

~~P.C.~~
~~G.M.L. m. G. 2.~~

Judgment
22, 1965

IN THE PRIVY COUNCIL

No. 37 of 1963

ON APPEAL

FROM THE COURT OF APPEAL OF THE STATE OF SINGAPORE

B E T W E E N

ATURELIYA WALENDAGODAGE HENRY SENANAYAKE
(Defendant)

APPELLANT

- and -

ANNIE YEO SIEW CHENG (Plaintiff)

RESPONDENT

RECORD OF PROCEEDINGS

SPEECHLY, MUMFORD & SOAMES,
10, New Square,
Lincoln's Inn,
London W.C.2.
Solicitors for the Appellant.

PARK NELSON and DENNES & CO.,
11, Essex Street,
London W.C.2.

Solicitors for the Respondent.

i.

IN THE PRIVY COUNCIL

No. 37 of 1963

ON APPEAL

FROM THE COURT OF APPEAL OF THE STATE OF SINGAPORE

B E T W E E N :

ATURELIYA WALENDAGODAGE HENRY SENANAYAKE
(Defendant)

APPELLANT

- and -

ANNIE YEO SIEW CHENG (Plaintiff)

RESPONDENT

RECORD OF PROCEEDINGS

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ON APPEAL

FROM THE COURT OF APPEAL OF THE STATE OF SINGAPORE

B E T W E E N :-

ATURELIYA WALENDAGODAGE HENRY
SENANAYAKE (Defendant) APPELLANT

- and -

ANNIE YEO SIEW CHENG (Plaintiff) RESPONDENT

RECORD OF PROCEEDINGS

10

No. 1.

WRIT OF SUMMONS

In the High
Court of the
State of
Singapore

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

No. 1.

Suit
No.1008 1959 } B E T W E E N

Writ of
Summons

21st July 1959

ANNIE YEO SIEW CHENG (f)

Plaintiff

AND

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE

Defendant

20

ELIZABETH the Second 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.

To

Atureliya Walendagodage Henry Senanayake
of No. 44 High Street, Singapore

In the High
Court of the
State of
Singapore

No. 1.

Writ of
Summons

21st July,
1959

Continued

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 Annie Yeo Siew Cheng of No. 23 Dunsford Drive, Singapore 13, Remisier and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS The Honourable Sir Alan Edward Percival Rose, Knight Chief Justice of the State of Singapore the 21st day of July, 1959.

10

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.

20

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.

Sd. Philip Hoalim & Co.

Solicitors for the Plaintiff.

STATEMENT OF CLAIM

30

The Plaintiff's claim is for the return of the sum of \$20,000.- paid on the 20th April 1959 for five shares of the Defendant's holdings in the firm of Sena & Goh, Share and Stock Brokers, of No. 22 Market Street, Singapore, which said sum at the request of the Defendant was paid to the firm of Sena & Goh.

2. The said sum of \$20,000.- was paid for five of the Defendant's shares in the said firm of Sena & Goh on the Defendant's representations to the Plaintiff that the

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said firm of Sena & Goh was a gold mine and subject to the Malayan Share Brokers' Association approving of the Plaintiff becoming a partner of the said firm of Sena & Goh and also subject to the certified accounts of the firm for 1958 being shown to the Plaintiff.

In the High Court of the State of Singapore

No. 1.

3. The said representations were at all material times untrue.

Writ of Summons.

10

4. The certified accounts of the firm for 1958 as promised have not been shown to the Plaintiff nor has the Malayan Share Brokers' Association approved of the Plaintiff becoming a partner.

21st July, 1959.

Continued.

AND the sum of \$65.- (or such sum as shall be allowed on taxation of costs). If the amount claimed is paid to the plaintiff or her solicitor and within the time limited for appearance further proceedings will be stayed.

20

TAKE NOTICE that in default of your entering an appearance hereto final judgment may be entered at once against you for the above amount and costs.

30

AND TAKE FURTHER NOTICE that if you enter an appearance you must also deliver a defence within ten days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge; otherwise judgment may be entered against you without notice, unless you have in the meantime been served with a summons for judgment.

Sd. Philip Hoalim & Co.

Solicitors for the Plaintiff.

No. 2.

No. 2.

DEFENCE.

Defence

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

9th September, 1959.

40

Suit No. 1008 of 1959

4.

In the High
Court of the
State of
Singapore

Between

Annie Yeo Siew Cheng (f)

... Plaintiff

And

Atureliya Walendagodage
Henry Senanayake

... Defendant

No. 2.

Defence.

9th September,
1959.

Continued

D E F E N C E

1. The Defendant admits that the Plaintiff paid the sum of \$20,000.00 to the firm of Sena & Goh on or about the 20th April 1959, for the purchase of 5 shares of the Defendant's holdings in the said firm of Sena & Goh as stated in paragraph 1 of the Statement of Claim but the Defendant denies that the Plaintiff is entitled to the return of the said sum of \$20,000.00 or at all. 10

2. On or about the 3rd April 1959, the Plaintiff who has been a broker with the said firm of Sena & Goh doing regular and continuous business with the said firm from about 1955, freely and voluntarily and without any canvassing from the Defendant or from any of the other existing partners of the said firm of Sena & Goh requested to be admitted as a partner in the said firm of Sena & Goh and offered to buy some of the Defendant's shares in the said firm of Sena & Goh. 20

3. On the request as stated in paragraph 2 hereof being made by the Plaintiff to the Defendant the Defendant verbally informed the Plaintiff of the said firm's recent financial position and further made available for the inspection of the Plaintiff the said firm's Books of Accounts for the year 1958 so that she may ascertain for herself the current financial position of the said firm. 30

4. Subsequently a day or two before the 20th April 1959, the Plaintiff orally confirmed to the Defendant that she had herself inspected the said firm's Books of Account for the year 1958 which she later on the 20th April 1959 40

acknowledged in writing and again offered to purchase a share in the said firm whereupon the Defendant offered to sell to the Plaintiff 5 shares of his holdings in the said firm for \$20,000.00.

In the High
Court of the
State of
Singapore

No. 2.

Defence.

9th September
1959.

Continued.

10 5. It was then and there orally agreed between the Plaintiff and the Defendant that the Plaintiff would be treated as a partner of the said firm with a holding of 5 shares as from the date on which she paid into the said firm of Sena & Goh's banking account the said sum of \$20,000.00 and it was further then and there orally agreed between the Plaintiff and the Defendant that although the Plaintiff would be a partner in the said firm of Sena and Goh with a holding of 5 shares as from 20 the date of her payment into the said firm's banking account of the said sum of \$20,000.00 the formalities of informing the Sharebrokers Association of the admission of the Plaintiff as a partner in the said firm, registering the change in the composition of the said firm with the Registrar of Business Names and also the signing of a new partnership agree- 30 ment be left over till the return of one Tan Eng Liak a partner in the said firm who was then holidaying in Japan.

In fact the Plaintiff has since the 20th April, 1959, attended all the partners' meetings of the said firm and has taken part in all the decisions regarding the business of the said firm and also on all policy matters concerning the said firm.

40 6. In the premises the Defendant denies ever having made any representations whatsoever to the Plaintiff that the said firm of Sena & Goh was a gold mine and further the Defendant also denies that it ever was a condition that the negotiations as pleaded were subject to the Malayan Sharebrokers Association approving the Plaintiff becoming a partner in the said firm of Sena & Goh.

7. Although it was never a condition that

In the High Court of the State of Singapore

No. 2.

Defence

9th September, 1959.

Continued.

the said negotiations were subject to the certified accounts of the said firm for the year 1958 being shown to the Plaintiff the Plaintiff was in fact given inspection of the said firm's Books of Accounts for the year 1958 and she acknowledged having inspected the said firm's Books of Accounts for the year 1958 as stated in paragraphs 3 and 4 hereof.

8. In the premises the Defendant claims that the Plaintiff's claim herein be dismissed with costs.

10

Dated and Delivered this 9th day of September 1959.

Sd. Allen & Gledhill.
Solicitors for the Defendant.

To the abovenamed Plaintiff and to her Solicitors, Messrs. Philip Hoalim & Co.

No. 3.

Further and Better Particulars of Defence.

21st September, 1959.

No. 3.

20

FURTHER AND BETTER PARTICULARS OF DEFENCE

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

Suit No. 1008 of 1959

Between

Annie Yeo Siew Cheng (f)
... Plaintiff

And

Atureliya Walendagodage
Henry Senanayake
... Defendant

30

FURTHER AND BETTER PARTICULARS
OF THE DEFENCE

In the High
Court of the
State of
Singapore

The following are the particulars of paragraphs 3, 4 and 5 of the Defendant's defence herein.

No. 3.

1. As to paragraph 3.

Further and
Better
Particulars
of Defence.

21st September,
1959.

Continued.

(i) The Plaintiff was verbally informed of the said firm's financial position by the Defendant on or about the 13 April 1959 at a meeting between the Plaintiff and the Defendant which was held on the Plaintiff's request at No. 94-43 Chestnut Drive, Singapore, the home of one Dr. Sibyl Kiani and again a day or two before the 20th April 1959 when the Plaintiff met the Defendant to discuss further the said firm's financial position which said second meeting was held at the Defendant's home at No. 92B Chestnut Drive, Singapore.

(ii) The said firm's Books of Accounts for the year 1958 were made available for the Plaintiff's inspection at the said firm's place of business at No. 22 Market Street, Singapore and the Plaintiff was at liberty to inspect the said firm's Books of Accounts for the year 1958 at any time convenient to her.

2. As to paragraph 4

The Plaintiff orally confirmed to the Defendant that she had herself inspected the said firm's Books of Accounts for the year 1958 at a meeting held between the Plaintiff and the Defendant a day or two before the 20th April 1959 at the Defendant's home at 92B Chestnut Drive, Singapore.

3. As to paragraph 5.

(i) The oral agreement as stated in paragraph 5 of the Defence was made at the meeting as aforesaid a day or two before the 20th April 1959.

In the High Court of the State of Singapore

No. 3.

Further and Better Particulars of Defence.

21st September, 1959.

Continued.

(ii) The partners' meetings referred to in paragraph 5 of the Defence were held during the latter half of May 1959 and early June 1959 during which period at least two such meetings were held. All partners' meetings were held at the said firm's place of business at 22 Market Street, Singapore.

Dated and Delivered this 21st day of September, 1959.

Sd. Allen & Gledhill.
Solicitors for the Defendant.

10

To the abovenamed Plaintiff and to her Solicitors, Messrs. Philip Hoalim & Co. Singapore.

No. 4.

Further Amended Writ of Summons.

17th July, 1961.

No. 4.

SPECIALLY FURTHER AMENDED
INDORSED WRIT OF SUMMONS
WRIT

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

Suit No. 1008 of 1959

BETWEEN

Annie Yeo Siew Cheng (f)
Plaintiff

and

Atureliya Walendagodage
Henry Senanayake
Defendant

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Further amended as underlined in red pursuant to Order of Court made the 17th day of July 1961 this 17th day of July 1961.

Sd. Goh Heng Leong.
Dy. Registrar.
(L.S.)

30

ELIZABETH the Second 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 the
State of
Singapore

No. 4.

To

Atureliya Walendagodage Henry
Senanayake of No. 44 High Street,
Singapore.

Further
Amended Writ
of Summons.

17th July,
1961.

Continued.

10

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 Our High
Court at Singapore, in a cause at the suit of
Annie Yeo Siew Cheng of No. 23 Dunsford Drive,
Singapore 13, Remisier

and take notice, that in default of your so
doing the Plaintiff may proceed therein to
judgment and execution.

20

WITNESS The Honourable Sir Alan Edward
Percival Rose, Knight Chief Justice, of the
State of Singapore at Singapore, aforesaid this
21st day of July 1959.

Sd. Philip Hoalim & Co.
Solicitors for the Plaintiff.

30

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.

40

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.

STATEMENT of CLAIM

The plaintiff's claim is for the return

In the High Court of the State of Singapore

of the sum of \$20,000.- paid on the 20th April 1959 for five shares of the Defendants holdings in the firm of Sena & Goh, Share and Stock Brokers, of No. 22 Market Street, Singapore, which said sum at the request of the Defendant was paid to the firm of Sena & Goh.

No. 4.

Further Amended Writ of Summons.

2. The said sum of \$20,000.- was paid for five of the Defendant's shares in the said firm of Sena & Goh on the Defendant's representation to the Plaintiff that the said firm of Sena & Goh was a gold mine and subject to the Malayan Share-brokers' Association approving of the Plaintiff becoming a partner of the said firm of Sena & Goh and also subject to the certified accounts of the firm for 1958 being shown to the Plaintiff.

10

17th July, 1961.

Continued.

3. The said representation was at all material times untrue.

4. The certified accounts of the firm for 1959 as promised have not been shown to the Plaintiff nor has the Malayan Sharebrokers' Association approved of the Plaintiff becoming a partner.

20

This Writ was issued by Messrs. Philip Hoalim & Co. of No. 3 Malacca Street, (3rd floor), Singapore, Solicitors for the plaintiff who resides at No. 23 Dunsford Drive, Singapore, 13, and is a Remisier.

This Writ was served by

on the defendant the date of

19 .

30

Indorsed the day of (signed) 19 .

(Signed)

(Address)



11.
No. 5.

In the High
Court of the
State of
Singapore

AMENDED DEFENCE

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

No. 5.

Suit No. 1008 of 1959

Amended
Defence

Amended as deleted and
underlined in red ink
pursuant to the Order
of Court made on the
19th day of July, 1961
Sd. Goh Neng Leong
Dy. Registrar.

Between

ANNIE YEO
SIEW CHENG (f)
... Plaintiff

2nd August,
1961.

And

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE
... Defendant

AMENDED DEFENCE

1. The Defendant admits that the Plaintiff
paid the sum of \$20,000.00 to the firm of Sena
& Goh on or about the 20th April 1959, for the
purchase of 5 shares of the Defendant's holdings
in the said firm of Sena & Goh as stated in
paragraph 1 of the Statement of Claim but the
Defendant denies that the Plaintiff is entitled
to the return of the said sum of \$20,000.00 or
at all.

2. On or about the 3rd April 1959 the
Plaintiff who has been a broker with the said
firm of Sena & Goh doing regular and continuous
business with the said firm from about 1955,
freely and voluntarily and without any can-
vassing from the Defendant or from any of the
other existing partners of the said firm of
Sena & Goh requested to be admitted as a
partner in the said firm of Sena & Goh and
offered to buy some of the Defendant's shares
in the said firm of Sena & Goh.

3. On the request as stated in paragraph 2
hereof being made by the Plaintiff to the Defen-
dant the Defendant verbally informed the
Plaintiff of the said firm's recent financial
position and further made available for the
inspection of the Plaintiff the said firm's
Books of Accounts for the year 1958 so that
she may ascertain for herself the current

In the High
Court of the
State of
Singapore.

No. 5.

Amended
Defence

2nd August,
1961.

Continued.

financial position of the said firm.

4. Subsequently a day or two before the 20th April, 1959, the Plaintiff orally confirmed to the Defendant that she had herself inspected the said firm's Books of Accounts for the year 1958 which she later on the 20th April 1959 acknowledged in writing and again offered to purchase a share in the said firm whereupon the Defendant offered to sell to the Plaintiff 5 shares of his holdings in the said firm for \$20,000.00. It was arranged between the Plaintiff and the Defendant that the Defendant would pay the said sum of \$20,000.00 into the said firm's banking account.

10

5. It was then and there orally agreed between the Plaintiff and the Defendant that the Plaintiff would be treated as a partner of the said firm with a holding of 5 shares as from the date on which she paid into the said firm of Sena & Goh's banking account the said sum of \$20,000.00 and it was further then and there orally agreed between the Plaintiff and the Defendant that although the Plaintiff would be a partner in the said firm of Sena & Goh with a holding of 5 shares as from the date of her payment into the said firm's banking account of the said sum of \$20,000.00 the formalities of informing the Sharebrokers Association of the admission of the Plaintiff as a partner in the said firm, registering the change in the composition of the said firm with the Registrar of Business Names and also the signing of a new partnership agreement be left over till the return of one Tan Eng Liak a partner in the firm who was then holidaying in Japan.

20

30

In fact the Plaintiff has since the 20th April, 1959, attended all the partners' meetings of the said firm and has taken part in all the decisions regarding the business of the said firm and also on all policy matters concerning the said firm.

40

6. ~~In the premises The Defendant denies ever having made any representations whatsoever to the Plaintiff that the said firm of Sena & Goh was a gold mine and further the Defendant also denies that it ever was a condition that the negotiations as pleaded were subject to the~~

~~Malayan Sharebrokers Association approving the Plaintiff becoming a partner in the said firm of Sena & Goh.~~

In the High Court of the State of Singapore

No. 5.

Amended Defence

2nd August, 1961.

Continued.

10 7. ~~Although it was never a condition that the said negotiations were subject to the certified accounts of the said firm for the year 1958 being shown to the Plaintiff the Plaintiff was in fact given inspection of the said firm's Books of Accounts for the year 1958 and she acknowledged having inspected the said firm's Books of Accounts for the year 1958 as stated in paragraphs 3 and 4 hereof.~~

7. The Defendant denies that the payment of the sum of \$20,000.00 was subject to the Malayan Sharebrokers' Association approving of the Plaintiff becoming a partner of the said firm of Sena & Goh and also subject to the certified accounts of the firm for 1958 being shown to the Plaintiff.

20 8. If no certified accounts of the firm for 1958 have been shown to the Plaintiff, the Defendant at no time denied the Plaintiff access thereto and the Plaintiff has been shown a draft balance sheet which has been adopted by the firm. The Malayan Sharebrokers Association has at no time disapproved of the Plaintiff becoming a partner and the Plaintiff's name was submitted for approval. The Plaintiff and other partners by a notice
30 given by Tan Eng Liak, one of the partners, decided to and did dissolve the partnership.

9. In the premises the Defendant claims that the Plaintiff's claim herein be dismissed with costs.

Dated and Re-Delivered this 2nd day of August, 1961.

Sd. L.A.J. Smith
Solicitor for the Defendant.

No. 6.

No. 6.

40 INTERROGATORIES

Plaintiff's Interrogatories

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

20th November, 1959.

Suit No. 1008 of 1959

In the High
Court of the
State of
Singapore

Between

Annie Yeo Siew Cheng (f)
... Plaintiff

No. 6.

And

Plaintiff's
Interrogatories.

Atureliya Walendagodage
Henry Senanayake
... Defendant

20th November,
1959.

Continued

INTERROGATORIES

On behalf of the abovenamed Plaintiff
for the examination of the abovenamed
Defendant pursuant to Order of Court
herein dated the 16th day of November,
1959 10

1. Is not Sena & Goh referred to in the indorse-
ment to the Writ of Summons in this action a
partnership business originally with two partners
namely Atureliya Walendagodage Henry Senanayake
(the abovenamed Defendant) and Goh Teik Teong?

2. Is not the said Sena & Goh carrying on
business as share and/or stock brokers at
Singapore ? 20

3. Were not the aforesaid two partners of Sena
& Goh approved by the Malayan Sharebrokers
Association before the firm of Sena & Goh
could become a member of the Malayan Share-
brokers Association ?

4. Is not the firm of Sena & Goh registered
on the 7th day of April 1959 in the Registry
of Business Names as having five partners
namely,

- (1) the said Atureliya Walendagodage Henry Senanayake (the abovenamed Defendant), 30
- (2) the said Goh Teik Teong,
- (3) Goh Ewe Hock,
- (4) Sylvia Goh Suan Poh, and
- (5) Tan Eng Liak ?

5. Were not the said Goh Ewe Hock, Sylvia Goh Suan Poh and Tan Eng Liak to become partners of the firm of Sena & Goh to be approved by the Malayan Sharebrokers Association ?
6. If the answer to No. 5 is in the affirmative: when was any application made to the Malayan Sharebrokers Association for the approval of the said Goh Ewe Hock, Sylvia Goh Poh and Tan Eng Liak and what was the result ?
- 10 7. Are not the said Goh Ewe Hock and Sylvia Goh Suan Poh infant children of the said Goh Teik Teong .
8. Did not the Defendant or the firm of Sena & Goh apply to the Malayan Sharebrokers Association for the approval of the Plaintiff to be a partner of the firm on the 20th day of April 1959 or some other and what date ?
- 20 9. Did not Tan Eng Liak referred to in paragraph 5 of the Defendant's Defence leave for Japan on the 19th April 1959 or some other and what date ?
10. Did not the said Tan Eng Liak return to Singapore from Japan on the 17th June, 1959 or some other and what date ?
11. Was not the firm of Sena & Goh on the 20th of April 1959 operating an overdraft with the Chartered Bank of \$184,522.11 or some other and what amount ?
- 30 12. Was not the firm of Sena & Goh on the 18th day of April 1959 operating an overdraft with the Mercantile Bank Ltd, of \$16,633.87 or some other and what amount ?
13. Was not the firm of Sena & Goh on the 16th day of April 1959 operating an overdraft with the Chung Khiaw Bank Ltd. of \$24,234.96 or some other and what amount ?
- 40 14. Was not one Tan Sin Seng, an employee of the firm of Sena & Goh indebted to the said firm on the 10th day of March 1959 to the extent of \$109,400/- or some other and what amount ?
15. Was not the said Tan Sin Seng also allowed

In the High Court of the State of Singapore

No. 6.

Plaintiff's Interrogatories.

20th November, 1959.

Continued.

16.

In the High
Court of the
State of Singapore

by the firm of Sena & Goh on the 11th day
of April 1959 to operate an account of the
said firm called "Stock Account No. 2" ?

No. 6.

16. Was not the said "Stock Account No.
2" guaranteed by one Essel Tan to the
extent of \$20,000/- or some other and what
amount ?

Plaintiff's
Interrogatories.

20th November,
1959.

Delivered this 20th day of November,
1959.

Continued.

Sd. Philip Hoalim & Company.

10

Solicitors for the abovenamed
Plaintiff

To the abovenamed Defendant and his
Solicitors, Messrs. Allen & Gledhill,
Singapore.

No. 7.

No. 7.

Defendant's
Reply to
Plaintiff's
Interrogatories

DEFENDANT'S REPLY TO PLAINTIFF'S
INTERROGATORIES

28th November,
1959.

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

20

Suit No. 1008 of 1959

Between

Annie Yeo Siew Cheng (f)
... Plaintiff

and

Atureliya Walendagodage
Henry Senanayake
... Defendant

The answer of the abovenamed
Defendant Atureliya Walendagodage
Henry Senanayake to the Interro-
gatories for his examination by
the abovenamed Plaintiff Annie

30

Yeo Siew Cheng (f) pursuant to the Order herein dated the 16th day of November, 1959.

In the High Court of the State of Singapore

No. 7.

In answer to the said interrogatories I the abovenamed Atureliya Walendagodage Henry Senanayake make oath and say as follows :-

Defendant's Reply to Plaintiff's Interrogatories

28th November, 1959.

Continued.

1. To the 1st Interrogatory I say - Yes.
2. To the 2nd Interrogatory I say - Yes.
- 10 3. To the 3rd Interrogatory I say that the approval of the Malayan Sharebrokers Association was only in respect of the transfer of the membership of the Malayan Sharebrokers Association from J.S. Nathan of 9 De Souza Street, Singapore to Goh Teik Teong who would carry on business in partnership with me under the firm name of Sena & Goh at No. 22 Market Street, Singapore.
4. To the 4th interrogatory I say - Yes.
- 20 5. To the 5th Interrogatory I say - Yes but such approval is only a formality.
6. To the 6th Interrogatory I say that information was conveyed to Cooper Brothers & Co. the Secretaries to the Malayan Sharebrokers Association by letter dated the 11th June 1959. No reply has been received.
7. To the 7th Interrogatory I say - Yes.
8. To the 8th Interrogatory I say that a letter dated the 30th April 1959 was written to the Malayan Sharebrokers Association
30 informing them of the assignment of 5 shares in the business of Sena & Goh to the Plaintiff.
9. To the 9th Interrogatory I say that Tan Eng Liak did leave for Japan on or about the 19th April 1959.
10. To the 10th Interrogatory I say that the said Tan Eng Liak did return to Singapore from Japan on or about the 17th June, 1959.

In the High Court of the State of Singapore

No. 7.
Defendant's Reply to Plaintiff's Interrogatories
28th November, 1959.

Continued.

11. To the 11th Interrogatory I say that the firm of Sena & Goh operated an overdraft with the Chartered Bank Ltd. on the 20th April 1959 amounting to \$176,908.33.

12. To the 12th Interrogatory I say that the firm of Sena & Goh operated an overdraft with the Mercantile Bank Ltd. on the 18th April 1959 amounting to \$18,038.74.

13. To the 13th Interrogatory I say that the firm of Sena & Goh operated an overdraft with the Chung Khiaw Bank Ltd. on the 16th April 1959 amounting to \$24,196.28.

10

14. To the 14th Interrogatory I say - Yes.

15. To the 15th Interrogatory I say - Yes.

16. To the 16th Interrogatory I say - Yes.

Sworn to at Singapore this) (sd.) A.W.H.
28th day of November 1959) Senanayake.

Before me,

Sd. V. Rajam.

A Commissioner for Oaths.

20

Plaintiff's Evidence

PLAINTIFF'S EVIDENCE

No. 8.

No. 8.

ANNIE YEO SIEW CHENG

Annie Yeo Siew Cheng

Monday 17th April, 1961.

17th April, 1961.

P.W.1. Annie Yeo Siew Cheng, sworn, states in English

Examination

I live at No. 23, Dunsford Drive, Singapore.

I am the plaintiff.

I have been a remiser since 1955.

A remiser is a broker in a firm of share brokers.

30

I have been working as such in Sena & Goh since October, 1955.

In the High Court of the State of Singapore

I was the first remiser there.

There were 3 remisers and 2 paid brokers in 1959 in Sena and Goh.

Plaintiff's Evidence

I was a remiser on commission.

No. 8.

I was not paid.

Annie Yeo
Siew Cheng

The office kept a daily collection book.

17th April, 1961.

It was kept by a special clerk.

10

Each remiser has his or her own book.

Examination

When it is given to the remiser, the remiser looks up the list of clients in his or her own book and ascertains what amount is outstanding.

Continued.

On 13.4.59 I went to Dr. Khiani's house at 7 p.m.

She is a friend of mine and invited me for dinner.

20

When I arrived she told me that Mr. Sena, the defendant, was coming to the house.

She told me that the defendant wanted to see me.

I asked her what for.

She said she did not know.

The defendant arrived at about 7.30 p.m.

Dr. Khiani invited him to join us at dinner.

The defendant approached me to buy some of his shares.

30

He said the business was a very good one and that it was a gold mine.

He said that if I joined him I could make the business better.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

17th April,
1961.

Examination

Continued.

He said he knew that I had a number of good clients and that I was bringing in very good business.

He said that I had been long in the firm and that my account was good and that I could be trusted.

He asked me to buy his shares so that I could have a better interest in the firm.

He told me that he distrusted Goh and that if I bought his shares he would make me run the firm for him. 10

He said the business was a flourishing one and that I must not miss this golden opportunity.

He also said that one of my very good clients, Tan Eng Liak, had joined the firm.

I believed what he told me.

He told me to join him as quickly as possible.

He insisted that I take ten shares for \$40,000. 20

I told him that \$40,000 was a bit too much for me.

I told him I would like to take 5 shares first and that if satisfied I would take another 5 shares later on.

Adjourned to 18.4.61 at 10.30 a.m.

18th April,
1961.

Tuesday, 18th April, 1961

P.W.1. Annie Yeo Siew Cheng (On former oath)

The defendant kept on hurrying me to put in the money as quickly as I could. 30

He said that until I paid the money then I am allowed to see the books.

Dr. Khiani asked the defendant "Why all this hurry, give her time."

The defendant replied that he will not let a woman down and that it is her hard-earned money and he would see that everything is all right.

In the High Court of the State of Singapore

He still insisted that I should join him as soon as possible and help him run the business and make it even bigger than Fraser & Co.

Plaintiff's Evidence
No. 8.
Annie Yao
Siew Cheng
18th April,
1961.

10 Dr. Khiani was very pleased about this and she even congratulated me.

She said "Mr. Sena is very kind to you. It's a flourishing business. It's a gold mine where money comes in all the time."

Examination
Continued.

She said she wished she had some money to join Mr. Sena also.

Mr. Sena said to her "Of course you can join me."

But she said she had no money and could not afford it.

20 I believed every word of what Mr. Sena had told me.

He was a good boss and I always respected him as a very rich man.

I had great faith in him.

Towards the end of the conversation on the 13th April we were all very happy about it.

When Mr. Sena was about to leave he invited Dr. Khiani and me to come over to his place on the 17th April.

30 Dr. Khiani and I went there on the 17th April about 7.30 p.m.

He introduced one Mr. Sivam to us.

Mr. Sena said he was the Chief Accountant of the firm and his Income Tax Adviser.

Sivam showed me two sheets of paper scribbled in pencil.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

He told me "these are the assets of the firm."

He confirmed what the defendant had told me previously.

He said the business was flourishing.

He said about \$165,000 changed hands every month.

I understood that to mean that they were buying and selling \$165,000 worth of stocks and shares.

10

I became very interested.

I told the defendant that I would take 5 shares and that if I was satisfied I would take another 5 later.

I paid \$20,000 for 5 shares of \$1,000 each.

Before I left I asked the defendant "What shall I do?"

He said "Go to the office on Monday morning (which was the 20th) and take from Mr. Raja his paying-in book and pay the money into the Chartered Bank."

20

On the 20th April I went to the office about 10 o'clock.

I asked Mr. Raja for the defendant's paying-in book.

I paid \$20,000 into the Chartered Bank as instructed by the defendant about 10.30 a.m.

I got a receipt for the amount paid in - Ex. A.B., p.1.

30

Sometime in the afternoon Sivam came rushing into the office and told me since I had paid the money I must now sign a paper stating that I have seen the accounts - Ex. A.B., p.2.

He told me that that was what the defendant said to him.

At first I did not want to sign it.

I said that honestly I did not see the books yet.

I said "Nothing has been shown to me."

He then replied "Never mind. Since you have paid the money, we want to put you as a partner as quickly as possible.

10

This piece of paper must be shown to the Malayan Share Brokers' Association before they can approve you to be a partner of the firm."

I still refused.

He told me that the piece of paper would be returned to me.

He said "It's just a formality to show to the Malayan Share Brokers' Association."

20

He said that the piece of paper would be returned to me after all the things are over and that I would be taken to a lawyer where a deed of partnership would be drawn up.

I believed all this to be true and I signed it.

A few days later there was a meeting at my house.

The defendant wanted to announce to the brokers that I had joined the firm.

This meeting was supposed to improve the system of working.

30

It took place on the 23rd April at 23 Dunsford Drive.

The Defendant and 3 brokers were there.

They were:

Tan Sin Seng,

Ee Thian Boon

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

Leong Koon Heng.

I think but I am not sure Sivam was there.

Goh Teik Teong was not there.

Rajoo, a paid broker, was not there.

The brokers said the clerical work was not so satisfactory.

The defendant announced that I had joined him.

The defendant told the brokers that anyone could join him if they wanted to.

10

At that meeting the defendant told the brokers it's a good idea to have my photograph taken and put in the papers to attract more clients.

The defendant said that I must take Mr. Goh's place, manage the business for him and sign the cheques.

He said "You don't trust Goh any more."

The meeting broke up about 8.30 or 9 p.m.

On the 29th April Ee Thian Boon told me that he is either delivering shares or collecting money to a client at the Straits Times.

20

He then asked me to come along with him as the defendant wanted my photograph to be published in the papers.

He said instead of calling the photographer to the office it makes it easier for him.

I then went with him to the Straits Times.

I was introduced to one Mr. Khoo.

Ee told Khoo that the Defendant wanted my photograph to be published in the papers.

30

I told Ee "You better make sure. Ring up Mr. Sena. Ask him."

Ee took up the phone and rang up Mr. Sena

at his office about publishing the photograph.

He said Mr. Sena approved and told him to go ahead.

I was then questioned by a man whom I knew a long time ago, a reporter.

He knew me since my swimming days.

He asked me some questions.

10 I told him buying and selling shares are very interesting and that I bought some shares of Mr. Sena's.

My photograph appeared in the papers on 30th April.

This is it - admitted and marked Exhibit P.1.

There was a row on the 30th April.

Goh rang me up and scolded me.

He said "You have no right to have your photograph published in the papers."

20 He said that under the rules of the Malayan Share Brokers' Association no one is allowed to advertise.

I told him to ring up Mr. Sena and deal with Mr. Sena himself.

On 4th May the defendant invited me and the brokers to his house.

He did not attend because he was sick.

Tan Sin Seng, Leong Koon Heng, and Wong Peng Yui attended.

30 Wong Peng Yui had just bought from Mr. Sena some shares.

It was a happy gathering.

Everything seemed to be all right.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

Up to the 4th May I had not taken Mr. Goh's place yet.

I was still working as a remiser.

I took Mr. Goh's place when he went on leave at the end of May or early in June as managing partner.

I was then signing cheques.

I had a chance to look into the books.

The books were kept on the 2nd floor.

The office was upstairs.

10

The brokerage business was done downstairs.

Before that I had access to my own book "Day to Day Collection Book" - admitted and marked Exhibit P.2.

I looked into a big book showing the accounts of the firm.

I then found out that there was a lot of bad debts which could not be collected, amounting to hundreds of thousands.

One was Tan Sin Seng, the paid broker.

20

Another was Rajoo, a paid broker.

At the same time the defendant used to ring me up and ask me to do as much collection as I could.

He said that his overdraft was very heavy.

He said it was over \$250,000.

I then became very suspicious.

I realized that I had been tricked into the business.

It was almost the end of June then.

30

I waited till Goh's return.

He returned about that time, after an

absence of a fortnight.

I consulted Wong Peng Yui.

I was very annoyed.

I told Wong "Let us go and see Sivam."

I wanted to find out more things and the actual position.

I went with Wong and saw Sivam two or three times at his office at Bonham Building.

10

I scolded him and told him that he and the defendant and the whole lot swindled me.

I said had I known the firm was so bad I would never have come in at all and pay such a fantastic price for it.

He was very disheartened.

Sivam assured me that the debts could be collected.

20

But he did say "Since you had paid the money the real truth is that Mr. Sena knew that the firm was bad and he wanted to lighten his burden."

When Goh returned I called for a meeting about the 29th June at the office.

Mr. Sena, Goh, Wong, Tan Eng Liak, and I were present.

30

At that meeting I said "Mr. Sena, what is all this about? You are hiding a lot of things from us. Since we have paid the money, we have no alternative but to know the truth."

He said "Put in more money. The overdraft is worrying me. You must help me."

I said I wanted my money back and that it was a rotten firm and I would not

In the High Court of the State of Singapore

Plaintiff's Evidence
No. 8.
Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence
No. 8.
Annie Yeo
Siew Cheng
18th April,
1961.

Examination

Continued.

put in a cent more.

Tan Eng Liak put up a suggestion.

He said "Mr. Sena we have just put in between the three of us \$80,000. Now you want more money. It looks like a bottomless pit. We will not put any more money."

Mr. Sena replied "If you people won't want to put any more money, I will take drastic action and don't blame me."

The meeting broke up.

10

The next day I went with Wong to see Mr. Sena at his office and begged Mr. Sena to return us the money because the firm is in bad shape and we did not want to be partners.

He still insisted that we put in more money.

We went again the following day.

His reply was the same.

We were so fed up that we consulted our lawyers.

Cross-
Examination

I was appointed Receiver and Manager of Sena and Goh on a salary of \$750/- per month.

20

I consented to be so appointed.

I do not know if an application was made to Court for removal of me and others from the office of Receivers and Managers.

I have not committed anything to memory.

Not one word has been learned by heart.

I came to know about the application when I got the letter about the discharge.

I can't remember if I was told about it before that.

30

I was never a partner of the firm.

Q. There was never a verbal agreement

between you and Mr. Sena to go into partnership?

A. No.

Q. Was there an oral agreement between you and Mr. Sena to go into partnership?

A. I agreed to become his partner on believing his representation that the business was good.

10

Q. You discovered at the meeting in May that the business was not good?

A. I found that the business was not good when Mr. Goh was on leave and I took his place.

Q. When you found out that the business was not good did you want to get out of the business?

A. Yes, and I wanted to get back my money.

20

Q. Your evidence is that you found out what you thought to be the position of the firm when you were put in charge of matters on Mr. Goh's going on leave?

A. When Mr. Goh went on leave I found out that the business was entirely different from what Mr. Sena had told me. It was not a gold mine as Mr. Sena had told me.

30

It was a losing business.

Q. Were you looking into the state of affairs then and not previously?

A. Yes.

Q. What do you refer to by the word "then"?

A. I meant at the time Goh was on leave. Goh went on leave sometime in May.

In the High Court of the State of Singapore

Plaintiff's Evidence
No. 8.
Annie Yeo
Siew Cheng
18th April, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence
No. 8.

Annie Yeo
Siew Cheng
18th April,
1961.

Cross-
Examination

Continued.

Q. As I understand your evidence it is that there were several hundreds of thousands of dollars which could not be collected?

A. Yes.

Q. You ascertained that in May?

A. Yes.

Q. You mentioned Tan Sin Seng and Rajoo?

A. Yes.

Q. Did you ascertain the amount owed by Tan Sing Seng?

10

A. I know it was over hundred thousand.

Q. And Rajoo?

A. Not so much.
About \$10,000.

Q. These were the biggest amounts?

A. Yes.

Q. The others?

A. Some clients.
The amounts were about \$10,000.
I can't remember the figures.

20

Q. Your evidence of several hundreds of thousands is incorrect.

It was about \$120,000?

A. Yes.

When I said several hundreds of thousands I was referring to the business when it was closing.

Q. Do you think that \$120,000 outstanding in a brokerage firm is a particularly large amount?

30

A. That I don't know.

I cannot understand why Mr. Sena is

grumbling about the overdraft.

In the High Court of the State of Singapore

Q. Was Mr. Sena grumbling about the overdraft in May?

A. Yes.

Plaintiff's Evidence

Q. He had overdraft facilities with the Chartered Bank to about \$200,000?

No. 8.
Annie Yeo Siew Cheng
18th April, 19. .

A. Yes.

I don't know how he fixed his overdraft. He had an overdraft with 3 banks. He said he had a clean overdraft with Chartered Bank. I don't know what it means.

Cross-Examination.

Continued.

10

Q. Mr. Sena never used the words "clean overdraft"?

A. He did.

Q. In May there were overdraft facilities and there were debts of \$120,000 due to the firm. When the business closed down there were several hundreds of thousands of dollars due to the firm?

20

A. Yes.

1 p.m. Adjourned to 2.30 p.m.

(sd.) J.W.D. Ambrose

2.30 p.m. Resumed.

Wednesday 19th April 1961

19th April, 1961.

30

P.W.1. Annie Yeo Siew Cheng (On former oath)
(continued)

Q. You had had access to the books in the absence of Mr. Goh?

A. Yes.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence
No. 8.
Annie Yeo
Siew Cheng
19th April,
1961.

Cross-
Examination

Continued.

I looked at the Collection book.

That was the only material book for the purpose of this case.

I was surprised that a big amount \$120,000 was owed by an employee of the firm.

I thought it was impossible for him to pay.

Q. In fact he owed the money on personal share transactions dealing in differences for himself? 10

A. Yes.

Q. You are quite familiar with fluctuations of the share market?

A. Yes.

Q. Is it not a fact that you had made money in various business activities?

A. Yes.

Q. You made the money?

A. I made the money because friends gave me the tips as to what shares to buy. 20

Q. How much were you worth when you agreed to buy 5 shares from the defendant?

A. I object to the question.

Q. Were you worth more than the \$20,000 you paid the defendant?

A. I was worth a little more.

Q. There was talk of you purchasing \$40,000/- worth of shares. Were you worth a little more than \$40,000/-? 30

A. I did not have \$40,000/- at that time.

In shares and landed property I had more than \$40,000.

- Q. After the dissolution of the partnership were you not offering to buy the seat of Sena & Goh in the Malayan Share Brokers' Association for \$60,000 or \$70,000?
- A. Yes, the licence.
I offered \$57,500 for the seat, goodwill and assets of Sena & Goh.
- 10 Q. To be approved by the Malayan Share Brokers Association you would have to tell them that you are worth \$250,000?
- A. Yes.
- Q. You applied to the Malayan Share Brokers' Association for admission with a view to acquiring the seat of Sena & Goh?
- A. Yes.
- Q. You told them you were worth \$250,000?
- 20 A. I had to find a guarantor for \$250,000.
- Q. There were others interested in sharing the guarantee?
- A. Yes.
- Q. The seat was to be yours and they could come into it on your terms?
- A. Yes.
- Q. You had been with the defendant as a remiser for 5 years?
- A. Yes.
- 30 Q. He did not know what was going on in the share brokers' business because he had the jewellery business to attend to?
- A. He should know because he was a partner.
- Q. You were the first to join the defendant

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.
Annie Yeo Siew Cheng
19th April, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence
No. 8.

Annie Yeo
Siew Cheng
19th April,
1961.

Cross-
Examination

Continued.

as a remiser?

A. Yes.

I could see the business expand.

I was able to get more business

Q. Your commissions became bigger and bigger?

A. Yes.

Q. Your holdings of shares became bigger and bigger?

A. Yes.

Q. Did you say to the defendant that you had loose cash? 10

A. No.

Q. You put bets on horses for Dr. Khiani?

A. No.

Q. You put bets on horses for the defendant?

A. Yes.

Q. You suggested to the defendant that you could make money for him on horses?

A. No.

Q. He gave you \$200/- and you brought back \$500/-? 20

A. No.

Q. The next time he gave you \$500/- and you lost \$300/-?

A. No.

Q. These are the only occasions on which he approached you to place bets on horses?

A. The defendant gave me \$100 on one occasion to bet on any horse which I thought could win. 30

I cannot remember whether I made for him or lost for him.

Another time he asked Mr. Goh to give me another \$100/- to place the bet.

I refused.

I told Mr. Goh it's no point of me putting for him without him knowing what horses I am putting on.

The money was given back to Mr. Goh.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo Siew Cheng

19th April, 1961.

Cross-Examination

Continued.

10

1 p.m. Adjourned to 2.30 p.m.

(sd.) J.W.D. Ambrose.

2.30 p.m. Resumed.

Q. Tan Eng Liak was already a partner when you paid the \$20,000?

A. Yes.

Q. He had put in \$40,000 for 10 shares of the firm?

A. Yes.

Q. He was a man of wealth?

20

A. Yes.

Q. You came to know that he had acquired the shares?

A. Through the defendant at the house of Dr. Khiani and not before that.

Q. When you came to know that you came interested in acquiring shares in the business?

30

A. The defendant told me about the business being a gold mine first and then he told me that Tan Eng Liak had acquired shares.

Q. Did not the business appear to be

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo Siew Cheng

19th April, 1961.

Cross-Examination

Continued.

flourishing in February or March, 1959?

A. Yes.

Q. Would you yourself have described it as a substantial business?

A. Yes.

Q. Dr. Khiani described it as a gold mine?

A. Not Dr. Khiani but the defendant.

I understood a gold mine to be a prosperous business and plenty of money to earn.

10

I thought so because of the other words used.

The word "gold mine" was used after the other descriptions.

Q. By itself the word is ambiguous?

A. To me a gold mine is something very valuable.

Q. A very valuable thing would not be necessarily a prosperous thing?

20

A. I understood the word to mean something valuable.

He said "It's a gold mine."

I did not understand it to be a gold mine literally.

Q. Did you keep a diary of the conversation at Dr. Khiani's house?

A. No.

But I remember it very well.

30

Q. You have never in any correspondence referred to the other description about "prosperous business". Look at Exhibit A.B., page 5?

- | | | |
|----|---|--|
| | A. I instructed my solicitor to say all that is contained in Exhibit A.B., page 5. | In the High Court of the State of <u>Singapore</u> |
| | Q. You say that Mr. Sivam gave you a totally incorrect picture of the financial position of the firm? | Plaintiff's Evidence |
| | A. Yes. | No. 8. |
| | Q. The statements made by Sivam were untrue? | Annie Yeo Siew Cheng |
| 10 | A. Yes. | 19th April, 1961. |
| | Q. This was a trick by Mr. Sena to get you to part with your money? | Cross-Examination |
| | A. That I don't know. | Continued |
| | Q. How much did you earn as brokerage during the period you were a partner, that is, from the time you took over from Mr. Goh till the dissolution? | |
| | A. I do not know. | |
| 20 | Q. Do you know how much the firm earned as brokerage before you took over? | |
| | A. No. | |
| | Q. Did you at any time enquire of the accountants how much brokerage was earned by the firm? | |
| | A. No. | |
| | Q. Did you enquire of the partners? | |
| | A. No. | |
| | Q. Did you enquire what the expenses were? | |
| 30 | A. No. | |
| | Q. Would the profits be gross receipts less the overheads? | |
| | A. Yes. | |

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

19th April,
1961.

Cross-
Examination

Continued.

Q. Did you not enquire what the profits were?

A. No, but I know there were outstanding debts.

The firm owed money to the bank.

The defendant worried about the overdraft.

Q. The defendant has paid up the debts of the firm?

A. Yes.

Q. When you were the Receiver of the firm you collected two millian dollars? 10

A. There were three Receivers.

Mr. Jee Ah Chian one of the Receivers would know.

Mr. Jee Ah Chian was in charge of the financial side.

Q. All the three Receivers were paid a total of \$3.000/- per month?

A. Yes.

Q. Was Tan Hin Jin the one who did all the work? 20

A. I and Tan Hin Jin.

Q. Jee Ah Chian prepared the accounts. You and Tan Hin Jin collected the money and gave receipts?

A. Yes.

Q. Did Jee Ah Chian show you a copy of the accounts?

A. Yes.

Q. You were Receivers for how long? 30

A. For 8 to 10 months.

Q. The Receivers were to receive the money

for the partners?

A. Yes.

Q. There was no suggestion of making any of the partners bankrupt?

A. No.

Q. There was no suggestion in the winding-up that the partnership could not pay its debts?

A. No.

But the business still showed a loss.

Tan Sin Seng could not pay up \$109,000/-,

Q. There was a broker named Raju, who is still with Sena & Co.?

A. Yes.

Q. He owed the firm \$10,000/- in May, 1959.

You formed the impression then that it was a bad debt?

A. Yes.

Q. What was his salary?

A. I don't know.

Q. You were happy when you found when you were Receiver he had deposited his share as security?

A. Yes.

Q. When did Raju become a broker for Sena?

A. In 1957.

Q. Subsequently his debt increased to \$30,000?

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng

19th April, 1961.

Cross-Examination

Continued.

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In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

19th April,
1961.

Cross-
Examination

Continued.

A. Yes.

When I went to see Sivam on Goh's return from leave and told him about the bad debts he assured me that as for Raju's account that one was all right because he had shares and a title deed on a piece of land.

Q. When you saw Sivam how much was Raju owing?

A. I can't remember.

He had not come back from India.

Q. On 11th May, 1959, Raju owed the firm \$21,270.07? 10

A. Yes.

Q. On 11th May, 1959, Tan Sin Seng owed the firm \$37,065.92?

A. Yes.

Q. When you said that you discovered on looking at the books for the first time in the early part of May, 1959, that Tan Sin Seng owed the firm \$120,000 that was incorrect, because that sum included the amount of the pro-note which you discovered for the first time when you were a Receiver? 20

A. Yes.

Adjourned to 20.4.61.

20th April,
1961.

Thursday, 20th April, 1961

P.W.1. Annie Yeo Siew Cheng (On former Oath)

Q. The securities deposited by Raju were worth half the amount of the debt, \$21,000? 30

A. I do not know.

I was satisfied as there were some securities.

Q. Raju after 11th May went on buying and

selling shares?

A. He was in India.

Q. Did you ascertain after 11th May what the further indebtedness to Raju was?

A. I did not, but we sold some of his shares.

I was not worried about his indebtedness.

Q. Raju paid off the debt of \$30,000 in cash?

A. He paid but I do not know in what form.

Q. On 11th May outside customers owed the firm \$150,720.61, did you know that.

A. I knew that.

Q. The \$150,000 was collected?

A. Yes. That is the clients' money. It is not a debt. They are shares which were paid for.

Q. The only cause for worry was Tan Sin Seng?

A. Yes. He had two accounts.

Q. Tan Sin Seng is the brother of Dr. Essel Tan?

A. Yes.

Q. Dr. Essel Tan had guaranteed Tan Sin Seng's account for losses up to \$20,000?

A. Yes.

Q. That was on Stock Account No. 2?

A. Yes.

Q. Did you know about that guarantee?

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo Siew Cheng

20th April, 1961.

Cross-Examination

Continued.

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In the High
Court of the
State of
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Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination

Continued.

A. I did not know it until I became Receiver.
The guarantee was in the safe.

Q. Tan Sin Seng was a broker in the firm?

A. Yes.

Q. You were worried because an employee could
not pay up \$37,000?

A. Yes.

Q. When you took over from Goh you had a look
at this book and found that several hundred
thousand dollars were owing to the firm?

10

A. I think it was at the end of May or early
in June.

Q. Did you know when you were a remiser and
Tan Sin Seng was a broker that in the first
half of 1958 he made \$81,000?

A. No. I am surprised to hear that.

Q. Did you do substantially well during the
same period?

A. I did not speculate in shares during the
first half of 1958.

20

Q. If you had known about Tan Sin Seng making
\$81,000 in the first half of 1958 would
you have worried about his debt of \$37,000
in 1959?

A. I think I would still be worried.

Q. You said no employee could make \$37,000.
Are you prepared to concede that your
shock was due to inexperience?

A. I don't say I was wrong in thinking that
a broker could not earn \$37,000 by way of
commission.

30

Q. It is not impossible for a broker to make
money by buying and selling shares?

A. By speculation he could make money.

Q. Tan Sin Seng was a speculation?

- A. When I took over but not before.
I did not know that before I took
over.
- Q. In the second half of 1958 Tan Sin
Seng lost \$65,000 in his speculations?
- A. I do not know about that.
- Q. Was the price of shares going down in
the latter half of 1958?
- A. I don't remember.
- 10 Q. You are not concerned with the losses
of the firm for 1958?
- A. That is so.
- Q. You are concerned with the position
as on 20.4.59 when you paid your
money?
- A. Yes.
- 20 Q. The defendant's attitude when faced
with the overdraft was that if you
and the others did not put in more
money he was pulling out?
- A. Yes.
- He said "I am going to take drastic
action and don't blame me".
- Q. He was talking about the overdraft
which he had personally guaranteed?
- A. We did not talk about that subject.
- Q. You were discussing the overdraft of
the firm which was personally
guaranteed by the defendant?
- 30 A. Yes. That was part of the subject
discussed.
- Q. The defendant said that he was not
prepared to continue guaranteeing the
overdraft personally?
- A. Yes.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination.

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination.

Continued.

Q. He said that you were all trading on his money?

A. No.

Q. And that he was not prepared to have you all trading solely on his money and that it was up to you to put in your money with his?

A. No.

Q. He said "I am willing to let my \$250,000 remain on overdraft as it is if you people put in more money"?

10

A. Yes.

Q. You people were not prepared to put in more money?

A. That is correct.

Q. Within a few days Tan Eng Liak issued a notice of dissolution?

A. Yes.

Q. That was because the defendant intended to withdraw his personal guarantee of the overdraft?

20

A. Yes.

Q. Had the defendant not threatened to do that would you not have been prepared to continue?

A. Yes.

Q. Had the defendant not demanded that you put in more money you would have continued?

A. Yes.

Q. Your complaint is based on the indebtedness of Tan Sin Seng and nothing else?

30

A. Yes, and I did not like the gambling?

Q. When a broker in the firm buys and sells

shares through the firm it looks like gambling?

A. Yes.

Q. It need not necessarily be so?

A. That is correct.

Q. You yourself bought shares from time to time for your own account?

A. Yes.

Q. When you were a remiser and after the 20th April, 1959?

A. Yes.

Q. There was no difference in form between your transactions and Tan Sin Seng's transactions?

A. That is correct.

Q. Of the shares you bought for your own account you sold them when they went up and have made a profit?

A. Yes.

Q. Tan Sin Seng made a loss?

A. Yes.

Q. I assume that came from buying the wrong shares or selling the shares which he had not got and having to buy in at the date of delivery to fulfil his contract?

A. Yes.

Q. On these transactions it is the Association's practice not to disclose the name of the buyer to the seller or vice versa?

A. That is right.

Q. If a person sells shares through your firm the seller expects to get the

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April, 1961.

Cross-Examination.

Continued.

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In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination.

Continued.

agreed price from the firm which guarantees
the payment?

A. Yes.

Q. That is why you were worried about Tan Sin
Seng?

A. Yes.

Q. All the others paid up?

A. Yes.

Q. You earned \$5,553.89 as commission for
1958?

10

A. Yes.

Q. Going through the contracts you saw, what
did you expect the firm to earn per day
by way of brokerage?

A. Between \$100 and \$200 up to \$1,000 a day.

Q. What were the overheads?

A. About \$3,000/- per month.

Q. The net profits of the firm would be about
\$5,000/- per month?

A. \$5,000/- or more.

20

Q. You were interested in that but not in
gambling?

A. Yes.

Q. There were 100 shares and you wanted to
buy 5 shares?

A. Yes.

Q. You estimated your share of the net
profits to be \$250/- p.m.?

A. Yes.

Q. If you got that you would have been
happy?

30

A. I expected \$500/- or \$600/- per month.

I expected the net profits to be \$15,000/- per month.

In the High Court of the State of Singapore

Q. The usual percentage for brokerage is 1/8%?

Plaintiff's Evidence

A. If we buy a \$2/- share the brokerage is 2 cents. The brokerage varies.

No. 8.

Q. You knew what the commission on shares was.

Annie Yeo Siew Cheng

So long as you got your profit you were happy to put your \$20,000 into the business?

20th April, 1961.

A. Yes.

Cross-Examination.

Q. You put your money in and you got \$250 per month or more that's a gold mine, is it not?

Continued.

A. Yes.

Q. In 1959 things were bad?

A. Yes.

Q. The contracts were not so great as during the earlier period?

A. I can't remember.

Q. In 1959 there was a slight rise towards the end?

A. The end of 1959 was good.

Q. You realized in April, 1959, that it was a quiet time?

A. Yes.

Q. If the firm made \$5000/- per month at that time it was a gold mine?

A. Yes.

Q. So long as it made something it was a gold mine?

10

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In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination.

Continued.

A. Yes.

Q. You were worried about Tan Sin Seng having entered into contracts on which the firm had to pay out?

A. Yes.

Q. Tan Sin Seng's contracts and the \$109,000 promissory note were not matters for which you were liable?

A. I was not liable for that.

I admit I was mistaken in worrying about Tan Sin Seng's debt.

10

Q. Stock Account No. 1. related to all Tan Sin Seng's past transactions. You were not concerned with it. Some of the \$37,000 debt was concerned with this?

A. Yes.

Q. Stock Account No. 2 was his current transactions. You were only concerned with that?

A. Yes.

20

Q. You thought you were a partner from 20.4.59?

A. Yes.

Q. Why did you not stop Tan Sin Seng from speculating?

A. He was given permission to speculate before I came in.

First I did not know what was going on.

Sivam told me about the guarantee but I did not believe it.

30

Q. Would you concede this? If there was a guarantee for Tan Sin Seng's debts on Stock Account No. 2 and that Tan Sin Seng was within it, financially the firm was all right on the day you saw Sivam?

A. Yes.

Q. If the debtors paid up there was money coming in, that's \$200,000?

A. Yes.

Q. Would you be prepared to say on that that the firm was a gold mine?

A. Yes.

Q. If Dr. Essel Tan honoured his obligations and Tan Sin Seng had not gone beyond \$20,000 everything would have been all right?

A. Yes.

Q. You were worried about Tan Sin Seng speculating?

A. Yes.

Q. If Tan Sin Seng went beyond \$20,000 he was to stop?

A. Yes.

He went beyond \$20,000.

Q. Tan Sin Seng went on speculating?

A. Yes.

Q. You did not like it?

A. Yes.

Q. Were not some of his contracts entered into between 20.4.59?

A. It was a continuous thing.

Both Sena and Goh should have stopped him.

I called a meeting and wanted to know the position.

Tan Sin Seng was in the meeting.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination.

Continued.

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20

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In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination
Continued.

I told the defendant I was going to ask more questions about Tan Sin Seng and that he should stay out.

The amount of Tan Sin Seng's debt was not stated.

No decision was taken to stop Tan Sin Seng.

That was the last meeting.

It was held on 29.6.59.

There was one meeting just before this one.

10

1 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.B. Ambrose.

2.30 Resumed.

Q. Look at this book, the Outstanding Debtors' Account - marked Exhibit D.1 for identification.

The entries were made daily. Did you know that?

A. I did not know that.

Q. When the party paid the amount owing his name was crossed off?

20

A. Yes.

Q. Tan Sin Seng had two accounts, Stock Account No. 2, and his personal account Stock Account No.1.

Tan Sin Seng sold shares for future delivery to Sena & Goh towards the end of 1958 and beginning of 1959 to be taken into Stock Account No. 1.

He in fact sold short.

30

He did not have the shares and was debited with the difference?

A. I don't know.

Q. On Stock Account No. 2 on 23rd May, 1959, Tan Sin Seng had a credit balance of \$14,000?

A. I can't remember.

Q. On the same day he owed \$53,000 on contracts entered into before 20th April, 1959?

A. I don't know.

10

Q. Did you know he was selling to the firm?

A. No.

Q. Did you know that on 16.5.59, Tan Sin Seng owed \$43,996.14 on Stock Account No.1 on forward contracts?

A. No.

Q. Up to the appointment of the Receivers, Tan Sin Seng had not exceeded in losses his guarantee?

20

A. I did not know that.

I would never have gone into the firm if I had known of the gambling without shares.

Q. You would never have gone into the firm if they were gambling without shares even if it was a gold mine?

A. I would not.

30

Q. You say that the firm was gambling in such a manner that you would not have gone in if you had discovered?

A. I do.

Q. You say that because of the position of Tan Sin Seng?

A. Not only Tan Sin Seng.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo Siew Cheng

20th April, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 8.

Annie Yeo
Siew Cheng

20th April,
1961.

Cross-
Examination

Continued.

Q. Who else?

A. Raju.

Q. Next one?

A. The other brokers I don't know.

Q. Buying of shares from Tan Sin Seng had
ceased before you were in?

A. I don't know.

Q. When the firm discovered that Tan Sin
Seng had been selling them short they
stopped it and took a pro-note from Tan
Sin Seng for \$109,000 and they waited
for the rest of the damage, \$5,000?

10

A. I was unaware of that.

If his gambling had been stopped it would
have been all right.

Q. Do you suggest that Stock Account No.2
was a gambling account?

A. I think so. I think he was gambling with
the firm.

Nobody had control over Tan Sin Seng.

20

Q. Did you gamble in differences?

A. No.

I can deliver shares when called upon.

I have never played short.

Q. In 1958 you traded in contra to the
extent of \$38,558.34?

A. I don't keep a record.

I traded in contra.

Q. Trading in contra may be gambling or may
not be gambling?

30

A. Yes.

It is not gambling when one has the

shares to deliver when called upon or the money to buy the required shares in the open market.

It is gambling when the market goes down you keep buying shares on a falling market hoping that when you come to sell the price you get will at least be the average of all the prices you paid.

10

Q. If you have to buy and sell shares and don't have the scrip that is not gambling so long as you have the money to pay the difference?

A. I agree.

Adjourned to a date to be fixed by the Registrar.

(4 more days will be required).

(Sg.) J.W.D. Ambrose.

Certified true copy.

20

Sd. K.J. Perera

13.6.61.

PRIVATE SECRETARY TO JUDGE,
COURT NO. 6
SUPREME COURT, SINGAPORE.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 8.

Annie Yeo
Siew Cheng
20th April, 1961.

Cross-Examination

Continued.

No. 9.

COURT NOTES

Monday, 17th July, 1961.

Hoalim:

I apply for leave to amend the Amended Statement of Claim by restoring the original claim as pleaded.

30

No. 9.

Court Notes

17th July, 1961.

In the High
Court of the
State of
Singapore

Smith:

I have not received any notice of this application. If this is allowed, I shall have to ask for an adjournment.

No. 9.

Court Notes

I would ask for costs, i.e. for getting up the case as regards the additional portions.

17th July,
1961.

Hoalim:

This is not anything new.

Continued.

COURT:

10

Leave granted to amend the Amended Statement of Claim by restoring the original Statement of Claim.

Plaintiff is directed to file and deliver an Amended Statement of Claim and a Further Amended Statement of Claim.

Leave granted to defendant to make all consequential amendments of the Defence.

Costs of the Amendment and consequential amendments including a fee to cover the getting up of the Pleading restored to be the defendant's in any event.

20

Adjourned to 19th July 1961 at
10.30 a.m.

(Sd.) J.W.D. Ambrose.

Plaintiff's
Evidence

PLAINTIFF'S EVIDENCE
No. 10.

No. 10.

P.W.1. Annie Yeo Siew Cheng (Continued)

Annie Yeo
Siew Cheng

I paid the money on 20.4.59.

19th July, 1961

That day I gave a note - Ex. A.B.2.

30

Examination
in Chief

I was interviewed by the committee of Malayan Sharebrokers' Association shortly after 30.4.59.

Mr. Sena and Mr. Goh took me there.

I was shown Ex. A.B.2. by the committee.

I had one interview.

Mr. Sena and Mr. Goh were interviewed individually.

I was the last to be interviewed individually.

Mr. Goh went in first.

Then Mr. Sena.

10 It commenced at 4.30 or 5 p.m. and lasted about 1 hour.

So far as I know I have not been approved.

I was disapproved.

Mr. Goh went in again.

When Mr. Sena was left alone with me he whispered to me to answer the questions according to Ex. A.B.2.

20 I was appointed as one of three Receivers and Managers in Suit No. 903/1959 in which Tan Eng Liak was plaintiff and sued for dissolution of the firm.

About 27.7.1959 each of the Receivers received a copy of the Balance Sheet for the year ending December, 1958.

This is the copy - admitted and marked Ex.P .3.

What Mr. Sivam showed me at Mr. Sena's house on 17.4.59 was not similar to this Balance Sheet.

30 It consisted of sheets of loose paper with figures scribbled on them.

Q. Were there any further partnership meetings after the interview with Malayan Sharebrokers' Association?

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 10.

Annie Yeo Siew Cheng

19th July, 1961.

Examination in Chief

Continued.

Cross- Examination

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

19th July,
1961.

Cross-
Examination

Continued.

A. Yes.

Q. How many?

A. There were 4 and I attended 3.

Q. The last partnership meeting was when?

A. In the office at the end of June, 1959.

Q. You continued to carry on as a partner in the firm for approximately 5 to 6 weeks after the meeting with the Malayan Sharebrokers' Association?

A. Yes.

10

Q. At the meeting at end of June, the defendant threatened to withdraw his guarantee of the overdraft?

A. Yes.

Q. Had he not done so, the partnership would have continued?

A. I wanted to get out as the firm was losing money like hell.

Q. Up to the moment you looked at the Collection Books and were not satisfied with them the Malayan Sharebrokers' Association had not given any indication that you were not approved?

20

A. I heard there was a certain circular that I was not approved but not at that time.

Q. You attended a meeting at the end of June, 1959, as a partner?

A. As an intended partner.

Q. Mr. Sena asked you for the additional money as a partner and up to that time neither the firm nor you had received any notification from the Malayan Sharebrokers' Association that you were not acceptable?

30

A. I did not receive any letter officially.

I think there was a circular from the Malayan Sharebrokers' Association which went round.

In the High Court of the State of Singapore

Q. After the dissolution you got some indication that you had not been approved?

Plaintiff's Evidence

A. Yes.

No. 10.

Q. Was it verbal?

Annie Yeo Siew Cheng

A. Yes.

19th July, 1961.

10

Q. From whom?

A. It was hearsay.

Cross-Examination

Q. The firm of Sena & Goh never received any notification from the Malayan Sharebrokers' Association that you were not acceptable?

Continued.

A. I can't remember.

Q. You know that during the time you were manager of the firm and when you were a receiver and manager no communication was received from the Malayan Sharebrokers' Association suggesting that you were not acceptable.

20

A. I am not sure. There may have been a circular.

Q. Had you in fact not been acceptable and had it been notified you would have been the first person to rely on it to get your money back?

30

A. Yes.

Q. You signed Ex. A.B.2 at Mr. Sivam's request?

A. I signed it because Mr. Sivam said that he was instructed by Mr. Sena.

Mr. Sivam was Accountant and Adviser on Income Tax.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

19th July,
1961.

Cross-
Examination

Continued.

Q. Tooke & Co. were the Accountants to the firm?

A. Sivam was the Accountant.

Q. He was the Chief Accountant of Pereira & Co.?

A. He was doing the work of Accountant for Sena & Goh.

Q. The Balance Sheet was drawn by Pereira & Co., Public Accountants?

A. Yes.

10

Q. They were doing the books of Sena & Goh?

A. Yes.

In the beginning I thought Sivam was connected with Sena & Goh.

I was unaware that he was connected with Pereira & Co.

Q. On 20.4.59 was Sivam paid his salary by Sena & Goh?

A. He was not a paid employee of Sena & Goh.

20

The defendant introduced him as the Accountant of Sena & Goh.

Q. That could mean either he was a paid employee or a person carrying on business as an Accountant?

A. Yes.

He was a professional man rendering professional services to the firm.

Q. You assumed that Sivam had been specifically asked by Mr. Sena to get Ex.A.B.2 signed by you?

30

A. Yes.

Q. This little job would be outside his

real job?

A. Yes.

Q. Before he could ask you to sign he would have had to get instructions from Mr. Sena?

A. Yes.

Q. Mr. Sena had never asked you to do what Sivam said?

A. I asked Mr. Goh about it.

10

Q. Mr. Goh said you must sign it?

A. Wong Peng Yuen also signed a document at the same time.

Q. You both consulted Mr. Goh, your working partner?

A. Yes.

Q. The proper person to arrange for your signing documents was Mr. Goh?

A. Yes.

Mr. Goh did not draw this document.

20

Q. You do not know who drew the document?

A. I do not know.

Q. After your interview with Mr. Goh you signed it?

A. Mr. Goh said "You better sign it if Mr. Sena wants you to sign it."

The original of Ex. A.B.2 is with the Malayan Sharebrokers' Association.

I signed it before Mr. Goh, Mr. Wong and Mr. Sivam.

30

When I signed it I gave it to Sivam.

I had 1 carbon copy myself.

In the High Court of the State of Singapore

Plaintiff's Evidence

No.10.

Annie Yeo Siew Cheng

19th July, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

19th July,
1961.

Cross-
Examination

Continued.

Q. You did not ask Mr. Sena if he wanted you to sign it.

A. I did not.

I hesitated to sign because I did not see the books.

I believed that Mr. Sena wanted me to sign Ex. A.B.2 as a formality to be shown to Malayan Sharebrokers' Association and to be returned to me.

Q. Mr. Sena made the suggestion?

10

A. Yes.

Q. That is a disreputable suggestion?

A. Yes.

Q. You did not ring up Mr. Sena to find out?

A. That is so.

Q. You go to Mr. Goh and he said "If Mr. Sena wants you to sign it, then sign it."?

A. Yes.

20

1 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D. Ambrose

2.30 p.m. Resumed

Q. On 17.4.59 Sivam showed you a sheet of paper similar to this in Ex. P.3.?

A. No.

Q. The body of one sheet was identical.

The 2nd sheet was the same as this in Ex. P.3.?

A. I was shown the assets of the firm.

30

There was no typewritten matter.

He did not show me the draft Balance Sheet of 1958.

In the High Court of the State of Singapore

Q. Do you consider Ex.P-3. accurate?

Plaintiff's Evidence

A. I Don't know.

No. 10.

Q. You have had that Balance Sheet since July, 1959?

Annie Yeo Siew Cheng

A. I don't understand it unless it is explained to me.

19th July, 1961.

10

Q. The objection you had to signing Ex.A.B.2 was that you had not seen the books?

Cross-Examination

A. I wanted to see the Balance Sheet drawn up and certified.

Continued.

Q. You were entitled to see all the books after you became manager?

A. I know.

Some books were with Sivam and not in the office.

20

Q. You could as manager see them?

A. I tried to see the books but Sivam said they were not ready.

Q. What books were you referring to?

A. One was the Balance Sheet.

Books mean accounts to me.

Q. What you were interested in seeing were the books of account?

A. Yes.

30

I wanted to see the assets in the books.

Q. You were not interested in the Balance Sheet?

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

19th July,
1961.

Cross-
Examination

Continued

A. I mean everything.

I wanted to know more.

I wanted documentary evidence as to what
the business amounted to.

Q. You were entitled to see the documentary
evidence as manager?

A. Yes.

I went to see Sivam several times.

Q. All the books were kept in the office?

A. Some were kept by Sivam.

10

He said the accounts were not ready as
some contracts had not closed.

Q. You wanted Sivam to prepare a picture
of the position of the firm?

A. Yes.

Q. At the middle or end of June, 1959, you
asked Sivam for a true picture of the
position of the firm?

A. Yes, and he said the accounts were not
ready.

20

Q. You became manager in beginning of June,
1959, acting in Goh's place?

A. Yes.

Q. During that period you had the Collection
Book and access to the books?

A. Yes.

Q. Nobody stopped you looking at the books?

A. No.

Q. All the business books were kept in the
office?

30

A. In the same building on the 2nd floor.

- Q. There is a book-keeper who keeps the books? In the High Court of the State of Singapore
- A. Yes. Plaintiff's Evidence
- Q. You could have gone to him and asked him to show you the books? No. 10.
- A. Yes, but I could not understand them. Annie Yeo Siew Cheng
- 10 Q. After you had seen the Collection Book at the end of June, 1959, you asked Sivam to give you a general picture of the position of the firm? 19th July, 1961.
- A. Yes. Cross-Examination
- Q. Did you tell Sivam that you wanted to know profits, losses and assets from the beginning of the firm in 1956 until June, 1959? Continued.
- A. Sivam said that he was not able to give all that information.
- 20 Q. Because there were outstanding contracts the fulfilment of which was necessary to give an accurate picture?
- A. Yes.
- Q. Nothing was said to you by Mr. Sena about certified accounts?
- A. Mr. Sena wanted me to take 10 shares for \$40,000.
- I said I could take 5 shares for \$20,000.
- I did not suggest that I would take 10 shares for \$40,000.
- 30 I said I would take more if I was happy.
- Q. You wanted to look at the books with regard to your taking more than \$20,000 worth of shares?
- A. Mr. Sena did also mention something about the Balance Sheet. At least

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

19th July,
1961.

Cross-
Examination

Continued.

he must produce the Balance Sheet for
1957 and 1958.

Q. You said the Balance Sheets mean nothing
to you and that looking at books did not
mean much and that you wanted a real
picture from Mr. Sivam?

A. I needed explanation.

Q. When you said "Honestly I did not see
the books yet" you meant they had not
been shown and explained to you?

10

A. Yes.

Q. Did you not write to Malayan Sharebrokers'
Association at end of June, 1959, saying
that you wanted to become a partner of
the firm?

A. Yes.

Q. When you go into the Malayan Sharebrokers'
Association you go in by one door for an
interview and go out by another door so
that you cannot talk to the next person
who is to be interviewed?

20

A. Mr. Sena came out and tip-toed to my side
while I was waiting in the room before I
was interviewed.

Q. You can't get back from the committee
room to the waiting room. They are 2
adjoining rooms with a door in between?

A. The long room is the committee room.

There is another room.

You go from there through a door to the
committee room.

30

Q. After the interview you are shown out of
the committee room through another door?

A. I can't answer that.

There is a door near the lift.

I was in the passage and not in the

waiting room when I saw Mr. Sena at the door of the committee room which leads to the lift.

He waved at me.

I tip-toed to him.

He did not tip-toe to me.

It was then that he told me to answer according to Ex. A.B. p.2.

10

Q. Did you tip-toe up to Mr. Sena to find out what had happened at his interview?

A. He waved to me.

He beckoned to me.

I understood that he was calling me.

I should not go to him by right because his interview was confidential.

Q. There were several peons outside the door?

A. No.

I had to go because he called me.

20

He whispered to me and then waited for the lift.

I went back into the waiting room.

I was walking up and down in the passage.

Adjourned to 10.30 a.m. - 20th July, 1961.

(Sd.) J.W.D. Ambrose

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 10.

Annie Yeo Siew Cheng

19th July, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Thursday, 20th July, 1961.

P.W.1. Annie Yeo Siew Cheng (On former Oath)

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

20th July,
1961.

Cross-
Examination

Continued.

Q. When you tip-toed to Mr. Sena, where was he?

A. He was near the lift.

I did not go through the swing doors to get to him.

I was in the passage outside the Committee room.

Q. When you went into the Committee Room did you go from the Waiting Room? 10

A. Yes.

Q. When you were asked to go into the Committee Room were you in the Waiting Room?

A. I can't remember.

Q. You remember when Mr. Goh went into the Committee Room?

A. Yes.

Mr. Sena went in after Mr. Goh. 20

Q. When Mr. Sena was asked into the Committee Room, were you and he in the Waiting Room?

A. I can't remember.

Q. No indication was given to you as to how long you would have to wait after Mr. Sena went into the Committee Room for you to be called?

A. I had no idea how long I would have to wait.

Q. You knew you were not to communicate with him? 30

A. Yes.

Q. You knew the consequence would be serious

for him and you?

A. Yes.

Q. You could reasonably expect you would be called immediately Mr. Sena left the Committee Room?

A. It depends on whether the Committee had finished with Mr. Goh. When Goh was in the Committee Room Sena was called into the Committee Room and then Sena came back into the Waiting Room.

Q. Your suggestion is that Goh went in first and after that you never saw him again.

A. I can't remember to say anything about Goh.

Q. The next person to go into the Committee Room was Mr. Sena. After Mr. Sena went into the room, the next time you saw him was at the end of the passage near the lift?

A. Yes.

Q. He beckoned to you and you went up to him and he whispered to you to say what was in the paper?

A. Yes.

Q. You went into the door between the Waiting Room and the Committee Room?

A. Yes.

I tip-toed after speaking to Mr. Sena either to the passage or to the Waiting Room.

Q. You would have no idea how long you would have to wait for your interview?

A. Yes.

Q. When Mr. Sena came out Mr. Goh had left the building?

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 10.

Annie Yeo
Siew Cheng

20th July,
1961.

Cross-
Examination

Continued.

10

20

30

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

20th July,
1961.

Cross-
Examination

Continued.

A. My opinion is he was in the Committee room.

Q. Did you see Mr. Sena go back into the Committee Room after you saw him near the lift?

A. I did not.

Q. You thought Mr. Goh was still in the Committee Room?

A. Yes.

Q. That accounted for the delay in calling you in?

10

A. Yes.

Q. If there was no delay in calling you in it would have been impossible for you to tip-toe down the passage to Mr. Sena and tip-toe back?

A. Yes.

Q. It is not usual for there to be a delay between the finish of one interview and the commencement of the next?

20

A. No.

Q. You had no reason to expect a delay after Mr. Sena was through with the Committee and before you were called in?

A. No.

Q. You had no idea how long Mr. Sena would be detained by the Committee?

A. No.

Q. How long did the interview of Mr. Goh and that of Mr. Sena last.

30

A. They took most of the time.

Mr. Sena was in the Waiting Room longer than 5 minutes.

I was in the passage way,
I could see the lift from there.

In the High
Court of the
State of
Singapore

Q. Do you recognise the signature of
Mr. Goh on this document?

Plaintiff's
Evidence

It is a consent to your being a
partner.

No. 10.

A. I have not seen this before - marked
Ex.D.2 for identification.

Annie Yeo
Siew Cheng

Q. Do you recognize this document?

20th July,
1961.

10

A. I have not seen it before - marked
Ex.D.3 for identification.

Cross-
Examination

Q. Do you remember signing a document
likethis?

Continued.

A. I don't remember signing such a change
in the particulars of the business.

I admit that the signature on Ex.
A.W.H.S.2 attached to the affidavit
of Mr. Sena, filed on the 8th August,
1959, is mine - admitted and marked
Ex.D.4.

20

Q. That was countersigned by Mr. Goh?

A. Yes.

Q. There are no untrue statements in
Ex.D.4?

A. No.

I acted for Goh when he went on leave.

Re-Examination

Mr. Sena promised me a fixed salary.

How much he did not state.

It was to be arranged when Mr. Eng Liak
came back.

30

I had no authority when I acted for Mr.
Goh.

I signed cheques when I acted for Mr.
Goh.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 10.

Annie Yeo
Siew Cheng

20th July,
1961.

Re-Examination

Continued.

I think Tan Sin Seng signed together with me.

Mr. Sena said he would give me a salary and he asked me to wait until Mr. Tan Eng Liak's return from Japan and that a deed would be drawn up then.

When I acted for Mr. Goh I saw a big Collection Book showing the names of persons owing money to the firm.

I received no letter from the Malayan Share-
brokers' Association. 10

I, therefore, thought that I had been disapproved.

Mr. Sena told me in Dr. Kiani's house that I must be approved by the Malayan Sharebrokers' Association.

I believed that Sena instructed Sivam as Sivam alleged when he asked me to sign the document, Ex. A.B.2, because Sena always mentioned Sivam when he spoke to me. 20

No. 11.

Dr. Sybil
Diamond
Gunatillake
Kiani

20th July,
1961.

Examination

PLAINTIFF'S EVIDENCE

No. 11.

SYBIL DIAMOND GUNATILLAKE
KIANI

P.W.2. Dr. Sybil Diamond Gunatillake Kiani
sworn, states in English.

I lived at No. 94-43, Chestnut Drive, formerly, and I live now at No. 74 Chestnut Drive, 9½ m.s. Bukit Timah Road. 30

I am an L.M.S. (Singapore), D.C.M. (London).

I retired from Government Service at end of 1959 in Singapore and at end of 1960 in Johore Bahru.

On 13th April, 1959, I had the plaintiff and defendant at my house.

In the afternoon Mr. Sena rang me up and asked me how he could contact Madam Annie Yeo.

I told him that he was very lucky as she was coming to my house for pot luck that evening and we would be very happy if he could join us and he could meet us in our house.

10

In the end we coaxed him and he accepted our invitation and promised to join us at 7.30 p.m.

I told him that my sister and I would disappear if he wanted to discuss any special business.

He laughed and said it was quite all right.

Annie Yeo came to our house at 7 p.m. and I teased her and said "Your boy friend wants to see you."

20

We chatted till about 7.30 p.m. when Mr. Sena arrived.

I said "Here you are, Mr. Sena. This is the young lady you wanted to meet."

I offered to disappear.

Mr. Sena said it would be quite all right.

Mr. Sena praised Annie Yeo and said she had brought a lot of business to the firm and a lot of rich clients and that she had done excellent work and that the firm had grown from a small one to a flourishing one and that they were making money hand over fist and that it was a veritable gold mine.

30

Mr. Sena was very happy about the amount of business and reiterated more than once that it was a gold mine.

He said that he would like Annie Yeo to take greater interest in the firm and have

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 11.

Dr. Sybil Diamond
Gunatilake
Kiani

20th July,
1961.

Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 11.

Dr. Sybil
Diamond
Gunatilake
Kiani

20th July,
1961.

Examination

Continued.

more authority.

Annie Yeo said "Well, Mr. Sena, Mr. Goh is there, looking after your business. What am I to do?"

Mr. Sena said "I am very disappointed with Mr. Goh. He does illegal things in the firm. He has been paying money on brokerage to a woman who is not in the firm. I have got him criminally in the palm of my hand. I am going to kick him out. I want you, Annie, to take over the whole management of the firm. I want you to buy ten of my shares for \$40,000.

10

I was excited. I broke in and said I would like to buy a share but I haven't got the money.

Mr. Sena said he would let me have a share.

I said I can't take it unless I paid for it.

We went in to dinner and were still discussing the subject.

20

Mr. Sena kept on telling Madam Yeo she must buy the shares and she could become a partner and that he would splash her photograph in the papers and he would see that she was approved by the Sharebrokers' Association and that she would get her salary, bonuses, make all her brokerage and that this would have to be drawn up in a deed in front of lawyers and that as a woman he would see that she was not let down and that he would never let a woman down.

30

He asked Madam Yeo if she knew a very good client of hers had already bought 10 shares of Mr. Goh's.

Madam Yeo said she did not know.

He asked Madam Yeo if she would get all her rich friends to buy shares in the firm.

The firm was a veritable gold mine, he said, and that it would become bigger than Frazer's.

40

After dinner he discussed some more and he was very insistent that Madam Yeo should hurry up and pay her money.

She said "I haven't got all that money now, Mr. Sena.

I will try to get \$20,000 and pay that first. If I am satisfied I will pay you another \$20,000. That will make up the \$40,000."

10

She said "I don't want to go into this blind folded because I must see the books."

He said "Until you become a partner and pay the money only then can you see the books. No firm allows people to see books until they become partners and pay down their money."

20

He said "You know the firm is doing a roaring trade. As a woman I will never let you down. But you come to my house, I will bring my Accountant, Mr. Sivam. He can show you the assets and other business items."

So we all arranged to go to Mr. Sena's house to meet Mr. Sivam.

Again I said my sister and I would not go if he did not want us to go.

He said "Come along. That is all right."

30

I and my sister and Annie went to Mr. Sena's house on 17th April, 1959, in the evening.

This house was a few yards down the same road.

Mr. Sena introduced us to his Accountant Mr. Sivam - identified.

He asked Mr. Sivam to show us the position of the firm.

Mr. Sivam produced a file and some papers in the file.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 11.

Dr. Sybil Diamond
Gunatilake
Kiani

20th July,
1961.

Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 11.

Dr. Sybil
Diamond
Gunatilake
Kiani

20th July,
1961.

Examination

Continued.

He showed them to Madam Yeo.

She could not make anything of the figures.

She said that she could not understand the figures.

Mr. Sena spoke about the prosperity of the firm.

He rushed Madam Yeo to pay the money.

He said "We have to draw up terms about salary, bonuses, holidays."

He said to turn to Mr. Sivam for anything she wanted to know about the business that she was to consult him and that he would take her along and get her money paid and that he would advise her about other matters.

10

Mr. Sena had mentioned in my house about the approval of the Malayan Sharebrokers' Association and he repeated that again and said that she had to meet the other partners and get them to approve her going into the firm and he told her that she must call a meeting at her house of the staff of the firm and that he would introduce her as a new manager of the firm, that she was to sign all cheques, to re-organise the whole firm if she so wanted to do, to engage and dismiss staff, to buy furniture as much as she liked, and that she was not to mind the cost as he was there to meet it.

20

All through this interview at my house and Mr. Sena's I kept urging Madam Yeo to take this golden opportunity to better herself and that of her children and that it was much better than opening a grocer's firm and that a stock-broker had more status than a grocer.

30

I was so thankful to Mr. Sena for giving this girl an opportunity to stand on her own feet.

The meeting broke up at 11.30 p.m.

She said she could only pay \$20,000 and that if she was satisfied she would buy the other shares.

40

Mr. Sena told Madam Yeo to get in touch with Mr. Sivam and pay her money on Monday the 20th April at the office of Sena & Goh.

In the High Court of the State of Singapore

Both Mr. Sena and Madam Yeo are very good friends of mine.

Plaintiff's Evidence

If I had been called by him as a witness I would have given the same evidence.

No. 11.

12.30 p.m. Adjourned to 2.30 p.m.

Dr. Sybil Diamond
Gunatilake
Kiani

10

(Sd.) J.W.D. Ambrose

20th July,
1961.

Examination

Continued.

2.30 p.m. Resumed.

Q. Prior to 13.4.59 you used to telephone Mr. Sena and he used to telephone you quite frequently?

Cross-
Examination

A. Yes, frequently but not quite frequently.

I mean occasionally, once a fortnight or once a month.

Q. These telephone conversations were just conversations?

20

A. Yes.

Q. During the conversations you discussed mutual friends, Mr. Sena's business, the weather?

A. Never.

I talked about my sister or his son.

I never talked about people in the neighbourhood.

Q. Did you talk about his business to him?

30

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 11.

Dr. Sybil
Diamond
Gunatilake
Kiani

20th July,
1961.

Cross-
Examination

Continued.

A. I went to Mr. Sena's shop one day to talk about his son's stutter.

The conversation came up about Sena & Goh.

Mr. Sena told me that he had employed Goh and that Goh had been discharged or dismissed from another firm of brokers and that he was a very clever man and that all the money in Sena & Goh was Mr. Sena's own money. I told Mr. Sena "having such a good name as a jeweller, why do you go into a firm like this that you know nothing about. Mr. Goh will let you down."

10

He said "You women do not know anything, he is a very clever man."

Q. Why should Mr. Sena mention his firm to you?

A. He likes boasting about all that he is able to do.

Q. You were anxious to put Mr. Sena on guard against Goh?

20

A. No.

It was not my intention to spoil the relations between Sena & Goh.

Q. It would have pleased you if Sena had dissolved his partnership with Goh?

A. No.

If Goh was doing Sena down I would be unhappy for Mr. Sena.

Q. What was your relationship with Mr. Sena?

30

A. He was an acquaintance.

Q. You occasionally telephoned Mr. Sena and you suggested that he should be on guard against Mr. Goh?

A. Not against Mr. Goh.

On guard, yes.

- Q. You had no business to express any opinions about the business of Sena & Goh?
- A. I did not bring up that matter myself.
- Q. You were unfamiliar with Mr. Goh?
- A. I did not know Mr. Goh until I was introduced to him by Mr. Sena. That was long after this conversation.
- 10 Q. You suggested to Mr. Sena that Mr. Goh might lose Mr. Sena's money?
- A. No.
- Q. What did you mean by "Mr. Goh will let you down"?
- A. I meant "not doing his best for the firm."
- Q. The firm's name was Sena & Goh?
- A. Mr. Sena told me that.
- Q. That would indicate they were partners?
- A. Yes.
- 20 But I did not realize it at the time.
- Q. How long ago did the conversation take place?
- A. In 1957.
- I first met Mr. Sena about 1955 or 1956.
- Q. Before that had you been to his shop?
- A. Before the war in High Street when he was not there.
- It was in High Street.
- 30 Q. You were by origin a Singhalese?
- A. I am a Singhalese.
Mr. Sena is a Singhalese.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 11.

Dr. Sybil Diamond
Gunatilake
Kiani

20th July,
1961.

Cross-
Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 11.

Dr. Sybil
Diamond
Gunatilake
Kiani

20th July,
1961.

Cross-
Examination

Continued.

Q. The Singhalese New Year was 13th April, 1959?

A. I did not know.

Sometimes its the 11th, sometimes the 12th, sometimes the 13th.

Q. You were married in the war to a Muslim?

A. I was married before the war.

Q. On 10th April, 1959, you telephoned Mr. Sena and asked him to come to your house on 13th April?

10

A. No.

Q. You knew Mr. Sena to be a Singhalese and Buddhist?

A. Yes.

Q. You also knew that Mr. Sena's wife had died in 1953 in London?

A. Yes.

Q. You knew that Mr. Sena was living alone?

A. I did not know that.

He had a son and a daughter.

20

Q. You did not know how many children he had?

A. No.

Q. You lived some 50 yards away at the time?

A. Yes.

Q. Have you not on some occasions gone to visit Mr. Sena at his house in Chestnut Drive?

A. Yes.

30

Q. On those occasions you had a nice friendly conversation with him?

- | | | |
|----|---|--|
| | A. No. | In the High Court of the State of <u>Singapore</u> |
| | Q. What did you go for? | |
| | A. Mr. Sena had a Buddhist priest, a vegetarian, and asked if my amah could cook for him. | Plaintiff's Evidence |
| | I undertook to do this. | No. 11 |
| | It happened on more than one occasion. | Dr. Sybil Diamond Gunatilake Kiani |
| | Q. There were other occasions when you had friendly conversations with him? | |
| 10 | A. No. | 20th July, 1961. |
| | Q. You had had telephone conversations about other matters? | Cross-Examination |
| | A. Very rarely. | Continued. |
| | I had some. | |
| | Q. You never visited him on your own initiative? | |
| | A. One day I visited him and asked if I might use his telephone. | |
| 20 | On another occasion I went to his house because my motor car was out of order and asked if he could help me. | |
| | Mr. Sena gave a party in honour of Mr. Yap Pheng Geck and invited me. | |
| | Q. On 10th April, 1959, you told Mr. Sena that you were giving a party for the Singhalese New Year and asked if he would come? | |
| | A. No. It is a fabrication of the truth. | |
| 30 | Q. You said Mr. Sena rang you up on the 13th April with a view to meeting Mrs. Annie Yeo and you said that she was coming to your house that night and invited him? | |
| | A. That is correct. | |

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 11.

Dr. Sybil Diamond Gunatilake Kiani

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Cross-Examination

Continued.

Q. How did Mr. Sena know that you knew Annie Yeo?

A. When Annie Yeo started with Sena & Goh she let me know.

She told me that she had been charged \$5,000/- to join the firm as a broker. She asked me if I could appeal to Mr. Sena and have that amount reduced. Being friendly with her I went to Mr. Sena and told him about it and asked if he could take action in the matter.

10

Mr. Sena said he could not interfere as he had given all authority to Mr. Goh. I told Mr. Sena that Annie Yeo was a good friend of mine.

(Adjourned to 10.30 a.m. 21st July, 1961)

(Sd.) J.W.D. Ambrose.

21st July, 1961.

Friday, 21st July, 1961

P.W.2. Dr. S.D.G. Kiani (On former oath)

I was asked to raise the subject with Madam Yeo after 1956 or 1957.

20

When I raised the subject with Mr. Sena he said he had nothing to do with the \$5,000.

Q. You suggested to Mr. Sena he should take steps to see that the money was paid back?

A. I asked if he could help to have some of that money returned even if the whole could not be returned.

Q. Why did you make the suggestion?

30

A. Because Mr. Sena was the head of Sena & Goh.

Q. Any other reason?

A. No.

81.

Q. Did you consider the money excessive?

A. I did.

Q. How much did you think was reasonable?

A. Other people were not charged anything or a nominal sum.

I do not know what would be a nominal sum.

Q. In your opinion, therefore, anything beyond a nominal sum would be excessive?

A. Yes.

Q. Your request was to return some of the money?

A. Some or all the money.

Q. How much did you have in mind?

A. At least \$3,000.

Q. Mr. Sena explained to you that he could not do anything about it?

A. He said he could not.

Q. You thought then that he owned the whole firm?

A. Yes.

Q. Were you under the impression that the money had been paid to the firm?

A. To the firm.

Q. You were aware that the firm was Sena & Goh?

A. Yes.

Q. Was this conversation after the first conversation you had with Mr. Sena about the firm?

A. Yes.

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Cross-
Examination

Continued.

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Cross-
Examination

Continued.

Q. Did you not gather from the first conversation with Mr. Sena about the firm of Sena & Goh that Mr. Goh was at that time Mr. Sena's partner?

A. No.

Q. What did you think Mr. Goh was in the firm then?

A. I thought he was an employee.

Q. Did you not consider it very usual for an employee's name to be part of the name of the firm?

10

A. Mr. Sena had told me that every cent in the firm belonged to him and that not one cent was put in by Mr. Goh.

I naturally thought that it was Mr. Sena's firm.

Q. Why naturally?

A. I thought that if a man did not pay a cent he could not be a partner.

Q. He told you at the beginning that Goh was his partner?

20

A. No.

Q. During that conversation did Mr. Sena mention that Goh was a partner?

A. No.

Q. At any time during that conversation did Mr. Sena state specifically that Mr. Goh was not his partner?

A. No.

Q. When did you first come to know that Mr. Goh was a partner?

30

A. On the 13th April, 1959, at my house.

Q. How did that come about?

A. He told us then.

Q. It must have come to you as a very great surprise?

A. No.

Q. In view of your remark that Mr. Goh would let him down were you not apprehensive of Madam Yeo going into partnership with the firm?

A. No.

Q. Had you by 13th April, 1959, changed your opinion about Mr. Goh?

A. No.

Q. It would be risky for Madam Yeo to go into partnership with Sena & Goh?

A. Mr. Sena said he would be kicking out Mr. Goh.

Q. There was no risk for Madam Yeo if Mr. Sena kicked out Mr. Goh?

A. Madam Yeo refused to take control if Mr. Goh was still there.

Q. Was it a condition that Mr. Goh was to be kicked out?

A. Mr. Sena said he would kick Mr. Goh out.

Q. Did you ask him to kick Mr. Goh out?

A. No.

Q. Did Madam Yeo ask Mr. Sena to kick Mr. Goh out?

A. No.

Q. Was there a discussion about Mr. Goh?

A. Yes.

Q. Was it suggested that Mr. Goh had been losing money for the firm?

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No. 11.

Dr. Sybil Diamond
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Cross-Examination

Continued.

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Cross-
Examination

Continued.

A. Mr. Sena told us a lot of dirt about Mr.
Goh which I did not bring up.

No. 12.

COURT NOTES

No. 12.

Smith:

Court Notes

21st July,
1961.

To my knowledge in other Courts where
Counsel have communicated with a witness
under cross-examination during the course
of a trial in the manner in which Mr.
Hoalim has done and after being warned by
the Court and his conduct has been commented
on the question of what is the correct thing
to do when it has been persisted it must
necessarily come before the Judge of the
Court.

10

The question is apart from his conduct can
the Court take cognizance of the cause or
matter.

Should not the Court if this is a proper case
identify the plaintiff with her counsel and
dismiss the action altogether?

20

COURT: If the dirt is relevant, Mr. Smith, the
witness must state what Mr. Sena said.

PLAINTIFF'S EVIDENCE

No. 13.

Dr. Sybil Diamond Gunatilake Kiani
(continued)

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Plaintiff's
 Evidence

No. 13.

Dr. Sybil
 Diamond
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 1961.

Cross-
 Examination

Continued.

Q. What did Mr. Sena say?

A. He said that Mr. Goh had done illegal things and he held Mr. Goh criminally in the palm of his hand.

10

He said that Mr. Goh was paying brokerage to a woman not employed by the firm.

Mr. Sena told us that Mr. Goh was keeping this woman and that he had a child by her.

Mr. Sena said that Mrs. Goh was considering a divorce.

Q. What did you understand Mr. Sena to mean when he said he held Mr. Goh criminally in the palm of his hand?

20

A. I thought he meant that Mr. Goh had done something very wrong for which he could be criminally punished.

Q. Did he name the woman?

A. No.

Q. Mr. Sena says there is not a word of truth in what you said about the 3 matters?

A. Mr. Sena said every word that I have said.

30

Q. You were apprehensive about Madam Yeo going into partnership with Sena & Goh?

A. I had no apprehension because Mr. Goh was going to be kicked out.

Q. You are telling us that there was no question of Goh continuing in the

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Cross-
Examination

Continued.

firm?

A. He was not to continue according to Mr. Sena.

Q. Was it not the basis of the understanding that Goh would leave the firm?

A. Mr. Sena said that Mr. Goh would be kicked out.

Q. Was it not impossible for Madam Yeo to go into partnership with Mr. Sena and Mr. Goh in view of what you say Mr. Sena said. In view of the serious allegation made by Mr. Sena against Mr. Goh, don't you think it would be impossible for a person like Madam Yeo to go into partnership with Sena & Goh?

10

A. But Mr. Goh was going to be kicked out.

Q. What do you mean by that?

A. Madam Yeo would not have to contend with Mr. Goh.

Q. Would he be kicked out before or after she became a partner?

20

A. Mr. Sena said that Madam Yeo was to run the whole business and that Mr. Goh was to be kicked out.

Q. What did you understand by that?

A. As soon as Madam Yeo took the reins of the management Mr. Goh would be kicked out.

Q. When would that be?

A. I don't know. God knows.

30

Mr. Sena said she was to call a meeting at Madam Yeo's house at which all the staff would be present and he would introduce her.

Q. When was the meeting to be called?

A. I don't know.

He said she had to be recognized by the Sharebrokers' Association and another partner in the firm.

In the High Court of the State of Singapore

Q. Immediately she was approved by the Association a meeting would be called at which Mr. Goh would be relieved of his duties?

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No. 13.

A. That is not correct.

Q. What is correct?

Dr. Sybil Diamond
Gunatilake
Kiani

10

A. She was to pay \$20,000 then she would be shown the books, as soon as she was made a partner approved by the Sharebrokers' Association; as soon as she paid the money a meeting was to be called at her house of the staff and Mr. Sena would introduce her and she would be in charge of the affairs of the firm instead of Mr. Goh.

21st July, 1961.

Cross-Examination

Continued.

Q. What was to happen to Mr. Goh?

20

A. He was to be kicked out of the firm and cease to be a partner.

Q. Previously you had told Mr. Sena that Mr. Goh would let him down.

It would appear from the statements you say that Mr. Sena made that Mr. Goh had let him down?

A. Mr. Goh had not satisfied Mr. Sena.

He said he was not satisfied with Mr. Goh.

30

Q. It is incorrect to say that on the 13th April, 1959, Mr. Goh had let down Mr. Sena?

A. Yes.

Q. Prior to Mr. Hoalim's interruption you agreed that Mr. Goh had let him down?

A. Yes, but I did not understand the question.

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Cross-
Examination

Continued.

I said Mr. Sena was not satisfied with
Mr. Goh.

Q. On this occasion was not Mr. Goh dis-
appointing in view of what Mr. Sena said?

A. Mr. Goh was disappointing.

Q. It could fairly be said that Mr. Goh had
let him down?

A. If disappointing and let down are the
same, yes.

Q. His conduct was so disappointing that
it was impossible for him to continue
as a partner? 10

A. Yes.

Q. You told us about a game and drew an
analogy with a team playing a game?

A. Yes.

Q. If people do not come up to expectations
it might be they are not doing their
best deliberately or they are incapable?

A. They speak of seeding out people from a
team if they are not up to standard. 20

Q. In some cases when people are capable of
being up to standard but have not come
to standard it is advisable to speak to
them so that they will come up to standard
in the future?

A. It depends if the person is willing to
be corrected.

Q. Which category does Mr. Goh come into?

A. He must go. 30

Q. Did you enquire what the criminality
Mr. Sena referred to was?

A. Mr. Sena did not enlarge on it.

We did not ask questions.

Q. Did you understand that to refer to the business transations of Sena & Goh?

A. I did not know what to make of it.

It did not necessarily refer to business transactions.

Q. Were you talking about Madam Yeo coming into partnership?

A. Yes.

10 Q. You had known Madam Yeo for several years prior to 1959?

A. Yes.

Q. When did you first make her acquaintance?

A. At the end of 1949 shortly after my return from England when I was Lady Medical Officer in charge of Police and Lady Health Officer in charge of schools.

20 Madam Yeo came as a young recruit to the Police Force.

Q. You continued with the Police Force for a few months?

A. Two months.

Q. Thereafter were you connected with the Police Force?

A. Yes on occasions when my sister was on leave and also when she was on sick leave.

30 Q. You have been connected with the Police Force for several years as a Lady Medical Officer?

A. Yes.

Q. Was not Madam Yeo a member of the Police Force for several years?

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Plaintiff's Evidence

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Cross-
Examination

Continued.

A. Yes, for three years.

Q. You came across her from time to time in the course of your duties as Lady Medical Officer and Lady Health Officer?

A. Yes.

Q. You have been professionally connected with Madam Yeo and her children for several years?

A. I attended to her children up to 1955.

Q. You remember Madam Yeo joining the firm of Sena & Goh? 10

A. Yes.

Q. Did you not keep in touch with her from time to time?

A. Yes.

Q. Did she not mention in conversation with you the affairs of Sena & Goh in so far as they related to herself?

A. Yes.

She was very happy she said and she said she made heaps of money for the firm and that the firm was progressing from a little thing to a very big one and that good money was coming in and that Mr. Sena was a good boss but they hardly ever saw him and he did not interfere with their work. 20

She said she had brought very rich clients into the firm buying shares.

Q. Did she say she would like to be a partner? 30

A. Never, she did not aspire to that.

Mr. Sena had not approached her.

Q. You knew Mr. Goh was going to let Mr. Sena down?

- A. Yes.
- Q. You say there was never a suggestion that Mr. Goh had lost money for any firm either by you or Mr. Sena?
- A. Neither Mr. Sena nor I made such a suggestion.
- Q. Did you hear any rumours in 1958 that the firm of Sena & Goh was losing money?
- 10 A. No.
- Q. Towards the end of 1958 you telephoned Mr. Sena on more than one occasion and you suggested to him that he should look into his firm because people were saying that Mr. Goh was losing money for the firm?
- A. It is a lie.
- Q. You heard nothing from any source to indicate that what Madam Yeo said was not correct?
- 20 A. No.
- Q. Consequently on the night of the 13th April it is your suggestion that there was no reason for Mr. Goh to leave the firm from a financial point of view?
- A. No reason.
- Q. Is your evidence that there was no reason to believe that Mr. Goh had let the firm down financially or otherwise?
- 30 A. No such statement was made.

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Cross-
Examination

Continued.

1 p.m. Adjourned to 2.30 p.m.

(sd.) J.W.D. Ambrose.

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Examination
Continued.

2.30 p.m. Resumed.

Q. From the statements made by Madam Yeo to you about making heaps of money, etc., it would appear that the impression she gave of the business was described in a manner similar to that in which Mr. Sena is said to have described it?

A. Mr. Sena described it as a gold mine and he said he was making money hand over fist.

10

Mr. Sena said a little more, no, I mean more than what Madam Yeo said.

Q. At this interview on the 13th April, did you say to Madam Yeo that the business of Sena & Goh was a gold mine?

A. I did. I was repeating what Mr. Sena had said.

Q. At the meeting or before the meeting?

A. On that occasion.

Q. That was the first occasion that Mr. Sena had said it was a gold mine where money comes in all the time?

20

A. Yes.

I was merely echoing what Mr. Sena had already said.

Q. At no stage in Madam Yeo's evidence did she suggest that it was agreed at your house on the 13th April that as soon as the money was paid they would call a meeting at her house to which the staff would be invited and that Mr. Goh would be kicked out or that Mr. Sena made the 4 remarks about Mr. Goh which you say he did.

30

How could such evidence be omitted by Madam Yeo?

A. I don't know.

That was what happened in my house.

Q. Mr. Goh continued in the partnership?

Madam Yeo came into the office and was made a partner.

Mr. Goh went on leave and Madam Yeo took over during his absence on leave.

Madam Yeo attended partnership meetings from 20th April, 1959, till the dissolution.

10

At no time on the 20th April up to the dissolution did Madam Yeo suggest to Mr. Sena or to any of the other partners verbally or in writing that Mr. Goh had to leave.

In view of what you said this is a little surprising?

A. No, it is not surprising.

20

Madam Yeotelephoned me some weeks after the 13th April that Mr. Sena was still keeping Mr. Goh on, that she was not allowed to sign cheques, that she was not re-organizing the firm, what's all this, Sybil.

I telephoned Mr. Sena and I told him "Mr. Sena, Annie says you are not carrying out all you said you would do and jokingly I added her boy friend is with the police."

30

Mr. Sena did not reply to that. The conversation ended there.

By boy friend I referred to Mr.Minns.

Q. Why did you not say so before and why did you say she has many boy friends, why did you evade the issue?

A. I did not want to refer to any particular person.

I was not prepared to make a false statement.

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Cross-Examination

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Continued.

Q. Why should you refer to Mr. Minns?

A. At my house on the 13th April, Mr. Sena mentioned Mr. Minns' name, a Mr. Wong, and any other rich friends Madam Yeo knew could bring into the firm.

There were 10 shares of \$40,000.

Q. At one stage Madam Yeo was living in a house of yours?

A. Yes, 209 Balmont Road.

I had not let the house to her.

10

I was staying there myself.

Q. Mr. Minns was staying there?

A. I don't know.

Q. You were very angry with Mr. Minns for staying there?

A. It's a lie.

Q. Have you given any presents to Mr. Sena?

A. Yes, at Christmas.

Q. Did you give this to Mr. Sena?

A. I have given a shirt like that.

20

I won't say it is that shirt.

Q. Why should you be ashamed of it?

A. I am not ashamed of it.

I admit I gave a shirt like this one.

Q. Is it not a bit forward for a casual acquaintance?

A. I did not say he was a casual acquaintance.

Q. Was he a regular acquaintance?

A. He was an acquaintance.

30

He has given me presents, not a piece of jewellery.

I have given him presents in return.

There is no particular friendship between him and me.

Q. You have been for many years a friend of Madam Yeo?

A. Yes, she has.

Q. When the business did not turn out to be to Madam Yeo's liking you have cut Mr. Sena completely dead?

A. That's a lie.

Q. Is it not a fact that you have not telephoned him at all since May, 1959?

A. It is a fact.

Q. Is it not a fact that you have not invited him to your house since then?

A. It is a fact.

Q. Is it not a fact that he has not invited you to his house since then?

A. It is.

Q. Nor has he asked you to any social function since then?

A. That is so.

Q. Is it a fact that since May, 1959, you have not been to his shop?

A. I have not been to his shop, not even to cash a cheque.

Q. If you see Mr. Sena in the street you do not recognize him?

A. I have not seen him to bow to.

Q. Up to 3 months ago Mr. Sena was living

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Continued.

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Continued.

in the same house a few yards away?

A. Yes.

Q. Since May, 1959, you have not been interested in Mr. Sena socially?

A. That is so.

Q. It would be quite incorrect to describe you as a friend of Mr. Sena?

A. I have no unfriendly feelings towards him.

I don't want him as a friend because of what he did to Madam Yeo.

10

Q. It would be incorrect, therefore, to describe you as an impartial witness.

A. I am quite impartial.

Had Mr. Sena subpoenaed me I would have had to give the same evidence.

Q. You are an enemy of Mr. Sena?

A. No.

Q. You still see Madam Yeo?

A. Yes.

20

I do not treat her or her children.

Q. There was a time, according to Mr. Sena, when Madam Yeo used to take a considerable interest in racing activities at the Turf Club.

Are you aware of that?

She was a bookie or a bookie's runner?

A. I cannot vouch for that.

Q. Will you look at Ex. P.3?

A. I don't understand this.

30

It is headed "Balance Sheet as at 31st

December, 1958".

Q. Have you ever seen a Balance Sheet before?

A. Yes.

Q. On the left you see "Liabilities."

On the right you see "Assets"

Would that appear to be drawn up in the manner in which a Balance Sheet is usually drawn up?

A. Yes.

Q. Look at page 2, Profit and Loss Account, bottom 3 lines "Net Profits."

You know what Net Profits mean?

A. Yes.

Q. What are the figures?

A. \$38,427.17.

Q. You know what Sundry Creditors are?

A. No, I know what creditors are.

20 Q. When Ex.P.3 was handed to you you did not understand this?

A. That is so.

Q. Were you reluctant to look at it?

A. No, I did not understand it.

Q. Mr. Sena produced a draft Balance Sheet at Mr. Sena's house on 17th April, 1959?

A. He never produced anything like Ex.P.3.

30 He produced a green file and ruled foolscap sheets, with nothing typed on it.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 13.

Dr. Sybil Diamond Gunatilake Kiani

21st July, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 13.

Dr. Sybil
Diamond
Gunatilake
Kiani

21st July,
1961.

Cross-
Examination

Continued.

Not a paper of the size in Ex.P.3.

Q. Had he produced a typed Balance Sheet like Ex.P.3, would you have known what it was.

A. I would have known what it was because it said so.

Q. Mr. Sivam will tell the Court that he produced a draft Balance Sheet and that the Balance Sheet was prepared from it and that the draft has been destroyed and that apart from the allocation of profits the draft was identical with Ex. P.3?

10

A. That is not correct.

Q. You say it was scribbled in pencil on lined foolscap?

A. I looked at it. It had figures written on it.

I don't remember seeing writings.

I can't remember how many figures there were.

20

I only saw one column, not a neat column.

There may have been words apart from figures.

I did not take very much interest in it.

Madam Yeo took more interest but she could not make out what it was.

I gave the paper a casual look.

I did not understand it.

Q. On 13th April what did Mr. Sena say, did he say he would produce the Certified Balance Sheet of any particular year as at 31st December, 1958?

30

A. He did not say anything about a Balance Sheet.

If he said it I was ignorant of business and did not take it in.

In the High Court of the State of Singapore

Q. You were not expecting a Balance Sheet as at 31st December 1958, on 17th April?

Plaintiff's Evidence

A. No.

No. 13.

Q. What did Mr. Sena say he would produce?

Dr. Sybil Diamond
Gunatilake
Kiani

10

A. He said Mr. Sivam would let Madam Yeo know the assets of the firm but she could not look into the books.

21st July, 1961.

Q. You knew Mr. Sena was a sleeping partner?

A. I don't.

Cross-Examination

Q. Mr. Sivam produced a list of the assets?

Continued.

A. I don't know.

Q. You had no reason to believe that he was producing a document other than that which was promised?

20

A. I believed Madam Yeo expected much more information.

I don't know.

Q. Was any suggestion made by Madam Yeo on 17th April that she wanted further information and that the information supplied was not what was promised?

A. Yes, she said so to Mr. Sivam.

30

Q. Was that in the house on the 17th April?

A. Yes.

Q. Was Sivam there and Sena there and were you all together?

A. Yes.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 13.

Dr. Sybil Diamond Gunatilake Kiani

21st July, 1961.

Cross-Examination

Continued.

Mr. Sena said that she could go to the office on Monday and take her money to Mr. Sivam and to Mr. Raja and Mr. Sivam was to give her every assistance and help her find out what she wished to know.

Mr. Sena also said that she could not see any more books or get any more information until she has paid her money and become a partner.

Q. Did it appear to you or Madam Yeo that the scribbled sheets of paper were that they were what Mr. Sena had promised? 10

A. No.

Q. Mr. Sena had suppressed the information which Madam Yeo had asked for?

A. Yes.

Q. If Mr. Sivam had produced the very information which he should have produced, you would have no complaint about the payment of the \$20,000? 20

A. She did not complain about the paying of the \$20,000.

She would pay \$20,000 and she would pay another \$20,000 if she was satisfied.

Adjourned to a date to be fixed by the Registrar.

(Five more days will be required).

(sd.) J.W.D. Ambrose.

Certified true copy.

Sd. K.J. Perera 2.8.61.

PRIVATE SECRETARY TO JUDGE,
COURT NO.6.
SUPREME COURT, SINGAPORE.

101.

PLAINTIFF'S EVIDENCE

No. 14.

TAN SIN SENG

P.W.3. Tan Sin Seng, affirmed, states in English.

I live at 3 Spottiswoode Park Road, Singapore.

I am a broker.

I was employed by Sena & Goh in 1957 as a paid broker at \$700 per month.

I have been sued by Sena & Goh for \$21,601.61.

This is a certified copy of the writ - admitted and marked Ex. P.4.

I signed a Promissory Note on 10.3.59 for \$109,400.00.

R.C. Lim & Co. are my solicitors.

I admit that I owed Sena & Goh this amount.

Sena & Goh are suing Dr. Essel Tan in Suit 1500/60 for \$20,000.

I produce a certified copy of the writ - admitted and marked Ex. P.5.

Chan Bah Yap has been sued in suit 1233/60 for \$5,745.57.

I produce a certified copy of the writ - admitted and marked Ex.P.6.

I produce three certified copies of writs issued by Sena & Goh against

Wei Sen Huing for \$7,527.81.

Yap Ciau Keng for \$5,518.36.

SP. N. Subramanian Chettiar for \$2,211.83, respectively.
(admitted and marked Ex.s P.7, 8 and 9).

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 14.

Tan Sin Seng

4th September, 1961.

Examination

10

20

30

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.

Examination
Continued.

The \$109,00 was due from me at the end of
January, 1959.

My salary was increased to \$800/- per month.

At the beginning of 1958 I was allowed to
speculate by the firm.

The differences were credited or debited to
my account with the firm.

During the first half of 1958 I made a
profit of about \$40,000.

But by December, 1958, I had lost about
\$100,000.

10

In January, 1959, when my account showed
a big loss I had to meet Mr. Sena in High
Street.

He told me of the heavy bank overdraft and
that he was worried about it.

He wanted me to get a buyer for his shares
to lighten his burden and he wanted to get
out of the business.

By that time the firm had stopped me from
gambling further on my own account.

20

During the interview I asked for a chance
to speculate further to enable me to pay
the losses.

Mr. Sena gave me a chance.

Then Stock No.2 Account came into existence.

That was my second account with the firm
guaranteed by my brother, Dr. Essel Tan.

The firm also imposed the term that if I
made a profit on the new account, half the
profit was to go to the firm, and that the
losses were to be borne by me alone.

30

This was the agreement made on 11.4.59 -
admitted and marked Ex.D.5.

I lost about \$50,000 on Stock No.2 Account
when receivers were appointed.

Mr. Sena would ring me whenever he wanted to see me.

In 1958 I was made an agent of the firm with power to sign for the firm.

At one time when Mr. Goh was on leave I and plaintiff signed cheques for the firm.

Plaintiff was in the same position as myself.

10

In March or April, 1959, he repeated his request to me to find a buyer for his shares.

I was informed by Mr. Muttiah just before Receivers were appointed that Goh sold 10 of his shares to Tan Peng Liat for \$40,000.

20

In later interviews Sena told me that he would like to dispose of his shares for the same price as that at which Goh had sold his shares.

I knew the price charged by Goh and I therefore knew the amount he wanted, i.e. \$4,000/- per share.

All that happened in March and April, 1959.

I know the plaintiff.

She was a remiser on the conditions agreed by the Malayan Sharebrokers' Association.

There were three other remisers.

30

One was ~~He~~ Tian Boon.

He too was a remiser on the same basis.

Each Remiser has his or her collection book to help the firm to collect what was due.

Remisers could only see their own collection books.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 14.

Tan Sin Seng

4th September, 1961.

Examination Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.
Examination
Continued.

The books were given to them in the morning and collected in the evening.

The Accounts Department is on the top floor and business was done on the ground floor.

The entrance to the Accounts Department was by steps leading from the outside and not through the office.

Thanappan was the Chief Bookkeeper.

The plaintiff would ring up from outside the office.

10

She would be away for two or three days and give an order by telephone.

Defendant told me in March or April, 1959, that he wanted the same price as Goh.

Sena told me that he had the three bank overdrafts and that the amount due to
Chartered Bank was \$200,000/-
Mercantile Bank \$25,000/-
Chung Kiaw Bank \$20,000/-

I attended a meeting at plaintiff's house.

20

I attended another meeting at the defendant's house.

The remisers were there.

Ee Tian Boon was at both meetings.

At Mr. Sena's house the main topic was preparing plaintiff for the coming interview at the Malayan Sharebrokers' Association and conditions for removing Mr. Goh.

Sena asked me to explain to plaintiff how she was to behave at the interview and what would be the probable questions.

30

I told her from my experience that she would be asked the following questions.

1. What is the capital of the firm?
2. Have you seen the balance sheet?

3. Are you satisfied in coming into the new firm?

I told her that she would be interviewed individually and later collectively and that they should make up their minds as to the answers which they should give.

Goh was not present at either of the 2 meetings.

He was then the managing partner.

10

The meetings were held before Goh went on leave.

Sena had distrusted Goh because Goh had paid brokerage to a mistress of his.

After Mr. Goh returned from leave there was another meeting which I was not allowed to attend.

Later I found out that they were discussing my position.

I owed the firm \$221,000 through gambling.

20

I was gambling with Sena's money.

I was gambling on my own account.

I was always aware who the other party was, either a client or a broker.

I bought from or sold to him.

I do not agree that plaintiff became a partner of Sena and Goh.

There was no circular to that effect from the Malayan Sharebrokers' Association.

30

I was a paid broker.

Plaintiff was acting as an agent signing per pro.

I took Wong Peng Yuen to Sena to buy his shares.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 14.

Tan Sin Seng

4th September, 1961.
Examination Continued.

Cross-Examination

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Ran Sin Seng

4th September,
1961.

Cross-
Examination

Continued.

I did not suggest to him that it was a good time to buy in.

He came to see me when he found out that plaintiff had bought shares.

He might have got the impression that it was a good time to buy in.

I do not know of any reason why Wong Peng Yuen should say that I told him that it was a good time to buy in.

I never told Wong Peng Yuen anything about my losses. 10

In my own interest I kept that as a secret in the hope that Wong Peng Yuen would pay up his \$20,000.

Q. Did plaintiff approach you to talk to Sena with regard to selling shares in Sena and Goh since Goh sold a part of his shares to Mr. Tan Eng Liak, i.e. 10 shares for \$40,000?

A. No. 20

Q. Did you explain to plaintiff that the firm had heavy debts.

A. No.

Q. Did you explain that Sena might agree to dispose of a few of his shares to stabilize the financial position of the firm?

A. No.

Q. Did Sena undertake to leave all the proceeds collected from the sale of his shares in the firm until such time as the financial position justified any withdrawal of money? 30

A. Sena explained to Wong Peng Yuen in my presence, but not to plaintiff.

Q. Was plaintiff aware prior to buying a partnership that the market was against you and Mr. Narayan in some of the short

positions thus causing this heavy debt?

A. She knew that I and Mr. Narayan were having such positions but she may not have formed an opinion as to whether I had made a profit or loss.

Q. Was plaintiff aware that the market was against you and Narayan?

A. She may be aware.

10

Q. You showed a loss at that time?

A. The market might be down but go up in a week.

Q. Are positions of brokers in the same firm known to each other?

A. No.

Q. Your losses were well known to the other brokers and remisers?

A. I did not disclose my losses to any-one.

20

I do not know if they knew about the losses.

Q. Do you remember plaintiff discovering a Promissory Note for \$109,000 given by you?

A. No.

Q. Do you remember a partnership meeting which was held to discuss your position?

A. No. I did not attend such a meeting.

30

Q. Did you approach Sena with a view to ascertaining if he was prepared to sell 5 of his shares to plaintiff at the same rate as Mr. Goh sold his shares to Mr. Tan?

A. No.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 14.

Tan Sin Seng

4th September, 1961.

Cross-Examination

Continued.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.

Cross-
Examination

Continued.

Q. Did Wong Peng Yuen approach you to assist him to buy a few shares of the firm?

A. Yes.

Q. Did you explain to Wong Peng Yuen that the firm had bad debts of which he was aware as he was a constant visitor of the firm?

A. No.

Q. Do you remember that you were subpoenaed by Sena in the Wong Peng Yuen case? 10

Do you remember saying to me outside the Court that you did explain that the firm had incurred the losses but not the full extent?

A. I said to Mr. Smith that he may have known of some losses that might have been incurred but he did not know the actual extent of the losses.

Q. Did I not ask you if you had not explained the position of the losses to Wong Peng Yuen? 20

A. Yes.

Q. Did you not say that you had not done so because it might put Wong Peng Yuen off?

A. Yes.

Q. You also said that Wong Peng Yuen would be aware of the losses but not the full extent?

A. Yes. 30

Q. Did you give as a reason that he was a constant visitor?

A. No.

He was a constant visitor.

1 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D.Ambrose.

2.30 p.m. Resumed.

In the High
Court of the
State of
Singapore

Q. Did plaintiff and Wong Peng Yuen have several meetings with you before they decided to purchase shares in the firm of Sena & Goh?

Plaintiff's
Evidence

A. No.

No. 14.

Q. Were they as the result of the meetings satisfied at becoming partners?

Tan Sin Seng

10

A. No.

4th September,
1961.

Q. Is the signature of this document yours?

Cross-
Examination

A. Yes.

Continued.

The document was typewritten in my presence in Mr. Sena's office in High Street by one of his clerks.

Q. It was typewritten from information supplied by you?

A. No.

20

It was a statement typed out by Mr. Sena's clerk for my signature.

It was to be used in judicial proceedings against the firm.

The date, 2nd August, 1959, is correct.

Q. Did you read it before signing it?

A. Yes.

Q. Was your signature intended to give Mr. Sena proof that you were prepared to say that?

30

A. I was under duress and I was afraid that he may take proceedings against me.

I thought that if I helped Mr. Sena he would not be severe with me and

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.

Cross-
Examination

Continued.

would give me a change to pay him out.

I mean a chance in the reorganization of
the firm.

Q. A Chance to buy and sell shares as pre-
viously?

A. Yes a chance to buy and sell shares with
such modifications as might be agreed
between me and Mr. Sena.

Q. Mr. Sena did not agree with you to cancel
the debt due to the firm?

10

A. That is correct.

Q. Was your brother prepared to guarantee any
further sums of money?

A. I do not know because I did not ask him.

Q. Did you ask your brother to pay up in
accordance with the terms of his guarantee?

A. I told him about the position.

He consulted his solicitors.

He has claimed that he is not liable to
pay.

20

I have claimed that I am not liable to pay.

Q. You say you were gambling and at the time
you signed Ex. D.5 you had no intention of
paying if you lost?

A. That is correct.

Q. You never had any intention of paying any
losses and you were merely hoping to make
money?

A. I deny that.

Q. Plaintiff took the view that your position
was highly irregular and that you could
not pay your losses?

30

You never had the money to pay losses?

111.

A. I paid at the beginning.
When I had no more money the firm
stopped me from gambling.

In the High
Court of the
State of
Singapore

Q. You volunteered to give the statement
dated 2nd August, 1959, in support of
Mr. Sena's case?

Plaintiff's
Evidence

No. 14 .

A. Yes.

(Statement admitted and marked
Ex.D.6).

Tan Sin Seng
4th September,
1961.

10 Q. Mr. Sena did not call you to make
the statement but you went yourself?

Cross-
Examination

A. I deny that.

Continued.

Q. You have been sued for the whole
amount due?

A. Yes.

Q. And Dr. Essel Tan on the guarantee?

A. Yes.

Q. You take the view that you are not
liable to pay?

20 A. Yes.

Q. When were you called as a witness by
the plaintiff?

A. I can't remember the date.

I received a subpoena from both
parties.

Q. You were prepared to give evidence in
accordance with Ex. D.6. in return
for a favour?

A. No. I hoped he would give me a chance.

30 Q. No favour or inducement was offered.

No threat was made.

A. That is correct.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.

Cross-
Examination

Continued.

I hoped if there was a reorganization there would be a place for me.

Q. There was talk of reorganization in August, 1959?

A. Yes.

I was prepared to side with Mr. Sena against plaintiff in the reorganization.

Q. The reorganization contemplated did not materialize?

A. No.

10

Q. Your hopes are dashed to the ground.

Your evidence is contrary to Ex.D.6?

A. I hoped the reorganization would include all the old partners and staff and that there would be no Court proceedings.

I did not express the hope to anyone.

Q. Several of the facts stated in Ex. D.6 never took place?

A. I admit that.

20

Q. You came to Mr. Sena and said that you would be a witness for Mr.Sena?

A. I did not go on my own accord.

I did not say I would be a witness for Mr. Sena.

Ex.D.6 sets out what I was asked to say.

I never admitted that it was correct.

Q. Was the plaintiff introduced as a partner at the meeting about 22nd April?

30

A. Yes.

Q. Did not Mr. Sena at that meeting in-

formed the staff that plaintiff had paid \$20,000 to become a partner?

In the High Court of the State of Singapore

A. He said so but I can't remember the date.

Plaintiff's Evidence

Q. Wong Peng Yuen approached you with a view to your approaching Mr. Sena about the 29th April?

No. 14.

A. He did.

Tan Sin Seng

10

I said I was willing to take him to Mr. Sena.

4th September, 1961.

That was the first time I knew that plaintiff had bought shares in the firm.

Cross-Examination

Continued.

Q. Did you persuade Wong Peng Yuen to take up 5 shares in the firm?

A. I did not.

Q. The evidence you have given in this Court is at variance with what you have said in Ex.D.6?

20

A. Yes.

I had clients as a broker.

Re-Examination

A contract made through me means brokerage for the firm of Sena & Goh.

As a broker I give advice.

It is to my interest not to let my clients know about my own losses.

They would have no confidence in me if I disclosed my losses.

30

It would not be in the interest of Sena & Goh for me to disclose my losses.

Raju was a paid broker and he would sign as agent for the firm.

As broker I did business on the telephone.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 14.

Tan Sin Seng

4th September,
1961.

Re-Examination
Continued.

5th September,
1961.

Most of the transactions would be done
on the telephone.

Other brokers would not know whether the
contract was my own or done on behalf of
the firm.

This is the Promissory Note dated 10.3.59.

Adjourned to 5.9.61.

(Sd.) J.W.D. Ambrose.

Thursday, 5th September, 1961.

Counsel as before.

10

Raju also known as N.I. Narayanan was
the only broker who knew about my short
position.

Raju and I were agents for the firm with
limited authority to assign.

He knew what contracts I signed and I
knew what contracts he signed.

I signed this statement, Ex.D.6, on
2.8.59.

At that time I was still an employee of
Sena & Goh.

20

At that time my liability to the firm
was \$221,000.

The document was signed at Mr. Sena's
office.

Mr. Sena rang up for me to call at his
office.

I was at the office of Sena & Goh in
Market Street.

I went about half an hour later to Mr.

30

Sena's office in High Street.

He showed me a statement in pencil and asked me whether I would sign it.

I said I would.

He asked one of his clerks to type it out.

When I said I signed under duress, I meant I dare not say no because I was employed by Sena & Goh and I owed a big sum to the firm.

I had a fear in my mind although Mr. Sena did not intimidate me.

I saw Mr. Sena after 2.8.59.

Nothing was said about Ex.D.6 after that.

I connected Ex.D.6 with the reorganization of the firm.

Receivers had been appointed on 14.7.59.

On 2.8.59 the firm had been dissolved.

When a person is approved by the Malayan Sharebrokers' Association as a partner the secretary of the Malayan Sharebrokers' Association sends out a circular.

I was a partner of Cheah & Co.

(Witness released, Mr. Smith not objecting).

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 14.

Tan Sin Seng

5th September, 1961.

Re-Examination

Continued.

No. 15.

EE TIAN BOON

P.W.4. Ee Tian Boon, affirmed, states in English

I live at 388 Pasir Panjang Road,

No. 15.

Ee Tian Boon

5th September, 1961.

Examination

10

20

30

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 15.

Ee Tian Boon

5th September,
1961.

Examination.

Singapore.

I was a Remiser for over 10 years.

I joined Sena & Goh as a Remiser in
October, 1955, on a commission depending
on amount of business brought by me.

Plaintiff was also a remiser on same terms.

Leong Khoon Heng was another remiser.

Tan Hin Jin was another remiser.

I was provided with a Collection Book.

As a remiser I had no access to the books 10
of the office.

The Collection Book is given to me in the
morning and taken from me in the evening
after the close of the business.

As a broker I work from 9.30 a.m. to 5 p.m.

The plaintiff used to work for half an hour
and go out.

I was provided with a telephone.

Sometimes orders are given by the clients
over the telephone and sometimes in person. 20

Usually a broker's office is full of people.

On or about 23rd April, 1959, I attended a
meeting at plaintiff's house which included
Leong Khoon Heng and Tan Sin Seng and the
plaintiff and defendant.

The meeting was called to improve collection
and the smooth running of the firm.

Nothing was said about the plaintiff joining
the firm.

I took plaintiff to the Straits Times Office. 30

She told me that she had permission from Mr.
Sena to have her photograph published in the
Straits Times as she was going to be a partner.

| | | |
|----|--|--|
| | I did not get in touch with Mr. Sena. | In the High Court of the State of <u>Singapore</u> |
| | I told her she had better ring Mr. Sena from the Straits Times to confirm it. | |
| | I did not get in touch with Mr. Sena on the telephone. | Plaintiff's Evidence |
| | The plaintiff got in touch with Mr. Sena. | No. 15. |
| | She then said "It's O.K." | Ee Tian Boon |
| | I can't remember if anyone in the Straits Times got in touch with Mr. Sena. | 5th September, 1961. |
| 10 | As a broker I know it would be wrong for the photograph to be published in the paper. | Examination Continued. |
| | I did not hear from Mr. Sena that he approved of the publication of the photograph. | |
| | I had to deliver some shares to a client at the Straits Times. | |
| | I told the plaintiff that. | |
| 20 | I did not tell Mr. Sena that plaintiff got his permission to have her photograph published. | Cross-Examination |
| | I did not tell Mr. Sena that I had not been to the Straits Times with plaintiff to have her photograph published. | |
| | Q. If plaintiff had not got permission from Mr. Sena and you assisted her to get her photograph published you might be given the sack? | |
| | A. No. | |
| 30 | Q. Was plaintiff introduced to the staff as being a partner of Sena & Goh? | |
| | A. Yes. | |
| | Q. As far as you are aware was it well known to the entire office staff that the plaintiff was a partner in the | |

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 15.

-Ee Tian Boon

5th September,
1961.

Cross-
Examination

Continued.

business?

A. Yes.

Q. When she took the place of Mr. Goh did she take his place as far as you are aware as the partner managing the business?

A. No.

Q. Mr. Goh was the managing partner and she took over his job?

A. No.

10

She was not there the whole day.

She was the person to whom I would look as the partner managing the business.

Q. When the picture was taken plaintiff represented that she was a partner?

A. Yes.

Q. Do you remember a party at Mr. Sena's house for remisers, brokers and partners?

A. Yes.

20

Q. Plaintiff attended as a partner?

A. Yes.

Q. She had been a remiser in the firm for some years?

A. Yes.

Q. Mr. Tan Sin Seng had been a remiser in the firm for some years?

A. Yes.

Q. Mr. Leong Koon Heng had been a remiser in the firm?

30

A. Yes.

Q. In April, 1959, there was a meeting

after office hours in the office at which plaintiff was introduced as a partner?

In the High Court of the State of Singapore

A. Yes.

Plaintiff's Evidence

Q. The remisers and brokers were asked to stay behind?

No. 15.

A. Yes.

Ee Tian Boon

Q. In the early part of March, 1959, sharebroking business was bad?

5th September, 1961.

10

A. Yes.

Cross-Examination

Q. Was it well known in the firm that the market was against Mr. Tan Sin Seng?

Continued.

A. No.

I do not know.

I did not know of the losses of other remisers and brokers in the firm.

I lost a little.

20

All the remisers and brokers were speculating with the firm.

Speculating means buying for delayed delivery.

That is gambling.

I do not know if plaintiff was doing that before she became a partner.

Not all the remisers and brokers were speculating.

Q. In the early part of 1959 the remisers and brokers had heavy losses?

30

A. I do not know.

Q. The brokers and remisers sell shares among themselves?

A. Yes.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 15.

Lee Tian Boon

5th September, 1961.

Cross-Examination

Continued.

Re-Examination

Q. Did you do that?

A. Yes.

Q. Were you short or long in the first 3 months?

A. Short by a few hundred dollars.

The contracts of the remisers and brokers were genuine contracts in accordance with the rules of the Malayan Sharebrokers' Association.

(No questions).

(Witness released, Mr. Smith not objecting).

10

No. 16.

David Ng

5th September, 1961.

Examination

PLAINTIFF'S EVIDENCE

No. 16.

DAVID NG.

P.W.5. David Ng. affirmed, states in Hakka.

I live at 329 North Bridge Road.

I am a professional photographer.

I tender 4 photographs of the premises of the Malayan Sharebrokers' Association on the 4th floor of Denmark House which were taken on 25.8.61 - admitted by consent and marked Ex.s P.10 - P.13.

20

Ex. P.10 was taken from a staircase leading to the 4th floor.

The 2 doors on the right are lift doors.

121.

The door nearest the camera on the left leads to a passage.

The door on the left nearer the window leads to a room.

Ex.P.11 was taken from the window shown in Ex. P.10.

The door on the left is the lift door.

The door on the right in the foreground leads to a room.

10 The door on the right in the background leads to a passage.

Ex.P.12 was taken from inside the passage facing the glass door.

It was taken about 20 feet away.

On the left is a door leading to a room.

Ex.P.13 was taken about 6 feet inside the passage.

The glass door leads into the passage.

20 The lift door can be seen through the glass door.

(No questions).

(Witness released, Mr. Smith not objecting).

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 16.

David Ng

5th September, 1961.

Examination

Continued.

Cross-Examination

PLAINTIFF'S EVIDENCE

No. 17.

EZEKIEL MANASSEH AKERIB

P.W.6. Ezekiel Manasseh Akerib, affirmed, states in English.

I am employed by Cook Brothers & Co.

No. 17.

Ezekiel Manasseh Akerib

5th September, 1961.

Examination.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 17.

Ezekiel Manasseh
Akerib

5th September,
1961.

Examination

Continued.

the Secretaries of Malayan Sharebrokers' Association.

I produce a form of undertaking to be signed by every member of Malayan Sharebrokers' Association - admitted and marked Ex. P.14.

I produce a letter signed by Annie Yeo dated 20th April, 1959 - admitted and marked Ex. P.15.

I produce a photostat copy of the minutes of the Malayan Sharebrokers' Association of the interview of Mr. Sena, Mr. Goh and Miss Annie Yeo on 13th May, 1959 - admitted and marked Ex. P.16.

The original is in Kuala Lumpur.

I have been instructed to make available the file relating to application by Sena and Goh for approval of plaintiff to become a member of the Malayan Sharebrokers' Association.

12.40 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D. Ambrose.

2.30 p.m. Resumed.

Hoalim:

I tender photostat copies of undertakings by Mr. Sena and Mr. Goh given to the Malayan Sharebrokers' Association on 19th August, 1958 - admitted by consent and marked Ex.s P.17 and P.18.

Cross-
Examination

(No questions).

(Witness released, Mr. Smith not objecting).

10

20

30

123.

PLAINTIFF'S EVIDENCE

No. 18.

SAW CHEE TOE

P.W.7 Saw Chee Toe, affirmed, states in English

I am a clerk employed in Registry of Business Names.

10 This is a certified copy of particulars relating to Sena & Goh registered in the Registry of Business Names on application made on 7th October, 1955 - admitted and marked Ex. P.19. I produce a certified copy of change of particulars furnished on 7th April, 1959 - admitted and marked Ex. P.20. There was no further change of particulars.

(No questions).

(Witness released, Mr. Smith not objecting).

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 18.

Saw Chee Toe

5th September, 1961.

Examination.

Cross-Examination

PLAINTIFF'S EVIDENCE

No. 19.

TAY KIM KIAT

P.W.8 Tay Kim Kiat, sworn, states in English.

I am a clerk to Murugason & Co., Solicitors to Tan Eng Liak.

I produce an office copy of the pleadings in that suit - admitted and marked Ex. P.21.

30 I produce a letter dated 9.7.59 from Allen & Gledhill to Philip Hoalim & Co. - admitted and marked Ex. P.22.

I produce a copy of minutes of meeting held at office of Philip Hoalim & Co. on

No. 19.

Tay Kim Kiat

5th September, 1961.

Examination

In the High
Court of the
State of
Singapore

13.7.59 - admitted and marked Ex.P.23.

Cross-Examination

Plaintiff's
Evidence

(No questions).

No. 19.

Tay Kim Kiat

(Witness released, Mr. Smith not
objecting).

5th September,
1961.

Examination
Continued.

PLAINTIFF'S EVIDENCE

No. 20.

Jee Ah Chian

No. 20.

JEE AH CHIAN.

5th September, P.W.9 Jee Ah Chian, sworn, states in English.
1961.

Examination

I am an Accountant.

10

Jee Ah Chian & Co., Sze Hai Tong Building.

I was appointed together with plaintiff
and Tan Hin Jin as Receivers and Managers
of Sena & Goh in Suit 903/59.

This is a photostat copy of the order -
admitted and marked Ex. P.24.

By that order the Receivers and Managers
were authorized to operate the firm's over-
draft.

By another order dated 27.7.59 the Receivers 20
and Managers were authorized to borrow upon
security and open a banking account.

I was to be in charge of the control of
the financial side by agreement of the
parties.

I had to arrange for the overdraft

and to see that the creditors are paid
and to collect debts from debtors.

The parties did not tell me about the
position of the firm.

As Receivers and Managers I had to go
into the affairs of the firm.

On 15.7.59 I wrote to Philip Hoalim & Co.
this letter - admitted and marked Ex.P.25.

I was informed that the firm had an over-
draft with

Chartered Bank,
Mercantile Bank,
Chung Khiaw Bank.

I went to see manager of Mercantile Bank
to find out whether they would allow me
to operate the overdraft and also manager
of Chartered Bank.

They refused.

The amount of the overdraft at the
Chartered Bank on 14.7.59 was \$300,600.42.

The amount of the overdraft at the
Mercantile Bank on 14.7.59 was \$22,182.77.

The amount of the overdraft at the Chung
Khiaw Bank on 14.7.59 was \$20,773.81.

The overdraft at Chartered Bank was
guaranteed by Sena.

I got him to guarantee an overdraft of
a further \$100,000.

Some shares were deposited with Mercantile
Bank as security.

The overdraft at Chung Khiaw Bank was
guaranteed by Mr. Goh.

After I obtained my discharge as Receiver
on 30th May, 1960, I received this state-

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 20.

Jee Ah Chian

5th September,
1961.

Examination

Continued.

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20

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In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20.

Jee Ah Chian

5th September, 1961.

Examination

Continued.

ment of account for 1st January to 14th July, 1959, from an official of Sena & Goh - admitted and marked Ex. P.26.

This is a balance sheet as at 31.12.58 prepared by Pereira & Co.

It is dated 24.7.59 - Ex. P.3.

I asked Philip Hoalim & Co. for audited accounts up to 14.7.59.

I was never able to get that.

A trial balance was produced to me by Thanappen, the Accountant of Sena & Goh.

10

The balance sheet in Ex. P.3 shows

Sundry debtors \$1,616,560.55.

In my opinion the position of the firm on 14.7.59 was fairly bad.

The capital of the firm was \$100,000.

Ex. P.26 shows that the bank overdrafts as at 14.7.59 stood at \$343,557.00.

This is a balance sheet as at 14.7.59 prepared by G.T. Rajah Manager and an Accountant - admitted and marked Ex. P.27.

The Schedule of Sundry Debtors attached to Ex, P.27 shows Tan Sin Seng as owing 2 amounts

\$ 59,218.58
\$106,850.00

Total \$166,068.58

In my opinion, Tan Sin Seng was a manager of Sena & Goh drawing \$800/- per month.

He himself told me that it was impossible for him to pay.

30

I came to the conclusion that the firm

was in a bad way.

Adjourned to 6.9.61.

(sg.) J.W.D.Ambrose.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 20.

Jee Ah Chian

5th September,
1961.

Examination

Continued.

6th September,
1961.

Cross-
Examination

Wednesday, 6th September, 1961.

Joe Ah Chian (On former oath)

I collected from the debtors of the firm about 2 million dollars.

10 On 15.7.59 I came to the conclusion on the evidence before me that the firm was in a bad way.

I took into consideration the fact that the amount due from the Sundry Debtors was \$1,616,000.

Subsequently I was able to collect \$2,000,000 from the sundry debtors.

20 In coming to the conclusion that the firm was in a bad way I took into consideration the fact that the chances of recovering the \$1,616,000 from the sundry debtors were doubtful.

I also took into consideration the fact that the amount due to sundry creditors \$1,425,852.18 was out of all proportion to the capital of the firm, i.e. \$100,000.

The capital of the firm was \$100,000.

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 20

Jee Ah Chian
6th September,
1961.

Cross-
Examination

Continued.

One of the managers, Tan Sin Seng, has
lost \$166,000.

Leong Khoon Heng owed \$20,000.

Tan Sin Seng told me that he was unable to
pay.

The firm had an overdraft of \$343,557.00.

When the seller has shares to deliver, if
the buyer does not pay, the firm may keep
the shares after paying for it.

In my opinion the accounts prepared by
Rajah and the Accountant as at 14.7.59 -
Ex. P.27 - are in the correct form: and
the balance sheet prepared by Pereira &
Co. - Ex. P.3 - are not in the correct
form.

10

Ex. P.3 does not show the true state of
affairs.

I am not sure that Ex. P.3 is correct.

Ex. P.3 appears to have been prepared
from the books of the firm.

20

Whether Ex. P.3 is correct or not I cannot
say but reference should be made to the
auditor's report.

I do not suggest that the entries in the
books of the firm on which Ex. P.3 or
Ex. P.27 are based are not correct.

Ex. P.3 is not in the standard form.

It does not show the correct state of
affairs as at 31.12.58.

They appear to have been prepared by E.
Pereira & Co.

30

They call themselves Public Accountants.

Anyone could call himself Public Accountant.

The term Public Accountant could be used
by anyone who is not a Chartered Accountant,
a Certified Accountant, or a member of a

recognised society of Accountants.

As regards a private limited company, any accountant belonging to any body of accountants whether recognized or not by Government can apply to the Registrar of Companies for permission to act as an auditor.

As regards a public limited company, the accountant has to be a Chartered or certified Accountant or a member of a recognized Society of Accountants and he has to apply for permission to the Attorney General through the Registrar of Companies to be auditors generally.

Anyone can audit the accounts of a partnership.

E. Pereira & Co. had a right to audit the accounts of the firm.

As regards contracts for immediate delivery, the purchase is made to show immediately in the balance sheet as a debtor. This does not show the correct state of affairs as at the date of the balance sheet.

If a purchaser buys shares for \$50,000 on the 25.12.58 his obligation to pay does not arise until the shares are delivered to him.

If the shares are not delivered to him until the 15.1.59 then he should not appear in the balance sheet as at 31.12.58 as a debtor for \$50,000.

That is what I meant when I said that the balance sheet, Ex.P.3, did not show the true state of affairs as at 31.12.58.

The obligation of Sena & Goh to deliver the shares or pay for them arises the moment the contract for immediate delivery is made.

Whether the seller has the shares or not, and whether the buyer has the money or not, Sena & Goh guarantee the due

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20.

Jee Ah Chian

6th September, 1961.

Cross-Examination

Continued.

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In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20.

Jee Ah Chian

6th September, 1961.

Cross-Examination.

Continued.

fulfilment of the contract.

Q. Is it not a fact that your opinion on whether the 1958 Balance Sheet shows the true state of affairs depends entirely on your view of the legal obligations arising from the contracts in relation to the sale of shares with regard to payment and delivery of the shares?

A. Yes.

10

Q. Provided the basis on which the balance sheet is drawn is made known it is possible to ascertain the position which you would like to see from a reference to the books?

A. Yes.

Ex. P.26 follows the same system as Ex. P.3.

Ex. P.27 the Balance Sheet as at 14.7.59 and Ex. P.26 do not tally.

20

I did not alter the system of accounting after I became Receiver and Manager.

I instructed Philip Hoalim & Co. to recover moneys from sundry debtors.

I sent reminders.

Yap Yeow Keng was aware of such sundry debtors.

1 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D. Ambrose.

2.30 p.m. Resumed

30

The rapid collection of the outstanding amounts was of importance.

Every month of delay meant paying \$3,000/- to the Receivers and salaries of office staff.

The question of the sale of the seat

in the Malayan Sharebrokers' Association and the business to Mr. Sena arose.

I asked him to go to Robinson's to have tea with me.

10 Q. The object was to put to him the proposition if Mr. Sena was prepared to sell the seat in the Malayan Sharebrokers' Association to Mr. Hoalim and Madam Annie Yeo for \$20,000/- Mr. Hoalim and his associates would call off the litigation?

A. That is nonsense.

I told Mr. Sena that it would be a good idea to settle the litigation between him and Mrs. Annie Yeo and Wong Peng Yuen.

20 At that meeting at Robinson's I said to him "If your business is under a Receiver and Manager you would lose a good deal of business and every month you have to pay expenses to the tune of \$6,000/-. Annie Yeo claims \$20,000, Wong Peng Yuen \$20,000. Pay them off and save yourself a lot of trouble. He said "I think \$10,000 I would be prepared and each to pay his own costs."

My reason for asking Mr. Sena to Robinson's was to thrash out this matter and if the matter was settled I stood to lose \$1,500/- per month.

30 There was no discussion of the sale of the business or the seat.

Q. You suggested that they should be given \$20,000 each and that Mr. Sena should sell the seat in the Malayan Sharebrokers' Association to Annie Yeo and Hoalim for \$20,000 and you said that if Mr. Sena did not do this Mr. Hoalim would bleed Mr. Sena to death?

A. I did not.

40 Later there was a further meeting in my office between Mr. Karthigesu, Solicitor for Mr. Sena, Mr. Hoalim, Mr. Sena and

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20.

Jee Ah Chian

6th September, 1961.

Cross-Examination

Continued.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20,

Jee Ah Chian

6th September, 1961.

Cross-Examination

Continued.

Annie Yeo in my presence.

At that meeting there was a discussion of the sale of the seat and the business.

There was to be a new firm consisting of Mr. Sena, Annie Yeo, Wong Peng Yuen, and another person.

Tan Eng Liat did not come.

Q. You told Mr. Sena at Robinson's that you were interested in going into the business yourself?

10

A. I did not say so.

I said I would help his firm.

I do not remember whether I said I was interested or not.

Q. Were you interested in acquiring a share in the business?

A. I can't remember.

Q. You do not own a share in any sharebroking business?

A. No.

20

Q. If you had a share in a sharebroker's business you would benefit from the brokerage charged on the shares bought and sold by you?

A. Yes.

Q. In addition you would have a close touch with the market as a whole?

A. No, not with such a small firm of share-brokers.

Q. If Sena & Goh was properly run it could make a profit?

30

A. Yes.

I drafted a scheme for them.

Q. Your suggestion was that you would come into the firm and that your firm, Jee Ah Chian & Co., would be the auditors?

In the High Court of the State of Singapore

A. Yes.

Plaintiff's Evidence

Q. At some stage there was a suggestion of a price to be paid for the seat?

No. 20.

A. When I brought Mr. Sena to Mr. Wilson, Manager of Chartered Bank, to arrange for a further overdraft of \$100,000, Mr. Sena said to me and in front of Mr. Wilson that he was a fool to go into sharebroking business and that he would never go into it anymore.

Jee Ah Chian

6th September, 1961.

Cross-Examination

Mr. Wilson said "I told you so. Did I not tell you not to meddle with sharebroking."

Continued.

At some stage I might have said that I would go into the business and that Jee Ah Chian & Co., would be auditors for Sena and that Sena would be in a better position.

There was no mention of a price for the seat.

I wrote this letter dated 15.2.60 asking Hoalim & Co. to take action on 12 matters - admitted and marked Ex. D.7.

Several papers have been handed over to Hoalim & Co. in connection with those matters.

Q. You asked Hoalim & Co. to collect \$109,000 due from Tan Sin Seng on a Promissory Note?

A. Yes.

Q. He did not do so?

A. Hoalim & Co. did not do so.

Q. Did you ask them to sue Tan Sing Seng?

10

20

30

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 20.

Jee Ah Chian

6th September,
1961.

Cross-
Examination

Continued.

A. I can't remember.

Q. Do you agree that it was not necessary to have three Receivers?

A. After a few months it was not necessary to have three Receivers. That was after \$2,000,000 had been collected.

Mr. Sena and Mr. Goh came to my office and asked me to help them to get rid of Annie Yeo and Tan Hin Jin, the two other Receivers.

10

I said to him that they appointed me to be Joint Receivers with them and that it was not for me to take the initiative to get an Order of Court to discharge them and that it was for Sena & Goh to do the job.

After that Sena would not even speak to me and he started to find fault with me by asking his solicitor to try to point out whatever faults could be found against me in order to be successful in his application to get rid of the three Receivers.

20

Q. An application was made in October, 1959, for removal of Annie Yeo and Tan Hin Jin?

A. Yes.

Q. You had collected \$2,000,000 by then?

A. I can't remember.

Q. If you had collected \$2,000,000 by then it would not be necessary to have 3 Receivers?

30

A. There were other sums outstanding.

I don't know how much more was outstanding after the \$2,000,000 was collected. Mr. Tan Hin Jin would know.

Q. Did Hoalim & Co. write any letters to you in connection with Ex. D.7?

A. He did.

I do not know if there was any hitch in supplying the information required.

In the High Court of the State of Singapore

Q. On 31st March, 1960, Hoalim & Co. wrote a letter, then did you put the matter in Hoalim's hands?

Plaintiff's Evidence

A. I can't remember.

No. 20.

Jee Ah Chian

Adjourned to 7.9.61.

6th September, 1961.

(Sd.) J.W.D.Ambrose

Cross-Examination

Continued.

10

Thursday, 7th September, 1961.

7th September, 1961.

P.W.9 Jee Ah Chian

I thought that if the three Receivers continued they would take much less time to realize as much as could be realized of the balance of \$600,000 owing to the firm than one Receiver.

I also stated in paragraph 5 of my affidavit of 15.10.59 in Suit 903 of 1959 as follows:-

20

"When I was approached to take up office I was informed that I would be primarily responsible for supervising the financial side of the winding up and the other two Receivers be primarily responsible for dealing with the carrying on of the firm's business. It was on this understanding that I accepted the appointment. I am therefore not prepared to carry on alone and to be burdened with the additional duties of the other two Receivers which are both tedious and onerous."

30

I agree that the amount of the balance

In the High
Court of the
State of
Singapore

Plaintiff's
Evidence

No. 20.

Jee Ah Chian

7th September,
1961.

Cross-
Examination

Continued.

of the outstanding debts had nothing to do with the matter.

The interview with Mr. Sena may or may not have taken place in September, 1959.

The interview took place long before 15.10.59.

The first interview with Mr. Sena arose as a result of an invitation to me by Mr. Tan Sin Seng at the request of Mr. Sena.

10

The interview took place at Mr. Sena's office.

The 2nd interview took place at Robinson's.

Either Mr. Sena invited me or I invited him.

Q. Prior to the making of your affidavit of 15.10.59 Mr. Sena consulted you about the heavy expenses in keeping the three Receivers and the large staff and suggested it was not necessary and you agreed and Allen & Gledhill took out the application for the removal of the Two Receivers?

20

A. Yes Mr. Sena suggested the removal of two Receivers as the work was much less.

I agreed at that time without having pre-knowledge of all the implications in respect of London contracts, local contracts, Federation contracts, and big amounts due to the staff which had not been actually finalised.

30

Q. Did you then consult Philip Hoalim & Co.?

A. Possibly there was a phone call.

Q. You said to Mr. Sena "Hoalim won't hear of it, he is going to bleed you to death?"

A. I don't think I said it. I am not sure.

Q. Would it be possible that you intimated to Mr. Sena that Mr. Hoalim intended to drag on the litigation?

A. I don't think I said so. I am not sure.

I can't say that I didn't say so.

Q. You had intimated to Mr. Sena that if they continued to fight this side would make the fight as tough as possible?

A. I said this at the interview at Robinson's.

Q. The reason you changed your mind was that Mr. Hoalim wanted to protract the litigation?

A. I have no idea.

Q. Mr. Hoalim drew up the affidavit and sent it to you for approval?

A. Yes.

Q. Having decided that the facts could be sworn to you swore the affidavit?

A. Yes.

I said to Mr. Sena that I was inclined to agree with him.

I went to the office and found that the other two Receivers were necessary.

As regards the figure of \$423,339.41 in paragraph 3 of my affidavit of 15.10.59 I admit I did not check the figure but I relied on the solicitor who drew up the affidavit. There was another application dated 3.2.60 by Mr. Sena to remove all three Receivers.

There was an affidavit by Mr. Sena in support.

In the High Court of the State of Singapore

Plaintiff's Evidence

No. 20.

Jee Ah Chian

7th September, 1961.

Cross-Examination

Continued.

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In the High
Court of the
State of
Singapore

I did not answer that affidavit.

I was not asked to answer it.

Re-Examination

Plaintiff's
Evidence

The \$2,000,000 which was collected has
been paid out.

No. 20,

The Receivers' Accounts were passed.

Jee Ah Chian

(Witness released, Mr. Smith not
objecting).

7th September,
1961.

1 p.m. Adjourned to 2.30 p.m.

Cross-
Examination

(Sd.) J.W.D.Ambrose.

10

Continued
Re-examination

2.30 p.m. Resumed.

PLAINTIFF'S EVIDENCE

No. 21.

No. 21.

Gudumivan
Syed Kessim

GUDUMIVAN SYED KESSIM

7th September,
1961.

P.W.10 Gudumivan Syed Kessim, affirmed,
states in English.

Examination

I am a Court Clerk to Philip Hoalim & Co.,
solicitors for the plaintiff.

I produce a certified copy of the affidavit
made by the defendant in Suit 1008/59 -
admitted and marked Ex. P.28.

20

Cross-
Examination

(No questions).

(Witness released, Mr. Smith not
objecting).

CASE FOR THE PLAINTIFF.

DEFENDANT'S EVIDENCE

NO. 22

ATURELIYA WALENDAGODAGE HENRY SENENAYAKEIn the High Court
of the State of
SingaporeDefendant's
Evidence

No. 22

Atureliya Walen-
dagodage Henry
Senanayake
8th September
1961
Examination

10 D.W.1. Atureliya Walendagodage Henry Senanayake,
affirmed, states in English, I am also known as
H. Sena. I did not say to the Plaintiff at
Dr. Khiani's house on the 13th of April or at
meeting on the 17th April that the firm of Sena
& Goh was a gold mine. During the course of
the discussions I was asked to express my opin-
ion about the firm. I said it could be re-
garded as a very lucrative business if all of us
put our shoulders together and work together.
I mentioned losses. I referred to the short
positions taken by Mr. Tan Sin Seng and Mr.
Narayanan. The plaintiff said she was fully
aware of the losses. At Sena & Goh all the
brokers sit and work at the same table. I
said in view of the losses she should have a
20 look into the books and accounts. I said
that at Dr. Khiani's house. I arranged for
Mr. Sivam to come up to my house to explain
matters on the 17th April. On the 13th April
I told plaintiff that Mr. Sivam would explain in
detail the workings of the office, the profit
and loss position. The 13th April, 1959,
was the Sinhalese New Year. The 12th April
was the Sinhalese New Year Eve. The 13th
30 April was the bigger day. Dr. Khiani is a
Sinhalese. She had known me by sight for
some time. In the past I had helped her in a
small way. I did not ring up Dr. Khiani and
tell her that I wanted to meet Annie Yeo. Annie
Yeo had been working for my firm since
1955. It was not necessary for me to
approach Dr. Khiani to have a meeting with Annie
Yeo. On 13th April Dr. Khiani asked me to
join her for dinner. She did so by telephone
either on the 12th April or on the morning of
40 the 13th April. She said "This is Sinhalese
New Year Day. Will you come to join us for
dinner?" I said "Yes, I will" and asked the
time. She said 7.30 p.m. I went to Dr.
Khiani's house. When I arrived Annie Yeo was
there. Dr. Khiani said to her "Here is your
boy friend," and to me "Annie Yeo wants to talk

In the High Court
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Defendant's
Evidence

No.22

Atureliya Walen-
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Senanayake
8th September
1961
Examination
continued

to you on business. My Sister and I know nothing about business. We don't want to hear anything about it." Dr. Khiani and her sister walked away. I discussed business with Annie Yeo. She said "I have a lot of loose cash lying about and I like to buy 10 shares of your business for \$40,000, the same rate as has been sold to Mr. Tan Eng Liak by Mr. Goh." She said "The R.A.P. Government coming into being will curtail speculating and gambling activities." I said "Before I sell the shares as you know we had reverses in the firm, I better call Mr. Sivam to explain the financial position of the firm." I said further "Any moneys you pay will go directly to the firm in order to reduce its overdraft. I will not touch any of your moneys until the firm is back on its feet." Ultimately she paid \$20,000 into the Bank to the account of Sena & Goh. Four days later at my houses we had a second meeting. Mr. Sivam came along to explain the position to Annie Yeo. Dr. Khiani and her sister came along too. When Mr. Sivam arrived he had papers with him. I told her "Here is Mr. Sivam. He will explain to you all the financial position of the firm." Mr. Sivam and Annie Yeo had a discussion. Dr. Khiani and her sister were not close to them. I passed by Mr. Sivam and Annie Yeo. I heard nothing that I could repeat. After Mr. Sivam had spoken to Annie Yeo. Annie Yeo said "After the disclosures made by Mr. Sivam I shall buy only 5 shares for \$20,000." Nothing at all was said about obtaining the approval of the Malayan Sharebrokers' Association to her becoming a partner. I recollect that her picture appeared in the newspaper. As a result I and Mr. Goh got a letter from the Malayan Sharebrokers' Association. That letter dealt with the photograph and her admission as a partner. Prior to that the question of the approval of the Malayan Sharebrokers' Association of her admission as a partner had not been mentioned by Annie Yeo or me or anyone else. As a result of the meeting in my house and the discussion between Annie Yeo and myself, Annie Yeo paid \$20,000 on 20th April, 1957, to become a partner of the firm of Sena & Goh for 5 shares. The shares were mine. After the payment I introduced her to the staff as a partner of the firm in the office at 5 p.m. after office hours.

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I asked the staff to remain in the office after office hours to introduce Annie Yeo as a partner. I said to the staff "Madam Annie Yeo has paid in \$20,000 to the firm of Sena & Goh to become a partner. She has done so and from now she is entitled to all the privileges and concessions that will be enjoyed by a partner and you all should treat her as a partner." On the 17th April at my house Annie Yeo did not ask for any accounts at all. At that time I did not know whether the certified accounts for 1958 had been drawn up. I was a sleeping partner. I can't remember. No conditions were attached to the payment of the \$20,000/- at all. I told her that once she paid the money she becomes a partner and the sale is complete. She was prepared to come in on that basis. Ex. A.B. p.5 was the first occasion on which it was suggested that I had said that the concern was a gold mine. I did not say to Annie Yeo that the concern was a gold mine. I did not tell Mr. Goh to get Annie Yeo to sign a document like Ex. A.B. P.2 without her having seen the books. When Mr. Goh went on leave Annie Yeo acted as managing partner. There was a meeting between Annie Yeo, Wong Peng Yuen and myself. Annie Yeo signed cheques for the partners as a managing partner and Tan Sin Seng signed them for the staff. Nothing was said about the return of the money. Stock Account No.2 was operated by Tan Sin Seng while Annie Yeo was in partnership with me. It was guaranteed by Dr. Essel Tan. The notice of dissolution caused Tan Sin Seng to lose a substantial sum of money. The stock market began to move upwards in October, 1959. Annie Yeo attended all partnership meetings as a partner. I approached Mr. Jee Ah Chian to reduce the number of Receivers. He agreed. I instructed Allen & Gledhill to take out the application to remove two of the Receivers. The following day he telephoned to me and said that he put the matter to Mr. Hoalim and Mr. Hoalim said that he definitely refused to make a move and that he will bleed me to death. A further application to reduce the number of Receivers was taken in January, 1960. There was the question of the sale of a seat. Offers were made by various people. When I applied to Court to sell the seat I was opposed

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Atureliya Walen-
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Examination
continued

In the High Court
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at the instance of Mr. Hoalim. Eventually
the seat was sold to me for \$60,000.

Defendant's
Evidence

1 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D.Ambrose

No,22

2.30 p.m. Resumed.

Atureliya Walen-
dagodage Henry
Senanayake
8th September
1961
Examination
continued

I was interviewed by the Sub-committee of the
Malayan Sharebrokers' Association on 13.5.59.
Annie Yeo, Mr.Goh and I agreed in the office
of Sena & Goh after receipt of a letter dated
30th April, 1959, from the Secretaries to the
Malayan Sharebrokers' Association that we would
inform the Malayan Sharebrokers' Association
that it was intended to admit Annie Yeo as a
partner.

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(Photostat copy of letter dated 30th April,
1959, admitted by consent and marked Ex.
D.8).

Annie Yeo actually became a partner on the 20th
April, 1959. Wong Peng Yuen became a
partner on 30th April, 1959, when he paid
\$20,000. These are the Rules of the Malayan
Sharebrokers' Association - admitted and marked
Ex. D.9. At the interview I went in first.
Mr. Goh followed me. I did not beckon to
Annie Yeo and speak to her while waiting for
the lift after the interview.

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Adjourned to a date to be fixed by the
Registrar.

(Four more days will be required).

(Sd.) J.W.D. Ambrose.

30

Certified true copy.

Sd. K.J.Perera 4.10.61.

PRIVATE SECRETARY TO JUDGE,
COURT NO.6.
SUPREME COURT, SINGAPORE.

Monday, 30th October, 1961.

Counsel as before.

In the High Court
of the State of
Singapore

In 1955 I entered into partnership by deed with Mr. Goh under the name of Sena & Goh. I had 51 shares. Mr. Goh had 49. The capital was \$100,000. The partnership was registered in the Registry of Business Names.

Defendant's
Evidence

No.22

- 10 Q. On 26.3.59 you entered into a new partnership by agreeing to admit the 2 children of Mr. Goh as partners?
A. I agreed for Mr. Goh to give a few shares to his children.
- Q. A change in registered particulars of the business was made on or about the 7th April, 1959? A. Yes
- 20 Q. On 3.4.59 Mr. Tan Eng Liak was admitted as a partner in Sena & Goh and a deed dated 3.4.59 was executed by you and Mr. Goh and Mr. Tan Eng Liak and by Mr. Goh as guardian of his two infant children?
A. A deed of partnership was signed on that date by me and Mr. Goh and Mr. Tan Eng Liak.
- Q. On 13.5.59 you appeared before the sub-committee of the Malayan Sharebrokers' Association?
A. I did but I can't remember the date.
- 30 Q. You lied when you told the sub-committee that there was no change in the partnership of Sena & Goh and that you held 51 shares and Mr. Goh 49 shares? A. I said so. It was a lie. Annie Yeo and Goh and I and Wong Peng Yuen agreed that the true state of affairs should not be disclosed to the Malayan Sharebrokers' Association to avoid unpleasant consequences.
- 40 Q. You signed an undertaking with Malayan Sharebrokers' Association that if the constitution of Sena & Goh was affected you would notify them?
A. Yes in the form Ex. P.17. I had to tell a lie because of my undertaking.
- Q. Under the undertaking if at any time you

Atureliya Walen-
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Evidence

No.22

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Cross-examination
continued

wished to alter the position as regards your interest in the firm of Sena & Goh you were bound to apply formally to the Committee of the Malayan Sharebrokers' Association for permission to do so?

A. Before the Association was informed Annie Yeo had to pay the money, she had to be admitted as a partner, and then the Association had to be informed.

Q. You committed a breach of the undertaking? 10

A. Yes, by consent of the partners.

Q. Did you notify the Malayan Sharebrokers' Association of the admission of Tan Eng Liak as a partner before 3.4.59? A. No.

Q. Why Not?

A. It never occurred to us. It occurred to us after the publication of the photo of Annie Yeo in the Straits Times and the confirmation of her becoming a partner of Sena & Goh and the receipt of a letter from the Malayan Sharebrokers' Association on the subject. (Partnership Deeds made on 18.10.55, 26.3.59, and 3.4.59, admitted by consent and marked Exs. D.10, D.11 and D.12). Mr. Goh as managing partner drew an allowance. 10% of the net profits. I agreed that plaintiff would be managing partner during Mr. Goh's absence on leave. 20

Q. Did you intend that Mr. Goh should leave the firm? A. Not that I remember of. 30

Q. When you had a meeting at Plaintiff's house on 23.4.59 why was not Goh there?

A. I don't remember calling the meeting. I attended the meeting, I was invited. The brokers attended the meeting. I don't think Goh attended the meeting.

Q. Did it not occur strange to you that the managing partner was not there?

A. It did not at that time.

Q. The meeting was called to devise ways and means of improving the business? 40

A. General matters of interest and general conditions of the market were discussed. I cannot remember what was discussed. I can't remember how long the meeting lasted.

It lasted for 30 to 45 minutes. It was not necessarily called to discuss ways and means of improving the business.

In the High Court
of the State of
Singapore

Q. It did not appear strange that Goh was absent because you had intended that Goh should leave the firm?

Defendant's
Evidence

A. I did not call the meeting.

No.22

Q. You suggested that the plaintiff should call the meeting?

10 A. I called the meeting which was held at the office either on the 20th or the 21st April, 1959. I attended a meeting at the plaintiff's house a few days later. The brokers attended that meeting.

Atureliya Walen-
dagodage Henry
Senanayake
30th October 1961
Cross-examination
continued

Q. On 4.5.59 was there not a meeting at your house?

20 A. Yes but I can't remember the date. Nearly all the members of the firm were present. I don't think Mr.Goh was present. Some of the brokers were there. Plaintiff was there. The meeting discussed the affairs of Sena & Goh.

Q. If you had no intention of getting rid of Goh don't you think he should have been there?

A. I think I invited all the partners and Goh did not turn up.

Q. When did you make up your mind to get rid of Goh?

30 A. At no time did I want to get rid of him. We only discussed how to improve things.

Q. You bought the seat of Sena & Goh on the dissolution of the firm? A. Yes.

Q. You are now carrying on that business under the name of Sena & Co.? A. Yes.

Q. Is Goh employed by you now? A. No. I employ whom I like.

Q. In 1958 your business was trading at a loss because of Tan Sin Seng's speculation?

40 A. It was because Tan Sin Seng had taken short positions, i.e. that certain payments were due from him to the firm.

Q. Tan Sin Seng had lost money and could not

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Evidence

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Atureliya Walen-
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30th October 1961
Cross-examination
continued

pay and the firm had to pay the money on
his behalf? A. Yes.

Q. In 1958 because of that you had a heavy over-
draft at the Chartered Bank?

A. We had an overdraft all throughout.

Q. That was your personal overdraft?

A. Yes.

Q. Why did you not get Goh to share the over-
draft?

A. I was financing the whole business. 10

Q. Did Goh put in \$49,000? A. No.

Q. When the overdraft was getting bigger did you
ask Goh to contribute a portion of the over-
draft?

A. I asked him to pay up for his shares. He
was able to do that in March or April, 1959,
by selling 10 of his shares to Tan Eng Liak
for \$40,000 and paying \$35,000 to me in
settlement of the \$49,000 due from him.

Q. When your firm was trading at a loss in 1958 20
due to the short positions of Tan Sin Seng
did you authorize him to speculate with the
firm's money?

A. I was a sleeping partner, you must ask Goh.

Q. It was your money which was lost?

A. When we were losing I asked Goh to bring in
his money.

Q. You were not worried about the losses of Tan
Sin Seng?

A. This thing happened in all brokers' firms in 30
speculating business. Tan Sin Seng had
made a lot of money for the firm by previous
speculation.

Q. He was given a free hand to speculate in the
hope that he would make money for the firm?

A. You must ask Mr. Goh.

Q. You were guaranteeing the firm's overdraft
personally, were you not concerned over the
losses of Tan Sin Seng?

A. There are ups and downs in speculation. I 40

was not concerned.

Q. In March, 1959, you took a Promissory Note from Tan Sin Seng for \$109,000 to cover his losses?

A. That was done by Goh.

Q. In March, 1959, your overdraft was higher than at end of 1958?

A. It should be so.

Q. Were you worried about your overdraft in March, 1959?

A. No, speculation was like that, there are ups and downs. I was not worried about the firm's position.

Q. At the time of the dissolution in July, 1959, the losses incurred by the firm were bigger than the losses at the end of 1958?

A. From April, 1959, to the time of dissolution we made a profit. I could not say what the position was as regards January - March, 1959, without looking into the accounts.

Q. You know what a balance sheet is?

A. Yes.

Q. The primary function is to give a clear and correct view of the affairs of the business?

A. Yes.

Q. The Profit and Loss Account is always connected with the Balance Sheet? A. It is.

Q. If anyone wants to buy shares in a company the balance sheets for the last 3 years are called for and examined?

A. It all depends on one's own discretion.

Q. Your Balance Sheet for 1958 - Ex. P.3 - shows a profit of \$38,427.17 in the Profit and Loss Account? A. Yes.

Q. Your Balance Sheet for 1959 - Ex. P.27 - shows a profit of \$16,182.95 in the Profit and Loss Account? A. Yes.

Q. When Tan Eng Liak was made a partner on 3.4.59 the firm of Sena & Goh was trading at a very heavy loss?

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Evidence

No.22

Atureliya Walen-
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30th October 1961
Cross-examination
continued

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Defendant's
Evidence

No.22

Atureliya Walen-
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Cross-examination
continued

A. We had a heavy overdraft. But for the short positions taken by Tan Sin Seng and Narayanan the day to day business was going on as usual.

Q. You and Goh and his two children were sued by Tan Eng Liak in Suit No.903 of 1959?

A. Yes.

Q. In your Defence, para.6, in that suit you admitted that the firm of Sena & Goh was trading at a heavy loss with overdrafts with the Chartered Bank, Mercantile Bank and Chung Khiaw Bank running to over \$200,000?

10

A. I admit that. When I said that the firm was trading at a heavy loss I was referring to the short positions taken by Tan Sin Seng and Narayanan which are referred to in para.8 of the Statement of Claim in that suit.

Q. You also admitted in your Defence that there were also large outstanding debts which were doubtful or unrecoverable?

20

A. Yes, but I was referring to the debts due from Tan Sin Seng and Narayanan.

Q. You have issued writs against several other persons?

A. One was against Yap Tiow Keng, another against a Chettiar, and another against Dr. Essel Tan.

Q. Did you instruct your solicitors to write Ex. P.22 on 9.7.59?

30

A. Yes. The Receivers were appointed at a very high remuneration. There were three and they were not necessary.

Q. The Receivers were not appointed on 9.7.59?

A. I was a sleeping partner. I can't remember all the dates.

Q. In 1959 the firm of Sena & Goh was trading at a heavy loss? A. I was solvent.

Q. The earnings of the business from brokerage were not sufficient to cover the losses incurred by the firm?

40

A. But for the losses caused by Tan Sin Seng and Narayanan the day to day business was going smoothly.

In the High Court
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Singapore

Q. What was the extent of your losses from January, 1958, to March, 1959?

Defendant's
Evidence

A. I cannot say. My accountants will be able to give the figures.

No.22

Q. Ex. P.3 is not an audited Balance Sheet?

A. It is.

Atureliya Walen-
dagodage Henry
Senanayake
30th October 1961
Cross-examination
continued

10 Q. Mr. Sivam was the Accountant employed by Sena & Goh?

A. Mr.Sivam was looking after the books of accounts of Sena & Goh but he was employed by Pereira & Co. Sena & Goh employed Pereira & Co. I cannot say whether Sena & Goh employed Pereira & Co. as Accountants or Auditors.

1 p.m. Adjourned to 2.30 p.m.

(SD.) J.W.D. Ambrose.

20 2.30 p.m. Resumed.

We had a permanent bookkeeper named Thanappan. If I want to know anything about Sena & Goh I ask Goh first. I used to discuss things with Thanappan in the presence of Goh. I financed the business. I employed M. Tooke & Co., Chartered Accountants. When Tan Eng Liak returned from Japan in June, 1959 I asked him to put more money into Sena & Goh because I was carrying the burden of the overdraft alone. I asked him to buy more shares from the firm of Sena & Goh, either mine or Mr.Goh's. I told all the partners, Tan Eng Liak, the plaintiffs, Wong Peng Yuen, Mr.Goh, that I was carrying the heavy burden of the overdraft by myself and that I would still carry on the overdraft for their benefit even after they had put in more money. I wanted them to participate in the burden that I was carrying. Goh's two children were not partners. I did not object to his assigning shares to them. I thought that thereby Goh would

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continued

be more attentive to his work. Goh drew money from the firm every month against his share of the net profits. When plaintiff joined the firm she was a partner and shared in the profits as a partner. She brought a lot of business to the firm. She was paid when she was a remisier on the basis of commission earned from the business introduced to the firm by her. As a partner she had to work for the firm.

10

Q. Goh was given the use of a car by the firm and a driver?

A. I think so, I can't be definite. I will have to look into the books.

Q. Why did you wait till June, 1959, to press the other partners to relieve you of the burden of the overdraft?

A. To give greater facilities to the public and participate in the burden I was carrying.

20

Q. Tan Eng Liak refused to put in more money?

A. He was almost willing to put in more money but there were other partners like Wong Peng Yuen who were not willing. Plaintiff and Goh did not say anything. We had another meeting about 2 or 3 weeks after. Tan Eng Liak returned from Japan on about the 17th of June, 1959.

Q. Did you at the subsequent meeting say that if the other partners did not put in more money and lighten the burden of the overdraft you alone would not be able to carry the burden alone for their benefit?

30

A. I said so. I also said that if they put in more money I would still guarantee an overdraft of \$200,000 myself for their benefit. I did not say I would take drastic action if they did not put in more money. I would consult my lawyers as to what I should do. I can't remember if plaintiff was not present at one of the meetings with Tan Eng Liak.

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NO.23

COURT NOTES

In the High Court
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Singapore

Smith:

No.23

I apply for leave to amend paragraph 2 of the Defence by substituting "13th" for "3rd", and to amend paragraph 1 (1) of the Further and Better Particulars of the Defence by substituting "13th" for "3rd".

Court Notes
30th October 1961

Hoalim:

10 I have no objection.

Court:

Leave granted as prayed.

DEFENDANT'S EVIDENCE

Defendant's
Evidence

No.24

No.24

ATURELIYA WALENDAGODAGE HENRY SENANAYAKE
(Contd.)

Atureliya Walen-
dagodage Henry
Senanayake
30th October 1961
Cross-examination
continued

20 Q. Did you tell the other partners that you would still carry on the business if they did not put in more money? A. No.

Q. Did the meeting end in a friendly way?
A. We had no quarrel.

Q. Did you threaten them with drastic action?
A. No, but I took a firm attitude. I firmly insisted that they should put in more money.

4 p.m. Adjourned to 10.30 a.m. 1.11.61.
(Sd.) J.W.D.Ambrose.

30 Certified true copy.
Sd. K.J.Perera 31.10.61.
PRIVATE SECRETARY TO JUDGE,
COURT No.6,
SUPREME COURT SINGAPORE.

In the High Court
of the State of
Singapore

Wednesday 1st November 1961.

Defendant's
Evidence

No.24

Atureliya Walen-
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Cross-examination
continued

Q. You say that your agreement was that the amount the Plaintiff paid the money into the firm of Sena & Goh she was a partner?

A. Yes.

Q. Until 30.4.59 when you received the letter from the Malayan Sharebrokers' Association nothing was said about the approval of the Malayan Sharebrokers' Association to the Plaintiff becoming a partner?

A. That is so. Also no mention was made of it prior to 30.4.59. 10

Q. Dr. Khiani said that you were urging the Plaintiff hurriedly to pay her \$20,000 for the 5 shares into the firm?

A. I deny this. I did not urge the plaintiff.

Q. Did you say that the plaintiff would have to be approved by the Malayan Sharebrokers' Association before she could become a partner?

A. It never occurred to me or to the Plaintiff that such approval was necessary. 20

Q. To get her approved you said you would apply to the Malayan Sharebrokers' Association for permission to admit her as a partner of Sena & Goh?

A. No, that question did not arise.

Q. You further said that the Plaintiff would succeed Mr. Goh as managing partner?

A. No.

Q. You said that Goh would be kicked out because you had lost confidence in him? A. No. 30

Q. You said you would pay plaintiff a salary, a bonus, and give her a holiday and that all that would be put in a deed to be drawn up by a lawyer? A. No.

Q. Did you not say that a deed of partnership would be drawn up by a lawyer and that it would be signed by the plaintiff after she had been approved by the Malayan Sharebrokers' Association? A. No.

Q. No deed of partnership was mentioned? 40

A. No deed was mentioned.

- Q. You also mentioned books or certified accounts which she could inspect to ascertain the actual position of the firm?
- A. It was I who suggested that she should meet the firm's accountant to learn about the affairs of Sena & Goh.
- Q. In your affidavit affirmed in this suit on 8.8.59 - Ex. P.28 - you said in paragraph 9 :

In the High Court
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No.24

Atureliya Walen-
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Cross-examination
continued

10

"Then and there (i.e. on the 17th April, 1959) I agreed to sell 5 of my shares in the said firm of Sena & Goh to the said Annie Yeo for \$20,000 and it was further agreed that the transactions would be completed on the said Annie Yeo paying into the said firm the said sum of \$20,000 and that she would be treated as a partner of the said firm as from that date"?

A. Yes.

20

- Q. In that paragraph you did not say that she would be a partner but would be treated as a partner?
- A. The affidavit was prepared by my solicitors. I instructed them that I said that she would be a partner. I meant that she would be a partner.

Q. You said in paragraph 10 of the said affidavit :

30

"It was further agreed between the said Annie Yeo then and there that although she would be a partner in the said firm as from the date of her payment to the said firm the said sum of \$20,000 for the purchase of the said 5 shares in the said business of the said firm the formalities of informing the Malayan Share-brokers' Association of the admission of the said Annie Yeo as a partner in the said firm, registering the change in the composition of the firm with the Registrar of Business Names and also the signing of a new partnership agreement be left over till the return of the said Tan Eng Liak who was then holidaying in Japan"?

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Evidence

No.24

Atureliya Walen-
dagodage Henry
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1st November 1961
Cross-examination
continued

A. Yes.

Q. You just said that the question of the approval of Annie Yeo by the Malayan Sharebrokers' Association had not been discussed prior to the 30th April, 1959.

In paragraph 10 of the affidavit you say that it was agreed on the 17th April that although she would be a partner as from the date of payment the formalities of informing the Malayan Sharebrokers' Association of the admission of Annie Yeo as a partner, etc., be left over till the return of Tan Eng Liak?

10

A. This portion of paragraph 10 of my affidavit is not correct. The admission of Tan Eng Liak as a partner had not been referred to the Malayan Sharebrokers' Association for approval nor the assignment of Mr. Goh's shares to his children.

Q. Will you explain what is meant by this sentence in Ex. A.B.4 which is a letter dated 22.4.59 from Sena & Goh to the plaintiff

20

"The changes in the partnership will be incorporated and delivered to you in due course"?

A. I will answer that when the original is produced to me. It appears that this letter was sent from my office by Mr. T.T. Goh or Mr. Sivam. The first part of the letter was written on my instructions. I can't say whether the sentence put to me was written on my instructions. I agree that that sentence means

30

"The changes in the partnership will be embodied in a formal document in due course and delivered to you."

Q. In paragraph 5 of your Amended Defence you say

"It was then and there orally agreed between the plaintiff and the Defendant that the plaintiff would be

40

treated as a partner as from the date on which she paid the said sum of \$20,000"?

In the High Court
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A. I meant that the plaintiff would be a partner.

Defendant's
Evidence

Q. Have you had a balance sheet and a profit and loss account drawn up every third month in accordance with your partnership deed dated 18.10.55 - Ex. D.10?

No.24

10 A. This was drawn up by lawyers. I was a sleeping partner.

Atureliya Walen-
dagodage Henry
Senanayake
1st November 1961
Cross-examination
continued

Q. Did you not mention "certified accounts" to the plaintiff and state that plaintiff could have inspection of the books of accounts to find out the true position of the firm?

A. There was no question of accounts or books. I suggested to plaintiff that she should meet Mr.Sivam, The Accountant of the firm.

Q. A balance sheet was not mentioned?

A. No.

20 Q. On 20.4.59 was it possible for the Balance Sheet as at 31st December, 1958, to have been prepared?

A. This question would have to be answered by the Accountant.

Q. The Balance Sheet for 1958 was prepared and dated 27th July, 1959?

A. This question would have to be answered by the Accountant or Mr. Goh.

30 Q. Did you produce the original of Ex. A.B.2. to the Malayan Sharebrokers' Association committee on 13.5.59?

A. That question should be put to Mr. Goh, the managing partner.

Q. Did you tell Mr.Sivam that the plaintiff should sign Ex. A.B.2?

A. I was never consulted on this.

40 Q. In paragraph 4 of the Amended Defence you say that subsequently a day or two before the 20th April, 1959, the plaintiff orally confirmed to the defendant that she had herself inspected the said firm's books of

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.24

Atureliya Walen-
dagodage Henry
Senanayake
1st November 1961
Cross-examination
continued

account for the year 1958?
A. That must have been on the 17th April,
1959, at my house after she had seen Mr.
Sivam there. I cannot remember if
Mr. Sivam brought books of account to my
house. I was not with Mr. Sivam and the
plaintiff when Mr. Sivam was explaining
the accounts to the plaintiff.

Q. In paragraph 4 of the Amended Defence you
said she later on the 20th April, 1959,
acknowledged in writing, is Ex. A.B.2 the
writing? A. I can't say. I now say
that Ex. A.B.2 is the document.
Ex. P.15 is the original.

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Q. Did you see Ex. P.15 before you went to
the Malayan Sharebrokers' Association on
13.5.59? A. I can't remember.

Q. Ex. P.15 was produced either by you or Mr.
Goh to the Malayan Sharebrokers'
Association?

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A. Mr. Goh can answer that question.

Re-examination

Neither the name of Tan Eng Liak nor the
name of Wong Peng Yuen was submitted to the
Malayan Sharebrokers' Association until the
letter was received from the Malayan Share-
brokers' Association dated the 30.4.59.
Wong Peng Yuen sought to buy 5 shares of mine
after the plaintiff. When I went to the
Malayan Sharebrokers' Association on 13.5.59
Wong Peng Yuen was already a partner. He
never suggested that his partnership should
be subject to an express condition that it
should be approved by the Malayan Share-
brokers' Association. Plaintiff never
suggested prior to the 29th June, 1959, that
she was not a partner because the approval
of the Malayan Sharebrokers' Association had
not been obtained. Tan Sin Seng had dealt
in shares and the shares had been delivered
and the firm had paid for them.
Narayanan or Raju was in the same position.
Unless the firm could recover the money from
both of them the firm would incur a loss.
Other shares for which the firm had paid had
not been delivered to customers and were in
fact in the possession of the firm. In

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In the High Court
of the State of
Singapore

Defendant's
Evidence

No.24

Atureliya Walen-
dagodage Henry
Senanayake
1st November 1961
Re-examination
continued

10 those cases we had the shares and we did not regard them as losses. Every firm of sharebrokers must have overdraft facilities. When the shares come in we must take them up and pay for them. We may or may not have the money from the customers. Normally we will not have the money from the customers. Because we do not ask for it until the shares are ready to be delivered. To have them ready for delivery we have to pay for them. The overdraft was covered by my personal guarantee. The firm had to pay interest on it. At the first meeting of the partners on the 29th June, 1959, I said that I would take drastic action if the partners did not buy more shares in the firm.

12.45 p.m. Adjourned to 2.30 p.m.

(Sd.) J.W.D.Ambrose.

2.30 p.m. Resumed.

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DEFENDANT'S EVIDENCE

NO.25

GOH TEIK TEONG

D.W.2. Goh Teik Teong, affirmed, states in English.

No.25

Goh Teik Teong
1st November 1961
Examination

30

I live at 23 Grange Road. I was formerly a partner of Sena & Goh. Plaintiff was at one time a remisier to the firm. I sold 10 of my shares to Tan Eng Liak. Subsequently the Defendant wished to dispose of some of his shares. Mr. Sena sold 5 of his shares to the Plaintiff. Plaintiff informed the press and her photograph appeared in the Straits Times. As a result the Malayan Sharebrokers' Association wrote to the firm and raised the question of the photograph and called our attention to an undertaking given by Mr.Sena and also by me: Ex. D.8. Ex. P.18 is a photostat copy of my undertaking. Wong Peng Yuen had also bought 5 shares from Mr.Sena.

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In the High Court
of the State of
Singapore

Defendant's
Evidence

No.25

Goh Teik Teong
1st November 1961
Examination
continued

The Plaintiff was introduced to Mr. Muthiah, the manager, as a partner by Mr. Sena. There was a partnership meeting on 29.6.59. Plaintiff and I were present. She was present as a partner. Wong Peng Yuen and Tan Eng Liak and Mr. Sena were present as partners. When Tan Eng Liak was admitted as a partner no application was made to Malayans Sharebrokers' Association for approval. Before the letter Ex. D.8 was received I was going to write to the Malayans Sharebrokers' Association stating that the plaintiff and Tan Eng Liak and Wong Peng Yuen had been admitted as partners. After the letter was received I and Mr. Sena and plaintiff had an interview with the Malayans Sharebrokers' Association committee. As regards the minutes of the Malayans Sharebrokers' Association sub-committee - Ex. P.16 - I do not agree with what is recorded on page 3. When I went for my interview Mr. Sena was present. We were not interviewed separately. Furthermore I said there were other partners. I also told them I would write them a letter and they gave me permission. Before plaintiff signed Ex. P.15 she saw me about it. She said to me that Sivam had told her that Mr. Sena had wanted her to sign it. I told her that I did not know anything about her terms with Mr. Sena and it was up to her to sign or not. I was not concerned with whether Mr. Sena was selling 5 or 10 of his shares, we had our original agreement. When I went in for the interview Mr. Sena was there. The sub-committee said that his answers were not satisfactory: that Mr. Sena had not told the truth. I told them there were other partners and that I would write to them. I told them that no final agreement had been made with the additional partners, i.e. the plaintiff and the others. Before I went to the interview I had a meeting with the plaintiff, Wong Peng Yuen and Mr. Sena. We discussed what attitude should be taken by us at the interview. We were to ask the committee for permission for the plaintiff, Wong Peng Yuen and Tan Eng Liak and the infants to be admitted as partners. At that time Tan Eng Liak was a partner. I was going to tell the sub-committee that Tan Eng Liak was a partner and also the children

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and ask for approval. I did not have any doubt as to approval being given. I wrote a letter to the sub-committee after the interview stating that Tan Eng Liak and my 2 infant children were intending to become partners along with the plaintiff and Wong Peng Yuen and asked for approval. As far as Tan Eng Liak and my 2 infant children were concerned they were already partners at that date. The plaintiff and Wong Peng Yuen were also already partners. I told Tan Eng Liak, plaintiff, Wong Peng Yuen and Mr. Sena what I was proposing to state in my letter. They raised no objection. What we had agreed upon prior to the interview was similar to what was stated in the letter. This is a copy of the letter dated 11.6.59 - admitted by consent and marked Ex. D.13. Contrary to what is stated in Ex. D.13 I had assumed previously that the 5 persons mentioned were already partners. I was afraid that if the Malayan Sharebrokers' Association sub-committee knew that these persons had been admitted as partners in breach of undertakings given by Mr. Sena and myself some action might be taken against us and probably a fine or suspension might be imposed. I did not want that to happen. I found myself in a difficulty. The Balance Sheet for 1958 was out in June, 1959. We have a quarterly balance sheet in addition to an Annual Balance Sheet. The plaintiff could not have seen the Balance Sheet for 1958 on 20.4.59 as it was not yet out. She could have seen the Balance Sheet for the last quarter of 1958. That was out in March, 1959. The idea that the 5 persons were intending to become partners was thought of jointly. Tan Sin Seng owed money to the firm. A Promissory Note for \$109,000 was taken from him. During the time when the plaintiff was a partner there was a guarantee by Dr. Essel Tan in respect of Tan Sin Seng for \$20,000. Tan Sin Seng recovered some of his losses at first. Up to the date of the dissolution Tan Sin Seng had not exceeded the amount guaranteed. Narayanan had lost money but was covered by certain land which he owned. The firm had overdrafts. It was part of the business to have overdrafts. The firm has to pay for shares and wait for the money from the customers. The overdraft

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.25

Goh Teik Teong
1st November 1961
Examination
continued

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.25

Goh Teik Teong
1st November 1961
Examination
continued

would indicate the volume of the business done by the firm. Mr. Sena asked me to pay up on my shares. I sold 10 of my shares to Tan Eng Liak for \$40,000. The staff were aware of Tan Sin Seng's dealings. The plaintiff also dealt with the firm before she became a partner. She was a remisier. Several of the brokers were remisiers. The brokers sat along a table. They knew what is going on. The plaintiff did not complain to me about Tan Sin Seng's losses. I and the plaintiff discussed Tan Sin Seng's losses. I cannot remember the date. She raised an objection as to why we should allow Tan Sin Seng to lose so much money. I told her that there was a guarantee from his brother. After that she did not make any further comments. A broker named Leong owed the firm a few thousand dollars. The plaintiff knew about it. On the dissolution we could not trade. We were forced to sell at a loss the shares which Tan Sin Seng bought on his own account. We were forced to sell at the current market price other shares and incur a loss. The prospects of the firm in April, 1959, were quite good. There was a small boom in October, 1959.

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Adjourned to 2.11.61 at 10.30 a.m.

(Sd.) J.W.D.Ambrose.

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2nd November 1961

Thursday, 2nd November, 1961.

Cross-examination

There was a discussion between me and the plaintiff before we went for the interview on 13.5.59. Mr.Sena was there. The discussion was how to tell the Malayan Sharebrokers' Association committee about the plaintiff. We decided to tell the committee that the plaintiff was going to join the firm as a partner. The plaintiff in fact had already become a partner at that date. That was as far as I was concerned. She had paid in the money into the firm and there was an advertisement in the papers. Nothing else was discussed.

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Q. The minutes of the Malayan Sharebrokers'

Association sub-committee recorded exactly what happened at the interview?

A. I and Mr. Sena were not interviewed separately. Mr. Sena went in first. I went in after a few minutes but while he was still inside. They addressed Mr. Sena and said he was not telling the truth about the composition of the firm. When the plaintiff was employed as a remisier she attended office every day. She did absent herself once in a while, not once a week. She did on some occasions work for half an hour and go out. She would be in touch with the office by phone. I am not working as a sharebroker now. I am in the Sales Department of Wearne Brothers. I approached a few firms of sharebrokers for a job. They told me to wait. Every 3 months a Profit and Loss Account was drawn up. From that my 10% of the profits was calculated. We had 4 Balance Sheets every year from 1955 to 1958. Mr. Sena and I had each a car which belonged to the firm. My petrol bill was paid by the firm. I did not draw a salary. I drew advance against my share of the profits. I draw an entertainment allowance, about \$200 or \$300. The firm used to pay half the brokerage to registered remisiers. We had a few brokers who were not registered remisiers. They were paid brokerage, sometimes quarter, sometimes half. That was against the Malayan Sharebrokers' Association Rules. Rosalind Cheng was one of them. She gave us the business and was paid. She was a broker but not an employee of Sena & Goh. The brokers employed by the firm were paid a salary but no commission. The brokers do not have to be registered. Each firm can only employ 3 remisiers. The brokers are employed as assistants and paid salaries as assistants and also for their work as brokers. They do the work of brokers. The names of the brokers need not be communicated to the Malayan Sharebrokers' Association. One broker would not know whether any contract made by or through another broker is a gaining contract or a losing contract, i.e. whether a profit or a loss has been made. Brokers do business on the telephone buying

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.25

Goh Teik Teong
2nd November 1961
Cross-examination
continued

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.25

Goh Teik Teong
2nd November 1961
Cross-examination
continued

and selling. They have an idea of the quantity of business done at current prices. They discuss these matters during the lunch hour and also during other hours. They do not discuss their personal losses and gains. Plaintiff showed me Ex. P.15 on 20.4.59. I never had it before. It might have been in the office safe after she signed it, but I am not sure. On 13.5.59 I can't remember if I took it out of the office safe. I can't remember if the plaintiff gave this document to me. Plaintiff asked me if she should sign it. I told her that I could not advise her and that I did not know the terms of the sale of the shares to her and that it was up to her to decide whether she should sign it or not.

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Q. In April, 1959, you were pressed by Mr.Sena to pay in your share of the capital?

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A. He asked me to pay what was due on my current account. It was about thirty-four thousand dollars. What was due from me as my share of the capital was transferred to this account as a debit in 1956. I sold 10 shares to Tan Eng Liak for \$40,000 and paid \$35,000 into my current account. I took the \$5,000 for myself.

Re-examination

On 13.5.59 before the interview the plaintiff regarded herself as a partner but agreed that the Malayan Sharebrokers' Association should be informed that the position was that she intended to become a partner. I can't remember from whom that suggestion originated. In April, 1959, there was a meeting after office hours in the office at which plaintiff was introduced as a partner. I can't remember if that was the day on which she paid her money or the day after or subsequently. From the time plaintiff paid her money she acted and appeared to be a partner. Plaintiff never suggested to me between 20.4.59 and 29.6.59 that she was not a partner or that she was intending to become a partner as opposed to being a partner. Partners were entitled to half brokerage like remisiers.

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(Witness released, Mr.Hoalim not objecting).

DEFENDANT'S EVIDENCE

NO.26

SADASIVAM S/O KANDASAMY,In the High Court
of the State of
SingaporeDefendant's
Evidence

No.26

Sadasivam s/o
Kandasamy
2nd November 1961
Examination

10 D.W.3 Sadasivam s/o Kandasamy, affirmed states
in English. I live at 41-32 Lengkong Dua,
Singapore, 14. I am Chief Accountant of
Pereira & Co. Partner in firm of Sivam &
Muthu. I am a Private Tutor. Head of
Mathematics Department, Stamford College.
General Registrar of Stamford College.
Lecturer in Mathematics, City School of Com-
merce. Bachelor of Commerce.
Incorporated Secretary. Pereira & Co. were
Accountants & Auditors of Sena & Goh in 1957
and 1958 but not 1959. In 1959 Tooke & Co.
were the Accountants and Auditors. Pereira
& Co. were Auditors of Sena, Ltd. in 1958 and
1959. Sivam & Muthu were Income Tax
Advisers to Sena, Ltd. in 1958 and 1959. In
20 early part of 1959 I was asked by Mr. Sena to
meet the plaintiff who was intending to become
a partner in the firm of Sena & Goh. I was
asked to produce the accounts for 1958 to show
the plaintiff. I did so. The accounts
were in draft. I produced the Trading
Account and the Balance Sheet. I showed
them to the plaintiff and explained them to her
item by item. She appeared to understand my
explanation. There were losses by Tan Sin
30 Seng. I told her the amount was about
\$100,000. I told her that there was a Pro-
missory Note covering that amount. At that
time there was Narayanan's loss. I told
her about that. There was no other known
loss at that time. I had been in charge of
the books for 1958. I was speaking of the
losses for 1958 known to me. She did not
express any views after I had finished my
explanation. Subsequently she did not ask
40 me any questions about the financial affairs
of the firm. Subsequently I attended a
partnership meeting, the last. Plaintiff,
Tan Eng Liak, Goh, Sena and Wong Peng Yuen
were there. I made a short note. I
attended at the request of Mr. Sena. No one
suggested that they were not partners. No
one suggested that they had paid for shares in
the partnership on representation made by Mr.

In the High Court
of the State of
Singapore

Defendant's
Evidence

No.26

Sadasivam s/o
Kandasamy
2nd November 1961
Examination
continued

Cross-examination

Sena or Mr.Goh which were subsequently found to be incorrect. Mr.Sena suggested to plaintiff, Wong Peng Yuen and Tan Eng Liak to buy more shares in the firm. They were not decided. Mr.Sena wanted more money for the business.

I did not get the plaintiff to initial the Trading Account and the Balance Sheet. They have been destroyed. I produced 2 sheets of paper. On one was the Trading Account and on the other the Balance Sheet. Plaintiff did not say that she was not satisfied with the accounts. I did not know whether she was going to pay any money into the firm or not. I did not know whether she had decided to become a partner. Wong Peng Yuen came to my office twice. Once he came with Tan Sin Seng. Plaintiff did not come to my office at all. On 20.4.59 I did not take Ex. P.15 and ask her to sign it. I did not say that it was required to get her approved by the Malayan Sharebrokers' Association as a partner. I took no books of accounts to Mr. Sena's house. I showed the Trading Account and Balance Sheet to the plaintiff. On 29.6.59 the plaintiff, Wong Peng Yuen and Tan Eng Liak did not refuse to buy more shares in the partnership, they were undecided. Mr. Goh charged his entertainment to the firm's entertainment account. It was \$2,000 odd for the whole year. He used the firm's car: but the firm did not provide a driver. So did Mr.Sena. I met plaintiff at the 2nd meeting on 29.6.59 but not at the 1st meeting on 10.6.59. At the 2nd meeting plaintiff, Wong Peng Yuen and Tan Eng Liak did not state that they regretted having put in their money into the firm.

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Re-examination

This is a copy of the minutes made by me of the meeting of the 29th June, 1959 - admitted and marked Ex. D.14.

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(Witness released, Mr.Hoalim not objecting).

Case for the Defence.

NO.27

JUDGMENT AND FORMAL ORDER

In the High Court
of the State of
Singapore

IN THE HIGH COURT OF THE STATE OF SINGAPORE

No.27

ISLAND OF SINGAPORE

Judgment and
Formal Order
3rd November 1961

Suit No.1008
of 1959

BETWEEN

ANNIE YEO SIEW CHENG (f) Plaintiff

(L.S.) - and -

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ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE Defendant

3RD NOVEMBER, 1961

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This Action coming on for trial before the Honourable Mr. Justice Ambrose on the 17th, 18th, 19th, 20th days of April 1961; the 17th, 19th, 20th, 21st days of July, 1961, the 4th, 5th, 6th, 7th, 8th days of September, 1961, the 30th day of October, 1961, the 1st and 2nd days of November, 1961 and this day in the presence of Counsel for the Plaintiff and the Defendant and upon reading the pleadings and hearing the evidence adduced and what was alleged by Counsel aforesaid THIS COURT DOTH ADJUDGE that this action be and is hereby dismissed with costs to be taxed as between Party and Party on the Higher Scale and paid by the Plaintiff to the Defendant.

Entered this 13th day of November, 1961
at 3.20 p.m. in Volume LXXXIV Page 327.

Sd. Goh Heng Leong

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DY.REGISTRAR.

In the High Court
of the State of
Singapore

NO.28

REASONS FOR JUDGMENT DELIVERED
BY AMBROSE J.

No.28

IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE

Reasons for Judgment delivered by
Ambrose J.

Suit No.1008/1959.

29th March 1962

BETWEEN

ANNIE YEO SIEW CHENG (f) Plaintiff

- and -

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE Defendant

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JUDGMENT OF AMBROSE, J.

This action was brought to recover the sum of \$20,000 alleged to have been paid on the 20th April, 1959, for five of the defendant's shares in the firm of Sena & Goh on a misrepresentation made by the defendant as to the financial position of the firm and subject to two conditions which were not fulfilled.

The material facts alleged in the special indorsement on the writ were these. The money was paid by the plaintiff on the representation made by the defendant to her that the firm was a gold mine. It was paid to the firm at the defendant's request. And it was paid subject to the Malayan Sharebrokers Association approving of her becoming a partner of the firm, and also subject to the certified accounts of the firm for 1958 being shown to her. The representation was at all material times untrue. The Association did not approve of her becoming a partner; nor were the certified accounts shown to her.

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The material facts alleged in the defence were these. The defendant agreed to sell to the plaintiff, at her request, five

of his shares in the firm for \$20,000. This sum was paid to the firm on the 20th April, 1959. The alleged representation was not made by the defendant. The payment was not made subject to the alleged conditions. As from the 20th April, 1959, the plaintiff was treated as a partner holding five shares, attended all the partners' meetings, and took part in all decisions regarding the business of the firm.

In the High Court
of the State of
Singapore

No.28

Reasons for Judgment delivered by
Ambrose J.
29th March 1962
continued

The following facts were not disputed. On the 18th October, 1955 the defendant and Goh Teik Teong executed a partnership deed and commenced business as stock and share-brokers at No.22 Market Street, Singapore, under the name of Sena & Goh. The partnership capital consisted of \$100,000, of which \$51,000 was to be contributed by the defendant and \$49,000 by Goh Teik Teong. On the 26th March, 1959, the defendant and Goh Teik Teong executed a partnership deed, which was stated to be supplemental to the partnership deed dated the 18th October, 1955. By this supplemental deed Goh Teik Teong, with the consent of the defendant, assigned and transferred \$14,000 of his share in the capital of the firm to each of his two infant children, Goh Ewe Hock and Sylvia Goh Suan Poh. The intention expressed in the deed was that each of them should on the 26th March, 1959, become "a partner of Sena & Goh to the extent of \$14,000 out of the total capital of \$100,000." The two infant children were not parties to this deed nor did they execute the same. On the 3rd April, 1959, the defendant, Goh Teik Teong and Tan Eng Liak executed a partnership deed which was stated to be supplemental to the two partnership deeds mentioned above. By this supplemental deed Tan Eng Liak became a partner of the firm of Sena & Goh by paying \$40,000 for a \$10,000 share out of the share of \$21,000 held by Goh Teik Teong. The two infant children of Goh Teik Teong were not parties to this deed nor did they execute the same. On the 20th April, 1959, the plaintiff paid \$20,000 for a \$5,000 share out of the share of \$51,000 held by the defendant. The expression "five of the defendant's shares" used by the parties and adopted in this judgment means a \$5,000

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In the High Court
of the State of
Singapore

No.28

Reasons for Judgment delivered by
Ambrose J.
29th March 1962
continued

share out of the defendant's share of
\$51,000.

The first question I had to decide was whether the defendant made a representation to the Plaintiff that the firm of Sena & Goh was a gold mine. The plaintiff's evidence was as follows. She started to work for the firm as a remisier from October, 1955. On the 13th April, 1959, she went to Dr. Sybil Kiani's house at 7 p.m. There the defendant, who arrived a little later, approached her and asked her to buy some of his shares in the firm so that she could have a better interest in the firm. He said that the business was a very good one and that it was a gold mine; that if she joined him she could make the business better; that she had a number of good clients and was bringing in very good business; that she had been long in the firm, her account was good, and that she could be trusted. He told her that he distrusted Goh and that if she bought his shares he would make her run the firm for him. He said that the business was a flourishing one and that she must not miss the golden opportunity. He also said that one of her very good clients, Tan Eng Liak, had joined the firm. She believed every word of the defendant. He was a good employer. She respected him as a very rich man and had great faith in him. He pressed her to take ten shares for \$40,000. She told him that \$40,000 was a bit too much for her; that she would take five shares first; and that, if satisfied, she would take another five shares later on. He told her to put in the money as quickly as she could, and pressed her to join him as soon as possible and help him to run the business. Before he left, the defendant invited her and Dr.Kiani to come to his house on the 17th April, They went there on that day about 7.30 p.m. There the defendant introduced his accountant, Sivam, to the plaintiff. Sivam showed her two sheets of paper with some figures scribbled on them and said those were the assets of the firm. Sivam told her that the business was flourishing and that they were buying and selling about \$165,000 worth of stocks and shares every month. She became very interested and

told the defendant that she would take five shares and that, if she was satisfied, she would take another five later on. The defendant told her to pay \$20,000 into the account of the firm with the Chartered Bank on the 20th April. The sum was paid as arranged.

In the High Court
of the State of
Singapore

No.28

Reasons for Judgment delivered by
Ambrose J.
29th March 1962
continued

10 Dr. Kiani gave the following evidence as regards what happened on the 13th April, 1959, at her house. The defendant said that the plaintiff had brought a lot of business to the firm and a lot of rich clients, and had done excellent work. The defendant also said that the firm had grown from a small to a flourishing one, that the firm was making money hand over fist, and that it was a veritable gold mine. The defendant added that he would like the plaintiff to take greater interest in the firm and have more authority; that he was very disappointed with Goh; that he wanted the plaintiff to take over the whole management of the firm; and that he wanted her to buy ten of his shares for \$40,000. The plaintiff said that she would try to get \$20,000 and pay that first; and that, if satisfied, she would pay another \$20,000. The plaintiff added: "I don't want to go into this blindfolded because I must see the books." The defendant replied that she could not see the books until she had become a partner and paid the money. But he invited the plaintiff and Dr. Kiani to come to his house on the 17th April, and said that he would get Sivam, his accountant, to show the plaintiff on that day the assets and other business items. Dr. Kiani and the plaintiff went to the defendant's house as previously arranged. There the defendant introduced Sivam, his accountant, to them and asked Sivam to show them the position of the firm. Sivam produced a file and some papers from the file and showed them to the plaintiff. The plaintiff said that she could not understand the figures. The defendant spoke about the prosperity of the firm and urged the plaintiff to pay the money. The plaintiff said that she could only pay \$20,000 and that, if she was satisfied, she would buy the other shares.

The defendant's story was as follows: On the 13th April it was the plaintiff who started

In the High Court
of the State of
Singapore

No.28

Reasons for Judgment delivered by
Ambrose J.
29th March 1962
continued

the discussion about the business. He was asked to express his opinion about the firm. He did not say to the plaintiff that the firm of Sena & Goh was a gold mine. He said that it could be regarded as a very lucrative business if all of them put their shoulders together and worked together. The plaintiff said that she had a lot of loose cash about and that she would like to buy ten shares of the business for \$40,000. He said that he had reverses in the firm and referred to the short positions taken by Tan Sin Seng and Narayanan. The plaintiff said that she was fully aware of the losses. He said that she should have a look into the books and accounts in view of the losses, and that, before he sold the shares, he had better call his accountant, Sivam, to explain the financial position of the firm to her. He added that any money paid by her would go directly to the firm to reduce its overdraft; and that he would not touch any of the plaintiff's money until the firm was back on its feet. He arranged for Sivam to come up to his house to explain matters to the plaintiff on the 17th April. On that day the plaintiff and Dr. Kiani came to his house. He told the plaintiff that Sivam would explain the financial position of the firm to her. Sivam did so. The plaintiff then said to the defendant that, after the disclosures made by Sivam, she would only buy five shares for \$20,000. On the 20th April, the plaintiff paid \$20,000 into the bank account of Sena & Goh and become a partner of the firm for five shares.

Sivam's evidence was to this effect. He was asked by the defendant to show the accounts of Sena & Goh for 1958 to the plaintiff. He produced the draft Trading Account and the draft Balance Sheet to the plaintiff and explained them to her item by item. She appeared to understand his explanation. He told her about the losses incurred by Tan Sin Seng and Narayanan; and that the amount due from Tan Sin Seng was about \$100,000 for which he had given a promissory note.

As regards the first question, I came to the conclusion that the defendant did make the

representation to the plaintiff that the firm of Sena & Goh was a gold mine. I accepted the plaintiff's evidence on this point: I saw no reason to disbelieve it. It was corroborated by the evidence of Dr. Kiana, which I accepted. The defendant's demeanour in the witness-box created a distinctly unfavourable impression. I did not believe his evidence. It seemed to me extremely probable that if the defendant really told the plaintiff about the reverses suffered by the firm and the losses resulting from Tan Sin Seng's transactions with the firm, she would not have agreed to buy five shares from him. The defendant's witness, Sivam, also impressed me unfavourably. It seemed to me extremely probable that, if he told the plaintiff that the losses incurred by Tan Sin Seng amounted to \$100,000, she would have refused to buy any shares from the defendant.

I found that when the defendant said that the firm was a gold mine, he meant that it was a flourishing business; and that that was what the plaintiff understood him to mean. I also found that the representation was a material one; and that the plaintiff was thereby induced to agree to buy five of the defendant's shares.

I then considered the question whether the firm of Sena & Goh was a flourishing business on the 13th and 17th April, 1959. It was not disputed that Tan Sin Seng, a broker employed by the firm, had been gambling in stocks and shares; that the firm as guarantor had to pay up the differences due from him; and that the firm had to pay about \$100,000 in respect of his losses out of its overdraft with the Chartered Bank. This sum was equal to the entire capital of the firm and was not expected to be made good by Tan Sin Seng. I accepted Tan Sin Seng's evidence that in January, 1959, when his account showed a loss of \$100,000, the defendant spoke to him about the heavy banked overdraft and said that he was worried about it; and that the defendant asked Tan Sin Seng to get a buyer for his shares to lighten his burden and said he wanted to get out of the business. I accepted

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Reasons for Judgment delivered by
Ambrose J.
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continued

the plaintiff's evidence that on the 29th June, 1959, the defendant threatened to withdraw his personal guarantee of the firm's overdraft if the partners did not put in more capital. I came to the conclusion, therefore, that the firm was not a flourishing business on the 13th and 17th April, 1959, and that it was not a gold mine and the defendant had made it out to be.

It was contended by counsel for the plaintiff that the plaintiff entered into an agreement with the defendant on the 13th and 17th April, 1959, to buy five of the defendant's shares but not to become a partner of the firm. In my opinion, there was no substance in this contention. The plaintiff said that the defendant asked her to buy his shares so that she could have a better interest in the firm; and that the defendant told her that he distrusted Goh and that if she bought his shares he would make her run the firm for him. The plaintiff herself testified that she thought that she became a partner of the firm from the 20th April, 1959. On the 25th April, she signed a form addressed to the Registrar of Business Names, stating that she had been admitted as a partner on the 20th April. Although this form was not sent to the Registrar of Business Names, the fact that the plaintiff signed it supported her own evidence that she thought she became a partner of the firm by buying five shares of the defendant. Dr. Kiani's evidence was that when the plaintiff said she wanted to see the books of account the defendant replied that she could not see the books until she had become a partner and paid the money. In my opinion, the plaintiff paid the money to become a partner and thereby have access to the books.

The next question I considered was whether the sum of \$20,000 was paid by the plaintiff for five of the defendant's shares in the firm subject to the Malayan Sharebrokers Association approving of her becoming a partner of the firm. The plaintiff did not mention any such condition in her own evidence. No reference to such a condition was made by the plaintiff's solicitors in their letter of the 1st July,

1959, to the firm of Sena & Goh. I accepted Dr.Kiani's evidence that the defendant said that he would get the approval of the Malayan Sharebrokers Association for the plaintiff to become a partner. But, in my opinion, the parties did not expressly stipulate that either their agreement or the payment of \$20,000 was subject to the Malayan Sharebrokers Association approving of the plaintiff becoming a partner.

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I then considered the question whether such a condition was to be implied. The suggestion that such a condition was to be implied was based on the assumption that the approval of the Malayan Sharebrokers Association was necessary in law before the plaintiff could become a partner. The firm of Sena & Goh was a member of the Association. On the 19th August, 1958, the defendant and Goh gave undertakings in writing to the Association in these terms:

"I also declare that my interest in Sena & Goh is held entirely in my own right and that no other person has any right, interest or title therein. If at any time I should wish to alter this position, I shall apply formally to the Committee for permission to do so."

In my opinion, even if the firm could be expelled under the rules of the Association for a breach of the written undertaking given by the defendant, there was nothing in law to prevent the plaintiff from becoming a partner of the firm without the prior approval of the Association. I therefore, took the view that neither the agreement between the plaintiff and the defendant nor the payment of the \$20,000 was subject to any implied condition as to the approval of the Association.

That brought me to the question whether the payment of the \$20,000 was made subject to the certified accounts of the firm for 1958 being shown to the plaintiff. The plaintiff herself gave no evidence of any express condition to that effect. It seemed to me that she wished the Court to imply such a condition. She relied on the fact that she was induced by Sivam

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to sign a document on the 20th April, 1959, which was in these terms:

"Upon my approach to Messrs. Sena & Goh for a share in the concern, I was shown the books of account of the Company and the Balance Sheet as at 31st December, 1958. I have satisfied myself with the position of the Company and I have willingly agreed to accept the five shares assigned to me by the firm as a going concern."

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I accepted the evidence of the plaintiff that she signed it because Sivam told her that the document had to be shown to the Malayan Share-brokers Association before they would approve of her becoming a partner, and also because Sivam told her that the defendant had said to Sivam that she must sign the document. I accepted the evidence of the plaintiff that when she signed the document she had not seen the books of account or the balance sheet in question. The plaintiff's line of reasoning appeared to be this: if she had not seen the balance sheet, the Association would not approve of her becoming a partner; if the Association did not give their approval, she could not become a partner; her becoming a partner was, therefore, subject to her having seen the balance sheet. As I have already stated, in my opinion, there was nothing in law to prevent the plaintiff from becoming a partner without the approval of the Association. And I did not see any necessity for implying a term that the agreement between the plaintiff and the defendant or the payment of the \$20,000 was subject to the certified accounts of the firm for 1958 being shown to the plaintiff.

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It was submitted by counsel for the defendant that it was not possible to recover money paid by a representee to a representor under a contract induced by misrepresentation without asking for and obtaining rescission of the contract. The authority he cited for this proposition was Long v. Lloyd, 1958, 2 All E.R. 402. It seemed to me that this case did not support such a proposition and

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that the proposition was untenable. In my judgment, the law is clearly and correctly stated in the following passage from 26 Halsbury's Laws of England (3rd edition) at page 876:

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10 "Where the representee has simply paid money to the representor under the contract, and has received neither money nor money's worth in exchange, and so has
nothing to restore, the proceeding assumes the form of an action for money had and received, which succeeds, or fails, on precisely the same principles as if the action were for rescission;"

20 It was further submitted by counsel for the defendant that the claim for money had and received was not maintainable as there was no total failure of consideration. It was said that the contract had been in part performed and the plaintiff had derived some benefit from it. I accepted this submission. In my view, as
30 from the 20th April, 1959, the plaintiff regarded herself and acted as a partner. She was introduced to the staff as a partner by the defendant. She attended partners' meetings. She acted as managing partner when Goh Teik Teong went on leave. She inspected the partnership books, and thereby clearly exceeded the rights of a mere assignee of a partner's share.
40 She was treated as a partner by the defendant and Goh Teik Teong. Whether Goh Ewe Hock and Sylvia Goh, the infant children of Goh Teik Teong, became partners from the 26th March, 1959 or merely assignees of parts of Goh Teik Teong's share, they acquiesced in the treatment of the plaintiff as partner. Tan Eng Liak, who became a partner on the 3rd April, 1959, and was away in Japan when the plaintiff began to act as a partner, also treated the plaintiff as a partner from the time he came to know that she was acting as a partner. The plaintiff's photograph was published in the Straits Times on the 30th April, 1959, with words indicating that she had become a partner of Sena & Goh. As a result, the defendant and Goh Teik Teong were required by the sub-committee of the Malayan Sharebrokers Association to furnish an explanation. Both of them told the sub-committee

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on the 13th May, 1959, that the plaintiff had not actually become a partner but was intending to become one. I found that this was a lie which they resorted to, with the consent of the plaintiff, as they feared the consequences of revealing the true position.

Counsel for the defendant relied on the case of Jefferys v. Smith (1827), 3 Russ.158. The facts in that case were that A agree to purchase B's share in a firm, and acted and was treated as a partner by the other partners, but afterwards rescinded the contract with B. It was held, nevertheless, that a partnership subsisted between A and B's co-partners. This case seemed to me to be authority for the proposition that recognition by other partners may confer the rights of a partner on an assignee of a partner's share. Counsel for the plaintiff contended that this principle could not be applied in the present case as the partnership deeds of the 18th October, 1955, the 26th March, 1959, and the 3rd April, 1959, did not provide for the sale by a partner of his share in the partnership. I rejected this contention as, in my view, the consent of all existing partners required under section 24 (7) of the Partnership Act for the introduction of any person as a partner may be given at the time of the introduction and without any provision for the sale by a partner of his share in the partnership being embodied in the partnership deed.

Counsel for the plaintiff further contended that the agreement between the plaintiff and the defendant was subject to a partnership deed being drawn up. This condition was not alleged in the statement of claim. I found no evidence to support such a condition. There was no evidence of any agreement between the plaintiff and the defendant that they were not to be partners until a partnership deed was signed. I found that the defendant did not say to the plaintiff that a partnership deed would be drawn up in due course and that the plaintiff and the defendant contemplated signing a partnership deed. It is clear, however, that persons

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who agree to become partners may be partners although they contemplate signing a formal partnership deed and never sign it; Lindley's Treatise on the Law of Partnership, 11th edition, page 20.

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It was for the above reasons that I gave judgment for the defendant with costs.

Reasons for Judgment delivered by
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continued

J.W.D.AMBROSE
JUDGE.

10 Singapore, 29th March, 1962.

Certified true copy
Sd. K.J.Perera
(K.J.PERERA) 29.3.62.
PRIVATE SECRETARY TO JUDGE,
COURT NO.6.
SUPREME COURT, SINGAPORE.

NO.29

No.29

NOTICE OF APPEAL

Notice of Appeal
6th November 1961

IN THE HIGH COURT OF THE STATE OF SIGNAPORE

20 ISLAND OF SINGAPORE

Suit No.1008 of 1959

Appeal No. of 1961.

BETWEEN

ANNIE YEO SIEW CHENG (f) Plaintiff
- and - Appellant

ATURELIYA WALENDAGODAGE Defendant
HENRY SENANAYAKE Respondent

30 NOTICE OF APPEAL

TAKE NOTICE that Annie Yeo Siew Cheng will

In the High Court
of the State of
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Notice of Appeal
6th November 1961
continued

appeal to the Court of Appeal at Singapore
against the whole of the Judgment of the Honour-
able the Justice J.W.D. Ambrose entered in this
matter on the 3rd day of November 1961.

Dated this 6th day of November 1961.

Sd. Philip Hoalim & Co.
Solicitors for the Plaintiff/Appellant.

To

The Registrar and
Atureliya Walendagodage Henry Senanayake
and to his Solicitor L.A.J.Smith.

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of Appeal

NO. 30

MEMORANDUM OF APPEAL

No.30

Memorandum Of
Appeal
26th April 1962

IN THE HIGH COURT OF THE STATE OF SINGAPORE

ISLAND OF SINGAPORE

IN THE COURT OF APPEAL

Civil Appeal No. of 1962)
Suit No.1008 of 1959)

BETWEEN

ANNIE YEO SIEW CHENG (f)
(Plaintiff) ...

APPELLANT

20

- and -

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE
(Defendant) ...

RESPONDENT

MEMORANDUM OF APPEAL

ANNIE YEO SIEW CHENG (f) the above-named
Plaintiff (APPELLANT) appeals to the Court of
Appeal against the decision of the Honourable
Mr. Justice Ambrose given at the High Court,
Singapore, on the 3rd day of November, 1961 on
the following grounds:

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1. That the learned Judge erred in holding that the Plaintiff was not entitled to return of the sum of \$20,000 claimed herein notwithstanding that (as found by the Judge) the Plaintiff was induced to pay the said sum and to agree to buy 5 of the Defendant's shares in the firm of Sena and Goh by a material misrepresentation made by the Defendant to the Plaintiff that the said firm was a gold mine.

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10 2. That the learned Judge misdirected himself in holding that the Plaintiff's action was not maintainable if (as he further held) there was no total failure of consideration.

Memorandum of
Appeal
26th April 1962
continued

20 3. That the learned Judge misdirected himself in that he did not apply as the test of the Plaintiff's entitlement to recover the said sum whether the Plaintiff was by virtue of the said misrepresentation entitled to rescind the oral agreement between herself and the Defendant whereunder the payment was made.

4. That the learned Judge should have held that the Plaintiff was entitled to rescind the said oral agreement and/or that she did rescind the same by letter dated 1st July, 1959, from her solicitors to the said firm and/or by instituting these proceedings.

30 5. That, if amendment of the Statement of Claim herein to incorporate a claim for rescission of the said oral agreement was necessary for the due determination of the case, the learned Judge exercised his discretion wrongly in refusing the application for leave to effect such amendment which was made at the trial on the Plaintiff's behalf, namely that there be added at the end of paragraph 1 the words "and for rescission of the oral agreement to take 5 of the Defendant's shares entered into between the Plaintiff and Defendant on or about 17th April, 1959."

40 6. That the learned Judge erred in holding that the Plaintiff had derived any benefit from the said agreement such as in law precluded her from contending that there had been a total failure of consideration.

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Memorandum of
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continued

7. That the learned Judge, in holding that the Plaintiff had become a partner in the said firm paid no or no sufficient regard to the following facts: (a) that it was contemplated by the parties that the change of constitution of the firm consequent upon purchase by the Plaintiff of the Defendant's said shares would be formally implemented by execution of a partnership deed; (b) that no such deed was drawn up or executed; (c) that no notification pursuant to the Business Names Ordinance, 1949, of the admission of the Plaintiff as a partner in the said firm was furnished to the Registrar of Business Names; (d) that the Plaintiff was not joined as a party to proceedings instituted in this Honourable Court by one Tan Eng Liak (Suit No.903 of 1959) for dissolution of the said partnership."

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8. In the premises the Appellant humbly submits that this Appeal should be allowed, that the judgment of the Trial Judge was wrong and ought to be reversed.

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Dated this 26th day of April 1962.

PHILIP HOALIM & CO.
Solicitors for the Appellant.

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Court of Appeal
28th June 1962

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JUDGMENT OF COURT OF APPEAL
IN THE HIGH COURT OF THE STATE OF SINGAPORE
ISLAND OF SINGAPORE
IN THE COURT OF APPEAL

30

Civil Appeal No.6 of 1962)
Suit No. 1008 of 1959)

BETWEEN

ANNIE YEO SIEW CHENG (f)

Plaintiff
Appellant

- AND -

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE

Defendant
Respondent

In the High Court
of the State of
Singapore

CORAM: Rose, C.J.
Buttrose, J.
Chua, J.

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of Appeal

ORAL JUDGMENT OF ROSE, C.J.

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10 This is a curious case but, as we have
made up our minds, we think it is unnecessary
to delay the matter further by reserving judg-
ment. It is one of those cases which require
to be regarded with considerable caution.
Any plaintiff who is a knowledgeable person
who comes into court and says that he did some-
thing or bought something on the strength of a
representation must, naturally, expect his
case to be closely examined, because courts as
a rule are somewhat chary of finding that a
competent plaintiff, a professional dealer or
20 something of that sort, relied in fact on a
representation when he had his own knowledge
and experience to guide him.

30 Well now, in this particular case the
facts seem to us to justify the Judge in coming
to the decision that he did with regard to them.
First, one has to consider whether the repre-
sentation was made - in the present case its
materiality is not in question; secondly,
whether that representation was false; and
thirdly - this of course is usually the most
difficult point for a plaintiff to overcome -
whether the plaintiff in fact acted upon it.

40 Now, what are the facts in this case?
The plaintiff apparently was what is called
here in this country a remiser, that is, a
broker, in a firm of brokers in which the Defen-
dant held the principal interest. It appears
that at the inauguration of the firm he held
\$51,000/- of the capital and the remaining
\$49,000/- was held by another man, one Goh Teik
Teong. Subsequently the \$49,000/- was sub-
divided between Goh and his two infant children.

The position, therefore, was that Mr.
Senanayake was a majority partner - just a

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majority partner - in this firm. The plaintiff had been working in the same firm for some four years prior to the episode in question as a broker, but it is conceded that in her capacity as a remiser she would not have had access to the books of the firm as according to the position taken up by the defendant, which on that point is reasonable enough, the books were only available to the partners in the firm.

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Well now, what is the evidence for the plaintiff? She says that on two days in April, 13th of April and 17th of April, representations were made to her in the presence of a witness, a Dr. Kiani (who testified on the plaintiff's behalf), about this matter and that she was offered by the defendant ten shares, ten of his shares - it is important to note that he is offering to sell his own personal shares - for \$40,000/-; which, of course, is obviously a high price being four times the amount of their original valuation. She says - and that is common ground - that she took five shares at \$20,000/-, being half the number she was offered.

20

Now of course it is very important to consider what the evidence is as to that transaction. The plaintiff says that she bought those shares because she thought that it was a profitable business. Now why did she think it was a profitable business? She thought it was a profitable business because the defendant said so; and the defendant, she says, was a rich man, an influential man, a good business man, and had been her employer for a number of years. She therefore accepted what he said. He told her that it was a gold mine. Well that of course means nothing more than that it was a profitable affair; that he trusted her; that she brought in good clients and so on; and that it would be a great mistake if she missed this golden opportunity of entering this flourishing business.

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Then there was the discussion or, at any rate, the implication that on the purchase of these shares she would either at once or in due course - there was considerable argument about

that - become a partner in the firm. The primary matter, however, was, according to her case that she invested \$20,000/- by buying Mr. Senanayake's own personal shares on the representation that this was a flourishing business; that it was a gold mine and that she must not miss the golden opportunity.

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10 Well now, as I say, on the face of it, one must investigate that evidence very carefully because it is easy enough for a plaintiff if he finds that he has made an unlucky speculation to come and say afterwards "I was told this, that and the other." In this case, what is the defendant's position? His position is not as I must say I rather expected it to be: "This is all nonsense; I mean it may be that I said that the business was a promising one but she knew far more about this than I do. She has been in the business for years. She
20 knew all about it and therefore she did not rely on any representation of mine. In fact I did not make any."

30 But he does not say that. What he says is that he told her the whole story; that he told her in fact that her money would go straight to reduce the overdraft; and that the firm had had losses and all the rest of it. And he then says that she answered that she knew all about that; that she understood this; and that the position had been explained by the accountant Mr. Sivam; it was because of her being aware and having been made aware of these facts about the overdraft and the financial losses that she in fact reduced the amount of her investment from \$40,000/- to \$20,000/-.

40 Now the learned Judge disbelieved all of that and I must say that, so far from having to go into the question of whether he was reasonable to disbelieve it, we are all of opinion that he would have been quite unreasonable to believe it. On the face of it for a business man to come and say in effect that talking with a business woman, having told her that his business is in a bad state, that it had had losses, and that her money - any money that she puts in - will go direct to the bank in

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reduction of the firm's overdraft, the effect upon the plaintiff was "Very well; instead of putting into the business the whole investment that I was intending, I will put in only half" does not make sense. A responsible man of the world who is prepared to swear to that is in my opinion prepared to swear to anything; and therefore one cannot quarrel with the learned Judge in disbelieving him on other matters of fact; and in the event the learned Judge disbelieved him in toto. He said that he found him to be an unsatisfactory witness and that he did not believe his evidence or the evidence of his accountant Sivam, who was called on his behalf.

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We have therefore the position of an imprudent plaintiff and an untruthful defendant. Fraud of course was not pleaded in this case and learned counsel for the defendant makes a point of that. It is not customary in this sort of case to plead fraud and, as has been pointed out by Lord Halsbury in a case which was cited to us, the fact that while innocent misrepresentation only is pleaded the evidence proved something more does not put the plaintiff in any worse position than he would have been in if he had only been able to establish innocent misrepresentation.

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In the present case there is no doubt that on the learned Judge's findings there was in fact fraudulent misrepresentation by the defendant; and upon that fraudulent misrepresentation the plaintiff acted and invested her money.

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Well now, what is the position from that? There was considerable discussion as to whether or not she was technically a partner. The Judge found that she was; because he said she was treated as a partner, and he relies in particular upon one matter, that she had been told by the defendant that she could not see the books until she was a partner; and she did see the books. It was in fact only when she saw the books that she realised that a fraud had been perpetrated upon her and the learned Judge therefore found that as she could not have seen the books unless she

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was a partner, it would seem to be probable that she was a partner. We do not quarrel with that finding as although the Share Brokers Association may have raised difficulties - there was evidence to that effect - there is no evidence on the record as to what, if any, steps they could have taken. She was at the lowest a de facto partner and it was from that position that she saw the books.

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10 These conversations took place on the 13th and the 17th of April. The plaintiff looked at these books in May and in June and she took definite action, in the sense that a Solicitor's letter was written on her behalf, on the 1st of July, that is, just over two months after her money was paid on the 20th April.

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20 In so far as any question of delay is concerned we do not think the plaintiff can in any way be criticised for that. There is no unreasonable delay. Her money is paid in on the 20th April; she looks at the books in May and June; and also there is something else which happened in June that is of importance. The position was that there was an overdraft of some \$250,000 at the bank. Nobody suggests that the bank was pressing for its reduction - there was no suggestion of that - but the evidence is that the defendant was worried about it and had told the other partners that he was
30 tired of the position and was not prepared to continue to guarantee it unless the partners put up some more money to assist in its reduction.

40 We therefore have the position of a man, within two months of his having informed the plaintiff that the business was a gold mine and she must not miss this opportunity of buying his shares - be it remembered at four times their nominal value - adopting the attitude that he was not prepared any further to guarantee this substantial overdraft unless his partners assume some of the burden.

It is not difficult to believe that the plaintiff, when confronted with this attitude of the defendant, realised that she had been unwise in the matter and had in fact made a

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thoroughly bad investment.

The learned Judge found in favour of the plaintiff on the facts in all these matters but came to the conclusion that her action must fail on the ground that there was no total failure of consideration.

Now, what was it that the plaintiff thought she was actually getting and what did she in fact get? Primarily the transaction was between the plaintiff and the defendant personally, on representations made not by the other partners at all, not by the partnership as such, but by Mr. Senanayake the individual, in order to sell his personal shares. It was thus a matter between these two people. The plaintiff thought - on the strength of the defendant's representations - that she was getting for her \$20,000/- five thousand dollars (nominal) worth of shares (i.e. five shares) in a profitable and lucrative concern. What she in fact got was an investment in a firm which had a large overdraft at the Bank which the defendant himself was not prepared to carry any longer and a number of substantial commitments. 10 20

It is unnecessary to refer to the precise details as the learned Judge has done that; but it is clear that instead of investing her money in a thoroughly good business she had been misled into investing in a thoroughly bad one. 30

The subsequent history of the firm is, perhaps, not material. There may be explanations for what occurred but the fact remains that this gold mine of a business was shortly afterwards wound up. In the result the plaintiff found herself in possession of five shares, for which she had paid \$20,000/-, which were to all intents and purposes worthless. 40

Up to this point it would seem that the plaintiff had no difficulty in her way but learned counsel for the defendant contends that her action must fail because in fact she has had the benefit of some consideration, in

that she was made a partner.

Let us now consider whether in fact this so called consideration was of any substance at all. What did the plaintiff becoming a partner really entail? The learned trial Judge sets it out in his judgment: "She regarded herself as a partner; she was introduced to the staff as a partner by the defendant; she attended partners' meetings; she acted as managing partner when Mr. Goh Teik Teong went on leave; she inspected the books and thereby clearly exceeded the rights of a mere assignee of a partner's share; and that is all. That is what she actually got from her partnership in this business. For that short period of time, until she decided wisely enough to resile from the firm, she had the pleasure - the arid, naked honour - of being able to say: "I am a partner in this brokers' firm." A partner in a firm that is overdrawn to an extent which the senior partner himself was not prepared to sustain and that had substantial commitments.

Well now, is that really a bar to the plaintiff succeeding? Can one really say to a woman who buys relatively worthless shares at a very high price, and who in addition has the arid satisfaction for a few weeks of calling herself a partner and being able to look at the partnership books which supplied her with the evidence of how valueless that partnership really was, can you really say to that woman: "You have had something for your money."?

There was a great deal of discussion in the lower court as to whether the plaintiff should be entitled to amend her claim to one of rescission. Her application was ultimately refused and the case proceeded on the basis of money had and received. There is a passage in Lord Halsbury's book which was referred to in the judgment. It is unnecessary to refer to it again here except to say that it would seem that in a case where money is paid by a representee to a representor and nothing has happened in the meantime to make it impossible or even unreasonably difficult

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continued

to restore the parties to their original position, an action for money had and received lies on exactly the same basis as an action would lie for rescission.

We were referred by learned counsel for the defendant to Mr. Snell's little book on Equity which is often useful in that it sets out briefly the effect of the authorities. In the 25th Edition at page 569, I think it was, it is stated that a person who rescinds his contract is entitled to be restored to the position he would have been in had the contract not been made; and his property must be returned and so on. No damages are recoverable since the purpose of damages is to place the party recovering them in the same position, so far as money can do it, as he would have been in had the contract been carried out. It stands to reason in the present case that there would have been great difficulty in assessing what the damages would be. If you begin to assess the damages in a case where a person thinks he has not a good investment and finds that he has a bad one, the assessment must be a very hit and miss affair. It seems to me in the circumstances of this case that in view of the shortness of time which elapsed between the purchase of the shares and the resiling from the transaction, the appropriate remedy is for the parties to be restored to the same position that they were in before the plaintiff purchased the shares upon the false representation of the defendant.

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On this view of the position, the plaintiff is entitled to the return of her \$20,000/-, the transaction in effect being regarded as a nullity.

For these reasons the appeal must be allowed and judgment entered for the plaintiff for \$20,000/- and costs, hereand below.

40

Sd. ALAN ROSE
CHIEF JUSTICE,
STATE OF SINGAPORE.

SINGAPORE, 28th June, 1962.

189.

I agree,

Sd. MURRAY BUTTROSE

JUDGE.

In the High Court
of the State of
Singapore

In the Court
of Appeal

No.31

I agree,

Sd: F.A.CHUA,

JUDGE.

Judgment of
Court of Appeal
28th June 1962
continued

CERTIFIED TRUE COPY,

PRIVATE SECRETARY TO,
the HON. THE CHIEF JUSTICE,
SUPREME COURT,
SINGAPORE, 6.

17. 7. 62.

In the High Court
of the State of
Singapore

NO.32

ORDER GRANTING LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.32

Order Granting
leave to appeal
to Her Majesty
in Council
16th November
1962.

IN THE HIGH COURT OF THE STATE OF SINGAPORE

ISLAND OF SINGAPORE

Suit No. 1008 of 1959 }
Civil Appeal No.6 of 1962 }

BETWEEN

ANNIE YEO SIEW CHENG (f) Plaintiff 10
Appellant

- and -

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE Defendant
Respondent

(L.S.)

And

In the Matter of Section 36 of the Courts
Ordinance (Chapter 3)

And

In the Matter of Order 57, Rule 3 and 4 of the 20
Rules of the Supreme Court.

BEFORE THE HONOURABLE THE
CHIEF JUSTICE

IN OPEN COURT

Upon motion preferred unto the Court by
the abovenamed Defendant/Respondent coming on

for hearing this day and upon reading the Motion Paper, the Petition of the Defendant/Respondent and the Exhibits referred to therein and upon hearing Counsel for the Defendant/Respondent, the Plaintiff/Appellant not appearing although duly served with the proceedings IT IS ORDERED that leave be and is hereby granted to the Defendant/Respondent to appeal to Her Majesty in Council against the judgment of the Court of Appeal pronounced herein on the 28th day of June 1962 AND THIS COURT DOETH CERTIFY that as regards the amount value and the nature of the legal issues this case is a fit one for appeal to Her Majesty in Council.

10

In the High Court
of the State of
Singapore

No.32

Order Granting
leave to appeal
to Her Majesty
in Council
16th November
1962
continued

Dated this 16th day of November, 1962.

Sd. T.C. CHENG

DY. REGISTRAR.

In the High Court
of the State of
Singapore

NO.33

ORDER GRANTING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL

No.33

IN THE HIGH COURT OF THE STATE OF SINGAPORE

Order Granting *final*
leave to appeal
to her Majesty
in Council
23rd August 1963

ISLAND OF SINGAPORE

Suit No.1008 of 1959)
Civil Appeal No.6 of 1962)

BETWEEN

ANNIE YEO SIEW CHENG (f) Plaintiff
Appellant

- and -

ATURELIYA WALENDAGODAGE
HENRY SENANAYAKE Defendant
Respondent

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BEFORE THE HONOURABLE MR.
JUSTICE AMBROSE

IN CHAMBERS

Upon the application of the abovenamed
Defendant/Respondent made by way of Summons
in Chambers Entered No.861 of 1963 coming on
for hearing this day and upon hearing the
Solicitor for the Defendant/Respondent and
the Plaintiff/Appellant not appearing
although duly served with the application
and upon reading the affidavit of Chun Tian
Chua affirmed and filed herein on the 7th
day of August, 1963 IT IS ORDERED that
pursuant to Order LVII Rules of the Supreme
Court 1934 the appeal be admitted AND IT IS
FURTHER ORDERED that the costs of and
incidental to this application be costs in
the cause.

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Dated this 23rd day of August, 1963.

Sd. T.C. CHENG

AG. REGISTRAR

E X H I B I T SExhibitsExhibit P.16

P.16

MALAYAN SHAREBROKERS ASSOCIATION

Copy of Minutes
of Malayan
Sharebrokers
Association
13th May 1959

Minutes of a Meeting of the Singapore Sub-Committee of the Malayan Sharebrokers Association held in Denmark House, Singapore, on Wednesday, 13th May, 1959, at 5 p.m.

PRESENT

E.A. Corless Esq. (In the
Chair)

10

A.G. Clinton Esq.
D.G. Hebdige Esq.
Khoo Hock Choo Esq.

IN ATTENDANCE

D.W. Treaise Esq. (For the
Secretaries).

Considered a draft circular to members on the appointment of remisers.

Mr. Khoo Hock Choo, in his letter submitted at the meeting, suggested that additional points should be mentioned -

20

(a) No free lance remiser should be allowed to operate

and

(b) No remiser should be attached to more than one firm.

The secretaries pointed out that this appeared to be covered in the Bye-Laws.

30

It appears, however, that persons are acting as free lance remisers and it is therefore necessary also to draw members' attention to the Bye-Laws.

The Sub-Committee interviewed Messrs. H. Sena and T.T. Goh and Madam Annie Yeo Siew Cheng in connection with an application for approval of Madam Yeo's admission as a partner, which was received after correspondence in connection with an advertisement in the Straits Times.

Exhibits

P.16

Copy of Minutes
of Malayan
Sharebrokers
Association
13th May 1959
continued

Messrs. Sena & Goh interviewed separately said that they held 51 and 49 per cent respectively of the capital and that there were not other partners. It was intended to transfer 5% from Mr. Sena to Madam Yeo.

Mr. Sena confirmed that he was not thinking of leaving the firm and also that he fully understood that his liability for the debts of the firm was unlimited.

Members of the Sub-Committee said that information had been received that there were other partners whose admission had not been disclosed.

10

Mr. Goh and Mr. Sena had some difficulty in remembering the names of these other partners but they finally reached agreement between themselves that they should tell the Sub-Committee and it was then stated that the persons concerned were :-

Goh Ewe Hock
Miss Syliva Goh
Tan Eng Liak
Wong Peng Yuen

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The first two additional Partners were stated to be 17 and 11 years of age respectively.

Messrs. Sena & Goh asserted that no final agreement had been reached with the additional partners and that it was proposed to form a "Company". They were unable to explain to the satisfaction of the Sub-Committee why a return of changes of partners, listing the first three of the persons mentioned, was made on the 7th April to the Registrar of Business Names if this was so.

30

The Sub-Committee thought that the explanations were completely unsatisfactory. Statements produced to representatives of the Association were, at least incomplete and the Secretaries were instructed to submit the papers to the full Committee for consideration whether the circumstances justify penalties provided in Rule 24 for conduct derogatory to the reputation of the Association.

40

The Sub-Committee thought that it would not in any case approve the admission of minors as partners.

The Sub-Committee also saw Madam Yeo.

It was decided that no objection would be raised to her admission as a partner if the issues arising out of the Sub-Committee's discussions with Messrs, Sena & Goh were settled satisfactorily.

10 There being no further business, the meeting came to an end.

CONFIRMED,

Sd. E.A. Corless
CHAIRMAN.

EXHIBIT 17

MALAYAN SHAREBROKERS ASSOCIATION

20 I, Partner of Sena & Goh have carefully perused the Rules, Bye-Laws and Code of Conduct of the Association and undertake to adhere to the letter and spirit of these regulations.

I also agree that in the event of a specific non-frivolous allegation of a breach of these regulations or of insolvency being made against my firm, the Committee may direct the Secretaries (or some other firm of Chartered Accountants) to examine the Firm's records to establish the truth or otherwise of such specific allegation.

30 I also declare that my interest in Sena & Goh is held entirely in my own right and that no other person has any right interest or title therein. If at any time I should wish to alter this position, I shall apply formally to the Committee for permission to do so.

Exhibits

P.16

Copy of Minutes
of Malayan
Sharebrokers
Association
13th May 1959
continued

P.17

Undertaking by
Defendant to
Malayan Share-
brokers Associ-
ation
19th August 1958

Exhibits

P.17

I understand that from time to time as necessity arises the Committee may introduce further clauses to the Code of Conduct.

Undertaking by
Defendant to
Malayan Share-
brokers Associ-
ation
19th August 1958
continued

H. Sena
.....
H. SENA

Singapore, 19th August 1958.

P.18

EXHIBIT P.18

Undertaking by
Goh Teik Teong
to Malayan
Sharebrokers
Association
19th August
1958

MALAYAN SHAREBROKERS ASSOCIATION

~~Proprietor~~
Partner

I, ~~Director~~ ofSena & Goh have carefully perused the Rules, Bye-Laws and Code of Conduct of the Association and undertake to adhere to the letter and spirit of these regulations.

10

I also agree that in the event of a specific non-frivolous allegation of a breach of these regulations or of insolvency being made against my Firm, the Committee may direct the Secretaries (or some other firm of Chartered Accounts) to examine the Firm's records to establish the truth or otherwise of such specific allegation.

20

I also declare that my interest in Sena & Goh is held entirely in my own right and that no other person has any right, interest or title therein. If at any time I should wish to alter this position, I shall apply formally to the Committee for permission to do so.

30

I understand that from time to time as necessity arises the Committee may introduce further clauses to the Code of Conduct.

Goh Teik Teong
.....
GOH TEIK TEONG

Singapore, 19th August 1958.

EXHIBIT P.23ExhibitsMESSRS. SENA & GOH

P.23

Minutes of a Meeting held at the
Offices of Messrs. Philip Hoalim & Co.,
on Monday 13th July, 1959 at 11 a.m.

Minutes of
Meeting of
Philip Hoalim
& Co.
13th July 1959

Present:- Mr. P. Hoalim Sr.
Mr. Tan Eng Liak and Madam
Annie Yeo.
Mr. K.T. Coi and Mr. Goh
Teik Teong.
Mr. T.E. Atkinson and Mr.H.
Sena and
Mr. K. Sadasivan.

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1. Following upon a discussion, it was unanimously agreed that it would be in the interests of all persons interested in the firm of Messrs. Sena & Goh that Receivers and Managers should be appointed without delay to take charge of the carrying on of the Company's business with a view to its winding up. It was estimated that it would take approximately six months to complete all the various outstanding contracts and enable the Company to be completely wound up, although probably the greater part of the necessary work will be completed within a shorter time.

2. It was unanimously agreed that an application should be made to Court for the appointment of the following persons as Receivers and Managers:

- (1) Mr. Jee Ah Chian,
- (2) Madam Annie Yeo, and,
- (3) Mr. Tan Hin Jin.

3. Confirmation having been obtained from Mr. Jee Ah Chian of his willingness to accept the office, it was agreed that the Receiver's remuneration should be \$1500/- per month for Mr. Jee Ah Chian, and \$750/- per month each for the other two Receivers. It was also

Exhibits

P.23

Minutes of
Meeting of
Philip Hoalim
& Co.
13th July 1959

agreed that Madam Yeo and Mr. Tan would be primarily responsible for dealing with the carrying on of the Company's business, while Mr. Jee Ah Chian would be primarily responsible for supervising the financial side of the winding up.

4. As regards banking arrangements, it was pointed out that the Company is operating on overdraft accounts which have either been guaranteed by Mr. Sena personally, or by Messrs. Sena & Goh as individuals. It would undoubtedly be necessary for the Receivers to be able to overdraw further in order to enable Scripts to be taken up and re-sold, and it was accordingly arranged that the Receivers should be entitled to carry on the existing bank accounts, and that the guarantors would renew their guarantees and indemnify the Receivers against all personal liability in respect of any further overdraft.

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5. As regards the accounts of the Company up to the date of dissolution, it was agreed that Messrs. Pereira & Co. assisted by Mr. Sadasivan, would carry on and write up the accounts as from 1st January, 1959, and submit these to the Receivers as soon as possible.

20

6. It was further agreed that pending the completion of the winding up of the business of the Firm, and the receipt of all moneys and other assets by the Receivers, if need be steps may be taken to have an order for accounts and enquiries to be taken and made and other consequential reliefs as are deemed to be necessary, and that all steps which are taken in connection with the winding up are to be treated as being taken without prejudice to the legal rights and liabilities of the various parties amongst each other as they now exist.

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7. The Meeting concluded at 12 noon.

CONFIRMED AS CORRECT:

Sd. Philip Hoalim & Co.

Sd. Braddell Brothers.

Sd. Allen & Gledhill.

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EXHIBIT P.25Exhibits

JEE AH CHIAN & CO.,
CERTIFIED ACCOUNTANTS.

SEE HAI TONG
BANK BUILDING
CHULIA STREET.

Singapore, 15th July, 1959.

P.25

Letter Jee Ah
Chian & Co. to
Philip Hoalim
& Co.
15th July 1959

PARTNERS:

JEE AH CHIAN - F.A.C.C.A. J.P.
LIM PENG HENG - A.A.C.C.A. A.C.C.S.
LEE BOON CHYE - A.A.C.C.A. A.C.C.S.

JAC/TEC.

10

For Prompt attention
Please Quote our Reference.

For attention of Mr. Philip Hoalim
(Senior)

Messrs. Hoalim & Co.,
Advocates & Solicitors,
Singapore.

Dear Sirs,

Re: SENA & GOH

20

I wish to inform you that the Mercantile Bank Ltd., telephone me that they are not prepared to continue the current account and I believe the Chartered Bank will also do the same, so with the Chung Khiaw Bank Ltd.

In view of this, we have opened a current account in the Oversea-Chinese Bank for whatever money we collect and payments made.

30

From my inquiry, I understand that Sena & Goh had an overdraft of \$295,000/- odd dollars from the Chartered Bank without any security upon the personal guarantee of Mr. Sena himself. I also understand that Sena & Goh had an overdraft of \$24,000/- odd against shares worth about \$50,000/-. In the case of Chung Khiaw Bank, Sena & Goh had an overdraft of \$22,900/- also a clean overdraft. It is quite possible they have no shares there.

40

The shares owned by Sena & Goh amounted to something like \$36,000/- and the shares of clients for which Sena & Goh have already paid amounted to \$111,000/-.

Exhibits

P.25

Letter Jee Ah
Chian & Co. to
Philip Hoalim
& Co.
15th July 1959
continued

The accounts for 1958 have not been audited. From the 1958 draft accounts, it appears the Company owed creditors and bankers to the tune of \$1,600,000/- and the Company's assets are worth as follows according to the draft accounts:-

| | | |
|---------------------------|--------------|----|
| Investments | £107,000/- | |
| Deposits | 4,500/- | |
| Miscellaneous Recoverable | 6,500/- | |
| Receivable | 14,000/- | |
| T.T.Goh | 35,900/- | 10 |
| Sundry Debtors | £1,616,000/- | |

I do not understand why Sena said he had assets to the tune of \$4,000,000/-. I think the Company itself is insolvent. The bankers will press for payments very soon. I am wondering whether it is advisable to publish a notice of winding-up and also to hold back money due to the general creditors until the Company's position is clear. Please advise.

Yours faithfully,
JEE AH CHIAN. 20

D.3

EXHIBIT D.3

Letter Sena
& Goh to The
Chartered
Bank
22nd April 1959

SENA & GOH
PARTNERS: H.SENA &
T.T.GOH
STOCK & SHARE BROKERS
22 MARKET STREET,
SINGAPORE, 1.
22nd April, 1959.

The Chartered Bank,
Singapore.

Dear Sir,

Re: Sena & Goh Current a/c

We hereby notify that the undermentioned persons are authorised to sign cheques, bills and all other instruments on behalf of the firm, jointly with Mr.Goh Teik Teong as Managing Partner or his proxy.

This is in addition to the existing person

30

authorised to sign on behalf of the firm viz.,
K.R.M.Thenappan

1. Madam Annie Yeo Siew Cheng

2. C.T. Rajah.

The specimen signatures of the above
persons duly attested are enclosed herewith.

Yours faithfully,

Sd. H.Sena Sd.Goh Teik Teong.

Exhibits

D.3

Letter Sena
& Goh to The
Chartered
Bank
22nd April 1959
continued

AGREED BUNDLE OF CORRESPONDENCE

Agreed Bundle
of Correspondence

10 No.1461 A Singapore 20th Apr. 1959.

1. Receipt of
Sena & Goh
20th April 1959

Received from Mdm. Annie Yeo Siew Cheng
the sum of Dollars Twenty thousand only being
payment on account.

Sena & Goh

Sd. Ill.

Manager.

/\$20,000/-

Cash.

6 cents stamp.

ExhibitsC O P Y

Agreed Bundle of
Correspondence

Annie Yeo Siew Cheng,
23 Dunsford Drive,
Singapore, 13.

No.2

20th April 1959.

Notice signed
by Plaintiff
20th April 1959

TO WHOM IT MAY CONCERN

Upon my approach to Messrs. Sena & Goh for a share in the concern. I was shown the books of account of the Company and the Balance Sheet as at 31st December, 1958. I have satisfied myself with the position of the Company and I have willingly agreed to accept the five shares assigned to me by the firm as a going concern.

10

Sd. Annie Yeo Siew Cheng.

No.3

C O P Y

Letter, Sena
& Goh to
Plaintiff
22nd April 1959

SENA & GOH 22 Market Street,
Singapore, 1.
22nd April 1959

Madam Annie Yeo Siew Cheng,
23, Dunsford Drive,
SINGAPORE 13.

20

Dear Madam,

Admission to Partnership

This is to acknowledge receipt of \$20,000/- (Dollars Twenty thousand only) received from you as consideration paid to Mr. Sena for the sale of \$5,000/- (Dollars Five thousand only) shares out of his total holding of \$51,000/- (Dollars Fifty one thousand only) in the firm. The changes in the partnership will be incorporated in due course and delivered to you.

30

Yours faithfully,

Sd. Sena & Goh.

Copy to Mr.Sena.

C O P Y

Exhibits

SENA & GOH

22, Market Street,
Singapore, 1.

Agreed Bundle of
Correspondence

22nd April, 1959.

No.4

Madam Annie Yeo Siew Cheng,
23 Dunsford Drive,
Singapore, 13.

Letter Sena & Co.
to Plaintiff
22nd April 1959

Dear Madam,

Sale of my Shares

10

This is to confirm the sale of \$5,000/- shares out of my total holding of \$51,000/- shares with Messrs.Sena & Goh for a consideration of \$20,000/- (Dollars Twenty thousand only). The changes in the partnership will be incorporated and delivered to you in due course.

Yours faithfully,

Sd. Sena & Goh.

20

Copy to Mr. T.T.Goh.
Copy to M/s. Sena & Goh.

C O P Y

No.5

PHILIP HOALIM & CO.
Advocates & Solicitors.

3, Malacca Street,
3rd Floor,
Singapore.

Letter, Philip
Hoalim & Co. to
Sena & Goh
1st July 1959

1st July, 1959.

Messrs. Sena & Goh,
No.22 Market Street,
Singapore.

Attention Mr.Sena

30

Dear Sirs,

We have been instructed by Madam Annie Yeo Siew Cheng of No.23 Dunsford Drive, Singapore 13, to and do hereby demand from you the

Exhibits

Agreed Bundle of
Correspondence

No.5

Letter, Philip
Hoalim & Co. to
Sena & Goh
1st July 1959
continued

return of the sum of \$20,000/- which she paid to you on or about the 20th April last with a view to buying 5 shares of Mr. Sena's holding in your firm.

Our client paid the money to the firm on Mr. Sena's representation that the concern was a gold mine and that the books of the firm would be shown to her to see the position for herself, but up to now the books have not yet been shown although she was made to sign a document that the books of the firm were shown to her on your Mr. Sena representing that such a document must be shown to the Malayan Sharebrokers' Association for their approval for our client to become a partner of the firm, and our client feels in the circumstances she does not want to have any share in the firm and wants the return of the money.

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Unless the said sum of \$20,000/- is paid to us within three days from the date of this letter, our client has instructed us to take such proceedings as are fit in the circumstances.

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Yours faithfully,

Sd. Philip Hoalim & Co.

IN THE PRIVY COUNCIL

No. 37 of 1963

ON APPEAL

FROM THE COURT OF APPEAL OF THE STATE OF SINGAPORE

B E T W E E N

ATURELIYA WALENDAGODAGE HENRY SENANAYAKE
(Defendant) APPELLANT

- and -

ANNIE YEO SIEW CHENG (Plaintiff) RESPONDENT

RECORD OF PROCEEDINGS

SPEECHLY, MUMFORD & SOAMES,
10, New Square,
Lincoln's Inn,
London W.C.2.
Solicitors for the Appellant.

PARK NELSON and DENNES & CO.,
11, Essex Street,
London W.C.2.
Solicitors for the Respondent.