

25

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.4 and 5 of 1974

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

B E T W E E N :

MARIA CHIA SOOK LAN (m.w.) Appellant

- and -

BANK OF CHINA (Civil Appeal No.36 of 1972) Respondents

A N D B E T W E E N : No. 5 of 1974

MARIA CHIA SOOK LAN (m.w.) Appellant

- and -

BANK OF CHINA (Civil Appeal No.37 of 1972) Respondents

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

VOL. I.

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 Hale Court,
 Lincoln's Inn,
 London, WC2A 3UL.

PARKER GARRETT & CO.,
 St. Michael's Rectory,
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 London, EC3V 9DU.

Solicitors for the Appellant

Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.4 and 5 of 1974

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL SINGAPORE

B E T W E E N :-

MARIA CHIA SOOK LAN (m.w.)

Appellant.

- and -

BANK OF CHINA

Respondents

(Civil Appeal No. 36 of 1972)

A N D B E T W E E N :-

10

MARIA CHIA SOOK LAN (m.w.)

Appellant.

- and -

BANK OF CHINA

Respondents.

(Civil Appeal No. 37 of 1972)

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

NO. 1

WRIT OF SUMMONS IN SUIT No. 1809 of 1969

WRIT OF SUMMONS

In the High Court of the Republic of Singapore

No. 1.

Writ of Summons in Suit No.1809 of 1969
6th October 1967

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

SUIT NO. 1809

20 of 1967

BETWEEN:

BANK OF CHINA

Plaintiffs

and

MARIA CHIA SOOK LAN (M.W.) Defendant

In the High Court of the Republic of Singapore

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF JUSTICE OF THE HIGH COURT, SINGAPORE, IN THE NAME AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC OF SINGAPORE.

No.1.

TO: Maria Chia Sook Lan (m.w.)
No. 160 Cuscaden Road,
Singapore.

Writ of Summons
in Suit No.1809
of 1969

6th October
1967

(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 Bank of China, a Corporation incorporated in the People's Republic of China with limited liability and with its Registered Head Office at Peking, China, and having a place of business at Bank of China Building, Battery Road, Singapore, Bankers.

10

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

WITNESS, MR. EU CHEOW CHYE, Registrar of the High Court in Singapore the 6th day of October 1967.

20

Sd. Donaldson & Burkinshaw

Sd. Tay Kim Whatt

Plaintiff's Solicitors

Dy. Registrar

High Court, Singapore.

N.B. - This Writ is to be served within twelve months from the date hereof, 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 of Singapore.

30

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 \$5.50 with an addressed envelope to the Registrar of the High Court at Singapore.

And the sum of \$ 65.00 (or such sum as shall be

allowed on taxation of costs).

If the amount claimed is paid to the Plaintiffs or their solicitors within the time limited for appearance further proceedings will be stayed.

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.

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. Donaldson & Burkinshaw

Solicitors for the Plaintiffs

STATEMENT OF CLAIM

1. The Plaintiffs are bankers carrying on business at their Branch Office at Bank of China Building, Battery Road, Singapore, and elsewhere.

2. At all material times Dwidaya Trading Company were customers of the Plaintiffs at the said Branch Office.

3. By a Contract in writing dated 2nd October, 1961 between the Plaintiffs and the Defendant, the Defendant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the Plaintiffs to the said Dwidaya Trading Company including all interest commission and banking charges thereon. It was an express term of the said Contract that the Defendant should not be liable for an amount exceeding \$100,000.00 in all.

4. By a Contract in writing dated 12th January, 1962 between the Plaintiffs and the Defendant, the Defendant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the Plaintiffs to the said Dwidaya Trading Company including all interest commission and banking charges thereon. It was an express

In the High Court of the Republic of Singapore

No.1.

Writ of Summons in Suit No.1809 of 1969
6th October 1967

(continued)

10

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40

4.

In the High
Court of the
Republic of
Singapore

—
No.1.

Writ of Summons
in Suit No.1809
of 1969
6th October
1967

(continued)

term of the said Contract that the Defendant should not be liable for an amount exceeding \$200,000.00 in all.

5. By a Contract in writing dated 27th January, 1965 between the Plaintiffs and the Defendant, the Defendant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the Plaintiffs to the said Dwidaya Trading Company including all interest commission and banking charges thereon. It was an express term of the said Contract that the Defendant should not be liable for an amount exceeding \$600,000.00 in all. 10

6. In pursuance of the said Contracts the Plaintiffs have made advances to the said Dwidaya Trading Company which together with interest commission and banking charges amount to \$1,653,163.97.

PARTICULARS 20

Full particulars of the said advances 3 folios and have already been rendered to the Defendant.

7. By a letter dated 16th September, 1967 from the Plaintiffs' Solicitors to the Defendant, the Plaintiffs' Solicitors demanded payment of the said sum, but the said Defendant has not paid the said sum or any part thereof.

And the Plaintiffs claim :- 30

1. The total sum of \$900,000.00;
2. Interest at the rate of 7% per annum on the aforesaid sum of \$100,000.00, 7½% per annum on the aforesaid sum of \$200,000.00 and 9% per annum on the aforesaid sum of \$600,000.00.

Sd. Donaldson & Burkinshaw

Solicitors for the Plaintiffs.

This Writ was issued by Donaldson & Burkinshaw of No. 9 Mercantile Bank Chambers, Singapore, Solicitors to the said Plaintiffs who carry on business at Bank of China Building, Battery Road, Singapore.

In the High Court of the Republic of Singapore

NOTICE

—
No.1.

TAKE NOTICE that the Writ served herewith is served on you as the person having the control or management of the business.

Writ of Summons
in Suit No.1809
of 1969
6th October 1967
(continued)

10 Dated this day of 196

Solicitors for the Plaintiff

This Writ was served by me, T. Natarajan on Maria Chia Sook (m.w.) the Defendant who accepted service but refused to sign for same at No. 28 Cuscaden Road, Singapore on Tuesday the 17th day of October 1967 at the hour of 3.55 p.m. the said Defendant was pointed out to me by Tan Thein Ling the Plaintiffs' representative.

20 Indorsed the 17th day of October 1967.

(Signed) T. Natarajan.

(Address)



In the High
Court of the
Republic of
Singapore

—
No.2

Further
Amended Defence
11th April 1972

6.

No. 2

FURTHER AMENDED DEFENCE

1. The Defendant admits paragraph 1 of the Plaintiffs' Statement of Claim.

2. The allegations contained in paragraph 2 of the Plaintiffs' Statement of Claim is admitted save and except that the Plaintiffs well knew that Yo Kian Tjoan the Defendant's husband was the sole proprietor of Dwidaya Trading Company.

~~3. The allegation contained in paragraph 3 of the Plaintiffs' Statement of Claim is denied.~~ With

10

regard to paragraph 3 the Defendant admits that at the request of the said Yo Kian Tjoan she agreed to guarantee payment of advances made to Dwidaya Trading Company to the extent of \$100,000.00 and interest thereon and further admits that in pursuance of such agreement she signed a blank and undated printed form in the English language described to her by the said Yo Kian Tjoan as being relevant to the said guarantee.

~~4. The Plaintiffs by threats, intimidations and/or undue influence procured the Defendant's husband Yo Kian Tjoan to exercise his will dominion and influence over her (his wife) to induce her to sign a confirmation of deposit of title deeds relating to the Defendant's property then known as 28 Guscadon Road, Singapore and together with contract in writing dated 2nd day of October 1961 referred to in paragraph 3 of the Plaintiffs' Statement of Claim.~~

20

~~5. The said Yo Kian Tjoan acted as agent of the Plaintiff bank in obtaining the Defendant's signature as hereinbefore averred.~~

30

~~6. The said Yo Kian Tjoan concealed from the Defendant the true nature and import of the afore-said documents.~~

~~7. The Plaintiffs well knew that the Defendant had no independent advice in regard to the documents dated 2nd October 1961 and received no consideration thereunder.~~

7.

~~8. The Defendant discovered in or about the year 1966 that she had executed the contract in writing referred to in paragraph 8 of the Plaintiff's Statement of Claim~~

In the High Court of the Republic of Singapore

9.-4. Paragraph 4 of the Plaintiffs' Statement of Claim is denied.

—
No. 2

10. On ~~or about~~ a day which the Defendant does not admit was the 12th day of January 1962 one Mr. Loke a manager in the Plaintiff Bank produced a document in printed form containing Blanks therein and undated at the Defendant's husband's office in the Bank of China Chambers and requested the Defendant to append her signature thereto using words importing that her signature thereto was a mere formality required ~~in order for him the said manager to assist the Defendant's husband in the business of Dwidaya Trading Company~~ for the purpose of substituting the same for the document referred to in paragraph 3 of the Statement of Claim which he informed the Defendant was not in the correct form or words to that effect.

Further Amended Defence
11th April 1972
(continued)

11.-5 The true nature and import of the document was not revealed to the Defendant by the Plaintiffs' said representative.

12.-6 The Plaintiffs well knew that the Defendant had no independent advice in regard to the said document and received no consideration whatsoever thereunder and which said document the Defendant discovered in the year 1966 to be the alleged contract referred to in paragraph 4 of the Plaintiffs' Statement of Claim. In the premises the said document is not the Defendant's document.

13.-7 The Defendant admits executing a contract in writing dated 27th January 1965 but denies that the same was executed on that day and avers that she did so under pressure and threats and intimidations exercised by the Plaintiffs through their servant and manager Mr. Loke while her husband was away in Kelantan, Malaysia.

14.-8 The Plaintiff bank ~~on the 27th January 1965~~ before the aforesaid contract in writing was signed by the Defendant disclosed to the Defendant that Dwidaya Trading Company was then owing the Plaintiff

In the High
Court of the
Republic of
Singapore

—
No.2

Further
Amended Defence
11th April 1972
(continued)

bank \$1,078.064.82 and compelled the Defendant to sign the contract threatening to sell the Defendant's share certificates, deposited with the Plaintiff bank to secure her own and separate overdraft if she refused to do so.

~~15. The true nature and import of the said document was not revealed to the Defendant by the Plaintiff bank.~~

16.9. The Plaintiff bank well knew that the Defendant had no independent advice in regard to the said document dated 27th January 1965 and received no consideration thereunder. 10

~~17.10. The Defendant in the premises hereinbefore stated denies she is indebted to the Bank in the total sum of \$900,000.00 and interest thereon or any sum at all admits liability for the sum of \$100,000.00 only together with interest on the amount from time to time owing by the said Dwidaya Trading Company to the Plaintiff bank (not exceeding \$100,000.00) from the 2nd October 1961 to the 26th May 1966.~~ 20

18.11. Save and except where specifically admitted all the allegations of the Plaintiffs' Statement of Claim are denied as if specifically set out and traversed.

COUNTERCLAIM

The Defendant repeats paragraphs 2 to 17 10 of her Defence and counterclaims for a declaration that :

1. ~~The alleged contract dated 12th October 1961 for \$100,000.00, the alleged contract dated 12th day of January 1962 and the alleged contract dated 31st day of October 1964 is are fraudulent and null and void as against the Defendant.~~ 30

The Defendant is entitled to be discharged from liability under the said contract of guarantee dated the 12th day of January 1962 upon the ground that the Plaintiff bank acting by its servant or servants procured the Defendant's execution thereto by falsely and fraudulently representing 40

to her that the same was a contract of guarantee for \$100,000.00 requiring the Defendant's signature thereto in substitution for a contract of guarantee for that amount dated the 2nd day of October 1961 which said contract was said to be defective in form.

In the High Court of the Republic of Singapore

No.2

Further Amended Defence 11th April 1972 (continued)

10

2. The Defendant is entitled to be discharged from liability under the said contract of guarantee dated the 27th day of January 1965 upon the ground that the Plaintiffs procured the Defendant's execution thereto by undue influence in that the Plaintiff bank acting by its servant or servants threatened to sell her property, namely stocks and shares held by the Plaintiff banks as security for her own overdraft and to take steps to make her husband a bankrupt if she declined to do so and in that for a period of two to three hours the said servant or servants persistently demanded that the Defendant should execute the same

20

2:- 3. Further and other relief.

3:- 4. Costs.

Dated this 26th day of October, 1967.

Sd. R.E. Redrup

Solicitor for the Defendant

Re-dated and Re-delivered this 18th day of September, 1971.

30

Sd. Hilborne & Co.

Solicitors for the Defendant

Re-Dated and Re-delivered this 11th day of April, 1972. Sd. Hilborne & Co.

Solicitors for the Defendant

In the High
Court of the
Republic of
Singapore

—
No.2

Further
Amended Defence
11th April 1972
(continued)

10.

AMENDED in red pursuant to Order of Court herein
dated 17th day of September, 1971.
Dated this 18th day of September, 1971.

Sd:-

Asst. Registrar.

FURTHER AMENDED in GREEN pursuant to Order of
Court herein dated the 10th day of April, 1972.

Dated this 11th day of April, 1972.

Sd:-

REGISTRAR.

10

—
No.3

AMENDED

REPLY AND DEFENCE TO COUNTERCLAIM

REPLY

—
No.3
Amended
Reply and
Defence to
Counterclaim
29th October
1971.

1. The Plaintiffs join issue with the
Defendant on her Amended Defence.

~~2. As to Paragraph 3 of the Defence, the
Plaintiffs say that the Defendant signed and
delivered to the Plaintiffs the documents
referred thereto and deny the alleged or any
threats, intimidation and/or undue influence.
The Defendant duly signed the said documents
and each of them of her own free will and in
the full knowledge of their significance,
and with the intention that the Plaintiffs,
should act thereon in relation to the account
maintained and operated with the Plaintiffs
by Dwidaya Trading Company at all material
times, and the Plaintiffs did in fact so act,
as the Defendant well knows.~~

20

2. As to Paragraph 3 of the Amended
Defence, the Plaintiffs deny that the said
guarantee was blank and or undated.

30

~~2. Paragraphs 5 and 6 of the Defence are
denied.~~

In the High Court of the Republic of Singapore

—
No. 3

Amended Reply and Defence to Counterclaim 29th October, 1971.
(continued)

10 3. As to Paragraphs, 4, 5 and 6 of the Amended Defence the Plaintiffs say that the contract referred to in Paragraph 4 of the Statement of Claim namely, the said contract dated 12th January, 1962, was executed by the Defendant in the presence of the Plaintiffs' representative and the Defendant fully realised and understood the contents and significance of the said document she was signing and did so voluntarily. The Plaintiffs deny that the purpose of the said contract was stated by the said Loke as alleged in Paragraph 4 of the Amended Defence.

~~4. Paragraph 7 of the Defence is denied. The Defendant was well versed in business matters and dealt extensively on the Stock Exchange in her own right. The consideration moving from the Plaintiffs to the Defendant was as appears from the said documents mentioned in Paragraph 3 of the Defence.~~

20 4. As to Paragraphs 7, 8 and 9 of the Amended Defence the Plaintiffs say that the contract referred to in Paragraph 7 of the Amended Defence, namely the said contract dated 27th January, 1965, was executed by the Defendant in the presence of the representative, servant or agent of the Plaintiffs, and that the Defendant fully realised and understood the contents and significance of the said contract she was signing and did so voluntarily. The Plaintiffs deny the allegation that the said Loke threatened, intimidated and/or used pressure on the Defendant. The consideration moving from the Plaintiffs to the Defendant was as appears in the said contract.

30 5. Paragraph 8 of the Amended Defence is denied as the Defendant was fully aware of the significance and contents of the said documents at the time of executing the same.

40 6. As to Paragraphs 10, 11 and 12 of the Amended Defence, the Plaintiffs say that the contract referred to in Paragraph 4 of the Statement of Claim was executed by the Defendant in the presence of the Plaintiffs' representative and the Defendant fully realised and understood the contents and significance of the said document she was signing

In the High
Court of the
Republic of
Singapore

—
No.3

Amended
Reply and
Defence to
Counterclaim
29th October,
1971.
(continued)

and did so voluntarily.

7. As to paragraphs 13, 14, 15 and 16 of the **Amended** Defence, the Plaintiffs say that the contract referred to in Paragraph 13 of the **Amended** Defence was executed by the Defendant in the presence of the Plaintiffs' representative and the Defendant fully realised and understood the contents and significance the said contract she was signing and did so voluntarily. The Plaintiffs deny the allegations that their servant and manager the said Loke or any other servant or manager of the Plaintiffs threatened, intimidated and/or used pressure on the Defendant. The consideration moving from the Plaintiffs to the Defendant was as appears from the said contract.

10

AMENDED DEFENCE TO
AMENDED COUNTERCLAIM

8. As to the **Amended** Counterclaim the Plaintiffs say that the Defendant is not entitled to the relief claimed or to any relief.

20

9. Save as has hereinbefore been expressly admitted the Plaintiffs deny each and every allegation contained in the **Amended** Defence and Counterclaim as if the same were set out herein seriatim and specifically traversed.

Dated and Delivered this 13th day of
December, 1968.

Sd. Donaldson & Burkinshaw

30

Solicitors for the Plaintiffs

**Re-dated and Re-delivered this 29th day
of October, 1971.**

Sd. Donaldson & Burkinshaw

Solicitors for the Plaintiffs

To the abovenamed Defendant and to her solicitors.
Messrs, Hilborne & Company, Singapore.

13.

AMENDED in red pursuant to Order of Court herein dated 24th day of September, 1971.

Dated this 29th day of October, 1971.

Sd. Chia Quee Khee

Asst. Registrar

In the High Court of the Republic of Singapore

No. 3

Amended Reply and Defence to Counterclaim 29th October, 1971. (continued)

Filed this 29th day of October, 1971.

Filed this 29th day of October, 1971.

No. 4

Amended Writ of Summons in Suit 1909 of 1967 (Maria Chia Sook Lan v Bank of China)

Generally Endorsed Writ.

No. 4 Writ of Summons (Generally Endorsed) 20th October 1967 Amended 17th February 1972

AMENDED WRIT OF SUMMONS

(O. 2, x.3)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1909 of 1967 }

Between

Maria Chia Sook Lan (m.w.) Plaintiff

and

Bank of China Defendant

THE HONOURABLE MR. JUSTICE WEE CHONG JIN,

In the High
Court of the
Republic of
Singapore

CHIEF JUSTICE OF THE REPUBLIC OF SINGAPORE,
IN THE NAME AND ON BEHALF OF THE PRESIDENT OF THE
REPUBLIC OF SINGAPORE.

—
No.4

To:- Bank of China,
Battery Road,
Singapore, 1.

Writ of Summons
(Generally
Endorsed)
20th October
1967
Amended
17th February
1972
(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
Maria Chia Sook Lan (m.w.) of 160 Cuscaden Road,
Singapore; and take notice, that in default of
your so doing the plaintiff may proceed therein
to judgment and execution.

10

WITNESS Mr. Eu Cheow Chye, Registrar of
the High Court in Singapore this 20th day of
October 1967.

Sd: R.E. Redrup

REGISTRAR

Solicitors for the Plaintiff

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.

20

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.
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 of \$5.50 with an addressed envelope
to the Registrar of the High Court at Singapore.

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The Plaintiff's claim is for :-

(1) A declaration that the **Confirmation of
deposit of the** title deeds of the said immovable
property consisting of all that piece of land
situate in Town Subdivision XXIV in the island
of Singapore being Lot 269 estimated according
to Government Resurvey to contain an area of
40,013 square feet or thereabouts and being

40

comprised under Certificate of Title registered in the Land Register in Volume 3 Folio 41 together with the dwelling house erected thereon and now known as No. 160 Cuscaden Road, formerly known as No. 28 Cuscaden Road, Singapore ~~deposited with the Defendant Bank to secure the overdraft of Dwidaya Trading Company is fraudulent and void as against the Plaintiff not the Plaintiff's document;~~ alternatively,

In the High Court of the Republic of Singapore

No. 4

Writ of Summons (Generally Endorsed) 20th October 1967 Amended 17th February 1972 (continued)

10 (2) A declaration that the said Confirmation of deposit of title deeds were being deposited with the Defendant Bank in fraud of the Plaintiff, is voidable against her.

(3) That the said Confirmation of deposit of title deeds be set aside.

~~(3)~~(4) That the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September 1966 be set aside.

20 ~~(4)~~(5) An injunction to restrain the Defendant Bank from selling or otherwise disposing of the said immovable property now known as No. 160 Cuscaden Road formerly known as No. 28 Cuscaden Road or otherwise exercising their rights under the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September 1966.

~~(5)~~(6) A declaration that the Plaintiff is entitled to the said mortgaged immovable property discharged from the claim under the said mortgage.

~~(6)~~(7) Further and other relief.

30 ~~(7)~~(8) Costs.

This writ was issued by R.E. Redrup, Esquire, of 6-B Raffles Place, Singapore, 1. Solicitor to the said plaintiff who resides at 160 Cuscaden Road, Singapore, and is a married woman.

The address for service is at No. 6-B Raffles Place, Singapore, 1.

This writ was served by
on
(the defendant, one of the defendants), on the
day of 19 .

Indorsed the day of , 19 .

In the High Court of the Republic of Singapore

AMENDED in red pursuant to Order of Court herein dated 7th day of February, 1972.

Dated this 17th day of February, 1972.

No.4

Signed:-

Asst. Registrar.

Writ of Summons (Generally Endorsed) 20th October 1967 Amended 17th February 1972 (continued)

No. 5

AMENDMENT TO STILL FURTHER AMENDED STATEMENT OF CLAIM

No. 5

Still Further Amended Statement of Claim 13th April 1972

1. The Plaintiff a married woman is the owner of property consisting of all that piece of land situate in Town Subdivision XXIV in the island of Singapore being Lot 269 estimated according to Government Resurvey to contain an area of 40,013 square feet or thereabouts and being comprised under Certificate of Title registered in the Land Register in Volume 3 Folio 41 together with the dwelling house erected thereon and now known as No. 160 Cuscaden Road formerly known as No. 28 Cuscaden Road, Singapore, hereinafter referred to as the said immovable property.

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2. On or about the 15th day of August 1961 the Plaintiff deposited the title deeds of the said immovable property with the Defendant Bank as security for an overdraft on the Plaintiff's personal account with the Defendant Bank.

20

~~2. The Defendant Bank by threats, intimidation and/or undue influence procured the Plaintiff's husband Yo Kian Tjoan to exercise his will, dominion and influence over her (his wife) to induce her to sign a confirmation of deposit of title deeds of the said immovable property and a Contract of guarantee, as~~

30

~~security for Dwidaya Trading Company's account with the Defendant Bank.~~

In the High
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—
No.5

Still Further
Amended
Statement of
Claim
13th April
1972.
(continued)

3. On an occasion believed to be in 1961 on the representation of one Loke, a servant of the Defendants that the same were documents the required signature to which were a mere formality the Plaintiff's husband Yo Kian Tjoan obtained from the Plaintiff her signature ~~in the year 1961~~ at the matrimonial home to two printed blank documents hereinafter referred to as the said documents containing blanks and one of which the Plaintiff and the said Yo Kian Tjoan learnt early in the year 1966 was a Confirmation of deposit of the title deeds relating to the said immovable property to secure Dwidaya Trading Company's account with the Defendant Bank of all monies then owing or which should thereafter be owing and the other being a guarantee to the Defendant Bank in the sum of \$100,000.00 on Dwidaya Trading Company's account and which said documents were both dated the 2nd day of October 1961.

4. Alternatively, the Plaintiff's husband was aware of the true nature of the said Confirmation of deposit of title deeds and the purpose for which the Plaintiff's signature to the same was required notwithstanding which the Defendants through the said Loke by threat, intimidation and/or undue influence procured him to exercise his will dominion and influence over the Plaintiff in order to induce her to sign the said document.

5. The said Yo Kian Tjoan was at all material times the sole proprietor of Dwidaya Trading Company and acted as agent of the Defendant Bank in obtaining the Plaintiff's signature as hereinbefore averred.

6. ~~The said Yo Kian Tjoan concealed from the Plaintiff the true nature and import of the said documents.~~

The Defendants or alternatively the Defendants and the said Yo Kian Tjoan wrongfully

In the High
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No. 5
Still Further
Amended
Statement of
Claim
13th April
1972.
(continued)

concealed from the Plaintiff the true purpose for they required her signature to the said Confirmation of deposit of title deeds, namely, for the purpose of obtaining a deposit by way of equitable mortgage of the title deeds of the said immovable property as security for the overdraft relating to the said Dwidaya Trading Company and fraudulently misrepresented to her the true nature of the transaction.

7. Furthermore the Defendant Bank well knew that the Plaintiff had no independent advice with regard to the said documents and received no consideration whatsoever thereunder. 10

8. Without the knowledge or consent of the Plaintiff the Defendant Bank in Originating Summons No. 185 of 1966 obtained an Order to sell the said immovable property out of Court by private treaty or by public auction and to be at liberty to execute as mortgagee a proper conveyance to the purchaser of the said immovable property as a result of Dwidaya Trading Company's failure to repay its debt to the Bank. 20

9. The said Order in Originating Summons No. 185 of 1966 was obtained on the 12th day of September 1966 counsel appearing on behalf of the Plaintiff consenting thereto.

10. The Plaintiff did not consent or authorise on her behalf the giving of any consent. ~~The said consent if any was given by the Plaintiff's husband the said Yo Kian Tjoan who acted under the threats and intimidation and/or undue influence exercised by the Defendant Bank to whom the said Yo Kian Tjoan was indebted in a sum of excess of \$1,200,000.00.~~ 30

10A. Further, the consent of the Plaintiff's counsel to the said Order being made was given on the assumption that an agreement between the Plaintiff and the Defendants had been reached regarding (inter alia) the sale of the Plaintiff's property known as Lot 882 Mukim XVIII being land at Thomson Rise, Singapore and the postponement of the sale of the said No. 160 Cuscaden Road. The Plaintiff says that in fact no concluded agreement 40

was reached between the parties by reason whereof the said consent was wrongly given. Alternatively, if a concluded agreement between the parties was reached, it was a condition thereof that no steps by the Defendants to sell the said No. 160 Cuscaden Road until after the sale of the said Lot 882 Mukim XVIII which property has not hitherto been sold by reason whereof the Defendants are not entitled to sell the said No. 160 Cuscaden Road.

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No.5

Still Further
Amended
Statement of
Claim
13th April
1972
(continued)

~~11. The defendant Bank further and/or in the alternative to the premises hereinbefore stated by threats, intimidations and undue influence exercise upon her husband procured and persuaded the Plaintiff not to resist and to consent to the Order made in Originating Summons No. 185 of 1966.~~

12. ~~11.~~ The Defendant Bank in the proceedings under Originating Summons No. 185 of 1966 and in the Affidavits filed therein concealed from the Court the fact well within the Bank's knowledge that the title deeds of the said immovable property were deposited with the Defendant Bank on or about the 15th day of August 1961 to secure the Plaintiff's personal overdraft.

12. Further, or in the alternative the said Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable property comprised therein which is void and unenforceable by the Defendant Bank against the Plaintiff for the following reasons, namely:-

(i) that by virtue of Section 5 of the Registration of Deeds Ordinance (Chapter 255) it is not admissible in evidence in these proceedings, nor was it admissible in evidence in the proceedings in Originating Summons No. 185 of 1966 on the ground that it was not registered under that Ordinance.

(ii) that the amount secured under and by virtue of the said equitable

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Republic of
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No.5

Still Further
Amended
Statement of
Claim
13th April
1972
(continued)

mortgage is not provided for in that the same is not stated therein now is the same stamped under the provisions of the Stamp Ordinance (Chapter 170) so as to make the said amount capable of ascertainment, and the same is therefore void for uncertainty.

13. Further, or in the alternative, if the said confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of \$100,000.00 (Dollars One hundred thousand) with such interest thereon, if any, as may properly be found to be due thereon.

10

13.12. 14. The Plaintiff therefore claims :-

(1) A declaration that the **Confirmation of deposit of the** title deeds of the said immovable property consisting of all that piece of land situate in Town Subdivision XXIV in the island of Singapore being lot 269 estimated according to Government Resurvey to contain an area of 40,013 square feet or thereabouts and being comprised under Certificate of Title registered in the Land Register in Volume 3 Folio 41 together with the dwelling house erected thereon and now known as No. 160 Cuscaden Road formerly known as No. 28 Cuscaden Road, Singapore ~~deposited with the Defendant Bank to secure the overdraft of Dwidaya Trading Company is fraudulent and void as against the Defendant not the Plaintiff's document; alternatively,~~

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30

(2) A declaration that the said Confirmation of deposit of title deeds were ~~being~~ **being** deposited with the Defendant Bank in fraud of the Plaintiff, **is void against her.**

(2A) Alternatively, a declaration that the said Confirmation of deposit of title deeds is invalid and unenforceable against the Plaintiff,

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or, alternatively, a declaration that the same is enforceable against her for a sum of not more than \$100,000.00 (Dollars One hundred thousand) with such interest thereon, if any, as may properly be found to be due thereon.

In the High Court of the Republic of Singapore

No.5

Still Further Amended Statement of Claim
13th April 1972
(continued)

(3) **That the said Confirmation of deposit of title deeds be set aside.**

10 ~~(3)~~(4) That the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September, 1966 be set aside.

20 ~~(4)~~(5) An injunction to restrain the Defendant Bank from selling or otherwise disposing of the said immovable property now known as No. 160 Cuscaden Road formerly known as No. 28 Cuscaden Road or otherwise exercising their rights under the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September 1966.

~~(5)~~(6) A declaration that the Plaintiff is entitled to the said mortgaged immovable property discharged from the claim under the said mortgage.

~~(6)~~(7) Further and other relief.

~~(7)~~(8) Costs.

Dated and Delivered this 8th day of November, 1967.

Sd. R.E. Redrup

30 Solicitor for the Plaintiff

Re-Dated and Re-Delivered this 18th day of September, 1971.

Sd. Hilborne & Co.

Solicitors for the Plaintiff
Re-Dated and Re-Delivered this 28th day of March, 1972.

Sd. Hilborne & Co.

Solicitors for the Plaintiff

22.

In the High
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RE-DATED AND RE-DELIVERED this 13th day
of April, 1972.

Sd. Hilborne & Co.

No. 5

Solicitors for the Plaintiff

Still Further
Amended
Statement of
Claim
13th April
1972.
(continued)

AMENDED in Red pursuant to Order of Court
herein dated 17th day of September, 1971.

Dated this 18th day of September, 1971.

Sd:-

ASST. REGISTRAR

FURTHER AMENDED in GREEN pursuant to Order of
Court herein dated 28th day of March, 1972.

Sd:-

ASST. REGISTRAR

STILL FURTHER AMENDED in BLUE pursuant
to Order of Court herein dated 13th day of
April, 1972.

Dated this 13th day of April, 1972.

Sd:-

REGISTRAR

AMENDEDFURTHER AND BETTER PARTICULARS

pursuant to Defendants' Solicitors' letter of the 9th November, 1967.

In the High Court of the Republic of Singapore

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No. 6

Amended Further and Better Particulars
17th February
1972

1. As to paragraph 3- 4 of the Statement of Claim **it is believed** the Defendant Bank through their then Assistant Manager Mr. Loke Chan Hing procured the Plaintiff's husband Yo Kian Tjoan by threatening Yo Kian Tjoan over whom he the said Mr. Loke had established control by virtue of his position in the Defendant Bank and by the unsecured overdraft facilities given to him by the said Loke Chan Hing to practice deceit upon the Plaintiff for the purpose of obtaining securities to cover Dwidaya Trading Company's unsecured overdraft with the Defendant Bank. The said Mr. Loke Chin Hing (**it is believed** in or about the month of December 1961) told the Plaintiff's husband that if it became known that he the said Yo Kian Tjoan had overdraft facilities from the Defendant Bank without the deposit of security he would be prosecuted. The said Mr. Loke Chan Hing prevailed upon the said Yo Kian Tjoan to back date the said Deed of Confirmation of deposit of title deeds and the Bank guarantee for \$100,000.00 to 2nd October 1961.

2. As to paragraph 5 of the said Agency arose as a result of the close personal relationship between the said Yo Kian Tjoan and Loke Chan Hing the then Assistant Manager of the Defendant Bank. ~~and when on verbal directions of Mr. Loke Chan Hing told the said Yo Kian Tjoan to obtain the Plaintiff's signature to the said document to conceal the fact that overdraft facilities had been given to the said Yo Kian Tjoan sole proprietor of Dwidaya Trading Company without the deposit of security.~~

3. ~~As to paragraph 10 the Defendant Bank threatened the said Yo Kian Tjoan with Bankruptcy and the possibility of criminal proceedings against him and had dismissed Mr. Loke Chan Hing from their services and the said Yo Kian Tjoan was indebted to the Defendant Bank in a sum of 1.2 million.~~

24.

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~~4. As to paragraph 11 the threats intimidations
and undue influence were of criminal proceedings and
bankruptcy against Yo Kian Tjoan the dismissed
of Mr. Loke from the services of the Defendant
Bank and of public disgrace to Mr. Yo Kian Tjoan
and his family.~~

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No.6

Amended Further
and Better
Particulars
17th February
1972
(continued)

Dated and Delivered this 7th day of
December, 1967.

Sd. R.E. Redrup

Solicitor for the Plaintiff

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**Re-Dated and Re-Delivered this 17th day
of February, 1972.**

Sd. HILBORNE & CO.

Solicitors for the Plaintiff

To:- The Bank of China,
the abovenamed Defendants,
Singapore.

**AMENDED in red pursuant to Order of
Court herein dated 7th day of February, 1972.**

Dated this 17th day of February, 1972.

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Sd:-

ASST. REGISTRAR

Re-Filed this 17th day of February, 1972.

25.

No. 7

STILL FURTHER AMENDED

D E F E N C E

In the High
Court of the
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Singapore

—
No.7

Still Further
Amended Defence
19th April 1972

1. Paragraph 1 of the Statement of Claim is admitted.

2. The deposit of title deeds referred to in Paragraph 2 of the Statement of Claim was made to secure the account of the said Dwidaya Trading Company.

10 3. As to Paragraphs 3 and 4 of the Statement of Claim the Defendants say that the Plaintiff signed and delivered to the Defendants the following documents :-

(a) a document dated 2nd October, 1961 and headed "Confirmation of Deposit of Title Deeds" confirming and acknowledging that the said title deeds referred to in the Statement of Claim held by the Defendants were to be held by the Defendants as security for the payment on demand of all moneys owing by the said Dwidaya Trading Company to the Defendants;

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(b) A Letter of Guarantee in the Defendants' favour, dated 2nd October, 1961 limited to \$100,000.00 and interest thereon, relating to Dwidaya Trading Company;

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(c) A Letter of Guarantee in the Defendants' favour, dated 12th January, 1962, in respect of the acceptance by the Defendants of Trust Receipts on behalf of Dwidaya Trading Company;

(d) A Letter of Guarantee in the Defendants' favour, dated 27th January, 1965, limited to \$600,000.00 and interest thereon, relating to Dwidaya Trading Company.

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The Defendants deny the alleged or any threats, intimidation and/or undue influence. The Plaintiff duly signed the said documents and each of them of her own free will and in the full

In the High
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Singapore

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No. 7

Still Further
Amended Defence
19th April 1972
(continued)

knowledge of their significance, and with the intention that the Defendants should act thereon in relation to the account maintained and operated with the Defendants by the said Dwidaya Trading Company at all material times, and the Defendants did in fact so act.

4. Paragraphs 5, 6 and 7 of the Statement of Claim are denied, save that the Defendants admit the said Yo Kian Tjoan was at all material times the sole proprietor of the said Dwidaya Trading Company. The consideration moving from the Defendants to the Plaintiff was as appears from the said documents mentioned in Paragraph 2 hereof under (a) and (b), to which the Defendants will refer at the trial.

10

5. Paragraphs 8 and 9 of the Statement of Claim are admitted, **save that it is denied that the said Order was obtained without the knowledge or consent of the Plaintiff.**

6. Paragraphs ~~10 and 11~~ of the Statement of Claim ~~are~~ **is** denied. The Plaintiff freely and knowingly and of own volition gave instructions to her Counsel to consent to the said Order in Originating Summons No. 185 of 1966. The Defendants have never at any time used threats or intimidation or undue influence towards or in relation to the Plaintiff as alleged or at all.

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7. As to Paragraph ~~12~~ **11** of the Statement of Claim, the Defendants say that there was no concealment from the Court as alleged or at all. As is clearly stated by the Plaintiff in the said document confirming the deposit of the said title deeds mentioned in Paragraph 2 hereof under (a), such deposit was at all material times by way of security for the indebtedness of the said Dwidaya Trading Company to the Defendants.

30

7A. Further or in the alternative, if, which is denied, the said Confirmation of Title Deeds was not the Plaintiff's document, and/or was wrongfully obtained from the Plaintiff as alleged or at all, and/or the Plaintiff's then solicitor was not instructed by the Plaintiff to

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consent to the said Order of Court as alleged, the Plaintiff is estopped or in equity precluded from relying on such allegations or any of them.

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PARTICULARS

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No.7

Still Further
Amended Defence
19th April, 1972
(continued)

10 The said Order of Court was made on the 12th
September, 1966 in the presence of the Plaintiff's
then solicitor. From a date in May, 1966, or in
July, 1966 at the latest, the Plaintiff was aware
of the Defendants' contention that the Plaintiff
had deposited the said title deeds with the
Defendants by way of security for the Plaintiff's
husband's account with the Defendants, and of the
Defendants' intention to apply to Court to be
adjudged a mortgagee of, and to have liberty to
sell, the said Cuscaden Road property. The
Plaintiff nevertheless took no steps whatsoever
to resist or object to the Defendants' said
application to Court, and/or to appeal from or
otherwise attempt to reverse or set aside or vary
20 the said Order, but instead stood by while the
Defendants to her knowledge were applying for,
obtaining, procuring registration of and there-
after acting in reliance upon the said Order.

30 7B. As to Paragraphs 12 and 13 of the Still
Further Amended Statement of Claim, the
Defendants deny that the said Confirmation of
Deposit of Title Deeds is void and unenforceable
as alleged or at all, and further deny that the
same is valid and enforceable only for the said
sum of \$100,000.00 and interest thereon.

40 7C. Further or in the alternative, if the said
Confirmation of Deposit of title Deeds is void
and unenforceable as alleged in Paragraph 12 of
the Still Further Amended Statement of Claim,
which is denied, or is security only for
\$100,000.00 and interest thereon as alleged in
Paragraph 13 of the Still Further Amended Statement
of Claim, which is denied, the Plaintiff is
stopped or in equity precluded from relying on
such allegations or any of them.

PARTICULARS

The Defendants repeat the Particulars to
Paragraph 7A hereof, and further say that the

In the High
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No.7
Still Further
Amended Defence
19th April, 1972
(continued)

28.

Plaintiff instructed her then Solicitors, Lee & Lee, to write to the Defendants' solicitors and to the Defendants representing expressly or by implication that the said title deeds had been and were deposited with the Defendants as security for the Plaintiff's husband's account with the Defendants in reliance on which representation the Defendants did not pursue their full legal remedies against the Plaintiff and/or the Plaintiff's husband by enforcing their rights against the Plaintiff under certain guarantees given to the Defendants by the Plaintiff, and/or against the Plaintiff's husband.

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8. In the premises, the Plaintiff is not entitled to the relief claimed or to any relief.

9. Save as is hereinbefore expressly admitted the Defendants deny each and every allegation of the Statement of Claim herein as if the same were set forth herein seriatim and specifically traversed.

20

DATED and DELIVERED this 17th day of November, 1967.

Sd. Donaldson & Burkinshaw

Solicitors for the Defendants.

RE-DATED and RE-DELIVERED this 21st day of October, 1971.

Sd. Donaldson & Burkinshaw

Solicitors for the Defendants.

30

RE-DATED and RE-DELIVERED this 13th day of March, 1972.

Sd. Donaldson & Burkinshaw
Solicitors for the Defendants.

RE-DATED AND RE-DELIVERED this 19th day of April, 1972.

Sd. Donaldson & Burkinshaw

Solicitors for the Defendants

29.

To:- The abovenamed Plaintiff
and to her Solicitors,

Messrs. Hilborne & Company,
Singapore.

In the High
Court of the
Republic of
Singapore

AMENDED in RED pursuant to Order of Court herein
dated 24th day of September, 1971.
Dated this 21st day of October, 1971.

No.7
Still Further
Amended Defence
19th April, 1972
(continued)

Sd. Chia Quee Khee

Asst. REGISTRAR

10 AMENDED in GREEN pursuant to Order of Court
herein dated 3rd day of March, 1972.
Dated this 13th day of March, 1972.

Sd. Teo Keng Bien

Asst. REGISTRAR.

AMENDED in BLUE pursuant to Order of Court
herein dated 14th day of April, 1972.
Dated this 19th day of April, 1972.

Sd. Michael Khoo Kah Lip

Asst. REGISTRAR.

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In the High
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NOTES OF EVIDENCE

DEFENDANT'S COUNSEL'S OPENING

Godwin, Roy Sharma with him, for Plaintiffs
Hilborne for Defendant.

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No.8
Notes of
Evidence
27th March 1972
Defendant's
Counsel's
Opening

- Hilborne: It has been agreed that the evidence to be given in Suit 1809/67 should be treated as evidence in Suit 1909/67.
- Godwin: I agree.
- Hilborne: It is admitted that Defendant signed the five documents and the onus is on her to prove that she is not bound by the documents. Godwin has suggested that I should therefore begin and I have agreed to begin. However, the onus may well rest on the bank in the end. 10
- Godwin: It may happen that depending on the evidence the onus may shift during the trial but I submit the onus ultimately rests on Defendant. 20
- (Agreed bundle of documents marked AB1, agreed bundle of pleadings including the pleadings in Suit No. 2393/68 marked AB2, agreed bundle of affidavits marked AB3, agreed statements of accounts marked AB4, agreed copies of contents of Messrs. Lee & Lee's file marked AB5).
- Hilborne: In 1958 Defendant and her husband Yo and their five children came to Singapore with the intention of settling here. They came from Indonesia where Yo was a business man. Defendant was born in China but in her early infancy came to Singapore. During the first seven years of her life she lived partly in Singapore and partly in Bangkok. She resided with her adopted father. Her real father was a business man in Batavia. He sent for her at the age of seven and she lived in Indonesia thenceforward until 1958. She married Yo in 1942. She had no schooling 30 40

for the first seven years. When she went to Indonesia she attended a Chinese speaking school which she left at the age of 16. She had very little tuition in English. Between 1942 and 1958 she had accompanied Yo on his business trips to Singapore on several occasions. But her English is of poor standard. In 1960 or thereabouts a Mrs. Collins gave her English conversational lessons.

Defendant was a woman of considerable means in her own right. Her father died in 1961 and Defendant's share in his estate was about \$500,000.

In 1958 Defendant bought 28 Cuscaden Road with her own money for \$70,000.

From 1960 Defendant began to speculate in the share market.

Defendant first opened an account with the Chung Khiaw Bank, Robinson Road. In 1960 through an introduction of an official of Bank Negara, Indonesia to Loke and Djeng she transferred her account to the Bank of China. She asked for overdraft facilities and they told her she could have 50% of the current value of shares deposited with the bank.

From 1960 Defendant dealt heavily in shares. Throughout 1960, 1961, 1962, 1963 she made a great deal of money. She relied on the advice of brokers and chose brokers who spoke Hakka, her mother tongue, or Mandarin. It will be suggested that she is a business woman or well versed in business affairs. I submit it requires no business education

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No.8
Notes of Evidence
27th March 1972
Defendant's Counsel's Opening
(continued)

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In the High Court of the Republic of Singapore

No.8

Notes of Evidence 27th March 1972

Defendant's Counsel's Opening (continued)

to make money by dealing in shares.

Because the share certificates has to be deposited with the bank she signed hundreds of transfer forms. She was in and out of the bank every day. She became good friends of the bank officials.

Defendant's account was transferred to the bank in November 1960.

Yo started doing business in Singapore in October 1961. He opened an account with the Bank of China in February 1961. Loke and Djeng asked Defendant and Yo why Yo had not opened an account with their bank and Yo accordingly did so.

10

Yo and Defendant converse in Malay. Defendant speaks Hakka and Mandarin. Yo only speaks Malay; his English is better than Defendant's English but is still indifferent.

20

Loke spoke no Mandarin or Hakka. He spoke Malay. Djeng spoke Mandarin. He spoke in Mandarin to Defendant. Loke spoke in Malay to Defendant. There was no common language, except English, among the four of them. But they did not speak English when the four of them were together.

Defendant asked the bank officials what would happen if she went over the 50% limit. Their answer was if she had solid security such as land they could assist her on that. Defendant then mentioned 28 Cuscaden Road. It was arranged that she should deposit the title deeds with the bank. Defendant instructed Messrs. Allen & Gledhill to deposit the deeds with the bank when they received them from the Registrar. On 11.8.61 the deeds were sent by the solicitors to the bank (see page 5 of AB1).

30

40

At all material times 28 Cuscaden

Road was security for her own overdraft. She never agreed at any time that it should be security for Dwidaya Trading Company.

In the High Court of the Republic of Singapore

The first time Defendant knew of the allegation of the bank that that property was security for Dwidaya Trading Company's account was a few days after 26.5.66. (see p. 50 of AB1).

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No.8

Notes of Evidence
27th March 1972.

Defendant's Counsel's Opening
(continued)

When Tann Wee Tiong went to Yo's house and informed Defendant about it, there was a scare in Yo's house. Neither Defendant nor Yo had known about it. There are two interpretations - (1) fraud by the bank. The bank had two overdrawn accounts, one of which was fully secured i.e. Defendant's account but the other, if 28 Cuscaden Road was not security, was unsecured. (2) Somehow in this unfortunate language situation there was a genuine mistake, a mutual mistake.

Godwin: Mistake has not been pleaded.

Hilborne: Defendant thought she was signing a document to secure her own overdraft. I am asking for equitable relief without pleading mistake. I am not relying on mistake in law.

Page 9 of AB1 - Defendant says she never signed any document relating to Dwidaya Trading Company.

Page 12 of AB1 - Everything in writing was written by Yo, except Defendant's signature.

Yo will say he was asked to back-date the documents to 2.10.61. The request to back-date was made weeks or months after 2.10.61.

Re the \$100,000 guarantee, Defendant says Yo asked her to guarantee Dwidaya's account for \$100,000, that she was

In the High
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No.8

Notes of
Evidence
27th March 1972.

Defendant's
Counsel's
Opening
(continued)

reluctant to do so, that on his assurance that he would do well as soon as he got going Defendant agreed to guarantee the account. Yo's money was in Indonesia and he could not get it out. Defendant says she signed p.12 of AB1 at home. She says Yo brought home one or two documents and asked her to sign them.

The principal sum of \$100,000 guaranteed on p.12 of AB1 has been paid to the bank.

10

Page 12 is not a simple document. Defendant did not understand what she was signing.

Defendant took no interest in and took no part in the business of Dwidaya Trading Co. Yo was the sole proprietor. Defendant had no idea of the overdraft. By March 1965 the overdraft was well over \$100,000.

20

In January 1965 Defendant was first shown or told about Dwidaya Trading Company's overdraft by Loke in the bank. Defendant was horrified.

In January 1965 the Bank extracted the third guarantee from Defendant. This was for \$600,000. This guarantee was signed by Defendant and she knew she was signing it. It was signed under threats while Yo was away. She was told that if she did not sign it all her shares would be sold and Yo would be made bankrupt.

30

Adjourned to 2.15 p.m.

(By consent Letter of Guarantee dated 2.10.61 put in and marked P1. Letter of Guarantee dated 12.1.62 put in and marked P2, Letter of Guarantee dated 27.1.65 put in and marked P3, Confirmation of Deposit of Title Deeds dated 2.10.61 put in and marked P4, Confirmation of Deposit of Title Deeds

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dated 19.11.63 put in and marked P5).

Hilborne: Market values and price of shares rose during 1960 to 1963. The feeling of confidence reached its peak in October 1963. Defendant's overdraft got bigger. But since the price of her shares was increasing her overdraft was secured.

Malaysia came into existence on 31.8.63.

10 See p.37 of AB4 for Dwidaya Trading Company's overdraft. The bank had a guarantee of only \$100,000. The Bank alleges it had 28 Cuscaden Road as security. If this property was worth \$515,000 it was sufficient security. But banks allow an overdraft of only 60% of the value of landed property.

20 On 8.11.63 confrontation started. Bank Negara closed its doors to the public. Confrontation completely upset the Bank as far as the two overdrafts were concerned. Share prices still went up until 1964 as the effects of confrontation were not immediately felt. In the middle of 1964 prices started to fall. Confrontation came to an end in September 1966.

30 On 30.6.64 (see p.47 of AB4), Dwidaya Trading Company's overdraft was \$1,004,556.40.

All the shares were sold in the third quarter of 1966. But there remained a debt of \$458,000 due to the Bank. Had the shares been sold in 1965, when Singapore left Malaysia, the discrepancy would have been greater.

40 Yo's firm was dealing mainly in rubber and confrontation affected it adversely.

In the High Court of the Republic of Singapore

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Notes of Evidence
27th March 1972.
Defendant's Counsel's Opening
(continued)

In the High
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No.8

Notes of
Evidence
27th March 1972.

Defendant's
Counsel's
Opening
(continued)

Going back to 12.1.62, this is for \$200,000 (see P2). Defendant says she knows nothing whatever about this guarantee. She says she signed only two letters of guarantee. She says she remembers Yo phoning her and asking her to sign a document which Loke wanted signed. Defendant went to Yo's office and there met Yo and Loke. Loke told her the guarantee dated 2.10.61 was not in order and wanted her to sign another document. She recalls signing a new document which she thought related to the guarantee dated 2.10.61. She says maybe that was the document she signed on that occasion.

10

In May 1963 Defendant bought property at Thomson Rise. She deposited the title deeds with the Bank.

20

On 27.1.65 the third Letter of Guarantee was signed. See p.231 of AB1. The account was closed on 19.3.65.

At about the same time Defendant's account was closed.

On or about 5.8.65 Loke and Djeng were dismissed by the Bank. Thereafter there were no further transactions between the Bank and Defendant.

30

Yo and Loke were on friendly terms. In 1965 Yo obtained a timber concession in Kelantan. After Loke left the Bank he joined Yo in this venture. The enterprise was not successful.

No action (apart from correspondence) was taken by the Bank until May 1966. The Bank may have heard about the timber concession.

40

On 26.5.66 solicitors began to write letters.

Messrs. Lee & Lee took over from Tann Wee Tiong. They acted for Defendant from August 1966 to October 1967. Then Redrup acted for Defendant.

In the High Court of the Republic of Singapore

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No.8

Notes of Evidence
27th March 1972.

Defendant's Counsel's Opening
(continued)

10 Yo asked the Bank whether it would accept Thomson Rise to secure both overdrafts so that 28 Cuscaden Road should be released. Ultimately the Bank alleged that both Thomson Rise and 28 Cuscaden Road were security for both overdrafts. See p. 127, 131, 146, 147 of AB1.

First, I submit the projected arrangement suggested by Yo never reached the stage of a concluded agreement.

20 Secondly, if there was a concluded and enforceable agreement I submit that that agreement had in it a condition which had to be complied with by the Bank and which the Bank did not comply with so as to give rise to a right of sale. The condition was that Thomson Rise had first to be sold before the amount of the monthly repayment by Defendant could be decided upon by the Bank. The property at Thomson Rise was never sold and the conditions which would have enabled Defendant after the sale to have paid off any balance owing never arose. The aim was to save the Cuscaden Road property.

30 The Bank forgot what had been agreed to. Messrs. Donaldson & Burkinshaw overlooked what had been agreed to.

An order for a lis pendens was made.

40 Selvadurai who purported to act for Defendant gave his consent to orders being made in O.S. 185/66 and 269/66 but Defendant had never given him instructions and knew nothing about the matter. See my letter at p.66 of AB5.

In the High
Court of the
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No.8

Notes of
Evidence
27th March 1972.

Defendant's
Counsel's
Opening
(continued)

28th March 1972. Hilborne:

See pleading at p.29A of AB2 -
para 7A.

Defendant told both Tann Wee
Tiong and Selvadurai that 28 Cuscaden
Road was security for her own over-
draft but not for Dwidaya Trading
Company's over-draft. She says
that both Tann and Selvadurai told
Defendant that her signature was
on the document and nothing could be
done

10

Tuesday, 28th March, 1972.

On p.90 of AB4 from 4.7.66 to 30.9.66
on p.91 - from 4.7.66 to 30.9.66
there is a continuous series of credit
advices. This represents the selling
off of shares.

In August 1967 Yo was declared a
bankrupt. The Bank's only hope of
recovering anything more lay in
Defendant.

20

Six questions :-

(1) Can the Bank take advantage of an
instrument in its favour when the
signatory was misled and deceived
about either the nature of the
document or its fundamental contents?
This arises in respect of the
Cuscaden mortgage and the second
guarantee.

30

(2) Can the Bank take advantage of
an instrument which was obtained from
the signatory by threats and/or
intimidation? This arises in the
case of the third guarantee.

(3) Even if there was no mis-
representation or deception or
intimidation can the Bank take
advantage of instruments signed by a
woman who does not understand the
English language sufficiently well,
who does not receive a proper or any

40

explanation as to the meaning of the instruments and who has received no independent advice as to whether she ought or ought not to sign them. This applies to the second and third letters of guarantee and the Cuscaden mortgage.

In the High
Court of the
Republic of
Singapore

—
No. 8

Notes of
Evidence

Defendant's
Counsel's
Opening
28th March 1972
(continued)

10 (4) If it is found as a fact that Yo connived or conspired with the Bank to induce Defendant to sign these instruments or any of them does it make any difference to the Bank's position?

(5) Was there ever a concluded agreement between the parties through their solicitors regarding the Thomson Rise property becoming security for Dwidaya Trading Company's account as well as Defendant's account?

20 (6) If there was such a concluded agreement did the Bank comply with the conditions of the agreement so as to enable them to sell the Cuscaden and Thomson Rise properties i.e. the Bank agreed to sell the Thomson Rise property only and would then decide the amounts of the monthly instalments to be paid by Defendant and the Bank would sell the Cuscaden property only if Defendant failed to make the monthly payments?

30 Godwin: So far as questions (5) and (6) are concerned the facts have not been pleaded.

(After discussion Hilborne says he will consider the matter. He may make an application to amend the pleadings).

40 Hilborne: Saunders v Anglia Building Society (1970) 3 All E.R. 961 at p.973 per Lord Pearson and at p.963 per Lord Reid. This case lays down that the doctrine of non est factum must be kept within narrow limits. Secondly, it does not matter any more whether the signatory's misapprehension was as to the nature of the document or

In the High Court of the Republic of Singapore

No.8

Notes of Evidence

Defendant's Counsel's Opening 28th March 1972 (continued)

merely its contents and effect so long as there is a fundamental misunderstanding as to either the character of the document or the contents of the document. See also p. 966,967 per Lord Dilhorne. If it is a fundamental misconception then it is non est factum.

If the plea of non est factum fails, I rely on undue influence exerted by the Bank officials or indirectly through Yo as their agent. My instructions are that Yo did not exercise undue influence on Defendant. 10

17 Halsbury's Laws 3rd Edition p. 672 paras. 1297, 1928, 1300, 1302, 1307, 1312.

18 Halsbury's Laws 3rd Edition p. 497 para 914.

The Cuscaden equitable mortgage (securing Defendant's own overdraft), the guarantee dated 27.1.65 and the Thomson Rise equitable mortgage were signed in the Bank. 20

The guarantee dated 12.1.62 was signed in Yo's office.

The guarantee dated 2.10.61 was signed at home.

Defendant does not know where she signed the Cuscaden equitable mortgage dated 2.10.61 whereby it is alleged Dwidaya Trading Company's account was secured by the Cuscaden property. She did not know the nature of the document which she signed. 30

Hilborne: 14 Halsbury's Laws 3rd Edition p. 478 para 909.

19 Halsbury's Laws 3rd Edition p. 836 para 1363.

Kerr on Fraud & Mistake 7th Edition p. 185 "Fiduciary relationship"; 40

p. 186 "Inhibited transactions"; p. 222 "Husband and wife"; p. 223 "Undue influence"; P. 226 "Inadequacy of consideration"; p. 225 "Inequality of footing"; p. 229 "Cases of undue influence".

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Huguenin v Baseley (1803 - 1813)
All E.R. Rep. 1 at p. 5 (Romilly's argument), p. 13F to G3, H to 14.

Notes of Evidence

Defendant's Counsel's Opening
28th March 1972
(continued)

10 .

Turnbull & Co. v Duval (1902)
A.C. 429.

Willis v Barron (1900-3) All E.R. Rep. 876.

Bischoff's Trustee v Frank (1903)
89 L.T. 188.

Wednesday, 29th March, 1972

29th March 1972.

Hilborne: I apply for leave to amend the statement of claim in Suit No. 1909 of 1967. (Tenders amended statement of claim).

20 Godwin: I have no objection.

The application is granted;

(Sd.) Tan Ah Tah.

Hilborne: Chaplin & Co. Ltd. v Brammall (1908)
1 K.B. 233.

Howes v Bishop (1909) 2 K.B. 390.

Bank of Montreal v Stuart (1911)
A.C. 120.

Bank of New South Wales v Rogers (1941) 65 C.L.R. 42 at p. 54, 55, 59, 61, 63, 64, 70, 74, 84, 87.

30



In the High Court of the Republic of Singapore

EVIDENCE OF MARIA CHIA SOOK LAN

No.9

Defendant's Evidence Maria Chia Sook Lan Examination 29th March 1972

D.W.1 MARIA CHIA SOOK LAN affirmed, states in Mandarin. 160 Cuscaden Road formerly known as 28 Cuscaden Road. Housewife.

I have five children. The eldest is a daughter aged 28, the second is a son aged 25 and the youngest is a daughter aged 17.

My husband Yo and I and our five children came to live in Singapore in 1958. I wanted my children to receive an English education.

10

When I was eight years old I attended a Chinese school in Banka, Indonesia. When I was in middle school at the age of 14 or 15 I started to learn English. I left school when I was 16. I had a year or two of English tuition.

I was born in China. For the first seven years of my life I stayed in Singapore and Bangkok. I went to Indonesia when I was eight years old. I went to stay with my parents. Before that I had been brought up by my adopted parents. My own father was a business man.

20

I married Yo in 1942. He was a business man dealing in rubber. My father was dealing in furniture and electrical appliances.

Before 1958 I had made several trips to Singapore with Yo - sometimes on holiday, sometimes on business trips.

30

In 1956 Yo was a prosperous business man.

I had a dress-making business in Indonesia.

In 1958 my father distributed his property. My share was \$500,000. I brought

this sum when I came to Singapore and deposited \$500,000 with Chung Khiaw Bank, Robinson Road.

In 1959 I bought 28 Cuscaden Road for \$70,000. My solicitors were Allen & Gledhill.

In Singapore Yo was helping an Indonesian to do business.

10 We moved into the house at 28 Cuscaden Road. I started to speculate in shares. I had never had a bank account until I opened one with Chung Khiaw Bank.

I could not understand English when I came to stay in Singapore.

I was introduced to a Vincent Yoong. He spoke Hakka and Mandarin. I am a Hakka and I speak Hakka and Mandarin.

Apart from my dress-making shop in Indonesia I had no business experience.

20 I had an overdraft with Chung Khiaw Bank. The bank pressed me for payment. I could not pay the Bank. I looked for another bank.

30 I was introduced to Chang Chi Hsin, an official of the Bank of China. He introduced me to Loke Chan Hing and H.H. Djeng. I told them I wanted an overdraft. I went to the Bank of China to see them. I went with Yo in October 1960. I opened an account. I did not sign anything. I did not sign an application form.

In 1960 I was introduced by a friend to a Mrs. Collins. Mrs. Collins gave me lessons in English conversation two or three times a week in my house for three or four months. Each lesson lasted two or three hours.

Yo and I conversed at home in the Indonesian language i.e. Malay.

In the High Court of the Republic of Singapore

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No.9

Defendant's Evidence
Maria Chia Sook Lan
Examination
29th March 1972
(continued)

In the High
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No.9

Defendant's
Evidence
Maria Chia Sook
Lan
Examination
29th March 1972
(continued)

I spoke to Djeng in Mandarin, Whenever I spoke to Loke I spoke in Malay. Yo spoke Malay to Loke. Yo cannot speak Mandarin. I have never heard Yo speak to Djeng - very seldom. When they did speak to each other they spoke in English.

Yo received a Dutch education. His English is better than mine.

A few months after October 1960 Yo opened an account with the Bank of China Djeng asked me what Yo was doing. I told him Yo was engaged in the rubber business. Loke and Djeng asked me to ask Yo to open an account with the Bank of China. They said they would help him.

10

I speculated in shares and did well in 1960, 1961. The Bank agreed to allow me to overdraw up to 50% of the value of the shares. The share certificates were deposited with the Bank and I signed transfer forms.

20

Loke and Djeng said the share market was fluctuating and asked me whether I had any property. I told them I had a house in Cuscaden Road. They said I could use the house as security. I told them the title deeds were with Messrs. Allen & Gledhill. Eventually my solicitors wrote to the Bank informing them that the title deeds would be sent to the Bank when ready. At that time Yo did not have an account with the Bank. In due course I came to know that my solicitors had sent the title deeds to the Bank. The Bank asked me to sign a document. I went to the Bank and signed it. I did not understand the contents of the document. I knew that it related to my overdraft. The document gave the Bank my house 28 Cuscaden Road as security. I signed the document in Loke's office. Loke, Djeng and Chang shared the same office.

30

40

I speculated and invested in shares throughout 1961, 1962, 1963 and 1964. I speculated heavily. I visited the Bank frequently in order to sign transfer forms.

I signed many such forms. In August 1963 I sold 350,000 shares in Central Properties Ltd. I signed 350 transfer forms. All these forms were signed as part of the security to be given to the Bank. My relations with Djeng were very good. I dealt more with him than with Loke.

In the High Court of the Republic of Singapore

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No.9

Defendant's Evidence
Maria Chia Sook Lan
Examination
29th March 1972
(continued)

10 Yo started Dwidaya Trading Co. in 1961. I was not a partner. I took no interest in its activities. I know nothing about dealings in rubber or export and import or opening of letters of credit.

20 I first knew about the firm's overdraft with the Bank when Loke asked me to sign a document - a guarantee - for \$600,000. He showed me a very big book, the account of Dwidaya Trading Co. He told me Yo had a big overdraft. He said the amount was over \$1,000,000. I had no idea the firm had an overdraft of that amount. On seeing the account I was astonished. From 1961 to 1965 I never saw the firm's bank statement.

In 1961 or 1962 Yo spoke to me about a guarantee. He said he wanted an overdraft of \$100,000. He brought home a document and showed it to me. He said that Loke wanted me to sign that document and then Loke would allow him an overdraft of \$100,000.

30 (Shown P1). This is my signature. At the time I signed it, it was a blank form. I felt annoyed and I had an argument with Yo. I was reluctant to sign it. I was pressed by Yo all the time - I could not help it - in the end I had to sign. Yo said he had great hopes that he would be successful in his business in Singapore. At the time I signed it he said in a very short time he would return it to me.

40 I never gave any of my other property as security for Dwidaya Trading Company's debts.

I never signed a document giving my Cuscaden Road property as security for Dwidaya Trading Company's debt to the Bank.

In the High
Court of the
Republic of
Singapore.

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No.9

Defendant's
Evidence
Maria Chia Sook
Lan
Examination
29th March 1972
(continued)

(Shown P4). This is my signature. I signed the document in the Bank but I don't know when I signed it. I know that when I signed it, it was a blank form. I remember Loke and Djeng asked me to go to the Bank to sign this document. I thought my title deed relating to 28 Cuscaden Road had reached the Bank. I was asked to sign a document. I don't know whether it is this document. I signed a document in August or September 1961. It was also a blank form.

10

Q : Was it this document (P4)?

A : I did not pay particular attention.

Q : It might or might not be P4?

A : Yes.

Djeng never asked me to give my Cuscaden Road title deeds to secure Dwidaya Trading Company's account.

I only remember signing guarantee for \$100,000 and \$600,000.

20

If I had been asked to give my Cuscaden Road title deeds to secure Dwidaya Trading Company's account I would not have agreed.

I know Yo's habits. He was a bold business man. I know that he has taken risks.

My overdraft was secured by my shares and my Cuscaden Road property.

Yo had no property in Singapore to be used as security.

30

I knew my Cuscaden Road property would be in danger if it was used as security for Dwidaya Trading Company's debt. I never agreed with Loke, Djeng, Chang or Yo that my Cuscaden Road property was to be security for Dwidaya Trading Company's debt.

I first came to know about the matter

when Tann Wee Tiong brought documents relating to the Cuscaden property and the guarantee and showed them to me in 1966. Tann said I had already signed the documents in favour of the Bank for Yo. I scolded Yo and said he had cheated me. Yo said he would swear on oath that he had not cheated me. He swore on oath that he had not done so. I went to my room and wept.

In the High
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No.9

Defendant's
Evidence
Maria Chia Sook
Lan
Examination
29th March 1972
(continued)

10 In 1961 I mortgaged my Cuscaden Road property to secure my overdraft. My shares were also security. I had also signed a guarantee for \$100,000.

20 On one occasion in 1962 Yo rang me up and asked me to go to his office which was then in the Bank of China building. I went to his office. I saw Yo and Loke together. Over the telephone Yo had told me that what I had signed at home was no use and I had to sign another document in his office. This was in relation to the \$100,000. Yo showed me a document and asked me to sign it. I signed it. Loke did not speak to me but he was present when I signed it. It was a printed document but it was blank.

(Shown P2). This is my signature but it was a blank form. I did not see Loke signed as a witness. I don't know who wrote "12 January 62".

30 None of the three documents - mortgage of my Cuscaden Road property to secure my own overdraft, the guarantee dated 2.10.61 and the guarantee dated 12.1.62 - were interpreted to me. None of them were explained to me. I can read some of the contents. I don't understand what the documents mean.

(Shown P1). I cannot understand the meaning of this document by reading it.

40 I did not have any independent advice. Neither Loke nor Djeng nor Yo asked me whether I wished to consult my own lawyer.

In the High
Court of the
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No.9

Defendant's
Evidence
Maria Chia Sook
Lan
Examination
29th March 1972
(continued)

Regarding the guarantee for \$600,000 Loke asked me to sign it. Loke said I had to sign the document to help Yo: otherwise he would make Yo a bankrupt. I said I had no connection with Dwidaya Trading Company. I refused to sign the document. Loke said if I refused to sign it I had to repay the overdraft. We argued for three hours. Yo was then in Kelantan. That same evening I telephoned to Yo who was staying at a hotel in Kelantan.

10

In 1965 the prices of my shares were very low. It was in the middle of confrontation.

(Shown P3). This looks like Loke's signature. I did not see Loke sign.

A few weeks later the Bank refused to allow me to operate my account.

In 1963 I bought about 26 acres of property in Thomson Rise. Edward Loke was my lawyer. The property cost about \$380,000. The Bank agreed to allow me to overdraw on my account.

20

(Shown P5). I signed this document.

From June 1966 to September 1966 the Bank sold my shares. I still owed the Bank \$458,000.

I went with Yo to Tann Wee Tiong's house. This was after Tann Wee Tiong came with the documents to my house. Tann asked us to consult another lawyer. He mentioned Messrs. Lee & Lee.

30

Yo and I went to Messrs. Lee & Lee. We saw Mrs. Lee. She introduced us to Selvadurai who took over the case. I remember seeing Selvadurai on that occasion only. I saw a Chinese lawyer named Lai on the last occasion I went to Messrs. Lee & Lee.

I did not instruct Selvadurai to consent to the Cuscaden Road property being sold. I did not instruct Selvadurai to

40

consent to the Thomson Rise property being sold to offset Dwidaya Trading Company's overdraft. I had never been to the High Court until last Monday.

In the High Court of the Republic of Singapore

Yo took me to Selvadurai's house. Selvadurai's mother was ill and Yo took me to visit the mother. I did not speak to Selvadurai but only to his mother. Yo spoke to Selvadurai.

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No.9

Defendant's Evidence
Maria Chia Sook Lan
Examination
29th March 1972
(continued)

10 (Shown p. 37 of AB1). Yo pressed me to sign this letter. I don't know who composed the letter. There were a number of such letters. In each case Yo asked me to sign the letters.

Thursday, 30th March, 1972

20 When Yo and I went to Messrs. Lee & Lee on the first occasion both he and I talked to Selvadurai but I did most of the talking. I spoke in Mandarin through an interpreter. The Cuscaden Road property was discussed in respect of my own overdraft. I asked Selvadurai for advice. He said that because I had signed the form he could not do anything. I asked him about the \$600,000. guarantee. I told him the circumstances which I have told the court. He said because I had already signed the document he could not do anything about it. We were with Selvadurai for two or three hours. At that time the Bank had not made a claim on the \$200,000 guarantee dated 12.1.62. I did not discuss this guarantee with Selvadurai. I did not discuss the Thomson Rise property with Selvadurai.

30

40 I did not authorise Yo to use the Thomson Rise property as security for Dwidaya Trading Company's account. I did not know he had given Selvadurai instructions to that effect. I did not know there was correspondence between Lee & Lee and Donaldson & Burkinshaw. Yo did not telephone me about it.

When letters arrived at my house addressed to me I handed them to Yo.

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Defendant's
Evidence
Maria Chia Sook
Lan
Examination
29th March 1972
(continued)
Cross-
Examination
30th March 1972

When I came to Singapore my children were aged from 3 to 13. Apart from buying stocks and shares I had no other interests.

In 1965 and 1966 Yo had business interest in Kelantan. During the August holiday in 1966 I took all the children to Kelantan for a holiday. Yo was there at the time. In September or October 1966 I took my son who had come back from U.S.A. to Kelantan. Apart from these two occasions I did not go to Kelantan. I did not go to Kelantan in 1967. 10

CROSS-EXAMINATION BY MR. GODWIN

I owned a dress-making business in Jakarta. It was a small business. I had between eight and ten employees. I ran this business for more than ten years. I started the business soon after my marriage in 1942. I went to the business premises every working day. I kept my own accounts - they were simple accounts. Customers paid me for goods supplied. I sold the business to someone because we were coming to Singapore. The business was making profit. The monthly turnover was about \$200 or \$300 - It is so long ago I cannot remember the amount. I sold the business for over \$1,000. I had eight to ten sewing machines - they were old machines. No goodwill. The business was called Madam Yang's Dressmaking School. Madam Yang was myself. Some people came to learn how to make dresses. I charged them fees. I sold the business in 1958. I had been running it for 15 years. 20 30

As a wedding present my father gave me money, gold and diamonds. My father was very attached to me. He was very prosperous.

I did not do any other business in Indonesia. Yes, I was a broker in jewellery. The jewellery was not my own. I made very little money out of my broker's business. 40

After the Japanese occupation I came to

Singapore for a holiday and bought jewellery. I came many times to Singapore and bought jewellery many times.

Q : Did you buy the jewels to sell them?

A : If anybody wanted them I would sell them.

I came to Singapore to buy jewellery for my own use. If anybody wanted them I would sell them. I had many customers who came to make dresses. Some of them asked me about the jewels. I did not take jewels to my shop and show them to customers. I did jewellery business on a small scale. At one stage I was wearing the jewellery. Customers said they looked nice and if I found I could make money I would sell them. I therefore came to Singapore and bought jewels. I did not keep them in the shop to show to customers. I had a reputation as a seller of jewels. I did not deal in any other goods. I did not bring goods from Indonesia to Singapore. I came to Singapore once or twice a year. I did not keep any accounts of my jewellery transactions.

My father died of cancer on 8.11.61. In 1959 he was seriously ill. In expectation of his death he distributed money among his relatives. I brought some money to Singapore. My father also remitted money to me in Singapore. I brought the sum of \$500,000 by instalments to Singapore. My father gave me a bit more than \$500,000. My father remitted \$400,000 by instalments to me in Singapore in 1959 and 1960. I myself brought over \$100,000 to Singapore.

Up till the time of confrontation I don't know whether Yo was a successful and influential business man. What I know is that he was doing big business but I did not know whether he was successful.

During confrontation when Yo was doing business in Kelantan he did not have enough money. He asked me to become a partner. He said he could make good money

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No.9

Defendant's Evidence
Maria Chia Sook Lan
Cross-Examination
30th March 1972
(continued)

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Defendant's
Evidence
Maria Chia Sook
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Cross-
Examination
30th March 1972
(continued)

in timber and I joined him as a partner.
I contributed not more than \$20,000.

Yo also opened a fibre factory in
Klang during confrontation. I put in about
\$200,000 in this business. I visited the
fibre factory once or twice.

During the holidays I visited the
timber concession in Kelantan.

I did not join Yo in other business
ventures.

10

I did not know about his business.
When he came back to Singapore I asked him
about it. He told me about it. I knew
something about the venture I had joined
in. He failed in business. He was made
a bankrupt in 1967. I have been to the
Official Assignee's office. I know Mrs.
Quek and Mr. Low of the Bankruptcy Department.
I gave a statement to Low. I don't remember
whether I signed it. I produced to Low my
Chung Khiaw Bank paying-in-slips. My
statement to Low was true and correct.
We spoke in Mandarin.

20

(Shown p. 185 of AB1 - the contents
are interpreted to witness). As to
paragraph 4, I deny that I was a broker
in all sorts of things. I was a broker
in jewellery only. I did tell Low I made
much money. I know I made much money in
Indonesian currency out of brokerage. But
I was not a broker in goods other than
jewellery.

30

As to paragraph 5, these were the
holiday trips. I bought some Indonesian
sarongs for my friends in Singapore who
wanted them. I brought jewellery from
Singapore to Indonesia.

As to paragraph 8, I did not tell
Low I had deposited the title deeds of
28 Cuscaden Road with the Bank because he
did not ask me about it.

40

As to paragraph 9, I did not tell Low

that the Thomson Rise property was under mortgage with the Bank against my overdraft and Yo's overdraft. I had no language difficulty with Low. We both spoke Mandarin.

In the High Court of the Republic of Singapore

—
No.9

Defendant's Evidence
Maria Chia Sook Lan
Cross-Examination
30th March 1972
(continued)

10 After the statement had been interpreted to me in Mandarin by Low I signed both pages. I did not mention the Thomson Rise mortgage in paragraph 9. I did not hear Low explaining paragraph 9. During the interview Low wrote down what I said to him. But I did not mention the things in paragraph 9. I did not hear him say that the Thomson Rise property was security for two persons' overdrafts.

As to paragraph 10, I owned the land at Dalvey Road but I have sold it. I owned the land in 1966.

I mortgaged it to the Redemptorist Church to raise money.

20 I don't know anything about land development -nothing whatever.

(Shown p. 187 of AB1). Yo asked me to sign this letter. I was forced to sign it. If I did not sign it the Bank would become difficult - this is what Yo told me.

30 As to the guarantee P1 dated 2.10.61 I was annoyed when I was asked to sign it. At the time I signed p. 187 of AB1 I was not myself, I was depressed, and two lawyers told me they could not do anything because I had signed the documents. I think it was the idea of Yo to ask the Bank to wait. I did not know what I was signing. Yo voluntarily explained some of the contents of the letter. He said it would be to my advantage. I deny that I understood the contents of the letter.

40 It was the Bank which raised the question of further security in addition to my shares. The Bank asked whether I had any land. On this point Mr. Hilborne's clerk may have misunderstood me. That is why Hilborne said what he did in his opening.

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Defendant's
Evidence
Maria Chia Sook
Lan
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Examination
30th March 1972
(continued)

I don't know one Ong Boon Ean.

(Shown p. 122 and p. 128 of AB3).
Now I remember Ong Boon Ean was a land broker
who was a friend of Yo's. Yo said Ong was
the author of the letter at p. 187 of AB1.
It may be that Ong was present when I signed
the letter.

I don't know who Lim Chuan Pek is.
(Shown p. 177 of AB1). I don't know the
man. It may be that Yo was trying to raise
money on my Thomson Rise property. Yo did
not tell me about it.

10

I speak Hakka and Mandarin. I don't
speak Hokkien. I speak and understand
Malay. I don't speak Dutch. I speak some
English.

(Shown P1). I don't remember where
I signed this. The first one I signed was
at home but it was not valid. My signature
is on this document. If this is the first
document it was signed at home. I don't
know whether this is the document.

20

I remember signing a guarantee in
favour of the Bank to secure Dwidaya Trading
Company's account up to \$100,000. The
first one was signed at home. The guarantee
just mentioned was the first one. When Yo
was persuading me to sign it he said that
Loke told him that Dwidaya Trading Company
could have an overdraft if I signed it. I
did not want to sign it. Yo pressed me to
sign and I had to sign it. I did not sign
it voluntarily.

30

As to the \$600,000 guarantee Loke
pressed me to sign it. I am not liable on
this guarantee because Loke forced me to
sign it by threatening me.

All along I have admitted liability on
the \$100,000 guarantee.

I had signed one guarantee for \$100,000.
Yo said it was not valid. I had to sign
another one. This was signed in Yo's office.

40

I was forced to sign both guarantees.

In the High Court of the Republic of Singapore

Q : Why do you say you are liable for the \$100,000 guarantee?

A : Yo had not received payment of the \$100,000. In the case of the \$600,000 Yo had already received the money.

No.9

Defendant's Evidence
Maria Chia Sook Lan
Cross-Examination
30th March 1972
(continued)

10

Q : Since Yo had not yet received any money from the Bank you admit you are liable on the \$100,000 guarantee?

A : Yes, I admit liability for that reason. After I had signed the guarantee he made use of the \$100,000 and that is why I admit liability.

Yo said the guarantee dated 2.10.61 was back-dated. I myself don't know whether it was back-dated or not.

20

Q : Why did you deny liability on the guarantee for \$100,000 in your affidavits?

A : I told Redrup I was forced by Yo to sign the guarantee, so Redrup thought I was not liable.

I don't know whether I am liable.

I did not know I was signing a mortgage of 28 Cuscaden Road.

(Affidavit at p. 7 of AB3 explained to witness).

Redrup advised me I was not liable.

30

(Affidavit of Yo at p.25 of AB3 explained to witness). I have no knowledge of this affidavit.

(Affidavit of witness at p. 81 of AB3 explained to her). I remember swearing this affidavit. I did inform Hilborne that I was forced to sign the guarantee for \$100,000.

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Defendant's Evidence
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(continued)

(Affidavit of witness at p. 87 of AB3 is explained to her). What I told the court is true.

I withdrew the allegation of fraud against Loke, Djeng and the Bank regarding the guarantee for \$100,000.

I say that all five documents, except the one for \$600,000 and the confirmation of deposit of title deeds relating to Thomson Rise property, were blank forms when I signed them.

10

In the beginning I trusted Yo, Loke and Djeng.

I was pressed to sign P1. The amount was left blank.

(Shown P4). It may be that I signed P4 at the same time that I signed P1.

I signed a confirmation re deposit of title deeds of 28 Cuscaden Road in August or September 1961 to secure my own account. I don't remember whether it looked like P4. It was a blank form. I signed the confirmation in August or September 1961 willingly. It was all blank.

20

In November 1963 I signed a confirmation (P5) re Thomson Rise. This form had been filled in when I signed it. I cannot explain why P4 was not filled in.

The fact that the confirmation signed by me in August or September 1961 was blank did not mean that the Bank was trying to cheat or deceive me.

30

The first lawyer to whom I said that I had signed a confirmation re 28 Cuscaden Road to secure my own overdraft was Selvadurai.

I also told Tann Wee Tiong about it. He was the first lawyer to hear about it from me. Tann Wee Tiong never acted for me although he wrote one or two letters on Yo's instructions. I also told Redrup about

40

it.

I did sign a confirmation of deposit of title deeds re 28 Cuscaden Road to secure my own overdraft.

Monday, 3rd April, 1972.

(Ng Ling Cheow called into Court).

I can't recognise this man. I have forgotten whether I have met him or not.

The Cuscaden Road property was security for my own overdraft at all times - yes, that is the crux of my case. It was the Bank which first raised the question of fluctuations in the value of shares. It was for that reason that they wanted the Cuscaden Road property as security. That was the only reason. I have never given any other version of this matter.

When I signed the guarantee dated 2.10.61 I signed it at home. I knew it was for \$100,000 but the form was blank. My memory about that is clear. I did not sign any other document but I don't remember whether I signed one document or two. I did not know whether they wanted to use one or two documents for the guarantee. I may have signed two documents but I don't remember. All along I have not been able to remember whether I signed one or two documents. Yes, I told Redrup I could not remember whether I signed one or two documents.

(Shown p. 8 and 9 of AB3 - paragraphs 6, 7, 8 and 9 interpreted to witness). I told Redrup that I signed one or two documents but I had forgotten whether it was one or two. I don't know how he prepared the affidavit. Yes, I did swear the affidavit but no one explained it to me. This affidavit was interpreted to me by Redrup's clerk in Malay. I speak Malay. I was asked by the Commissioner for Oaths whether I understood the contents and I said Redrup's clerk explained it to me. I don't say Redrup

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(continued)

has done it all wrong. I myself gave instructions to Redrup in Yo's presence. Maybe Redrup misunderstood me.

In 1966 when Tann Wee Tiong saw me I accused Yo of cheating me.

The affidavit was explained to me but I did not understand it. It was explained by Redrup's clerk whose name is Oon.

(Shown P4). I signed this document in August or September 1961. It was not to secure Dwidaya Trading Company's account. At the time I signed the document it was blank. It might have looked like this document or it might not have looked like this. I don't remember whether I signed it at the Bank. I say it was a blank form. I deny that the form had been completed when I signed it. 10

The confirmation of deposit of title deeds to secure my own overdraft was also blank when I signed it. 20

I think the Bank Officials must have filled in Dwidaya's Trading Company's name in P4 instead of my own name. This is the only document signed by me relating to the deposit of the title deeds of the Cuscaden Road property. I say I signed P4 in August or September 1961 after Messrs. Allen & Gledhill had sent the title deeds to the Bank on 11.8.61 (see p. 5 of AB1). 30

I don't know that Dwidaya Trading Company had no overdraft in August or September 1961. (Page 2 of AB4 shows the account was overdrawn on 5.10.61. - cheque for \$5,000). (Page 8 of AB1 contains Dwidaya Trading Company's application for an overdraft).

The Bank may have filled in Dwidaya Trading Company's name in P4 after the Bank had granted overdraft facilities to the firm. 40

In October 1961 my overdraft may

have been about \$700,000 (p. 62, 63 of AB4).

In January 1961 the Bank told me they were not satisfied with only my shares as security. I told the Bank the title deeds were not ready. Messrs. Allen & Gledhill wrote to the Bank promising to send the title deeds when they were ready. On 11.8.61 Messrs. Allen & Gledhill sent the title deeds to the Bank. I don't know what the Bank did.

10 When the Bank brought Suit 1809/67 against me I scolded Yo. I did not discuss the case with him. He took me to Redrup's office. Yo and I never discussed the case. I don't know what he said in his affidavits. We were living together. I deny that I discussed the case with Yo. We were quarelling all the time. I never discussed the case with him.

20 (Shown p. 25, 26 of AB3 - contents explained to witness). I did not conspire with Yo to fabricate my defence on the first guarantee dated 2.10.61.

(Shown P2). I deny signing this at the Bank. I signed it in Yo's office.

30 I knew Yo had a factory in Klang. I knew he was importing machinery for use in the factory. I did not know the Bank was prepared to allow Yo to overdraw on his account subject to my giving a guarantee and Yo issuing trust receipts. I have no knowledge of the guarantee for \$200,000. I say it was in substitution for the guarantee for \$100,000.

40 (Shown P2). This is my signature. I signed a document for \$100,000 to replace another one for \$100,000 but I cannot recognise this document P2. I did not tell Tann Wee Tiong or Selvadurai about this. I told Redrup that I had signed a document for \$100,000 to replace another one for \$100,000. The first time I heard about the \$200,000 guarantee was when Redrup told me about it.

(Shown p. 183 of AB1). I handed this

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letter to Yo. He did not explain it to me. In May 1966 I accused Yo of cheating me. I did not ask him or anybody else to explain it to me. Up to now I don't trust him. Since May 1966 I have not trusted him. In September 1967 I still did not trust him. I did not say anything to him when I handed it to him. I merely said "Here is a letter."

Q : Is it not strange for you to behave like that? 10

A : There was no other person - only Yo was in charge of the matter.

Q : Were you not afraid he might cheat you again?

A : Yes, I was afraid.

I was confused and did not know what to do. My eldest daughter aged 23 at that time was educated in English. I did not want my children to suffer. I did not want my children to know about it. I dare not ask Mrs. Collins. Selvadurai told me there was no hope. I would not dare to see any lawyer because I was told there was no hope. I agree that I put myself in the hands of my cheating husband. 20

(Paragraphs 6 and 7 of p. 2 of AB3 explained to witness). I told Redrup that the one I signed in Yo's office was for \$100,000. I don't know why the fact that one guarantee was substituted for another was not mentioned in this affidavit. 30

Q : I put it to you that it was an after-thought which occurred to you within the last few months?

A : At first I did not remember, later I thought of it.

Q : How much later?

A : I was trying to recollect what has happened. I told Redrup I signed a document for \$100,000 to replace 40

another one for \$100,000. I told him that all along.

Q : You told him that before the affidavit was sworn?

A : Yes.

The affidavit is also incorrect in this respect.

I don't know whether the point is an important one.

10 (Page 81 et seq of AB3). What I said to my lawyers was the same at all times.

I did inform Hilborne about the substitution of the \$100,000 guarantee for the original \$100,000 guarantee.

20 Loke asked me to sign the \$600,000 guarantee at the Bank. This was in 1965. I cannot remember the month. I don't know whether it was back-dated. I argued with Loke for three hours. Eventually I signed the guarantee. I did not want my shares to be sold. I did not want Yo to become bankrupt. I think the Bank was empowered to sell my shares because my own overdraft was very high.

Q : Did the Bank have the right to call in Dwidaya Trading Company's overdraft and if necessary make Yo bankrupt?

A : Perhaps, I don't know. I don't understand.

30 Q : Did the Bank have the right to call upon Dwidaya Trading Company to pay up?

A : Yes.

Q : Did the Bank have the right to make Yo bankrupt?

A : Perhaps. I don't understand whether the Bank had power to make Yo a bankrupt.

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I agree that the threat to make him a bankrupt operated on my mind. I knew that something nasty would happen to him. I knew that he could not do business if he was made a bankrupt. I knew that it would be a disgrace to our family. I knew that the Bank as a creditor could have made him a bankrupt.

I thought Dwidaya Trading Company's account was unsecured except for the \$100,000 guarantee. When Loke showed me the accounts disclosing an overdraft of about \$1,000,000, I know that the Bank had the right to make Yo a bankrupt. 10

I agree that what Loke said was that the position was unsatisfactory, that the Bank would have to sell my shares to reduce my overdraft and take steps concerning Yo's overdraft which would result in his becoming a bankrupt and in addition if what was realised was insufficient the Bank would sell my Thomson Rise property as well. I agree that Loke on behalf of the Bank was entitled to say these things to me. I say the Bank cheated me because Dwidaya Trading Company's overdraft did not concern me. I knew the Bank could have gone against Dwidaya Trading Company and against Yo. Knowing that, I agree to give the \$600,000 guarantee to prevent my shares from being sold and Yo from being made bankrupt. Loke said that if I signed the guarantee the Bank would not press for payment before confrontation. Loke said I could pay him after confrontation was over because the price of shares and property would go up slowly. By then the Bank would not press me for payment. Loke promised not to press me for payment but before confrontation was over the Bank sold my shares. 20 30 40

(Hilborne : We are alleging undue influence in the shape of pressure, threats and intimidation. We are alleging fraud in the equitable sense. Undue influence involves fraud in equity).

The Bank used threats and intimidation

wrongfully against me. I agree that the Bank had the right to sell my shares. Perhaps the Bank had the right to make Yo a bankrupt.

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(continued)

10 In January 1965 I heard that the Central Government in Kuala Lumpur had order the Bank of China including the Singapore branch should cease to do business within a few months but I did not pay much attention to it. I don't know that other customers' overdraft were being called in.

(Page 35 of AB1 explained to witness)
I don't remember receing this letter. I don't remember being asked to pay off my overdraft. I was not told about the letter at p. 36A.

20 (Shown p. 37 of AB1). Yes, I signed this letter. Yo pressed me to sign this letter. He did not explain the contents to me. I asked him why I had to sign it. He said the Bank had asked him to get my signature. Maybe Yo and I were asking for more time. Yo said the Bank was pressing him for payment. I never thought that I was involved in it.

(Shown p. 38 of AB1). I did not write this letter - I don't know - I can't remember. Somebody in my husband's office may have written it.

30 (Shown p. 40 of AB1). I remember signing this letter. Yo asked one of the members of his staff to compose it. I remember giving the letter at p. 39 of AB1 to Yo. Letters signed by me were composed by a member of his staff. The contents of p. 40 were explained to me. I can understand a bit of the letter when I read it now.

40 (Shown p. 43 of AB1). I remember receiving this letter. I handed it to Yo. I tried to read it but I could not understand it. I remeber receiving several letters from the Bank.

(Shown p. 44 of AB1). I remember

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(continued)

signing this letter. The contents were read to me.

Singapore separated from Malaysia on 9.8.65.

(Shown p. 45, 46 of AB1). I don't remember this letter. I have forgotten about it.

(Shown p. 46A of AB1). I don't remember this letter.

(Shown p. 46B of AB1). I did not know about this letter. 10

(Shown p. 46C of AB1). I don't remember this letter.

(Shown p. 46E of AB1). I don't remember this letter.

(Shown p. 46F of AB1). I don't remember this letter.

(Shown p. 46G of AB1). I don't remember this letter.

I remember Yo telling me there were constant reminders from the Bank. I remember either Yo or I or both of us writing to the Bank to ask for time. 20

(Shown p. 47 of AB1). I don't remember this letter.

(Shown p. 47A of AB1). I don't remember this letter.

(Shown p. 48A of AB1). I don't remember this letter. It was Yo who contacted Tann Wee Tiong. 30

The Bank has cheated me of \$600,000. It has threatened me. The Bank promised not to take action in court and promised to allow me to pay up slowly after confrontation was over. The fraud was committed because the Bank broke its promise.

It was an Indonesian company which brought bankruptcy proceedings against Yo and made him bankrupt. I don't know the name of the company. I don't know the amount of the debt.

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(Shown p. 50 and 51A of AB1). Tann Wee Tiong brought three documents, the first being the \$100,000 guarantee, the second being the \$600,000 guarantee and the third relating to the Cuscaden Road property. He might have shown me the two letters but I don't remember. That was the first time I came to know that my Cuscaden Road property was regarded as security for Dwidaya Trading Company's overdraft. It was in the year 1966. I told Hilborne that I first heard about it in 1966 - I cannot remember the month. I asked Hilborne to find out the date.

Tann Wee Tiong did come to my house. If he says he did not he would be telling a lie. I deny he spoke to me in English. He spoke to me in Mandarin and Malay. I might have spoken one or two sentences in English but I can't remember. It was Yo who instructed Tann to delay proceedings by the Bank. I did not give Tann any such instructions. I did tell Tann there had been fraud, duress, undue influence and trickery on the part of the Bank. If Tann says I did not he would be lying.

I don't remember whether Tann showed me O.S. 185/66 and the affidavit in support. He did not show them to me. If he says he did he would be lying. I deny asking him to do all he could to delay matters.

Tann might have sent me copies of letters. I handed them to Yo.

(Shown p. 58 of AB1). I don't know about this letter. I did not instruct Tann to write it. Yo might have instructed him to write it but I don't know.

In August 1966 I consulted Selvadurai. He acted for me in place of Tann Wee Tiong

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from August 1966. Mrs. Lee Kuan Yew sent for Selvadurai and asked him to act for me. Selvadurai sent for a Chinese clerk who spoke Mandarin. I can't remember if it was the person who was in court yesterday. I can't speak Hokkien. The clerk did not speak to me in Hokkien. I deny I answered in English. I cannot understand Hokkien. I deny that I told the clerk that my two properties were security for two overdrafts at the Bank. I deny that the clerk left the room because I could speak in English to Selvadurai. I say there was a Mandarin speaking clerk in attendance all the time. There was no difficulty in communication.

10

I saw Selvadurai once or twice. I did not go to see him in September 1966. I deny that Ng Ling Cheow was in his office when I called. I deny that I instructed Selvadurai to consent to an order being made in O.S. 185/66. I deny that I instructed Selvadurai to agree to an order of Court whereby the Bank could sell my Thomson Rise property to cover Dwidaya Trading Company's debt and my debt if the Bank agreed not to sell 28 Cuscaden Road. If Selvadurai and Ng say that I did they would be lying.

20

I did tell Selvadurai that my signatures to P2, P3 and P4 were not given freely and willingly.

30

I did not tell Selvadurai to delay the sale of 28 Cuscaden Road. Maybe Yo did so.

I deny that I told Selvadurai that Yo could give instructions to him on my behalf. Whatever instructions he was given were to come from me personally.

It may be that Selvadurai sent me letters concerning the orders in the two Originating Summonses but I handed them to Yo.

40

I did not instruct Selvadurai to prepare an option re sale of the Thomson

Rise property to be given to Liew Chin Foo.

In 1966 I came to know that the Bank was claiming that 28 Cuscaden Road was security for Dwidaya Trading Company's overdraft. I explained my position to Tann Wee Tiong and Selvadurai. I did nothing else.

(Shown p. 56 and 66 of AB1). If I received these letters I would have handed them to Yo without reading them and without asking any questions. The lawyers Tann Wee Tiong and Selvadurai said there was no hope and I was very annoyed and I was ill. I was afraid. I admit I took no action.

(Shown p. 105 of AB1). This letter was not written on my instructions. I think it was written on Yo's instructions. I deny that I gave the instructions. All along I said the Bank had cheated me regarding 28 Cuscaden Road. Selvadurai told me there was no hope and I did not wish to see him any more. I did not believe Tann or Selvadurai. I did not think I was liable. I had no faith in Singapore lawyers. All the lawyers were like Tann and Selvadurai. I had no experience. So I did nothing. I am a Roman Catholic. I go to church to pray every day (witness weeps). I deny that I preferred my Thomson Rise property to be sold so that I could remain at 28 Cuscaden Road with my family.

(Shown p. 10 and 11 of AB5). I did not know about these letters. It was not what I wanted. It was Yo who wanted it.

(Shown p. 13 of AB5). I did not know about this letter.

RE-EXAMINATION BY MR. HILBORNE

In 1966 and 1967 my English had improved a little. In 1971 my English had improved still more.

When I first saw Hilborne in 1971 he spoke English. I could not understand him and he called a clerk who spoke Mandarin. I was in Hilborne's office for several hours

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Defendant's Evidence
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Cross-Examination
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(continued)

Re-Examination
4th April 1972

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No.9

Defendant's Evidence Maria Chia Sook Lan Re-Examination 4th April 1972 (continued)

and the same clerk acted as an interpreter. I spoke in Mandarin to that clerk.

(Shown p. 6 of AB1). I can read a little.

(Shown p. 73 of AB1). I don't quite understand this.

I never went to Tann Wee Tiong's office. I met him on two occasions. On one occasion he came to my house. On the other occasion I went to his house at Katong.

10

I went to see Selvadurai at his office once or twice. I paid social visits to his house. On the first occasion at his office I met Madam Kwa Geok Choo. I went to his office again the next day. I did not see any other lawyer in Messrs. Lee & Lee.

I don't know any Hokkien at all. Yo knows some Hokkien.

I think Liew Chin Foo is a friend of Yo's. I have met him in Kelantan and Singapore. I did not discuss the sale of the Thomson Rise property with him. I can't remember whether Yo told me about an option given to Liew concerning the Thomson Rise property.

20

No.10

No. 10

Roy Earle Redrup Examination in Chief 4th April 1972

EVIDENCE OF ROY EARLE REDRUP

D.W.2 ROY EARLE REDRUP sworn, states in English.

415 East Coast Road. Advocate and Solicitor.

When I started to act for Defendant (identified) I took over from Messrs. Lee & Lee. Prior to my acting for Defendant I met her husband Yo together with one Bunny Ong. This was late in September 1967 - when I met Yo and Bunny Ong.

30

(Shown p. 128 of AB3). Bunny Ong is Ong Boon Ean.

It was known that I knew a land developer called Chew Ming Teck who was interested in Perseverance Estate. Bunny Ong and Yo came to see if I could interest Chew in developing 26 acres of land at Thomson Rise. I assumed the land belonged to Yo. I took down particulars of squatters and other details. I saw Yo and Bunny Ong on subsequent occasions. At the second or third meeting Yo said the land belonged to the Defendant. I said I wanted to take instructions from Defendant.

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Roy Earle
Redrup
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(continued)

10 One day in late September or early October 1967 Yo and Defendant came to my office.

When I spoke to Yo I spoke in English and Malay but more in English. When I spoke to Defendant I spoke both in English and Malay. I can't say which language I used more. Whenever I found she didn't understand me I used both English and Malay in different forms. Her standard of English was very poor - it could be described as pidgin English.

20 When Defendant first came to see me it was about the Thomson Rise development. I did not know about any court proceedings. I only knew that the Thomson Rise property was mortgaged to the Bank of China.

30 When I asked Defendant about the mortgage she and Yo started to explain and she got upset. Defendant said Yo had been making a lot of trouble for her over the mortgage. I asked Yo to wait in another room. Defendant told me that Yo had got the Thomson Rise property involved with his private debt. It took me several weeks to obtain her instructions.

After several meetings with Yo and Defendant and after I had perused some of the papers I learnt that Yo had arranged it so that Defendant's Thomson Rise property was held by the Bank to secure not only her personal overdraft but Dwidaya Trading Company's overdraft. I saw copies of O.S. 185/66 and O.S. 269/66.

40 As to the Cuscaden Road property Defendant told me that it had nothing to do with Dwidaya Trading Company's overdraft. My instructions were that she handed the title deeds to the Bank to

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secure her own overdraft and at no time did Defendant agree to the Cuscaden Road property being held by the Bank to secure Dwidaya Trading Company's overdraft.

No.10

Roy Earle Redrup Examination in Chief 4th April 1972 (continued)

I learnt that Selvadurai had been acting for Defendant. The order made in O.S. 185/66 was a consent order. Defendant denied emphatically that she had given her consent to either of the orders being made.

If my recollection is correct Defendant said she met Selvadurai only once in his office and that was before he filed any documents or wrote any letters.

10

Defendant told me both Tann Wee Tiong and Selvadurai had told her that nothing could be done because she had signed the confirmation.

I was asked whether anything could be done. After looking up the law I decided that something could be done. I acted for Defendant in Suit 1809/67 and Suit 1909/67.

20

I spoke to Dyne of Donaldson & Burkinshaw about the possibility of developing the Thomson Rise property. Dyne said the Bank was contemplating taking action. This was in early October 1967.

(Shown p. 191 of AB1). I wrote this letter. It shows that Defendant was served with the writ of summons on 18.10.67.

(Shown p. 193 of AB1). I received this letter.

I received instructions from Defendant to set aside the consent order in O.S. 185/66. The writ of summons in Suit 1909/67 was issued by my firm on 20.10.67.

30

I was going to London in connection with this case to take counsel's opinion. I received a cable from the solicitors in London on 20.10.67. I produce the cable (marked D1).

I left for London on 27.10.67.

I had to file a Defence in this action. I

filed it on 26.10.67.

There was great activity from 10.10.67 onwards.

An application under Order 14 was made by the Bank in Suit 1809/67.

(Shown p. 1, 5, 7, 10, 13, 16, 19). These affidavits were filed in connection with the application under Order 14.

There was great activity from 10.10.67 to early December 1967.

10 I had commenced practice on my own in June 1967. In October 1967 I had a court clerk, a secretary, an office boy, a typist and a peon. I had no one who could speak Mandarin.

I now know there are a number of inaccuracies in the affidavits and pleadings.

(Shown paragraph 16 of p. 10 of AB3). It was Yo who gave me the instructions - these were wrong.

20 (Shown paragraph 5 of p. 14 of AB3). Looking at p. 231 - entry dated 25.1.65 - of AB1 and other entries dated in early March 1965, I say there was no time to check these points. I did not see the bank statements until a year after the affidavit was filed.

I returned from London to Singapore on 8.11.1967.

(Shown p. 122 of AB3 - paragraph 10). This contains an error.

(Shown p. 8 of AB2). I think the contract dated 3.10.61 must mean the third guarantee which is actually dated 27.1.65.

30 I know that the guarantee dated 2.10.61 was willingly entered into by Defendant.

As to the other two guarantees I took instructions from Yo and Defendant in October 1967. Yo said that the guarantee bearing the date 2.10.61 and the confirmation bearing the date 2.10.61 had both been back-dated. Defendant did say she had signed the guarantee. Two things struck me (1) both

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Roy Earle
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Roy Earle
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documents were dated 2.10.61 (2) both had been witnessed by Yo. On that I filed the defence disputing the \$100,000. The fact that both documents were witnessed by Yo made them both suspect to my eyes. There was a third factor - the title deeds of 28 Cuscaden Road had been in the Bank's possession some time before 2.10.61. When I read the affidavits in O.S. 185/66 particularly the one at p. 73 of AB1 the impression I got was that Defendant had not deposited the title deeds to secure the firm's overdraft.

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CROSS-EXAMINATION BY MR. GODWIN

I spent several weeks looking into this case. I spent a lot of time with Defendant. I had several meetings with Defendant over the three actions and the two Originating Summonses. I think she understood the meaning of the affidavits which she swore. The pleadings reflected what her instructions were and what I thought the law was. As much as I could glean at that time the pleadings reflected Defendant's instructions on facts. She mentioned earlier that she had signed a guarantee but there was a dispute regarding the date of the guarantee and so I thought it best at that stage to dispute the guarantee. The pleadings reflected her case based on Defendant's instructions received at that time. I ceased to act for the Defendant in June 1971. Up to that date I never thought I had made a mistake.

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30

Defendant did not tell me she was liable on the first guarantee. She never conveyed to me that she was liable on the first guarantee.

I can't remember whether Defendant told me that the second guarantee for \$200,000 was required by the Bank in substitution for the first guarantee because there was something wrong with the first guarantee. If she had told me that I would have regarded it as important. I can't say what I would have done about the pleadings without studying them again.

40

Re-
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RE-EXAMINATION BY MR. HILBORNE

(Shown p. 3, 10, 14). I either explained the affidavits to Defendant on the telephone or in

my office. She went with my court clerk to swear the affidavits in the Registry. I spoke both in English and Malay to Defendant.

I have come across cases where clients have thought they were liable and I have advised them they were not.

In the High Court of the Republic of Singapore

No.10

Roy Earle
Redrup
Re-
Examination
5th April 1972
(continued)
Examined by
Court
5th April 1972

EXAMINED BY COURT

During my interviews with Defendant I felt we understood each other.

No.11

No.11

EVIDENCE OF YO KIAN TJOAN

D.W.3 YO KIAN TJOAN sworn, states in English.

Yo Kian Tjoan
Examination
in Chief
5th April 1972

160 Cuscaden Road formerly known as 28 Cuscaden Road. I have no fixed occupation.

I am the husband of Defendant. (identified). I was the sole proprietor of Dwidaya Trading Company. I started that business at the end of 1960 at Room 2E Asia Insurance Building.

20 I produce three certified extracts from the Register of Business Names (marked D2, D3 and D4).

I moved from Boat Quay to the Bank of China Building at the beginning of 1962.

30 I actually started to do business some time in 1961. I opened an account with the Bank of China on 2.2.61. Defendant told me the Bank wanted me as a customer. Defendant already had an account at the Bank. She was playing in shares. I don't like to play in shares. She was not concerned in my business. While in Indonesia she knew nothing about my business - not at all. She knew nothing about the business of Dwidaya

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Yo Kian Tjoan
Examination
in Chief
5th April 1972
(continued)

Trading Company - not at all.

Defendant bought 28 Cuscaden Road with her own money. During 1961 I learnt that Defendant had an overdraft with the Bank. I know now that her shares and house were security for her overdraft. I knew that in 1961. I was not involved in any discussion with the Bank about the security. I did not advise Defendant about shares.

In 1961 I wanted an overdraft. I saw Loke. He asked me to give a guarantee for \$100,000. I wanted an overdraft of about \$100,000. 10

(Witness now speaks in Malay).

(Shown p. 8 of AB1). Yes, this is my signature but the figure \$200,000 was not there. The date 2nd October 1961 is in my handwriting. Loke advised me to approach Defendant for the guarantee. Loke gave me a form. I saw Defendant at home and explained what I wanted. She was not willing to sign the form. I forced her to sign it. I pressed her to sign it. I pleaded with her to help me. I did not use physical force. Eventually she signed the form. I told her the period was a short one. I expected to get some money, about \$600,000 or \$700,000, from Indonesia. 20

(Shown P1). This is the document which was signed by Defendant. My signature is on the left. I wrote the two addresses at the bottom and the date 2nd October 1961. At the time the document was signed there were no words typed on it. I handed P1 to Loke. When I handed it to Loke the addresses and date were not filled in by me. They were filled in later. My signature was there. I wrote my signature in my office and chopped the document with my office chop. I signed the document first before I took it home to Defendant. 30

My overdraft grew to over \$1,000,000 from 1961 to 1965. Loke did not ask for further security.

Towards the end of 1961 I received over \$600,000 from Indonesia and year after year I received small amounts from Indonesia. The Bank trusted me. I told the Bank I had a factory in 40

Klang and had a business in Indonesia. The Bank did not ask for further security.

In 1962 and 1963 business in Indonesia and Singapore was good. In August 1963 Malaysia was formed. Business was still good. Confrontation has a bad effect on business between Indonesia and Singapore. It came to a complete stand-still. I had been dealing in the importation of rubber and the barter trade. Both came to a complete stand-still.

(Shown P2). I now know that Defendant signed this document.

When I wanted to buy goods from Europe I would have to open a letter of credit. I asked the Bank to open a letter of credit on my behalf. When the goods arrived they were kept in the Bank's godown. I signed trust receipts in favour of the Bank. The goods in the godown were security for the amount paid by the Bank.

I first came to know Defendant had signed P2 when Selvadurai told me about it. Before that I did not know about it.

I did not need trust receipt facilities from the Bank in January 1962. I needed them towards the end of 1962 or the beginning of 1963 when I imported goods from Germany, England and Japan - machinery and textiles to be exported to Indonesia.

I had formed a company called Federal Fibre Works Ltd. in Klang. I did not use trust receipts in connection with that company.

(Shown p. 18 of AB1). The date 12th January 1962 is in my handwriting. The document had been back-dated. The date was not written in 1962. It was written in 1963 or 1964. I was taken to the Bank to sign the document. I don't know whether it was this document or not. Loke asked me to sign it. Loke signed as a witness on p. 18 of AB1.

I never signed a document in January 1962. I don't know that Defendant ever signed a document relating to trust receipts.

I identify Defendant's signature and Loke's

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No.11

Yo Kian Tjoan
Examination
in Chief
5th April 1972
(continued)

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No. 11

Yo Kian Tjoan
Examination
in Chief
5th April, 1972
(continued)

signature on P2 and p. 18 of AB1. The document was back-dated. I know that because I did not sign my document on 12.1.62. I remember that in 1963 or 1964 I was asked to write the date 12th January 1962 in P2. I did not read the document. I trusted Loke.

I don't remember Defendant signing any document in 1962.

I only remember Defendant signing the guarantee for \$100,000. That is the only document she signed in my presence. It was dated 2.10.61. 10

I have no idea how Defendant's signature got on to P2.

From 1965 I was interested in a timber concession in Kelantan.

(Shown P3). Defendant telephoned to me at night and told me the Bank had pressed her to sign a guarantee for \$600,000 as security for my overdraft. I was at a hotel in Kota Bahru. I told her I could not do anything as she had signed it. I told her I would repay her when I made a profit out of my timber concession. I knew I would make a profit. I was confident about it. I was going to repay her out of the profits of the timber concession and not from Dwidaya Trading Company. 20

I spoke Malay to Loke. I spoke one or two words in English to Djeng but I did not have any lengthy conversation with him.

Defendant went to the Bank on many occasions. She spoke in Mandarin to Djeng. I could understand very little. I know a few words of Mandarin. Defendant spoke Malay to Loke. 30

I can understand a little Hokkien. My mother tongue is Malay. I can't speak Hokkien.

Defendant bought the Thomson Rise property in 1963. I introduced the Vendor to her. The Vendor to her. The Vendor was the son of Tan Kah Kee. I don't know his name. I heard about the property through a broker. I suggested to Defendant that it was a good property to buy. Defendant got the 40

money from the Bank to buy the property - I don't know on what terms. After she had bought the property I heard that she had mortgaged it to the Bank. I learnt about it in 1963.

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(Shown P5). I have never seen this document before. I identify the signatures of Defendant and Loke.

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No.11

Yo Kian Tjoan
Examination
in Chief
5th April 1972
(continued)

10 The Bank stopped my overdraft facilities in 1964 or 1965. The Bank made demands on me and Defendant for payment.

In 1966 Messrs. Donaldson & Burkinshaw wrote to me and Defendant about our overdrafts.

(Shown p. 50 of AB1). I remember this letter. I told Tann Wee Tiong it was not true that 28 Cuscaden Road was security for my firm's overdraft. I was called by Tann to his office and I saw him in his office. I told him Donaldson & Burkinshaw had filed an action against Defendant to sell the property. I told Tann to see Defendant.
20 I took Tann to my house where we saw Defendant. I informed Defendant that according to the letter 28 Cuscaden Road was security for my overdraft. There was a quarrel between me and Defendant. She cried and she scolded me. She said I had cheated her. She used the word "tipu". We were speaking in Malay. Tann heard this. After that Defendant went to her room. Tann and I remained in the hall. Tann advised me to see another lawyer and he recommended Messrs. Lee & Lee. This happened on
30 another day. I mentioned the name of Messrs. Lee & Lee. I had heard that they were a good firm. I asked him whether I should go to them and he said yes.

Tann, Defendant and I were together only once. That was at my house. I remember going to Tann's house with Defendant once or twice. I never went with Defendant to Tann's office.

40 I went to the office of Messrs. Lee & Lee with Defendant. We saw Mrs. Lee Kuan Yew. I did the talking. Mrs. Lee called Selvadurai who came to her room. Defendant and I went to Selvadurai's room. We remained there for two or three hours. Selvadurai sent for an interpreter who spoke to Defendant in Mandarin. We spoke about the mortgage of 28 Cuscaden Road. We told Selvadurai

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all about it. Defendant told Selvadurai that the property was not security for my overdraft. She cried. She asked him for advice. Selvadurai remained silent. He did not give any advice.

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No. 11

Court : Q : Did Selvadurai say there was nothing he could do?

A : Yes.

Yo Kian Tjoan
Examination
in Chief
5th April 1972
(continued)

Defendant and I saw Selvadurai once or twice in his office and two or three times in his house. In his house I spoke about the case to him but Defendant only spoke to his mother. I myself saw Selvadurai more than five or six times in his office. I came to know his clerks. One was Miss Yap, his secretary. Another was Chua who interpreted for Defendant.

10

I did not own any shares or land.

(Shown p. 105 of AB1). It is wrong to say that Defendant deposited the title deeds of 28 Cuscaden Road to secure my firm's overdraft. I told Selvadurai that the Thomson Rise property was enough to pay my overdraft and Defendant's overdraft. I told him that because 28 Cuscaden Road was going to be sold. My idea was to save 28 Cuscaden Road. I don't know how the letter came to be written like this. I was told about this letter by Redrup. I did not get a copy of the letter. Defendant did not know that Selvadurai was making the proposal. I had no authority from Defendant to give instructions to Selvadurai. Defendant liked 28 Cuscaden Road very much and I tried to save the property. That was the object. I wanted the Bank to hold the Thomson Rise property for both overdrafts. But the Bank obtained orders to sell both properties.

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When Selvadurai left Messrs. Lee & Lee the work was taken over by Lai.

Later Defendant and I consulted Redrup. I wanted to sell the Thomson Rise property.

When business letters addressed to Defendant arrived at our house Defendant handed them to me. I did not discuss the letters with her. As for business, she dealt in shares only, business was

40

dealt with my me.

I can't write good English.

(Shown p. 37, 38, 40 of AB1). I asked my secretary Seow to compose these letters. I gave him the gist of the contents. I spoke to him in English and Malay. All the letters signed by Defendant and me were composed by Seow. After the letters had been typed I asked Defendant to sign them. I did not explain the contents to her. I said they were for her benefit. As for p. 37 the timber concession was for myself alone - 52,000 acres in my own name. I had great expectations from this concession. The venture failed because I could not get a renewal of my licence to export timber and there was an unusually big monsoon in 1967.

(Shown p. 187 of AB1). This letter was composed by an acquaintance of mine called Bunny Ong. He could speak Malay but not Mandarin.

The Thomson Rise property was put up for auction by the Bank but the sale by auction was withdrawn. I came to know about the proposed sale on the day on which the auction was to have taken place. I was told about it by a friend.

Thursday, 6th April, 1972.

(Shown p. 36 of AB1). I don't quite remember seeing this letter. I didn't see this letter.

(Shown p. 36A of AB1). I received this letter. I don't remember whether any previous demands for payment had been made.

(Shown p. 50 of AB1). Part of the goods was disposed of by the Bank. When I was made a bankrupt the remaining goods were in the godown but I don't know what happened to them.

(Shown P1). This was signed by Defendant at home. I don't remember the date on which it was signed. I inserted the date 2nd October 1961. I think I did so in 1963.

(Shown P2). I know nothing at all about this

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Yo Kian Tjoan
Examination
in Chief
5th April 1972
(continued)

In the High Court of the Republic of Singapore

document.

(Shown P3). Defendant telephoned me in Kelantan about this document. She told me the Bank pressed her to sell her property and shares and said they would make me a bankrupt.

No. 11

Yo Kian Tjoan Examination in Chief 5th April 1972 (continued)

(Shown P4). My signature is on this document. I signed it in Loke's office in the Bank. I think I signed it in 1962 when my office was in the Bank of China Building. Defendant's signature was on it. Loke did not explain the contents to me. He did not say what it was. I wrote the date 2nd October 1961 at the time I signed the document. I wrote the two addresses on the same occasion. I was asked to back-date the document. I was upset. Loke asked me to write 12 Boat Quay as my address. I did not know until Tann Wee Tiong informed me in 1966 that 28, Cuscaden Road had been deposited with the Bank to secure my firm's overdraft.

10

(Shown P5). I was not concerned with this document.

20

Cross-Examination 6th April 1972

CROSS-EXAMINATION BY MR. GODWIN

(Ng Ling Cheow called into court). I have never seen this man before as far as I can remember.

I know that Suit 1809/67 was started in October 1967. I know that a few days later Defendant started Suit 1909/67. I know what the claims in each suit were. I heard that Defendant started Suit 2393/68 in December 1968. I have been living with Defendant at all times except for my visits to Malaysia. I knew about the two Originating Summonses. I swore two affidavits in Suit 1809/67; I accompanied Defendant to Redrup's office on a number of occasions. I discussed the cases with Defendant occasionally. I took an interest in them because my overdraft was involved. I had been accused of cheating in respect of the house. There was a danger that the family home would be sold. I was extremely interested in these cases and so was Defendant. Defendant did discuss the cases with me. We did not discuss them very often. When Redrup was retained Defendant and I discussed the cases once or twice at home. Defendant and I were not working closely together on these cases. I did

30

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not read the affidavits sworn by Defendant because they were in the hands of the lawyer. The contents of my two affidavits were interpreted to me and I understood them. I could read them but could not quite understand them by myself.

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No.11

10 (Shown p. 25 of AB3). Yes, I did say that Loke knew that Defendant had no knowledge of the three guarantees which are the subject-matter of Suit 1809/67. I now admit that my statement in paragraph 3 were not correct. My evidence given in this court about P1 is correct.

Yo Kian Tjoan
Cross-
Examination
6th April 1972
(continued)

I agree that P1 is security for my overdraft. I admit that my statement in paragraph 4 of the same affidavit was untrue. I also agree that the sentence about Loke using pressure upon me to produce securities in late December 1961 was untrue. I also admit that the last sentence in paragraph 4 was untrue.

As to paragraph 5, I agree it is untrue.

20 I say that paragraph 6 is true. Loke made the suggestion about back-dating in 1962. It may be in December 1961. I say the document was back-dated.

(Shown p. 8 of AB1). I think I signed this application for an overdraft on 2.10.61.

(Shown p. 2 of AB4). I see the entry dated 5.10.61. - cheque 91457 was debited to my account which became overdrawn for the first time.

30 I still say that P1 was back-dated, I admit I overdrew on my account for the first time on 5.10.61. But I still say that P1 and P4 were back-dated. The Bank allowed me a clean overdraft.

(Shown p. 26 of AB3). I still say the Bank was threatening me with bankruptcy and prosecution. I could not understand the threat about prosecution - I was frightened - I did not ask Loke how the Bank could prosecute me.

Defendant did not know about it when I gave instructions to Selvadurai.

40 There was a Mandarin interpreter when

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Defendant and I saw Selvadurai. He was a clerk named Chua employed by Lee & Lee.

(Shown paragraph 10 on p. 26 of AB3). The first sentence is true.

No.11

Q : So your evidence in this court is untrue?

Yo Kian Tjoan
Cross-
Examination
6th April 1972
(continued)

A : I don't understand how this sentence came to be included in the affidavit.

I deny that Defendant and I were conspiring to avoid becoming liable to the Bank in this case.

The second and final sentence in paragraph 10 of the Affidavit is true. My evidence in court about saving our home from being sold is also correct. I did not cheat Defendant. 10

I deny that Defendant and I conspired to cheat the Bank.

(Shown p. 105 of AB1). I was not given a copy of this letter. I am absolutely certain about that. It was Redrup who showed it to me about one year later.

(Shown p. 5 of AB5). Yes, this is a copy of the same letter. 20

(Shown p. 4 of AB5). I don't think I received this. I don't know whether Defendant received it. I did not see this letter. I admit I have said that Defendant handed me all letters received by her.

(Shown p. 8 of AB5). I received this letter.

(Shown p. 12 of AB5). I received this letter.

(Shown p. 10, 11 of AB5). I received copies of these letters. 30

(Shown p. 16 of AB5). I instructed Selvadurai to write this letter. I did not get Defendant's consent. I agree this was what Defendant wanted. I knew that that was what she wanted. If I had asked her she would have agreed. I had previously discussed with her the question of

selling the Thomson Rise property in order to save 28, Cuscaden Road.

(Shown p2). I wrote the date 12th January 1962. I don't know when the Defendant signed this document. The document was first shown to me in 1963 or 1964 and I was asked to insert the date 12th January 1962. Defendant did not sign it on 12.1.62.

10 My factory at Klang was making ropes from coconut fibre. I paid for machinery imported by me by letter of credit. I did not use trust receipts in the purchase of the machinery.

In 1963 I imported machinery for my factory at Klang. This included curled hair and fibre production plant and motors for the plant. I don't remember signing trust receipts in relation to this machinery. I don't know whether I signed trust receipts or not. I think I said yesterday that I did use trust receipts.

20 (Shown sight draft, receipt for documents and trust receipts). Yes, these are genuine documents. My signature appears on all three documents. (Sight draft marked P6A, receipt for documents marked P6B, trust receipt marked P6C).

(Shown sight draft, receipt for documents and trust receipt.) These are genuine documents. My signature appears on all three documents. (Sight draft marked P7A, receipt for documents marked P7B, trust receipt marked P7C).

30 I did not tell Tann Wee Tiong about the Bank using undue influence and fraud. Maybe Defendant did. Defendant went to her room. I remained talking to Tann. I did not tell Tann about it.

Defendant and I both told Selvadurai about the Bank using undue influence and fraud. We explained it all to him. He is not stupid but it was up to him to take action. I kept on pressing him to take action. I agree I instructed him to consent to one order of court being made.

40 I deny that my instructions to Selvadurai were to delay the matter. My instructions were to save Thomson Rise and save 28 Cuscaden Road. I knew that there were squatters on the Thomson Rise

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No.11

Yo Kian Tjoan
Cross-
Examination
6th April 1972
(continued)

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Yo Kian Tjoan
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Examination
6th April 1972
(continued)

property. I don't know that the Bank would not be able to sell the Thomson Rise property for a realistic sum. I agree the sale by auction was withdrawn on 22.12.66 perhaps because the reserve price had not been reached.

It is agreed that the Bank would not sell 28, Cuscaden Road until it had sold Thomson Rise. I was happy when the auction sale fell through.

(Shown p. 50 of AB5). I took this letter to Selvadurai who then wrote the letter at P.51 of AB5. This letter at p.51 sets out the situation which I had intended to create.

10

I informed Selvadurai that the Bank had used undue influence and fraud.

In addition to speculating in shares Defendant had experience in running a dress-making school in Djakarta. She was a broker during the occupation.- the business was negligible. She made a lot of money from the school and dress-making business. The School is well known in Djakarta. The school was sold for \$1,000. It was a gift to a relative.

20

I did the barter trade. Defendant accompanied me to Singapore. Defendant did barter trade in sarongs and jewellery. Maybe she made a lot of money - but I personally don't know. Defendant had business acumen - she could do business. I don't know whether she made a lot of money. I never asked her how much she sold the things for. I asked her once or twice. She did not reply.

30

Defendant put \$100,000 in my Klang business and \$10,000 in the Sungei Rek timber concession. She guaranteed my overdraft to the extent of \$100,000. She was only a shareholder.

(Pages 36 to 48A of AB1 referred to). I handed p. 37 to Defendant to sign. She signed it. She asked about the contents. I said it was for our benefit. She signed it without finding out more about the contents. Defendant signed p. 40, 41 without knowing the contents. I knew the contents. I did not know the particulars and value of Defendant's shares. She told me about the shares. But she did not know the contents of the letter.

40

I was making arrangements for the O.C.B.C. to take over Defendant's shares and pay \$900,000 to Bank. Defendant did not know the contents of p. 42 of AB1. She merely signed it. Loke and I went to the O.C.B.C. to make the arrangements. I don't know whether the Bank refused to agree.

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No.11

10 Defendant signed p. 44 at my request without knowing the contents. I now admit the Bank of China did not agree to the arrangement. Loke only introduced me to the O.C.B.C. officials. He did not bring the particulars of Defendant's shares with him.

Yo Kian Tjoan
Cross-
Examination
6th April 1972
(continued)

I think O.C.B.C. agreed before the letter at p. 42 was written. Maybe the O.C.B.C. asked Loke about the shares.

I heard that the Malaysian Government ordered the Bank of China to be closed in 1965.

RE-EXAMINATION BY MR. HILBORNE

Re-
Examination

20 I made the arrangements with O.C.B.C. concerning the \$900,000. Defendant knew nothing about it. I don't think Defendant went to O.C.B.C. I did not go with Defendant to the Bank of China regarding the \$900,000. I made the arrangements with O.C.B.C. The figure of \$900,000 came from Loke. Loke mentioned the amount of \$900,000 to me.

Defendant told me her dress-making school was sold to a member of our family. I don't know the name. It was a woman. She was Defendant's niece.

30 In 1966 while I was giving instructions to Selvadurai Defendant was ill. She was under treatment by Dr. C.T. Lau. Her illness had nothing to do with the case in which Selvadurai acted for her..

40 I asked the Bank to take Thomson Rise as security for both overdrafts to save 28 Cuscaden Road. After I had told Selvadurai about this I went home and informed Defendant. This was the first time she knew that Thomson Rise was to be used in that way. She was not happy about it. I don't know why. She did not tell me. I don't think it was because there was danger of the Thomson

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No.11

Yo Kian Tjoan
Re-
Examination
6th April 1972
(continued)

No.12

Vincent Yoong
Examination
in Chief
6th April 1972

Rise property being sold by the Bank.

I know the shares were sold by the Bank and Defendant still owed about \$400,000 to the Bank. Defendant thought that she owned both properties and only owed the Bank \$400,000. Her Thomson Rise property had nothing to do with my overdraft.

There were four shareholders in my business in Klang. The office was in the factory in Klang.

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No. 12

EVIDENCE OF VINCENT YOONG

10

D.W.4 VINCENT YOONG affirmed, states in English 814 Dunearn Road. Partner in Lyall & Evatt, stockbrokers.

I know Defendant (identified). She was a client of mine in 1959 and 1960. I speak Hakka. I don't speak much Mandarin. I spoke Hakka to Defendant and some Malay. She spoke a few words of English here and there. She bought and sold shares through my firm. She was more an investor than a speculator. At the beginning I advised her what to buy. She was a regular customer from 1959 to 1963. I wouldn't know whether she was a business woman.

20

Cross-
Examination

CROSS-EXAMINATION BY MR. GODWIN

Defendant was using other brokers as well. After 1962 she dealt with me off and on.

At the beginning I advised Defendant what to buy. Later on she used her own judgment.

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EVIDENCE OF SEOW YEOW KOON

In the High Court of the Republic of Singapore

D.W.5 SEOW YEOW KOON affirmed, states in English.
6, Marian Close. Business man.

No.13
Seow Yeow Koon
Examination
in Chief
6th April 1972

In 1964 I was employed as a secretary by Yo (identified). I left his firm in July 1965.

Yo's command of English was poor. He asked me to compose letters addressed to the Bank.

(Shown p. 37 of AB1). I composed this letter and the letters at p. 38, 40, 41.

10 (Shown p. 46F of AB1). I composed this letter. After I had left Yo's employment he still asked me to compose letters for him.

CROSS-EXAMINATION BY MR. GODWIN

Cross-
Examination

I never saw Defendant sign any of the letters. Yo told me what to write and I composed the letters.

EVIDENCE OF VIOLET COLLINS

Violet Collins
Examination
in Chief
7th April 1972

Friday, 7th April,
1972.

D.W.6 VIOLET COLLINS Sworn, states in English.

20 3 Chestnut Crescent. Voluntary Worker and Housewife.

I know Defendant (identified) and Yo (identified). I think I first met Defendant in 1960. I gave her lessons in English conversation in or about 1960. I helped her for about two months. I used to go to her house about once a week. Each lesson lasted about two hours. Her standard of English was very poor. Her progress was very poor.

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No.15

D.W. 7 TANN WEE TIONG affirmed, states in English.

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No.15
Tann Wee Tiong
Evidence
7th April 1972

I live at 6 Gladiola Drive, Adelphi Park.
In 1966 I was living at 34 St. Patrick's Road. I
am practising as an Advocate and Solicitor at 41-B
Bencoolen Street. In 1966 I was practising at 3
Prince Street.

On 16th June 1971 Hilborne came to see me.
I informed him that I could not find the file
concerning Defendant's relations with the Bank. 10

On 11.8.71 Hilborne asked me to find the
file I was unable to find it at that time.

On 28.3.72 I was served with a subpoena to
attend court. I found the file yesterday.

I acted for Defendant (identified) and Yo
(identified) in 1966. They both came together
to my office at 3, Prince Street. Both of them
asked me to act for them.

(Shown p. 49 and p. 49A of AB1). These
were the first two letters I write for Defendant
and Yo. 20

Defendant and Yo came to see me at my office
on 3rd, 4th or 5th May 1966. Yo asked me to
write the letter at p. 49 and to inform the Bank
that he was away in Kelantan.

(Shown p. 50 of AB1). This is the next
letter in the correspondence. It is the first
letter I received from Messrs. Donaldson &
Burkinshaw.

(Shown p. 51A of AB1). I received this
letter. 30

I sent copies of both letters, one to
Defendant and the other to Dwidaya Trading Company.
Both letters were sent to Room 33, Bank of China
Building.

On 28.5.66 I rang up Yo to ask for
instructions. He asked me to delay the matter.
Yo also said confrontation was coming to an end

and he said he would sell the properties himself.

(Shown p. 53 of AB1). Either Yo or Seow asked me to write this letter. I had no idea where Yo was.

(Shown p. 53A of AB1). I wrote this letter. I was instructed by Defendant to write it. I rang her up at her home and she gave me the instructions.

10 I spoke Malay and English to Defendant I never spoke Mandarin. I spoke bazaar Malay. I don't think her English is very good.

I spoke Malay and English to Yo.

Defendant and I had no difficulty in understanding each other.

(Shown p. 55, 56, 56A of AB1). I received these letters from Messrs. Donaldson & Burkinshaw, p. 56 being a copy.

20 On the same day i.e. 15.6.66 I sent copies of these letters to Defendant and Dwidaya Trading Company at Room 33, Bank of China Building. I sent two letters, one addressed to Defendant and the other to Dwidaya Trading Company.

30 On 17th or 18th June 1966 I rang up the office and Defendant answered. She said she was prepared to give a legal mortgage to the Bank of both properties i.e. 28, Cuscaden Road and Thomson Rise and was also prepared to have her shares sold. She said she must consult Yo first. She did not say for which overdraft she was prepared to give a legal mortgage. I understood she was prepared to give a legal mortgage to secure both overdrafts. It was clear that one property related to one overdraft and the other property related to the other overdraft. She said she was prepared to mortgage both properties to the Bank to secure Dwidaya Trading Company's overdraft. I am sure about that. Both Defendant and Yo told me that the Bank wanted a legal mortgage of both properties to secure Dwidaya Trading Company's overdraft. These
40 instructions were given to me before the letters dated 15.6.66 were received by me. I got these instructions from both Defendant and Yo when I saw

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Tann Wee Tiong
Evidence
7th April 1972
(continued)

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Tann Wee Tiong
Evidence
7th April 1972
(continued)

them at Yo's office. I had a friend in Room 35 and when I went to see him I dropped in at Room 33. I don't have an attendance slip. I would not say the instructions were accidental. They told me the Bank wanted a legal mortgage of both properties. At that stage they were very reluctant to give the legal mortgage.

On 28.6.66 I saw Yo in his office and I suggested to him that we should write to Messrs. Donaldson & Burkinshaw offering to give a legal mortgage of both properties and that the shares should be sold within three months and informing them that Dwidaya Trading Company had no money with which to pay the debt. Yo agreed to my suggestion. Defendant was not present at this interview. 10

On 29.6.66 I phoned Yo and he told me to say the shares would be sold as soon as possible. I then wrote the letter dated 29.6.66 at p. 58 of AB1. I sent a copy of this letter to Dwidaya Trading Company. 20

On 1.7.66 I received the letters at pages 59, 60 and 60A of AB1.

The main thing was to delay matters.

I was served with O.S. 185/66 on 4.8.66. It was to be heard on 15.8.66. On 9.8.66 I went to Yo's house. I said if they wanted a postponement they should get another lawyer to act for Defendant. Yo mentioned Messrs. Lee & Lee. I asked him to see the top man in that firm. 30

On 6.8.66 I saw Defendant and Yo at their house. I explained the proceedings in O.S. 185/66 to them. They asked me to get a postponement. Defendant did not accuse Yo of cheating her. She did not cry. She never left the room while I was there.

I only went twice to Yo's house - on 6.8.66 and 9.8.66. On both visits I saw Defendant and Yo together. Defendant never left the room on either visit. She never cried. 40

I never saw the three guarantees or the confirmations of deposit of title deeds.

Neither Yo nor Defendant complained about the behaviour of the Bank. Defendant did not complain about the behaviour of Yo.

Defendant never gave me the impression that she challenged the contents of the letters from Messrs. Donaldson & Burkinshaw.

10 On 18.7.66 both Defendant and Yo saw me in my house. Defendant said she had been to see Chang of the Bank and Chang told her that her shares had been sold. Defendant told me that she did not oppose the sale of the shares.

Defendant told me to send letters to her at Room 33, Bank of China Building.

(Shown p. 51A of AB1). This was the first document I sent to Defendant with a covering letter.

20 I saw Yo and Defendant at their house twice after the Originating Summons had been served. They saw me once at my house before the Originating Summons was served and once after the Originating Summons was served. They saw me a couple of times at my office.

When I visited Yo and Defendant for the first time at their house I took with me O.S. 185/66 and the affidavits. I explained what it was all about in Malay and English. I handed the Originating Summons and affidavits to Yo. Yo explained the contents in Malay to Defendant.

30 I always insist on my clients seeing me at least once in my office. Defendant never said Yo had been cheating her.

I had acted for Defendant on 24.3.66. I prepared an acknowledgement of debt for her to sign. The debt was due to a priest of the Redemptorist Church. The title deeds of land in Dalvey Road were handed to the priest as security.

COURT : It is agreed by Counsel that the letter at p. 187 of AB1 was composed by Bunny Ong.

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Tann Wee Tiong
Evidence
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(continued)

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No.16

D.W.8 KAO WEI TSENG Sworn, states in English.
102 Emerald Hill Road. Chief of Business Department,
Bank of China.

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Kao Wei Tseng
Examination
in Chief
7th April 1972

I joined the Bank in 1940.

(Shown p. 73 of AB1). As to paragraph 2, I looked at the confirmation of deposit of title deeds dated 2.10.61. It was there stated that there was a verbal agreement previously made. The verbal agreement was made before 2.10.61.

(Shown pages 1, 2 and 5 of AB1). I did not know about these letters when I signed the affidavit at p. 73. I first came to know about these letters when I read one of Defendant's affidavits.

(Shown p. 131 of AB1). I got the date 18.11.63 because the confirmation was dated 19.11.63. I just chose the day previous to 19.11.63. I did the same thing at p. 73 - I chose the date before 2.10.61.

(Shown p. 146 and 147 of AB1). I personally checked the figures in paragraph 4. I think it is a correct claim. It is a correct claim.

(Shown p. 165 of AB1). I saw the draft of this letter. My colleague See Chuan Keng drafted the letter.

(Shown p. 2 of AB1). This letter was also written by See Chuan Keng.

Case for Madam Chia Sook Lan in
both Suits Nos. 1809/67 and 1909/67.

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PLAINTIFFS' COUNSEL'S OPENINGIn the High
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Godwin : A solicitor has power to bind his client in certain matters. Defendant cannot challenge the two orders in the two Originating Summonses.

36 Halsbury's Laws 3rd Edition p. 78 para. 108.

10 Messrs. Lee & Lee were on the record, having entered appearance in both Originating Summonses.

The orders are in AB1 at p. 116 (Order dated 12.9.66 in O.S. 185/66) and p. 161 (Order dated 10.11.66 in O.S. 269/66).

I am making four submissions:-

20 (1) Once legal proceedings have been commenced a solicitor instructed by a party thereto has in the absence of instructions to the contrary an implied authority from the client to compromise them.

(2) In the same circumstances the solicitor has an ostensible authority to compromise the proceedings. So if the client has given instructions not to compromise but such instructions have not been brought to the notice of the opposing party the client will be bound by a compromise made in defiance of the instructions.

30 (3) But if the compromise involves the making of a court order and the client repudiates the compromise before the Order is drawn up and perfected the court has a discretion to set aside the compromise.

(4) A further limitation on the first two principles is that neither the implied nor ostensible authority to compromise extends to compromising the proceedings on terms which involves matters extraneous to the proceedings.

40 Supreme Court Practice 1970 Vol. 2 p. 558 para. 2010 and p. 559 para 2013.

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Neale v Gordon Lennox (1902) A.C. 465.
Re a Debtor (1914) 2 K.B. 758 at p. 761
per Horridge J.
Shepherd v Robinson (1919) 1 K.B. 474.
Methews v Munster (1888) 20 Q.B. 141.
S.N. Mitra v Srimati T. Dasi (1930) 46
T.L.R. 191.

In para. 9 of the Statement of Claim
in Suit 1909/67 (see p. 20 of AB2) it was
alleged that counsel appearing for Madam
Chia consented to the order made on 12.9.66
in O.S. 185/66. 10

In para. 15 of the statement of claim
in Suit No. 2393/68 (see p. 41, 42 of AB2)
it is alleged that a consent order was made
in O.S. 269/66.

I submit that when Selvadurai consented
to the two orders being made nothing
extraneous came into the proceedings.

See p. 45 of AB1 - letter dated 11.8.65
signed by both Defendant and Yo and dealing
with both accounts. See also p. 46B, 46C
and 46F, p. 58 (Tann Wee Tiong's evidence
is relevant). 20

Monday, 10th April, 1972.

COURT : Hilborne applies for leave to amend the
Defence and Counterclaim in Suit 1809/67
(tenders draft amendment).

Godwin has no objection.

The application is granted. 30

Godwin : I submit there was estoppel by represent-
ation or equitable estoppel in the case of
the confirmation of the deposit of title
deeds of 28, Cuscaden Road. See para 7A
and particulars of the amended defence in
Suit 1909/67 (p. 29A of AB2). The basis
of the estoppel is that in May 1966
Defendant knew that the Bank's position was

held as security for Dwidaya Trading Company's overdraft. There was however no suggestion communicated to the Bank by the Defendant personally or through an agent that the Bank was in any way mistaken or not justified in assuming that position until through her new solicitor Redrup she filed the affidavit in Order 14 proceedings in Suit 1809/67 in November 1967. About 17 months before that, Tann Wee Tiong had written to the Bank the letter dated 29.6.66 (p. 58 of AB1) offering all the properties under lien to the Bank. Tann's letter is a clear representation by Defendant through her solicitor that both the Cuscaden Road and Thomson Rise properties were the subject of equitable mortgages in favour of the Bank. I submit that from May 1966 Defendant has been under a duty to disabuse the Bank of the understanding in relation to the equitable mortgage of 28 Cuscaden Road.

The order of court in O.S.185/66 was made by consent as the result of negotiation between the solicitors.

Similarly the order of court in O.S. 269/66 was obtained by consent.

Both orders were acted upon by the Bank.

The Bank attempted to auction Thomson Rise but the auction was abortive. The Bank was unable to proceed against 28 Cuscaden Road because the Bank had agreed to sell Thomson Rise first (see p. 167 of AB1).

The Bank relied on the representation in p. 58 of AB1 or through the Defendant's silence or inaction. The Bank relied on the representation contained in p. 58 of AB1 that 28 Cuscaden Road was security for Dwidaya Trading Company's account in June 1966. The words "under lien" are relevant. This letter must be read in the context of the correspondence in which Tann Wee Tiong was engaged and particularly the letter dated 26.5.66 at p. 50, 51 of AB1.

Spencer Bower on Estoppel by Representation

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2nd edition p. 4 para. 3, p. 6 para. 5, p. 47 para. 56, p. 48 para. 57.

Savage v Foster (1866) 88 E.R. 299 at p. 300.

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Spencer Bower p. 89 para. 110, p. 101 para. 111.

Plaintiffs' Evidence Plaintiffs' Counsel's Opening 7th April 1972 (continued)

I submit that Defendant and Yo have conspired to evade their legal obligations to the Bank. They have got themselves so caught up with their web of lies that they cannot agree with each other on the important elements of the case such as the circumstances in which the second guarantee came to be signed.

10

Redrup denied what Defendant said about her instructions on the first guarantee. Tann Wee Tiong denied the evidence of Defendant and Yo as to what happened when Messrs. Donaldson & Burkingshaw's letter dated 26.5.66 was communicated to them (p. 50, p. 51 and AB1). e.g. Defendant's evidence as to crying and leaving the room etc.

20

No.18

No.18

EVIDENCE OF LOKE CHAN HING

Plaintiffs' Evidence Loke Chan Hing Examination in Chief 10th April 1972

P.W.1 LOKE CHAN HING sworn, states in English. 40 Cassia Drive. I am a retired bank officer.

From 1938 to August 1965 I was employed by the Bank of China. In August 1965 I was a sub-manager. I had been a sub-manager for about 5 years. There were two other sub-managers. Djeng Hsieh Heng was another sub-manager. C.H. Chang was the other sub-manager. All three of us shared the same room in the Bank.

30

For some years up to August 1965 the manager was Lu who is now dead.

I am a Singapore Citizen. In 1965 I was a Singapore citizen and so were Lu and Djeng.

C.H. Chang was not a Singapore citizen.

In early 1965 the central government of Malaysia gave itself powers to close down banks owned by foreign powers. As a result the Bank was told to wind up its business in Singapore.

Djeng, Lu and I followed the instructions of the Government.

10 Lu, Djeng and I were dismissed by the Bank in August 1965. This was done on the orders of the head office in Peking. Since we were Singapore citizens we did not resist the orders of the Government to close the Bank. That is the reason why we were dismissed.

Dwidaya Trading Company's account and Defendant's account had nothing to do with our dismissal. Our dismissal was not connected with the handling of any particular account. It was not due to our allowing overdrafts without security.

20 In November 1960 Defendant and Yo came to the Bank. They came to see C.H. Chang but he was not in. Djeng and I were there. Defendant told me she wished to open an account with the Bank and to deposit some shares to secure an overdraft. I told her I would have to speak to the manager and asked her to return in a day or two. Djeng took part in the discussion. Djeng speaks Mandarin and English. I don't speak Mandarin but I understand a little. I speak a little bit of Malay. At that interview we spoke in Mandarin, English and Malay. 30 Defendant spoke in Mandarin and Malay. She did not speak much English. There was no difficulty in communicating with Defendant. I spoke English and a little bit of Malay to Defendant. She spoke to me in Malay and Mandarin. I understand a little Mandarin. I have dealt with customers who cannot speak English. Many customers did not speak English. The spoke Hokkien and Cantonese.

40 After a few days Defendant and Yo came to see me. I told her the Bank was prepared to give her overdraft facilities with a deposit of her shares. I told Defendant she could overdraw up to 50% of the value of the shares. She agreed.

On 10.11.60 Defendant opened an account by depositing \$500. On the same day she drew out

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Plaintiffs' Evidence
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(continued)

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₹40,000 i.e. an overdraft of ₹39,500. She must have deposited about ₹80,000 worth of shares.

(Shown p. 55 of AB4). The words "A shares etc." on the top right corner mean against shares on deposit with interest at 7 per cent per annum on the overdraft. The words "against shares" etc. appear on pages 55 to 79 of AB4. Defendant operated her account actively.

Yo opened an account on 2.2.61 in the name of Dwidaya Trading Company. He did this because I invited him to open an account. Up to 4.10.61 that account was on credit. 10

(Shown p. 1 of AB1). I saw this letter in January 1961.

(Shown p. 2 of AB1). This was signed by Djeng. SCK means See Chuan Keng. He wrote the letter and Djeng signed it.

(Shown p. 3 of AB1). This is an answer to our letter.

(Shown p. 5 of AB1). I saw this letter when it arrived. The letter was acknowledged at p. 6 of AB1. 20

I did not arrange with Defendant or anybody else to send the title deeds to the Bank.

(Shown p. 61 of AB4). There is no mention of any deposit of title deeds on p. 61 nor on p. 62. If the title deeds had been deposited to secure an overdraft it would have been recorded on the statements such as p. 61 and 62. I would also have expected a confirmation of deposit of title deeds like P4 to be signed by Defendant. Defendant never signed a confirmation regarding her own overdraft. I don't know why the title deeds were sent to the Bank by Allen & Gledhill in August 1961. I had nothing to do with the correspondence. 30

On 5.10.61 Dwidaya Trading Company started to overdraw on their account. Yo applied for overdraft facilities. He said he would furnish letters of guarantee from Defendant and deposit title deeds relating to 28 Cuscaden Road which belonged to Defendant. He offered these as security. He said he wanted ₹100,000 against the guarantee and ₹100,000 against 28 Cuscaden Road. 40

(Shown p. 8 of AB1). Yo signed this form. The word "Clean" means against a letter of guarantee. See the marginal note. This document is required in the ordinary course of banking business when a customer wants an overdraft. We never ask a customer to sign a document in blank.

I spoke English and Malay to Yo. We understood each other.

10 (Shown p4). This was signed by Defendant and witnessed by Yo.

(Shown P1). This was signed by Defendant and witnessed by Yo.

The application for an overdraft P1 and P4 had all the details completed before they were signed.

(Shown p. 7). This is part of the Bank's record. A document of this kind is opened whenever secured overdraft facilities are granted.

20 It is not true that I asked Yo to back-date P1 and P4. Both P1 and P4 were signed by both Defendant and Yo on 2.10.61 in my office at the Bank. I was present and so was Djeng. I saw Defendant and Yo sign P.1 and P4.

30 (Shown p. 16 to 18 of AB1). Defendant signed this guarantee in my office. I signed as a witness. It is not true that the guarantee was signed in Yo's office. It is not true that Defendant was told that it was in substitution for the first guarantee. The date 12th January 1962 was written on 12.1.62. I don't know whose writing it is. I did not see who wrote the date. There is a revenue stamp dated 12 Jan 1962 at the top right hand corner. The four initials are those of Lu, Chang, Djeng and myself. The details were filled in and completed before Defendant signed it. The procedure in our Bank was for the Manager and all the sub-managers to initial guarantees. We initialled practically every guarantee. We initialled guarantees to show
40 that we know about them. Lu approved the guarantee.

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In January 1965 Lu asked me to get a further guarantee to secure Dwidaya Trading Company's overdraft.

The Bank kept a register of overdrawn accounts. Entries are made in every customer's account who has an overdraft whenever a transaction takes place. The intention is to see how a customer's account stands. Lu inspected the register every day.

Lu suggested a further guarantee of
\$600,000.

10

(Shown p. 51 of AB4). Dwidaya Trading Company's overdraft was just over \$1,000,000 in January 1965.

I phoned Yo and asked him to supply a further guarantee of \$600,000. I passed on Lu's message to him. He said he would ask Defendant to give us a further guarantee.

Soon afterwards Defendant and Yo came to my office. I told Defendant and Yo that if they did not furnish a further guarantee the matter would be placed in the hands of our solicitor. There had been some preliminary discussion before I told them that. Djeng was present. I said those words because Defendant was very reluctant to sign a further guarantee.

20

Dwidaya Trading Company's account was shown to Defendant in my office. She was quite surprised when she saw the overdraft was over \$1,000,000.

I told Defendant and Yo that if no further guarantee was furnished we would have to make Dwidaya Trading Company bankrupt. I also said we would have to sell the shares.

30

Defendant did sign the guarantee for \$600,000.

(Shown P3). This had been prepared before Defendant and Yo arrived at my office. I initialled as a witness. The date 27 Jan. 1965 was stamped in my presence. The guarantee was signed on 27.1.65. Defendant definitely knew what she was signing. The words had all been typed in before they arrived at my office.

40

P1 and P2 were explained by Djeng in Mandarin to Defendant. P4 was also explained to Defendant by Djeng in Mandarin. There was no doubt that Defendant understood all the documents.

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Defendant is a very capable business woman.

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Defendant and Yo were in my office for about half an hour when P3 was signed.

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(continued)

10 In February 1965 the Bank was given a licence to operate for 6 months only. It was expected that the Bank would have to close in August 1965. Generally we sent our letters to customers with overdrafts asking them to pay up.

(Shown p. 36A of AB1). The form of letter was stencilled and the particulars filled in.

The O.C.B.C. were very helpful to us. One day I went with Yo to O.C.B.C. to try to arrange for O.C.B.C. to take over Yo's overdraft. As a result of an arrangement between O.C.B.C. and the Bank I took many of our customers to the O.C.B.C.

20 (Shown p. 42 & 44 of AB1). I can't remember what happened regarding the \$900,000.

In August 1965 the Singapore Government informed the Bank that it could carry on.

CROSS-EXAMINATION BY MR. HILBORNE

Cross-Examination
10th April 1972

(Shown p. 1, 2 and 3 of AB1). I saw these three letters in January 1961.

(Shown p. 5 of AB1). I saw this letter in August 1961.

30 All letters sent out are seen by each of the other sub-managers before they go out.

All letters coming in would be seen by all sub-managers.

I did not see the title deeds mentioned in p. 5 of AB1. Only the letter was circulated to the sub-managers. The current account department would be handling the title deeds.

Q : So you thought the title deeds were security

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(continued)

for an overdraft?

A : Not necessarily.

Q : What else could it be?

A : It could be for safe custody - for the Bank to keep.

Q : If so they would go to the security department.

A : No, they would go to the current accounts department and then on to the cashier.

If a person brings title deeds for us to keep not as security for an overdraft but for safe custody we would give him or her a receipt and keep the deeds in our own strong room. A customer may need them in future as security for an overdraft. Very few lots of title deeds have been kept by us in that manner. We don't accept shares for safe custody. It is too troublesome to keep shares. There are too many scrips. I don't know that other banks accept share certificates for safe custody. There must be something to it before we accept the title deeds - the customer must say he or she intends to have an overdraft. I understood from the letters that Defendant would want an overdraft in future. I knew that Defendant already had an overdraft. The deeds may not necessarily be to secure an overdraft - she has already deposited shares as security. I thought she might need a further overdraft. It was not safe custody alone - there must have been an intention to have a further overdraft.

10

20

30

In October 1961 Yo approached me for an overdraft for his firm. This was about seven weeks after the deeds had been received by the Bank. Yo said he would ask Defendant to sign a guarantee and deposit the title deeds as security.

It is correct that Defendant dealt more with Djeng than with myself. Djeng was looking after her overdraft. I dealt more with Yo than Djeng. The main reason for this was the language difficulty.

40

I knew that Defendant had not signed a confirmation of deposit of title deeds before

P4 was signed because all confirmations are passed round to all sub-managers. That is done for us to know the position. The Confirmations are initialled by the managers and sub-managers.

In the High Court of the Republic of Singapore

(Shown P4). This was initialled by Lu, Djeng, Chang, myself and Chu who was the head of the current accounts department. The initials appear on the back sheet.

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10 (Shown P1 and P4). I was present when these were signed. Yo and Djeng were also present. They were signed on the same occasion. I can't tell whether Yo wrote the dates. I saw him sign as a witness. It was not possible for the dates to be left blank. After signing Yo may have filled in the dates. I may have been talking to somebody.

(continued)

It is possible that Defendant was incapable of reading either P1 or P4.

20 (Shown P1). We don't fill in the part where the words "Interpreted and explained by" appear because we explain the contents to the customer. If the customer does not speak English we get the right person to interpret for him.

In the case of shares used as security we have a transfer form signed by the customer. The transfer form is not seen by the sub-managers because the current account department takes care of it.

I knew that Defendant was dealing heavily in shares. I knew that her overdraft went up very quickly.

30 (Shown p. 62 of AB4). On 7.10.61 Defendant's overdraft was about \$700,000. The value of her shares deposited with the Bank must have been about \$1,400,000.

Tuesday, 11th April 1972.

40 Djeng, Defendant and Yo were present when P1 and P4 were signed. I understood what Djeng explained to Defendant. There was no reaction from Defendant - she just signed after the explanation. She was perfectly willing to sign it. After 2.10.61 I had no further dealings with Defendant regarding the Cuscaden Road property. Djeng explained to Defendant what her responsibility

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(continued)

was under the Confirmation of deposit of the title deeds. The explanation was that the deposit was against Dwidaya Trading Company's overdraft. \$100,000 was the limit of her liability.

(Shown p. 50 of AB1). I don't know about this - I had left the Bank. We have to get an opinion from our lawyers.

(Shown p. 7 of AB1). I can't remember if there were any more contracts between Defendant and the Bank after 2.10.61. If there were any more contracts up to August 1965 I would have known about it.

10

On 2.10.61 after P1 and P4 had been signed Defendant was committed up to \$200,000 - \$100,000 under P1 and \$100,000 by way of deposit of title deeds of 28 Cuscaden Road.

The Bank was entitled to demand a legal mortgage of \$100,000. If we wanted a legal mortgage it would be for \$100,000. That amount would have been stipulated therein.

20

(Shown P4). This is one of our standard forms. There is no provision for a limit.

Djeng did not exactly tell Defendant that the limit was \$100,000. The application (at p. 8 of AB1) contained the figure \$100,000. Djeng may have informed her that her liability was \$100,000 but this deposit of title deeds can be used for more than \$100,000. It is very difficult to recall what Djeng said. I can't remember whether Djeng showed the application to Defendant. The usual thing we have to explain to customers is to mention the amount and then say it can drag on and increase later on. I knew that Dwidaya Trading Company's overdraft went up. No steps were taken to increase Defendant's liability in respect of 28 Cuscaden Road. It is difficult to answer the question whether her liability remained at \$100,000. It means that if the customer overdraws the amount stated the confirmation will cover the amount overdrawn. I go according to the Bank's forms. It is correct that if any customer signs a form like P4 to secure a third party's overdraft his or her liability is unlimited.

30

40

I know that Dwidaya Trading Company's overdraft went up to over \$1,000,000. I know the value of 28 Cuscaden Road has gone up. If it goes up to \$1,000,000 the Bank can appropriate it against the overdraft.

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(Shown p. 7 and p. 8 of AB1). These are the first documents completed at an early stage.

No.18

10

We don't give notice to the customer who signs the confirmation that the amount overdrawn had gone over the amount first mentioned. I did not tell Defendant about the increase in Dwidaya Trading Company's overdraft. It was the manager who allowed it to exceed \$200,000. I knew about it. I can't remember whether it caused any concern. The matter is left to the discretion of the manager. It had nothing to do with me.

Plaintiffs' Evidence
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(continued)

20

I rang up Yo in January 1965 to ask for further security. I can't remember if I spoke to him before that date.

The Cuscaden Road property was security for Dwidaya Trading Company's overdraft all along. Our bank officer went to inspect the property and prepared a report.

30

The manager decided to ask for a further guarantee for \$600,000. I have no idea how he arrived at that figure. My idea about the Cuscaden Road property was that it was worth about \$20 per square foot i.e. \$800,000.

There was no letter before August 1965 stating that 28 Cuscaden Road was security for more than \$100,000.

(Shown p. 52 of AB4). The overdraft was \$1,181,540.07 in December 1965. The words "against property" refer to the Cuscaden Road property. The figure "\$100,000" was the figure first entered in our records. Subsequently the manager allowed an increase in the overdraft.

40

(Shown p. 51 of AB4). I don't agree that \$600,000 was chosen because there were guarantees for \$100,000, \$200,000 and the Cuscaden Road project was security for \$100,000 - there were still some outstanding bills.

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Plaintiffs'
Evidence
Loke Chan
Hing
Cross-
Examination
10th April
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(continued)

Statements of Dwidaya Trading Company's account were never sent to Defendant.

I never mentioned 28 Cuscaden Road in January 1965 because it was already a security. Shares were easier to sell and I did not talk to Defendant about selling 28 Cuscaden Road.

(Shown p. 69 of AB1). I can't give any opinion about this as I had already left the Bank.

(Shown p. 73 of AB1). Kao Wee Tseng was in the remittance department when I left the Bank. I cannot answer your question about paragraphs 3 and 4 because I had left the Bank. It is not for me to answer your question.

10

I say that P1 was signed in the Bank in the presence of Djeng and myself. Djeng explained the contents to Defendant. I deny giving the form P1 to Yo to take home for Defendant to sign. Djeng was sitting in front of me and Defendant was sitting at the same table. I agree that Defendant was quite happy to mortgage her home for Yo's business.

20

Yo was also good in business. In a sense I agree barter trade was a risky business.

I don't remember any woman mortgaging her home as security for her husband's speculative business.

Defendant and Yo always came together to the Bank. If it concerned her shares Defendant came alone. Otherwise they came together. They came together only when they wanted an overdraft. They came together when they had to sign a document. I am sure about that. The documents must be signed in the bank. They must be witnessed by bank officers. The documents were signed in my presence. As to P1 and P4 we thought it was better if Yo signed as a witness.

30

More often a bank official would witness the signatures. This was done in the case of P2 and P3.

P4 was an important document. The contents had to be explained to the person who signed it. That person had to come to the bank.

40

I know Yo moved from Boat Quay to an office in the Bank of China Building. I have been in his office many times on bank business. Not to discuss his overdraft. Sometimes it was a social call. I became very friendly with Yo.

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Plaintiffs' Evidence
Loke Chan Hing
Cross-Examination
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(continued)

10 (Shown P2). Yo said he had ordered machinery and could not pay for it. He wanted to use trust receipts. He said Defendant would give another guarantee to cover what we would pay in order to obtain the machinery. We would pay the inward bill. Yo would then take delivery in exchange for trust receipts signed by him in the Bank's favour. This guarantee was not for money owing on the overdraft.

(Shown P6A, B, C and P7A, B, C).

This describes the machinery.

I heard about Yo's factory at Klang.

20 P6A is a sight draft dated 3.10.63. Yo had made use of P2 many times. P6A, B, C are the last documents. The first documents would have been handed to Yo when he made the payments. Most probably that is why they are not available.

Lu gave instructions for P2 to be prepared.

30 Defendant and Yo came to see me at the Bank. P2 was ready for signature. Djeng explained the contents of P2 to Defendant. I understood the substance of what he said. Defendant was quite willing to sign P2. I deny that P2 was signed in Room 33, Bank of China Building. I say that Djeng was present when it was signed.

P2 was initialled by Lu and the three sub-managers and the chief of the trust department put his chop on it.

I am quite sure P2 was signed on 12.1.62.

I did not correspond with Defendant about P2 after it was signed. I can't remember whether we spoke about it.

(Shown P5). I can't remember whether Defendant told me she wanted to buy the Thomson

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Evidence
Loke Chan
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(continued)

Rise property. P5 was signed to secure her overdraft. The limit at the beginning was \$700,000. She can use more later on the same security i.e. overdraw more later.

(Shown p. 34 of AB1). This was signed by Defendant. Yes, it was a short term overdraft limited to \$700,000. It does not mean that she could not draw more than \$700,000. \$700,000 was only the original figure.

(Shown p. 90 of AB4). The figure \$700,000 at the top right hand corner refers to the Thomson Rise property. 10

There was no written application for an overdraft by Defendant. The reasons are (1) the shares and title deeds were used as security (2) it was approved by the manager personally. He approved it without any application being signed. There are some cases where the customer is allowed overdrafts without signing an application.

P5 was signed by Defendant in the presence of Djeng and myself. Djeng explained the document to her. 20

(Shown P3). I initialled this as a witness. It was not necessary to sign my full signature. I don't think Defendant was with me for more than half an hour. We were very busy then - we could not spend too much time on it. Yo was present.

It is correct that the Bank was trying to get in the overdrafts.

I deny that when P3 was signed we were already contemplating closing the account. 30

(Shown p. 231 of AB1). I agree only a few cheques were drawn on the account after 17.1.65. These cheques add up to less than \$2,500.

(Shown p. 49, 50, 51 of AB4). In September, October, November, December 1964 and January 1965 Yo drew cheques for small amounts.

In December 1964 I heard rumours that the Bank would be closed down. On 30.12.64 my staff was talking about the Bank being closed. On 9.1.65 people were talking about my Bank demanding 40

repayment of overdrafts.

We were still hoping the Bank could carry on. On 27.1.65 I never thought of closing Dwidaya Trading Company's account.

On 11.3.65 we informed Defendant that her overdraft facilities were cancelled. On 20.3.65 we informed Dwidaya Trading Company that their overdraft facilities were cancelled.

Wednesday, 12th April, 1972

10 (Shown p. 51 of AB4). The date 19.3.65 chopped on the right top corner indicates that the overdraft was stopped on that day.

Generally we allow an overdraft of 66 per cent of the value of landed property.

In January 1965 Dwidaya Trading Company's overdraft was over \$1,000,000.

Q : According to the notes at the top of p. 51 the security was \$200,000?

A : Yes.

20 Q : \$100,000 referred to the Cuscaden Road property?

A : Correct.

Q : For this account to be secured Cuscaden Road would have to be worth \$1,800,000?

A : Yes.

We had not valued the property. I think it is worth more than \$500,000. I think it was worth about \$800,000.

30 It is not true that Dwidaya Trading Company's overdraft was unsecured from 1962 until I left the Bank. The words "clean overdraft" means secured only by a guarantee.

All the time we took it that the security provided by 28 Cuscaden Road was unlimited.

(Shown p. 2 of AB2). The initials SCK are

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(continued)

those of See Chuan Keng - he was assistant to the secretary. He is still with the Bank.

Defendant is a good business woman. It is difficult to say why I formed that opinion. She dealt in shares and owned good property.

I believe I asked Yo to bring Defendant to see O.C.B.C.

Yo dealt more often with me than with Djeng.

(Shown p. 46A of AB1). I left the Bank on 4.8.65. The initials "W C H" are those of Woo Chok Heng.

10

I agree that no copies of P, P2, P3 and P4 were sent to Defendant. All four documents were signed in the Bank. Yo was present on each occasion. They were all signed on the dates shown in the documents. All the documents were typed in before Defendant arrived at my office. I deny that the only documents signed in the Bank were P3 and P5.

No. 19

No. 19

20

EVIDENCE OF DJENG HSUEH HENG

Plaintiffs'
Evidence
Djeng Hsueh
Heng
Examination
in Chief
12th April
1972

P.W.2 DJENG HSUEH HENG Sworn, states in English.
18-B Chatsworth Road, I am a retired bank officer.

I was employed by the Bank of China from 1936 to August 1965. In August 1965 Lu was the manager - he had been the manager for some years prior to August 1965. In 1960, Loke, C.H. Chang and I were sub-managers and we shared one room.

I am fluent in Mandarin. It is my mother tongue.

30

Early in November 1960 Defendant and Yo came to my office. Chang was out but Loke and I were in. Defendant, Yo, Loke and I had a discussion. Defendant spoke to Loke in Malay with a little bit of English. Loke spoke to her in the same way. Loke spoke to Yo in Malay mixed with English.

Yo spoke to Loke in the same way. I don't have much knowledge of Malay. Defendant and I spoke Mandarin to each other. As far as I can recall we had no difficulty in understanding one another.

In the High Court of the Republic of Singapore

Defendant wanted to open an account with the Bank and operate an overdraft with the deposit of shares. Loke said he would consult the manager. Defendant and Yo were asked to come back in a few days.

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No.19

Plaintiffs'
Evidence
Djeng Hsueh
Heng
Examination
in Chief
12th April
1972
(continued)

10 A few days later Defendant and Yo came again. Defendant was told she could have an overdraft against shares up to 50 per cent of the shares.

(Shown p. 1 of AB1). I saw this letter in January 1961. I signed the reply at p.2. The reply was drafted by the secretarial department. I saw the letter at p. 3 when it arrived. I also saw the letter at p. 5. Lu signed the reply at p. 6. The initials J H L on p. 6 are those of Lim Jek Hui, assistant chief of the secretarial department.

20

The deeds were sent to the Bank for safe custody and for the purpose of the future of Yo's company's account. Yo hinted to Loke that it was his intention to ask for an overdraft. Yo gave Loke this hint a few weeks after November 1960. I knew about this in August 1961 when the deeds were received. Loke had told me about it. When I saw the deeds I knew they were connected with Yo's intended overdraft. The records show that

30 Dwidaya Trading Company started to overdraw on 5.10.61.

(Shown P1). This guarantee was signed in my office in the presence of Loke and myself. We always prepare and type the documents before we ask the customer to come and sign them. We follow the practice in this case. The document was not blank - all the details had been typed in. There has never been any case where a customer has been asked to sign a blank document. I don't know who

40 wrote the date 2nd October 1961. The date was written on 2.10.61. The document was signed on that very day, 2.10.61. Before Defendant signed the document I explained it to her in Mandarin. She also read it herself. She fully understood the contents and what she was signing for.

In the High Court of the Republic of Singapore

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Plaintiffs' Evidence
 Djeng Hsueh Heng
 Examination in Chief
 12th April 1972
 (continued)

(Shown P4). Defendant signed this in my room on the same occasion on which she signed P.1. I explained the full contents to her in Mandarin, she understood them fully and she signed P4 voluntarily. She read it herself. The document was typed properly before she signed it.

(Shown P2). This document was signed by Defendant in my office in the presence of Wu, Loke, Yo and myself. I explained the contents to Defendant in Mandarin. She looked over the document. The document was properly typed before hand. I cannot remember who wrote the date.

10

(Shown P3). This document was signed by Defendant in my room. It had been properly typed. Loke and myself and Yo were present at the time. Loke explained the contents to Defendant in Malay. Then I explained the contents to her in Mandarin. Dwidaya Trading Company's account was shown to Defendant. Loke explained it to her in Malay. I explained it to her in Mandarin. I told her if she did not sign it the Bank would take legal action and make Yo bankrupt and sell her shares to recover the overdraft. Defendant appeared to be surprised when the account was shown to her. At first she appeared to be in a reluctant mood about signing. A few minutes later she signed it voluntarily. The whole thing took about 20 to 30 minutes.

20

The department which typed the guarantee chopped the date 27 Jan 1965 on it before it was signed on receiving a message from me that Defendant had arrived at my office.

30

(Shown P5). This was in connection with Defendant's own overdraft. It was signed by Defendant in my office and witnessed by Loke. It was typed out. The date was chopped in the same manner as P3. Loke, myself and Defendant were present. I explained the contents to her in Mandarin.

Cross-Examination

CROSS-EXAMINATION BY MR. HILBORNE

40

(Shown p. 1 of AB1). When I saw this in January 1961 I knew the deeds were sent to the Bank for safe custody. Loke had told me about Yo's intention to have an overdraft. When I signed the letter at P.2 I knew the deeds would be

sent to us to cover Yo's future overdraft - Loke had told me so in December 1960. Loke told me that Yo had told him that Yo intended to extend his business to Indonesia.

In the High Court of the Republic of Singapore

Dwidaya Trading Company's account was opened in February 1961.

—
No. 19

I think the cashier's department would have a register of title deeds kept for custody. I have never worked in the cashier's department.

Plaintiffs'
Evidence
Djeng Hsueh
Heng
Cross-
Examination
12th April
1972
(continued)

10 I am certain that the deposit of the title deeds was for Dwidaya Trading Company's account. Before the account was opened the title deeds were for safe custody. If deeds are not sent for any account they are sent for safe custody. Defendant deposited her shares to cover the overdraft. It was not possible that she deposited the deeds to cover her overdraft. Her shares were sufficient to cover her overdraft.

20 (Shown P1). Documents signed in the Bank are not necessarily witnessed by a bank official. We have no regulation that only bank officials can be witnesses.

Our practice is for all documents to be signed in the Bank. As far as I know all documents have been signed in the Bank. Applications to open current accounts are usually signed in the Bank. I agree these applications can be signed outside the Bank. Apart from the current account department our forms are signed in the Bank.

30 My recollection about P1 is clear.

(Shown P4). It is such a long time ago - I can't remember whether I explained P1 or P4 first to Defendant. I can't remember if I asked Defendant any questions after I explained P4 to her. She signed it voluntarily. Yo did not ask any questions.

40 As to P1, Defendant did not ask any questions after I explained the contents to her. Yo did not ask any questions.

(Shown P1 and P4). I say that these documents were signed in the Bank. I say that I did explain the contents to Defendant.

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Plaintiffs'
Evidence
Djeng Hsueh
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(continued)

(Shown P2). I explained the contents to Defendant. I explained about the trust receipts according to the contents of this guarantee. I explained to Defendant what a trust receipt is. I remember that. This is a guarantee for money owing on trust receipts. I explained this to Defendant.

In our practice we don't fill in the portion below the words "Interpreted and explained by".

I say that P2 was signed in the Bank. I say I did explain the contents to Defendant. I say that Yo was present. 10

(Shown P5). I say I did explain the contents of this document to Defendant. I am sure about that.

(Shown P3). I say I did explain the contents of this document to Defendant. I say that Yo was present. I am quite sure about that. I remember both Defendant and Yo came.

(Shown passport). This happened such a long time ago. I cannot recollect whether Defendant came alone or Yo came withher. I said I was quite sure he came because all the time they came together. 20

Yo did not come when P5 was signed. I can only say mostly they came together.

(Godwin says he has no objection to the passport being admitted. Passport admitted and marked D5. Hilborne says Godwin did not cross-examine Defendant and ask her whether Yo was present and that is why the passport was not produced at that stage). 30

I have not discussed this case with Loke. I left the Bank such a long time ago. Loke and I never discussed this case together - not even during the last few days. I did not discuss this case on the telephone with Loke. I deny that I have told lies in this court.

Dwidaya Trading Company's account was shown to Defendant. Loke explained the account to her in Malay. Sometimes she wanted to know things more clearly and I spoke to her in Mandarin. 40

She understood the account when Loke explained it to her. To enable her to understand it better I explained it to her in Mandarin.

I deny that Defendant was in my office for two or three hours. She was there for only 20 to 30 minutes.

10 (Shown p. 51 of AB4). I knew that Dwidaya Trading Company's overdraft was over \$1,000,000 on 27.1.65. I agree that in 1965 the Cuscaden Road property would have been worth more than \$100,000. In 1965 it would have been worth \$800,000 to \$1,000,000.

I did not tell Defendant we would sell 28 Cuscaden Road because to sell shares is easy but to sell landed property takes a long time.

20 The sum of \$100,000 in the application signed by a customer is to allow the customer to start off with an overdraft of \$100,000. The Bank may allow the customer to have more by way of overdraft if required. The Bank holds the entire property as security to cover an unlimited amount.

In the High Court of the Republic of Singapore

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Plaintiffs' Evidence
Djeng Hsueh Heng
Cross-Examination
12th April 1972
(continued)

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No. 20

EVIDENCE OF LOW SIM CHAN

P.W.3 LOW SIM CHAN affirmed, states in English. 14 Mayflower Place. Chief interpreter attached to Official Assignee's Office.

In 1967 I was a certificated Chinese interpreter in that Department. I speak Cantonese, Hakka, Hokkien, Mandarin, Tiochiu.

30 In recording statements we have a set procedure. The first step is for me to find out in which dialect the person wishes to speak. Having ascertained that, the person and I speak in the dialect chosen and I recorded the statement. I would then send the statement to the typist to be typed. Following that I would explain the contents of the type-written statement to the person in the dialect chosen. I would ask him or her to sign the statement after making

No.20

Evidence of Low Sim Chan
12th April 1972

In the High Court of the Republic of Singapore

corrections or amendments in the statement.

On 20.12.67 I recorded a statement from Defendant (identified).

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Evidence of
Low Sim Chan
12th April
1972
(continued)

(Shown p. 185 of AB1). I recorded this statement from Defendant. I followed the procedure which I have explained. I spoke in Mandarin and so did she. There was no difficulty in understanding each other. I read the statement back to her. She produced 13 Chung Khiaw Bank receipts. I checked them. I corrected one item - 75 cents. I wrote the words on the right.

10

(Hilborne says he does not require the original statement to be produced).

Cross-
Examination

CROSS-EXAMINATION BY MR. HILBORNE

I interpreted the statement to Defendant in Mandarin.

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Evidence of
Ng Ling Cheow
13th April
1972

No.21
EVIDENCE OF NG LING CHEOW

Thursday, 13th April 1972.

20

P.W.4 NG LING CHEOW affirmed, states in English.
27, St. Michael Road. Managing Clerk employed by Messrs. Lee & Lee.

I have been their managing clerk since 1963.

In 1966 Selvadurai was a legal assistant in Messrs. Lee & Lee. I acted as interpreter for him. I speak Hokkien and Tiochiu. I understand a little Malay.

On or about 10.8.66 Selvadurai asked me to go to his room to do some interpretation for him. I went to his room and saw Defendant and Yo there (both identified). I asked the Defendant in Hokkien "What is the matter?". In reply she spoke in English to Selvadurai. She said that the two properties were mortgaged to the Bank of China. As my services were not required I went back to my room. I stayed in Selvadurai's room

30

only for a short while. I gathered that Defendant's property at Cuscaden Road and Thomson Rise were involved - They were mortgaged to the Bank. I don't know whether she said which account.

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Later Selvadurai asked me to enter an appearance for Defendant in O.S. 185/66. I prepared the form which he signed.

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Evidence of
Ng Ling Cheow
13th April
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(continued)

10 On or about 6.9.66 I happened to be with Selvadurai doing some work in his room. Defendant and Yo came into the room. Defendant gave instructions to Selvadurai to consent to an order being made in O.S. 185/66. I can't recollect in which language she gave me instructions - it might be English and Malay. She also instructed Selvadurai to consent to an order being made for the sale of land at Thomson Rise.

CROSS-EXAMINATION BY MR. HILBORNE

Cross-
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20 I won't be able to say how long Defendant and Yo were with Selvadurai on 10.8.66 because I left the room first. I did not see them leave Selvadurai's room. I was in the room for a short while - may be two or three minutes. When I entered the room Selvadurai told me he might require me to do some interpretation for him. I had seen Defendant and Yo go into his room. I won't be able to tell how long they had been with him before he summoned me. I have no idea at all how long they had been there. I heard Defendant speak to Selvadurai. I don't think Yo spoke to Selvadurai. I can't remember Yo ever speaking to Selvadurai. The first time Defendant spoke to Selvadurai she spoke in English. She also used some sort of Malay. My Malay was not so good. She spoke English and Malay during that short while I was in the room. I did not find out whether Defendant spoke Hokkien. I didn't find out what Chinese dialects she spoke. I thought Hokkien is a common language and that is why I spoke to her in Hokkien. I always speak Hokkien to Chinese clients. Normally when Chinese clients came to see Selvadurai he would ask me to go into his room.

30

40

I know Chua Boon Kwan. He is a clerk in Messrs. Lee & Lee. He speaks Mandarin. I didn't see him go to Selvadurai's room on the first occasion. I didn't see him go to Selvadurai's

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room on the second occasion.

Miss Molly Yap is a clerk with Messrs. Lee & Lee.

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Evidence of
Ng Ling Cheow
Cross-
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13th April
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(continued)

On 6.9.66 as far as I can remember Defendant spoke English and Malay to Selvadurai but I am not sure. I can't remember how long I was in the room. It is a long time ago. I can understand a bit of simple Malay. I believe Defendant and Selvadurai were talking to each other when I left the room. I can't remember whether Yo spoke to Selvadurai.

10

I know the date was 6.9.66 because our firm sent a letter to Donaldson & Burkinshaw on that day. I did not know about the letter on that day.

I was asked to give evidence in this court about two or three weeks ago.

In 1966 Messrs.Lee & Lee's office was at 10-B Malacca Street. They occupied two floors.

I say I did see Defendant in Selvadurai's room on or about 6.9.66. I am telling the truth when I say that Defendant instructed Selvadurai to consent to the order of court. Defendant did instruct Selvadurai to consent to an order of court for the sale of the land at Thomson Road.

20

No.22

Evidence of
P. Selvadurai
13th April
1972

No.22

EVIDENCE OF P. SELVADURAI

P.W.5 P. SELVADURAI affirmed, states in English.
27-K Jalan Jintan. Advocate and Solicitor.

I was admitted in 1961. Partner in Rodyk & Davidson. Member of Parliament.

30

In 1966 I was employed as an associate solicitor in Messrs. Lee & Lee. In August 1966 Defendant and Yo (both identified) consulted me concerning two overdrafts - one was Defendant's and the other was Dwidaya Trading Company's overdraft.

I have looked at a copy of Messrs. Lee & Lee's

file (AB5).

Defendant and Yo first saw me on 10.8.66 (after referring to p. 2A of AB5). They had seen Mrs. Lee first. She sent them to me as court proceedings were involved. She does not undertake court proceedings.

10 No one else was in my room when they came. In accordance with my usual practice I asked PW4 to sit in in case there was a need for interpretation and also if need be to give him instructions relating to the filing of papers in court. He was in charge of court matters. Both Defendant and Yo started talking in English. Defendant also spoke Malay from time to time. This was in PW4's presence. PW4 tried to explain what I said in Chinese. But as Defendant was speaking in English and Malay it soon became apparent that there was no need for an interpreter. PW4 left my room after about five
20 or ten minutes.

Defendant and Yo said they have come from Tann Wee Tiong's office and they wanted us to act in his place. They said that they had two large overdrafts - Defendant's stood at \$1,400,000 and Dwidaya Trading Company's overdraft stood at over \$1,200,000. They said the Bank would be applying to court for orders for the sale of two properties belonging to Defendant which had been used to secure both overdrafts.

30 Before we went deeper into the matter I telephoned Tann and asked him whether it would be in order for me to act for Defendant in his place. He said he had no objection.

40 Defendant and Yo went on to say that the house in which they lived - 28 Cuscaden Road - was one of the properties which had been mortgaged to the Bank by way of deposit of title deeds to secure Dwidaya Trading Company's overdraft. They also said the Thomson Rise property was used to secure by way of equitable mortgage an overdraft granted to Defendant. They also said Defendant had further deposited share certificates worth about \$1,000,000 to secure her overdraft. They said the Bank had realised \$600,000 worth of the shares and the value of the remaining shares was about \$400,000.

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P. Selvadurai
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Evidence of
P. Selvadurai
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(continued)

They also said that Defendant had given guarantees to the Bank amounting in all to \$900,000. PW4 left my room in the course of the discussion when it became apparent that there was no need for him to be present. I think Defendant and Yo brought a letter from Messrs. Donaldson & Burkinshaw (p. 2 of AB5). I asked them if they disputed the Bank's claims. They said "no". They said the money was in fact owed to the Bank by them on both overdrafts and that they were in difficult financial straits and they wanted time to reduce the overdrafts and finally settle them. They said if the Bank were to proceed against the house the Bank would sell the house very cheaply as market conditions were not very good due to confrontation. They said 28 Cuscaden Road was their family home and it was a valuable property. They said that as confrontation was virtually coming to an end it would be easier to realise the true value if need be of both properties after the end of confrontation. They wanted me to approach the Bank's solicitors and request them to stay their hand for a while. I told them that before I could do this I must know what proposals they had regarding reduction of the overdrafts. They said that they were finding it difficult to raise money but I could offer reduction of the overdraft by payment by them of monthly instalments of \$10,000. I told them it was unlikely that this offer would be accepted as it would take a very long time to pay the overdrafts.

10

20

30

There was no difficulty as far as language was concerned. They spoke in English most of the time. Defendant's English was not strictly grammatical English but it was clearly understandable - there was no difficulty whatsoever. I have dealt with many Chinese clients whose standard of English was similar to that of the Defendant.

40

I told them that I would in any event speak to Dyne to see if we could arrive at some accommodation. I phoned Dyne and told him of the proposals. I phoned Dyne while they were still in my room. Dyne said it was very unlikely that the Bank would accept monthly instalments of \$10,000 only. He said the Bank had accommodated them for a long time and had given them a lot of time to reduce the overdrafts. He asked me to

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Evidence of
P. Selvadurai
13th April
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(continued)

10 write to him. I told Defendant and Yo that we
should offer something better. They said that
the Thomson Rise property was worth about
\$3,000,000 and that it would be sufficient to
cover both overdrafts. They said they were
negotiating to sell Thomson Rise and to use the
proceeds of sale to pay off the overdrafts. They
said there were many squatters and this stood in the
the way of the sale going through. They said
they had come to some agreement with most of the
squatters on terms of compensation but there were
a few squatters who wanted exorbitant compen-
sation. They said they should be able to sell
Thomson Rise within six months. They instructed
me to propose to the Bank that the Bank should
proceed first against the Thomson Rise property
and the shares and that in the event of their
proving insufficient the Bank could if need be
proceed against the house. They wanted to save
20 the house. In the course of these discussions
I told them that on the facts as narrated by them
I could not see any defence to the Bank's two
applications for the sale of the two properties.
They went on to say that Yo spent half his time
in a month at Kelantan and the remainder in
Singapore and he would make one last try at
coming to a settlement with the squatters in
order to sell Thomson Rise. He would do this
on his return from Kelantan. I said I would
30 withhold writing to the Bank in accordance with
their instructions setting out their terms until
Yo returned and informed me about the result of
his discussions with the squatters and the
prospective purchaser. They said it would not
be possible for Defendant to come to my office
frequently to give instructions and that Yo
would do so as and when necessary as he was fully
conversant with Defendant's affairs. They said
that if Yo was away in Kelantan I could phone
40 Defendant and she would in turn get in touch with
Yo. They gave me their Singapore and Kota Bahru
telephone numbers and the address in Kota Bahru.

They were speaking with one voice. There
was no contradiction between Defendant and Yo
whatsoever. Defendant did not cry but plainly
both of them were anxious.

On 23.8.66 or 24.8.66 Yo came alone to my
office and said he was unable to come to an

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Evidence of
P. Selvadurai
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(continued)

agreement with the squatters and asked me to write to the Bank's solicitors in accordance with the instructions given.

On 24.8.66 I wrote p. 5 of AB5 to Messrs. Donaldson & Burkinshaw. The postponement was at my request. I discussed the matter with Dyne in court. He said it was unlikely the Bank would accept \$10,000 per month. The last paragraph of p. 5 is in accordance with Defendant's and Yo's instructions.

10

On 25.8.66 I wrote p. 7 of AB5 to Messrs. Donaldson & Burkinshaw.

I also wrote p. 8 to Defendant.

I received p. 11 from Messrs. Donaldson & Burkinshaw. As soon as I received it I phoned Defendant at her house.

She said Yo was in Kelantan and she would inform him. Half an hour later Yo phoned me from Kelantan. He said Defendant had told him that I wanted to see them. He said he would come to see me.

20

On or about 6.9.66 Defendant and Yo came to my office PW4 was present discussing some other matter with me and I asked him to stay on. Defendant and Yo considered the letters from Donaldson & Burkinshaw and the Bank. They said that as long as the Bank agreed to proceed against the house last they would agree to the terms set out in both letters. I told them I would make one more effort at preserving the status quo so far as the house was concerned and ask the Bank to proceed only against Thomson Rise.

30

I wrote p. 13 of AB5 and sent a copy to Defendant.

My firm entered appearances on behalf of Defendant in O.S. 185/66 and O.S. 269/66.

I received p. 15 from Donaldson & Burkinshaw.

The Bank had in their letter dated 2.9.66 agreed to proceed against the house only after realising Thomson Rise and having come to some agreement with Defendant if need be in relation to

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monthly payments of any balance remaining, if any, and her making such payments. This achieved the object of Defendant and Yo.

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Yo was coming to my office frequently and I told him the Bank had turned down their offer.

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My letter at p. 16 was sent to Donaldson & Burkinshaw. It was in accordance with instructions received from Defendant and Yo.

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(continued)

10 On 12.9.66 I attended before the Judge in Chambers and consented to an order being made in O.S. 185/66.

20 In the meanwhile Yo was trying to sell Thomson Rise by private treaty in order to get a better price. He came to see me on 20.9.66 and said he had prospective buyers and he gave the names Chin Foo Liew and Miss B.G. Guok. He said he wanted to give an option to Chin Foo Liew to sell the property at not less than \$2 per square foot. He would give Chin Foo Liew a commission of 2 cts. per square foot. I approved the option agreement at p. 24 of AB5.

I received p. 31 of AB5. On 18.10.66 I wrote p. 32 to Defendant. I wrote p. 35 after Yo told me that Defendant did not have the plan. The costs of O.S. 185/66 were paid I think by Defendant's cheque which was handed to me by Yo.

30 (Shown p. 50 of AB5). Yo brought this letter to me. I told Yo that the Bank could not ask for payment of monthly instalments until Thomson Rise had been sold.

I wrote the letter at p. 51 to the Bank.

40 After the order for sale of Thomson Rise was made it was put up for sale by auction. A few days before the sale Yo came to see me about a reserve price - he was certain there would be no buyers as there were squatters on the land. He knew the Bank would not be able to sell the land at a reasonable price. That was his way of buying time. I phoned Dyne and was told he expected the Bank to fix a reserve price. Eventually a reserve price was fixed. When the sale was withdrawn Yo came to see me and told me that as he had expected the Bank were unable to sell the land.

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I told him 28 Cuscaden Road was safe and there was no need to pay monthly instalments.

I received p. 52 of AB5.

On 10.11.66 I consented to an order being made in O.S. 269/66 on behalf of Defendant.

I left Lee & Lee at the end of June 1967.

Defendant and Yo came to my house once. We discussed the matter but nothing new emerged. Defendant, Yo and I discussed the matter.

(Shown p. 197 of AB1 and P. 9 of AB3 - paragraph 12). There was no indication at any time from Defendant that her Cuscaden Road property was not used as security for Dwidaya Trading Company's overdraft. 10

Defendant also instructed me to consent to an order of court in O.S. 269/66. The instructions were given by her when Defendant and Yo came to see me to discuss the Bank's letter dated 2.9.66 and Messrs. Donaldson & Burkinshaw's letter dated 3.9.66. The instructions were to consent to an order in both Originating Summons. These instructions were consistent with the discussion I had with Defendant and Yo on 10.8.66. 20

Cross-
Examination
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CROSS-EXAMINATION BY MR. HILBORNE

On the first occasion Defendant and Yo came to my office P.W.4 spoke in Chinese to Defendant but she spoke to me in English. P.W.4 spoke to her and she at once spoke to me in English. Apart from that I did not use an interpreter. No other clerk apart from P.W.4 was present during the discussions. 30

When I sent for P.W.4, I did not know how good or bad Defendant's English was. I was following my normal practice of having P.W.4 in with me when Chinese clients came with a new matter. I had not been speaking with Defendant and Yo for some time before I called in P.W.4. I called him in almost immediately after they arrived. I did not ask Defendant which dialect she spoke. At the time I called P.W.4 in I did not know his services as an interpreter would not be required. As soon as Defendant and Yo came in 40

they started to speak in English. It was not necessary for me to ask what dialect she spoke. Defendant's English was not grammatical English but she could make herself understood. I agree making oneself understood is a question of degree.

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10 (Shown p. 12 of AB1). I have seen this document before. I saw it in Court when Dyne showed it to me. I am unable to say whether Defendant would be able to read and understand this document. I did not ask Defendant whether she can read English.

There was a Chua Boon Kuan in Lee & Lee. He was a clerk. I don't know whether he speaks Mandarin. It is not correct that he was an interpreter when Defendant came to see me.

There is a Miss Yap in Lee & Lee.

20 The only attendance slip concerning the Court proceedings is the one dated 10.8.66 (p. 2A of AB5). There is no attendance slip dated 6.9.66. Defendant's instructions to consent to the orders are not in the attendance slips. I don't keep attendance slips of all occasions. I note the basic facts. I covered the situation by sending copies of letters written by me to Defendant.

I think Defendant came to see me twice at my office.

30 When Defendant and Yo came to my flat that was the first time they met my mother. They discussed the proceedings with me. They could not have come for any purpose but to discuss the case with me.

Defendant and Yo brought the letter dated 21.7.66 (p.2 of AB5). I don't think they brought any other document.

40 As for the conversation between Defendant and Yo and myself it was a dead heat between Defendant and Yo or it may be 60 - 40 in favour of Yo. Yo was more fluent. He had a bigger vocabulary. It might have been easier for me to converse with Yo than Defendant. The interview lasted about one hour. I don't think it was much more than one hour - it was somewhere around there.

They did not mention the number of guarantees.

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The Bank was suing on the guarantees. The Bank chose to proceed by way of Originating Summons. The danger of the Bank suing on the guarantees did not occur to me. They did not tell me the details of the guarantees. They told me about the deposit of title deeds. I did not see the confirmations of deposit until I went to court. I saw both copies - photostat copies - in Dyne's file. I examine them. I thought they were valid.

On 10.8.66 Defendant and Yo said I should offer Thomson Rise for both overdrafts and to proceed against Cuscaden Road last. My letter dated 24.8.66 reflects what happened on 10.8.66. I agree that my letter dated 24.8.66 does not mention selling 28 Cuscaden Road last. If they got \$3,000,000 28 Cuscaden Road would be saved.

10

They said if the Bank were to sell the properties in 1966 the properties would not fetch the true prices because market prices were bad because of confrontation. That is why they wanted to delay the sale. Thomson Rise had squatters in it. \$3,000,000 was the value of Thomson Rise without squatters and after confrontation.

20

I knew that the Bank had sold some of Defendant's shares and that Thomson Rise was security for her overdraft.

10.8.66 the sale of Thomson Rise was mentioned. I was told by Defendant and Yo that the Bank was going to proceed against both properties. They did not say that proceedings had been commenced.

On 10.8.66 Defendant said she could not come often to my office. She said her health was not too good. She also said Yo could give me instructions as he knew all about the matter. I agree that Yo came to see me about ten times. Where the wife's property is security for her husband's overdraft there was no conflict so far as I could see and they were in harmony with one another. I can't agree there is a possibility of conflict.

30

Defendant and Yo told me to offer to pay \$10,000 by monthly instalments on each overdraft. They said they would try to raise the money. I don't know how the Indonesian trade would have helped her.

40

I wanted to file an affidavit to be sworn by Defendant setting out the circumstances and to delay matters. But in the circumstances no affidavit was required.

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(Shown p. 10 of AB5). The position set out shows a less dangerous situation than existed before this letter was written. The word "decided" in paragraph 3 in my view means to be agreed between the parties.

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10 The agreement was to leave the amount of monthly instalments to be agreed upon in the future. If the Bank demanded a large sum which appeared to be unreasonable it would be left to the court to decide.

20 There was this concluded agreement between the Bank and Defendant. I don't agree I would be asking the Court to conclude an unconcluded agreement. At p.11 of AB5 Messrs. Donaldson & Burkinshaw treated it as a concluded agreement.

I only agree that the primary object was to save 28 Cuscaden Road altogether only if the sale of Thomson Rise enable both overdrafts to be paid off.

(Hilborne : I apply for leave to amend the statement of claim in Suit No, 1909/67 by adding new paragraphs 12 and 13 and a new prayer 2A (tenders amended statement of claim).

Godwin : Paragraph 12(2) is not very clear.

30 Hilborne : I will consider the matter.

Friday, 14th April, 1972.

Hilborne : I have prepared another amended statement of claim in Suit No. 1909/67 to replace the one submitted yesterday. I apply for leave to amend.

Godwin : I have no objection.

Court : The application is granted.

40 Godwin : I apply for leave to amend the defence in Suit No. 1909/67.

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Hilborne not objecting, the application is granted.

(By consent, letter dated 28.8.63 from Edward Loke to the Bank and letter dated 3.9.63 from the Bank to Edward Loke put in and marked P8 and P9).

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No.22

P. SELVADURAI

Evidence of
P. Selvadurai
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(continued)

(Shown p. 13 of AB5). I don't agree that at our first interview on 10.8.66 Defendant told me that 28 Cuscaden Road was not charged to cover Dwidaya Trading Company's overdraft. I have in my letter dated 24.8.66 to Donaldson & Burkinshaw stated to them my instructions (see paragraph 5 of my letter). I got this information from Defendant and Yo at our first discussion on 10.6.66. On 24.8.66 I sent a copy of my letter dated 24.8.66 to Defendant. If there was anything wrong in my letter Defendant could easily have come back to me and told me I had made a mistake. Neither Defendant nor Yo told me there was anything wrong in my letter. I did have further discussions with Yo on his return from Kelantan. I deny that after 10.8.66 I took all my instructions from Yo. The basic instructions came from Defendant and Yo. The only other occasions on which I saw Defendant was on 6.9.66 and at my house. I say that Defendant gave me instructions to consent to orders for sale in both applications on 6.9.66. That was when we were discussing the Bank's letter dated 2.9.66. I think I sent my letter dated 6.9.66 on the same day on which Defendant and Yo came to my office.

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20

30

The letter dated 6.9.66 (p. 13 of AB1) does not completely reveal my instructions.

Yo knew that I had consented to the orders being made and I expected him to tell Defendant.

Before I went to court I received p. 15 of AB5. I did not discuss this letter with Yo. I can't remember whether I discussed the matter with Defendant and Yo from 9.9.66 to 12.9.66. I had already obtained instructions to consent but I told them I would make another effort on their behalf. I did not think there was any need to tell Defendant and Yo about p. 15 as the situation was already covered by previous correspondence and instructions.

40

Yo was coming to my office frequently and I told him the orders had been made on one of the two occasions when the orders were made. I think Yo was in court. I think it was when the first order was made.

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(continued)

10 (Shown p. 50 of AB5). I was not surprised at the amount of \$2,000. I assumed that Defendant and Yo had arrived at some accommodation with the Bank. He wanted to know whether he had to pay the instalments. I said not until Thomson Rise had been sold. I agree the Bank was wrong when it threatened to sell 28 Cuscaden Road in paragraph 1 of the letter. I realised the Bank had made a mistake. I told Yo about it. I also wrote p. 51. (Shown p. 52 of AB5). I can't see a breach of the agreement in this letter. Messrs. Donaldson & Burkinshaw were trying to modify the agreement. There was nothing to stand in the way of the Bank selling Thomson Rise at any price. The letter at p. 52 is a concession on the part of the Bank. I don't agree I left Defendant and Yo completely unprotected.

20

The understanding was that the Bank could sell Thomson Rise whenever they liked after the order was made. Defendant and Yo did instruct me to fix a time limit. I don't agree it was a legal duty for me to advise Defendant and Yo about the danger of not fixing a time limit. It was clearly understood by Defendant and Yo that the Bank could sell Thomson Rise the day after the Order was made. Yo said that the Bank would not be able to find a buyer because of the squatter problem.

30

I don't agree that the letter at p. 52 spelt disaster for Defendant and Yo.

The 2 years at p. 57 was suggested by Yo.

At p. 59 we were negotiating again. Further negotiations had to be entered into because of the abortive sale of Thomson Rise.

40 I did not see the letter at p. 63 because I left Messrs. Lee & Lee at the end of June 1967.

RE-EXAMINATION BY MR. GODWIN

Re-
Examination

I thought Defendant's and Yo's bargaining

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position with the Bank was very weak when they came to see me.

Case for the Bank of China in Suits Nos. 1809/67 and 1909/67.

No.22

Monday, 17th April, 1972

Evidence of P. Selvadurai Re-Examination 14th April 1972 (continued)

Godwin : I apply for leave to amend the Defence (tenders draft amended Defence for perusal).

Hilborne is heard

Court : The application is granted.

10

No.23

No. 23

Submissions by Defendant's Counsel 17th April 1972

SUBMISSIONS BY DEFENDANT'S COUNSEL

Hilborne : I submit that the confirmation of deposit of title deeds dated 2.10.61 is void as it has not been registered under section 4 of the Registration of Deeds Act (Cap. 281 Ed. 1970). The important thing is the deposit of the deeds itself but that deposit must be for the specific purpose of securing the chargor's debt or any third party's debt. Mere possession of the deeds by the chargee unrelated to an agreement preceding his obtaining the possession of the deeds as chargee is insufficient. Therefore the danger of an equitable mortgage can be described as follows: If you have a single deposit of deeds unaccompanied by any writing the Bank will be safe. The reason is that the deposit is the creation of an equitable charge because it is part performance of a contract to give a loan in exchange for a charge on the deeds and that part performance is regarded as sufficient to take it out of the operation of the Statute of Frauds. If the Bank wants something in writing to record the particulars of the loan they must ensure that that document is registered under the Registration of Deeds Act because otherwise there is the

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danger that they will find themselves in the position of being unable to recover the debt because of section 4 of the Act. The Bank fell between these 2 stools by having a document which was not registered under the Act.

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Submissions
by
Defendant's
Counsel
17th April
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(continued)

Coote on Mortgages 9th Edition Vo. 1 p. 90,
91.

Stevens on Registration of Deeds Ordinance
pages 18 to 28.

Kasmeerah v Hadjee Mohamed Taib (1901)
6 S.S.L.R. 104.

Kasmeerah v Hadjee Mohamed Taib (1904)
8 S.S.L.R. 113.

Samy Nathan Chetty v Ramasamy Chetty (1904)
8 S.S.L.R. 113.

Re M.D. Mistry (1904) 8 S.S.L.R. 122.

Ho Hong Bank Ltd. v Teo Chin Chay (1929)
S.S.L.R. 195.

Braddell's Law of the Straits Settlements
Vol. II p. 213, 214.

I submit that if the creditor is relying on the deposit itself he must show that the deposit constituted the complete transaction. If there is a complete transaction by the deposit of title deeds the charge created by that deposit is not vitiated by a subsequent memorandum which refers to the terms on which the deposit took place.

If there is no proper deposit of deeds or no complete transaction the creditor must look elsewhere for his charge. That can only be in the form of a memorandum of charge. This charge will have to be registered in the Registration of Deeds - otherwise it is inadmissible as evidence.

Tuesday, 18th April, 1972.

In the High
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Submissions
by
Defendant's
Counsel
17th April
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(continued)

Hilborne : Section 28(1) and (2) Stamp Ordinance.

There is no such thing as a mortgage for an unlimited amount. The amount must either be expressed in the document to be limited or if it is not expressed in the document the limitation must be capable of being ascertained by reference to the ad valorem stamp duty on the document. In the latter case the mortgage is only security for that amount which is limited by the ad valorem stamp duty on the document.

10

Neither a mortgage nor a promissory note or any other document creating a charge is capable of providing unlimited security in the sense of unascertainable security.

I am not objecting to the document being produced although it is not stamped.

A bank or any other creditor can advance unlimited amounts on the security of an equitable mortgage or a legal mortgage when the amount of the charge is not limited in the instrument itself subject to the fact that that instrument can at no given time be security for an amount in excess of that which corresponds to the ad valorem stamp duty charged on the document.

20

I submit that as P4 stands at present being unstamped there is no way in which the amount of the security provided by that instrument can be ascertained. It is a condition of an enforceable mortgage that the amount of the security must be known and it is void for uncertainty if that condition is not fulfilled in the same way as for example if the name of the chargor or mortgagor had been omitted and was unascertainable.

30

I am not suggesting that a document such as P4 cannot be submitted to the Commissioner of Stamps with the appropriate information as to past advances made on the overdraft with a

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view to having the instrument properly stamped subject to any penalties payable so that having been so stamped it would become a mortgage in proper form and a document admissible in evidence. Whether the foregoing proposition is correct would be a matter for the Commissioner of Stamps to consider. I am only concerned with the document in its present form and as it is at present before this court.

10

I am not taking a stamp objection and I am not objecting to the admission of P4 as evidence.

I am not objecting to the admission of P1, P2 and P3 on the score that they have not been stamped..

Wednesday, 19th April, 1972

(Written submissions have been tendered by Mr. Godwin and Mr. Hilborne).

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Submissions by Defendant's Counsel
17th April 1972
(continued)

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No.24

WRITTEN SUBMISSION BY THE PLAINTIFFS' COUNSEL

I. DEFINITIONS

Bank	means	Bank of China
Dwidaya	=	Dwidaya Trading Company
Dft	=	Madam Chia (D.W.1)
Redrup	=	R.E. Redrup (D.W.2)
Yo	=	Yo Kian Tjoan (D.W.3)
Tann	=	Tann Wee Tiong (D.W.7)
Loke	=	Loke Chan Hing (P.W.1)
Djeng	=	Djeng Hsieh Heng (P.W.2)
Low	=	Low Sim Chee (P.W.3)

30

No. 24

Written Submissions by the Plaintiffs' Counsel
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No.24

Written
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by the
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(continued)

Ng	=	Ng Ling Cheow (P.W.4)	
Selvadurai	-	P. Selvadurai (P.W.5)	
1st Guarantee	-	P1	
2nd Guarantee	=	P2	
3rd Guarantee	=	P3	
Cuscaden Confirmation	=	P4	
Thomson Confirmation	=	P5	
Cuscaden Order	=	Order of Court in O.S. 185/1966	10
Thomson Order	=	Order of Court in O.S. 293/1966	
Cuscaden	=	28 Cuscaden Road	
Thomson	=	Land at Thomson Rise	
O.14 Proceedings	=	O.14 Proceedings in S. 1809	

II. PLEADINGS

SUIT 1809:

STATEMENT OF CLAIM (AB 2 - 3). Claim by
Bank for principal and interest due under
all 3 Guarantees. 20

UNAMENDED DEFENCE AND COUNTERCLAIM (AB 2 - 6 to 8)

denies liability on all 3 Guarantees
including 1st, (See paras. 4 to 8) on
basis of threats, intimidation and/or
undue influence, lack of independent
advice and consideration, and fraud.
Also alleges (para 10) that she signed 2nd
Guarantee on misrepresentation by Loke that
it was a mere formality to enable Loke to
assist Yo. 30

Admits Defendant signed 3rd Guarantee on

10 27.1.65 but alleges undue influence, etc.
(paras. 13 to 16).

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AMENDED DEFENCE AND COUNTERCLAIM

(AB 2 - 6A to 10A)

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and FURTHER AMENDED DEFENCE AND COUNTERCLAIM

20 Dft in September, 1971, amends to admit
liability on 1st Guarantee and Radically
alters nature of defence on 2nd Guarantee,
(para 4) by alleging that Loke told her
2nd Guarantee was required to replace 1st
Guarantee which was in some way defective.
Now denies dates of signature of 2nd and
3rd Guarantees.

Written
Submissions
by the
Plaintiffs'
Counsel
19th April
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(continued)

NOTE: Numerous Affidavits were
filed in Order 14 proceedings,
which are referred to on
pages below

SUIT 1909:

UNAMENDED STATEMENT OF CLAIM (AB 2 - 20 - 24).

30 Claim by Dft to be relieved from liability
on Cuscaden Confirmation on grounds of
fraud by Bank and/or Yo.

AMENDED STATEMENT OF CLAIM (AB 2 - 20A to 25)

pleads in the alternative that it was the
Bank or Yo, or both, who defrauded Dft re
Cuscaden Confirmation.

FURTHER AMENDED STATEMENT OF CLAIM

40 raises new point that no concluded agreement
reached between Bank and Dft, therefore
consent to Cuscaden Order wrongly given
(para 10A).

STILL FURTHER AMENDED STATEMENT OF CLAIM

raises yet another 3 new points (during 3rd
week of trial) under Registration of Deeds
Ordinance and Stamp Ordinance, and that
Cuscaden Confirmation is security for
maximum \$100,000.00 with interest if any
(paras. 12 and 13).

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UNAMENDED DEFENCE (AB 2 - 27 to 30)

denies Defendant's allegation in UNAMENDED STATEMENT OF CLAIM.

FURTHER AMENDED DEFENCE pleads an estoppel (para 7A) on Cuscaden Confirmation and Cuscaden Order.

STILL FURTHER AMENDED DEFENCE alleges an estoppel as to the 3 new points raised by the STILL FURTHER AMENDED STATEMENT OF CLAIM.

10

III. ISSUES

A. ISSUES OF FACT

The basic issues of fact as they now stand are as follows :

- (i) Whether the 2nd Guarantee was signed by Dft. on a representation by Loke and/or Yo that it was to replace the 1st Guarantee because it was in some way defective; 20
- (ii) Whether the 3rd Guarantee was signed by Dft unwillingly as a result of undue influence by the Bank in that Loke and/or Djeng used pressure, threats and intimidation to that end;
- (iii) Whether Cuscaden Confirmation was knowingly and voluntarily signed by Dft;
- (iv) Whether Thomson Confirmation was knowingly and voluntarily made available by Dft to the Bank as security not only for Dft's overdraft, but also for Dwidaya's indebtedness; 30
- (v) Whether Selvadurai had authority express, implied or ostensible to consent to the Cuscaden and/or Thomson Orders;

(vi) Whether the Cuscaden and/or Thomson Title Deeds were deposited with the Bank as security for Dwidaya's indebtedness before the signing of the Cuscaden and/or Thomson Confirmations.

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B. ISSUES OF LAW

Written Submissions by the Plaintiffs' Counsel
19th April 1972
(continued)

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(NOTE: As S. 2393/68 is not strictly before the Court, no reference is made to the issues which arise re Thomson Confirmation and Order).

(i) Whether the Bank has been guilty of fraud in respect of the 2nd and/or 3rd Guarantee and/or Cuscaden Confirmation;

20

(ii) Whether Yo exercised undue influence over Dft entitling Dft to relief.

(iii) Whether the absence of independent advice to Dft with regard to the 2nd and/or 3rd Guarantees and/or Cuscaden Confirmation (if so proved) affords her any defence;

30

(iv) Whether (apart from estoppel) the doctrine of non est factum can be relied on by Dft with regard to 2nd Guarantee and/or Cuscaden Confirmation;

(v) Whether there was any consideration for the Cuscaden Confirmation and/or 3rd Guarantee;

40

(vi) Whether the mortgage of Cuscaden, if valid, is security for a maximum of \$100,000.00 and interest, if any;

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- (vii) Whether Dft is entitled to have the Cuscaden Order set aside on the ground that she did not authorise her Counsel to consent to it.
- (viii) Whether a concluded agreement was reached between Dft and the Bank through their respective solicitors pursuant to which the Dft through Selvadurai consented to the Cuscaden and Thomson Orders; 10
- (ix) Whether the Registration of Deeds Ordinance and/or the Stamp Ordinance precludes the Bank from relying on Cuscaden Confirmation, and whether Bank, even if it is so precluded, can nevertheless enforce its rights under the Cuscaden Order, or in other words, whether the Cuscaden Order falls to the ground with the Confirmation. 20
- (x) Whether Dft is estopped from alleging non est factum and/or fraud re Cuscaden Confirmation, Cuscaden Order, non registration and/or non-stamping of Cuscaden Confirmation, and/or limit of liability under Cuscaden Confirmation of \$100,000.00. 30

IV. EVIDENCE

- A. It was conceded by Dft that Dft should open because onus was on her to show that she is not liable under the two Guarantees, the Cuscaden and Thomson Confirmations and Orders. 40

She has failed to discharge onus.

- B. EVIDENCE CALLED FOR DFT

1. DFT

Dft's evidence as a whole was absolutely unreliable.

It is not proposed to analyse it in detail here, as a detailed analysis would not appear to be necessary, but examples of untrue statements made by her of the most flagrant kinds are now given:

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- (1) Dft's affidavit (AV 3 - 1 to 3), paras 1 - 5 where she says she is not liable on the 1st Guarantee, which was signed by her because Yo, as agent of the Bank, threatened her and/or exercised undue influence over her. She says that she signed the 1st Guarantee at the same time as Cuscaden Confirmation, and she did not know what the nature of the 1st Guarantee was and she had no independent advice, and there was no consideration, and she only discovered that she had signed it in or about 1966. As stated, however, she now admits liability. She says she told Redrup she was liable, but Redrup says she did not.

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- (2) Same affidavit (AB 3 - 1 to 3), paras 7, 8 and 9:

On 2nd Guarantee, she says she signed it because Loke told her it was merely a formality to help yo, and she first learnt in 1966 that it was a guarantee for \$200,000/-. Compare her evidence in Court, that Yo told her in Loke's presence that it was to replace the 1st Guarantee which was defective (p.m. 29.3.1972). And see Yo (a.m. 5.4.1972).

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- (3) Same affidavit (AB 3 - 1 to 3), paras 10 to 12.

She says 3rd Guarantee was signed on the 27.1.65 but in Court (p.m. 27.3.72 and p.m. 3.4.72) she says she does not know the date. She would have to deny it, because Yo was not in Kelantan on 27.1.65 but both Dft and Yo say she telephoned him in Kota Bahru on the evening of 27.1.65 (Exhibit 'D' (passport)) and evidence on

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- (4) (a) Dft's affidavit (AB 2 - 81 to 83 para 1).

This attributes alleged mistake by Redrup re 1st Guarantee to inadequate English and complexity of the facts. But there was no complexity because Dft if truthful must have known what her case was on 1st Guarantee quite clearly from 2.10.61. Para 2 is contradicted by her Order 14 Affidavits and also by Redrup and Yo. (AB 3 - 25 to 26 paras 3 to 5 and 10). And there was no language difficulty between Dft. and Redrup (Evidence p.m. 4.4.72 a.m. 5.4.72);

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(b) Dft's affidavit (AB 3 - 8-9) paras 6 - 9 link Cuscaden Confirmation with 1st Guarantee quite emphatically and precisely. Unlikely Redrup could have been mistaken as to Dft's instructions on 1st Guarantee.

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- (5) Dft even after admitting liability on 1st Guarantee some 4 years after Writ issued in 1809 was still unwilling to pay. (Ab 3 - 88).

(6) Dft stated in evidence (p.m. 24.3.72) that there was a scene in front of Tann when he showed her and Yo Donaldson & Burkinshaw's letters dated 26.5.66 (AB 1 - 50 to 51A) and she accused her husband of cheating her, which he swore he had not done. She said that she told Tann what the position was i.e. the story about fraud, trickery, etc. but Tann (7.4.72 a.m.) emphatically denied this and said that his instructions were merely to delay, which he did, Tann was called by Dft, who presumably holds him out as a witness of truth.

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(7) She also said that she and Yo when they first saw Selvadurai, told him the story about fraud, etc. and she spoke through a Mandarin interpreter called Chua. She denies, however, ever having authorised Selvadurai to enter into the arrangement which was made with the Bank eventually or to consent to either of the Orders. She did not call Chua. Against this the Bank called Ng (10.40 a.m. 13.4.72) who said that Chua was not involved and that he (Ng) had been sent for by Selvadurai at the beginning of the first interview and was satisfied that Dft's English was adequate and no interpreter was needed. Ng also said he heard Dft and Yo tell Selvadurai her two properties were held by the Bank as security for 2 overdrafts (a.m. 13.4.72). Selvadurai said that her English was quite understandable to him. He also said that she authorised him to take instructions concerning her properties from Yo and that she was fully aware of

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- and a party to the instructions given to him at the first meeting on 10.8.66 which eventually resulted in the 2 Orders. The object of the arrangement with the Bank was to preserve the family home, and to offer Thomson to the Bank to sell first. Thereafter, if there was any outstanding indebtedness by her and/or Dwidaya, the monthly instalments to be paid in reduction could be agree, and only if such instalments were not paid regularly, could the Bank sell Cuscaden. The relevant correspondence contained in AB 5 fully supports Selvadurai's and Ng's evidence. Further, Yo said that after instructing Selvadurai specially to consent to the Thomson Order, he returned home and informed Dft. who took no steps to countermand such instructions. Yo, of course, was Dft's witness. 10
- (8) It is perhaps remarkable that not until Redrup was instructed by Dft at the end of 1967, after Bank had issued Writ in 1809, that these allegations of fraud, etc. first saw the light of day. 20 30
- (9) Dft's statement to Official Assignee AB 1 185/186 - Document was proved by Low (late p.m. 12.4.72). See Paras. 2 and 3 which show Dft. came from a successful business family. Paras 4 and 5 make it clear that the Dft had had extensive, varied and successful business experience. In addition she said in evidence she had had a successful dress-making business, and she had speculated heavily on the share market. 40
- Para 8 refers to Cuscaden, but

does not say that it was deposited to secure her own account. Para 9 refers to Thomson and it specifically states that Thomson was mortgaged to the Bank to secure her overdraft AND Yo's overdraft.

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This is completely inconsistent with her evidence re: Cuscaden and Thomson.

Dft in cross-examination (30.3.72 about noon) confirms accuracy of statement to Low and that Mandarin was used, although subsequently she disputed the parts of it which were inconvenient to her.

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Even if Dft's evidence on 3rd Guarantee is accepted in full, it does not establish any undue influence, but merely that the Bank warned her of the legal steps it would take if she did not sign it.

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- (10) Dft's demeanour was most unsatisfactory and she was extremely evasive under cross-examination, and her evidence cannot be relied on.

2. REDRUP (4.4.72 p.m. ; 5.4.72 a.m.)

The only matters to which attention need be drawn are :-

- (1) That Dft never told him she was liable under 1st guarantee;
- (2) On the basis of Tann and Selvadurai's evidence, he was the first solicitor to whom Dft had complained of fraud etc.

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3. YO

Yo's evidence was a tissue of lies, with occasional elements of truth,

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See AB3 - 25 to 26 paras 3, 6, 8, 9 and 10. His statements regarding 1st Guarantee were admittedly false. His allegation in para 8 as to the reason why Loke and Djeng were dismissed is false.

His allegation regarding threats of prosecution is incredible, and his confirmation of all the affidavits sworn by the Dft is also perjurious. In addition, his evidence regarding what transpired with Tann when AB 1 - 50 to 51A were brought to the attention of Dft and Yo, and subsequently, was contradicted by Tann. His evidence as to the instructions given to Selvadurai, and what transpired at their first interview on 10.8.66 was contradicted by Selvadurai and Ng.

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Clearly, the evidence of Tann, Ng and Selvadurai should be preferred to the evidence of Dft and Yo, two grossly untruthful witnesses.

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TANN

Contradicts Dft and/or Yo as indicated above, and is consistent overall with the Bank's case.

Tann was Dft's witness, and was not cross-examined at all by Bank, who accepted his evidence in full.

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C.

EVIDENCE CALLED FOR BANK - 1 and 2

LOKE and DJENG

1 and 2.

LOKE AND DJENG

At the time when they gave evidence, Loke and Djeng had both been retired for over 7 years.

Both of them were dismissed by

Head Office of the Bank in August, 1965 on the ground that they had co-operated with the Central Government or, in other words, had behaved as law-abiding citizens. They therefore had no motive to give evidence dishonestly in favour of the Bank, but rather the opposite.

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Both described the practice of the Bank with regard to the signature of documents of the kind concerned in these cases, i.e. that the customer would come to the Bank and would then sign the relevant document, which would have been completed as to its particulars. They also said that documents were dated on the day they were signed as a matter of practice.

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Loke was cross-examined for a day and a half (Noon 12.4.72 to 3.30 p.m. 13.4.72), but his evidence was not shaken.

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Djeng was asked in cross-examination why on the occasion the 3rd Guarantee was signed he did not threaten to sell Cuscaden, although he threatened to sell Dft's shares and to bankrupt Yo. The question confused Djeng, who said it was easier to sell shares than land, but the true explanation clearly is that there was no need to threaten to sell Cuscaden specifically, because the Bank would realise the securities it held for Dwidaya's account, which included Cuscaden, and if there was still a deficit, it would bankrupt Yo. It was not as suggested in cross-examination to Djeng that it was because he knew Cuscaden was security only for \$100,000.00

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It was suggested to Djeng that the 3rd Guarantee was not signed on 27.1.65, and Yo's Passport (D 5) was produced, which contained stamps showing Yo was out of Singapore and Malaysia at that time. Dft's and

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Yo's evidence was that Dft had telephoned Yo at the Miramar Hotel, Kota Bharu, on the evening of the day she signed the 3rd Guarantee. From this, it is argued by Dft that the 3rd Guarantee could not have been signed on 27.1.65. However, it is equally consistent with Dft and Yo telling yet another lie. Loke and Djeng both said that Yo was present when the 3rd Guarantee was signed and that it was signed on 27.1.65. It appears, however, that their memory of Yo's presence was defective, and presumably they assumed he was present because he had been present when all the 4 previous documents were signed. It is, however, of no importance to the Bank whether Yo was present or not when the 3rd Guarantee was signed, and this lapse does not destroy the credit of Loke and Djeng. 10 20

It was suggested that Loke and Djeng had been discussing their evidence together and implied that they had agreed to give false evidence in concert. This, however, is most unlikely, because e.g. Loke said that he assumed that Cuscaden deeds were sent in August, 1961 by Allen & Gledhill for safe custody, whereas Djeng said that there was a pre-existing understanding that Dwidaya would be given overdraft facilities at some date in the future, and the deeds were sent to the Bank so that they could be made available as security when Dwidaya required facilities. 30

(Loke p.m. 10.4.72 and Djeng noon 12.4.72). 40

The evidence of Loke and Djeng is consistent with commercial probabilities and with the correspondence before the Court. No suggestion has been made either by witnesses or from the Bar that Loke and Djeng had anything to gain from

indulging in the fraudulent practice alleged against them. Loke said that Ab 1 - 7 the Bank's "Secured Overdrafts - Against Properties" - sheet was opened by the Bank in the ordinary course of business when Bank agreed to advance money to a customer against property. There would in this case have had to be a verbal agreement between the Bank on the one hand and Yo and Dft on the other to advance money to Dwidaya against Cuscaden.

AB 1 - 7 is dated 1.10.61, so that the verbal agreement could not have been arrived at at a date later than 1.10.61, and quite probably a day or two before. (And see pages 31 to 32 below).

3. LOW

Senior Interpreter, Official Assignee's Office.

His evidence is p.m. 12.4.72.

He proved Dft's statement to him (A 1 - 185 - 6) and said he had taken it down himself, and read it over to Dft in Mandarin after it had been typed out; and she had no amendments or corrections to make.

His evidence was not challenged in any way.

4. NG

Lee & Lee's Chief Clerk. See 11-12 para (7) supra.

And Ng also said that he was in Selvadurai's office on or about 6.9.66 by chance, when Dft and Yo arrived, and he heard her instruct Selvadurai to consent to Cuscaden Order, and to an Order for Sale of Thomson. Ng's evidence was not shaken in cross-examination.

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5. SELVADURAI

Selvadurai's evidence was quite clear and he was not shaken in cross-examination at all, even though he was cross-examined from the afternoon of 13.4.72 and nearly the whole morning of 14.4.72.

His evidence was quite clear, that he and Dft understood each other without the use of an interpreter, that she quite understood her position with regard to the Bank, that she instructed him that Cuscaden was security for Dwidaya's account, that she had given Guarantees totalling \$900,000.00, that she had mortgaged Thomson for her own account, that the Bank was now really serious in its intentions to enforce its securities, that Cuscaden was the family home and that they wanted help in preserving Cuscaden from sale by the Bank.

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She also authorised him to take instructions on her behalf from Yo.

Acting on these instructions, in 1966 Selvadurai came to the arrangement described in Court with the Bank's solicitors pursuant to which the Cuscaden and Thomson Orders were properly and with Dft's full authority made by consent.

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Selvadurai achieved for Dft the objective which she desired. The entire contents of AB 5 support Selvadurai's evidence, as does Ng.

Selvadurai in fact did all that any solicitor could have done for Dft, having regard to the extremely vulnerable position she was in. In Court he absolutely rejected the suggestion that she told him the story about fraud, etc. (in common with Tann).

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It was suggested by Counsel that Selvadurai was being untruthful in certain aspects of his evidence. But see AB 5 - 66 to 70, Hilborne & Co.'s letter to Lee & Lee dated 22.6.71, at Pages 68, 69 and 70 which alleges negligence against Selvadurai in consenting to the Cuscaden and Thomson Orders and in writing the letter at AB 1 - 105, 106. In the same letter, (AB 5 - 66-70) Hilborne & Co. say that if Cuscaden Order was set aside, no harm would have been done. Here again, if Selvadurai was minded to be dishonest, he would have given evidence in favour of the Dft, thereby endeavouring to enable her to get the Cuscaden Order set aside so as to relieve himself from liability.

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But it is not necessary really to consider such matters, because clearly Selvadurai was a witness of truth, fully supported by the surrounding circumstances and relevant correspondence.

GENERAL OBSERVATIONS

A picture clearly emerges of Dft and Yo conspiring together (and possibly with others) to defraud the Bank by perjured evidence on Affidavit and in the witness-box, whereby the Bank's lawful claims would be defeated.

The Bank in fact displayed exceptional patience and forbearance in its dealings with Dft and Yo, as evidence by e.g. AB 1 - 36, 36A, 39, 43, 46A, 46C, 46E, 46G, 47, 47A, 48, 48A, 50, 51A, 56, 66, 67A, and the correspondence between Donaldson & Burkinshaw and Lee & Lee (AB 1 - 105 to 125).

V. LAW

- (i) Whether the Bank has been guilty of fraud in respect of the 2nd and/or 3rd Guarantees and/or Cuscaden

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Confirmation.

It is not necessary to cite any authorities. Clearly, if Dft's evidence is accepted, there has been fraud, either actual or constructive. Constructive fraud would arise through undue influence.

(See Kerr on Fraud and Mistake, 7th Edition, page 223).

(ii)

Whether Yo exercised undue influence over Dft.

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There is no presumption of undue influence between husband and wife.

- 1) Howes v. Bishop (1909) 2KB 390;
- 2) In re Lloyds Bank Ltd. (1931)
1 Ch. 289 at 301-2.

For an example of a case where transactions were set aside on the ground of undue influence by a husband over his wife, see

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Bank of Montreal v. Stuart (1911)

A.C.120-1

Headnote

Summary of facts pp 120-1

Lord MacNaughten pp 125-39.

The position of Mrs. Stuart was quite difference from that of Dft in this case -

See page 136 "confirmed invalid who acted in passive obedience to husband's directions".

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See page 137 - "her evidence was that she had acted of her own free will..." And, in Bank of Montreal, the Company was in such a bad financial state that no one who was not under an

undue influence would have put money into it, but there is no such suggestion here, as to Dwidaya. In Hilborne & Co.'s letter of 22.6.71 to Lee & Lee (AB 5 - 66) they say Dwidaya was doing very well until the effects of Confrontation were felt (in late '63 onwards), but Cuscaden Confirmation was signed in October 1961, and 2nd Guarantee in February, 1962.

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The Dft and Mrs. Stuart are as different from each other as a tiger and a domestic kitten.

(iii) Whether the absence of independent advice to Dft with regard to the 2nd and/or 3rd Guarantees and/or Cuscaden Confirmation would afford her any defence.

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There is no legal requirement that a married woman should have independent advice. It is a question which depends on the facts.

Howes v. Bishop (1909) 2 KB 390

Headnote

Per Lord Alverstone C.J. at pp 395-7 There is nothing in the evidence in t this case which shows that the Defendant needed independent advice, or that if she thought she needed it, she could not have obtained it.

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(iv) Whether (apart from estoppel) the doctrine of non est factum can be relied on by Dft with regard to 2nd Guarantee and/or Cuscaden Confirmation

The leading case is Saunders v. Anglia Building Soc. (1971) AC 1004.

See Headnote and per Lord Reid pp 1015-7

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Hodson 1017-20

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Dilhorne pp 1020-3

Wilberforce pp 1023-7

Person at 1032G-1039

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The following adjectives are used in the Judgments to describe the sort of difference that must be shown before this plea can succeed :-

"Radical" "fundamental" "serious" or "very substantial" 1017C - D Lord Hodson. 10

"substance of the whole consideration" "root of the matter" p. 1019A Lord Hilborne.

"radically different" p. 1021B.

"Entirely or fundamentally different" p. 1022H

"Consent truly lacking" 1027E to F. Lord Wilberforce.

"Fundamental" at page 1034D to E Lord Pearson. 20

It is also clear that the burden of proof on Defendant is a heavy one and it is submitted that she has not even begun to discharge it in this case. Even if her evidence is believed, she cannot succeed because clearly she has been negligent.

See e.g. Lord Reid 1016 D to F and Lord Hodson 1019 B to C.

(v) Whether there was any consideration for the Cuscaden Confirmation and/or 3rd Guarantee 30

The consideration appears on the face of the documents (AB 1 - 9 and 32) and in any event is otherwise quite clear.

The consideration for the Cuscaden

mortgage was the granting of overdraft facilities to Dwidaya, and the consideration for 3rd Guarantee was forbearing to sell Dft's shares and take steps to realise securities and if necessary bankrupt Yo.

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Forbearance to sue is good consideration.

10 See Crears v. Hunter (1887) 19 Q.B.D. 341, C.A.

Lopes L.J. said at p. 346 :

"The Law appears to be that a promise to forbear is a good consideration, but also that actual forbearance at the request, express or implied, of the defendant would be a good consideration"

20 Consideration See Halsbury's Laws, 3rd Edition, pp. 113 para 198.

See also Cheshire & Fifoot on Contract, 7th Edition, 67-7.

The Court will find a consideration if humanly possible.

(vi) Whether the mortgage of Cuscaden, if valid, is security for a maximum of \$100,000.00 and interest, if any.

30 No authorities have been cited by Defendant to support this proposition, nor do any exist. Quite clearly the proposition is misconceived because it ignores the nature of the security arranged on the deposit of Cuscaden deeds.

40 (See AB 1 - 9). There is no limit in P4 to the amount for which the security was given nor is there any evidence elsewhere of any limit. The limit of \$100,000.00 referred to

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in AB 1 - 7 and 8 is the limit imposed by the Bank, which was at liberty to increase the limit against the same security at any time (and did so).

- (vii) Whether Dft is entitled to have the Cuscaden Order set aside on the ground that she did not authorise Selvadurai to consent to it. The answer to this question is clearly "No". Firstly, the evidence of Selvadurai and Ng is quite clear that she expressly instructed Selvadurai to consent to the Order, Even if she did not, however, Lee & Lee were properly on the record, having entered an appearance for the Dft in O.S. 185, and Selvadurai had implied authority. 10

Dft does not allege she instructed him not to consent. 20

The Legal principles are as follows :-

- (a) Once legal proceedings have been commenced, a Solicitor instructed by a party to those proceedings to conduct them on his behalf, has, in the absence of instructions to the contrary, an implied authority from the client to compromise them.
- (b) In the same circumstances, the Solicitor has an ostensible authority to compromise, so that if the client has given instructions not to compromise, but such instructions have not been brought to the notice of the opposing party, the client will be bound by a compromise made in defiance of the instructions. 30
- (c) But if compromise involves the making of a Court Order, and the client repudiates the compromise before the Order is drawn up and perfected, the Court has a discretion to set aside the compromise, and 40

would normally do so if satisfied that client had not authorised the compromise.

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- (d) A further limitation on (a) and (b) is that neither the implied nor the ostensible authority to compromise extends to compromising the proceedings on terms which involve matters extraneous to the proceedings.

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See :

1. Halsbury's Laws - 3rd Ed. - Vol. 36 para 108
2. White Book 1970, Vol. 2, para 2009 et seq -
3. Neale v. Lennex (1902) 1 KB 838, and (1902) AC 465
4. Re a Debtor (1914) 2 KB 758
5. Shepherd v. Robinson (1919) 1 KB 474
6. Sourendra v. Srimati (1930) 46 T.L.R. 191

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Applying the four principles (a) to (d) to this case, and even assuming Dft never instructed Selvadurai to consent to the Order, principle (a) can be invoked by Bank.

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Thus, in her Amended Statement of Claim in S. 1909, para 9, she admits Selvadurai appeared on her behalf.

Clearly (b) and (c) do not apply.

As to (d), the entire transactions between Dft, Dwidaya and the Bank were admittedly so closely connected together that it could not be said that the term of the compromise as to Thomson Rise was extraneous.

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Thus, e.g. both Yo and Dft wrote letters to the Bank relating to BOTH accounts (e.g. AB 1 - 45; 46B - 46C 46F).

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(viii) Whether a concluded agreement was reached between Dft and the Bank through their respective solicitors pursuant to which the Dft through Selvadurai consented to the Cuscaden and Thomson Orders: 10

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The argument seems to be that there was no concluded agreement because the amount of the instalments to be paid was left to be agreed or decided by the Court, after Thomson had been sold.

This is misconceived and irrelevant.

(ix) Whether the Registration of Deeds Ordinance and/or the Stamp Ordinance precludes the Bank from relying on Cuscaden Confirmation, and whether Bank, even if it is so precluded, can nevertheless enforce its rights under the Cuscaden Order, or in other words, whether the Cuscaden Order falls to the ground with the Confirmation. 20

By an amendment to her pleadings in the 3rd week of the trial, Dft raised three new points, of which these are 2. 30

Dft submits Bank is precluded from relying on Cuscaden Confirmation in evidence because it is inadmissible as evidence of title under Section 4 of the Registration of Deeds Act. - In fact it is pleaded as being void, but this does not seem to be what has been argued.

The evidence as to the agreement for Dwidaya to have overdraft facilities is as follows : 40

YO

Yo said he knows nothing about Cuscaden

Confirmation, except he witnessed it in Loke's office on a date he believes was in 1962. He did not know what nature of document it was (11 a.m. - 6.4.1972).

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LOKE

Yo asked Loke for overdraft in October 1961 and offered Guarantee and Cuscaden as security (p.m. 10.4.72).

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He says that Loke told him that Yo had suggested that he might want an overdraft in the future and that the deeds were sent by Allen & Gledhill in August 1961 for safe custody but with the intention that they would be appropriated to Dwidaya's account in due course, when Dwidaya wanted an overdraft. He also says he knew that the deeds were to be held in safe custody pending the overdraft arrangement being made for Dwidaya. (noon 12.4.72).

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See AB 1 - 7 which shows that the arrangement must have been made at least one day before AB 1 - 8 and 9 - 11 were signed. There was, therefore, a verbal agreement between the Bank on the one hand and Dft and Yo on the other, prior to the signing of Cuscaden Confirmation. (Verbal agreement in all probability was made in September, because the Manager's approval for the facilities was needed and AB 1 - 7 would not have been made out prior to the Manager's approval being given).

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Thus, Confirmation is merely a record of the already completed transaction, because the Bank already held Cuscaden deeds, which became appropriated to Dwidaya's account when the verbal agreement was reached. Thus, there was no deposit of deeds accompanied by a Memorandum of Charge within the second proposition propounded by Braddell on page 214. The Bank's case comes within Braddell's 3rd proposition.

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If this wrong, then Bank relies on Kasmeeerah Haji Mohd. Taib (1901) 6 SSLR 104 and

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1904 & SSLR 113 (C.A.). Applying Kasmeeerah (which is binding on this Court) Cuscaden Confirmation is admissible, with the exception of those parts of it which record a deposit. Therefore, the following words should be rejected :

- (1) The Heading "Confirmation of Deposit of Title Deeds"
- (2) The words "that the title deeds relating to the undermentioned properties which were in your possession were to be held by you as security"

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Kasmeeerah was followed in the following two cases:

The Ho Hong Bank Ltd. v. Teo Tiang Seng trading as Chop Hock Chin Leong (1929) SSLR 195; and

Rumanathan Chettiar v. Chua Chin Chay (1933) 2 MLJ 69.

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NOTE: Stevens J. at page 202 of Ho Hong points out that it is only when an assurance is tendered as evidence of title that it is inadmissible in evidence, and at page 203 he says he can see no reason why these words should be given a wide interpretation which encourages fraud and that assurances, to be evidence of title, should be what are ordinarily known as documents of title. Stevens J. thought that a Memorandum of Charge of this kind is not an assurance which constitutes evidence of title and is therefore not within Section 4. There is no doubt that Stevens J. would have so held in Ho Hong but for the C.A. decision in Kasmeeerah.

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It is respectfully submitted that Stevens J's reasoning is correct. Terrell J. agrees with Stevens J. in Rumanathan Chettiar at page 70. However, both Stevens and Terrell JJ (and as has been already submitted, this Court) were bound by Kasmeeerah.

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However, it may be unnecessary to consider the above because it is submitted the

question of registration does not arise at all for the reason that Cuscaden Confirmation is not a registrable document under the Act.

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See Section 7 (1) and (2). Cuscaden Confirmation does not comply with requirements of Section 7(2)(a), (b) as to occupation of Defendant, (c) as to name of district.

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Section 7(5) is mandatory as to the form of a registrable Memorandum.

10 See also the Registration of Deeds Rules, 1934, which are still in force. G.N. 824 of 1934. See Rule 6(1) and Form No. 6 in the Schedule.

It is thus clear that Cuscaden Confirmation is not capable of being registered because it is not in the form required.

No obligation lies on Bank to prepare a registrable document. Bank will suffer by losing priority if unregistrable document.

20 See also Section 4".....may be registered....." Not mandatory.

There is clearly no obligation created by the Act for the lender to draw up a Memorandum at all and certainly not to draw up a Memorandum in registrable form.

See Neve v. Pennell 71 E.R. 427 at 434, 2nd para.

30 Machinery of Act cannot meet mischief intended to be remedied where no Memorandum at all exists. In that case, there was a document capable of registration which had in fact been registered. Accordingly, where there is no document capable of being registered, the position is the same as if there is a bare deposit with the intent to create a security.

40 Sec. 4 of this Statute cannot be construed as creating a disability (inadmissibility as to title) as against the Bank by reason of failing to perform an act (registering the memorandum), the performance

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of which is impossible by virtue of Sec. 7, there being no legal obligation on the part of the Bank to render such performance possible by drawing up a memorandum capable of registration.

Non-compliance of a Memorandum with requirements of form for registration does not appear to have been argued in any of the local cases on the point.

Thus, to summarise :

- (1) The Cuscaden Confirmation is not an assurance at all, but merely a confirmation of the previous verbal agreement; 10
- (2) If it is an assurance, only the words indicated above should be rejected, the intention to create a security by the deposit to be collected from the remainder of the document. Therefore, the Bank has an enforceable security, subject to paying stamp duty and penalty, which its Counsel has undertaken to do if the Court so directs; 20
- (3) Kasmeeah was wrongly decided, but it is not open to this Court so to hold;
- (4) Cuscaden Confirmation is not registerable at all.

Dft also pleads that the equitable mortgage is void for uncertainty because the amount secured is not stated nor is the Confirmation of Deposit of Title Deeds stamped so as to make the amount secured capable of ascertainment. 30

This argument presupposes that the Law has always been what is stated in Section 28 (2) of the Stamp Ordinance. The law, however, has not always been so. Under the Stamp Act 1815, 55 G.3, c.184, a security for an uncertain and indefinite amount attracted a fixed stamp duty of £25. See *Doe D. Scruton v. Snaith* (1832) 131 E.R. 356, at p. 358 (Tindal C.J.). 40

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There is no reported case in which it was held that a security for an uncertain and indefinite amount stamped £25 was void for uncertainty because the amount secured was incapable of ascertainment. It is submitted that this shows that Dft's argument cannot be sustained.

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If the Cuscaden Confirmation is a "memorandum under hand only, relating to the deposit of.....title deeds", it should have been stamped, but it has not.

The Court, however, may admit it in evidence upon the personal undertaking of the Bank's Counsel to stamp it and to produce it so stamped before the Judgment is drawn up. See *In re Coolgardie Goldfields, Limited* [1900] 1 Ch. 475.

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The next question, is whether the Cuscaden Order was nullified if the Confirmation is rejected. A consent Order can only be set aside on grounds for setting aside an agreement. See *Huddersfield Banking Company, Limited v. Henry Lister & Son, Limited* [1895] 2 Ch. 273, C.A. at p. 284 (Kay L.J.).

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In the present case the Cuscaden Order can only be set aside, if at all, on the ground of common mistake. It is, however, submitted that there was no common mistake. The Solicitors for both sides consented to the Order because

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- (1) The equitable mortgage had been created, and not because the Confirmation was admissible as evidence, and/or
- (2) The Bank and Dft had entered into the agreement relating to the sale of Thomson, the instalments to be agreed, and the sale of Cuscaden only as a last resort, an essential term of which was that the Cuscaden Order was to be taken, by consent.

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As to mutual mistake, see Bell v. Lever Bros. (1932) A.C. 161 at 227 per Lord Atkin - for a contract to be set aside on the ground of mutual mistake, the identity of the subject matter has to be destroyed by the mutual mistake. In our case, the subject matter of the application to Court was the existence of an equitable mortgage and not the enforceability or admissibility of the Cuscaden Confirmation.

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(x) (1) It is conceded that the Bank cannot rely on estoppel to preclude Dft making her objections under Registration of Deeds Act and or the objections under the Stamp Act as to Cuscaden Confirmation. However, this, of itself, does not affect the validity of Cuscaden Order.

(2) An estoppel however does arise as to Dft's allegations of non est factum and misrepresentation as to Cuscaden Confirmation of Deposit, and as to Cuscaden Order. The basis of the estoppel is that from May, 1966, Dft. as admitted in Hilborne & Co.'s letter 22.6.71 to Lee & Lee (AB 5 - 66) and as appears from the evidence, knew that the Bank's position was that Cuscaden was held as security for Dwidaya's overdraft.

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There was, however, no suggestion communicated to Bank from Dft or her lawyers or otherwise that the Bank was in any way mistaken or out of order in its attitude towards Cuscaden, until in Suit 1809 after the Bank sued Dft on the 3 Guarantees, she filed an Affidavit in the Order 14 proceedings in November, 1967; (Ab 3 - 1 to 4).

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Further, her solicitors, Tann Wee Tiong & Co. on 29.6.66 (AB 1 - 58) writing on behalf of Dft and Yo, had offered a legal mortgage of "all the properties under lien to your clients."

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This could only refer to Cuscaden and Thomson in respect of which equitable

mortgages existed. And this is confirmed by Tann himself (a.m. 7.4.72). She cannot therefore say that Cuscaden Confirmation is invalid or unenforceable because she had a duty to disabuse the Bank, which duty arose from May, 1966, or at some other date in 1966. Cuscaden Order was applied for and consented to as a result of negotiations between Dft's solicitors, Lee & Lee, and the Bank's solicitors. Order was obtained and acted on by Bank as a consequence of Dft's silence or inaction after May, 1966, and until she filed her Affidavit in Suit 1809, and an estoppel arises.

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LAW :

The essential factors in estoppel :

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See Spencer-Bower on Estoppel by Representation, 2nd Edition, paragraphs 3 and 4.

Hopgood v. Brown (1955) 1 AER 550 at 559
MacLaine v. Gatty (1921) 1 AC 376 at 386

Representation by silence or inaction -

ibid paragraphs 55, 56, 57.

Savage v. Foster SS E.R. 299

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Detriment or Prejudice (Alteration of position)

Spencer Bower

Para 110

"change in practical or business affairs or condition of representee". "actual and temporal damage" "may assume infinite variety of forms" e.g. cases where representor has secured to himself an advantage involving a corresponding and proportionate disadvantage to representee,

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by asserting the validity of ... a proceeding
in the conduct or course of litigation.

Para. 111

Where representee has abstained from taking
measures for his protection security or
advantage which he had in contemplation.

This is so even though there is no
impossibility or improbability of recovering
money ultimately, but trouble, expense, loss
of interest and delay are involved.

Para 110 ibid on page 103

In this case, Bank's agreement with Dft.
of which the 2 Orders form part, resulted
in Bank's being precluded from proceeding
against Cuscaden until Thomson had been sold.
Dft's representation was that the 2 Orders
of Court were valid and made with her
consent.

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In conclusion, it is submitted that the
Dft has failed on the facts and the law.

Sgd:- Donaldson &
Burkinshaw

19th April, 1972.

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1. Nature of the Proceedings - The Defendant admits signing all the four instruments, but there is a disagreement about the circumstances under which they were signed. The 1st guarantee (P1) can be disposed of; the Defendant admits agreeing to guarantee Dwidaya's account for \$100,000 at the request of her husband, Yo. The point that she was not liable to pay this amount was taken by Mr. Redrup in the initial stages having regard to what the Defendant told him about the events leading to the execution of this document and the Cuscaden deposit (P4), but liability was later admitted and judgment obtained. The claim under the 2nd guarantee is for \$200,000, against moneys owing on Trust Receipts given by Dwidaya to the Bank. The 3rd guarantee was for \$600,000 against "all money which now is or may during the operation of this agreement be owing" to the Bank. Finally, there is the Cuscaden deposit, alleged to be security for Dwidaya's account and the whole amount of its eventual overdraft amounting at the commencement of the actions to over \$1.2 million. All these claims carry interest, although it is pertinent to note here that no evidence was led on this aspect of the matter, nor was it explained from what date it was claimed interest ran in each case, or on what basis it was computable.

The defences to these claims are similar in one respect, that the Defendant did not knowingly, freely and voluntarily sign any of these 3 documents, although each signature is admittedly hers. In the case of the 2nd guarantee (P2) she denies that she was asked or, that she agreed, to guarantee Dwidaya's account in respect of trust receipts; in the case of the 3rd guarantee (P3) she admits knowingly signing the instrument but claims that she did so against her will under the pressure of threats from a bank official. With regard to the Cuscaden deposit, she says that she agreed that this property should be security for an overdraft, but it was her own overdraft that was in point, and then only as secondary security after that provided by the deposit of her stocks and shares. She denies that she was asked, or agreed, to deposit the title deeds of

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that property as security for Dwidaya or that she knowingly or voluntarily signed P4 for that purpose. She adds that all the documents, which were standard printed forms, were blank in the sense that the empty spaces, requiring to be filled in to adapt the form to the particular circumstances, had not been completed. She denies liability upon any of these instruments, as to the P2 on the ground that it was not her document (non est factum) and (by her counter-claim) that it was obtained from her by a false and fraudulent representation, as to P3 that it was obtained by the undue influence of the Bank's servant, and as to the Cuscaden deposit that it was not her document, or alternatively, that it was obtained by the Bank in circumstances amounting to fraud, either with or without the connivance of her husband.

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2. The Cuscaden Deposit - The Order of Court obtained by the bank in O.S. 185/66 on the 12.9.66 represents the most important part of the bank's claim against the Defendant. It is claimed, that by virtue of the document dated the 2nd October 1961, the amount due by the 19th March 1965, when Dwidaya's account was closed, was \$1.1 million (AB1 - 102); with compound interest at approximately \$100,000 per year, the present claim under this head is, in round figures, \$1,800,000. It would seem to be a surprising end result to a transaction entered into before Dwidaya had an overdraft and when the value of Cuscaden was a fraction of its present day worth. It is submitted that on the bank's own evidence, this claim cannot be sustained for the following reasons :-

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- (a) P4 is defective in form;
- (b) the circumstances attending its execution vitiate its validity;
- (c) even if it is valid, the Defendant's liability is limited to \$100,000.

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It is submitted that the instrument ought to have been registered as an equitable mortgage under the Registration of Deeds Ordinance, and that the provisions of Section 5 exclude its admissibility in the proceedings. Further, an equitable mortgage ought to have been stamped

under the Stamp Ordinance in which case the amount of the duty would, in the absence of a fixed sum in the body of the document, have governed the amount of security available.

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Reference is made to Forms 27 and 28 in Butterworths Encyclopaedia of Forms and Precedents (3rd Edition) (Volume 2 pages 350 - 352).

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10 P4 refers to deposited title deeds but there is no evidence that the deeds were deposited by the Defendant for Dwidaya's account, and the bank's evidence is vague and contradictory. When the bank's leading Counsel was asked by the Court what their case was with regard to the correspondence with Messrs. Allen & Gledhill (AB1 - 1, 2, 3, 5 and 6) he stated that the bank could offer no explanation for it, but that the deeds "were appropriated" for Dwidaya's account later. Loke testified that in the absence of any explanation he would expect the deeds to be received by the bank by way of security rather than safe custody.

20 Djeng's evidence was different. He said the deeds had been sent to the bank for a two-fold purpose, firstly, for safe custody, and secondly, as future security for Dwidaya's account. The desire for overdraft facilities was mentioned by Yo to Loke in December 1960 before Dwidaya had opened an account. The information had been passed on to him by Loke. It is significant that not only did Loke not mention this request by Yo in his evidence, but the substance of Djeng's evidence was never put to the Defendant, in regard to safe custody, or to Yo, in regard to the future overdraft. Again, Djeng's evidence is a direct contrary to Loke's evidence in paragraph 4 of his affidavit (AB3 - 28). Furthermore, it is difficult to accept that a bank which was to be recipient of deeds merely for the purpose of protective custody, would be prompted to write to their customers solicitors, let alone enquire about the details of the deeds.

40 It is submitted that Djeng's evidence is a deliberate but clumsy attempt to bolster a weak aspect of the bank's case and that the only acceptable explanation is the Defendants, that the deeds were sent to the bank as security for her then existing overdraft. If this is so, there was a valid deposit of title deeds in August by the Defendant, creating a charge in the bank's favour for the Defendant's overdraft, and the bank would have to show how

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this charge came to an end, and how the title deeds became security instead for Dwidaya's account. There was no attempt by the bank to lead any evidence on these matters; on the contrary, it appeared that P4 was drawn up in pursuance of an arrangement between Loke and Yo, and that the Defendant was not consulted prior to her coming to the bank to sign the instrument. The legal aspects of the matter referred to above will be dealt with separately later.

Passing to the circumstances under which the instrument was signed, apart from the absence of any prior agreement on the Defendant's part, it is common ground that her English was very limited and that she required Djeng's assistance in Mandarin, and that she had no independent advice. There being no fixed sum mentioned in the document, the Defendant would no doubt have been surprised to learn that her liability was unlimited, or limited only by the eventual value of her property. It is submitted that the circumstances attending the signature, accepting the bank's own evidence, are such that the contract is unenforceable on the ground of undue influence; whether, in fact, the evidence of Loke and Djeng on this, or any crucial aspects of the case, can be accepted is another matter and will be dealt with separately. Lastly, there is the question whether, if the instrument is valid, its validity extends to supporting an overdraft unlimited in amount, and about which the Defendant knew nothing. It is clear from the surrounding documents signed on the 1st and 2nd October (AB1 - 7, 8) that the permitted overdraft was \$200,000 and it is equally clear that this was divided as between the guarantee and the Cuscaden deposit. It is obvious, therefore, that had these documents been shown and interpreted to the Defendant she would have understood the clear intention expressed by these documents. Here again, a conspicuous weakness in the bank's case was observed and corresponding attempts were made by Loke and Djeng to remedy matters. They said the reference to \$100,000 only meant "\$100,000 at first" or in the initial stages, and that the overdraft could be extended by the bank. This somewhat vague formula was apparently intended to cover the fact that the overdraft increased without any relation to corresponding security;

no new overdraft limits were ever mentioned again, nor was there any further security on the overdraft until January 1965, when the circumstances were exceptional. The overdraft soared, and with the spacious accommodation afforded to Dwidaya, it was now suggested by the bank's witnesses that the Defendant's liability kept pace. Whatever the formula is worth, it has no bearing on the Defendant's liability, for it is the first rule of a guarantor's liability that it cannot be extended by the creditor without the guarantor's consent, and whatever might have been agreed between Loke and Yo, expressly or tacitly, could not advance the Defendant's involvement in the transaction. It is submitted therefore that the proper limit of the charge was \$100,000. So far only the Bank's case has been dealt with, but a further question arises out of the Defendant's evidence. Her evidence establishes a case under the doctrine of non est factum; the evidence of the principal parties will be reviewed later, but it is here submitted that in this area, namely, the truth regarding the actual signing of P4, the evidence of the Defendant and Yo is the more acceptable.

3. The Third Guarantee - The next document in importance is the \$600,000 guarantee signed on the 27th January 1965 according to the Bank. the Defendant, unlike the other two documents, knew what she was signing, but she signed it under protest in circumstances which clearly make it unenforceable. The proposition here is that whether there was consideration, real or apparent, or not, is beside the point, since the invalidating factor is the pressure brought to bear on an unwilling participant in a transaction. It was put to the Defendant that the withholding of bankruptcy proceedings against Yo and the postponement of the sale of her shares until after confrontation were the inducements which supported the validity of the guarantee. In fact, the expressed consideration for the guarantee was the continuing of the overdraft facilities, and it is submitted that for a victim of threats to succumb to them is no invitation to the offerer of these threats to disguise them as lawful consideration. Even if it were, the bank did not adhere to their bargain since the sale of the Defendant's shares took place before the end of confrontation.

The true assessment of this transaction

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must be made against the background of the prevailing circumstances. The dominant factor in these cases, without which they cannot properly be understood, is the unexpected political and economic consequences arising out of confrontation, which began in November 1963. Its full effects were not felt until towards the end of 1964, by which time Dwidaya's overdraft was over \$1 million. The only security for the overdraft, on the bank's case, was one guarantee for \$100,000 and Cuscaden, apart from a guarantee for trust receipts for \$200,000. It is suggested that it is clear that for a very considerable part of the period between October 1961 and January 1965, Dwidaya's account was only partially secured, and that the element of unsecured advances increased with the confidence generated by the advent of Malaysia in August 1963.

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If, as the bank appears to claim, Cuscaden was an unlimited security, no admissible evidence was given as to any valuation made at any time, and it is submitted that the truth is that the bank during the years 1962 and 1963 were not concerned about security. The atmosphere of economic buoyancy continued well into 1964, despite confrontation, but by the end of 1964 it was becoming clear that it was not a transient political event and thenceforward the economic and political depression set in. Even so, it is doubtful whether the bank would have taken any steps against Dwidaya's overdraft, had it not been for the Malaysian government's amendment to the law relating to foreign banks. This was published on the 29th December 1964, and early in February 1965, the Bank of China were given 6 months notice to cease business in August 1965. Clearly, one of the first considerations would be the current state of outstanding overdraft positions, and the desire to liquidates or secure them before August 1965. It is against this background that the Defendant's signature of P3 must be viewed.

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She says that she was in the bank 2 to 3 hours and eventually agreed to sign the document. She said that she telephoned Yo that evening in Kelantan, and she was not challenged on this nor was it suggested that Yo accompanied her to the bank. It is submitted that one of the most significant pieces of evidence arose out of the testimony of both Loke and Djeng that Yo was present,

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together with their certainty that the document was signed on the date thereof, the 27th January 1965. By a coincidence Yo was on that day in Honolulu, and his passport (Exhibit D5) shows that he was away from Singapore from the 26.1.65 to 1.2.65.

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10 It would seem clear that the evidence of Loke and Djeng was deliberately fabricated to give the impression that a wife had the protective presence of a husband when signing a document for \$600,000. Further, it underlines the probability that Loke and Djeng collaborated over the evidence to be given, since it would be strange for both to be mistaken about such an important interview which was apparently vividly remembered by all concerned. When taxed on this aspect, Djeng denied that he and Loke had ever discussed these proceedings, a statement difficult to accept, particularly having regard to the similarity of affidavits filed by them (AB 2 - 16, 19, 130, 132).

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It is pertinent to observe what happened after the 27th January 1965. An amount of \$2,411.48 was drawn on the account (AB 4 - 51) and 51 days later the account was stopped (AB 4 - 51 and AB 1 - 36A). Reviewing the evidence as a whole, the conclusion is inescapable that the unchallenged evidence of the Defendant represents the truth about what happened, that she was summoned to the bank while her husband was out of Singapore, that for the first time the enormity of Dwidaya's overdraft was brought to her attention that she resisted their overtures to sign the guarantee but eventually, after some 2 to 3 hours at the bank, succumbed to the pressure being applied to her, and that the same evening she telephoned her husband. The transaction cannot stand. Before leaving this episode, the double significance of the passport evidence should be noted, for it not only proves that Loke and Djeng are unworthy of credit. The Defendant recalls telephoning Yo in Kelantan where he was staying in the Hotel Miramar at Kota Bharu; not only was Yo not in Singapore but it could not have been the 27th January when the document was signed since Yo was then in Honolulu. This point will be alluded to when the general evidence regarding the 3 documents is considered.

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4. The Second Guarantee - This guarantee, P2,

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is dated the 12th January 1962. Unlike P1 and P4, which were witnessed by Yo this document was witnessed by Loke, using his full name. The Defendant does not admit knowingly signing any such document, and can only surmise that it might be the document which she signed on an occasion when she was called to Yo's office at the request of Loke. On arriving she was informed by Loke that the previous guarantee for \$100,000 was defective in form and that the instant document was in substitution for it. She thereupon signed the document in good faith. Djeng was not present. Yo's recollection of the transaction appeared to be minimal, except that he suggest that it was signed much later in late 1962 or 1963. The bank's witnesses reiterated the familiar story. P2 appears to be a guarantee for trust receipts using the standard form for overdraft on current account. Reading the document objectively it appears to be a guarantee of the amount due or to become due on overdraft and the affording of trust receipts facilities to Dwidaya merely the consideration. However, Djeng when questioned clearly stated that the guarantee was intended to be of the amount due on trust receipts and he is the person who purported to explain the effect of the document to the Defendant. It is submitted that on the bank's own version of what took place the explanation must have been wrong. A further point is that despite the fact that Yo clearly disputed the date of the document, January 1962, on the ground that the machinery for his factory at Klang, Federal Fibre Works Limited, was not required till 1963, no evidence whatsoever was produced to show the utilization of the trust receipt facilities in 1962, and such exhibits as were produced tended to support Yo's testimony (p 6, A, B & C and P 7, A, B & C). The Defendant's evidence, and more so that of Yo's, are less certain and clear than in respect of P3, but this is because the Defendant signed the document put before her with full trust in Loke. It must be remembered that from the year 1960 the Defendant signed literally hundreds of share transfer forms in blank without a thought. The Defendant's evidence on this document, though negative in character is not for that reason less persuasive. She was adamant that she had signed no such document, nor did she have any knowledge of trust receipts. It is submitted

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that this document, along with P3 and P4 cannot stand.

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5. Review of Documents Generally - If the bank's case is correct, it necessarily follows that the Defendant in the course of 4 months from October 1961 to January 1962 committed herself to guarantees in the sum of \$300,000, and her own hearth and home, the refuse of herself and 5 children, ranging from the age of 3 to 13, and this in the face of her own knowledge that her husband was a bold businessman prone to taking risks. From any point of view it is inconveivable that a wife and mother should be so needlessly foolish, and it is submitted that her own evidence, that she agreed to guarantee her husband's account to the extent of \$100,000 with considerable reluctance is the truth, and that she had no idea whatsoever that she had signed documents which later were produced as P2 and P4. There is also the evidence relating to the 3 documents generally. It appears that all the documents were prepared in advance by the bank without any prior agreement or even consultation with the Defendant. They were explained but not interpreted. She received no independent advice nor was she given copies of the documents which at least would have enabled her later at her leisure to seek independent advice. She knew nothing about the affairs of Dwidaya nor was she given bank statements or any information at all about the state of the overdraft and the large debt it was increasingly incurring to the bank. All this evidence was unchallenged. Furthermore, the bank's evidence about when, where and how the documents were signed was curiously flat and skeletal in character. There was nothing circumstantial about the time of day, words passed other than the "explanation" of the document to support their case, or any remembrance of detail which one might expect to be mentioned. It is submitted that the reason for this is that the evidence of Loke and Djeng as to the place where P2 and P4 were signed is not worthy of credit, that if in fact all the documents, P1, P2, P3 and P4 had been signed in the bank premises, the evidence would not be of such a tentative and sketchy nature. In particular, it is submitted that while there appeared to be a practice that documents of this kind were witnessed by a bank official, this practice was subject to exceptions. This

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evidence was typical of the bank's witnesses' testimony - the rule or practice with the convenient exception. P1 and P4, both dated the 2nd October 1961 were both witnessed by Yo. Was it because of the exception to the rule or was it because as testified by the Defendant and Yo they were signed at the house, that they were brought home by Yo for her signature. It was proffered as a reason why Yo witnessed these documents that a husband was the logical and desirable witness to a document of this character signed by his wife. In that case, why did Yo not sign P2 and P3? On behalf of the Defendant it is contended that Yo was the natural witness to his wife's signature; on the contrary, there is clearly a possibility of a conflict of interest between husband and wife where the relationship of debtor and guarantor exists between the, and prudence would dictate that that putative conflict ought not to be postulated on the document itself. However, that factor would not be present to a wife signing a document in her own home or to her husband unversed in these matters. It would then be natural for the husband's signature to appear as witness. Again, the evidence of the Defendant in that P2 was signed in Yo's office in the presence of Loke. It is of no consequence, whatsoever whether P2 was signed in Yo's office or in the bank and one wonders why the Defendant should be so insistent on this score unless it was true. It is submitted that on a fair appraisal the evidence of the Defendant is the true version and that P1 and P4 were signed at the home and P2 in Yo's office. Before leaving this aspect of the matter, it might be noticed that P3, the only document where persistent pressure was employed, was witnessed by Loke, but instead of using the normal signature as seen in P2 and P5, a mere curved loop is used. In evidence Loke called this his initial, but if so, it has no identifiable character and is a somewhat informal mode of witnessing a formal document. The inference might not unfairly be drawn, it is suggested, that identification was not particularly desired with respect to that document.

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6. The Defendant as a Businesswoman - It is submitted that in no proper or serious sense can the Defendant be described as a businesswoman or a person of business acumen or having a knowledge

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of business affairs. Djeng proffered this opinion, but when asked on what it was based he said that she dealt in shares and "good" property. There must be many women who, having the resources, and professional advice, are able to make a profit out of shares and property, without having any knowledge of business in the accepted sense. In any event, circumstances showed in the end that she lost all her previous gains on the share market, and the ultimate comment on her business ability is the fact that she finds herself in the position which she does in these actions; a warranty of business acumen and ability is hardly consistent with a willingness to sign documents which are not properly understood.

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7. The Evidence of the Witnesses - A general appraisal of the witnesses and their evidence and demeanour will here be attempted. The two leading characters in the proceedings were the Defendant and Loke, and thereafter Yo on the one side and Djeng on the other. The other witnesses gave testimony of an indirect character, but of these Redrup, Tann Wee Tiong and Selvadurai were important.

The Defendant herself was a steadfast witness, and broke down only after nearly 3 days in the witness box. This was not a breakdown in veracity, but was the natural result of emotional strain. Even her answer at that juncture was, it is submitted, a most relevant one for it brought into focus the despair she felt when she thought there was no way out of her difficulties. It was made clear beyond any doubt by her evidence and that of Mrs. Collins and Yoong, that her English in 1961 was no more than a smattering, enough to make herself understood only at a basic level. Moreover, Mrs. Collins noted that her capacity for absorption of the language was poor. Little, if any essential inroads were made by the cross-examination of the Defendant although she was subjected to prolonged and persistent questioning. Yo was, on the whole, an unreliable witness and uncertain in his answers. At times he gave the impression that he was or might be concealing something, but nothing eventually emerged which could form the basis of a suggestion that he and Loke were, in fact, participants in some arrangement to induce the Defendant to sign documents for Dwidaya's accommodation, the alternative defence pleaded. Yo's ability as a witness may be no

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guide to his ability as a businessman, although all 3 ventures in which he was engaged in the five year period appear to have ended in failure. He clearly ran Dwidaya's affairs with the assistance of a small staff, and from 1962 onwards he and Loke often met, according to Loke, in Yo's office at No. 33 in the bank building. His evidence was negative in character in so far as the Defendant's case was concerned and neither materially advanced or retarded it. The evidence of Redrup was important in the following respects:-

- (i) to ascertain the attitudes of mind of the Defendant in October 1967;
- (ii) to explain the mis-statements and errors contained in affidavits and pleadings filed in October and November 1967.

It is evident that Redrup was hard pressed in the second half of October and first half of November 1967, during which he was away from Singapore from the 27th October to 8th November. Not only were there the pleadings in Suit No. 1809 to be drawn but also an application for summary judgment to resist. Furthermore, the proceedings in Suit No. 1909 of 1967 were commenced on the 20th October. It was virtually impossible in the limited time available to obtain detailed and accurate instructions relating to events which had occurred over a period of 6 to 7 years, and in these circumstances it is submitted that it is not surprising that mistakes were made. Redrup confirmed that the Defendant did admit the fact that Yo had requested her to become guarantor in the sum of \$100,000, but he explained why he nevertheless denied liability on P1. He also confirmed that one of the Defendant's main grievances was the poor service she had received from her previous lawyers who took the view that liability could not be disputed because she admitted that the signatures to the documents were hers. This raises the question of the testimony of Tann Wee Tiong and Selvadurai. It was known, of course, that the former's evidence would not confirm some aspects of the Defendant's case but it was felt that he must be called since he was a material witness. In some ways, the evidence of Tann Wee Tiong is the most perplexing.

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One is reluctant to offer criticism of his conduct of the proceedings, but the fact is they do appear to have been somewhat half-hearted, and neither he nor Selvadurai apparently considered the desirability of at least scrutinizing the relevant documents for the purpose of considering their validity. It is strange, if it is the truth, that the Defendant did not conceive the idea of denying knowledge of the nature and contents of P2 and P4 until 17 months after the original letter of the 26.5.1966 (AB 1 - 50), and that then it should suddenly strike her. One gets the impression that the feeling of hopeless despair engendered in her was induced by the pessimism of her legal advisers. For example, the circumstances surrounding the signature of P3 stand out in clear relief, and this document was mentioned in the original letter (AB 1 - 50). In marked contrast to Redrup who asked for photostat copies of the guarantees at once (AB 1 - 191) the files of Tann Wee Tiong and Selvadurai are devoid of statements and notable for a general absence of notes or instruction. The unchallenged facts about P3, ought, at the least, to have raised a doubt about the validity of the transaction. Both Tann Wee Tiong and Selvadurai stated that the main concern of the Defendant and Yo was delay. No doubt this was a factor, particularly when Confrontation appeared to be ending, but it was not necessarily the only or even the most important factor, and particularly in the case of Selvadurai who had personal charge of the matter for 10 months and inspected P4, one would have expected some discussion as to the circumstances under which it was signed. The truth is that instructions were mostly given by Yo, although there is hardly a scintilla of evidence that Yo was acting as the Defendant's agent, and the furthest Selvadurai ventured in this respect was to depose that the Defendant stated that Yo knew all about the facts and would be able to instruct him. This does not establish agency, particularly in circumstances where the possibility of a conflict of interest had become a reality, it being clear that the wife as guarantor or mortgagor was being pressed by the creditor of the husband. From May 1966 to October 1967 the attendances by the Defendant on her two solicitors, on their own evidence, amounted to six. In each case, one of these was denied by the Defendant, in the case of Tann

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Wee Tiong, to his office, and in the case of Selvadurai, the fact that she had any business discussion on her visit to his residence. Tann Wee Tiong had no attendance slip, statement or notes regarding the visit to his office, and supported this evidence that she did visit his office by stating that it was "his practice" to have at least one visit from the client in his office. It adds or subtracts nothing to the Defendant's case that she did so, yet the Defendant says she did not; likewise, it takes her case no further to give the pictorial account of her crying and retiring to her room at her own residence, yet she insisted on this evidence, knowing that it would not be confirmed by Tann Wee Tiong. It must also be borne in mind that neither Tann Wee Tiong nor Selvadurai come into the category of naturally impartial witnesses; the very substance of the contested conversations revolves round the duty of a solicitor to his client, and the sort of flawless integrity which compels a man to inculcate himself out of his own mouth is not a common commodity in the market place. Two other witnesses for the Defendant (the evidence of Selvadurai having been dealt with together with that of Tann Wee Tiong) were Kao Wei Tseng and Seow. The former made it clear that the statement contained in affidavit regarding the deposit of the Cuscaden title deeds on the 1st October 1961 was based on assumption not fact (AB 3 - 108 para.2); in fact, he had no personal knowledge of the contents of the affidavit. Seow testified that he wrote letters while in the employment of Dwidaya on the instructions of Yo and that he never saw the Defendant sign any of these (AB 1 - 37, 38, 40, 42, 44, 45, 46B, 46D, 46F, 46H). It was conceded by the bank that the only other letter (AB 1 - 187) was written by Ong Boon Ean also known as Bunny Ong.

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It is submitted that neither Loke and Djeng were forthright witnesses, bearing in mind that they claimed to have personal knowledge of the affairs of the Defendant and Yo and the circumstances under which the documents were signed, and it is submitted that they were not telling the truth about the place of signature of P1, P2 and P4. There were significant differences between them on vital issues e.g. the history of the deposit of the Cuscaden deeds by

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Allen & Gledhill in August 1961, and the proper interpretation of P4. The following are some of the significant questions to and answers by Loke on the latter topic :-

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"Q. If her limit of liability is up to \$100,000 on P4 on the 2nd October 1961 how could that liability at any time change".

"A. I don't know".

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"Q. If you had decided the very next week that you wanted a legal mortgage that would be for \$100,000.".

"A. Yes".

"Q. When the defendant wanted to deposit title deeds in the bank, the important thing is to tell her what the amount of liability is in the form to be signed by her. Is that vital?".

"A. Yes".

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"Q. What did Mr. Djeng say to the Defendant".

"A. Mr. Djeng might have told her that her liability is \$100,000".

"Q. To your knowledge were any steps taken to increase the Defendant's liability under Cuscaden to cover the increasing overdraft".

"A. No."

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The truth of the matter is clearly revealed. Even on the bank's evidence, the Defendant was simply asked to sign a document, nothing was said about liability, and Loke and Djeng have but the haziest idea about the rights and liabilities which P4 gave rise to.

The evidence of both is equivocal in content, in many respects contradictory, and it is submitted that it is wholly unreliable; and in one respect, as has been mentioned, the fortuitous presence of Yo in Honolulu showed that they were both prepared to perjure themselves in order to present a united

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front against the Defendant. If they were prepared to do that with regard to one instance, there is no logical reason for supposing that they would not do it in respect of all the others. Other answers in cross-examination are not worthy as showing what the bank conceived their case to be

"Q. Your proposition is that once any customer signed one of these documents (P4) in respect of third party's overdraft the liability is unlimited." 10

"A. Yes."

"Q. If the value of the property coincidentally also went up to a million the bank would take a million dollars overdraft".

"A. Yes, that is correct."

"Q. If P4 can be security for any amount but if the original overdraft was arranged at \$200,000 would not the person who gave these title deeds be given notice that the overdraft was over \$200,000." 20

"A. No."

"Q. You knew the overdraft was over \$200,000."

"A. Yes."

"Q. Did it cause you any concern."

"A. I can't remember."

"Q. You had no discussions yourself with Yo about the state of Dwidaya's overdraft". 30

"A. I can't remember."

On a number of occasions, Loke's memory apparently deserted him on aspects of the matter one would have expected him to remember; it is difficult to believe that a current account gradually rising to a \$1 million overdraft would not be alluded to between banker and customer, and there is no suggestion that Yo

dealt with anybody but Loke. Similarly, it appears strange, it is suggested, that the fact that a woman was prepared to involve herself so deeply in respect of a business which Loke himself acknowledged to be attendant with risks should make no impression upon him. The evidence of Loke and Djeng, it is submitted, is inconsistent in content and unconvincing in the manner in which it was given, e.g. all documents have to be signed in the bank, but not all documents; all documents have to be signed by bank official as witness but not all documents (P1 and P4); the Defendant and Yo always came to the bank together, but not for P5 (when the Defendant came alone) or P3 (where they were found to be lying); all documents were dated on and with the very date they were signed, but the evidence clearly shows that this was not so about P3.

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8. Documents - The principal documents have already been referred to, together with the application for Dwidaya's overdraft (AB1 - 8) which it is submitted is the single most important document apart from the correspondence between Allen & Gledhill and the bank.

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The letters in March 1965 to the Defendant (AB1 - 36) and to Yo (AB1 - 36A) indicate that following the edict by the Malaysian Government the bank was taking steps against outstanding debtors to liquidate their debts. AB1 - 37 shows that Yo tended to identify the Defendant with his business, although she had no interest therein. AB1 - 42 refers to the attempt made by Yo and Loke to transfer the overdraft and security represented by shares to OCBC; it also establishes that Loke tended to identify the Defendant and Yo, since the Defendant apparently was not informed of these negotiations. The letter comprised in AB1 - 58 must be approached with caution, since it typifies the loose and imprecise manner in which the Defendant's and Yo's affairs were being handled in 1966. On the 15th June, Messrs. Donaldson & Burkinshaw had written 3 letters, two in respect of Dwidaya (AB1 - 55 and 56) and one in respect of the Defendant (AB1 - 56A). AB1 - 58 is a reply to Donaldson & Burkinshaw in respect of both overdrafts, and cannot be construed as in any way an admission by the Defendant that Cuscaden or Thomson were security for Dwidaya's overdraft.

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The letter comprised in AB1 - 90 is important in relation to the bank's claim; although at the trial, there was no formal statement as to the amount of the bank's claim, this letter makes it clear that interest only runs from the date of demand, namely the 15th June 1966 (see para. 5 of the letter). AB 1 - 127 is the application in O.S. 269/66, showing the bank originally intended to obtain a legal mortgage of Thomson in respect of the Defendant's balance of overdraft of \$458,501.51. AB 1 - 146 shows how the application, by virtue of Kao's affidavit, became an application for both overdrafts to the extent of \$1,936,084.71.

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AB3 - Page 5 contains a tacit admission by Kao that the title deeds deposited by the Defendant for her own overdraft, in that he says - "As further stated in Paragraph 3 of her said Affidavit, the Defendant in August 1961, had deposited certain title deeds as security for her said overdraft". It is true that Kao was not personally familiar with these matters, but it is fair to assume that a responsible official of the bank would take steps to ascertain the relevant facts before making an affidavit. On the other hand, if it is simply an error, it is no worse and no better than those made by the Defendant in October and November 1967.

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AB3 - 29 paragraph 8 makes it clear that according to Loke overdraft facilities were granted to Dwidaya only after P1 to P4 had been signed. AB3 - 92 paragraph 2 is a statement made by Kao that the statements deposed to in that affidavit are true of his own personal knowledge whereas in evidence he admitted that the contrary was the truth; this is yet a further indication of the willingness of the bank official to make statements or give evidence without much scruple if the bank's interests were to be further advanced. Finally, there is AB3 - 171 paragraph 2 of the effect that the Thomson title deeds were deposited on the 18th November 1963 the fact directly contradicted by the bank's own Exhibits P8 and P9.

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AB4 - The bank records of Dwidaya show that although it was alleged by Loke and Djeng that the Cuscaden deposit was in fact a security for an unlimited amount yet throughout it was noted in these documents that the security was \$100,000 against property" meaning Cuscaden. In connection

with Kao's statement (AB3 - 92 paragraph 4) that Dwidaya's overdraft was at all times secured. It is to be noted that no valuation of Cuscaden was produced which would have indicated the value of the security at any given time bearing in mind that as admitted by Loke the amount allowed on a moveable property was from 50% to 60% depending upon the class of the property concerned. During the period from October 1961 to March 1965 when the account was closed the value of Cuscaden fluctuated considerably and if that property was security for more than \$100,000 one would have expected some evidence of valuations of the property during that period. It is submitted that the inference is clear, namely that if the bank gave any thought to the security of Dwidaya at all which it is suggested they did not, the valuation of Cuscaden and in particular the possibility of its valuing exceeding \$100,000 played no part in their considerations. Further, although the matter was never tested it would appear by analogy with the Thomson deposit that the clear intention was that Cuscaden was security for \$100,000 only. The note on the Defendant's overdraft e.g. AB4 - 90 shows that that overdraft to be good for \$700,000 as against Thomson and this coincides with her application for an overdraft of that amount (AB1 - 24).

9. LAW - The following aspects of the Law have been dealt with in oral submissions made to the Court:-

- (1) the law relating to undue influence;
- (2) the doctrine of non est factum;
- (3) the validity or otherwise of P4 having regard to Section 5 of the Registration of Deed Ordinance;
- (4) the validity of P4 having regard to the fact that the amount of the security provided thereby is unlimited and unascertainable (see Section 28 of the Stamp Ordinance and the definition of "Mortgage" in that statute).

It is further submitted regarding the correspondence between Messrs. Lee & Lee and Messrs. Donaldson & Burkinshaw (p5 - 5 to 15) which preceded the Order of Court made on the

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12th September 1966 in O.S. No. 185/66 that such correspondence did not give rise to a concluded contract between the parties, on the ground that the amount of the future monthly instalments to be paid by the Defendant to the bank after the sale of Thomson were not provided for (see Scammell v. Ouston (1941) 1 AER 14 and Chitty on Contracts (23rd ed.) Volume 1 paras. 78 et seq). On this omission being pointed out to Mr. Selvadurai, he expressed the opinion that in the case of a failure of the parties to arrive at an agreement on this question, the Court would be asked to decree what amount was reasonable. With respect, it is doubtful whether any jurisdiction lies in the Court to conclude an unconcluded contract. It was further submitted that even if this was a concluded contract, an essential term thereof had not been performed, namely, the sale of Thomson. The correspondence in question led directly to the Order of Court, and the above submissions are intended to provide additional reasons why the same ought to be set aside.

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A point taken by the bank was that Counsel having authority to compromise an action, the client, the Defendant, is bound by Counsel's consent to the Order, whether the client authorised it or not, so long as Counsel did not act contrary to express instructions. On the basis, therefore, that the Defendant did not inform Selvadurai that Cuscaden was charged for her and not for Dwidaya's account, but that she did not authorise Selvadurai at the meeting on the 24th August 1966 to consent to the said Order, it is said that nevertheless she is bound by her Counsel's consent. It is submitted that there are two answers to this. Firstly, the agreement which led to the consent order on the 12th September was an agreement arrived at between the parties solicitors in their capacity as solicitors. Secondly, there was no compromise of proceedings within the meaning of those words. What took place on the 12th September was the consummation, in the shape of a consent order, of the agreement previously arrived at between the parties solicitors. In no proper sense can that be described, it is submitted, as a compromise by Counsel of proceedings before the Court.

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There are also two points on the estoppel.

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10 Firstly, it is said that although the Defendant
was given notice of AB 1 - 50 that it was being
alleged by the bank that Cuscaden was security
for Dwidaya nevertheless the Defendant stood by
and took no action to protest against that
assertion. It is not understood how these bare
facts raise or can ever raise an estoppel, the
essential ingredient of which is that the
representee should alter his position to his
own detriment. What detriment is there to the
bank in this case? They have not been prevented
from pursuing their claim in these proceedings and
if that claim fails it will not be on the ground
of the Defendant's silence following the receipt
of the letter in question. The same answer would
appear to be valid with regard to the other point
of estoppel now comprised in paragraphs 7c and
7d of the Amended Defence in Suit No. 1909. It is
therefore submitted there is no substance in these
20 points which cannot avail the bank.

10. CONCLUSION - It is not a necessary part of
the Defendant's case that the bank acted dishonestly,
except in relation to the 3rd guarantee where
improper pressure was brought to bear upon her in
order to induce the execution of the document.
Further, if P2 is in fact the document which the
Defendant says Loke requested her to sign in Yo's
office in substitution for the defective first
guarantee (as the Defendant assumes it is) that
30 would be a clear case of a false representation.
But fraud, as a tortious wrong, is not the basis of
her defence to the claims in Suit No. 1809 or her own
claim in Suit No. 1909. It is suggested that the
following circumstances led to the signature of P2
and P4 without the Defendant being aware of the
true nature or meaning of the instruments :-

(i) the fact that the signing of documents
was entirely consistent with what the
Defendant conceived to be her own
40 obligations towards the bank, namely,
arising out of her title deeds being
deposited with the bank, the signing of
blank transfer forms for shares, and
her agreement to become guarantor for
Dwidaya's account to the extent of
\$100,000;

(ii) the failure of the bank to separate and
to keep separate the accounts of the

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Defendant and her husband. The two accounts were entirely individual in character, yet there was a persistent tendency to blur the outlines of their identities. According to Loke it was Yo who said that his wife would be prepared to deposit the deeds with the bank and to sign P1 and P2, and on the strength of these assurances the documents were prepared without further ado. The bank failed, apparently, to appreciate the inherent dangers of transactions of this kind, and the desirability of ensuring that the wife was independently advised.

(iii) the pattern of socio-economic conditions in the years 1961, 1962 and 1963, the years of active growth for both overdrafts. It was a period of bounding confidence increasing towards the advent of Malaysia in August 1963. They were conditions likely to suppress any qualms the bank or Yo, if it is true that he was a party to the arrangements leading to the signature of the documents, might have regarding the Defendant's position. It was never expected that the guarantees or the Cuscaden deposit would in fact be called upon, and the events of those years served only to fortify that view.

The conclusion is that the bank's judgment and the working of its executive and administrative controls left much to be desired and allowed them to participate in the transactions which have led to the present proceedings.

It is submitted that there should be judgment in both suits in favour of the Defendant.

Sd:- K.E. HILBORNE

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No. 26CLOSING ADDRESS BY PLAINTIFFS' COUNSEL

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Godwin : The Bank's claim in the two actions is under the three guarantees. The sum of \$100,000 under the first guarantee has been paid. The claim is now under the 2nd and 3rd guarantees. (By consent the question of interest under the 2nd and 3rd Guarantees will be referred to the Registrar if it becomes necessary to do so).

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Defendant has had 18 years of experience in business of different kinds. She is a shrewd, intelligent and hard-headed woman.

Selvadurai did what he could for Defendant who was in a weak bargaining position. He achieved the objective sought by Defendant and Yo i.e. to prevent 28 Cuscaden Road from being sold until other means had been exhausted.

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Defendant and Yo mentioned a clerk named Chua but he was not called to give evidence.

Redrup was the first solicitor to whom Defendant mentioned that the Bank had been guilty of fraud.

It would have been to Selvadurai's advantage to give evidence which favoured Defendant's case as he is in danger of being dued for negligence by Defendant. I submit he told the truth.

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Loke and Djeng were dismissed in 1965. If they were not truthful persons they could have given evidence against the Bank - they had a motive for doing so.

Did Yo exercise undue influence over Defendant entitling Defendant to relief?

Howes v. Bishop (1909) 2 K.B. 390.

Bank of Montreal v Stuart (1911)
A.C. 120 at p. 125.

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Absence of independent advice.

Howes v Bishop (1909) 2 K.B. 390 at p. 395.

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As to the plea of non est factum, I refer to Saunders v Anglia Building Society (1971) A.C. 1004.

Thursday, 20th April, 1972.

On 29.3.72 p.m. Defendant said she did not know when she signed P4. She said it was blank and she signed it in the Bank without paying attention to the contents. In order to establish the plea of non est factum and to argue that she is only liable for \$100,000, if at all, she must testify to the effect that she knew that Dwidaya Trading Company's overdraft was limited to \$100,000 at the time she signed P4, that she was told by the Bank that that was the extent of the liability and that she signed on that basis and that those representation operated on her mind. In any event Defendant cannot rely on non est factum because she paid no attention to it. Further, the contents of P1 and P4 were explained to Defendant by Djeng who also said she looked at them.

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There was a concluded agreement before the sale of Thomson Rise was withdrawn. After that certain variations were discussed in the correspondence. Eventually two orders were made by consent. These orders contain the final terms of the agreement.

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As to the point about failure to register P4 the following cases are relevant.

Kasmeerah v Hadjee Mohamed Taib (1901) 6 S.S.L.R. 104; (1904) 8 S.S.L.R. 113 Court of Appeal.

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Samy Nathan Chetty v Ramasamy Chetty (1904) 8 S.S.L.R. 117.

Re M.D. Mistry (1904) 8 S.S.L.R. 122.

Ho Hong Bank, Ltd. v Teo Chin Chay
(1929) S.S.L.R. 195.

A.R.A.R.M. Ramanathan Chettiar v Chua
Tiang Seng (1933) 2 M.L.J. p.69.

Braddell's Law of the Straits
Settlements Vol. II p. 208 et seq.

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The verbal agreement for the overdraft between the Bank and Defendant and Yo whereby money was to be advanced against deposit of the Cuscaden deeds could not have been made later than 1.10.61 and was probably made some days earlier. The manager had to approve the application and that would have taken some time.

Alternatively I rely on Kasmeeerah's case.

In the further alternative I submit that P4 is incapable of registration.

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Neve v Pennell 71 E.R. 427 at p. 434.

Kasmeeerah's case in Court of Appeal (1904) 8 S.S.L.R. at p. 116 - there was no obligation on the Bank to draw up a memorandum of any kind, whether or not it is capable of registration. Section 7 Registration of Deeds Act (Cap. 281 Ed. 1970).

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Registration of Deeds Rules, 1934 are still in force. Gazette Notification 824 of 1934. See Rule 6(1) and Form No. 6 in the Schedule.

P4 does not comply with section 7(2) (a). It does not give the occupation of the Defendant. It does not give the district in which the land is situated. It is not signed by the Bank (see Rule 6(i)).

Doe d. Scruton v. Snaith 131 E.R. 356.

There is no need to specify the limit of the overdraft either expressly or by

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Closing Address by Plaintiffs' Counsel 19th April 1972 (continued)

reference to ad valorem duty.

Huddersfield Banking Co. Ltd. v. H. Lister & Son Ltd. (1895) 2 Ch. 273 at p. 284 - a consent order of court can be set aside on the ground of common mistake.

None of the grounds on which a consent order can be set aside exist in this case.

Friday, 21st April, 1972.

Even if P4 is held to be inadmissible, that does not affect the consent order in O.S. 185/66. That order is independent of P4.

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Huddersfield Banking Co. Ltd. v. H. Lister & Sons, Ltd. (1895) 2 Ch. 273 at p. 284.

The court order - it is an agreement of the parties carried out by the court. Defendant is estopped from denying that the title deeds were deposited to secure Dwidaya Trading Company's account and she is estopped from disputing the validity of the order her counsel having consented to it and the Bank having acted on it.

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Closing Address by Defendant's Counsel 21st April 1972

CLOSING ADDRESS BY DEFENDANT'S COUNSEL

Hilborne : Referring to p. 8 of Godwin's written submissions, the facts have to be put in proper perspective. (1) Redrup was very hard pressed at the time. He was endeavouring to grasp a complicated set of facts. The law was complicated. (2) Defendant's English was poor. (3) There is no satisfactory evidence that these documents were properly explained to Defendant.

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As to p. 9, paragraph (2) there was no contradiction in Defendant's evidence.

As to p. 9, paragraph (3) it is a case

of making a mountain out of a molehill.

As to p. 10, paragraph 4(a), Redrup said "liability was for me" i.e. it was for him to decide the question of liability.

As to p. 11, paragraph (7), Chua was not called on behalf of Defendant to give rebutting evidence because his evidence would not have gone to the heart of the matter.

10 As to p. 13, paragraph (9), Defendant was explaining the position after Yo had become a bankrupt.

As to p. 17, 18, Djeng gave evidence to plug a hole in Loke's evidence.

As to p. 18, Loke never discussed the matter with Defendant.

20 (Godwin : The effect of the oral evidence and p. 7 and 8 of AB1 and P4 is that the verbal agreement referred to in P4 was arrived at between Yo on Defendant's behalf and Loke on the Bank's behalf and confirmed in writing on P4 by Defendant).

Hilborne : This is a last minute thought on the part of Godwin.

(Godwin : P4 is a confirmation - Defendant assents to the arrangement made between Yo on her behalf and Loke on behalf of the Bank).

30 Hilborne : As to p. 23, I say that Defendant was illiterate. This differentiates the present case from Bank of Montreal v. Stuart where Mrs. Stuart was a confirmed invalid.

As to non est factum, I refer to Saunders v. Anglia Building Society (1970) 3 All E.R. 961 at p. 963 b 3, 969 f, 971 f, 973 b.

40 It is iniquitous of the Bank to sue Defendant for \$1,200,000 on a document (P4) which laid down a limit of \$100,000. The

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doctrine of non est factum applies to this situation. Even if this court finds that Defendant knew that she was signing P4 as security for Dwidaya Trading Company's account the fact that this enormous sum is being claimed makes it a case of non est factum.

Hilborne : Kerr on Fraud & Mistake 7th Edition
p. 223, 224, Deane v. Hagan (1961) 3
All E.R. 380 at p. 383 G 3. Morgan v.
Pike 139 E.R. 195.

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27 Halsbury's Laws 3rd Edition p. 435
para. 863.

P4 being inadmissible, nothing that happened in 1966 can help the Bank.

(After discussion about the question of stamp duty Godwin undertakes on behalf of the Bank of China to stamp the documents P1, P2, P3, P4 and P5).

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In these proceedings two actions, viz. Suit No. 1809 of 1967 and Suit No. 1909 of 1967 were virtually heard together although no order for the consolidation of the actions had been made. It was agreed by counsel for both parties that the evidence given in one action should be admissible in the other action.

In Suit No. 1809 of 1967 the Bank of China (hereinafter referred to as "the Bank") sued Madam Maria Chia Sook Lan (hereinafter referred to as "the Defendant") for the amount due on three Letters of Guarantee, the particulars of which are set out as follows, together with interest thereon :-

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Letter of Guarantee dated 2nd October 1961
\$100,000.00

Letter of Guarantee dated 12th January 1962
\$200,000.00

Letter of Guarantee dated 27th January 1965
\$600,000.00

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The principal sum of \$100,000.00 under the Letter of Guarantee dated 2nd October 1961 was paid by the Defendant to the Bank before the trial commenced. What has to be decided in Suit No. 1809 of 1967 is therefore whether the Bank is entitled to payment from the Defendant of the principal sums of \$200,000.00 and \$600,000.00 and interest thereon under the Letter of Guarantee dated 12th January 1962 and 27th January 1965 respectively.

In Suit No. 1909 of 1967 the Defendant is the plaintiff while the Bank are the defendants. The facts alleged by the Defendant in this action may be summarised as follows. The Defendant is the owner of the land and dwellinghouse erected thereon known as No. 28 Cuscaden Road, On or about the 15th August 1961 the Defendant deposited the title deeds of the said immovable property with the Bank as security for an overdraft on the Defendant's personal account with the Bank. The Defendant's husband Yo Kian Tjoan (hereinafter referred to as "Yo") was the sole proprietor of a firm carrying on business under the name of Dwidaya Trading Company. On a certain date in what the Defendant believes to be the year 1961, on the representation of a Mr. Loke, an employee of the Bank, that the same were documents the required signatures to which were a mere formality, Yo obtained from the Defendant at the matrimonial home her signatures to two printed blank documents one of which the Defendant and Yo learnt early in the year 1966 was a Confirmation of deposit of the title deeds relating to the said immovable property to secure Dwidaya Trading Company's account with the Bank of all monies then owing or which should thereafter be owing, the other document being a guarantee to the Bank in the sum of \$100,000.00 on Dwidaya Trading Company's account. Both documents were dated the 2nd October 1961. Alternatively, Yo was aware of the true nature of the said Confirmation of deposit of title deeds and the purpose for which the Defendant's signature to the same was required, notwithstanding which the Bank through the said Loke by threats, intimidation and/or undue influence procured him to exercise his will, dominion and influence over the Defendant in order to induce her to sign the said document. The Bank or

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alternatively the Bank and Yo wrongfully concealed from the Defendant the true purpose for which they required her signature to the said Confirmation of deposit of title deeds, namely, for the purpose of obtaining a deposit by way of equitable mortgage of the title deeds of the said immovable property as security for the overdraft of the said Dwidaya Trading Company and fraudulently misrepresented to her the true nature of the transaction. Furthermore, the Bank knew that the Defendant had no independent advice with regard to the said documents and received no consideration whatsoever thereunder. Without the knowledge or consent of the Defendant the Bank in Originating Summons No. 185 of 1966 obtained an order to sell the said immovable property out of court by private treaty or by public auction and to be at liberty to execute as mortgagee a proper conveyance to the purchaser of the said immovable property as a result of Dwidaya Trading Company's failure to repay its debt to the Bank. The said order in Originating Summons No. 185 of 1966 was obtained on the 12th September 1966 with the consent of Mr. Selvadurai who was then acting as solicitor for the Defendant. The Defendant did not give her consent to the making of the said order nor did she authorise Mr. Selvadurai or any other person to give such consent. Further, the consent of the Defendant's counsel to the said order being made was given on the assumption that an agreement between the Defendant and the Bank had been reached regarding, inter alia, the sale of the Defendant's property known as Lot 882 Mukim XVIII being land at Thomson Rise and the postponement of the sale of 28, Cuscaden Road. The Defendant alleges that in fact no concluded agreement was reached between the parties by reason whereof the said consent was wrongly given. Alternatively, if a concluded agreement between the parties was reached, it was a condition thereof that no steps be taken by the Bank to sell 28, Cuscaden Road until after the sale of the said Lot 882 Mukim XVIII which property has not hitherto been sold by reason whereof the Bank is not entitled to sell 28, Cuscaden Road. The Bank in the proceedings in Originating Summons No. 185 of 1966 concealed from the court the fact which was well within the Bank's knowledge that the title deeds of 28, Cuscaden Road were deposited with the Bank on or about the 15th August 1961 to secure the Defendant's personal overdraft. Further or in

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10 the alternative the said Confirmation of deposit
of title deeds constituted an equitable mortgage of
the immovable property comprised therein which is
void and unenforceable by the Bank against the
Defendant for the following reasons, first, that
by virtue of section 4 of the Registration of
Deeds Ordinance (Cap. 255) it is not admissible
in evidence in these proceedings, nor was it
admissible in evidence in the proceedings in
20 Originating Summons No. 185 of 1966 on the ground
that it was not registered under that Ordinance,
and secondly, that the amount secured under and
by virtue of the said equitable mortgage is not
provided for in that the same is not stated therein
nor is the same stamped under the provisions of
the Stamp Ordinance (Cap. 170) so as to make the
said amount capable of ascertainment, and the same
is therefore void for uncertainty. Further, or
in the alternative, if the said Confirmation of
30 deposit of title deeds is valid and enforceable,
then the same is security only for a sum of
\$100,000.00 with such interest thereon, if any,
as may properly be found to be due thereon.

Those being the facts alleged in Suit No.
1909 of 1967, the Defendant claims a declaration
that the Confirmation of deposit of the title
deeds relating to the land and house known as
28 Cuscaden Road to secure the overdraft of
Dwidaya Trading Company is not the Defendant's
30 document. Alternatively, the Defendant claims
a declaration that the said Confirmation of
deposit of title deeds being deposited with the
Bank in fraud of the Defendant is voidable as
against her and she asks for an order that the
said Confirmation of deposit of title deeds be
set aside. Alternatively, the Defendant claims
a declaration that the said Confirmation of
deposit of title deeds is invalid and unenforce-
able against her, or in the alternative, a
40 declaration that the same is enforceable against
her for a sum of not more than \$100,000.00 with
such interest thereon, if any, as may properly
be found to be due thereon. The Defendant asks
that the order made on the 12th September 1966
in Originating Summons No. 185 of 1966 be set
aside and for an injunction to restrain the Bank
from selling or otherwise disposing the land and
house known as 28, Cuscaden Road. Finally, she
claims a declaration that she is entitled to the
50 said immovable property discharged from the claim

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under the said mortgage.

It is submitted by counsel for the Defendant that in no proper sense can the Defendant be described as a business-woman or a person with business acumen or having a knowledge of business affairs. In considering this submission, it should be remembered that the Defendant herself gave evidence that she managed her own dress-making business which had eight to ten employees for about fifteen years in Djakarta. She also stated that apart from dealing in jewellery on a small scale she did not deal in other goods. However, in her statement made to the Official Assignee's department which was recorded by Mr. Low Sim Chan, the chief interpreter in that department, the following words appear :-

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"During the Japanese occupation, I was a broker in all sorts of things and made much money. After the Japanese occupation both my husband and I travelled to and from Indonesia and Singapore doing business. I had also made much money in this way. In those days I was like a travelling trader. I brought goods from Indonesia to Singapore and took back goods from Singapore to Indonesia."

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I accept the Defendant's statement as recorded by Mr. Low Sim Chan as a correct account of her business activities during and after the Japanese occupation. To all that has been stated must be added her dealings in the share market in Singapore which were obviously on a large scale. The plight in which the Defendant and Yo found themselves in and after 1964 was entirely or almost entirely due to the policy of Indonesia known as confrontation and not to any lack of business acumen. In my opinion the Defendant is a shrewd woman with considerable business ability.

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It has been contended on behalf of the Defendant that she had difficulty in communicating with solicitors and bank officials. The evidence shows that her mother tongue was Hakka and that she was also fluent in Mandarin. She had some knowledge of English and Malay and could also converse in these two languages. There were occasions when she spoke in a mixture of two

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languages. Three solicitors have given evidence that each of them conversed with the Defendant in a mixture of English and Malay. These three solicitors are Mr. Tann Wee Tiong, Mr. P. Selvadurai and Mr. R.E. Redrup. Each of these solicitors has given evidence to the effect that the Defendant understood what they said to her and that they understood what she said to them. Mr. Selvadurai has stated that when the Defendant and Yo first came to his office he sent for his managing clerk Mr. Ng Ling Cheow as he thought that it might be necessary to communicate with the Defendant and Yo through an interpreter. However, it soon became apparent that there was no need for an interpreter and Mr. Ng Ling Cheow left the office after five or ten minutes. According to Mr. Selvadurai, there was no difficulty as far as language was concerned. He stated that the Defendant's English was not strictly grammatical English but it was clearly understandable; there was no difficulty whatsoever. Mr. Selvadurai added that he had dealt with many Chinese clients whose standard of English was similar to that of the Defendant. It is true that Mrs. Collins, who gave the Defendant lessons in English conversation in or about 1960, stated that the Defendant's standard of English was very poor and that her progress was also very poor. However, what is relevant in this case is whether she was able to communicate with other people in the English language and not whether she spoke good, grammatical English. I accept the evidence of Mr. Tann Wee Tiong, Mr. Selvadurai and Mr. Redrup that they were able to converse directly with the Defendant by using a mixture of English and Malay without the aid of an interpreter and that what was said was understood. In my view the Defendant was not being truthful when she said that she spoke in Mandarin through an interpreter when she was in Mr. Selvadurai's office.

40 One of the witnesses called on behalf of the Bank was Mr. Loke, who has been referred to as an employee of the Bank. He was in fact a sub-manager at the Bank and there were two other sub-managers called Mr. Djeng and Mr. Chang. All these three sub-managers shared one room in the Bank.

Mr. Loke's evidence relating to the opening of the accounts of the Defendant and of Dwidaya Trading Company and the signing of the documents by

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the Defendant may be summarised as follows. In November 1960 the Defendant and Yo saw Mr. Loke and Mr. Djeng in their room at the Bank. The Defendant informed Mr. Loke that she wanted to open an account with the Bank and to deposit some shares to secure an overdraft. Mr. Loke spoke in English and Malay to the Defendant. He did not speak Mandarin but could understand a little of that language. The Defendant spoke to Mr. Loke in Malay and Mandarin. Mr. Djeng was fluent in English and Mandarin. There was no difficulty in communicating with the Defendant.

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A few days later, after Mr. Loke had spoken to Mr. Lu, the manager of the Bank, the Defendant and Yo came to the Bank and were informed by Mr. Loke that the Bank was prepared to give the Defendant overdraft facilities if she deposited her shares with the Bank. The Defendant opened an account with the Bank on the 10th November 1960 by depositing the sum of \$500.00. She drew out the sum of \$40,000.00 on the same day after having deposited shares worth about \$80,000.00 as security.

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On the invitation of Mr. Loke, Yo opened an account with the Bank on the 2nd February 1961 in the name of Dwidaya Trading Company of which he was the sole proprietor.

Early in October 1961 Yo applied for overdraft facilities to be provided for Dwidaya Trading Company. It was arranged that the Defendant should sign a letter of guarantee and also deposit the title deeds of her property 28, Cuscaden Road with the Bank to secure the account of Dwidaya Trading Company. The Bank's records (page 7 of AB1) show that the deposit of the title deeds to secure the firm's account was entered in the records on the 1st October 1961, the limit of the overdraft then approved being \$100,000.00.

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On the 2nd October 1961 the Defendant and Yo came to Mr. Loke's room where Mr. Djeng explained the contents of the letter of guarantee for \$100,000.00 and the Confirmation of deposit of title deeds to the Defendant in Mandarin. The relevant details had all been typed in the two printed forms. It is convenient

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at this stage to mention that Mr. Djeng also said in the course of his evidence that the relevant details had all been typed in the two printed forms and that he explained the contents of the two documents to the Defendant in Mandarin. Mr. Djeng said that the Defendant fully understood the contents of both documents before she signed them. Both Mr. Loke and Mr. Djeng said that both documents were signed by the Defendant in their room in the Bank and in their presence. Mr. Loke added that Yo signed both documents as a witness.

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It should be mentioned at this stage that according to Yo the letter of guarantee dated the 2nd October 1961 was handed to him as a blank printed form by Mr. Loke. Yo took it home and persuaded the Defendant to sign it. He then signed the document as a witness and returned it to Mr. Loke.

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I accept the evidence of Mr. Loke and Mr. Djeng that the letter of guarantee and Confirmation of deposit of title deeds were both signed by the Defendant in their room in the Bank on the 2nd October 1961 and that the relevant details had been typed in the forms before they were signed. I also find as a fact that the contents of both documents were explained in Mandarin to the Defendant by Mr. Djeng before she signed them.

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To resume the summary of Mr. Loke's evidence, the next document to be considered is the letter of guarantee bearing the date 12th January 1962. Yo had ordered machinery from abroad in connection with his business in Malaysia for which he was unable to pay. He therefore wanted to use trust receipts signed by him in the Bank's favour in order to take delivery of the machinery. It was accordingly arranged that the Defendant should sign a letter of guarantee, whereby she would guarantee the payment by Dwidaya Trading Company of their indebtedness to the Bank to the extent of \$200,000.00.

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A letter of guarantee was accordingly prepared. The Defendant and Yo came to see Mr. Loke at the Bank on the 12th January 1962. The relevant details had been typed in the printed form. Mr. Djeng explained the contents of the document to the Defendant in Mandarin. At this

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stage it should be mentioned that Mr. Djeng said that in the course of his explanation of the contents of the document to the Defendant he also explained to her what a trust receipt was. Both Mr. Loke and Mr. Djeng said that the letter of guarantee was signed by the Defendant on the 12th January 1962 in their room in the Bank and in their presence. Mr. Loke signed the document as a witness after the Defendant had signed it.

According to Yo's evidence he did not require facilities relating to trust receipts from the Bank in January 1962. He only needed them towards the end of 1962 or the beginning of 1963. He therefore alleged that the letter of guarantee had been back-dated, and that the date 12th January 1962 was actually written in 1963 or 1964. The Defendant's version regarding this document is that on one occasion in 1962 Yo spoke on the telephone to her and asked her to go to his office which was then in the Bank of China Building. He explained that the first document which both of them alleged was signed by the Defendant in their home was of no use and that she had to sign another document in his office. She accordingly went to his office where she saw him and Loke together. Yo then handed her the document and she signed it. She identified her signature on the letter of guarantee dated 12th January 1962.

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I accept the evidence of Mr. Loke and Mr. Djeng that the letter of guarantee was in fact signed by the Defendant on the 12th January 1962 in their room in the Bank and that the relevant details had been typed in the printed form before it was signed. I find that the document was a letter of guarantee in respect of trust receipts and that Mr. Djeng had explained its contents to the Defendant who knew and understood what she was signing. I reject Yo's allegation that the document had been back-dated. I do not believe the Defendant's statement that she signed the document because she had been told that the first document had been found to be defective in form and that she signed it in Yo's office.

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Resuming the summary of Mr. Loke's evidence, the next document to be considered is the letter of guarantee dated the 27th January 1965. As Dwidaya Trading Company's overdraft had exceeded

10 \$1,000,000 in January 1965 Mr. Lu, the manager of the Bank, requested Mr. Loke to obtain a further guarantee of \$600,000.00. On the 27th January 1965 at Mr. Loke's request the Defendant and Yo came to Mr. Loke's office where Mr. Loke told them in the presence of Mr. Djeng that if the further guarantee was not given the matter would be placed in the hands of the Bank's solicitors. Mr. Loke also explained that if the Bank's request was not 10 complied with, bankruptcy proceedings would have to be taken against Dwidaya Trading Company which would result in Yo being made bankrupt and the Defendant's shares would have to be sold. The Defendant was very reluctant to sign the letter of guarantee but after the matter had been discussed for about half an hour she agreed to sign the document. The contents of the document were explained to her by Mr. Djeng in Mandarin. The document was then signed by the Defendant and Mr. 20 Loke wrote his initial on it as a witness. It may be added at this stage that Mr. Djeng gave evidence which was very similar to Mr. Loke's description of what took place in the office, except that Mr. Djeng said the discussion lasted from 20 to 30 minutes.

30 The Defendant's version of the incident is that she was threatened and intimidated by Mr. Loke and Mr. Djeng and argued with them for about three hours until they finally forced her to sign the guarantee. It is contended on behalf of the Defendant that she was subjected to undue influence and that her signature to the document was obtained as the result of pressure, threats and intimidation on the part of Mr. Loke and Mr. Djeng. During the trial Yo's passport was produced and it showed that he was away from Singapore from the 26th January 1965 to the 1st February 1965. It was clear therefore that Yo could not have been present if the document was signed by the Defendant on the 27th 40 January 1965.

Another point put forward on behalf of the Defendant is that as a result of an amendment to the law in Malaysia relating to foreign banks, the Bank was given notice in February 1965 to cease business in August 1965. It will be remembered that Singapore at that time was part of Malaysia. It is argued that the prospect of having to close down in August 1965 gave the officials of the Bank an added impetus to take action in cases where

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accounts had been overdrawn.

In my view both Mr. Loke and Mr. Djeng had a lapse of memory when they said that Yo was present in their room on the 27th January 1965. They had been accustomed to seeing both the Defendant and Yo together when documents were signed by the Defendant. Despite this lapse of memory on their part, I regard Mr. Loke and Mr. Djeng as honest witnesses. I find that the discussion which resulted in the signature by the Defendant of the letter of guarantee on the 27th January 1965 lasted about half an hour and not three hours as she claimed it did. As to what happened in Mr. Loke's office on that day, I find as a fact that because of the large amount by which Dwidaya Trading Company's account was overdrawn, both Mr. Loke and Mr. Djeng informed the Defendant of the necessity of having a further guarantee and explained to her what legal steps the Bank would have to take if the further guarantee was not provided. In my opinion Mr. Loke and Mr. Djeng did not exercise undue influence over the Defendant nor did they use pressure threats or intimidation to make her sign the letter or guarantee.

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It is contended on behalf of the Defendant that in any event there was no consideration for the letter of guarantee dated the 27th January 1965. On this point it is sufficient to say that the consideration for this letter of guarantee was the agreement by the Bank to allow Dwidaya Trading Company to continue to operate their overdrawn account and the forbearance by the Bank to sell the Defendant's shares and to take bankruptcy proceedings against Yo.

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Counsel for the Defendant also submitted that on the facts of this case it had been proved that Yo had exercised undue influence over the Defendant. On the question of the exercise of undue influence by a husband over his wife the following passage from the headnote in *Howes v Bishop* (1909) 2 K.B. 390 is relevant :-

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" Per Lord Alverstone C.J. and Fletcher Moulton L.J.: There is no general rule of universal application that the rule of equity as to confidential relationships necessarily applies to the relation of

husband and wife, so as to throw on the husband, or on the person who is suing the wife, the onus of disproving an allegation of undue influence."

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10 In the Bank of Montreal v Stuart (1911) A. C. 120 the Privy Council considered the case of Cox v Adams (1904) 35 Can. S.C.R. 393 heard by the Supreme Court of Canada, which decided, or was supposed to have decided, that no transaction between husband and wife for the benefit of the husband can be upheld unless the wife is shown to have had independent advice. This decision in Cox v Adams was disapproved by the Privy Council.

20 In my opinion there is no general rule of law or equity which places upon the Bank the onus of disproving the allegation made by the Defendant that Yo had exercised undue influence over her. Even if there were such a general rule the evidence in this case does not show that Yo exercised undue influence over the Defendant. As I have stated, the Defendant is a shrewd woman with considerable business ability. Her experience in the world of business commenced soon after her marriage to Yo in 1942 when she started her dressmaking business. I find as a fact that neither Yo nor Mr. Loke nor Mr. Djeng nor any other bank official exercised undue influence over her in respect of any of the transactions or documents in this case.

30 On the question of independent advice, the Defendant's experience and business ability was such that in my view she did not need independent advice. If she thought she needed independent advice she could have easily obtained it. Neither Mr. Loke nor Mr. Djeng would, in my view, have raised any objection if the Defendant had said she wanted to consult someone, for example, a solicitor before signing any of the documents in this case. There is, however, no evidence that she wished to consult
40 a solicitor or any other person.

I find that there was never any connivance or conspiracy between Yo and any of the Bank's officials to induce the Defendant to sign the relevant documents in this case.

In my opinion the Bank cannot be said to have been guilty of fraud in respect of any of the

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transactions between the Bank and the Defendant or between the Bank and Yo. The Defendant has failed to prove the allegation of fraud made by her against the Bank. The transactions and documents which have been referred to were explained to her and she fully understood what she was doing.

As to the plea of non est factum put forward on behalf of the Defendant, this plea must fail because in my view there was no misunderstanding, least of all a fundamental misunderstanding, on the part of the Defendant as to either the character of the documents or the contents of the documents signed by her. The case of *Saunders v Anglia Building Society* (1970) 3 All E.R. 961, which defines and explains in detail the plea of non est factum, does not assist the Defendant's case.

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The evidence given by Mr. Loke and Mr. Djeng regarding the deposit of the title deeds relating to 28, Cuscaden Road has been subjected to criticism by counsel for the Defendant. Mr. Loke said that he saw various letters including the letter dated 11th August 1961 which was sent by Messrs. Allen & Gledhill, who were acting for the Defendant in the purchase of the property, to the Bank enclosing the title deeds. However, Mr. Loke did not seem to be very certain about the purpose for which the title deeds were sent to the Bank. On the other hand Mr. Djeng said it was Mr. Loke who told him in December 1960 that Yo had told Mr. Loke about his intention to ask for an overdraft on Dwidaya Trading Company's account. When Mr. Djeng saw a letter dated 21st January 1961 from Messrs. Allen & Gledhill undertaking to forward the conveyance relating to 28, Cuscaden Road to the Bank after the matter had been finalised, Mr. Djeng said that he knew the title deeds would be sent to the Bank to secure Yo's future overdraft. In considering the evidence on this point it should be noted that Mr. Djeng was in charge of the correspondence between the Bank and Messrs. Allen & Gledhill on the subject of the title deeds. Mr. Loke saw the correspondence because it was the practice of the Bank to send all in-coming and out-going letters for perusal by all the sub-managers; he was not personally in charge of the matter. In my view Mr. Loke forgot what Yo had told him in

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December 1960 and also forgot that he had mentioned the matter to Mr. Djeng. I accept the whole of Mr. Djeng's evidence regarding the title deeds.

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I find as a fact that Yo saw Mr. Loke on or before the 1st October 1961 and discussed the matter of an overdraft on Dwidaya Trading Company's account. It was arranged between them that the title deeds relating to 28, Cuscaden Road which were already in the possession of the Bank, should be treated as having been deposited as security for the overdraft. It was also arranged that the Defendant should sign a letter of guarantee. During this discussion Yo was speaking for and on behalf of the Defendant so far as the title deeds and letter of guarantee were concerned. No direct evidence was given as to whether Mr. Loke consulted Mr. Lu on the matter but it can be presumed that he would have done so. On the 1st October 1961 an entry was made in the Bank's record (page 7 of AB1) setting out the particulars of the transaction, the limit of the overdraft then approved being \$100,000.00.

On the 2nd October 1961 the Defendant and Yo came to see Mr. Loke and Mr. Djeng. I have already found as a fact that the Defendant signed both the letter of guarantee and Confirmation of deposit of title deeds in Mr. Loke's room on the 2nd October 1961. I am also satisfied and find as a fact that the Defendant understood the contents of both documents. There is in my view no truth in the allegation that Mr. Loke by threat, intimidation and/or undue influence procured Yo to exercise his will, dominion and influence over the Defendant in order to induce her to sign the Confirmation of deposit of title deeds. Nor is there any truth in the allegation that the officials of the Bank or alternatively the said officials and Yo concealed from the Defendant the purpose for which they required her signature to the document and fraudulently misrepresented to her the true nature of the transaction. It is in my opinion clear beyond any doubt whatsoever that the consideration for the equitable mortgage by way of deposit of title deeds was the granting of overdraft facilities to Dwidaya Trading Company.

It is contended by Counsel for the Defendant that the Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable

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property comprised therein which is void and unenforceable by the Bank against the Defendant because by virtue of section 4 of the Registration of Deeds Ordinance (Cap. 255) it is not admissible in evidence in these proceedings.

Before citing a case which is relevant to this argument I must set out the facts as found by me. The facts are that the equitable mortgage came into existence on or before the 1st October 1961 when Yo, acting on behalf of the Defendant, made the arrangements with Mr. Loke at the Bank. It should be remembered that the title deeds were already in the possession of the Bank, having been sent there by Messrs. Allen & Gledhill on the 11th August 1961. It is also relevant to refer to the first six lines of the Confirmation of deposit of title deeds which was signed on the 2nd October 1961. These six lines read as follows:-

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"I, the undersigned Maria Chia Sook Lan alias Tjhia Sioek Lan of No. 28, Cuscaden Road, Singapore, hereby confirm the terms of my verbal agreement previously made with you under which it was arranged that the title deeds relating to the undermentioned properties which were in your possession were to be held by you as security for the payment to you on demand of all moneys then owing or which should at any time thereafter be owing from Dwidaya Trading Co., of 12, Boar Quay, Singapore....."

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The case which I shall now cite is *The Ho Hong Bank, Ltd. v Tso Chin Chay* (1929) S.S.L.R. 195, the relevant part of the headnote of which reads as follows:-

"The Defendant deposited title deeds relating to land with the plaintiff Bank subject to an oral agreement that they should be held as security for future advances by the Bank and such advances were made. The Defendant subsequently wrote to the Bank confirming that he had deposited the deeds as security for the advances, and undertook to execute a legal mortgage when called upon to do so. The letter was not registered as an "assurance" under S. 5 of Ordinance No. 148

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(Registration of Deeds).

Held, following *Kasmecrah v Haji Mohamed Taib*, 8 S.S.L.R. 114, that, notwithstanding the wording of the letter, the agreement under which the deposit of title deeds had been made could be proved by parol evidence. The word "assurance" in S. 5 (1) of Ordinance No. 148 (Registration of Deeds) does not include the act of depositing title deeds.

Saminathan v. Ramasamy, 8 S.S.L.R. 117, and *Re Mistry*, 8 S.S.L.R. 122, dissented from.

Held, further, that even if the letter came within the meaning of the word "assurance", as used in S. 5 of the Ordinance, it was not evidence of title to land, and, consequently the admissibility of the letter, as evidence, was not affected by the Ordinance.

An equitable mortgagee's rights are conferred by the deposit itself coupled with an intention to create a security. The subsequent letter did not create the equitable mortgage, but merely stated the terms of the contract."

It is clear that in the present case the Confirmation of deposit of title deeds did not create the equitable mortgage, but merely stated the terms of the contract. The very words of the Confirmation refer to a verbal agreement previously made under which the arrangement or contract was entered into. In my opinion the Confirmation was not rendered inadmissible by the provisions of Section 4 of the Registration of Deeds Ordinance.

Another argument put forward on behalf of the Defendant is that the equitable mortgage is void and unenforceable because the amount secured under and by virtue of the said equitable mortgage is not provided for in that the same is not stated therein nor is the document stamped under the provisions of the Stamp Ordinance (Cap. 170) so as to make the said amount capable of ascertainment. It is therefore argued that the

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document is void for uncertainty. Assuming for a moment in favour of the Defendant that the document is a security within the meaning of section 28 (2) of the Stamp Ordinance, ad valorem duty can always be paid on it accompanied by a penalty, if any, imposed by the Commissioner of Stamps. It is to be observed that under section 28(2) of the Stamp Ordinance advances or loans can continue to be made in excess of the amount covered by any stamp duty paid and the security shall for the purpose of stamp duty be deemed to be a new and separate instrument bearing date on the day on which the advance or loan is made. There is therefore no question of the document being void for uncertainty or unenforceable, whatever may be the stamp duty payable thereon.

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It is further argued on behalf of the Defendant that if the Confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of \$100,000.00 with interest thereon, if any, as may properly be found to be due thereon. Reliance is placed on the fact that the records of the Bank show that the limit of the overdraft approved was \$100,000.00. In this connection it must be pointed out that according to the verbal agreement referred to in the document the title deeds were to be held by the Bank as security for the payment on demand of all moneys then owing or which should at any time thereafter be owing from Dwidaya Trading Company. Increases in the overdraft had normally to be approved by Mr. Lu, the manager of the Bank, and there is evidence to show that he did agree to certain increases. The records of the Bank cannot be relied on to show the limit of the amount that can be claimed by the Bank from the Defendant. There is no reason why increases in the overdraft cannot be approved by the manager even during a telephone conversation. The agreement between a bank and its customer is binding on the parties even though the records of the bank merely show the initial amount approved.

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On the 19th November 1963 the Defendant signed another Confirmation of deposit of title deeds whereby she confirmed the terms of a verbal agreement made between her and the Bank under which it was arranged that the title deeds relating to the property at Thomson Rise were to be held by the Bank as security for her overdraft.

In March 1965 the Bank cancelled the overdraft facilities which had been given to the Defendant and Dwidaya Trading Company and requested payment from them of the amounts due on the overdrafts. Correspondence ensued between the Bank on the one hand and the Defendant and Dwidaya Trading Company or Yo on the other hand. This correspondence went on until 1966. In May 1966 Mr. Tann Wee Tiong was instructed by the Defendant and Dwidaya Trading Company to act for them. Mr. Tann Wee Tiong made certain offers on behalf of his clients which were not acceptable to the Bank.

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On the 1st August 1966 the Bank filed Originating Summons No. 185 of 1966 against the Defendant. This was an application for, inter alia, a declaration that the Bank be considered to be a mortgagee of 28, Cuscaden Road and for an order that the said property be sold giving the right to the Bank to convey the property to the purchaser.

20 The Originating Summons and accompanying affidavit were served on Mr. Tann Wee Tiong on the 4th August 1966. On the 6th August 1966 Mr. Tann Wee Tiong took the Originating Summons and affidavit to Yo's house where he explained the contents to Yo and the Defendant. According to Mr. Tann Wee Tiong neither Yo nor the Defendant complained about the behaviour of the Bank nor did the Defendant complain about the behaviour of Yo. Mr. Tann Wee Tiong said that the Defendant did not accuse Yo of

30 cheating her nor did she cry or leave the room while he was there. This is in contrast to the Defendant's version of the incident which was to the effect that she scolded Yo in the presence of Mr. Tann Wee Tiong and said that Yo had cheated her. She also said that she went away to her room and wept. According to the Defendant she first came to know that 28, Cuscaden Road was security for Dwidaya Trading Company's overdraft when Mr. Tann Wee Tiong explained the contents of the

40 Originating Summons and affidavit to her. I accept the evidence of Mr. Tann Wee Tiong as to what happened at the interview between him and the Defendant and Yo. I do not accept the version given by the Defendant as in my opinion she was not telling the truth.

On the 10th August 1966 the Defendant and Yo sent to see Mr. Selvadurai and asked him to act for them. They explained to him that 28, Cuscaden Road was their family home and they

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wanted to save it from being sold. After detailed instructions had been given to Mr. Selvadurai by the Defendant and Yo, correspondence ensued between Messrs Lee & Lee and Messrs. Donaldson & Burkinshaw, who were acting for the Bank. As a result of the correspondence an agreement was reached between the parties whereby an order of court was to be obtained enabling the Bank to sell 28, Cuscaden Road, another order of court was to be obtained enabling the Bank to sell the property at Thomson Rise, the Bank was to sell the property at Thomson Rise and utilise the proceeds of sale for payment to account of the amounts owing to the Bank by the Defendant and Dwidaya Trading Company, the Bank was to sell the Defendant's shares, and the amount of the monthly instalments to be paid to the Bank by the Defendant and Dwidaya Trading Company was to be determined after the realisation of the property at Thomson Rise and all the Defendant's shares. The Bank also agreed to withhold selling 28, Cuscaden Road so long as the monthly instalments to be determined as stated in the agreement were paid regularly to the Bank.

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I should add that during the course of the correspondence between Messrs. Lee & Lee and Messrs. Donaldson & Burkinshaw instructions were sometimes given to Mr. Selvadurai by Yo on behalf of the Defendant. Mr. Selvadurai has stated that the Defendant authorised him to take instructions on her behalf from Yo. Although the Defendant has denied this, I accept the evidence of Mr. Selvadurai on this point. Furthermore, there was nothing in the circumstances of this case which debarred Yo from giving instructions to Mr. Selvadurai on behalf of the Defendant. Both Yo and the Defendant were acting in concert at that stage to save the family house 28, Cuscaden Road.

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In due course the Bank filed Originating Summons No. 269 of 1966 against the Defendant. This was an application in respect of the land at Thomson Rise and was similar in many respects to Originating Summons No. 185 of 1966.

On the 12th September 1966 an order was made by consent in Originating Summons No. 185 of 1966 and on the 10th November 1966 an order

was made also by consent in Originating Summons No. 269 of 1966. In both matters it was Mr. Selvadurai who was acting for the Defendant and who consented to the orders being made.

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10 Mr. Selvadurai has stated that on the 6th September 1966 the Defendant personally instructed him to consent to orders being made in respect of both properties i.e. 28, Cuscaden Road and the property at Thomson Rise. The Defendant has denied that she gave him any such instructions. I accept the evidence of Mr. selavadurai on this point. I find as a fact that the Defendant personally gave him instructions to consent to orders for the sale of both the properties. In my opinion the Defendant was not being truthful when she denied that she gave him any such instructions.

20 In any event, once legal proceedings have been commenced, a solicitor instructed by a party to conduct them on her behalf has, in the absence of instructions to the contrary, an implied authority from the client to compromise them. See S.N. Mitra v S.T. Dasi (1930) 46 T.L.R. 191 and Halsbury's Laws Vol. 36 page 78 paragraph 108. There is no evidence of any instructions to the contrary in this case.

30 It is submitted by counsel for the Defendant that the agreement arrived at by the correspondence between the two firms of solicitors was not a concluded agreement because the amount of the monthly instalments had not been determined and was not known. In my opinion an agreement which expressly leaves one or more matters to be determined at a future date can nevertheless be a concluded agreement. In this case the agreement arrived at by the correspondence was in my view a concluded agreement.

40 It is alleged on behalf of the Defendant that in the proceedings in Originating Summons No. 185 of 1966 the Bank concealed from the court the information that the title deeds relating to 28, Cuscaden Road were deposited with the Bank on or about the 15th August 1961 to secure the Defendant's personal overdraft. As I have already found as a fact that the said title deeds were, with the full knowledge and consent of the Defendant, treated as having been deposited with

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the Bank to secure Dwidaya Trading Company's overdraft, it follows that there was no concealment on the part of the Bank.

One of the claims made by the Defendant in Suit No. 1909 of 1967 is that the order of court obtained in Originating Summons No. 185 of 1966 on the 12th September 1966 should be set aside. It was held in *Huddersfield Banking Co., Ltd. v Henry Lister & Son, Ltd.* (1895) 2 Ch. 273 that the court has jurisdiction to set aside a consent order upon any ground which invalidates an agreement between the parties. In that case a consent order which had been completed and acted upon, but without affecting the interests of third parties, was set aside by the Court upon the ground of common mistake. In the present case I find that no fraud has been practised by any person on the Defendant nor has any person used threats, intimidation or undue influence to procure her agreement to the title deeds relating to 28, Cuscaden Road being treated as having been deposited with the Bank to secure Dwidaya Trading Company's overdraft or to obtain her signature to the Confirmation of deposit of title deeds. Neither has there been any common mistake between the Bank and the Defendant or Yo. There is therefore no ground upon which the order made on the 12th September 1966 can be set aside.

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Assuming that it can be shown that the facts as found by me cannot be supported by the evidence, and assuming that the Confirmation of deposit of title deeds was not the Defendant's document and was wrongfully obtained from her, that Mr. Selvadurai was not instructed by the Defendant to consent to the making of the order of court dated the 12th September, 1966, that the said Confirmation is void and unenforceable or is security only for the sum of \$100,000.00 and interest thereon all of which are alleged by the Defendant, I am of the opinion that the Defendant is estopped or in equity precluded from relying on such allegations or any of them.

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The essence of the doctrine of estoppel by representation was stated by Lord Birkenhead in *Maclaine v Gatty* (1921) 1 A.C. 376 at p. 386 as follows:-

"Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time."

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10 In May 1966 the Defendant was aware of the
Bank's assertion that she had deposited the title
deeds relating to 28, Cuscaden Road with the Bank
by way of security for Dwidaya Trading Company's
account, and of the Bank's intention to apply to
court to be considered to be a mortgagee of and
to have liberty to sell 28, Cuscaden Road. The
Defendant nevertheless took no action whatsoever to
resist the Bank's application to court or to
appeal against or otherwise reverse or set aside
or vary the said order of court, but except on one
point, maintained a quiescent attitude while the
20 Bank and their solicitors were acting in reliance
upon the said order of court. The one exception
was that the Defendant instructed Mr. Selvadurai
to write to Messrs. Donaldson & Burkinshaw in
order to persuade the Bank to agree to an arrange-
ment whereby 28, Cuscaden Road would be saved from
being sold. In the letters written by Mr.
Selvadurai on behalf of the Defendant it was clearly
represented to the Bank that the said title deeds
had been deposited with the Bank as security for
30 Dwidaya Trading Company's account. In reliance
on this representation, inter alia, the Bank
refrained from pursuing their full legal
remedies which they could otherwise have easily
done. Nothing was said or done by the Defendant
or any other person on her behalf from May 1966
until November 1967 to show the Bank that they
were mistaken in thinking that the said title
deeds had been deposited with them as security for
Dwidaya Trading Company's account. It was not
40 until the 2nd November 1967 that the Defendant
swore an affidavit which was filed in Suit No.
1809 of 1967 in which she made certain allegations
about the manner in which she had been induced
to sign the Confirmation of deposit of title deeds.
Before the 2nd November 1967 the position was that
there were in existence the two orders of court and
the concluded agreement between the Bank and the
Defendant whereby the Bank were precluded from
selling 28, Cuscaden Road until the property at
50 Thomson Rise and the Defendant's shares were sold
and there was a failure to pay the monthly

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instalments which were to be determined. Until the 2nd November 1967 the representation made by the Defendant to the Bank was that the two orders of court were valid and made with her consent.

In the circumstances of this case I am of the opinion, as I have already stated, that the Defendant is estopped or in equity precluded from relying on the allegation to which I have earlier referred.

Of the witnesses in this case I found Mr. Tann Wee Tiong, Mr. Selvadurai, Mr. Loke, Mr. Djeng, Mr. Low Sim Chan and Mr. Ng Ling Cheow to be honest in all that they said. Mr. Loke and Mr. Djeng both had a lapse of memory when they said that Yo was present at the time the letter of guarantee dated the 27th January 1965 was signed by the Defendant. Mr. Loke also forgot what Yo told him about the proposed overdraft and what he himself told Mr. Djeng. However, these two matters do not, in my view, affect the honesty of Mr. Loke and Mr. Djeng. The fact that they were dismissed by the Bank in August 1965 is not a reflection on their character. As for the Defendant and Yo, they were both prepared to tell lies whenever it suited them to do so and each of them did tell a number of lies. Subject to what I have said concerning lapses of memory on the part of Mr. Loke and Mr. Djeng, wherever the testimony of the Defendant and Yo differs from or runs contrary to the evidence of the witnesses whom I have just named I accept the evidence of these witnesses.

In my judgment in Suit No. 1809 of 1967, the Bank succeed in their claim under the letter of guarantee dated the 12th January 1962 for \$200,000.00 with interest and the letter of guarantee dated the 27th January 1965 for \$600,000.00 with interest. There will accordingly be judgment for the Bank for the sum of \$800,000.00 with interest and costs while the Defendant's counterclaim is dismissed with costs. The question of interest is referred to the Registrar for ascertainment. The Defendant's claim in Suit 1909 of 1967 is dismissed with costs.

Sd. TAN AH TAH

J U D G E

Singapore, the 6th day of July, 1972.

No.29

FORMAL JUDGMENT IN SUIT NO. 1809 of 1967THE 6TH DAY OF JULY, 1972

This Action having been tried together with Suit No. 1909 of 1967 before the Honourable Mr. Justice Tan Ah Tah on the 27th, 28th, 29th and 30th days of March, 1972, the 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th and 21st days of April, 1972 IT WAS ORDERED that this Action do stand adjourned for judgment and Upon the case coming on for judgment this day IT IS ADJUDGED that the Defendant do pay the Plaintiffs \$800,000.00 with interest to be assessed by the Registrar and costs to be taxed AND IT IS FURTHER ORDERED that the Defendant's Counterclaim be dismissed with costs to be taxed AND THIS COURT DOETH CERTIFY that on taxation, the Plaintiffs be allowed fees for 2 Counsel AND IT IS FURTHER ORDERED that execution hereunder be stayed pending appeal so far as the land and premises known as No. 28, Cuscaden Road, Singapore, are concerned AND IT IS LASTLY ORDERED that the parties hereto be at liberty to apply as to the assessment of interest aforesaid

Sd. Teo Keng Bian

ASST. REGISTRAR

Entered this 14th day of July, 1972 in Volume CXVIII Page 118 at 2.30 p.m.

No.30

FORMAL JUDGMENT IN SUIT NO. 1909 of 1967THE 6TH DAY OF JULY, 1972

This Action having been tried together with Suit No. 1809 of 1967 before The Honourable Mr. Justice Tan Ah Tah on the 27th 28th, 29th and 30th days of March, 1972, and 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th and 21st days of April, 1972 IT WAS ORDERED that this Action do stand adjourned for judgment And Upon the same

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Formal Judgment in Suit No.1909 of 1967 14th July 1972 (continued)

coming on for judgment this day IT IS ADJUDGED that the Plaintiff's claim herein be dismissed AND IT IS FURTHER ORDERED that the costs of this Action as taxed between party and party be paid by the Plaintiff to the Defendants AND THIS COURT DOTH CERTIFY that on taxation, the Defendants be allowed fees for 2 Counsel.

Sd. Teo Keng Bian

ASST. REGISTRAR

Entered this 14th day of July, 1972 in Volume CXVIII Page 119 at 2.30 p.m.

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No.31

NOTICE OF APPEAL IN SUIT NO.1809 of 1967

In the Court of Appeal in Singapore

No.31

Notice of Appeal in Suit No. 1809 of 1967 6th July 1972

TAKE NOTICE that Maria Chia Sook Lan, the abovenamed Appellant being dissatisfied with the decision of the Honourable Mr. Justice Tan Ah Tah given at Singapore on the 6th day of July, 1972 appeals to the Court of Appeal against the whole of the said decision.

Dated the 6th day of July, 1972.

Sd. HILBORNE & CO.

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SOLICITORS FOR THE APPELLANT

To the Registrar, Supreme Court, Singapore.

And to the above named Respondents and their Solicitors,

Messrs. Donaldson & Burkinshaw, Singapore.

The address for service of the Appellant is at the office of Messrs. Hilborne & Company, Nos. 22/23 Nunes Building, No. 9 Malacca Street, Singapore, 1.

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No.32

In the Court
of Appeal in
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NOTICE OF APPEAL IN SUIT NO. 1909 of 1967

Take Notice that Maria Chia Sook Lan, the abovenamed Appellant being dissatisfied with the decision of the Honourable Mr. Justice Tan Ah Tah given at Singapore on the 6th day of July, 1972 appeals to the Court of Appeal against the whole of the said decision.

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Dated the 6th day of July, 1972.

Sd: HILBORNE & CO.

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SOLICITORS FOR THE APPELLANT

To the Registrar,
Supreme Court,
Singapore.

And to the above-named Respondents and
their Solicitors,

Messrs. Donaldson & Burkinshaw,
Singapore.

The address for service of the Appellant is
at the office of Messrs. Hilborne & Company,
Nos. 22/23 Nunes Building, No. 9 Malacca Street,
Singapore, 1.

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No.33

No.33

PETITION OF APPEAL IN SUIT NO. 1809 of 1967

Petition of
Appeal in Suit
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1967
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To the Honourable the Judges of the Court of Appeal.

The Petition of the abovenamed Appellant sheweth
as follows:-

1. The appeal arises from a claim by the above-named respondents against the abovenamed appellant, inter alia, that by a Contract in writing dated 12th January, 1962 between the respondents and the appellant, the appellant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the respondents to the said Dwidaya Trading Company

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including all interest commission and banking charges thereon. It was an express term of the said Contract that the appellants should not be liable for an amount exceeding \$200,000.00 in all; that by a Contract in writing dated 27th January, 1965 between the respondents and the appellant, the appellant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the respondents to the said Dwidaya Trading Company including all interest commission and banking charges thereon. It was an express term of the said Contract that the appellant should not be liable for an amount exceeding \$600,000.00 in all; that in pursuance of the said Contracts the respondents made advances to the said Dwidaya Trading Company which together with interest commission and banking charges amounted to \$1,653,163.97; that the respondents therefore claimed (1) the total sum of \$800,000.00; and (2) interest at the rate of 7½% per annum on the aforesaid sum of \$200,000.00 and 9% per annum on the aforesaid sum of \$600,000.00.

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2. By judgment dated the 6th day of July, 1972, judgment was given for the respondents.

3. Your Petitioner is dissatisfied with the said judgment on the following grounds :-

(i) That the learned Judge ought to have held that both transactions, namely, the Guarantee dated the 12th January 1965 (Exhibit P2 at the trial) and the Guarantee dated 27th January 1965 (Exhibit P3 at the trial) were affected by undue influence on the part of the respondents and were therefore void, voidable or unenforceable by them against the appellant.

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(ii) That in relation to the Guarantee of the 12th January 1962 (P2) the appellant's evidence was that she signed such document in the mistaken belief that it was an instrument of another kind. Such evidence, which the learned Judge ought to have accepted, established that the execution of the document was not her act and deed, and the learned Judge ought to have held

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that the same was not binding upon her.

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(iii) That it appeared from the respondents' evidence that they misconceived the nature, purpose and effect of the said Guarantee (P2) and that such misconception was communicated to the appellant, thereby precluding her from understanding the nature, purpose and effect of the document. The learned Judge made no finding on this aspect of the appellant's case; a proper finding on such evidence would, or ought to, have led him to hold that the document was not the act and deed of the appellant and that the same was not binding upon her.

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(iv) That if the Guarantee (P2) was in other respects binding upon the appellant, the learned Judge ought to have held that the respondents' claim nevertheless failed on the ground that they had not discharged the onus of proof upon them of showing that they had issued trust receipts to Dwidaya Trading Company.

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(v) That the evidence regarding the execution of P3 established that the appellant's signature was obtained in terrorem. Yet the learned Judge took an indulgent view of the conduct of the respondents' servants, and erred in holding that the threats used against the appellant to induce her to execute the document amounted to consideration for the appellant's commitment of \$600,000.00. Further, there was a failure on the part of the learned Judge to make an objective assessment of the evidence surrounding the circumstances of the execution of the document; such an assessment would have led him to have taken a less sympathetic view of those portions of the evidence of Loke and Djeng which the learned Judge described as "lapses of memory".

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(vi) That the learned Judge ought to have drawn an adverse inference against

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the respondents arising out of their failure to state and put their case to the appellant and her witnesses and to cross-examine them on important aspects of the appellant's case, but, on the contrary, he drew inferences and made findings adverse to the appellant which were not supported by the evidence.

(vii) That the learned Judge's findings that "the Defendant and Yo Kian Djoan were both prepared to tell lies whenever it suited them to do so and each of them did tell a number of lies" and that "whenever the testimony of the Defendant and Yo differs from or runs contrary to the evidence of the witnesses whom I have just named I accept the evidence of these witnesses", were unwarranted by the evidence, and inconsistent with the result of a fair and even appraisal of the witnesses concerned.

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4. Your Petitioner prays that such judgment may be reversed.

Dated the 4th day of September, 1972.

Sd. Hilborne & Co.

Solicitors for the Appellant

And to the abovenamed Respondents and to their Solicitors,

Messrs. Donaldson & Burkinshaw,
Singapore.

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No.34

Petition of
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PETITION OF APPEAL IN SUIT NO.1909 of 1967

To the Honourable the Judges of the Court of Appeal.

The Petition of the abovenamed appellant showeth as follows:-

1. The appeal arises from a claim by the

above-named appellant against the abovenamed respondents for (1) a declaration that the Confirmation of Deposit of the Title Deeds of the said immovable property consisting of all that piece of land situate in Town Subdivision XXIV in the island of Singapore being Lot 269 estimated according to Government Resurvey to contain an area of 40,013 square feet or thereabouts and being comprised under Certificate of Title registered in the Land Register in Volume 3 Folio 41 together with the dwelling house erected thereon and now known as No. 160 Cuscaden Road, Singapore to secure the overdraft of Dwidaya Trading Company was not the appellant's document; alternatively, (2) a declaration that the said Confirmation of Deposit of Title Deeds being deposited with the respondent Bank in fraud of the appellant, was voidable against the appellant; (3) that the said Confirmation of Deposit of Title Deeds be set aside; (4) that the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September 1966 be set aside; (5) an injunction to restrain the respondent Bank from selling or otherwise disposing of the said immovable property now known as No. 160 Cuscaden Road or otherwise exercising their rights under the Order of Court obtained in Originating Summons No. 185 of 1966 on the 12th day of September 1966; (6) a declaration that the appellant was entitled to the said mortgaged immovable property discharged from the claim under the said mortgage; (7) further and other relief; and (8) costs.

2. By judgment dated the 6th July, 1972, judgment was given for the respondents.

3. Your Petitioner is dissatisfied with the said judgment on the following grounds :-

- (i) That the learned Judge was wrong in dismissing the appellant's claim, and he ought to have set aside the Order of Court dated the 12th day of September 1966 in Originating Summons No. 185 of 1966 and granted the consequential relief prayed for on the ground that the document dated the 2nd October 1961 described as a Confirmation of Deposit of Title Deeds (Exhibit P4 at

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the trial) was void, voidable and/or unenforceable by the respondents against the appellant for the following reasons, or one or more of them, namely :-

- (a) the evidence supported the appellant's contention that at all material times she intended that the security provided by the deposit of the title deeds of No. 160, Cuscaden Road, Singapore was to be in respect of her own current account with the respondents and not that of Dwidaya Trading Company. Upon the evidence the learned Judge ought to have upheld her plea that at the time when she signed P4 she was not aware that the same was to provide security for the current account of Dwidaya Trading Company and he ought to have held that the said document was not her deed. Further, the learned Judge erred in law in holding that the principles enunciated in *Saunders v. Anglia Building Society* (1970) 3 A.E.R. 961 did not assist her case; 10 20
- (b) the evidence established that the transaction was affected by undue influence. The learned Judge failed to give any, or sufficient, weight to that evidence which established that the appellant was a peculiarly vulnerable party to such a transaction, arising out of her poor English language, her lack of familiarity with banking and commercial practice and procedure, and her ignorance of the nature, scope and effect of the transaction. The learned Judge was wrong, in fact and in law, in finding that the appellant did not need independent advice and that she was a person experienced in matters 30 40

of business, and he misdirected himself on the question of her command of English at the material time, namely, October 1961;

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10 (c) the transaction was unenforceable against the appellant by virtue of the provisions of Section 4 of the Registration of Deeds Ordinance (Cap. 255) in that the evidence established that the document was an equitable mortgage which ought to have been registered pursuant to the provisions of the Ordinance, in default whereof the same was not admissible in evidence. The learned Judge failed to give adequate consideration to the important evidence touching the receipt by the respondent of the title deeds in 20 August 1961, which strongly supported the appellant's contention that the respondents had failed to prove that the said deeds had been deposited with them to secure the current account of Dwidaya Trading Company. Further, the learned Judge erred in law in wrongly holding that the case of The Ho Hong Bank Limited v Teo Chin Choy (1929) S.S.L.R. 195 was 30 authority for his finding that the document (P4) was a mere confirmatory letter and not an equitable mortgage;

40 (d) the learned Judge erred in his interpretation of the provisions of Section 28(2) of the Stamp Ordinance (Cap. 170). He ought to have drawn a distinction between the particular object of that section and the general provisions of the statute insofar as they apply to inadequate stamping of documents, and he ought to have found that since the document (P4) was unstamped, the extent to which it was capable of affording any security was unascertainable, by reason whereof it was unenforceable

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by the respondents;

- (e) the learned Judge was wrong in finding that the Order made on the 12th day of September 1966 in Originating Summons No. 185 of 1966 was made with the appellant's knowledge and consent and was binding on her. Alternatively, if such Order was made with her knowledge and consent, the learned Judge erred, in fact and in law, in holding that the agreement between the appellant and the respondents leading to the making of the Order was a concluded agreement. Further, the learned Judge failed to make a finding, as he ought to have done, on the appellant's contention that assuming the existence of such a concluded agreement, the prior sale of the appellant's other property, comprised in Lot 882 of Mukim XVIII was a condition precedent to the Order being carried into effect. 10
- (ii) That if the document (P4) was in all other respects valid, effective and enforceable, nevertheless, on the evidence the same constituted security for the principal sum of \$100,000 and no more, and the learned Judge was wrong in holding that an agreement between the respondents and Dwidaya Trading Company for further advances over and above \$100,000 was binding on the appellant. 30
- (iii) That the learned Judge erred in law in holding that if the appellant was otherwise entitled to succeed in the action, she was "estopped or in equity precluded from relying on the allegations" referred to. The evidence adduced, and the learned Judge's findings thereon did not raise a pleadable estoppel. 40
- (iv) That the learned Judge ought to have drawn an adverse inference against the respondents arising out of their failure

to state and put their case to the appellant and her witnesses and to cross-examine them on important aspects of the appellant's case, but, on the contrary, he drew inferences and made findings adverse to the appellant which were not supported by the evidence.

- (v) That the learned Judge's findings that "the defendant and Yo Kian Djoan were both prepared to tell lies whenever it suited them to do so and each of them did tell a number of lies" and that "whenever the testimony of the Defendant and Yo differs from or runs contrary to the evidence of the witnesses whom I have just named I accept the evidence of these witnesses" were unwarranted by the evidence, and inconsistent with the result of a fair and even appraisal of the witnesses concerned.

4. Your Petitioner prays that such judgment may be reversed.

Dated the 4th day of September, 1972.

Sd. Hilborne & Co.

Solicitors for the Appellant

And to the above-named Respondents and to their Solicitors,

Messrs. Donaldson & Burkinshaw,
Singapore

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JUDGMENT OF THE COURT OF APPEAL

Coram: Wee Chong Jin, C.J.
F.A. Chua, J.
T. Kulasekaram, J.

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JUDGMENT

This is an unusual case. In 1967 the Bank of China commenced an action in the High Court in Suit No. 1809 of 1967 against a married woman Maria Chia Sook Lan. About six weeks later, in Suit No. 1909 of 1967, Maria Chia Sook Lan (hereinafter referred to as "Madam Chia") sued the Bank of China (hereinafter referred to as "the Bank"). Both actions arose out of overdraft facilities extended over a period of years by the Bank to a sole proprietorship firm known as Dwidaya Trading Company owned by Madam Chia's husband Yo Kian Tjoan. Hereafter we shall refer to Dwidaya Trading Company as "the Company" and Yo Kian Tjoan as "Yo" or as "the husband".

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These two actions were eventually heard by Tan Ah Tah J. in March 1972. At the commencement of the trial of the Bank's action, it was recorded by the trial Judge that "it has been agreed that the evidence in Suit No. 1809/67 should be treated as evidence in Suit No. 1909/67". The trial lasted over three weeks and the trial judge, after taking time to consider, in a single judgment dealing with both actions gave judgment in favour of the Bank in its action and dismissed Madam Chia's action. Hence the present appeals and we propose to deal with both appeals in a single judgment of the Court.

30

It is convenient first, to state the facts. Madam Chia and her husband whom she married in 1942 are of Chinese origin and with their children came from Indonesia to Singapore in 1958 and have since lived here. Before 1958 she had made several trips to Singapore with her husband who was by 1956 a prosperous business man dealing in rubber. She did business during these visits to Singapore and made much money as a broker. While she was living in Indonesia she owned and ran a dress-making business and during the Japanese occupation she was a successful broker.

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Her father was a comparatively wealthy man and when his health was failing he remitted to her in Singapore in 1960 by way of gift large sums of money totalling about \$440,000/- which she deposited in the Chung Khiaw Bank. In 1961 she purchased a house now known as No. 28 Cuscaden Road, Singapore for \$70,000/- and her family has since lived in it.

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10 Apparently, shortly after her arrival in
Singapore in 1958 she speculated and invested in
shares and in her own words "did well in 1960,
1961". She had overdraft facilities with her
first bankers, Chung Khiaw Bank, against the
security of her shares but when in later 1960 that
bank pressed her for payment of her then overdraft
she transferred her account to the Bank. She and
her husband saw two sub-managers, Loke Chan Hing
and Djeng Hsueh Heng (hereinafter referred to as
"Loke" and "Djeng") in early November 1960 to open
20 an account and to ask for overdraft facilities to
be secured by a deposit of her shares. According
to Loke she did not speak much English and
conversed mostly in Mandarin and Malay whilst he
spoke to her in English and Malay and Djeng spoke
to her in Mandarin. A few days after this first
meeting she and her husband Yo saw Loke again at
the Bank's premises and Loke told her that the Bank
was prepared to allow her to overdraw up to 50%
of the value of her shares deposited with the Bank.
30 She agreed and opened an account with \$500/- and on
the same day drew out \$40,000/- against her shares.

 On 2nd February 1961 her husband Yo, at the
invitation of Loke, also opened an account in the
name of the Company without any prior arrangement
for overdraft facilities and up to 4th October 1961
the Company's account was in credit. Just before
4th October 1961 Yo approached Loke requesting
overdraft facilities for the Company's account
saying he would furnish a Letter of Guarantee from
his wife and would deposit the title deeds
40 relating to 28 Cuscaden Road which belonged to his
wife as security. Yo also said he wanted \$100,000/-
against the Letter of Guarantee and \$100,000/- against
28 Cuscaden Road. On 2nd October 1961 Madam Chia
and her husband Yo went to Loke's office and in the
presence of Loke, Djeng and Yo, Madam Chia signed
a Letter of Guarantee dated 2nd October 1961 and a
document described therein as "Confirmation of
Deposit of Title Deeds" relating to 28 Cuscaden

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Road. Yo signed, in his capacity as sole proprietor of the Company, as witness to both these two documents. It is convenient hereafter to refer to the Letter of Guarantee dated 2nd October 1961 as "P1" and the Confirmation of Deposit of Title Deeds relating to 28 Cuscaden Road as "P4".

Under "P1" Madam Chia guaranteed the Company's overdraft up to a limit of \$100,000/- and interest thereon. In "P4" it is stated "I..... Maria Chia Sook Lan hereby confirm the terms of my previous verbal agreement with you under which it was arranged that the title deeds relating to 28 Cuscaden Road which were in your possession were to be held by you as security for the payment to you on demand of all moneys then owing or which should at any time thereafter be owing from the Company ... to the Bank... including interest".

10

Before 2nd October 1961, the title deeds of 28 Cuscaden Road were in the possession of the Bank, having been sent to the Bank by Messrs. Allen & Gledhill who had acted as solicitors for Madam Chia in her purchase of this property. The title deeds were sent by Messrs. Allen & Gledhill on her instructions with a letter dated 11th August 1961 and the Bank acknowledged receipt of the title deeds on 15th August 1961. At the trial Madam Chia said that her own overdraft was secured by her shares and her Cuscaden Road property. In the Statement of Claim in her action against the Bank it is pleaded (Para.2) that she deposited the title deeds relating to her Cuscaden Road property on or about 15th August 1961 with the Bank as security for an overdraft on her personal account with the Bank. At the trial Loke said he did not arrange with Madam Chia or anybody else to send the title deeds to the Bank and he did not know why the title deeds were sent by Messrs. Allen & Gledhill to the Bank. In cross-examination he explained that he thought the title deeds were sent to the Bank because Madam Chia must have had an intention to have a further overdraft and that until then the title deeds were sent to the Bank for safe custody. Djeng, on the other hand, at the trial said the title deeds were sent to the Bank for safe custody and for the purpose of the future of Yo's company's account as Loke had

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10 told him that Yo had, a few weeks after November 1960, hinted to Loke that it was Yo's intention to ask for an overdraft because Yo intended to extend his business to Indonesia. Djeng said it was not possible that Madam Chia deposited the title deeds to cover her own overdraft as her shares were sufficient to cover that. There is thus a conflict between the evidence of Madam Chia, of Loke and of Djeng as to the purpose for which the title deeds were sent by Madam Chia's solicitors to the Bank.

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20 On 12th January 1962, approximately four months after Madam Chia had signed "P1" (the Letter of Guarantee dated 2nd October 1961) guaranteeing the Company's account to a limit of \$100,000/- and "P4" (the Confirmation of Deposit of Title Deeds dated 2nd October 1961) which purported to confirm an equitable mortgage by way of deposit of title deeds relating to 28 Cuscaden Road as security for the payment of all moneys owing by the Company to the Bank, Madam Chia signed another Letter of Guarantee (hereinafter referred to as "P2") in Loke's office with Djeng also present and Loke signed as a witness. "P2" came into existence as Yo had told Loke that he had ordered machinery for which he could not pay and wanted to use trust receipts whereby the Bank would pay an inward bill and the Company would then take delivery in exchange for a trust receipt signed by the Company in favour of the Bank. Yo said that for this accommodation his wife, Madam Chia, would give the Bank another guarantee to cover what the Bank would pay. Although "P2" in effect constitutes a general guarantee by Madam Chia of her husband's Company's account to a limit of \$200,000/- and interest thereon, it is stated therein that the accommodation by the Bank is in consideration of a request by Madam Chia "to accept Trust Receipts ... on behalf of the Company for any sum or sums not exceeding Malayan dollars two hundred thousand only at any one time". Before "P2" was signed by Madam Chia, she had looked over it and Djeng had explained its contents to her in Mandarin and had told her it was a guarantee for money owing on trust receipts. Djeng had also explained to her what a trust receipt was.

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Thereafter, for three years nothing eventful happened affecting the banker/customer relationship

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between the Bank and Madam Chia and between the Bank and the Company until 27th January 1965 when Madam Chia signed yet another Letter of Guarantee (hereinafter referred to as "P3") which guaranteed the Company's account to a limit of \$600,000/-. The Company had by January 1965 overdrawn its account with the Bank by over \$1,000,000/- and Loke was requested by the Bank's manager to obtain a further guarantee of another \$600,000/- for the Company's overdraft. Yo on being asked for this further guarantee said he would ask his wife to furnish the guarantee and on 27th January 1965 he and his wife went to Loke and Djeng's office in the Bank. Madam Chia was shown the Company's outstanding overdraft and was told in Mandarin by Djeng in Loke's presence that if she did not sign the Bank would take legal action and make Yo a bankrupt and sell her shares. Madam Chia appeared surprised when she saw the amount of the Company's overdraft and at first appeared reluctant to agree to give the required guarantee. She was in the Bank for about 30 minutes.

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On 11th March 1965 the Bank sent Madam Chia a letter informing her that the Bank was cancelling her own overdraft facilities and giving her two weeks' notice to pay off the sum of \$1,424,768.64 being the debit balance on her overdraft account. On 20th March 1965 a similar letter was sent to the Company cancelling its overdraft facilities and requesting payment of the sum of \$1,095,625.19.

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On 1st April 1965, Madam Chia and her husband jointly signed a letter on the Company's letter paper to the Bank assuring the Bank that they would make every effort to settle the Company's outstanding overdraft at the earliest possible date and informing the Bank that they were trying to sell a 26-acre piece of land and "some of our public shares" to settle the debt. The letter ended as follows:- "We wish to express our gratefulness to you again for the most generous and favourable terms for the overdraft facilities accorded us".

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On 14th April 1965 Madam Chia wrote to the Bank informing the Bank that she was trying to dispose of her shares and her property to reduce her own overdraft.

The Bank took no other steps to enforce payment by her and by the Company and on 11th August 1965 Madam Chia and her husband sent another joint letter to the Bank requesting the Bank to permit the Company to use the overdraft facilities and "to re-consider the calling-up of the overdrafts which were granted to us against the security of our landed properties and public shares". The letter referred to recent offers made for their properties, \$3,400,000 for 26½ acres at Thomson Rise and \$600,000 for 28 Cuscaden Road and referred to these properties as "our securities".

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Thereafter in correspondence passing between the Bank and Madam Chia and the Company, the Bank continually pressed for payment and Madam Chia and the Company continually requested more time to re-pay. Subsequently in May 1966 Messrs. Tann Wee Tiong & Co. corresponded with the Bank as solicitors for Madam Chia and the Company and in August 1966 accepted service of an Originating Summons, being O.S. 185 of 1966, instituted by the Bank against Madam Chia. This Summons asked inter alia for a declaration that the Bank, claiming to be an equitable mortgagee under a deposit of title deeds relating to 28 Cuscaden Road, be declared by an Order of Court to be a mortgagee of the said immovable property and for an Order for sale of the said property. Before the return date of the Originating Summons, Madam Chia and her husband changed their solicitors to Messrs. Lee & Lee. Mr. Selvadurai of Messrs. Lee & Lee was in charge and they informed him that she had a large overdraft account and the Company had also a large overdraft account with the Bank and that the Company's account was secured by a deposit of the title deeds to 28 Cuscaden Road and by her guarantees amounting in all to \$900,000. They told Mr. Selvadurai that they did not dispute the Bank's claims but wanted time to reduce and finally settle the overdrafts. They instructed him to enquire whether the Bank would stay their hand for a while if they offered to pay monthly instalments of \$10,000/- as market conditions were then such that the properties, though valuable, would be sold cheaply if sold by the Bank. Mr. Selvadurai in their presence telephoned the Bank's solicitors but was told that the Bank would be unlikely to delay in view of the small monthly payment offered. Madam Chia and her

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husband then instructed Mr. Selvadurai to propose to the Bank to proceed first against the Thomson Rise property and the shares and if these proved insufficient the Bank could proceed to sell 28 Cuscaden Road as they wished to save their home.

Accordingly, Mr. Selvadurai, on behalf of Madam Chia wrote a letter dated 24th August 1966, the hearing of the Originating Summons having been postponed to 5th September 1966, in which he stated that he was instructed by Madam Chia that she had deposited with the Bank the title deeds relating to her property, 28 Cuscaden Road, to secure the Company's overdraft and requested the Bank to agree to proceed against her other property at Thomson Rise as the latter property would be sufficient to repay both her overdraft and the Company's overdraft. The next day another letter was sent to the Bank's solicitors offering also to pay monthly \$10,000/- towards reducing both overdrafts.

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The Bank's solicitors received written instructions by a letter to them from the Bank dated 2nd September 1966 a copy of which they sent to Messrs. Lee & Lee with their letter dated 3rd September 1966. Mr. Selvadurai of Messrs. Lee & Lee replied on 6th September 1966 requesting the Bank to preserve the status quo with regard to 28 Cuscaden Road but the Bank rejected this proposal and eventually on 12th September 1966 Mr. Selvadurai consented to an Order of Court against Madam Chia declaring the Bank to be a mortgagee of the Cuscaden Road property and giving the Bank liberty to sell the property.

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As one of the issues raised in this appeal is whether or not the agreement between Madam Chia and the Bank leading to the making of the said consent Order of Court was a concluded agreement it is necessary to set out the relevant correspondence between their respective solicitors on this issue. They are :-

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233.

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore.

24th August, 1966.

In the Court
of Appeal in
Singapore

Dear Sirs,

Attention: Mr. H.M. Dyne

Re: Originating Summons
No. 185 of 1966
Bank of China
vs.

Maria Chia Sook Lan

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We act for Madam Chia Sook Lan.

We refer to the above Originating Summons, the hearing of which was postponed to Monday, 5th September 1966, and to the conversation the writer has had with your Mr. Dyne about an alternative security that our client offers to furnish to cover the overdrafts involved.

20

We have waited till now in writing to you because we wanted to discuss this matter further with our client who has just returned from Kelantan.

We are instructed that the Dwidaya Trading Company's overdraft stands at approximately \$1,218,009.49 plus further interest at the rate of 8% per annum from the 30th June 1966, and that our client's overdraft with the Bank stands at approximately \$1,400,000.00.

30

We are further instructed that our client deposited with the Bank the Title Deeds relating to her property at No. 28 Cuscaden Road, Singapore to secure the said company's overdraft and the Title Deeds relating to her property at Thomson Rise together with numerous share certificates to secure her own overdrafts.

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It appears that the Bank has sold and realised some of the shares to the extent of \$600,000.00. and that the remaining shares would realise another \$400,000.00 at least.

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The Thomson Rise property, we are
instructed, is worth about three million
dollars.

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As the property, the subject of your
application herein, is our client's only house
housing her family, our client would be
obliged if the Bank would agree to proceed
against our client's Thomson Rise property,
which is sufficient to cover both overdrafts
in place of the Cuscaden Road property.

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Kindly let us have your client's reaction
to the above proposals at your earliest.

Yours faithfully,

Sd:- LEE & LEE."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 25th August, 1966.

Dear Sirs,

Attention: Mr. H.M. Dyne

re: Originating Summons No. 185 of 1966
Bank of China v. Maria Chia Sook Lan

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We refer to our telephone conversation
of this morning (H.M. Dyne - P. Selvadurai)
and would confirm that our client also offers
to repay the overdrafts herein by monthly
instalments of \$10,000.00 each with larger
instalments should her financial position
improve with the resumption of the imminent
Indonesian trade.

Yours faithfully,

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Sd:- LEE & LEE."

235.

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 2nd September, 1966.

In the Court
of Appeal in
Singapore

Dear Sirs,

Your Ref: HMD/MLC/B.39185
Re: Dwidaya Trading Company
O.S. No. 185 of 1966
Ourselves v. Maria Chia Sook Lan

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10 With reference to your letter of the 31st
August 1966 and copies of two letters from
Messrs. Lee & Lee, we would accept the terms
of settlement offered therein subject, however,
on the following conditions :-

1. An Order of Court to be obtained
giving us the liberty to sell No.28
Cuscaden Road;
2. An Order of Court to be obtained
giving us the liberty to sell land
20 at Thomson Rise (Lot 882 Mukim
XVIII) by public auction as soon as
such Order is obtained, and proceeds
to satisfy both accounts, if
sufficient.
3. The amount of the monthly instalments
to be paid to us is to be decided
after realisation of the above
property at Thomson Rise and all the
shares. We cannot agree to the
30 monthly payment of \$10,000/- as
interest payable on both overdrafts
accounts amounts to more than
\$16,000/- per month at present
excluding accrued interest payable
under Trust Receipts the unpaid
bills under which totalling
\$231,429.00. Besides there is
still an amount of \$132,159.28 owing
as under AB bills.

40 We will withhold selling No. 28 Cuscaden
Road so long as the monthly instalments as
determined by 3 above are regularly paid to us.

Yours faithfully,
for Bank of China
Singapore.
Sd:- Sub-Manager."

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"Messrs. Lee & Lee,
Singapore.

3rd September, 1966.

Dear Sirs,

Attention Mr. P. Selvadurai

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Originating Summons No.185 of 1966
Bank of China v. Maria Chia Sook Lan

We have now taken our clients' instructions with reference to your two letters dated 24th and 25th August respectively.

We enclose herewith a copy of a letter we have received from our clients, the contents of which we think you will find to be self-explanatory.

10

If your client agrees to these conditions laid down by the Bank it appears to us that the following steps be taken:-

1. Your client consents to the Bank being adjudged mortgagee of the property, the subject matter of the above-mentioned Summons, and on taking out the Order which will inter alia give our clients the right of sale, for us to confirm that subject to compliance by your clients of the terms of monthly payments to be agreed, the Bank will not enforce the Order and sell the property. 20
2. For our clients to proceed by way of Originating Summons to apply to Court for leave to sell your client's property at Thomson Rise, and for your client to consent to the application which will be similar to the one referred to above. 30

We await hearing from you at your early convenience.

Yours faithfully,

Sd: Donaldson & Burkinshaw."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 6th September, 1966.

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Attention: Mr. H.M. Dyne

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Dear Sirs,

Re: Originating Summons No.185/1966
Bank of China v. Maria Chia
Sook Lan

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We thank you for your letter with
enclosure dated 3rd September, 1966.

Our client agrees to conditions 2 and 3
stated in your clients' letter to you dated
2nd September, 1966, as exhibited in your
letter under reply.

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But with regard to No. 28, Cuscaden Road,
our client would be grateful if the status quo
could be preserved as she is certain that the
Thomson Rise property together with the shares
would be more than sufficient to cover both
overdrafts.

Our client feels that this arrangement
should be satisfactory to your clients, as
your clients already hold the title deeds to
No. 28 Cuscaden Road anyway.

Yours faithfully,

Sd: LEE & LEE."

"Messrs. Lee & Lee,
Singapore. 9th September, 1966.

Dear Sirs,

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re: Originating Summons No.185/1966
Bank of China v. Maria Chia
Sook Lan

We have now taken our clients'
instructions with reference to the contents of
your letter dated 6th September 1966, and are
instructed to inform you that our clients
adhere to the original terms and conditions

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more particularly set out in their letter of
2nd September 1966.

We must therefore inform you that at
the hearing of the adjourned application on
Monday, 12th September we shall ask for an
Order of Court in terms of the said application.

You will no doubt bear in mind the
ultimate paragraph of our clients' letter of
2nd September 1966 and advise your client
accordingly.

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Yours faithfully,

c.c. Clients. Sd: Donaldson & Burkinshaw."

"Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore, 1. 12th September, 1966.

Attention: Mr. H.M. Dyne

Dear Sirs,

re: Originating Summons No. 185/1966
Bank of China v. Maria Chia
Sook Lan

20

We thank you for your letters dated 7th
September, 1966 and 9th September, 1966 and
would confirm that your clients will withhold
selling the property at No. 28, Cuscaden Road
so long as the monthly instalments, (to be
decided after reasalisation of the land at
Thomson Rise and all the shares) are regularly
paid by our client.

Yours faithfully,

Sd: LEE & LEE."

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On 10th November 1966 a Consent Order in
Originating Summons No. 269 of 1966 was obtained by
the Bank against Madam Chia declaring the Bank to
be a mortgagee of her Thomson Rise property and
giving the Bank liberty to sell the property.
Following on this Order of Court the Bank put the
Thomson Rise property for sale by auction but the
auction was abortive as there were no offers
approaching the reserve price put by the Bank.

Thereafter the Bank made no more attempts to sell the Thomson Rise property under the power conferred on them by the Order of Court in O.S. 269 of 1966 and as no subsequent arrangements satisfactory to the Bank were made in respect of the Company's overdraft account and interest thereon the Bank commenced proceedings in the High Court against Madam Chia on 6th October 1967 claiming \$900,000 and interest thereon in respect of the three Letters of Guarantee "P1" (for \$100,000), "P2" (for \$200,000) and "P3" (for \$600,000) given by Madam Chia as security for the Company's overdraft on its current account with the Bank. On being served with the Writ, Madam Chia instructed yet another firm of solicitors to act for her, namely Messrs. Redrup & Co., and on her instructions Messrs. Redrup & Co. also commenced an action by her against the Bank in respect of No. 28 Cuscaden Road. These two actions intituled Suit No. 1809 of 1967 and Suit No. 1909 of 1967 respectively are the subject matters of the present appeals.

Madam Chia's pleadings in her action against the Bank are illuminating. Her claim as endorsed in her Writ in effect was for a declaration that "P4" (her written Confirmation of the deposit of the title deeds relating to No. 28 Cuscaden Road as security for any overdraft on the Company's account with the Bank) is voidable because of fraud. The claim was also to set aside the Order of Court in O.S. 185 of 1966. Her Statement of Claim alleged that the Bank had possession of the title deeds of her house in August 1961 as security for her personal overdraft account with the Bank and that she was induced in the year 1961 to sign "P4" by her husband who exercised his will, dominion and influence over her as the result of threats, intimidation and /or undue influence by the Bank on him. The Statement of Claim further alleged that her husband obtained her signatures at the matrimonial home in the year 1961 to two printed documents containing blanks which she later in early 1966 discovered to be a guarantee by her to the Bank in the sum of \$100,000 in the Company's account ("P1") and a Confirmation of deposit of title deeds relating to immovable property ("P4") to secure the Company's account with the Bank of all monies then owing or which should hereafter be owing to be dated 2nd October 1961. She also alleged the Bank knew she had no

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independent advice and received no consideration with regard to the two documents she was induced by her husband to sign. Her Statement of Claim also alleged that she did not consent or authorise her then solicitors to consent to the Consent Order in O.S. 185 of 1966 and that the consent, if any, was given by her husband who acted under threats and intimidations and/or undue influence exercised by the Bank.

Four years later, on 18th September 1971, the Statement of Claim was amended. The allegation against her husband that he induced her to sign the written Confirmation of deposit of title deeds relating to 28 Cuscaden Road was abandoned and in its place it was alleged as an alternative plea that her husband knew the true nature of the written Confirmation of deposit of title deeds and the purpose for which her signature was required but through threats, intimidations and/or undue influence the Bank had procured her husband to exercise his will, dominion and influence over her to induce her to sign the said written Confirmation. A new allegation was added, namely, that Loke had represented to her husband that "P4" was a document her signature to which was required as a mere formality and Yo obtained her signature on that representation. Another new allegation was also added, namely, that the Bank or alternatively the Bank and her husband wrongfully concealed from her the true purpose for which they required her signature to the said written Confirmation and fraudulently misrepresented to her the true nature of the transaction. With regard to the Consent Order in O.S. 185 of 1966 she abandoned her allegation that the consent was given by her husband acting under threats, intimidations and undue influence on the part of the Bank.

About six months later, on 28th March 1972 the day after the trial commenced the Statement of Claim was further amended relating to the consent Order of Court setting up, inter alia, a plea that there was in fact no concluded agreement between her and the Bank by reason whereof her consent was wrongly given.

Finally, on the fourteenth day of the trial the Statement of Claim was still further amended to set up, inter alia, the following pleas :-

"12. Further, or in the alternative the said Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable property comprised therein which is void and unenforceable by the Defendant Bank against the Plaintiff for the following reasons, namely :-

- (i) that by virtue of Section 5 of the Registration of Deeds Ordinance (Chapter 255) it is not admissible in evidence in these proceedings, nor was it admissible in evidence in the proceedings in Originating Summons No. 185 of 1966 on the ground that it was not registered under that Ordinance;"

13. Further, or in the alternative, if the said Confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of \$100,000 (Dollars One hundred thousand) with such interest thereon, if any, as may properly be found to be due".

We now turn to Madam Chia's pleadings in the Bank's action against her in respect of "P1" (Guarantee for \$100,000), "P2" (Guarantee for \$200,000) and "P3" (Guarantee for \$600,000). In her Amended Defence, which was amended in September 1971 many months before the trial, she admitted liability in respect of "P1" and this claim is no longer in issue. It is to be observed that "P1" and "P4" (the Confirmation of deposit of title deeds of 28 Cuscaden Road) were signed by her in Loke's and Djeng's room at the same time on 2nd October 1961. Her defence in respect of "P2" was that Loke falsely and fraudulently misrepresented to her that her signature was required to "a document in printed form containing Blanks therein and undated" for the purpose of substituting it for "P1" because "P1" was defective in form. She also pleaded that the Bank well knew she had no independent advice with regard to "P2" and received no consideration thereunder. In respect of "P3" her defence was that though she signed it, it was not signed by her on 27th January 1965, and she signed it under pressure, threats and intimidations exercised through Loke while her husband was absent from Singapore. She specifically

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alleged that the Bank compelled her to sign "P3" by threatening to sell her shares, deposited with the Bank to secure her own overdraft, if she refused to do so. There was also a plea by her that the Bank well knew she had no independent advice with regard to "P3" and received no consideration thereunder. In her Counterclaim she also alleges that the Bank procured her execution of "P3" by undue influence in that the Bank acting by its servant or servants threatened to sell her property, namely, stocks and shares held by the Bank as security for her own overdraft and to take steps to make her husband a bankrupt if she declined to do so and in that for a period of two to three hours the said servant or servants persistently demanded that she should execute the same".

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It is convenient at this state to summarise, as appears from Madam Chia's pleadings, the issue relevant for the purposes of these two appeals, which would have to be dealt with when the trial of these two actions commenced. They appear to us to be as follows:-

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- (1) Was "P4" when executed by Madam Chia a printed blank document.
- (2) Did Loke represent to Madam Chia and her husband that her signature was required to "P4", a printed blank document, as a mere formality.
- (3) Did the Bank through Loke procure Madam Chia's husband, who was aware of the true nature of "P4", by threats, intimidation and/or undue influence procure her husband to exercise his will, dominion and influence over her in order to induce her to sign "P4".
- (4) Did the Bank or alternatively the Bank and Madam Chia's husband wrongfully conceal from her the true purpose for which they required her signature to "P4" and did the Bank or alternatively the Bank and her husband fraudulently misrepresent to her the true nature of the transaction.
- (5) Was there a concluded binding agreement

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between the parties which led to Madam Chia's solicitors consenting to the Order of Court in O.S. 185 of 1966. (This issue was raised by her Counsel in his opening address on the second day of the trial).

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- 10 (6) Did Madam Chia sign a document in printed form containing Blanks therein which was produced to her by Loke at her husband's office which the Bank says is "P2" which is dated 12th January 1962.
- (7) Did Loke procure the execution of "P2" by Madam Chia by falsely and fraudulently misrepresenting to her that it was a mere formality required for the purpose of substituting it for "P1" which was defective in form.
- 20 (8) Did the Bank know that Madam Chia had no independent advice in regard to "P2" and received no consideration thereunder.
- (9) Did the Bank through Loke obtain Madam Chia's signature to "P3" by exercising pressure, threats and intimidations on her.
- 30 (10) Did the Bank procure Madam Chia's execution of "P3" by undue influence in that the Bank acting through its servant or servants threatened to sell her stocks and shares held by the Bank as security for her own overdraft and to take steps to make her husband a bankrupt if she declined to do and in that for a period of two to three hours the Bank's said servant or servants persistently demanded that she should execute "P3".

40 These presently relevant issues are thus issues of fact mostly and raise, in respect of "P2", "P3" and "P4", the plea of undue influence and in respect of "P2" and "P4" the plea of non est factum. We have stated earlier that on the 14th day of the trial Madam Chia applied and was granted leave to still further amend her Statement of Calim in her action against the Bank. This final amendment raises, inter alia, a plea that "P4" constituted an equitable mortgage of the immovable property

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comprised therein which is unenforceable upon the ground that by virtue of Section 5 of the Registration of Deeds Ordinance "it is not admissible in evidence in these proceedings". To this plea an alternative defence was raised by the Bank that Madam Chia is estopped or in equity precluded from relying on the allegation that "P4" constituted an equitable mortgage of 28 Cuscaden Road and/or that it was inadmissible in evidence in these proceedings.

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Having thus set out at some length the history of this litigation, the relevant pleadings and the relevant facts that, in our opinion, were found by the trial judge we turn to consider the arguments submitted by Mr. Le Quesne, Counsel for Madam Chia in these two appeals. Before we do so, however, we think it necessary to observe that in his judgment the trial judge, except on one question whether Madam Chia's husband was present when "P3" was executed by her in January 1965, stated that wherever the testimony of Madam Chia and her husband differed or ran contrary to the evidence of the other witnesses at the trial he accepted the evidence of those witnesses. It is also necessary to observe that the trial judge in his judgment found those witnesses to be honest in all that they said and on more than one occasion stated that Madam Chia was not truthful or stated that he did not believe her. We would also observe that the trial judge found her to be a "shrewd woman with considerable business ability".

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Having regard to the ten issues which we have just enumerated it is clear that they, and here we quote the language of Lord Morris in *Onassis and another v. Vergottis* (1968) 2 L.L.R. at 421, "could really only be resolved by someone who over a period of many days had the advantage of hearing words spoken by persons who could constantly be observed". It is also clear that the issues which required to be decided were primarily questions of fact the determination of which depended almost entirely on the credibility of Madam Chia, of the officers of the Bank and of the solicitors who had acted from time to time for Madam Chia. We would observe also that in view of the gravity of the allegations made by Madam Chia against responsible officers of the Bank and against the solicitor acting for her on the Consent Order in

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O.S. 185 of 1966, allegations which were made in the face of contemporary documents and the probabilities, success on her part, apart from questions of law and the inferences to be drawn from primary facts, depended upon the trial judge accepting her as an honest, truthful and totally credible witness and rejecting the Bank Officers and her solicitor as witnesses unworthy of credit.

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10 We first set out Mr. Le Quesne's general
submissions on the law relating to undue influence
and non est factum:

"A. On Undue Influence.

1. A transaction procured by the exercise of undue influence can be set aside, whether it is a gift or a contract upon consideration.
- 20 2. If the parties to the transaction stand in a fiduciary relationship, undue influence is presumed and the burden is upon the party who relies on the transaction to show that the other party understood the transaction and entered into it freely and voluntarily and understood the nature and contents of the documents.
- 30 3. If the parties do not stand in a fiduciary relationship, there is in general no presumption of undue influence, and generally the burden is upon the party attacking the transaction to show that undue influence was exercised. However, even if the parties do not stand in a fiduciary relationship, the circumstances of the transaction may be such as to throw on the party who relies on the transaction the burden of justifying it.
- 40 4. Undue influence is some unfair and improper conduct or coercion from

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outside.

B. On Non Est Factum.

This plea is established if it is shown that :

- (a) the document signed was fundamentally or essentially different, in substance or in kind, from what the signer believed it to be (a mistake about the amount of the liability involved may make such a difference); and 10
- (b) the signer signed it with the care to be expected of a normal person of prudence."

We now consider, first, Mr. Le Quesne's submissions on "P3", the \$600,000 guarantee dated 27th January 1965 relied on by the Bank in its action against Madam Chia. It is submitted that "P3" is unenforceable because Madam Chia was induced to sign the guarantee by the exercise of undue influence. It is conceded that she cannot rely on any presumption and the burden lies on her to prove undue influence was in fact exercised on her but the submission is that the facts relating to this guarantee as found by the trial judge establish undue influence which consisted of

- (a) pressing her in her husband's absence to give a further guarantee of his account; 20
- (b) threatening that, if she did not give the guarantee, the Bank would sell her shares which the Bank held only as security for her overdraft and 30
- (c) threatening that, if she did not give the guarantee, the Bank would make her husband bankrupt because, although the Bank was entitled to make him bankrupt, the threat to do nevertheless constitutes undue influence. The case of Williams v. Bayley (1866) 1 English and Irish Appeals at page 200 is relied on. That was a case where a son carried to bankers of whom he, as well as his father, was a customer, certain promissory notes with his father's name upon them as endorser. The endorsements were forgeries by the son. The bankers insisted, without any direct threat of a prosecution, on a settlement to which the father was to be a party. He 40

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consented and executed an agreement to make an equitable mortgage of his property. It was held where a father appealed to, under such circumstances, takes upon himself a civil liability with the knowledge that, unless he does so, his son will be exposed to a criminal prosecution, with a moral certainty of conviction is not a free and voluntary agent and the agreement he makes under such circumstances is not enforceable in equity. Another case is relied on where a guarantee was obtained under an implied threat to prosecute a member of the family who was alleged to have forged the family company's signature to a previous guarantee. It was held that the guarantee was obtained by undue influence.

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Mr. Le Quesne concedes that in these two cases the implied threat was a criminal prosecution but he submits that in principle it is impossible to say that in no case, other than a threat of prosecution, could an agreement be set aside because of undue influence. We do not propose to agree or disagree with this submission. In our opinion whether or not undue influence has been established such as to be sufficient in law for a transaction to be set aside as unenforceable must depend upon the facts and circumstances of the particular transaction under consideration. Suffice it for us to say that in our judgment on a consideration of all the facts and circumstances relating to "P3" the trial judge was entitled to and in our view, correct in finding that Madam Chia had failed to establish undue influence. We have not been persuaded that as an appellate tribunal having regard to the principles established in cases such as *Hontestroom (Owners) v. Sagaporack (Owners)* [1927] A.C. 37; *Wat or Thomas v. Thomas* [1947] A.C. 484 and *Benmax v. Austin Motor Co. Ltd.* [1955] A.C. 370 we ought to interfere with the trial judge's finding.

Secondly, we turn to consider Mr. Le Quesne's submission on "P2", the \$200,000 guarantee dated 12th January 1962. Here again, it is submitted that on the facts found by him the trial judge was wrong in not coming to the conclusion that there was undue influence rendering the guarantee unenforceable. The submission is that this transaction, together with "P4" the written Confirmation of the deposit of the title deeds of No. 28 Cuscaden Road, were part of a series of

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transactions between Madam Chia and the Bank for the benefit of her husband and ultimately for the benefit of the Bank; that the documents used were printed forms of the Bank in English of a technical kind which were executed by her at a time when she could not have understood them because her English was very poor; that she and the Bank were not in an equal position because she was already the Bank's debtor on her own account and the Bank held her shares as security and that the ultimate result of this series of transactions was catastrophic for her in that she had made herself responsible for more than \$1,500,000 on her husband's account and exposed her house, which was the family's house, to the risk of sale. It is further submitted that because of all these relevant circumstances, although there is no fiduciary relationship to give rise to the presumption of undue influence, the burden of justifying "P2" and "P4" is cast on the Bank which seeks to support these two transactions and on the facts the Bank has failed to prove that these two transactions were not carried through without undue influence by the Bank on Madam Chia.

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We are unable to accept any of Mr. Le Quesne's submissions. There were in fact only three relevant transactions namely, the first one "P1", the \$100,000 guarantee dated 2nd October 1961, the second one "P4" also dated 2nd October 1961 and the third and last one, "P2" was entered into three months later on 12th January 1962. The Bank was perfectly entitled and it seems to us it is normal prudent banking practice to require security before lending its money on overdrafts. The Bank and Madam Chia at the relevant times were in our opinion in an equal position in that she was not obliged to enter into "P2" or "P4" or for that matter "P1". The fact that she was then the Bank's debtor on her own overdraft account is not a relevant consideration as there is no evidence that the Bank had required further security from her, apart from her shares already deposited with the Bank, as a condition for continuing to allow her to operate on an overdraft. Finally, the fact that many years later her husband's overdraft account had swollen to \$1,500,000 and thereby exposing her family house for sale is entirely irrelevant to the question whether or not the Bank had

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exercised undue influence in late 1961 or early 1962.

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In our judgment the burden was on Madam Chia to establish undue influence on the part of the Bank in respect of "P2" and "P4" and the trial judge was entitled on the facts found by him to come to the conclusion that she had failed to establish undue influence.

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10 Next we have to consider Mr. Le Quesne's submission on the plea of "non est factum". This plea is raised in respect of "P2" and "P4", documents executed by Madam Chia on 12th January 1962 and 2nd October 1961 respectively. The case relied on by Mr. Le Quesne is the recent House of Lord's case of Saunders v. Anglia Building Society (1970) 3 A.E.R. 961 which he submits establishes the principles governing the plea of non est factum. These principles we have not set out in Mr. Le Quesne's general submissions on
20 the law relating to non est factum.

Applying these principles to the facts relating to "P2" Mr. Le Quesne submits that Madam Chia is entitled to succeed. He relies on the evidence of Djeng which was accepted by the trial judge who in his judgment said :-

30 "I find that [P2] was a letter of guarantee in respect of trust receipts and that Mr. Djeng had explained its contents to [Madam Chia] who knew and understood what she was signing."

Djeng's evidence on "P2" reads as follows:-

"(Shown P2). I explained the contents to [Madam Chia]. I explained about the Trust Receipts according to the contents of this guarantee. I explained to [Madam Chia] what a trust receipt is. I remember that. This is a guarantee for money owing on trust receipts. I explained this to [Madam Chia]".

40 The submission is that Djeng's evidence clearly establishes that Madam Chia signed "P2" in the belief that "P2" was a guarantee by her of money owing by the Company to the Bank on trust receipts whereas "P2" was in fact a general guarantee of the

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Company's indebtedness to the Bank on the Company's account with the Bank. The submission also is that in signing "P2" Madam Chia did not act carelessly and acted as a normal person of prudence would in all the circumstances have acted and is therefore not precluded from relying on the plea of non est factum. It is accordingly submitted that the actual document ("P2") she signed was "fundamentally" or "essentially" or "basically" or "radically" or "entirely" different from the documents as she believed it to be. All these expressions appear in the speeches of the Law Lords in Saunders case (supra). 10

Saunders case also decides that it does not matter whether the difference is in kind or in substance so long as there is a "fundamental" difference and whether or not there is a "fundamental" difference depends on all the circumstances of the transaction. Accepting the law to be, as we do, as stated in Saunders case the question that has to be asked and answered is whether or not, on all the circumstances leading up to its execution "P2" was so "fundamentally" or "essentially" or "basically" or "radically" or "entirely" different from the document as she believed it to be. In order to answer this question her own evidence must be considered. She said her husband telephoned to tell her that "P1" which she had signed at home was of no use and she had to sign another document in his office. So she signed "P2" which at the time of her signature was blank and undated and was not witnessed by Loke. The trial judge disbelieved her and accordingly her evidence on "P2" does not establish her plea of non est factum. So Mr. Le Quesne, as earlier stated, relies on Djeng's evidence. Having regard to her business acumen and ability and activities and the fact that she had about three months earlier signed "P1", a general guarantee of her husband's Company's overdraft account with the Bank and the findings of the trial judge, we are quite unable to find, assuming that the trial judge had failed to apply the principle established by Saunders case, that "P2" and "fundamentally" or "radically" or "entirely" different from the document as she believed it to be. It must be borne in mind that the burden of proving non est factum lies on her and on all the circumstances we are of the opinion that the trial judge's conclusion was correct and that she had failed to establish her plea of non est factum in respect of "P2". 20 30 40 50

Next, it is submitted that "P4" is void because of "non est factum" on the ground that the evidence of Loke and Djeng, the Bank's witnesses, establishes that Madam Chia was told before she executed "P4" that her liability on it was limited to \$100,000.00 and the difference between a limited liability document and the actual amount on which her liability was unlimited brings "P4" within the principle established in Saunders case. We repeat that whether or not the plea of non est factum is established depends on all the circumstances. The circumstances must be the surrounding circumstances at the time of the execution of the document and no regard must be paid to the circumstances to be found years later. "P4" was a written Confirmation that the title deeds of 28 Cuscaden Road had been given to the Bank to secure the overdraft granted by the Bank to her husband's Company. The property was purchased by her on the 20th January 1961 under a Conveyance of the same date. Her evidence that she bought it in 1959 was palpably untrue. The purchase price was \$70,000/- and there is no suggestion or evidence that the price she paid was well below the then market value of the property. "P4" came into existence about nine months later on 2nd October 1961. There is no suggestion or evidence that property values in general or the value of the particular property had risen spectacularly or even at all during those nine months. In those circumstances it seems quite impossible for us to find that the document she signed i.e. "P4" was "fundamentally" or "essentially" or "radically" or "entirely" different from what she believed it to be at the time of its execution. No reliance is placed by Mr. Le Quesne on her evidence and we therefore ignore it. The requirement of the exercise of such care as to be expected of a normal person of prudence does not arise but if it did we would find that she was careless in that sense. On the facts all that emerged from her own evidence and that of her witnesses was that at the material time her English was poor and she could not communicate well or properly in English and could not understand well or properly when spoken to in English. It does not establish that she could not read simple English with understanding or in particular that she could not read with understanding "P4" so that she would not realise that her liability under it was not \$100,000/- but was unlimited. The burden was

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on her and on her own evidence she attended a Chinese school from the age of 8 and started to learn English at the age of 14 or 15. After leaving school at 16 she had English tuition for one or two years. All these facts coupled with her business experience do not point to a person who could not read in English with a sufficient degree of proficiency to understand the difference between providing security to a limit of \$100,000/- and providing unlimited security. Her tutor in English while she was in Singapore was on her own evidence engaged to help her to be more proficient in speaking the English language.

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Next, Mr. Le Quesne submits that the Consent Order made by the High Court on 12th September 1966 declaring the Bank to be a mortgagee of her Cuscaden Road property ought to be set aside on the ground that the agreement between Madam Chia and the Bank which led to the making of the Consent Order was in fact and in law not a concluded agreement. It is not in dispute that the Court has jurisdiction to set aside a Consent Order upon any ground which would invalidate an agreement between the parties [see *Huddersfield Banking Co. Ltd. v. Henry Lister & Son Ltd.* (1895) 2 Ch. 273]. Mr. Le Quesne submits that on the proper construction of the letters passing between Messrs. Donaldson & Burkinshaw, solicitors for the Bank and Messrs. Lee & Lee, solicitors for Madam Chia (see supra) there was no concluded agreement but merely an agreement to agree. His argument is that if one looks at the letter dated 2nd September 1966 there was something of critical importance to be settled between the parties and that was the amount of the instalments to be paid by Madam Chia to the Bank. We do not accept this submission. In our judgment it is clear on a consideration of the correspondence between the solicitors for the Bank and for Madam Chia beginning with the letter of 24th August 1966 and ending with the letter of 12th September 1966, all of which we have earlier set out, that there was a concluded agreement, inter alia, that Madam Chia would consent to an Order of Court being made in terms of the Bank's application in O.S. 185 of 1966. From the correspondence and the facts leading up to the correspondence it is in our opinion clear that Madam Chia

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was prepared to consent to an Order of Court in respect of her Cuscaden Road property and to an Order of Court also in respect of her Thomson Rise property provided the Bank would agree to withhold selling her Cuscaden Road property until her Thomson Rise property and her shares held by the Bank were sold. This was agreed to by the Bank. It seems to us clear also from the correspondence that it was agreed the amount of the monthly instalments to be paid by her was to be decided after the sale of her Thomson Rise property and her shares and further that until agreement was reached as to the amount of the monthly instalments the Bank would not enforce its right to sell her Cuscaden Road property under the Order of Court which it sought to obtain in O.S. 185 of 1966. All that the correspondence amounted to in respect of the monthly instalments to be paid after realisation of the Thomson Rise property and the shares was a clear indication by the Bank that it considered a monthly payment of \$10,000/- to be unacceptable.

Although in the Petition of Appeal the finding of the trial judge that the said Order of Court was made with the knowledge and consent of Madam Chia is challenged, Mr. Le Quesne has not attempted to pursue this ground in his argument before us but in any event there is in our judgment clear and conclusive evidence to support the trial judge's finding.

Another ground of appeal depends on the true construction of Section 4 of the Registration of Deeds Act (Ch. 281). We do not propose to deal with this ground in view of our decision that the Consent Order relating to 28 Cuscaden Road is valid and binding on Madam Chia except to say that it has been conceded, and rightly so, by Counsel for the Bank that this Court is bound by the decision in Kasmerah's case (8SSLR 113).

The question of estoppel, similarly, need not be considered by us and it remains for us to deal with the alternative general submission by Mr. Le Quesne that the trial judge was wrong in accepting the evidence of Loke and Djeng in that he gave inadequate consideration or overlooked matters of vital importance when weighing their evidence against the evidence of Madam Chia. We do not consider it necessary to deal in detail with the

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several matters relied on by Mr. Le Quesne and will merely content ourselves with saying that having regard to the observations we have earlier made based on the language of Lord Morris in the Onassis case (supra) we are quite unable to say that the trial judge with all the advantages he had was plainly wrong and that we as an appellate tribunal could and would accept Madam Chia as a witness of truth and worthy of credit on all the material issues of fact canvassed by the pleadings and at the trial of these two actions. We would dismiss both appeals with costs.

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Sd. Wee Chong Jin

CHIEF JUSTICE,
SINGAPORE.

Sd. F.A. Chua

JUDGE

Sd. T. Kulasekaram

JUDGE

SINGAPORE, 3 MAY 1973.

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No. 36

FORMAL ORDER IN CIVIL APPEAL

No. 36 of 1972 (SUIT No. 1809 of 1967)

O R D E R

THIS APPEAL coming on for hearing on the 19th, 20th, 21st and 22nd days of February, 1973 in the presence of Mr. John Godfrey Le Quesne, Q.C. and Mr. Kenneth Edward Hilborne of Counsel for the abovenamed Appellant and Mr. Antony Purdon Godwin and Mr. Roy Sharma of Counsel for the abovenamed Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and upon the same coming on for judgment this day in the presence of Counsel as aforesaid THIS COURT DOTH ORDER that the Appeal herein be and is hereby

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dismissed AND THIS COURT DOTH FURTHER ORDER that the Appellant do pay the Respondents the costs of this Appeal as taxed AND THIS COURT DOTH CERTIFY that on taxation, the Registrar is to allow the attendance of two Counsel for the Respondents AND THIS COURT DOTH LASTLY ORDER that the sum of \$500.00 lodged in Court as security for the costs of this Appeal be paid out by the Accountant-General to Messrs. Donaldson & Burkinshaw, the Solicitors for the Respondents to account of their costs.

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GIVEN under my hand and the seal of the Court this 14th day of May, 1973.

Sd. R.E. Martin

ASSISTANT REGISTRAR

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Formal Order in Civil Appeal No.37 of 1972 (Suit No.1909 of 1967) 14th May 1973

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THIS APPEAL coming on for hearing on the 19th, 20th, 21st and 22nd days of February, 1973 in the presence of Mr. John Godfrey Le Quesne, Q.C. and Mr. Kenneth Edward Hilborne of Counsel for the abovenamed Appellant and Mr. Antony Purdon Godwin and Mr. Roy Sharma of Counsel for the abovenamed Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and upon the same coming on for judgment this day in the presence of Counsel as aforesaid THIS COURT DOTH ORDER that the Appeal herein be and is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that the Appellant do pay the Respondents the costs of this Appeal as taxed AND THIS COURT DOTH CERTIFY that on taxation, the Registrar is to allow the attendance of two Counsel for the Respondents AND THIS COURT DOTH LASTLY ORDER that the sum of \$500.00 lodged in Court as security for the costs of this Appeal be paid out by the Accountant-General to Messrs. Donaldson & Burkinshaw, the Solicitors for the Respondents to

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In the Court
of Appeal in
Singapore

account of their costs.

GIVEN under my hand and the seal of the Court
this 14th day of May, 1973.

Sd. R.E. Martin

ASSISTANT REGISTRAR

No.37
Formal Order
in Civil Appeal
No.37 of 1972
(Suit No.1909
of 1967)
14th May 1973
(continued)

No.38
Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council in
Civil Appeal
No.36 of 1972
(Suit No.1809
of 1967)
14th May 1973

No.38

ORDER GRANTING LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
IN CIVIL APPEAL NO.36 of 1972
(SUIT NO. 1809 of 1967)

O R D E R

UPON Motion preferred unto the Court by the
abovenamed Appellant, Maria Chia Sook Lan (m.w.)
coming for hearing this day in the presence of
Counsel for the Appellant and for the abovenamed
Respondents AND UPON reading the Notice of Motion
dated the 3rd day of May, 1973 and the Affidavit
of Maria Chia Sook Lan (m.w.) sworn and filed
herein on the 3rd day of May, 1973 for leave to
appeal to the Judicial Committee of Her Britannic
Majesty's Privy Council under Section 3(1)(a)(i),
(ii) and (iii) of the Judicial Committee Act
(Cap.8) AND UPON hearing what was alleged by
Counsel aforesaid THIS COURT DOTH GRANT LEAVE to
the said Maria Chia Sook Lan (m.w.) to appeal to
Her Britannic Majesty's Privy Council against the
whole of the Judgment of the Court of Appeal
delivered herein at Singapore on the 3rd day of
May, 1973 AND THIS COURT DOTH DIRECT that the
Appellant do pay the sum of \$10,000.00 into Court
as security for the payment of all such costs as
may become payable to the Respondents in the
event of the Appellant failing to proceed with
the appeal to the Judicial Committee or the
Judicial Committee ordering the Appellant to

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pay the costs of the Respondents.

Dated this 14th day of May, 1973.

Sd. R.E. Martin

ASSISTANT REGISTRAR

In the Court
of Appeal in
Singapore

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No.38

Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council in
Civil Appeal
No.36 of 1972
(Suit No.1809
of 1967)
14th May 1973
(continued)

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No. 39

ORDER GRANTING LEAVE TO APPEAL TO
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
IN CIVIL APPEAL NO. 37 of 1972
(SUIT NO. 1909 of 1967)

No.39

Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council in
Civil Appeal
No.37 of 1972
(Suit No.1909
of 1967)
14th May 1973

O R D E R

UPON Motion preferred unto the Court by the abovenamed Appellant, Maria Chia Sook Lan (m.w.) coming for hearing this day in the presence of Counsel for the Appellant and for the abovenamed Respondents AND UPON reading the Notice of Motion dated the 3rd day of May, 1973 and the Affidavit of Maria Chia Sook Lan (m.w.) sworn and filed herein on the 3rd day of May, 1973 for leave to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council under Section 3(1)(a)(i), (ii) and (iii) of the Judicial Committee Act (Cap.8) AND UPON hearing what was alleged by Counsel aforesaid THIS COURT DOTH GRANT LEAVE to the said Maria Chia Sook Lan (m.w.) to appeal to Her Britannic Majesty's Privy Council against the whole of the Judgment of the Court of Appeal delivered herein at Singapore on the 3rd day of May, 1973 AND THIS COURT DOTH DIRECT that the Appellant do pay the sum of \$10,000.00 into Court as security for the

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In the Court
of Appeal in
Singapore

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No.39.

Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council in
Civil Appeal
No.37 of 1972
(Suit No.1909
of 1967)
14th May 1973
(continued)

payment of all such costs as may become payable
to the Respondents in the event of the Appellant
failing to proceed with the appeal to the Judicial
Committee or the Judicial Committee ordering the
Appellant to pay the costs of the Respondents.

Dated this 14th day of May, 1973.

Sd. R.E. Martin

ASSISTANT REGISTRAR

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.4 and 5 of 1974

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

B E T W E E N :

MARIA CHIA SOOK IAN (m.w.) Appellant

- and -

BANK OF CHINA (Civil Appeal No.36 of 1972) Respondents

A N D B E T W E E N : No. 5 of 1974

MARIA CHIA SOOK IAN (m.w.) Appellant

- and -

BANK OF CHINA (Civil Appeal No.37 of 1972) Respondents

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

VOL. I.

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