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LEGAL STUDIES

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Nos. 21 and 22 of 1954.

In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL SUPREME COURT OF THE
FEDERATION OF MALAYA IN THE HIGH COURT AT
KUALA LUMPUR.*

BETWEEN

PL. RM. FAMILY - - - - - Appellant

and

THE COMPTROLLER OF INCOME TAX - - Respondent.

and

BETWEEN

P. V. FAMILY - - - - - Appellant

and

THE COMPTROLLER OF INCOME TAX - - Respondent.

(Consolidated Appeals)

CASE FOR THE APPELLANTS.

1. This is an appeal by the above-named Appellants PL. RM. Family and P.V. Family by leave of the Court of Appeal Supreme Court of the Federation of Malaya in the High Court at Kuala Lumpur from the Orders of that Court (Mathew C.J. Federation of Malaya, Murray-Aynsley C.J. Singapore and Taylor J.) dated 2nd July 1953 in the two suits above specified. The two suits involve the same point of law and were consolidated for the purpose of this Appeal by Order dated 17th June 1954.

pp. 36-37.

pp. 39.

2. The question arising on this Appeal is whether, in computing their profits for the purpose of income tax in the Federation of Malaya for the year of assessment 1951, the Appellants are entitled to deduct sums due to them in accordance with the Debtor and Creditor (Occupation Period) Ordinance 1948 which sums the Appellants had been unable to recover.

3. The Appellants are moneylenders and before the Japanese occupation of Malaya lent money on the security of land. During the occupation the loans in question were repaid in depreciated Japanese currency and the relevant securities released. 10

4. On 1st October 1949, the Debtor and Creditor (Occupation Period) Ordinance 1948 came into force under which creditors were enabled, subject to certain conditions, to have their securities reinstated and to claim the difference between the face value and the real value of the repayments made in Japanese occupation currency. The following are the relevant provisions of the Debtor and Creditor (Occupation Period) Ordinance 1948:—

“4. (1) Subject to the provisions of sub-section (2) of this section, where any payment was made during the occupation period in Malayan currency or occupation currency by a debtor or by his agent or by the Custodian or a liquidation officer purporting to act on behalf of such debtor, to a creditor, or to his agent or to the Custodian or a liquidation officer purporting to act on behalf of such creditor, and such payment was made in respect of a pre-occupation debt, such payment shall be a valid discharge of such pre-occupation debt to the extent of the face value of such payment. 20

(2) In any case—

(a) where the acceptance of such payment in occupation currency was caused by duress or coercion; or

(b) where such payment was made after the thirty-first day of December, 1943, in occupation currency in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which— 30

(i) was not due at the time of such payment; or

(ii) if due, was not demanded by the creditor or by his agent on his behalf and was not payable within the occupation period under a time essence contract; or

(iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent; or 40

(c) where such payment was made in occupation currency to a Custodian or liquidation officer in respect of a pre-occupation capital debt exceeding two hundred and fifty dollars in amount except where payment as aforesaid was caused by duress or coercion ;

such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation.

(3) In sub-section (2) of this section—

10 (a) the expression ‘ pre-occupation capital debt ’ means any pre-occupation debt other than a sum accruing due after the commencement of the occupation period in respect of—

(i) rent ; or

(ii) interest ;

(b) the word ‘ demand ’ includes the rendering of an account for goods supplied or services rendered.

20 (4) Where any pre-occupation debt as is mentioned in sub-section (1) of this section purports to have been wholly or partly discharged during the occupation period by payment in occupation currency, no interest on such debt or any portion thereof purporting to have been so discharged shall be chargeable in respect of the period between the date of such payment and the date of the commencement of this Ordinance notwithstanding that such debt or portion thereof may, under the provisions of sub-section (2) of this section, be deemed to be partly undischarged.

30 (5) For the purposes of this section ‘ duress or coercion ’ means force, injury or detriment applied or caused, or threat of force, injury or detriment offered, to the creditor or debtor (as the case may be) or his agent or another person by the debtor or creditor (as the case may be) or his agent or an official of, or person acting on behalf of, the Occupying Power, which, in the opinion of the Court, was of such a nature as to render the acceptance of a payment or a payment (as the case may be) an involuntary act.

In this sub-section ‘ threat of force, injury or detriment ’ includes a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the creditor or his agent to accept payment in occupation currency or of the refusal of the debtor to make payment (as the case may be).

11. (1) In any case where a debt purporting to have been discharged in whole or in part by payment in occupation currency is, by

virtue of the provisions of this Ordinance, deemed to be partly undischarged, and where the payment of such debt before it purported to be discharged as aforesaid was secured by a charge over property movable or immovable and such charge has, or purports to have, been discharged by the chargee or by his agent or by the Custodian or a liquidation officer, such discharge shall (subject to the provisos next following) be void as against the chargor or his personal representatives and any person claiming through or under him or them, and the charged property shall stand charged with the revalued balance of the debt and interest, if any, accrued and unpaid and to accrue thereon; 10

Provided that—

(a) Where the charged property is movable property and such property has, after its discharge or purported discharge as aforesaid, been transferred or charged to a bona fide purchaser or chargee for value; or

(b) Where the charged property is immovable property and such property has after its discharge or purported discharge as aforesaid, been transferred or charged to a bona fide purchaser or chargee for value without the intervention in the transaction of the Custodian or a liquidation officer; 20

the discharge to the chargor by the chargee or his agent shall not be void as aforesaid, but the title of such bona fide purchaser or chargee for value, or any person claiming through or under him shall prevail against the title of the original chargee.”

5. As a result of the Debtor and Creditor (Occupation Period) Ordinance, 1948, the Appellant P. V. Family (upon the facts of whose suit judgment was given by the Courts in Malaya) became entitled to claim in the aggregate a sum in excess of \$600,000. Owing to the death in 1945 of the man who was the Appellant P. V. Family's Manager at the material time the Appellant P. V. Family found it difficult satisfactorily to prove all the facts necessary to substantiate their right under the Debtor and Creditor (Occupation Period) Ordinance, 1948, to claim the sum of \$600,000 (approximate). The Appellant P. V. Family therefore settled these claims and recovered approximately \$306,000 leaving \$344,465.90 to be written off as irrecoverable. In their return of income for the year 1950 for assessment of tax payable in 1951 the Appellant P. V. Family claimed to deduct the amount written off, a claim which was rejected by the Respondent. On similar facts the Respondent rejected a claim by the Appellant PL. RM, Family to deduct a sum of \$58,929.05 written off as irrevocable. 30

6. The relevant provisions of The Income Tax Ordinance, 1947, of the Federation of Malaya are as follows:—

“ PART III.

IMPOSITION OF INCOME TAX.

10. (1) Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from the Federation or received in the Federation from outside the Federation in respect of—

10 (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised ;”

“ PART IV.

ASCERTAINMENT OF INCOME.

14. (1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Ordinance, in this Part referred to as ‘ the income,’ there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income, including—

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.....
(d) bad debts incurred in any trade, business, profession or vocation, which have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated, to the satisfaction of the Comptroller, to have become bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that—

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(i) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts, other than debts incurred before the commencement of the basis period for the first year of assessment under this Ordinance, shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that period ;

(ii) the debts in respect of which a deduction is claimed were included as a trading receipt in the income of the year within which they were incurred ;

(iii) no deduction shall be allowed in respect of any debt incurred before the commencement of the basis period for the first year of assessment under this Ordinance.”

“PART VI.

ASCERTAINMENT OF ASSESSABLE INCOME.

33. (1) The assessable income of any person from all sources chargeable with tax under this Ordinance for any year of assessment shall be the remainder of his statutory income for that year after the deductions allowed in this Part of this Ordinance have been made.

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(2) There shall be deducted—

(a) the amount of a loss incurred by him during the year of assessment in any trade, business, profession or vocation, which, if it had been a profit, would have been assessable under this Ordinance:

Provided that no such deduction shall be made unless it is claimed in writing within one year after the end of the year of assessment;

(b) the amount of a loss similarly incurred by him in any such trade, business, profession or vocation during any of the six 20 years preceding the year of assessment which has not been allowed against his statutory income of a prior year:

Provided that—

(i) in no circumstances shall the aggregate deduction from statutory income in respect of any such loss exceed the amount of such loss;

(ii) a deduction under this paragraph shall be made as far as possible from the statutory income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then from the statutory income 30 of the next year of assessment, and so on;

(iii) no deduction under this paragraph shall be made in respect of a loss incurred prior to the commencement of the year preceding the first year of assessment under this Ordinance.”

7. The Appellants appealed to the Income Tax Board of Review at Kuala Lumpur against the assessments for the year 1951 in so far as the Respondent refused to allow the sums of \$344,465.90 and \$58,929.05 to be deducted from the profits assessed. On 21st October the Income Tax Board of Review at Kuala Lumpur dismissed the

appeals and confirmed the assessments on the grounds (i) that the sums in question consisted of bad debts incurred before the commencement of the basis period (1st January 1947) for the first year of assessment (1948) and that the third proviso to Section 14 (1) (d) precluded the deduction of any debt incurred before the commencement of the basis period for the first year of assessment and (ii) that the sums in question were not a loss within the meaning of Section 33 (2) (a) of the Income Tax Ordinance 1947 and that the sums could not be deducted by reason of the third proviso to Section 33 (2) (b) which provides that no deduction shall be made in respect of a loss incurred prior to the commencement of the year (1st January 1947) preceding the first year of assessment (1948). A transcript of the Grounds of Decision of the Income Tax Board of Review at Kuala Lumpur is printed in the Record. p. 12.

8. On 3rd November 1952 the Appellants gave notice of appeal to the High Court of Judicature at Kuala Lumpur against the decisions of the Income Tax Board of Review and the appeals were heard on 13th February 1953 by Briggs J. who delivered Judgment on 20th February 1953 allowing the appeals in part and ordered that the cases be remitted to the Respondent to reassess the Appellants on the footing that they were entitled to an allowance for the principal moneys lost in consequence of the facts that had arisen but not to an allowance for interest similarly lost and further that in making his calculations on that basis the Respondent should proceed on the footing that the settlements which the Appellants had been able to make must be deemed to have been recoveries of capital in each case in the first place and recoveries of income only as regards any balance recovered in excess of the total capital involved in each transaction. p. 13.
p. 21.

In his Judgment the learned Judge said that he thought the Respondent was right in conceding that the loss took place in 1950, that the capital lost was part of the Appellants' circulating capital and the replacement of such a loss was a necessary expense of conducting a moneylenders business and the deduction of that loss could be made under the general provisions of Section 14 (1) of the Income Tax Ordinance 1947 without invoking the special provisions of paragraph (d) of that Section. With regard to the interest he said he thought the provisions of proviso (iii) to Section 14 (1) (d) of the Income Tax Ordinance applied. p. 19.
p. 18.

A transcript of the Judgment of the learned Judge is printed in the Record (pp. 16-20). pp. 16-20.

9. On 13th March 1953 the Respondent gave notice of appeal to the Court of Appeal at Kuala Lumpur against the decision and orders of Briggs J. and the appeals were heard on 14th April 1953 by Mathew p. 22.

p. 26. C.J. Federation of Malaya, Murray-Aynsley C.J. Singapore, and Taylor J. On 2nd July 1953 the Court of Appeal gave Judgment allowing the appeals and ordered that the Judgment of Briggs J. be set aside and the Respondent's assessments be restored.

p. 28. The learned Chief Justice of Malaya in his Judgment said that he found it difficult to see how the Debtor and Creditor (Occupation Period) Ordinance created a new debt and that he regarded the sums recovered by the Appellants when they settled their claims under the special provisions of the Debtor and Creditor (Occupation Period) Ordinance as a gain which cannot for the purposes of Income Tax be related back to the concluded transactions which took place during the occupation. He further said that if that Ordinance revived an old debt, the debts with which the Appeal was concerned were covered by proviso (iii) to Section 14 of the Income Tax Ordinance and could not be deducted. 10

pp. 27-28. A transcript of the Judgment of the learned Chief Justice of Malaya is printed in the Record (pp. 27-29).

p. 29. The learned Chief Justice, Singapore, in his Judgment said that, in his view of the construction of the Income Tax Ordinance, Section 14 (d) was the only method by which a debt incurred in one year and found to be bad in another could be treated as a trading loss for the latter year. If he were wrong on that construction he thought that the only method of ascertaining whether a loss had occurred would be to value all debts at the end of each year. In his view the debts in question were never worth more than the amounts for which they were ultimately compromised and therefore no loss had been incurred. 20

p. 29.

p. 30.

pp. 29-30. A transcript of the Judgment of the learned Chief Justice, Singapore, is printed in the Record (pp. 29-30).

p. 32. Taylor J. in his Judgment said that no loss occurred in 1950 and that the losses in question were actually incurred before 1946 and that the third proviso to Section 32 (2) (b) of the Income Tax Ordinance forbids deduction from assessable income in respect of a loss incurred before 1947. He said further that in his opinion the Debtor and Creditor (Occupation Period) Ordinance only gave a right to make a claim which did not become a debt until the amount payable had been agreed and decided. Assuming, however, contrary to his view, that a revaluation claim under the Debtor and Creditor (Occupation Period) Ordinance does rank for Income Tax purposes as a debt, and if that Ordinance revived portions of the original debts these debts were incurred many years ago before the first basis year and the assessment was correct. If on the other hand the Ordinance created new debts they were incurred in 1949 the amount written back on revaluation should then have been 30

p. 33.

p. 34.

p. 34. 40

brought into the taxation account of that year; the amount written off in 1950 would then have been deductible.

A transcript of the Judgment of the learned Judge is printed in the Record (pp. 30-35). pp. 30-35.

By Order dated 14th September 1953 the Court of Appeal at Kuala Lumpur granted the Appellants conditional leave and by Order dated 11th December 1953 final leave to appeal to Her Majesty in Council. pp. 37-38.
pp. 38-39.

By Order dated 17th June 1954 the Privy Council ordered that the appeals be consolidated and that they be heard together on one Printed Case on each side. pp. 39-40.

The Appellants humbly submit that the Judgment of the Court of Appeal at Kuala Lumpur is wrong and should be reversed for the following among other

REASONS.

(1) THAT the sums in question formed part of the Appellants' stock-in-trade or floating capital and the losses of these sums occurred during the year 1950 and these losses ought to be deducted before arriving at the Appellants' gains and profits for the year 1950 for the purpose of Section 10 (1) of the Income Tax Ordinance, 1947, or deducted as outgoings or expenses in accordance with Section 14 (1) or as a loss in accordance with Section 33 (2) (a) of the Ordinance. 20

(2) THAT, in the alternative, so much of the losses as represent repayment of the original sums lent ought to be deducted for the purpose of arriving at the Appellants' gains and profits under Section 10 (1) of the Income Tax Ordinance, 1947, or deducted in accordance with Section 14 (1) or Section 33 (2) (a) of the Ordinance.

(3) THAT the Judgment of the Court of Appeal at Kuala Lumpur was wrong and ought to be reversed. 30

(4) THAT the order of Briggs J. dated the 20th February, 1953, ought to be restored.

HENRY SALT.

WILLIAM LINDSAY.

In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL
SUPREME COURT OF THE FEDERATION
OF MALAYA IN THE HIGH
COURT AT KUALA LUMPUR.*

BETWEEN

PL. RM. FAMILY - - - - - *Appellant*

AND

THE COMPTROLLER OF INCOME
TAX - - - - - *Respondent*

AND

BETWEEN

P. V. FAMILY - - - - - *Appellant*

AND

THE COMPTROLLER OF INCOME
TAX - - - - - *Respondent*

(Consolidated Appeals).

Case for the Appellants.

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