at re-trial and I must not allow my reasons for concluding as I did before the re-trial commenced to be coloured in any way by what I subsequently found on the facts at the end of the re-trial.

There is no doubt that the 1st defendant was in fact sued within its ordinary meaning when the original trial began as were the 2nd defendants. I have no doubt that, had this been the original trial of the 1st defendant in which he had been sued for the first time alone and if the facts were that the 2nd defendants had, in fact, in separate proceedings prior to that trial been sued and held liable and had had final judgment entered against them, I would have had no alternative except to hold that Section 11(1)(a) did avail the plaintiffs subject to any such defence as that based on limitation. Was I, in the case before me, I asked myself anxiously, in exactly the same position as I would have been in the hypothetical situation which I have just posed? I came to the conclusion that I was not. I asked myself whether the fact that this was the same action, in effect, as the original action empowered me to decide that Section 11(1)(a) availed the plaintiffs notwithstanding final judgment against the 2nd defendants in the same action even though such judgment remained unsatisfied. I found myself unable to answer this question in the affirmative.

One of Mr. Le Quesne's arguments was that damages had been assessed against both defendants and he referred me to AB17 and submitted that, if

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Judgment of Winslow J.

24th July 1972 (continued)

the 1st defendant were to be held liable, he would be liable for the sum assessed. He seemed to consider that the mere fact that damages had been assessed was a factor which I should take into consideration in deciding whether I should overrule the objection. Mr. Parker pointed out that this was an unworthy point for the plaintiffs to take for a number of reasons one of which was that the order by the Federal Court applied to assessment of damages against the 2nd defendant and no one else. 10

Mr. Le Quesne also referred to the meaning of the word "liable" as used in section 11(1)(a) and relied on the proposition that "liable" there, according to him, meant "held liable in judgment" to support his proposition that "sued" must mean "sued to final juudment".

He referred to page 178 in George Wimpey & Co. Ltd. v. British Overseas Airways Corporation (1955) A.C. where Viscount Simonds said that: "the word 'liable' where it is secondly used in section 20 6(1)(c) ... means held liable in judgment." It should be noted, however, that on the same page Viscount Simonds says: "No other meaning can reasonably be attributed to it in the context 'would if sued have been', for these words make a suit the condition of liability." It is interesting to note that Lord Porter said at page 180 after dealing with the common law rule, that:

"Section 6(1)(a) of the Act of 1935 was enacted in order to alter this result. Henceforward, the 30 fact that the injured party had recovered judgment against one or more would not prevent his suing and obtaining judgment against the rest.

In this collocation the first use of the word 'liable' must mean held liable in an action, because unless there is an action judgment cannot be recovered: the second 'liable' preceded by the words 'would if sued have been' might well be replaced by the words 'any other guilty party' but is by implication limited to one who has not been 40 sued."

At page 188 Lord Reid points out that

"There are two points in subsection (1)(a) which should, I think, be noted. In the first

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No.16

Judgment of Winslow J.

24th July 1972 (continued)

place, the word 'liable' occurs twice and in each case it is clear that it must mean held liable. And secondly, in the phrase "who would if sued have been liable as a joint tortfeasor' it appears to me that 'if sued' most probably means if he had been sued together with the tortfeasor first mentioned, because a person cannot properly be said to be held liable 'as a joint tortfeasor' if he is sued alone. If that is right, not only must the words 'if sued' here have a temporal connotation but they must refer to the time when the other tortfeasor was sued. But that conclusion depends on an assumption that the language of the provision is used accurately, and looking to the defective drafting of other parts of the sub-section it would, I think, be unsafe to rely on any inference from the form of drafting of subsection (1)(a). With regard to subsection (1)(b) I need only observe that the word 'liable' is there used in a context where it cannot possibly mean held liable. The context is 'if more than one action is brought ... against tortfeasors liable in respect of the damage' and liable there can only mean against whom there is a cause of action. So on any construction of the subsection the word 'liable' must be held to have quite different meanings in different places in the subsection. I am not prepared in this case to base my decision on any inference from similarities of expression in either subsection (1)(a) or subsection (1)(b)."

In Wimpey's case, of course, the House of Lords was concerned with subsection (1)(c) and not with subsection (1)(a).

It seems to me that in dealing with subsection (1)(c) the meaning attached to the word "sued" by their Lordships in the House of Lords was its plain and ordinary meaning. Having to choose between the plain and ordinary meaning of "sued" and the meaning ascribed to it Mr. Le Quesne decided that logic and common sense demanded the construction placed on the word "sued" by Mr. Parker, namely, that it bears its plain and ordinary meaning and not "sued to final judgment". A person may be sued to final judgment and be held not liable in judgment as happened at the original trial in the case of both the 1st defendant and the 2nd defendants. It may well be that the legislature did not intend the interpretation for which Mr. Parker contended but

In the High Court of Singapore

No.16

Judgment of Winslow J.

24th July 1972 (continued)

the fact remains that it has not succeeded in conveying the meaning, for which Mr. Le Quesne contended, in clear and unmistakeable language.

I accordingly upheld the first preliminary objection.

Second Preliminary Issue: The So-called Bare-Boat Charterparty Point

The objection based on the so-called "bare-boat" charterparty point as set out in Ex.PD2 was, at first, said to arise only if the first preliminary objection raised by the defendants on the section 11 point failed but it was later agreed that I should decide this point as well, even if the first objection succeeded, in order to determine the proper scope of the re-trial ordered by the Federal Court. 10

I should have thought as I have earlier said that the order for re-trial clearly defined the issue before me, i.e. whether the 1st defendant was also liable. 20

Mr. Le Quesne, however, for the plaintiffs had, in opening, already invited the objection in question by stating that the Federal Court might have adjudged the wrong defendant liable but, as he conceded in Ex. PD2, the only basis upon which judgment could have been given against the 2nd defendants was that the master and crew were the servants of the 2nd defendants and not of the 1st defendant as pleaded at paragraph 3A of the Amended Defence. 30

The plaintiffs conceded also that if there was such a bare-boat charterparty in existence, then the master and crew were servants of the 2nd defendants and not of the 1st defendant. They were not employed jointly by the 2nd defendants and the 1st.

Paragraphs 8, 9, 10 and 11 of Ex. PD2 set out clearly the opposing contentions and I was invited by the plaintiffs to hold that the Federal Court intended by the whole of their written judgment that I should re-try the whole issue as to whether the 1st defendant or the 2nd defendants or both were liable for the conversion of the goods 40

notwithstanding the last paragraph thereof, the formal order and other matters relied upon by the 1st defendant.

The point I had to decide on the objection raised by the 1st defendant was whether the plaintiffs should be allowed to contend that the master and crew were servants of the 1st defendant and not of the 2nd defendants, viz., that there was no bare-boat charterparty in existence.

10 I decided that it was not open to the plaintiffs to do so.

The Federal Court judgment admittedly could be sustained only on the basis that there was in fact a bare-boat charterparty. That is the judgment for which the plaintiffs asked and did in fact obtain notwithstanding that page 375 of the record contains in the written judgment a reference to the fact that both parties had agreed that the issue on whom liability should fall, if proved, could not be properly 20 dealt with in the appeal as its determination depended almost entirely on the credibility of witnesses.

No one knows exactly when Mr. Kerr asked for judgment against the 2nd defendants in the course of the argument in February 1967 before the Federal Court. It was certainly after the commencement of the appeal when it was agreed that liability should be left open and he must then have been well aware that he could only get the judgment he asked for against 30 the 2nd defendants in one of two ways:-

either (a) it had to be found by the Court against the plaintiffs in favour of the 1st defendant that his allegation in paragraph 3A of the Further Further Amended Defence at page 12 of the record (which is actually a Joint Defence) was established; or (b) it had to be admitted by the plaintiffs that the master and crew were the servants of the 2nd defendants and not the 1st.

As Mr. Parker said, the Court in July 1967, 40 gave judgment for which Mr. Kerr asked and stated with absolute accuracy the consequence of that judgment that the only remaining issue was whether the 1st defendant was also liable.

In the High Court of Singapore

No.16

Judgment of Winslow J.

24th July 1972 (continued)

Despite the clarity of the formal order taken out on that judgment by the plaintiffs they sought to contend that the Federal Court intended to leave the whole question of who was liable open. To contend thus was, according to Mr. Parker, "to attribute to the Federal Court either confusion or loss of memory or total insanity or both."

It seemed to me when I upheld Mr. Parker's objection that the Federal Court were more probably giving effect to an admission by the plaintiffs that the master and crew were servants of the 2nd defendants and not the 1st, based on an acceptance of paragraph 3A of the Defence as amended than to a finding of fact which the parties had earlier agreed involved the credibility of witnesses though the Federal Court may have been doing both because of such admission.

The fact remains that the Federal Court gave judgment on this aspect of the matter pursuant to Mr. Kerr's request, which as appears from Ex. PD2, could only have been given on the basis that it was either proved or admitted that the master and crew were the servants of the 2nd defendant viz., that there was, in fact, a bare-boat charterparty.

Mr. Parker said that, quite apart from the impossible situation which would arise if I were to reach a different conclusion from that contained in the order for re-trial, the estoppel rule applied to the judgment of the Federal Court. Citing Farwell L.J. at page 144 of Harriman's case, to which I have already referred, he submitted that as between the parties the ordinary doctrine of estoppel applied. He also relied on Fletcher Moulton L.J.'s reference in that case to the binding estoppel created between parties in civil actions.

By specifically stating that the goods were released by the 2nd defendants the Federal Court, he submitted, necessarily found that the master and crew were their servants and that, even if, as Mr. Le Quesne contended, the Federal Court were mistaken in stating that certain facts were never in dispute, Mr. Kerr's request for judgment against the 2nd defendants made that dispute cease to exist.

Mr. Le Quesne, on the other hand, relied on Isaacs v. Salbstein (1916) 2 K.B. for the proposition that a judgment obtained against the wrong defendant does not preclude the pursuit of the defendant who is in fact liable for the same relief. He said he was not barred from proceeding against the 1st defendant on the basis that he was not necessarily a joint tortfeasor.

10 Secondly, he said he was trying to show that the 1st defendant was a sole tortfeasor because there was no oral bare-boat charterparty.

He admitted that, if the estoppel rule applied, then he was barred but agreed that the Federal Court judgment was not a judgment to that effect which is binding on the plaintiffs so as to produce an estoppel.

Next he said he was not relying on the same cause of action.

20 He invited the application of caution in ensuring that the grounds of decision were perfectly clear and submitted that the estoppel rule should not be regarded as extending to the grounds unless the grounds can be clearly discovered from the judgment itself.

He said that it could not be clearly discovered that there was a finding or an admission of a bare-boat charterparty in the written judgment.

30 He finally said that he was not asking the Court to say that the 2nd defendants were not liable and that he was asking only for a judgment that the 1st defendant was liable.

Mr. Parker, in reply, said that the Isaacs case did not help the plaintiffs in these proceedings. There was no question of the cause of action being a different one in respect of each of the defendants. He submitted that the central fallacy in Mr. Le Quesne's argument lay in his adoption of the definition of "cause of action" cited by 40 Bankes L.J. at page 154 and in arguing that, because different facts might have to be proved against each of three different groups of people, they could not also be joint tortfeasors, as for example, a servant group, a group like the 2nd

In the High Court of Singapore

No.16

Judgment of Winslow J.

24th July 1972 (continued)

defendants as employers, and a complete stranger acting in concert with them. Although other facts may have to be established to show responsibility for the same tort the vital fact common to all three groups would be the misdelivery of goods which would only go to show one tort. This was the "injuria" and as Scrutton L.J. said in the Koursk case at page 157 "What constitutes the cause of action is the injuria, the wrong done ny a separate tortfeasor," citing the view of Collins L.J. in another case. 10

I agreed with Mr. Parker that this definition was to be preferred to the one cited by Bankes L.J. in the Isaacs case which, no doubt, in relation to the facts of that case appeared plausible though it could not be precisely right as a general proposition.

The better view to take with regard to the respective contentions on the bare-boat charter-party point was, I considered, that view for which Mr. Parker contended in order that sanity might prevail. It would have been quite impossible for me to have proceeded with the re-trial on any other basis as to the scope of the trial than that clearly conveyed in the order for re-trial which required a determination whether the 1st defendant was also liable. 20

I accordingly held that the 2nd preliminary objection was well-founded.

Sd: A.V. Winslow 30

JUDGE

SINGAPORE,

24TH JULY, 1972.

In the High Court of Singapore

No.17

Order

24th July 1972

No. 17

ORDER dated 24th July 1972

Suit No. 1284 of 1961

BETWEEN:

1. WAH TAT BANK LIMITED

2. OVERSEA-CHINESE BANKING CORPORATION LTD.

(L.S.) Plaintiffs

and

10 1. CHAN CHENG KUM

2. HUA SIANG STEAMSHIP CO. LTD. Defendants

The 24th day of July, 1972

The issue as to whether the first Defendant is also liable for the conversion held by the Federal Court and, on Appeal, by the Privy Council to have been committed by the second Defendants, which issue was by the Order of the Federal Court of the 7th day of July, 1967, ordered to be re-tried, coming before the Honourable Mr. Justice Winslow on 20 the 6th, 7th, 8th, 9th, 13th and 14th days of March, 1972, and the Judge having this day found for the first Defendant that further proceedings against the first Defendant were barred directed that Judgment be entered for the first Defendant and that the claim against the first Defendant be dismissed with costs IT IS ADJUDGED that the Plaintiffs do pay the first Defendant his costs to be taxed, and in taxing the said costs of the first Defendant the Registrar is to allow the 30 costs of the attendance before this Court of two Counsel on behalf of the first Defendant.

Entered in Volume CXVIII page 347 at 10.05 of the 26th day of August, 1972.

Sd. R. E. MARTIN

ASSISTANT REGISTRAR.

In the Court of Appeal of Singapore

No.18

Petition of Appeal

23rd September 1972

No. 18

PETITION OF APPEAL

Civil Appeal No. 45 of 1972

BETWEEN:

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Appellants

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Respondents

10

(In the Matter of Suit No.1284 of 1961 in the High Court in Singapore

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking (Sic) ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

20

PETITION OF APPEAL

To the Honourable the Judges of the Court of Appeal

The Petition of the abovenamed Appellants showeth as follows:-

1) The appeal arises from the re-trial of the issue directed by the then Federal Court by its judgment dated the 7th day of July 1967 as to whether the 1st Respondent was also liable for the conversion of the rubber and pepper the subject matter of these proceedings.

30

2) By judgment dated the 24th day of July 1972 judgment was given for the 1st Respondent.

3) Your Petitioners are dissatisfied with the said judgment on the following grounds:-

(i) The learned trial Judge was wrong in law in holding that section 11(1)(a) of the Civil Law Act (Cap.30) did not avail the Appellants.

(ii) The learned trial Judge should have held that, notwithstanding the fact that the action was commenced against both Respondents, the judgment entered against the 2nd Respondents did not bar further proceedings in that action against the 1st Respondent.

10

4) Your Petitioners pray that such judgment be reversed.

Dated the 23rd day of September 1972.

Sd. Allen & Gledhill

Solicitors for the Appellants

To:

The Registrar,
Supreme Court,
Singapore.

20

And To

Messrs. Drew & Napier,
Solicitors for the Respondents,
Singapore.

The address for service of the Appellants is at the office of Messrs. Allen & Gledhill, 1st Floor, Meyer Chambers, Raffles Place, Singapore.

In the Court of Appeal in Singapore

No.19

Respondents notice

25th September 1972

No. 19

RESPONDENTS NOTICE

Civil Appeal No. 45 of 1972

BETWEEN:

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Appellants

and

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Respondents

10

(In the Matter of Suit No. 1284 of 1961 in the High Court of Singapore

BETWEEN:

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Plaintiffs

and

1. CHANG CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Defendants

20

TAKE NOTICE that on the hearing of this Appeal the Respondent Chan Cheng Kum will contend that the Judgment of the Honourable Mr. Justice A.V. Winslow given on the 24th day of July, 1972 dismissing the Plaintiffs' claim against the said Respondent should be affirmed not only on the grounds given by the learned Judge but also on the grounds that the said Respondent did not procure or otherwise take part in the conversion committed by the Hua Siang Steamship Company Limited so as to render himself a joint tortfeasor with such company alternatively that there was no evidence upon which the learned Judge was entitled to hold that the said Respondent did procure or otherwise take part in the said conversion so as to render himself such joint tortfeasor.

30

Dated the 25th day of September, 1972

Sd. Drew & Napier

Solicitors for the Respondents.

To:

The Registrar, Supreme Court, Singapore.

The Appellants, and to their Solicitors, Messrs. Allen & Gledhill.

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

No. 20

JUDGMENT

10 IN THE COURT OF APPEAL OF SINGAPORE
CIVIL APPEAL NO. 45 of 1972

BETWEEN

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Appellants

AND

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Respondents

20 (In the Matter of Suit No. 1284 of 1961 in the High Court in Singapore

BETWEEN

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Plaintiffs

AND

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Defendants)

30 Coram: WEE CHONG JIN, C.J.
CHUA, J.
CHOOR SINGH, J.

JUDGMENT

The appellants in this appeal are two banks.

In the Court of Appeal of Singapore

No.20

Judgment

16th April 1973 (continued)

The first bank carried on business in Sibu, Sarawak, and the second bank carried on business in Singapore. The second appellants were at all material times the Singapore agents of the first appellants.

The first respondent, was prior to the 31st December, 1960, the sole managing proprietor of Hua Siang Steamship Co. and was at all material times the owner of two motor vessels, the "Hua Heng" and the "Hua Li" plying between Singapore and Sarawak ports. 10

The second respondents, the Hua Siang Steamship Co. Ltd., were incorporated by the first respondent on the 30th December, 1960, and the second respondents took over the former business of the first respondent. The second respondents were alleged to be at all material times the charterers of the two vessels, the "Hua Heng" and the "Hua Li".

The appellants sued both the respondents in the High Court of Singapore for damages for wrongful 20 conversion of rubber carried on the vessels the "Hua Heng" and the "Hua Li" on four voyages between May and June, 1961, from Sibu, Sarawak, to Singapore.

The material facts relating to these four shipments of rubber and which facts were never in dispute are briefly these.

The shippers of all the four consignments of rubber were Tiang Seng Chan (Singapore) Limited (hereinafter referred to as "T.S.C."). T.S.C. had over a substantial period of years bought produce 30 in Sibu for export to Singapore and the bulk of their exports from Sibu to Singapore were carried on vessels operated by the first respondent and later by the second respondents.

The four consignments of rubber in question of the estimated value of $600,000, were delivered by T.S.C. to the second respondents at Sibu for carriage on board the vessels the "Hua Heng" and the "Hua Li" to Singapore. Twenty receipts entitled "Mate's Receipt", which acknowledged 40 receipt of these four consignments in apparent good order and condition for shipment to Singapore and named the second appellants as consignees, were issued to T.S.C. by or on behalf of the

second respondents. These mate's receipts were signed by the Chief Officer of one or other of the two vessels.

T.S.C.'s principal bankers at Sibu were the first appellants with whom they had overdraft facilities and over the years, by means of such overdraft facilities, the first appellants financed shipments of the goods of T.S.C. for carriage to Singapore against the latter's Bills of Exchange 10 and/or Mate's receipts on condition that the goods so carried were consigned to the second appellants as agents for the first appellants and with the intention that such goods would be pledged or treated as having been pledged to the first appellants as security for the said financing by the first appellants of such shipments.

The four consignments in question were so financed by the first appellants and the twenty mate's receipts were duly delivered by T.S.C. to 20 the first appellants who sent them to the second appellants in Singapore, together with Bills of Exchange or Notes drawn on T.S.C. and payable to the order of the second appellants.

However, shortly after the arrival of the vessels at Singapore, all the goods covered by these twenty mate's receipts were released by the second respondents to T.S.C. without production of and surrender of the relevant mate's receipts and only against indemnities signed by T.S.C. and three 30 of its directors. These indemnities were not Bank Guarantees in the sense that they were not countersigned by a bank.

Unfortunately T.S.C. were unable to meet their obligations and as a consequence the appellants commenced this action against the respondents, who joined T.S.C. and its three directors who signed the indemnities as Third Parties.

It was agreed during the course of the trial that the issues between the appellants and the 40 respondents be heard first and subsequently the issues between the respondents and the third parties. Later, however, the respondents and the third parties reached settlement so that as far as the trial Court was concerned there was merely a straight contest between the appellants and the respondents.

In the Court of Appeal of Singapore

No.20

Judgment

16th April 1973 (continued)

When the matter came to trial the claims of the appellants were put in three ways:-

First, they said that by the custom of the trade relating to the shipment of goods by sea between Sarawak and Singapore (and vice versa) mate's receipts are treated as documents of title to the goods thereby covered in the same way as Bills of Lading and therefore, they said, they as holders of documents of title were entitled to damages for conversion if the goods were delivered to anybody else. 10

Second, they said that when the vessels issued these mate's receipts naming the second appellants as consignees the respondents were representing that they held the goods for the second appellants and therefore the respondents were estopped from denying their right to the possession of the goods.

Third, they said that once the respondents had issued the mate's receipts and once T.S.C. had delivered the mate's receipts to the first appellants, T.S.C. had lost any right to give to the respondents instruction to deliver the goods to themselves or to anyone else so that the delivery of the goods to T.S.C. constituted a wrongful conversion both by T.S.C. and the respondents. 20

Kulasekaram, J. who tried the case, delivered judgment to this effect. As to the First he held that the law would only recognise a universal custom and not a local custom and so the local custom could not be recognised. He made no finding as to the existence or non-existence of the alleged local custom or usage. As to the Second, he rejected it. As to the Third, he did not deal with it. He dismissed the action altogether. 30

The appellants then appealed to the Federal Court of Malaysia and that Court held that

(1) it was a custom of the trade relating to shipment of goods between Sarawak and Singapore that mate's receipts were treated as documents of title in the same way as Bills of Lading. 40

(2) By reason of such custom of trade being

established the issue of mate's receipts to the order of the second appellants estopped the respondents from denying the second appellants' right to possession of the goods thereby making the second respondents liable for wrongful conversion by their act of making delivery to T.S.C.:

and ordered a retrial on the disputed issue as to whether or not the first respondent was also liable for wrongful conversion since he was merely owner of the vessels which he claimed were under a bare-boat charterparty at all material times.

Counsel for the appellants applied for and was granted judgment against the second respondents with costs for damages to be assessed.

The appellants had their bills of costs taxed and they were allowed at $75,612.86 (their first instance bill) and $41,209.35 (their appeal bill) making a total of $116,822.21.

The respondents appealed to the Privy Council. While the appeal was pending the appellants caused damages to be assessed and damages were assessed by the Registrar in the sum of $551,876.88. The appellants appealed against the Registrar's assessment and the assessment was increased to $570,500.

The appellants then entered judgement against the second respondents in the sum of $570,500. They demanded payment of the judgment sum and their taxed costs but the second respondents paid only $116,822.21 the taxed costs.

The Privy Council dismissed the appeal of the respondents. The Privy Council held:

(1) that, although there was evidence to justify the finding of a custom of the trade that mate's receipts were treated as documents of title, the endorsement "not negotiable" on the mate's receipts defeated the custom.

(2) that, in the circumstances of the case, the shipment of the goods was a delivery to the ship as bailee for the banks, so that thereby the pledge was completed and the banks given

the possessory title on which they relied thereby entitling them to succeed in their claim for conversion.

The retrial of the issue directed by the Federal Court as to whether the first respondent was also liable for the conversion of the goods was heard by Winslow J. who held that the first respondent was in fact a joint tortfeasor but that further proceedings against the first respondent were barred by the judgment which the appellants had obtained against the second respondents and he gave judgment for the first respondent. 10

The appellants now appeal against the judgment of Winslow J and the first respondent gave notice pursuant to R.S.C. Order 57 Rule 7 that on the hearing of the appeal the first respondent would contend that the judgment of Winslow J. should be affirmed not only on the grounds given by the learned Judge but also on the grounds that the first respondent did not procure or otherwise take part in the conversion committed by the second respondents so as to render himself a joint tortfeasor with the second respondents alternatively that there was no evidence upon which the learned Judge was entitled to hold that the first respondent did procure or otherwise take part in the said conversion so as to render himself such joint tortfeasor. 20

The present appeal turns on the interpretation of the word "sued" in section 11(1)(a) of the Civil Law Act (Cap.30) which provides: 30

"11(1) Where damage is suffered by any person as a result of a tort (whether a crime or not) -

(a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage; " 40

Winslow J. was of the view that "sued" in section 11(1)(a) ought to be given its ordinary and natural meaning and that the first respondent was in fact sued within its ordinary meaning when the

original trial began as were the second respondents.

Before we set out the contentions of the parties as to the meaning of the word "sued" it would be useful to set out the agreed position between the parties on this point.

It was accepted by both parties that under common law final judgment against one joint tortfeasor operates as a complete bar to all further proceedings against any other joint tortfeasor whether in the same action or otherwise.

It was accepted by the appellants that the Federal Court judgment, coupled with the assessment of damages thereunder, constitutes a final judgment and is a complete bar at common law to all further proceedings against the first respondent. It therefore follows that the appellants' claim against the first respondent is now barred and that the claim against him must be dismissed unless the common law rule has been altered by statute.

It was accepted by both parties that section 11(1)(a) does alter the common law rule so that final judgment against one joint tortfeasor is no longer a bar to an action against any other joint tortfeasor if, but only if, he has not been "sued" within the meaning of this subsection.

Mr. Le Quesne, for the appellants, contends that "sued" in this subsection means "sued to final judgment" and that because the first respondent has not been sued to final judgment they were not barred.

Mr. Parker, for the first respondent, on the other hand contends that "sued" in this subsection bears its ordinary and natural meaning and that the first respondent, being a defendant in the same action in which final judgment has been given against the second respondents, has already been sued within such ordinary and natural meaning and that the first respondent was accordingly not a person who had not been "sued" within the meaning of this subsection.

Mr. Le Quesne contends that his submission is supported by a decision of the Court of Appeal in England in the case of Hart v. Hall & Pickles Ltd., (1969) 1 Q.B. 405), (that case, however, was not put before Winslow J.)

In that case the plaintiff sued his employers, the first defendants, for damages for personal injury caused by the alleged negligence of one of their servants. The first defendants in their defence alleged blame on the part of the servant of another company. They joined that company as third party and claimed indemnity or contribution from them. Thereupon the plaintiff added the third party as second defendants. The claim against the second defendants was later dismissed for want of prosecution. At the trial of the plaintiff's claim against the first defendants and the claim over against the third party, the third party claimed on a preliminary point of law to be dismissed from the action on the ground that they could not be liable for contribution under the Law Reform (Married Women & Tortfeasors) Act, 1935, section 6(1)(c), since the plaintiff's claim against them as second defendants had been dismissed for want of prosecution. The Court refused the application of the third party to be dismissed from the action.

The third party appealed on the ground, inter alia, that the judge erred in law in deciding that the third party could be a person who would if sued have been liable in respect of the plaintiff's damage, within the meaning of section 6(1)(c) of the Act of 1935, since the plaintiff had in fact sued the third party, and his action had been dismissed for want of prosecution. The Court of Appeal held, dismissing the appeal, that since the plaintiff's action against the third party as second defendants had only been dismissed on a procedural ground without any adjudication on the merits, the first defendants had a straight claim against the third party for indemnity or contribution under section 6(1)(c) of the Act of 1935, as if the third party had never been joined as second defendants.

The relevant portions of section 6(1)(c) say that:

> " where damage is suffered by any person as a result of a tort .... (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage ...."

(We have a similar provision in section 11(1)(c) of the Civil Law Act (Cap.30).)

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Lord Denning, M.R., in the course of his judgment said (at p.411):

" It seems to me that, in order that a person should be exempted from contribution, he must have been "sued to judgment" and found to be not liable. Those words "sued to judgment" were used by Parker J. in Littlewood v. George Wimpey & Co. Ltd. and B.O.A.C. and B.O.A.C. (Third Party) and were adopted by Morris L.J. in the same case. When an action has been dismissed for want of prosecution, the defendant has not been "sued to judgment" at all. There has been no finding on the merits. "

Davies, L.J. in the course of his judgment said (at p.412):

" There must, in other words, be some adjudication on the merits before a potential third party can escape liability or escape having proceedings taken against him under the subsection. "

Winn, L.J., in the course of his judgment said (at p.413):

" I myself have reached the conclusion which I will shortly express by a simple and short route. It appears to me that when Parker J. at the page to which my Lord has referred, referred to the word "sued" in the relevant subsection and said "by 'sued' I mean sued to judgment", he undoubtedly must have meant: By "sued" on each occasion when I have used that word in my last sentence, I mean sued to judgment. It follows that Parker J.'s construction of the subsection might be paraphrased thus: "is sued and held liable, or, if not sued, would if sued have been held liable, is equivalent to 'if sued to judgment and held liable by the judgment, or, if not sued already to judgment, would if sued to judgment have been held by the judgment liable to the plaintiff'." I think there is, therefore, a fundamental dichotomy, implicit

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in the underlying reasoning, between the expression "held not liable, scilicet, by a judgment," and, on the other hand, by contrast, the expression "sued and not held liable."

So, Lord Denning, Davies, L.J. and Winn, L.J., were of the view that "sued" in section 6(1)(c) of the 1935 Act means in effect "sued to judgment".

Mr. Le Quesne says that one of the objects of section 11(1)(a) was to get rid of the common law rule that a final judgment against one joint tortfeasor, even if unsatisfied, barred any other proceeding against any other joint tortfeasor. He says that the legislature intended to remove an injustice in that a judgment against a joint tortfeasor which is worthless is a complete bar against proceeding against another joint tortfeasor. He submits that to interpret section 11(1)(a) in the way Winslow, J. did is to work an injustice to the appellants.

Mr. Parker contends that the appellants are seeking two judgments in one action and that this is contrary to the single judgment rule in respect of joint tortfeasors which has recently been restated by Lord Hailsham, Lord Reid and Viscount Dilhorne in the House of Lords case of Cassell & Co. Ltd. v. Broome, ((1972) 2 W.L.R. 645; at pages 661-H, 686D, and 700H respectively). He concedes that one of the objects of section 11(1)(a) is to alter the common law position but he says that it is clear beyond argument that it did alter the common law position in certain respects. He asks the Court to observe that having made an alteration to the common law position in subsection (a) it was immediately recognised that there was something else to be dealt with and that is, what should one do in the event there is more than one judgment? and that is dealt with in subsection (b) of section 11 and that says in the clearest terms that if more than one action is brought then the plaintiff cannot recover in the aggregate more than the amount of the judgment given in the first action. So, he argues, one has an indication in the clearest possible way that it was never contemplated that subsection (a) could lead to separate judgments in one action because if it had been so contemplated it must follow that subsection (a)

would have the same limitation as to the amount the plaintiff can recover as is provided for in subsection (b) with regard to judgments in different actions.

We agree with the submission of Mr. Parker that subsection (a) has not succeeded in abolishing the single judgment rule in so far as it relates to joint tortfeasors in a single action.

As regards injustice Mr. Parker says that there can be no injustice to the appellants if subsection (a) is interpreted in the way he submits the Court should interpret it. The appellants had the remedy in their own hands. It was they who obtained final judgment against the second respondents and they are now proceeding against the first respondent because they could not get satisfaction from the judgment which they had obtained against the second respondents. He says that an injustice would be done to the first respondent if subsection (a) is interpreted in the manner advocated by Mr. Le Quesne as the first respondent would not get the protection of subsection (b).

Mr. Parker says that his submission that "sued" in subsection (a) bears its ordinary and natural meaning is strongly supported by the judgment in the House of Lords case of George Wimpey & Co. Ltd. v. British Overseas Airways Corporation, ((1955) A.C. 169).

The relevant facts of that case are these. Following an accident in which he was injured an employee of the respondent corporation brought an action against the appellant company claiming damages for negligence. The appellant company served a third party notice on the respondent corporation claiming contribution under section 6(1)(c) of the Law Reform (Married Women & Tortfeasors) Act, 1935, in the event of its being held liable to the injured man. Later the respondent corporation was joined as second defendant. The trial judge found that the respondent corporation was one-third and the appellant company two-thirds responsible for the damage suffered and he gave judgment for the injured man against the appellant company but held that his action against the respondent corporation failed because it was

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16th April 1973 (continued)

statute barred. The appellant company claimed by third party proceedings against the respondent corporation contribution to the damages which it was adjudged to pay to the injured man under section 6(1)(c) of the Act of 1935. The trial judge dismissed the claim of the appellant company against the respondent corporation as third party and the Court of Appeal affirmed that decision. The appellant company then appealed to the House of Lords against that decision. It was held: (1) (per Viscount Simonds, Lord Reid and Lord Tucker; Lord Porter and Lord Keith of Avonholm dissenting), that the appellant company was not entitled under section 6(1)(c) of the Act of 1935 to recover contribution from the respondent corporation; (2) (Per Viscount Simonds and Lord Tucker,) Section 6(1)(c) does not admit a claim for contribution by one tortfeasor against another where that other has been sued by the injured person and found not liable. 10 20

Viscount Simonds said (at page 177);

" It may at once be observed upon this subsection (6(1)) that, whereas paragraph (a) relates to the rights of the injured person and substantially alters the law to his advantage, paragraph (c) relates to the rights of tortfeasors inter se and, to a greater or less degree, according to the interpretation which is put upon it, alters the law for the benefit of the tortfeasor who alone has been sued or against whom alone judgment has been recovered. How far Parliament has proceeded upon this path depends on the language of the Act. If I find its meaning sufficiently clear, I do not think it right to depart from it upon a speculation that it might have been wiser or more consistent to proceed further. 30

The question of construction, as I see it, is whether section 6(1)(c) can, according to its natural meaning, be so interpreted as to admit a claim for contribution by one tortfeasor against another when that other has been sued by the injured person and held not liable. I agree with Parker J. and Singleton and Morris L. JJ. in thinking that it cannot. 40

Lord Porter said, at page 180, after dealing with the common law rule thus:

" Section 6(1)(a) of the Act of 1935 was enacted in order to alter this result. Henceforward, the fact that the injured party had recovered judgment against one or more would not prevent his suing and obtaining judgment against the rest.

In this collocation the first use of the word "liable" must mean held liable in an action, because unless there is an action judgment cannot be recovered: the second "liable" preceded by the words "would if sued have been" might well be replaced by the words "any other guilty party" but is by implication limited to one who has not been sued."

At page 188 Lord Reid said:

" It is therefore in my judgment necessary for the decision of this case to determine as a matter of construction to what period the words "if sued" (in S.6(1)(c)) refer, and that can only be determined by considering the subsection as a whole.

I begin by considering the terms of section 6(1)(a). It is true that this only deals with joint tortfeasors and therefore has no application to the present case, but it may be important because in structure and phraseology it closely resembles subsection (1)(c). It provides: "Where damage is suffered by any person as a result of a tort (whether a crime or not) - (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage."

Before 1935 if judgment was recovered against the joint tortfeasor that judgment was a bar to any action against another joint tortfeasor even although no sum had been or could be recovered under that judgment. This provision removes that bar.

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(continued)

"

There are two points in subsection (1)(a) which should, I think, be noted. In the first place, the word "liable" occurs twice and in each case it is clear that it must mean held liable. And secondly, in the phrase "who would if sued have been "liable" as a joint tortfeasor" it appears to me that "if sued" most probably means if he had been sued together with the tortfeasor first mentioned, because a person cannot properly be said to be held liable "as a joint tortfeasor" if he is sued alone. If that is right, not only must the words "if sued" here have a temporal connotation but they must refer to the time when the other tortfeasor was sued. But that conclusion depends on an assumption that the language of the provision is used accurately, and looking to the defective drafting of other parts of the subsection it would, I think, be unsafe to rely on any inference from the form of drafting of subsection (1)(a). With regard to subsection (1)(b) I need only observe that the word "liable" is there used in a context where it cannot possibly mean held liable. The context is "if more than one action is "brought .... against tortfeasors liable in respect of the "damage" and liable there can only mean against whom there is a cause of action. So on any construction of the subsection the word "liable" must be held to have quite different meanings in different places in the subsection. I am not prepared in this case to base my decision on any inference from similarities of expression in either subsection (1)(a) or subsection (1)(b)."

Lord Keith of Avonholm said (at page 194):

" In this matter some assistance is to be got, in my opinion, from other parts of section 6 of the Act. In subsection (1)(a) the same words are used: "judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage." The language is curious. It contemplates the possibility of

an action by an injured party against the person liable as a joint tortfeasor and at the same time regards him as having been sued by the injured party in a hypothetical action in the past. But the purpose of the provision is clear. It is to get rid of the rule settled since Brinsmead v. Harrison. There Blackburn J. said: "Is it for the general interest that, having once established and made certain his right by having obtained a judgment against one of several joint wrong-doers, a plaintiff should be allowed to bring a multiplicity of actions in respect of the same wrong? I apprehend it is not; and that, having established his right against one, the recovery in that action is a bar to any further proceedings against the others." Having this passage and the provision of the statute in view it seems to me clear that the hypothetical action envisaged by the statute is an action that could be competently raised against one joint tortfeasor if there was no bar in the shape of a judgment recovered against another joint tortfeasor. This hypothetical action does not appear to me to be tied to any point of time other than that when the cause of action arose. "

In Wimpey's case, of course, the House of Lords was concerned with subsection (1)(c) and not with subsection (1)(a) but it is clear to us that in dealing with subsection (1)(c) their Lordships considered subsection (1)(a) and the meaning attached to the word "sued" by their Lordships was its plain and ordinary meaning.

Hart's case is squarely on section 6(1)(c) and not subsection (1)(a) at all and it was not a case of joint tortfeasors. It was dealing with separate as opposed to joint tortfeasors and with a purely procedural incident in which the party claiming contribution had no part at all.

Words must be given its ordinary and natural meaning unless there is some compelling reason to depart from it. In the present case there is no compelling reason because in the appellants' case the remedy was in their own hands. Mr. Le Quesne is asking us to put a strained construction on subsection (1)(a) but there is no reason to do so

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16th April 1973 (continued)

as there was no injustice to the appellants who had the control of the action in their hands.

The construction which found favour with Winslow J. is amply supported by Wimpey's case. We agree with Winslow J. that the word "sued" in subsection (1)(a) bears its ordinary and natural meaning and that the first respondent being a defendant in the same action in which final judgment had been given against the second respondents has already been sued within such ordinary and natural meaning and that he was accordingly not a person who had not been "sued" within the meaning of this subsection. 10

We now proceed to deal with the notice of the first respondent under O.57 R.7. The question is, was the first respondent a joint tortfeasor with the second respondents in the conversion of the goods in question as a result of the delivery by the ships to T.S.C. who were persons not entitled to possession? 20

At the retrial the appellants called one witness, the Managing Director of the first appellant bank, and they formally put in as admissions selected passages in the evidence of the first respondent given at the original trial (Ex. P.21). The appellants then concluded their case. No evidence was called on behalf of the first respondent.

At the original trial there was a further issue as the first respondent had denied liability on the ground that both vessels were the subject matter of an oral bareboat charterparty at all material times. The appellants disputed the existence of the alleged bareboat charterparty and also claimed that in any event the first respondent was liable as he was personally concerned with the release of the goods to T.S.C. on the indemnities. 30

At the appeal before the Federal Court both the appellants and the respondents were agreed that the issue on whom should the liability if proved fall could not be properly dealt with in that appeal as its determination depended almost entirely on the credibility of the witnesses who gave evidence relevant to this issue. 40

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16th April 1973 (continued)

The first respondent's case had been that the actual misdelivery was committed by people who were not his servants or agents but servants or agents of the second respondents. At the retrial Winslow J. said that he was bound by the finding of the Federal Court that the second respondents were liable in conversion on the basis that they were bareboat charterers of the vessels concerned. However, since he was directed to determine whether there was in fact a bareboat charter in respect of these vessels to the second respondents he came to the conclusion that there was. There has been no appeal against this finding of Winslow J.

Before proceeding further it is necessary to state what the findings of Winslow J. are. First, that there was a bareboat charter of the two vessels to the second respondents.

Second, that the first respondent had parted with the whole possession and control of these vessels and that there can be no question but that the first respondent cannot be held to be vicariously liable for the acts of the master and crew of each of these vessels.

Third, that the first respondent had stopped trading under his old firm's name with effect from the 31st December, 1960, and that the second respondents for whose incorporation he was responsible commenced to trade with effect from the 1st January, 1961.

Fourth, that there was no direct evidence of any fraud tending to show that the first respondent personally directed the crew to make wrongful delivery.

Fifth, that the first respondent did not order or procure the crew of these vessels to commit the tort which they did.

The question arises who are joint tortfeasors?

In the Koursk ((1924) P.140), Scrutton L.J. said (at p.155):

> " The substantial question in the present case is: What is meant by "joint tortfeasors"? and one way of answering it is: "Is the cause

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16th April 1973 (continued)

of action against them the same?" Certain classes of persons seem clearly to be "joint tortfeasors"; The agent who commits a tort within the scope of his employment for his principal, and the principal; the servant who commits a tort in the course of his employment, and his master; two persons who agree on common action, in the course of, and to further which, one of them commits a tort. These seem clearly joint tortfeasors; there is one tort committed by one of them on behalf of, or in concert with another. "

The first and second classes of joint tortfeasors as stated by Scrutton L.J. cannot apply to the present case. If the first respondent is a joint tortfeasor it can only be if he falls within the third class.

The first respondent was at the material times the managing director of the second respondents. Was he responsible for all that was done by his Company or only those acts which he had in fact authorised or in which he had taken part?

The answer is to be found in the judgment of Atkins L J. in Performing Right Society v. Ciryl Theatrical Syndicate ((1924) 1 K.B. 1) where he said (at p.14):

" Prima facie a managing director is not liable for tortious acts done by servants of the company unless he himself is privy to the acts, that is to say unless he ordered or procured the acts to be done. That is authoritatively stated in Rainham Chemical Works v. Belvedere Guano Co. (1921) 2 A.C. 465, where it was sought to make a company liable for an explosion upon their works in the course of manufacturing high explosives. The company were held liable on the principle of Rylands v. Fletcher. It was also sought to charge two directors with liability. They were eventually held responsible because they were in fact occupiers of the works. It was contended that they were liable on the ground that they were managing directors of the company, that the company was under their sole control as governing directors, and that they were responsible for the work done by their

" servants. Lord Buckmaster said: "I cannot accept either of these views. If the company was really trading independently on its own account, the fact that it was directed by Messrs. Feldman and Partridge would not render them responsible for its tortious acts unless, indeed, they were acts expressly directed by them. If a company is formed for the express purpose of doing a wrongful act of (sic) if, when formed, those in control expressly direct that a wrongful thing be done, the individuals as well as the company are responsible for the consequences, but there is no evidence in the present case to establish liability under either of these heads." Perhaps that is put a little more narrowly than it would have been if it had been intended as a general pronouncement without reference to the particular case; because I conceive that express direction is not necessary. If the directors themselves directed or procured the commission of the act they would be liable in whatever sense they did so, whether expressly or impliedly."

So for the first respondent to be a tortfeasor he must have procured or ordered the deliveries to T.S.C. It is the submission of the appellants that the first respondent procured the second respondent Company to commit the tort.

The appellants relied on certain extracts from the evidence of the first respondent at the original trial (Ex. P.21) as admissions suggesting the inference that the first respondent expressly or impliedly procured the delivery of the said goods to the shippers. The learned Judge said that he was enabled to draw certain inferences from the salient facts which emerged from Ex. P.21 and he enumerated the salient facts and inferences which he drew (fourteen in all) and on which he relied to come to a conclusion that the first respondent had procured the misdeliveries to T.S.C.

The learned Judge attached much weight to the matter of taking indemnities from T.S.C. and personal indemnities from the directors of T.S.C. He said:

" It would appear that the procedure which had existed prior to the formation of the 2nd

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16th April 1973 (continued)

"
defendants as a limited company continued afterwards, i.e. what the 1st defendant had personally instituted as a procedure to be observed in relation to the release of the goods and the taking of indemnities without the production of Mate's Receipts went on as before with one important difference for which he alone was responsible. It seems to me quite clear from this that, notwithstanding what the 1st defendant said before the trial Judge in the earlier proceedings about leaving the matter in the discretion of Cheah Wee Hock and his son, Chan Kim Yam, he was personally taking more than an ordinary interest in the matter for a person who claimed that his duties were confined to finance, freight rates and repairs. 10

He was getting himself personally involved in seeing that deliveries were being effected as they had been done prior to the incorporation of the old firm as a limited company with the added difference that he was personally getting somewhat restive about the fact that his son had complained of delays between the delivery of goods against indemnities and the actual surrender of Mate's Receipts. Hence the personal indemnities. 20

He said that Chan Kim Yam the son and Cheah Wee Hock and the first respondent could have "thrown considerable light on the second issue and at least given me some assurance, which I do not at the moment possess, that the decision to make deliveries resulting in the conversion was taken by Chan Kim Yam as his own personal responsibility as a director of the 2nd defendants. As I have already said, it seems clear to me that Chan Kim Yam was dominated by his father whose brainchild the limited company which he called into being was and for whose protection from liability he considered himself personally responsible. Hence the directions to his son which I have found he gave quite apart from his own admission relating thereto. " 30 40

The learned Judge said that he was entitled to draw an adverse inference from the first respondent's failure to call evidence.

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With all due respect, we do not agree with the learned Judge that on the facts that he had outlined regarding the taking of the indemnities an inference can be drawn that the first respondent had in fact procured the wrongful delivery of the goods. It is common commercial practice to deliver goods on indemnity. It is not unusual commercial practice for former commercial policies to be continued by the new company. It seems to us perfectly proper for the first respondent as a director in charge of the financial side of the Company to take a personal interest in the matter as the finances of the company were involved and he did what any managing director would have done under the circumstances. Furthermore the action of the first respondent in obtaining personal indemnities from the directors of T.S.C. was taken _after_ the acts of conversion. We are of the view that the other points set out by the learned Judge do not point to the conclusion that the first respondent in fact procured the wrongful delivery of the goods.

We are also of the view that the learned trial Judge was not entitled to draw an adverse inference from the failure of the first respondent to call evidence. The burden of proving that the first respondent acted in concert or procured the conversion is on the appellants. The parties had agreed at the appeal before the Federal Court that this issue depended on the credibility of witnesses and yet the appellants at the retrial thought fit to put in selected passages of the first respondent's evidence given at the original trial as evidence at the retrial and to rely on them as admissions. These admissions do not point to the conclusion that the first respondent in fact procured the wrongful delivery of the goods.

For these reasons we dismiss the appeal with costs.

(Sd)........................
WEE CHONG JIN, C.J.

Dated this 16th day of April, 1973.

(Sd)........................
CHUA, J.

(The Judgment of the Court was delivered by CHUA, J.)

(Sd)........................
CHOOR SINGH, J.

In the Court of Appeal of Singapore

No.21

Order

16th April 1973

No. 21

ORDER

Civil Appeal No. 45 of 1972

BETWEEN:

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Appellants

and

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Respondents

10

(In the Matter of Suit No. 1284 of 1961 in the High Court of Singapore

Between

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING CORPORATION LIMITED ... Plaintiffs

and

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP COMPANY LIMITED ... Defendants)

20

CORAM:

THE HONOURABLE THE CHIEF JUSTICE: THE HONOURABLE MR. JUSTICE CHUA: and THE HONOURABLE MR. JUSTICE CHOOR SINGH

O R D E R DATED THIS 16TH DAY OF APRIL, 1973

This appeal coming on for hearing on the 28th day of February and the 1st day of March, 1973, in the presence of Mr. John Godfray Le Quesne, Q.C. with Mr. M. Karthigesu of Counsel for the Appellants 30 and Mr. Roger J. Parker with Mr. Joseph Grimberg of Counsel for the Respondents, and upon reading the Record of Appeal and the Notice on behalf of the Respondent Chan Cheng Kum dated the 25th day of September, 1972, of his intention to contend that the Judgment hereinafter mentioned should be affirmed, and upon hearing Counsel for the parties it was

In the Court of Appeal of Singapore

No.21

Order

16th April 1973 (continued)

ordered that the said appeal should stand for Judgment and this appeal standing for Judgment this day in the presence of Counsel for the Appellants and for the Respondents IT IS ORDERED that the Judgment of the Honourable Mr. Justice Winslow dated the 24th day of July, 1972, dismissing the Appellants' claim against the Respondent Chang Cheng Kum be affirmed not only on the grounds stated in the said Judgment but also on the grounds
10 that the said Respondent did not procure or otherwise take part in the conversion committed by the Hua Siang Steamship Company Limited so as to render himself a joint tortfeasor with such company and that there was no evidence upon which the learned Judge was entitled to hold that the said Respondent did procure or otherwise take part in the said conversion so as to render himself such joint tortfeasor and that this appeal be dismissed AND IT IS ORDERED that the costs of the appeal
20 together with the costs of the said Notice be taxed and paid by the Appellants to the Respondents AND in taxing the said costs the Registrar is to allow the costs of the attendance before this Court of two Counsel on behalf of the Respondents AND IT IS ORDERED that the sum of $500.00 lodged in Court as security for the Respondents' costs of the appeal be paid out to the Solicitors for the Respondents.

Given under my hand and the Seal of Court this
30 9th day of May, 1973.

Sgd. R.E. Martin

ASSISTANT REGISTRAR.

In the Court of Appeal in Singapore

No.22

Order granting leave to appeal to the Judicial Committee of Her Majesty in Council

25th June 1973

No. 22

ORDER granting leave to appeal to the Judicial Committee of Her Majesty in Council

Civil Appeal No. 45 of 1972

BETWEEN:

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Appellants

And

Chan Cheng Kum ... Respondent 10

(In the Matter of Suit No. 1284 of 1961 in the High Court of Singapore

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants 20

CORAM:

The Honourable the Chief Justice, Mr. Justice Wee Chong Jin,
The Honourable Mr. Justice Chua and
The Honourable Mr. Justice Tan Ah Tah

ORDER IN OPEN COURT

Upon Motion made unto the Court this day by Mr. M. Karthigesu of Counsel for the Appellants in the presence of Mr. K. A. O'Connor of Counsel for the Respondent And Upon Reading the affidavit of 30 Mr. Karthigesu filed on the 2nd day of June 1973, and Upon Hearing Counsel for the Appellants and Mr. K. A. O'Connor of Counsel for the Respondent IT IS ORDERED that the Appellants be at liberty to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the whole of the Judgment of the Court of Appeal delivered in Singapore on the 16th day of April 1973 AND IT IS ORDERED that the costs of this application be costs in the cause.

DATED this 25th day of June, 1973. 40

Sd. R. E. Martin
ASST. REGISTRAR.

EXHIBITS

EXHIBIT AB

Agreed Bundle of Correspondence and documents
Extract from Taxing Master's certificate
dated 18th September 1967

	B/Forward	83589.93	55249.70
337.	Letter acknowledging receipt thereof and forwarding Bill duly receipted		4.--
		$83589.93	$55253.70
	Taxed off	$48569.77	$16149.00
		$35020.16	$39104.70
	Paid fees		$35020.16
			$74124.86
	Taxing & Allocatur fees		$ 1488.00
			$75612.86

Solicitors for the Plaintiffs (Appellants)

I HEREBY CERTIFY that I have taxed this Bill of Costs of the Solicitors for the Plaintiffs (Appellants) herein as Between Party and Party and have allowed the same at $74124.86 plus $1488.00 being taxing and allocatur fees payable thereon.

Dated this 18th day of September 1967.

REGISTRAR

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Extract from Taxing Master's certificate dated 18th September 1967

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs Solicitors to Defendants Solicitors dated 25th September 1967

Letter, Plaintiffs Solicitors to Defendants Solicitors dated 25th September 1967

ALLEN & GLEDHILL

Advocates & Solicitors

Notaries Public and

Commissioners for Oaths

59 & 61, The Arcade
Raffles Place,
P.O. Box 32,
SINGAPORE, 1.

10

Our Ref: MK/DO/652/61
Your Ref. JG/PP/185/67

25th September 1967

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

Suit No. 1284 of 1961
Federal Court Civil Appeal No. Y2 of 1966

Our first instance Bill in the above matter has been taxed and allowed at $75,612.86 inclusive of disbursements and taxing and allocatur fees. We shall, therefore, be obliged to receive your cheque for $75,612.86 by return.

20

Yours faithfully,

(Sd.) ALLEN & GLEDHILL

Letter, Plaintiffs' Solicitors to Defendants' Solicitors

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants' Solicitors
28th September 1967

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

59 & 61, The Arcade,
Raffles Place,
P.O. Box 32,
10 SINGAPORE, 1.

Our Ref. MK/DO/652/61
Your Ref. JG/PP/185/67

28th September 1967

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

re: Suit No. 1284 of 1961
Federal Court Civil Appeal No. Y2 of 1966

We understood from your Mr. Grimberg that you
20 have no instructions to proceed with your objection to the taxation of our Appeal Bill of Costs following the Registrar's revision. The amount now due as allowed by the Registrar on revision on the Appeal Bill inclusive of taxing and allocatur is $41,209.35.

We have already written to you regarding the first instance Bill on the 25th September, and we shall now be obliged if you will let us have your cheque for $116,822.21 in payment of our Party & Party costs both at first instance and on appeal by
30 return.

i) first instance	-	$ 75,612.86
ii) appeal	-	$ 41,209.35
		$116,822.21

Yours faithfully,

(Sd) ALLEN & GLEDHILL

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants Solicitors dated 10th October 1967

Letter, Plaintiffs' Solicitors to
Defendants' Solicitors dated 10th October 1967

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

59 & 61, The Arcade,
Raffles Place,
P.O. Box 32,
SINGAPORE, 1. 10

Our Ref. MK/DO/652/61
Your Ref. JG/PP/185/67

10th October 1967

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

For the attention of Mr. Grimberg

Federal Court Civil Appeal No. Y2 of 1966

We refer to your letter to us of the 30th September, and to your Mr. Grimberg's telephone con- 20 versation with the writer during the course of last week when your Mr. Grimberg enquired whether we would have any objection if you were to pay the taxed costs at first instance and on appeal at $116,822.21 during the course of this week. Our Mr. Karthigesu indicated that he had no objection and we trust that we will be receiving your cheque for $116,822.21 before Saturday, the 14th instant. We wish to place on record that if we do not receive your cheque for $116,822.21 by the 14th instant, we 30 will have to levy execution against your clients for the taxed costs.

We note that we have not yet received from you the draft Order for approval giving your clients leave to appeal to the Judicial Committee, and we trust that we shall be receiving your draft Order soon.

We have been considering the Federal Court's Order of the 7th July 1967, and in particular the question of the assessment of damages against the 40

2nd Respondent and the question of the re-trial of the liability of the 1st Respondent. We are presently of the view that there is no reason why we should not proceed with these two matters notwithstanding the appeal to the Judicial Committee. However, we expect that the earliest that we can proceed with these two matters would be after February next year. Please let us know whether you will agree to this procedure.

Yours faithfully,

(Sd) ALLEN & GLEDHILL

Exhibits

Exhibit AB Agreed Bundle of correspondence and documents. Letter, Plaintiffs' Solicitors to Defendants' Solicitors dated 10th October 1967 (continued)

PAYMENT VOUCHER dated 11th October 1967

Payment Voucher 11th October 1967

11th October 1967

PAYMENT VOUCHER

HUA SIANG STEAMSHIP COMPANY LIMITED

General Account

Pay Messrs. Allen & Gledhill

Dollars One Hundred & Sixteen Thousand Eight Hundred & Twenty Two & Cents Twenty One only

Being Taxed Costs.

Account Office folio

Lower Court	$75,612.86
Federal Court Civil Appeal	$41,209.35
	$116,822.21

Payment received

Approved for Payment

(Sd.)

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Payment Voucher 11th October 1967
(continued)

No. 11th October 1967

PAYMENT VOUCHER

HUA SIANG STEAMSHIP COMPANY LIMITED
General Account

Pay Messrs. Allen & Gledhill

Dollars One Hundred & Sixteen Thousand Eight Hundred & Twenty Two & Cents Twenty One Only

Being Taxed Costs.

Account Office. folio

Lower Court	$75,612.86
Federal Court Civil Appeal	$41,209.35
	$116,822.21

Payment received Approved for Payment

(Sd.)

Cheque for $116,822.21 dated 11th October 1967

Cheque for $116,822.21 dated 11th October 1967

(Indecipherable)

Letter, Defendants' Solicitors to Plaintiffs' Solicitors dated 13th October 1967

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Defendants' Solicitors to Plaintiffs' Solicitors dated 13th October 1967

Our Ref: JG/PP/185/67
Your Ref: MK/DO/652/61

13th October, 1967

Messrs. Allen & Gledhill,
SINGAPORE.

Dear Sirs,

Federal Court Civil Appeal No. Y2 of 1966

10 Thank you for your letter of the 10th October.

We are much obliged to you for your indulgence on the question of the payment of your costs, and have pleasure in enclosing a cheque in your favour in the sum of $116,822.21. Will you kindly let us have your receipt in due course.

You should by now have received the draft Order for your approval.

In regard to your final paragraph, our attitude will be that the assessment of damages and re-trial 20 should await the determination of the appeal to the Judicial Committee.

Yours faithfully,

Exhibits

Exhibit AB
Agreed Bundle of Correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants' Solicitors dated 16th October 1967

Letter, Plaintiffs' Solicitors to Defendants' Solicitors dated 16th October 1967

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

59 & 61, The Arcade,
Raffles Place,
P.O. Box 32,
SINGAPORE, 1.

10

Our Ref: MK/DO/652/61
Your Ref: JG/PP/185/67

16th October 1967

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

Federal Court Civil Appeal No. Y2 of 1966

We thank you for your letter of the 13th instant, enclosing therewith a cheque in our favour for $116,822.21 for which please find enclosed herewith our receipt.

20

We have noted the last paragraph of your letter under reply.

Yours faithfully,

(Sd.) ALLEN & GLEDHILL

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Receipt dated 16th October 1967

Receipt dated 16th October 1967

ALLEN & GLEDHILL (Clients' Account)

No. 2 Account. No. 8540

Singapore, 16 Oct. 1967

$116,822.21 Re Federal Court Civil Appeal

No. Y2 of 1966

RECEIVED from Hua Siang Steamship Co. Ltd.

per Drew & Napier

the sum of Dollars One hundred & sixteen thousand

10 eight hundred twenty two cts twenty one only.

Signature of
ALLEN & GLEDHILL

....

Letter, Plaintiffs' Solicitors to the Registrar High Court dated 21st March 1968

Letter, Plaintiffs' Solicitors to the Registrar, High Court, dated 21st March 1968

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

20 1st Floor, Meyer Chambers,
Raffles Place,
P.O. Box 32,
Singapore, 1.

Our Ref: MK/NLC/652/61
Your Ref:

21st March, 1968

The Registrar,
High Court,
Singapore.

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to The Registrar, High Court 21st March 1968 (continued)

Dear Sir,

re: Federal Court Civil Appeal No.YZ of 1966
(Suit No. 1284 of 1961)

In the above Federal Court Civil Appeal, we appear for the plaintiffs/appellants and Messrs. Drew and Napier now appear for the defendants/respondents.

We refer you to the Order of the Federal Court dated the 7th July, 1967 whereby the Court ordered judgment to be entered against the defendants/respondents, the Hua Siang Steamship Company Limited for damages to be assessed by you. By the Order of the Federal Court dated the 5th October, 1967 the judgment against the Hua Siang Steamship Company Limited was stayed until the determination of the appeal to the Judicial Committee on the Hua Siang Steamship Company Limited giving security in the sum of $300,000.00 by bond or banker's guarantee to your satisfaction. The Hua Siang Steamship Company Limited did not give this security and the time for giving such security has long passed.

We have been in correspondence with Messrs. Drew and Napier for sometime now to get them to agree to going before you to assess the damages against Hua Siang Steamship Company Limited but up to now Messrs. Drew and Napier have not expressed agreement and have taken the view that the proper time for assessment of damages would be after the determination of the appeal to the Judicial Committee.

Our view of the Matter is that as the Hua Siang Steamship Company Limited have not furnished the security, our clients are entitled in law to proceed under the Order of the Federal Court dated 7th July, 1967 and, in order to do so, they are entitled to have the damages assessed forthwith.

We shall therefore be obliged if you will give our Mr. Karthigesu and Mr. Grimberg of Messrs.Drew and Napier an appointment to appear before you to take suitable dates for the assessment of damages.

Yours faithfully,

(Sd.) ALLEN & GLEDHILL

c.c. M/s Drew
& Napier

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Summons in Chambers
1st June 1968

SUMMONS IN CHAMBERS dated 1st June 1968

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
(Appellate Jurisdiction)

Federal Court Civil Appeal No. Y2 of 1966

BETWEEN:

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Appellants

And

10

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Respondents

(In the Matter of Suit No. 1284 of 1961 in the High Court in Singapore

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

20

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon ... Third Parties

Let all parties concerned appear before the Judge in Chambers on Monday the 10th day of June 30 1968, at 10.30 o'clock in the forenoon on the hearing of an application on the part of the abovenamed Appellants for an order that in assessing the amount of damages for which judgment was ordered to be entered against the abovenamed 2nd Respondents by Order of the Federal Court herein dated the 7th day of July 1967 the Registrar was wrong in law and

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Summons in Chambers
1st June 1968
(continued)

exceeded his jurisdiction in inquiring into and ruling on the question of whether the goods described in the Mate's Receipts in question as "Rubber dry RSS No.3" were by the practice of the trade between Sibu and Singapore in rubber descriptive of Sibu rubber known as "Loose Unselected Rubber" and to have valued them accordingly and that the costs of and incidental to this application and of the attendance before the Registrar for the assessing of damages as aforesaid be the Appellants in any event. 10

Dated this 1st day of June 1968.

Entered No. 1033/68

(Sd.) By Order,

Clerk (Sd.)

Registrar.

This Summons is taken out by Messrs. Allen & Gledhill of 1st Floor, Meyer Chambers, Singapore, Solicitors for the abovenamed Appellants.

To: 20

the abovenamed Respondents and to their Solicitors

Messrs. Drew & Napier,
Singapore.

Letter, Plaintiffs' Solicitors to The Registrar, High Court, dated 1st April 1969

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to The Registrar, High Court.
1st April 1969

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

1st Floor, Meyer Chambers,
Raffles Place,
P.O. Box 32,
Singapore, 1.

Our Ref: MK/DO/652/61
Your Ref. FCCA.Y2/66/GKG

1st April 1969

Registrar,
High Court,
Singapore.

Sir,

Federal Court Civil Appeal No. Y2 of 1966
Summons-in-Chambers No. 1033/68 dated 1.6.68

In the above matter we act for the Appellants, Wah Tat Bank Limited and Oversea-Chinese Banking Corpn. Ltd., and Messrs. Drew & Napier (Mr. Grimberg) act for the Respondents, Chan Cheng Kum and Hua Siang Steamship Co. Ltd.

By Order of the Federal Court dated the 7th July 1967, the Registrar was directed to assess the damages payable to our clients against which assessment the above Summons-in-Chambers was taken out by way of an appeal from the Registrar's assessment. The above Summons-in-Chambers came before the Chief Justice on the 10th June 1968 and was adjourned for a date to be fixed by the Registrar, such date not to be an ordinary summons day.

We have been endeavouring without much success to get Messrs. Drew & Napier to attend with the writer before you to take a date and as this matter has been protracted for nearly 10 months our clients are much dissatisfied.

We feel that the only way in which a date can

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to The Registrar, High Court.
1st April 1969
(continued)

be fixed is for you to direct Messrs. Drew & Napier and ourselves to attend before you on a certain date and time so that you may fix a convenient date to both parties and to the Court.

We shall, therefore, be obliged if you will, if you see fit, issue the necessary directions.

We have the honour to be,
Sir,
Your obedient servants,

(Sd.) ALLEN & GLEDHILL

10

c.c. Messrs. Drew & Napier
(Your Ref. JG/PP/185/67)

Order
20th June 1969

ORDER dated 20th June 1969

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
(Appellate Jurisdiction)

Federal Court Civil Appeal No. Y2 of 1966

BETWEEN:

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Appellants

20

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ... Respondents

(In the matter of Suit No. 1284 of 1961 in the High Court in Singapore)

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Plaintiffs

And

		Exhibits
1. Chan Cheng Kum 2. Hua Siang Steamship Company Limited ...	Defendants	Exhibit AB Agreed Bundle of correspondence and documents. Order 20th June 1969 (continued)
And		
1. Tiang Seng Chan (Singapore) Limited 2. Lee Chin Tian 3. Lee Teow Keng 4. Lee Peng Koon ...	Third Parties	

10 BEFORE THE HONOURABLE MR. JUSTICE CHOOR SINGH
IN OPEN COURT

Upon the adjourned application of the abovenamed Plaintiffs/Appellants made by way of Summons-in-Chambers Entered No. 1033 of 1968 dated the 1st day of June 1968, coming on for hearing this day And Upon Hearing Counsel for the abovenamed Plaintiffs/Appellants and the abovenamed Defendants/Respondents on the abovenamed Plaintiffs/Appellants' Appeal from the Registrar's assessment of the damages herein in 20 the sum of $551,876.88 made on the 29th day of May 1968 and interest thereon at the rate of 6% per annum from the 7th day of July 1967 to the date of payment IT IS ORDERED that the Registrar's said assessment of the damages herein be varied and that the sum of $570,500/- be substituted therefor and that the costs of this appeal be taxed and paid by the Defendants/Respondents to the Plaintiffs/Appellants.

Dated the 20th day of June 1969.

Sd.

DY. REGISTRAR

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants' Solicitors 6th January 1970

Letter, Plaintiffs' Solicitors to Defendants' Solicitors dated 6th January 1970

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

1st Floor, Meyer Chambers,
Raffles Place,
P.O. Box 32,
SINGAPORE, 1. 10

Our Ref: TKS/ml/652/61
Your Ref: OC/RC/JG.185-67

URGENT 6th January 1970

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

Federal Court Civil Appeal
No. Y2 of 1966
(Suit No. 1284 of 1961)

We would refer to the Judgment of $570,500/- which we have obtained against your clients Hua Siang Steamship Co. Ltd. in connection with the above matter. We have been instructed and we now write to inform you that if the sum of $570,500/- is not paid to us within 48 hours from the date hereof we have firm instructions to levy execution to enforce the said Judgment without further reference to you. 20

Yours faithfully,

(Sd.) ALLEN & GLEDHILL 30

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents
Letter, Defendants' Solicitors to Plaintiffs' Solicitors 12th January 1970

Our Ref: JG/PP/165/67
Your Ref: TKS/ml/652/61

12th January, 1970.

Messrs. Allen & Gledhill,
SINGAPORE.

Dear Sirs,

Federal Court Civil Appeal No. Y2 of 1966
(Suit No. 1284 of 1961)

We refer to our letter of the 9th January, and
10 have now been able to obtain our Clients' instructions.

We are instructed to inform you that our Clients are quite unable at this time to meet the judgment debt.

Yours faithfully,

Letter, Defendants' Solicitors to Plaintiffs' Solicitors dated 29th December 1971

Letter, Defendants' Solicitors to Plaintiffs' Solicitors 29th December 1971

Our Ref: JG/PP/165/67
Your Ref. MK/DO/652/61

29th December, 1971.

20 Messrs. Allen & Gledhill,
SINGAPORE.

Dear Sirs,

Civil Appeal No. Y2 of 1966

Wah Tat Bank Ltd. & Another v.
Chan Cheng Kum & Another

With regard to the forthcoming trial of the issue whether our Client, Mr. Chan Cheng Kum, is also liable for the conversion held to have been committed by the Hua Siang Steamship Co. Ltd., we are advised by
30 Counsel (1) that the only matter which can now arise is whether Mr. Chan is liable as a joint tortfeasor in respect of that conversion and (ii) that the question whether Mr. Chan had, by bare-boat or demise charter, divested himself of possession and control of the vessels, masters and crews does not now arise.

Exhibits

Exhibit AB
Letter,
Defendants'
Solicitors to
Plaintiffs'
Solicitors
29th December
1971
(continued)

This is because, as your Clients' Counsel recognised at the initial trial, the only basis upon which the Company could be liable was that the bare boat charter was in existence at the material time. The Company now having been held liable the only possible claim against Mr. Chan is as a joint tortfeasor.

We shall be obliged if you will confirm that you are in agreement with us on this point so that both our Clients may be spared the expense of preparing to fight on an issue which no longer arises. 10

Yours faithfully,

Letter,
Plaintiffs'
Solicitors to
Defendants'
Solicitors
10th January
1972

Letter, Plaintiffs' Solicitors to
Defendants' Solicitors dated 10th January 1972

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

1st Floor, Meyer Chambers 20
Raffles Place,
P.O. Box 32,
Singapore, 1.

Our Ref: MK/DO/652/61 10th January 1972
Your Ref: JG/PP/185/67

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

Civil Appeal No. Y2 of 1966
Wah Tat Bank Ltd. & Another
v. Chan Cheng Kum & Another 30

We have your letter of the 29th December, the contents of which we have duly noted. We have referred the matter raised in your letter to Counsel for his views thereon and will communicate with you as soon as we hear from him.

Yours faithfully,
(Sd.) ALLEN & GLEDHILL

Letter, Defendants' Solicitors to Plaintiffs' Solicitors dated 19th January 1972

Exhibits

Exhibit AB Agreed Bundle of correspondence and documents. Letter, Defendants' Solicitors to Plaintiffs' Solicitors 19th January 1972

DREW & NAPIER
Advocates,
Solicitors &
Notaries Public

P.O. Box 152
30/35 Chartered Bank Chambers
Singapore, 1.

Our Ref: JG/PP/185/67
Your Ref: MK/DO/652/61

19th January, 1972

10 Messrs. Allen & Gledhill,
SINGAPORE.

Dear Sirs,

Civil Appeal No. Y2 of 1966

Wah Tat Bank Ltd. & Anor. v. Chan Cheng Kum & Anor.

We refer to your letter of the 10th January and should like to know by return whether you are now in a position to know what stand your Clients will take in this appeal with regard to the question raised in
20 our letter to you of the 29th December last.

We think that attention must now be given to the question of preparing an Agreed Bundle for the re-trial.

In addition to the correspondence which passed between the parties prior to the trial, we think that there must be included the correspondence which has passed between the trial and the present time.

The minute book of the Company must go in, as must the Company's accounts including Mr. Chan Cheng Kum's loan account with the Company, the delivery
30 orders for the consignments concerned, the indemnities and the Mate's Receipts.

The Privy Council Record should also be availanle. This includes many of the documents to which we have referred, and where there is a duplication, perhaps it could be agreed that the documents in question need not also be included in the Agreed Bundle.

We shall be obliged to hear from you as a matter of some urgency.

Yours faithfully,

40 (Sd.) DREW & NAPIER

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Defendants' Solicitors to Plaintiffs' Solicitors 10th February 1972

Letter, Defendants' Solicitors to Plaintiffs' Solicitors dated 10th February 1972

DREW & NAPIER,
Advocates
Solicitors &
Notaries Public

P.O. Box 152
30/35 Chartered Bank
Chambers
Singapore, 1.

Our Ref. JG/PP/185/67
Your Ref.MK/DO/652/61

10th February, 1972.

Messrs. Allen & Gledhill,
SINGAPORE.

URGENT

10

Dear Sirs,

Wah Tat Bank Ltd. & Anor. v.
Chan Cheng Kum & Anor.

We refer to our letter of the 8th February and are now in a position to deal with your letter of the 7th February.

It is noted with regret that you are unable to agree that the question whether Mr. Chan had divested himself of possession and control of the vessels, Masters and crews is no longer in issue. Unless he had done so we can see no basis upon which the Company could be liable and indeed this was expressly stated by your Counsel at the trial - see Privy Council Record p.356.

20

We should be grateful if you would inform us of the basis upon which you contend that the Company was liable if it is not on such basis. In the meantime we have, of course, no option but to prepare for trial on the basis that there is still an issue on this point. We wish, however, to make it plain that we shall, if so advised, take as a preliminary point at the trial that the issue is not open.

30

With regard to your suggestion that the case be heard by Kulasekaram J. on the basis of the written record of the evidence given at the trial with liberty to recall witnesses or call additional witnesses, we are unable to agree to this. It was agreed on the appeal that the question upon whom the liability, if proven, should fall depended on credibility and could not therefore be decided on

40

the record. It is true of course that Kulasekaram J. heard and saw the witnesses some 8 years ago, but it seems to us hardly realistic to suppose that he can now make any better judgment as to their credibility than the Appeal Court.

We find the suggestion particularly surprising in view of the fact that you are not even able to agree that the control and possession point is not open.

10 As to documents for the hearing, we can agree to Part II of the Appeals Record as well as the Privy Council Record being before the Court on the usual "saving all just exceptions to admissibility basis".

We consider that these should be supplemented by post trial correspondence and the other documents which reveal the history of the case since trial, insofar as not included in the two Records, including the second Defendants' cheque for $116,822.21 dated the 11th October 1967, representing
20 the taxed costs of the trial and the appeal. A copy of this cheque is enclosed.

We should perhaps make it clear to avoid misunderstanding that we have no objection to Kulasekaram J. trying the case. Our objection is merely to either him or any other learned Judge being asked to decide issues, which depend on credibility, from the Record.

Will you please let us have a supplementary bundle for agreement as soon as possible.

30 Yours faithfully,

(Sd.) DREW & NAPIER

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants' Solicitors 12th February 1972

Letter, Plaintiffs' Solicitors to Defendants' Solicitors dated 12th February 1972

ALLEN & GLEDHILL
Advocates & Solicitors
Notaries Public and
Commissioners for Oaths

1st Floor, Meyer Chambers
Raffles Place,
P.O. Box 32,
Singapore, 1. 10

Our Ref: MK/DO/652/61
Your Ref: JG/PP/185/67

URGENT 12th February 1972

Messrs. Drew & Napier,
Singapore.

Dear Sirs,

Wah Tat Bank Ltd. & Anor. v.
Chan Cheng Kum & Anor.

We have your letter of the 10th instant, the contents of which we have duly noted. 20

We have noted that as to the documents for the hearing you agree to Part II of the Appeal Record as well as the Privy Council Record being before the Court on the usual "saving all just exceptions to admissibility basis". We also note that you consider that these should be supplemented by post trial correspondence and other documents which reveal the history of the case since trial insofar as not included in the two Records including the 30 Defendants' cheque for $116,822.21 dated the 11th October 1967 representing the taxed costs of the trial and the appeal. We will endeavour to prepare a supplementary bundle of the post trial correspondence and other documents and will forward it to you for your approval very shortly.

We note that you are not prepared to accept our suggestion that the case be heard by Kulasekaram J., on the basis of the written record of the evidence given at the trial with liberty to 40 recall witnesses or call additional witnesses. In fact, our suggestion was of a twofold nature, the

Exhibits

Exhibit AB
Agreed Bundle of correspondence and documents.
Letter, Plaintiffs' Solicitors to Defendants' Solicitors 12th February 1972 (continued)

first being that the case be heard by Kulasekaram J., and the second no matter who heard the case that the evidence given at the previous trial be admitted and treated as evidence at the forthcoming trial, both parties being at liberty to recall the same witnesses or such other witnesses as they may deem necessary. We note from the penultimate paragraph of your letter under reply that you have no objection to Kulasekaram J. trying the case and we thus deduce that your objection is to the evidence given at the previous trial being admitted and treated as evidence at the forthcoming trial on the ground that the question upon whom the liability, if proven, should fall on depended on credibility and could not therefore be decided on the record.

It was not our intention that the question of liability should be decided on the evidence contained in the record without the new trial Judge hearing and seeing the same witnesses who gave evidence on this point before and such other witnesses the parties may decide to call. Our concern was to see that all the evidence given at the previous trial was before the Judge at the new trial. Accordingly, we propose, if necessary, to call Kulasekaram J. to prove the evidence he recorded at the previous trial.

Lastly as to your inquiry to inform you of the basis upon which we contend that the Company was liable if it is not on the basis as stated in the 2nd paragraph of your letter under reply, we will disclose this at the appropriate time.

Yours faithfully,

(Sd.) ALLEN & GLEDHILL

Exhibits

Exhibit PD 1
Setting out agreed position between the parties on "The Section 11 Point"

Exhibit PD 1

Setting out agreed position between the parties on "The Section 11 Point"

SUPREME COURT, SINGAPORE

EXHIBIT PD1 in S.1284/61

Date: 8/3/72

Sd: Illegible
Registrar.

THE SECTION 11 POINT

1. It is accepted by both parties that under common law final judgment against one joint tortfeasor operates as a complete bar to all further proceedings against any other joint tortfeasor whether in the same action or otherwise. 10

2. It is accepted by the Defendant Chan that the Federal Court judgment, being only interlocutory, is not by itself a complete bar to all further proceedings against the Defendant Chan under the common law. 20

3. It is accepted by the Plaintiffs that the Federal Court judgment, coupled with the assessment of damages thereunder, constitutes a final judgment and is a complete bar at common law to all further proceedings against the Defendant Chan.

4. It therefore follows that the Plaintiffs' claim against the Defendant Chan is now barred and that the claim against him must be dismissed unless the common law rule has heen altered by statute. 30

5. It is for this reason that section 11(1) of the Civil Law Act becomes relevant. The Plaintiffs contend that that section has altered the common law rule so that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan.

Exhibits

Exhibit PD 1
Setting out agreed position between the parties on "The Section 11 Point" (continued)

6. It is accepted by both parties that section 11(1)(a) does alter the common law rule so that final judgment against one joint tortfeasor is no longer a bar to an action against any other joint tortfeasor if, but only if, he has not been "sued" within the meaning of that sub-section.

7. The Plaintiffs contend that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan because they contend that "sued" in section 11(1)(a) means "sued to final judgment", and since Mr. Chan has not been sued to final judgment, there is no complete bar to further proceedings against him.

8. If this contention is upheld this Court is free to consider and decide upon the Plaintiffs' claim against the Defendant Chan within whatever may be held to be the proper scope of the re-trial ordered by the Federal Court.

9. The Defendant Chan contends that the final judgment already given in this case is a bar to all further proceedings against the Defendant Chan because "sued" in section 11(1)(a) bears its ordinary and natural meaning and the Defendant Chan, who is a Defendant in the same action in which the final judgment has been given against the Defendant Company, has been "sued" within such ordinary and natural meaning.

10. If this contention is upheld then all further proceedings against the Defendant Chan are completely barred and the Plaintiffs' claim against the Defendant Chan must be dismissed.

Exhibits

Exhibit PD 3
Questions by
Court and
answers by
Counsel

Exhibit PD 3

Questions by Court and Answers by Counsel

Suit No. 1284 of 1961

Wah Tat Bank Ltd. & Another
v.
Chan Cheng Kum and Another

Question by the Court

What did Counsel for the Defendant/ Respondent's say when Counsel for Plaintiffs/ Appellants, during Federal Court hearing, requested Court to give judgment against the Defendant Company? Did he object?

10

Answer by Parker

It is not known what was said by Defendants' Counsel but it does not matter. He either raised no objection or he raised an objection which was rejected by the Federal Court since they accepted Kerr's request.

Both Plaintiffs' and Defendants' Counsel confirm that there is no record either of Kerr's request or of any observation by Defendants' Counsel when the request was made.

20

Question by the Court

Were either of the matters now raised by way of preliminary points raised or discussed in the Privy Council?

Answer by both Plaintiffs and Defendants' Counsel

No. The sole matter raised and discussed in the Privy Council was whether there had been a conversion.

Question by the Court

30

Could the Plaintiffs or the Defendants have advanced, on appeal to the Privy Council, any of the points now advanced before this Court?

Answer by both Plaintiffs and Defendants Counsel

We are unable to agree what, if any, of such points may technically have been open, but we are agreed that neither party gave any

consideration to such matters on the occasions of the Appeal and neither of us wishes to forward any argument on the omission to take any point. The sole point taken by either of us with regard to the Privy Council Appeal is the point taken by the Defendant that the Plaintiffs sought and obtained affirmation of the Federal Court Order.

Exhibits

Exhibit PD 3 Questions by Court and answers by Counsel (continued)

P 21

Exhibit P 21 Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969

10

Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969

Passages read from evidence of the Defendant Chan

Page 209, lines 26 - 32
" 210, " 37 - 45
" 212, " 13 - 32
" 216, line 31 - page 217, line 6
" 223, " 3 - " 225, " 10
" 238, " 19 - " 239, " 7
" 246, lines 31 - 38
" 247, line 9 - page 248, line 20
" 249, lines 15 - 42
" 256, " 36 - 41

20

Page 209, lines 26 - 32

"D.W.1. Chan Cheng Kum a.s. in English. I am the owner of the vessels "Hua Li" and "Hua Heng". I have been connected with ships since 1926. We have been trading vessels since 1926. I was the sole managing proprietor of Hua Siang Co. till 1960. These two vessels were operated by the firm up to 1960."

30

Exhibit P 21
Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969 (continued)

Page 210, lines 37 - 45

"When the cargo comes to Singapore somebody presents the shipping documents and ask for delivery of the cargo. I don't normally see these shipping documents when presented at our office. Chan Kim Yam and Cheah Wee Hock deal with these documents. Chan is a director and one of my sons. Mr. Cheah is in charge of issuing delivery orders and shipping orders."

Page 212, lines 13 - 32 10

" It happens from time to time that a person claiming the cargo is unable to produce the shipping documents. In such cases we ask for an Indemnity before giving delivery of the goods. My company has its own printed forms for such indemnities. We use the same form for cargo from Sarawak as well as cargo from other ports.

My co-director Chan Kim Yam will decide whether the cargo is to be released against indemnities. People sometimes telephone and sometimes 20 call at the office regarding cargoes to be released against indemnities. They do not call on me at the office. I don't have any discussions with them.

I have a private room. Some of the people who telephoned spoke to me. I always referred them to Chan Kim Yam. I look after the finance, freight rates and repairs to vessels etc."

Page 216, line 31- page 217, line 6

" My office would not consider the various chops on the face of the Mate's Receipt. I may 30 have seen during the years 1960-1961 about one or two Mate's Receipts a year. The delivery department is looked after by Chan Kim Yam and Cheah. As managing director I have not given them any specific instructions. Cargo is released by our company on indemnities. At the Singapore end it is at the discretion of Chan Kim Yam whether to release any cargo on an indemnity. Early in 1961 Chan Kim Yam reported to me about deliveries to T.S.C. 40

Page 216, line 31 - page 217, line 6 (continued)

Exhibit P 21 Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969 (continued)

He reported the delay between the delivery and the receipt of the shipping documents. As a result I went to Singapore offices of T.S.C. A certain promise was made to me. I went to T.S.C. office to see the old Towkay. That is the person who has been referred to as Uncle Lee Chin Tian. I was concerned about the delay in giving us the return of the shipping documents. I was concerned because 10 the Mate's Receipt might have been exchanged for Bill of Lading."

Page 223, line 3- page 225, line 10

" I see para 3A amended Statement of Claim by 2nd Defendant against the 3rd parties. I agree with first sentence of that paragraph. I agree that I made that agreement in early 1961. The 3rd parties agreed to be personally liable to me. That was the promise of Lee Chin Tian. The indemnities continued to be signed on behalf of the company 20 T.S.C. but by the oral agreement in early 1961 the 2nd, 3rd & 4th 3rd party would be personally liable on indemnities by the Company thereafter.

Because I got this personal agreement of the 3rd parties I went on delivering against indemnities without production of Mate's Receipts. Even if I had not got this personal promise of the 3rd parties I would have continued to deliver unless other parties claimed.

During years before 1961 I have been delivering 30 to T.S.C. against indemnities. Every time before 1961 when a shipment was made by T.S.C. consigned to O.C.B.C. I delivered against an indemnity without production of Mate's Receipts. After the meeting with the 3rd parties in early 1961 the position went on exactly the same as before until this case started.

Even if I did not get their personal promise I would have continued to deliver as before without the production of a Mate's Receipt and without an 40 indemnity signed by a bank. I did not tell the 3rd Parties anything.

Exhibit P 21
Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969 (continued)

Page 223, line 3 - page 225, line 10 (continued)

I see page 36 of A and the last sentence of para. 2.

Q. Is this sentence correct?
A. I was only concerned with delay in return of the shipping documents. I heard Mr. Chew Choo Sing give evidence that T.S.C. during later part of 1960 and early 1961 delayed more and more in paying their drafts. I also heard Chew and Ong Seng Chew say in evidence that T.S.C. took longer and longer to redeem the shipping documents from the bank. 10

Q. You understood perfectly well that the reason why T.S.C. were delaying in returning the Mate's Receipts was because they were delaying in settling their draft.
A. It was quite possible.

Q. I suggest that the pleading of the last sentence in para 2, page 36 of A is true. 20
A. I was only concerned with the return of the shipping documents. I was not concerned with the financial position of T.S.C. There were no circumstances that gave me any doubt about the financial position of T.S.C. in early 1961.

Adjourned to 10.30 a.m. on 10th April 1964.

Friday, 10th April, 1964

Counsel as before. 10.30 a.m. 30

Cross-examination by Mr. Kerr (continued)

Mr. Chan Cheng Kum o.f.a.

Q. The last sentence of para 2 of Page 36 of A.
A. I say that is not the truth. I think there is a misunderstanding. I was not concerned that T.S.C. was delaying in meeting these drafts. The first time I knew of the drafts was after Chew Choo Sing's visit to Lee Chin Tian's house on 10/7/61.

Exhibit P 21 Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969 (continued)

When I said yesterday that it was quite possible that reason for delay in returning the shipping documents was because they were delaying in meeting the drafts I misunderstood the question.

Q. Why were you concerned about the delay in returning the shipping documents, after delivering the goods?

A. I was concerned that Bill of Lading may have been issued and I think of the precaution of safety first. I am seriously giving that answer on oath.

10

Q. I suggest that this answer is untrue.

A. I say it is true."

Page 238, line 19 - page 239, line 7

" In every one of the cases where T.S.C. altered the instructions, the instructions came over by phone from Mr. Lee Chin Tian or Lee Teow Keng which I referred back to Chan Kim Yam and also during my social visits to T.S.C. The instructions were received before the goods were delivered. I can't say if the instructions were given before or after the Mate's Receipts were issued. They told us, either to me or Chan Kim Yam and when it was to me I referred to Chan Kim Yam. They told me the goods were arriving by certain vessel, either the Hua Heng or Hua Li, and to deliver the goods to them. In everyone of the cases where banks were named as consignees I had instructions to deliver to T.S.C. and in all these cases we delivered to T.S.C. In everyone of these cases we delivered against an indemnity given by T.S.C."

20

30

Page 246, lines 31 - 38

" It is true that on 10/7/61 I realised that T.S.C. could not pay Wah Tat Bank and I advised my son over the phone not to release further shipments to T.S.C. without Mate's Receipt. It is true that after 10/7/61 I did not release any goods to T.S.C. without the Mate's Receipt or without a letter of indemnity guaranteed by a bank."

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Exhibit P 21
Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969
(continued)

Page 247, line 9 - page 248, line 20

"Q. If you were concerned about the delay between delivery and return of Mate's Receipt why did you not say to T.S.C. that you will not deliver unless they produced the Mate's Receipt or Bill of Lading?

A. I had no reason to say that because they were the shippers and I acted on their instructions.

Q. Are you saying that you were compelled to deliver to them?

A. On their demand I had to deliver to them. They had also to give me an indemnity.

Q. When you demanded their personal promise of guarantee in early 1961 had they to do so?

A. They gave me the promise. If they did not do so I would still continue to deliver the goods.

Q. You were entitled to refuse to deliver without the production of the shipping documents.

A. No.

I was prepared to deliver on a letter of indemnity from them which they have in every single occasion. If they did not give the letter of guarantee I would have refused to deliver to them."

Page 249, lines 15 - 42

" During the first 5 or 6 years when we carried T.S.C.'s goods I was the sole proprietor of the firm. Each one of those hundrds of delivery were not made on my authority. Chan Kim Yam authorised the deliveries, I knew this was going on i.e. T.S.C. was getting delivery on a letter of indemnity without production of Mate's Receipt or shipping documents.

Between 1954 and the end of 1960 I controlled the policy of the firm. It was the policy of the firm between 1954 and 1960 to deliver to T.S.C. against indemnity without production of Mate's Receipt. After the formation of the company this

Page 249, lines 15 - 42 (continued)

Exhibit P 21
Passages read from evidence of the Defendant Chan as appearing in the Record in Privy Council Appeal No. 6 of 1969 (continued)

policy did not change. I was the Chairman of the Board of Directors and the Managing Director and I was also the manager of the Ltd. Co.

In early 1961 when I got worried about the delay I went and saw T.S.C. Having got their personal promises I was prepared to go on delivering as before. From 1954 to 1960 it was my personal decision to deliver to T.S.C. After 1960 it was
10 in the discretion of Chan Kim Yam. He was one of the directors. I did not give him that discretion. I went and saw T.S.C. because Chan Kim Yam was busy in the office."

Page 256, lines 36 - 41

"When T.S.C. changed their shipping instructions we have never asked if they had exchanged the Mate's Receipt for Bill of Lading. I merely accepted the letter of indemnity. If we had got an answer there is no means of checking on it."

No. 22 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM
THE COURT OF APPEAL IN SINGAPORE

BETWEEN

1. WAH TAT BANK LIMITED

2. OVERSEA-CHINESE BANKING CORPORATION LIMITED

(Plaintiffs) Appellants

- and -

CHAN CHENG KUM (Defendant) Respondent

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD

Solicitors for the Appellants

LINKLATERS & PAINES,
Barrington House,
59-67 Gresham Street,
London EC2V 7JA

Solicitors for the Respondents