

ON APPEAL
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N:

GIAN SINGH & COMPANY LIMITED

Appellants
(Plaintiffs)

- and -

BANQUE DE L'INDOCHINE

Respondents
(Defendants)

A N D B E T W E E N:

BANQUE DE L'INDOCHINE

Appellants

- and -

GIAN SINGH & COMPANY LIMITED

Respondents

(By Cross Appeal)

C A S E FOR THE APPELLANTS

Record

1. This is an appeal to your Lordships' Committee by leave of the Court of Appeal of Singapore granted on the 15th day of May, 1972 from an Order of the Court of Appeal of Singapore (Chief Justice Wee Chong Jin, Mr. Justice Tan Ah Tah and Mr. Justice Choor Singh) dated the first day of March 1972 dismissing (Mr. Justice Choor Singh dissenting) an appeal by the Appellants from the judgment of Mr. Justice Chua dated the 22nd day of March 1971 dismissing the Appellants' claim for a declaration that the Respondents had wrongfully debited the Appellants' account with the Respondents with the sum of \$139,496.43 and that the Respondents owed the said sum together with interest at 8½ per centum per annum from 16th July 1968 to the Appellants.

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- pp.82-83 2. This action arises out of a Letter of Credit opened by the Respondents at the request of the Appellants, a term of which required that it was only to be negotiated against presentation of a certificate signed by one Balwant Singh concerning the subject matter of the Letter of Credit, namely a fishing boat.
3. The issues which arise are: whether the certificate which was presented to the paying bank was a forgery; whether, if the certificate was forged payment was made under the Letter of Credit without a want of reasonable and proper care on the part of the Respondents and/or their agents, the paying bank; whether the certificate presented to the paying bank was in conformity with the requirements of the Letter of Credit; whether, if the certificate was not forged, and if the certificate did not comply with the requirements of the Letter of Credit, the Appellants are nevertheless estopped from relying upon the fact of such non-conformity. 10 20
4. The facts which gave rise to the present appeal are, briefly, as follows.
- pp.82-83 The Appellants were customers of and had an account with the Respondents. On 24th April 1968 the Respondents, at the request of the Appellants, opened in irrevocable Letter of Credit for the sum of U.S. \$45,000 in favour of Thai Lung Ship Machine Manufactory of Keelung, Taiwan ("Thai Lung") for the purchase of a fishing vessel. It was a condition of the Letter of Credit that payment thereunder would only be made against the production of a certificate certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail, such certificate to be signed by Balwant Singh, holder of Malaysian Passport No. E. 13276, and countersigned by the Respondents. Balwant Singh was the Managing Director of the Appellants. 30
- p.84 On or about 15th May 1968 the Respondents, at the request of the Appellants, amended the Letter of Credit by (a) deleting the requirement that the aforesaid certificate be countersigned by the Respondents, and (b) extending the validity of the Letter of Credit to 22nd July 1968. 40

5. On or about 28th June 1968 the Letter of Credit was utilised in Taiwan through the Respondents' agents, the First Commercial Bank of Taiwan. There was presented to that Bank a certificate dated 25th June 1968 on paper bearing what purported to be the Appellants' letter heading. What purported to be the signature of Balwant Singh appeared at the foot, above it appearing the stamped words "GIAN SINGH & CO. LIMITED" and below it the stamped word "DIRECTOR" The whole signature was preceded by the words "I Balwant Singh, Passport No. E-13276, issued at 11th Nov. 1964."

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6. On 9th July 1968 the Respondents informed the Appellants that the Letter of Credit had been utilised, and showed them the relevant documents. The Appellants repudiated the certificate on the ground that (a) the signature of Balwant Singh was a forgery, and (b) in any event the certificate purported to have been signed by the Appellants, and not by Balwant Singh personally, as required by the terms of the Letter of Credit.

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Nevertheless, the Respondents debited the Appellants' account with them in the sum of \$139,496.43, the equivalent of U.S. \$45,00.

7. On 27th September 1968, the Appellants issued a writ against the Respondents claiming a declaration that the Respondents had wrongfully debited the Appellants' account in the sum of \$139,496.43 and that the Respondents were indebted to the Appellants in that amount together with interest thereon at 8½% per centum per annum from 16th July 1968.

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8. The trial took place before Mr. Justice Chua in the High Court of Singapore on 3rd, 4th and 5th March 1971.

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The Appellants contended that they were not liable to reimburse the Respondents on the Letter of Credit because

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- (a) The signature on the certificate was a forgery;
- (b) The certificate did not comply with the requirements of the Letter of Credit, since inter alia it purported to be the

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certificate of, and signed by, the Appellants;

- (c) There was a want of reasonable care on the part of the Respondents and/or the paying bank.

The Respondents contentions were to the effect

- (1) That the signature of Balwant Singh was not forged;
- (2) That the certificate did comply with the terms of the Letter of Credit; 10
- (3) That if the Certificate did not comply with the terms of the Letter of Credit, the Appellants were estopped from relying upon that fact;
- (4) That there had been no want of care on the part of the Respondents and/or the paying bank and that therefore the Respondents were entitled to the protection afforded by Article 9 of the Uniform Customs and Practice for the Documentary Credits, the same being incorporated in the contract between the Appellants and the Respondents. 20

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9. Each side called a witness or witnesses at the trial before Mr. Justice Chua. On behalf of the Appellants oral evidence was given by Balwant Singh, Chua Seck Kang, the Deputy Assistant Controller of Immigration in Singapore, and Robert James Guthrie, the Assistant Manager of the Chartered Bank of Singapore. On behalf of the Respondents oral evidence was given by Patrick Louis Wintrebert, who was then the acting Manager 1 of the Respondents and who had, at the time of the events in issue, been the Assistant Manager of the Respondents. 30

10. On 11th March 1971, Mr. Justice Chua delivered judgment. The learned judge found and held as follows:

- (a) That the Appellants had not discharged the

burden of proving that the signature on the certificate had been forged;

- (b) That the certificate complied with the terms of the Letter of Credit;
- (c) That in any event, the signature not having been shown to be a forgery, the Appellants would be estopped from denying that the certificate was in conformity with the requirements of the Letter of Credit;
- (d) That even if the certificate had been forged, the Appellants could not hold the Respondents responsible unless they could show that the negotiating bank had failed to use reasonable care, and this the Appellants had failed to show.

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11. Mr. Justice Chua therefore dismissed the Appellants' claim with costs, and a formal judgment to that effect was entered on 22nd March 1971.

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12. The Appellants gave a Notice of Appeal dated 8th April 1971 and set out their grounds of appeal in a Petition of Appeal dated 15th May, 1971.

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13. The appeal was argued before the Court of Appeal of Singapore (Chief Justice Wee Chong Jin, Mr. Justice Tan Ah Tah and Mr. Justice Choor Singh) and on 11th February 1972 that Court gave judgment dismissing the appeal by a majority (Mr. Justice Choor Singh dissenting).

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All three members of the Court of Appeal concurred in the view that Mr. Justice Chua's finding to the effect that the signature on the certificate was not a forgery was unsustainable. The Court of Appeal was therefore unanimous in reversing that finding of Mr. Justice Chua and in finding that the signature appearing on the certificate was a forgery.

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However, the majority of the Court, the Chief Justice and Mr. Justice Tan Ah Tah, held that such a finding was of no help to the Appellants on the

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ground that the certificate had nevertheless complied precisely with the terms of the Letter of Credit. On that ground both of the learned Judges dismissed the Appeal.

Mr. Justice Choor Singh dissented. He entered into an exhaustive analysis of the authorities on the necessity for strict compliance with the terms of a letter of credit, and he concluded that the certificate in question, by reason of the manner in which the signature was qualified, did not strictly comply with the terms of the Letter of Credit. He would therefore have allowed the appeal.

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14. The appeal to the Court of Appeal of Singapore was therefore dismissed with costs by an order of that Court dated 1st March, 1972.

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By order dated 15th May, 1972 the Court of Appeal of Singapore (the Chief Justice, Mr. Justice Winslow and Mr. Justice Tan Ah Tah) gave leave to the Appellants to appeal to your Lordships' committee against the whole judgment of the Court of Appeal, and further gave leave to the Respondents to appeal to your Lordships' Committee against so much of that judgment as reversed the finding of Mr. Justice Chua on the issue of forgery.

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It is pursuant to that leave that the Appellants appeal to your Lordships' Committee.

15. The Appellants will deal with each of the issues in turn.

16. The Issue of Forgery

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The learned trial judge, Mr. Justice Chua, found that the allegation of forgery had not been made out on the grounds that, since the only evidence in support of that contention adduced by the Appellants was that of Balwant Singh, there was therefore "no evidence whatever" on which he could find that the Appellants had discharged the burden of proving forgery.

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The Appellants accept that the burden of proving forgery was upon them. However, the Appellants

respectfully contend that the learned Judge's finding that there was "no evidence whatever" to support the contention of forgery is unsustainable. In a case of forgery the best available evidence is that of the person whose signature is in issue. Such evidence, in the form of the sworn testimony of Balwant Singh, was adduced by the Appellants in this case, and no evidence of any nature was adduced by the Respondents to contradict it.

10. 17. Furthermore, a number of undisputed facts, which are referred to by Mr. Justice Choor Singh in the Court of Appeal, go to support the evidence of Balwant Singh. These are: (a) that the certificate was presented to the paying bank by a known criminal, one Chew Ghee Song (Also known as Peter Chew), (b) that the passport which was presented to the paying bank in conjunction with the certificate, and which purported to be the passport of Balwant Singh, was itself a forgery, and (c) that the vessel which was to be purchased by means of the Letter of Credit was supposed to be newly built, but, upon inspection, was discovered to be 14 years old.

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18. The Appellants therefore contend that in the light of the uncontradicted evidence of Balwant Singh, in the light of all the surrounding circumstances, and in particular in the light of the facts set out in paragraph 17 hereof, it is an irresistable conclusion that the purported certificate was forged.

19 The Appellants therefore respectfully submit that the reversal by the Court of Appeal of Singapore of the learned trial Judge's conclusion on the issue of forgery ought to be upheld.

20. The Issue of Article 9 and Due Care

The Appellants accept that, by reason of the terms of Clause 6 of their application to the Respondents for the opening of the Letter of Credit, the contract between the Appellants and the Respondents incorporated the terms of the 1962 revision of the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce ("Uniform Customs").

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21. Part B of the Uniform Customs is headed "Liabilities and Responsibilities" and contains Articles 7 and 9, which provide as follows:

"Article 7

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.

Article 9

Banks assume no liability and responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition packing, delivery, value or existence of the goods represented thereby, or for the good faith or acts and/or omissions, solvency performance or standing of the consignor, the carriers or the insurers of the goods or any other person whomsoever."

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22. The Appellants contend that the effect of Articles 7 and 9 is identical to the position at common law. A banker owes a duty to the person for whom a letter of credit is opened to take reasonable care. Furthermore, a banker is only entitled to reimbursement from his customer, having paid under a letter of credit, if he has paid against proper documents which conform to the letter of credit. Prima facie, a forged document is not a proper document upon which payment should be made. Nevertheless, a banker does not warrant the genuineness of documents presented against a letter of credit. If, therefore, he pays under a letter of credit against a forged document, the banker will nevertheless be entitled to reimbursement provided that he has exercised all reasonable and proper care in so doing.

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Article 7 of the Uniform Customs clearly emphasises the duty of care owed by a banker in

respect of documents presented against a letter of credit. Article 9, which states the common law rule that a banker is not a guarantor of documents presented to him, does not derogate from the duty imposed by Article 7, nor is its language such as to alter the common law position to the effect that a banker's immunity in the case of payment against forged documents depends upon the exercise of reasonable and proper care on his part.

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23. The Appellants contend that, both at common law and under the terms of the Uniform Customs, once a document against which a banker has paid under a letter of credit has been shown to be forged, the onus lies upon the banker to prove that there was no want of reasonable and proper care on his part. If the banker fails to prove that he paid without negligence, then he is not entitled to claim reimbursement from his customer for whom he opened the letter of credit.

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24. The Appellants further contend that the Respondents have failed to discharge the onus of demonstrating that they and the paying bank exercised reasonable care in connection with payment under the Letter of Credit against a forged certificate.

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Alternatively, if the Appellants are wrong in their contention that the onus of proving the exercise of reasonable care lies upon the Respondents they contend that they discharged the burden of proving a want of due care on the part of the Appellants and of the paying bank.

25. In support of their aforesaid contentions, the Appellants rely, inter alia, upon the following facts and matters:

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- (i) The sole disinterested evidence adduced at the trial was the testimony of Robert James Guthrie, the Assistant Manager of the Chartered Bank of Singapore. The substance of his evidence was that the presence of the company stamp surrounding the purported signature of Balwant Singh on the certificate would have put him on his guard, and would have

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led him to seek the confirmation of the opening bank before paying under the Letter of Credit.

- (ii) The certificate was presented to the paying bank by someone who clearly was not Balwant Singh.
- p.86 (iii) The signature of Balwant Singh appearing on the certificate was qualified by the addition of the words "Gian Singh & Co., Limited" and the word "Director." 10
- p.86 (iv) The third paragraph of the certificate was an odd and unnecessary addition to the wording of the certificate required by the Letter of Credit.
- p.86 (v) There was a conflict between the body of the certificate, which was expressed in the first person singular, and the signature thereof, which purported to be that of the Appellants.
- p.86 (vi) The certificate had been unnecessarily stamped with the chop of Thai Lung. 20
- p.86 (vii) The certificate was dated at Singapore, whereas if an inspection of the vessel had been made, it would have been more likely that the certificate would have been issued in Taiwan.
- (viii) The paying bank knew that one of the safeguards against any improper utilisation of the Letter of Credit, namely the counter signature of the certificate by the Respondents, had been removed. 30
- (ix) The Respondents, once the aforesaid safeguard had been removed, failed to take any or any adequate steps to prevent any improper utilisation of the Letter of Credit or to minimise the risk thereof. In particular the Respondents failed to take possession of the passport of Balwant Singh when the same was offered to them,

failed to provide the paying bank with any details thereof including the date of issue, failed to provide the paying bank with a facsimile copy of the relevant pages of the said passport, and failed to provide the paying bank with a specimen of the signature of Balwant Singh.

10 Insofar as there is any conflict between the evidence of Balwant Singh and the evidence of Patrick Louis Wintrebert, the Appellants contend that the learned trial Judge had no proper and sufficient grounds for preferring the evidence of the latter, that the learned Judge was wrong to do so, and that the learned Judge ought to have preferred the evidence of Balwant Singh.

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20 26. If, as the Appellants contend, the burden of demonstrating that payment under the Letter of Credit lay upon the Respondents, they contend that, in the light of the facts and matters set out herein, the Respondents have failed to discharge that burden.

Alternatively, if the burden of proving a want of due care lies upon the Appellants, the Appellants contend that they have discharged that burden.

30 The Appellants therefore respectfully submit that, the certificate being a forgery, it follows that the Respondents are not entitled to reimbursement from the Appellants in respect of the payment made under the Letter of Credit.

27. The Issue of Compliance and of Estoppel

In the words of Mr. Justice Choor Singh "It is settled law that where a Letter of Credit calls for the production of a specific document, it's requirements in that regard must be 'strictly' and 'exactly' complied with."

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40 The Appellants respectfully adopt that statement of the law and respectfully pray in aid the numerous and well-known authorities cited in the judgment of the learned Judge. Those authorities are all to the effect that, when it

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comes to any question of the nature, contents and form of any document required for the negotiation of a Letter of Credit, there is no room whatsoever for any deviation from strict, exact and literal compliance with the terms and requirements of the Letter of Credit. The cases of Rayner v. Hambros Bank Ltd., (1942) 2 All E.R. 694, Bank Melli Iran v. Barclays Bank (1951) T.L.R. 1057, Moralice (London) Ltd. v. E.D. & F. Man (1954) 2 Lloyd's Rep. 526 and Overseas Union Bank Ltd. v. Chua Teng Hwee (1964) M.L.J. 165, are all illustrations of the extreme strictness of the rule. In each of those cases a minor and apparently insignificant deviation from the requirements contained in the letter of Credit was held to render payment thereunder unjustifiable.

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p.86 28. The certificate presented to the paying bank in this case failed to comply with the terms of the Letter of Credit in the numerous respects.

p.86 Firstly, the certificate appeared under the letterhead of the Appellants.

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p.86 Secondly, the certificate was that of the Appellants by reason of the stamped words at the foot thereof.

p.86 Thirdly, the written words at the foot thereof, namely "Balwant Singh" were qualified by the stamped words "Gian Singh & Co., Limited" and the word "Director".

p.86 Fourthly, the certificate was not signed in the presence of an officer or other authorised representative of the paying bank.

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p.86 Fifthly, there was a conflict between the use of the first person singular in the body of the certificate and the signature of the Appellants at the foot thereof.

p.86 Sixthly, the third paragraph of the certificate constituted an uncalled for addition to the certificate specified in the Letter of Credit.

Seventhly, the description of the vessel contained the additional qualification "built in wood".

Eighthly, the Letter of Credit called for a certificate stating, inter alia, that the vessel had been built "according to specifications," whereas the certificate presented stated that the vessel had been built "according to the specification"

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Ninthly, the certificate contained an uncalled for statement as to the date of issue of the passport of Balwant Singh.

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10 Tenthly, the certificate bore the uncalled for chop of Thai Lung and an uncalled for signature on behalf of Thai Lung.

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29. The Appellants contend that by reason of each and/or all of the foregoing the certificate presented to the paying bank departed from the requirements for a valid certificate under the Letter of Credit, and that it therefore follows ineluctably that the Respondents were not entitled to reimbursement.

20 30. The Respondents have argued, if the signature of the certificate was not a forgery, then the Appellants are estopped from denying that the certificate was in accordance with the terms of the Letter of Credit. It is the Appellants' case that the principle of estoppel cannot come into play in a situation such as that which arose in this case, and that there are no grounds, whether in law or on the facts, on which the Appellants could be held to have been estopped.

30 31. The Appellants humbly submit that the order of the Court of Appeal of Singapore is wrong and ought to be reversed, that this appeal should be allowed, that judgment should be entered for the Appellants, and the Respondents should be ordered to bear the Appellants' costs before your Lordships' Committee and in the Court of Appeal of Singapore and in the High Court of Singapore, for the following (amongst other)

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REASONS

40 (1) Because the Court of Appeal were right in finding that the certificate was a forgery;

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- (2) Because it was for the Respondents to show that there was no want of reasonable and proper care on either their part or that of the paying bank in paying under the Letter of Credit against the certificate, and they have failed so to show; alternatively, if it is for the Appellants to show such a want of reasonable and proper care, because the Appellants have so shown;
- (3) Because it is a well-established rule that the requirements of a letter of credit as to the documents to be presented against it must be strictly and exactly complied with; 10
- (4) Because in the absence of a strict and exact compliance with the requirements of a letter of credit, the opening bank cannot obtain reimbursement for payment made under the letter of credit;
- (5) Because the certificate presented to the paying bank in Taiwan did not comply with the requirements of the Letter of Credit, whether strictly or exactly or at all; 20
- (6) Because the Appellants were estopped from relying upon the fact that the certificate did not comply with the terms of the Letter of Credit;
- (7) Because the judgment of the majority of the Court of Appeal of Singapore on the issues of the compliance of the certificate with the terms of the Letter of Credit was wrong; 30
- (8) Because the judgment of the Court of Appeal of Singapore on the issue of reasonable and proper care was wrong.
- (9) Because the dissenting judgment of Mr. Justice Choor Singh was right.

32. The Appellants further humbly submit that the Respondents' cross-appeal should be dismissed and that the Respondents should be ordered to bear the Appellants' costs thereof before your Lordships'

Committee for the following (amongst other)

REASONS

- (1) Because the Court of Appeal of Singapore was right in finding that the certificate was a forgery and were right in holding that the learned trial Judge's finding to the contrary was against the weight of the evidence and was wrong;
- (2) Because in any event the Appellants are not estopped from relying on the fact that the Certificate did not comply with the requirements of the Letter of Credit.

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A.G.S. POLLOCK

No.26 of 1972
IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

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

B E T W E E N :
GIAN SINGH & COMPANY LIMITED
Appellants
(Plaintiffs)

- and -
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Respondents
(Defendants)

A N D B E T W E E N:
BANQUE DE L'INDOCHINE
Appellants

- and -
GIAN SINGH & COMPANY LIMITED
Respondents
(By Cross Appeal)

CASE FOR THE APPELLANTS

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