

Privy Council Appeal No. 35 of 1958

Chow Yoong Hong - - - - - *Appellant*

v.

Tai Chet Siang - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF THE FEDERATION OF MALAYA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 8TH OCTOBER, 1959**

Present at the Hearing

LORD GODDARD

LORD JENKINS

MR. L. M. D. DE SILVA

[*Delivered by* LORD JENKINS]

In this case the plaintiff (now respondent), Mr. Tai Chet Siang, sued the defendant (now appellant), Mr. Chow Yoong Hong, in the High Court at Kuala Lumpur for the return of a deposit of 5,000 dollars paid by the plaintiff to the defendant as a deposit or earnest, as it was called, under a contract, in the form of a receipt for the deposit, entered into between the parties for the sale by the defendant to the plaintiff of a house in Kuala Lumpur.

The defendant opposed the plaintiff's claim on the ground, to put it very shortly, that the bargain had gone off through the plaintiff's default and that circumstances had accordingly arisen in which he was entitled to forfeit the deposit. The defendant's case as ultimately developed in court rested, their Lordships think, substantially on the contention that the plaintiff had repudiated his bargain because he came to the conclusion that the price he had agreed to pay was too high. Indeed, it was said by the defendant that at a particular interview of the 29th February, 1956, the plaintiff had definitely refused to complete.

An appreciation of the case demands a somewhat detailed consideration of the correspondence, and, indeed, it was referred to in great detail and with great care by Mr. Khambatta, who said all that possibly could be said on the defendant's behalf. As to the interview of the 29th February, assuming in the defendant's favour that it ever took place at all, their Lordships are quite satisfied from the subsequent correspondence that there was nothing in the nature of a repudiation at that interview. Looking at the documents and the evidence as a whole, it appears to their Lordships that the plaintiff was in fact at all times ready and willing to complete, but he stipulated, naturally enough, that before he did complete the title should be investigated by his lawyer. The learned judge in the High Court unfortunately did not deliver himself of a judgment from which the Court of Appeal could derive the assistance which an Appellate Court is entitled to expect from a judge of first instance. The learned judge said this: "I have considered the case for plaintiff and that for defendant. I am not without some sympathy for the plaintiff as the case has turned out for him, but in law and in fact I am satisfied that the transaction could, would and should have been completed at defendant's solicitor's office. That this was not done was due to plaintiff's

resiling from his contract with defendant because he felt he had entered into a bad bargain." Their Lordships cannot regard that judgment as of any assistance either on the facts or on the law.

The plaintiff appealed to the Court of Appeal at Kuala Lumpur, and that court reversed the decision of the trial judge and gave the plaintiff the relief claimed. Mr. Khambatta has emphasised the principle that the greatest respect should be paid to the findings of fact of a judge of first instance, based on seeing and hearing the witnesses and forming an estimate of their credibility, and there is no doubt as to that principle; but it is a principle impossible of application where, as in the present case, the learned judge has unfortunately failed to make any intelligible findings of fact at all. The Court of Appeal felt obliged to go into the matter *de novo*, as their Lordships think quite rightly, and, having done so, came to the conclusion that the plaintiff's case was made good and that the defendant's allegations of repudiation were ill founded. It appears to their Lordships that the judgments of the Court of Appeal are impeccable both in their reasoning and their conclusion, and their Lordships see no reason whatever for disturbing the order made.

Accordingly, their Lordships will report to the Head of the Federation of Malaya as their opinion that this appeal ought to be dismissed, and the appellant ought to pay the costs of the appeal.



In the Privy Council

CHOW YOONG HONG

*,

TAI CHET SIANG

DELIVERED BY
LORD JENKINS