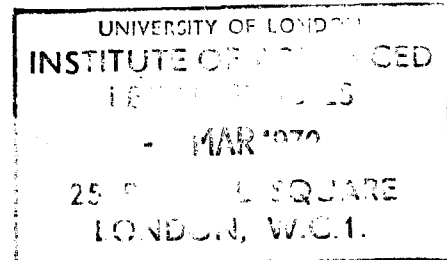


12, 1969

No. 25 of 1967

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM
THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)



B E T W E E N :-

TAN CHOW SOO (Defendant) Appellant

- and -

RATNA AMMAL (Plaintiff) Respondent
daughter of VEERASINGHAM

10

CASE FOR THE APPELLANT

Record

1. This is an Appeal pursuant to the leave given on 7th August 1967 by the Federal Court of Malaysia (Appellate Jurisdiction) against the judgment and order of that Court dated the 2nd March 1967 allowing an Appeal by the Respondent (Plaintiff) and thereby setting aside the Judgment and Order of the High Court holden at Penang dated 25th June 1966.

p. 127.

2. Under the Order and Judgment of the said High Court dated 25th June 1966 it was ordered that the action brought by the Respondent (Plaintiff) against the Appellant (Defendant) be dismissed with costs.

p. 60.

3. The said action was commenced by specially indorsed writ indorsed the 12th July 1963. By the Statement of Claim the Respondent (Plaintiff) claimed \$50,000/- against the Appellant (Defendant) as drawer of cheque No. 459527 for \$50,000/- dated the 24th January 1961 drawn by the Appellant (Defendant) upon the Nederlandsche Handel-Maatschalphy, Penang, payable to the bearer together with interest at 6% per annum from the date of writ until payment or judgment. She alleged that she became and was the bearer of the said cheque and duly presented the same for payment but the said cheque was dishonoured payment thereof having been countermanded by the Appellant (Defendant) and

p. 1.

20

30

Record
p. 6.

that she duly gave notice of dishonour to the Appellant (Defendant) by letter dated 6th July 1963. By further and better particulars of the Statement of Claim delivered by her advocates and solicitors it was alleged that the Respondent (Plaintiff) became the bearer of the said cheque on or about the 24th January 1961 and that the said cheque was presented for payment on or about the 5th July 1963.

p. 4.

4. In an Affidavit affirmed the 26th July 1963 the Respondent (Plaintiff) affirmed that the Appellant (Respondent) was justly and truly indebted to her in the sum of \$50,000/- and that she verily believed that there was no defence to the action.

10

p. 7.

5. In paragraph 4 of an Affidavit affirmed the 5th August 1963 the Appellant (Defendant) admitted that he was the drawer of the said cheque but affirmed that he would plead that the said cheque was given by him to one Mahalingham Ratnavale for an illegal consideration contrary to public policy, namely, in consideration of promises made by the said Ratnavale that he could through his connections with the Department of Foreign Exchange at Penang and with the Department of Commerce and Industry Kuala Lumpur, in an illegal manner, obtain official approval for the export of goods under certain barter rights amounting to \$1,400,000/- the disposition of which was at all material times under the control and direction of the Appellant (Defendant).

20

30

p. 7.

6. In paragraph 5 of the said Affidavit the Appellant (Defendant) averred that in August 1960 he desired to dispose of the said barter rights and that one Lee Yim Wah an agent of the said Ratnavale came to his shop at No. 48 Prangin Road, Penang and informed him that the said Ratnavale could be of great help in the sale of the said barter rights as the said Ratnavale could use his official influence as Assistant Controller of Foreign Exchange, Penang, to push through and/or expedite the proposed official approval. As to consideration for such services the said Lee Yim Wah informed the Appellant (Defendant) that the said Ratnavale would demand 75 per cent of the proceeds of the said sale leaving the Appellant (Defendant) with the balance of 25 per cent. In furtherance of the said scheme the said Ratnavale demanded

40

security from the Appellant (Defendant) for the payment of the said 75 per cent proceeds of sale in the sum of \$50,000/- which the Appellant (Defendant) consequently gave in the form of the said cheque. In giving the said cheque as security the Appellant (Defendant) stipulated with the said Ratnavale that it was not to be negotiated at all or encashed. The said barter rights were ultimately sold for a sum of \$117,446.60/- but out of this sum the Appellant (Defendant) was paid only \$57,525.30/- by the said Ratnavale and the said Lee Yim Wah. The Appellant (Defendant) made frequent requests for the return of the said cheque, but was put off from time to time by the said Ratnavale, and ultimately the Appellant (Defendant) wrote to his Bank on March 22nd, 1963 countermanding payment of the said cheque. The substance of paragraph 5 of the said Affidavit except the matters mentioned in the last foregoing sentence was repeated by paragraph 2 of the Defence of the Appellant (Defendant).

7. In paragraph 6 of the said Affidavit the Appellant (Defendant) affirmed that he would plead that the Respondent (Plaintiff) was the mother of the said Ratnavale and that she well knew that the said cheque was given for an illegal consideration. p. 7.

8. In paragraph 7 of the said Affidavit the Appellant (Defendant) affirmed that he would plead that the Respondent (Plaintiff) paid no consideration to any party or at all whatsoever to become the bearer of the said cheque and that she became the bearer of it well knowing that the consideration therefor was not only illegal but had failed. p. 7.

9. In paragraph 8 of the said Affidavit the Appellant (Defendant) affirmed that he did not know the Respondent (Plaintiff) at the time of drawing the said cheque and only came to know her in or about March 1961. p. 7.

10. By a Defence delivered the 15th August 1963 the Appellant (Defendant) through his Solicitors delivered a pleading embodying the allegations made in his said Affidavit. p. 9.

11. The case came on for hearing on 17th, 18th, 19th and 20th May 1966. On 25th June 1966 Raja Azlan Shah, J., gave a reserved judgment in favour of the Appellant.

<p>Record p.13, ll.28-34 p.14, ll.1-7</p>	<p>12. The evidence of the Appellant (Defendant) was that he had barter rights amounting to \$1,400,000/- in the name of one of his shops, Chop Guan Cheong at 48, Prangin Road, Penang, and to use these barter rights he had to obtain a licence to export goods from Malaysia to Indonesia from the Malaysia Controller of Foreign Exchange. A friend, Lee Yim Wah, whom the Appellant (Defendant) had known for the past 20 years, dealt with the appropriate government departments, and in March or April 1960 the said Lee Yim Wah told the Appellant (Defendant) to hand over his customs declarations for this purpose (which he did) so that the said Ratnavale, who at that time was employed in the Foreign Exchange Control could deal with the matter.</p>	<p>10</p>
<p>p.14, ll.16-37</p>	<p>Towards the end of July or beginning of August 1960 the said Lee Yim Wah took the Appellant (Defendant) to meet the said Ratnavale at a house in Scotland Road which was a Government quarter occupied by the said Ratnavale. At this meeting the Appellant (Defendant) was told by the said Ratnavale that he would procure the necessary licence in return for the Appellant (Defendant) granting him and his group 75% of the said barter rights. The Appellant (Defendant) said he would have to go back and consider the matter but later agreed and Ratnavale asked him to pay the sum of \$50,000/- to \$60,000/- as a form of security. On the 19th January 1961, the Appellant (Defendant) signed an undated cheque for \$50,000/- made out 'pay cash' which he handed to Lee Yim Wah with instructions to give it to Ratnavale and tell him that the cheque was undated and could not be used until the Appellant (Defendant) had sold the barter rights and given Ratnavale \$50,000/- in cash. The Appellant (Defendant) said he did not hand the cheque to the Respondent (Plaintiff), the mother of the said Ratnavale, whose acquaintance he did not make until the end of March 1961. In cross-examination the Appellant (Defendant) said he had never seen a cheque for \$3000/- dated 27/12/60 (Exh.D4), that he denied he had been given a cheque by the Respondent (Plaintiff) for \$9000/- dated 13/1/61 (Exh.D5) or a cheque by her for \$15,000/- dated 23rd January 1961 (Exh.D7) but admitted that he had received a cheque from her for \$25,000/- dated 21/1/61 (Exh.D6). He further denied that the cheque for \$50,000/- was consideration for the cheques of \$3,000/-, \$9,000/- and \$25,000/- and \$1,000/- cash given to him on the 13th January 1961.</p>	<p>20</p>
<p>p.14, l.37 p.15, l.12</p>	<p></p>	<p>30</p>
<p>p.13 ll.7-8. p.17 ll.4-29.</p>	<p></p>	<p>40</p>
<p>p.15 ll.12-31 & 39-41</p>	<p></p>	<p></p>

- On 3rd November 1961 the Appellant (Defendant) entered into an agreement with the Respondent (Plaintiff) and the said Ratnavale to form a partnership known as the Maha Syndicate for the purpose of importing condensed milk. Subsequently, the Appellant (Defendant) performed many favours for the said Ratnavale, including the payment of telephone, water, conservancy and electricity bills. Later the Appellant (Defendant) and the said Ratnavale had differences of opinion. On five or six occasions the Appellant (Defendant) demanded the return of the said cheque, but did not receive it. Later the Appellant (Defendant) had differences of opinion with the said Ratnavale who then wanted to cash the said cheque, with the result that on 22nd March 1963 the Appellant (Defendant) stopped payment. The Appellant (Defendant) said in re-examination that his average weekly credit balance with the bank was \$180,000/- but re-called said this was a mistake and that he was allowed an overdraft of \$500,000/- and letters of credit in the sum of \$1,000,000/-.
- 10 p.15 11.34-38
- 20 p.18 11.28-29
- p.29 11.27-29
13. The bank statement (P.11) of the Appellant (Defendant) showed that the cheque for \$25,000/- had been paid into his Bank but there were no entries indicating that the cheque for \$9,000/- or the cheque for \$15,000/- had ever been paid into his banking account. The banking account however showed that on 13th January 1961 among other sums \$10,000/- in cash had been paid in and on 24th January 1961 in addition to other sums a sum of \$16,800/- in cash had been paid to his credit. The maximum overdraft shown on the said account was \$198,141.53/- on 10th January 1961. At the end of the day on the 12th January 1961, the overdraft was \$190,805.69/- and at the end of the day on the 23rd January 1961 it was \$162,620.65/-.
- 30 Exh.P.11
(pp.150-157)
14. The evidence of Lee Yim Wah was that the Appellant (Defendant) had met Ratnavale who had proposed the bargain mentioned in the evidence of the Appellant (Defendant) and required a security of \$50,000/- to \$60,000/-. He also said that he was handed a cheque for \$50,000/- for cash similar to the cheque for \$50,000/- except that it was undated, by the Appellant (Defendant) with instructions to hand it to Ratnavale, and tell him not to tender the cheque or to use it until the Appellant (Defendant) gave permission to Ratnavale, and that
- 40 p.21 11.5-16
- p.19, 11.23-34
- p.21 11.23-26

Record
p.22 11.36-37
p.23 11.17-30

he had handed this cheque to Ratnavale by way of the security requested as aforesaid by Ratnavale. He said he had sold the said barter rights in July 1961. He admitted in cross-examination that he had sworn a statutory declaration dated 16.8.63 (Exhibit P.10) and that the contents were not true but said he had merely signed it because of his friendship with Ratnavale. The statutory declaration stated that he did not go to see the Appellant (Defendant) or act as an agent of the said Ratnavale or make arrangements as alleged in paragraph 5 of the Affidavit the contents of which are referred to in paragraph 6 of this Case.

10

p.25 11.13-28

15. The evidence of the Appellant (Defendant) about the cheque for \$50,000/- was supported by Koay Teik Choon who said that he had left the service of the Appellant (Defendant) in April 1963, that he made out the cheque apart from the signature and the date 24th January 1961 which was not in his handwriting on 19th January 1961 and that the Appellant (Defendant) signed the cheque in his presence at which time it was undated. He said he remembered the date of 19th January 1961 because it was on the cheque counterfoil which was taken by the police in 1964 for the purpose of investigations. He also gave evidence that the signature on the back of the cheque for \$3,000/- was his. He said that he had been given the cheque by Ratnavale and had cashed it at the bank and given the cash to Ratnavale.

20

p.26 11.17-21

30

p.26 11.24-38

16. The evidence of Lee King Seng, then employed by Leong Wah Co., formerly a clerk and cashier of the Appellant (Defendant) called on his behalf, was that the said cheque for \$9,000/- bore his signature on the back, that he had cashed the cheque at the Bank personally having been given the cheque to cash by Ratnavale, and had handed the cash to him. He stated also that the said cheque for \$10,000/- bore his signature on the back, that he had been asked by the said Ratnavale to cash the cheque which he had done at the Bank, and that he had given the cash to Ratnavale. He also said that he had cashed cheques for Ratnavale on some ten to twenty occasions.

40

p.27 11.3-14

p.30 1.43 to
p.31 1.3

17. The evidence of the Respondent (Plaintiff) was that the cheque was given to her by the Appellant (Defendant) personally on 24th January

	1961, that when it was handed to her it was undated and that on this occasion she filled in the date in the presence of the Appellant (Defendant). She said that on 27/12/68 the Appellant (Defendant) had come to her house with her son the said Ratnavale and asked for and been given by her on this occasion in the presence of the said Ratnavale a cheque for \$3,000/- made payable to cash (D.4) by way of loan which had been repaid. She said also that on 13th	Record p.30 11.21-27 p.32 11.36-38
10	January 1961 the Appellant (Defendant) came to see her with Ratnavale and that she had given the Appellant (Defendant) a cheque for \$9,000/- made payable to cash (D.5) and \$1,000/- cash by way of loan. She said that the Appellant (Defendant) about a week before 21st January 1961 had asked for a loan of \$25,000/- through Ratnavale and that on 21st January 1961 she had handed a cheque for \$25,000/- made payable to cash (D.6) to the Appellant (Defendant) in the presence of Ratnavale by way of	p.30 11.28-32 p.33 11.3-10
20	loan. There was never any talk of interest on the loan. She said that on 21/1/61 the Defendant asked for a loan of \$40,000/- but on the advice of the said Ratnavale she had only given the Appellant (Defendant) \$25,000/- the balance of \$15,000/- only to be provided if it was urgently needed by him. On 23rd January 1961 the Appellant (Defendant) came with the said Ratnavale to the house of the Respondent (Plaintiff) and she gave him a cheque for \$15,000/- made payable to cash (D.7) by way of loan.	p.34 11.1-10 p.34 11.18-19 p.34 11.33-38
30	She said that her deceased husband had left property in Tampin, Penang, Kuala Lumpur and Gemas of which she was the executrix but she said she could not remember the amount of estate duty she had paid. She lived at 19 Scotland Road which was the only property in her name in Penang. This was a double storey bungalow with a big compound. She had estates also in Gemas, Tampin and Kuala Lumpur. She said her husband died a millionaire. She said she had overdraft facilities which she thought were about \$80,000/- at the Overseas Chinese Bank Corporation to which her house in Scotland Road was mortgaged. She started her account with the Overseas Chinese Bank Corporation with a mortgage of about \$70,000/- to \$80,000/- on the security of the house at 19 Scotland Road. The house was mortgaged because of the children's marriages and sending money for children's studies overseas. Her son Ratnavale was doing some petty business so she had to give him money for that. She said that in a civil suit she and her son had pleaded that they	p.31 11.37-41 p.32 11.10-15 p.32 11.24-25 p.35 1.33 p.33 11.10-16
40		p.35 11.1-36

<u>Record</u>	had expended over \$1,161,000/- in connection with the Maha Syndicate. She admitted that by petty business carried on by her son she meant the Maha Syndicate. The sum of \$1,161,000/- was raised by mortgaging the said house, the estates at Gemas and Kuala Lumpur and bank overdrafts. She could not remember the sums which were borrowed on the security of the said estates. She denied that all the monies in her name belonged to the said Ratnavale. She explained that she had given \$1,000/- in cash as part of the loan of \$10,000/- made on 13th January 1961 because her account was overdrawn and interest would have had to be paid on any money drawn from the Bank.	10
p.33 11.20-27		
p.41 1.28 to p.42 1.32	18. In his judgment given on the 25th June 1966, Raza Azlan Shah J., said that the law applicable to the case was the English Bills of Exchange Act 1882, and that accordingly as the Appellant (Defendant) had admitted that he was the drawer of the said cheque the law presumed that the Respondent (Plaintiff) was the holder of the cheque in due course and the burden was therefore on the Appellant (Defendant) of proving that the cheque was tainted with illegality or that there was a total failure of consideration. If he satisfied the Court that on a higher degree of probability there was an element of illegality or total failure of consideration then the presumption in favour of the Respondent (Plaintiff) no longer held good and it was thus for the Respondent (Plaintiff) to prove that subsequent to the alleged illegality valud had in good faith been given for the bill, though not necessarily by herself. The learned Judge found that if the agreement alleged by the Appellant (Defendant) was made, it was a criminal conspiracy within the ambit of Section 120A of the Penal Code. The learned Judge came to "the inevitable conclusion that the Plaintiff (the Respondent in this appeal) did not lend any money because she had none". He relied on a number of grounds:-	20
p.44 11.3-7		
p.57 11.8-10		
p.57 11.11-23	Firstly that: "She contended that the \$50,000/- loan was made up of adding Exhs. D5 (\$15,000/-), D6 (\$9,000/-) and D7 (\$25,000/-) which made a total of \$49,000/-. Arithmetically \$1,000/- was missing so she said she gave \$1,000 in cash to the Defendant. In view of my observations on the bank statement of Chop Soo Seng (Exh.P.11) (the statement mentioned in paragraph 13) and of the probability that a businessman like the Defendant	30
		40

(the Appellant in this appeal) who enjoyed greater overdraft facilities would not borrow from the Plaintiff (the Respondent in this appeal) who enjoyed a lesser amount of overdraft facilities her attempts to justify the ₹50,000/- loan cannot stand".

Record

Secondly, that: "..... the estates and wealth which she claimed she had derived from her late husband were but a figment of her own imagination. No evidence was led to substantiate her averment." p.57 11.23-27

10 Thirdly, that only ten days separated the three cheques for an aggregate amount of ₹49,000/- which the Respondent (Plaintiff) relied on in support of her alleged loan to the Appellant (Defendant), and that: "Apart from the consideration of overdraft facilities, it is not in line with human conduct for a person to request for a series of loans within a short space of time for so large an amount, and it is also against human nature for a person to grant a series of loans within a short space of time for so large an amount". p.57 11.27-29
p.57 11.29-36
20

The learned Judge said: "If it is necessary to decide between the evidence of the Defendant (Appellant) and that of the Plaintiff (Respondent) I have no hesitation in accepting that of the Defendant (Appellant). He gave his evidence in a straightforward manner and I consider him to be a truthful witness. On the other hand, the Plaintiff (Respondent) was speculative and at times evasive in her answers in cross-examination. The weight and character of her testimony can be gauged by the various wild statements she made in Court". p.57, 11.39-50
30

The learned Judge also said: "It was alleged on behalf of the Plaintiff (Respondent) that the entire transaction as pleaded in paragraph 2 of the Defence took place in August 1960 whilst the evidence showed that the said cheque was handed to Ratnavale in January 1961. In my view I cannot read the said paragraph as disclosing a transaction that occurred in one single day. To succumb to that temptation would be to ignore reality". He concluded that: "Having reviewed the evidence as a whole, I am satisfied that on a balance of probabilities as is required to be proved in a case of this nature, the Defendant has substantiated his claim that the cheque was given to Ratnavale and that at the time it was given it was tainted with p.49 11.20-30
40 p.58 11.26-36

Record

p.58 l.43 to
p.59 l.11

illegality and is therefore void. It is manifest that in the circumstances this Court cannot entertain the Plaintiff's claim." The learned Judge stated that the evidence of the said Lee Yim Wah must be treated with caution, but he accepted the said evidence "after observing his demeanour". "That, coupled with the Defendant's (Appellant's) evidence and other surrounding circumstances have led up to the conclusion at which I have arrived. That being the case, it is now on the Plaintiff (Respondent) to prove that subsequent to the illegality, value has in good faith been given for the bill. She has failed to do that, her assertion being that she received the said cheque direct from the Defendant (Appellant). In respect of that proposition, I have not the least hesitation in saying that that is highly improbable." The learned Judge accordingly made an order dated the 25th June 1966 dismissing the Respondent's (Plaintiff's) action with costs.

10

20

p. 121.

19. The Respondent appealed and the Appeal came on for hearing on 6th December 1966 before Azmi, Chief Justice, Malaya; Pike, Chief Justice, Borneo; and Yong J. By Judgment and Order dated 2nd March 1967 the Appeal was allowed.

pp.111 to 115,
1.29

20. Azmi, Chief Justice, Malaya, gave a judgment with which Yong J. concurred. In his judgment he reviewed the evidence and then dealt with a number of grounds of appeal which he dismissed including a ground that the learned Judge had misdirected himself as to the nature of the burden of proof on the Appellant (Defendant) on the question of whether the said cheque was tainted with illegality. The learned Chief Justice held that there were two substantial grounds of appeal. One was the failure of the learned trial Judge to consider adequately the fact that Ratnavale had left the Government service on 19th July 1960. The learned Chief Justice said: "According to the Defendant (Appellant) he met Ratnavale the first time in connection with the alleged conspiracy about the end of July or the beginning of August 1960 at about 3 or 4 p.m. About that time Ratnavale had ceased to function as Assistant Controller". He said he could not understand the comment of the learned trial Judge on this apparent discrepancy that he could not read the paragraph as disclosing a transaction that occurred on one single day. The

30

p.115 l.28 to
p.116 l.10

40

other ground was that the learned trial Judge mis-directed himself concerning the admissibility, weight, reliability and relevance of the evidence of the said Lee Yim Wah. The learned Chief Justice said in reference to the discrepancy between the said Lee Yim Wah's evidence before the trial Judge and a previous statutory declaration made by him:

10 "If a witness made two contradictory statements on the same matter, he must be held to perjure himself unless perhaps he could satisfy the Court that there was compulsion or duress in the making of one. Therefore, his evidence on this matter should be totally disregarded The evidence of Lee Yim Wah in reference to the alleged conspiracy must be disregarded with the result that the Court was left to consider the uncorroborated evidence of the Respondent (Appellant in his appeal) alone". The learned Chief Justice further held the learned trial Judge to have misdirected himself in regarding as cogent evidence the fact that the Appellant (Defendant) had bigger overdraft facilities than the Respondent (Plaintiff) and said: "We know this to be wrong because the Respondent (Appellant in this appeal) had practically exhausted his overdraft facilities on 29th January 1961". He also stated that it was unfortunate that no evidence was given by the Appellant (Defendant) as to when the necessary licence or licences were issued by the Controller of Foreign Exchange. The learned Chief Justice came to the conclusion "in the circumstances" that the Appellant (Defendant) had failed to prove his case.

20

30

21. Pike, Chief Justice, Borneo, in his judgment stated that he agreed substantially with the judgment of the learned Chief Justice of Malaya except in one respect. This was that the learned trial Judge misdirected himself as to the standard of proof required in a case where fraud and criminal conspiracy were pleaded because he directed himself that no more than a favourable balance of probability was required. He also held that there was insufficient reliable evidence to find in the Appellant's (Defendant's) favour even on the basis of a balance of probabilities. He said "the Defendant (Appellant) is a self-confessed rogue and his principal witness Lee Yim Wah, and the only witness as to the conspiracy is a self confessed rogue and perjurer. The Defendant's (Appellants) evidence was self-serving in revealing a criminal conspiracy which had occurred some two years previously and the

40

Record

p.116 l.11 to
p.117 l.10

p.117 ll.11-30

pp.118 & 119

Record

existence of which would never have been brought to light if it had been possible by other means to defeat the Plaintiff's (Respondent's) claim on the cheque and it must therefore be treated with the utmost caution, and Lee Yim Wah's must be wholly rejected". He held therefore that there was insufficient evidence to find in the Appellant's (Defendant's) favour even on a bare balance of probabilities.

22. The Appellant (Defendant) contends that the learned trial Judge did not misdirect himself in law concerning the burden and standard of proof on the issue of illegality and either directed himself correctly or must be deemed to have directed himself correctly concerning the relevant burden and standard of proof on the said issue. 10

23. The Appellant (Defendant) contends that there was ample evidence from which to infer that the said cheque was given for an illegal consideration and that the Respondent (Plaintiff) failed to prove that subsequent to the said illegality value had in good faith been given for the said cheque. 20

24. The Appellant (Defendant) contends that the Federal Court of Malaysia (Appellate Jurisdiction) were in error in finding that the learned trial Judge failed to consider adequately the fact that the said Ratnavale had left the Government service on 19th July 1960 because there was no evidence that D4 was authentic or that Ratnavale left the Government service on this date. 30

p.115 1.30 to
p.116 1.5

25. The Appellant (Defendant) contends that the Federal Court of Malaysia (Appellate Division) misdirected themselves in finding that they failed to understand the meaning of the statement of the learned trial Judge when he said: "In my view I cannot read the paragraph as a transaction that occurred in one single day. To succumb to that temptation would be to ignore reality." It was not, as the Federal Court appears to have thought, a comment on the apparent discrepancy between the fact (if such was the case), that Ratnavale had left the Government service on 19th July 1960 and the evidence that the Appellant (Defendant) first met Ratnavale about the end of July or beginning of August 1960. It was in fact a comment by the learned trial Judge on the argument put forward on 40

p.49 11.17-30

behalf of the Respondent (Plaintiff) that it was impossible to accept that the entire transaction as pleaded in paragraph 2 of the Statement of Defence took place in August 1960 because the evidence showed that the said cheque for \$50,000/- had been handed to Ratnavale in January 1961.

10 26. The Appellant (Defendant) contends that there was ample evidence to support the conclusion of the learned trial Judge that the transaction referred to in his observation had not taken place in a single day in that the Appellant (Defendant) in dealing in his evidence with his interview with Ratnavale, after describing the said Ratnavale's proposals said:-

"I said I had to go back to consider.

p.14 11.33-35

"I agreed to Ratnavale's proposition."

and Lee Yim Wah said:-

20 "Plaintiff (Respondent) saw the handing over of the cheque to Ratnavale. This was not on the same day when Defendant (Appellant) and his clerk went to see Ratnavale at his house. Handing over of cheque was several months later."

p.21 11.25-29

30 27. The Appellant (Defendant) contends that the learned trial Judge gave proper weight to the fact that the said Ratnavale had left the Government service on 19th July 1960 (if such was established which is denied) and that the Federal Court of Malaysia (Appellate Jurisdiction) failed to consider adequately or at all other factors indicating that at all relevant times the said Ratnavale was in a position to influence or procure the obtaining of the necessary licences, including his period of service in the Government and his residence in Government quarters.

40 28. The Appellant (Defendant) contends that the learned trial Judge directed himself properly concerning the evidence of the said Lee Yim Wah and that the Federal Court of Malaysia (Appellate Jurisdiction) was in error in deciding that the said evidence, whether in relation to the said conspiracy or otherwise should be totally disregarded.

29. The Appellant (Defendant) contends that the learned trial Judge was entitled to conclude because of the improbability of her evidence and her unreliability as a witness that the Respondent (Plaintiff) did not lend any money to the Appellant (Defendant) as alleged or at all.

30. The Appellant (Defendant) contends that the learned trial Judge was entitled to take into account the fact that the Appellant (Defendant) had greater overdraft facilities than the Respondent (Plaintiff) and that the Federal Court of Malaysia (Appellate Jurisdiction) erred inasmuch as reliance was placed on the alleged incorrectness of the said fact in reversing the learned trial Judge's findings of fact on the evidence before him. 10

31. The Appellant (Defendant) contends that the Federal Court of Malaysia (Appellate Jurisdiction) failed to consider adequately the extreme improbability of the Respondent's (Plaintiff's) allegation that the Appellant (Defendant) had given her the said cheque and failed to draw the proper inferences and conclusions from that improbability. 20

32. The Appellant (Defendant) contends that the issues before the learned trial Judge were issues of fact, that his findings of fact were justified on the evidence before him, and that the Federal Court of Malaysia (Appellate Jurisdiction) was not justified in the exercise of its appellate jurisdiction in disturbing the findings of fact of Raja Azlan Shah J. 30

33. Accordingly, the Appellant (Defendant) humbly submits that the Appeal should be allowed and that the judgment of Raja Azlan Shah J. should be restored for the following amongst other

R E A S O N S

- (a) THAT the evidence of the Appellant (Defendant) and his witnesses should be accepted and the evidence of the Respondent (Plaintiff) on matters of conflict should be rejected;
- (b) THAT Raja Azlan Shah J. directed himself correctly on the burden and standard of proof on the issue of the illegality of the cheque; 40

15.

- (c) THAT the proper view of the evidence taken as a whole was the view expressed by Raja Azlan Shah J. in his judgment;
- (d) THAT the Federal Court of Malaysia (Appellate Jurisdiction) was not justified in the exercise of its appellate jurisdiction in disturbing the findings of fact of Raja Azlan Shah J.

LEONARD LEWIS.

No. 25 of 1967

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL
COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N :-

TAN CHOW SOO
(Defendant)
- and - Appellant

RATNA AMMAL daughter
of VEERASINGHAM
(Plaintiff)
Respondent

CASE FOR THE APPELLANT

CLINTONS, 55/58, PALL MALL,
~~Clinton House,~~
~~9 Clifford Street,~~
London, S.W.1.