Privy Council Appeals Nos. 4 and 5 of 1974

Maria Chia Sook Lan (m.w.) – – – – – *Appellant*

v.

Bank of China – – – – – *Respondents*

and

Maria Chia Sook Lan (m.w.) – – – – – *Appellant*

v.

Bank of China – – – – – *Respondents*

(*Consolidated Appeals*)

FROM

THE COURT OF APPEAL IN SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER 1975

Present at the Hearing:
LORD SIMON OF GLAISDALE
LORD MORRIS OF BORTH-Y-GEST
LORD SALMON
LORD FRASER OF TULLYBELTON
LORD RUSSELL OF KILLOWEN

[*Delivered by* LORD RUSSELL OF KILLOWEN]

These appeals from the Court of Appeal in Singapore stem from two actions. In one of them the respondent Bank of China ("the Bank") sued the appellant ("Chia") upon two written guarantees signed by Chia guaranteeing payment to the Bank of moneys due to the Bank by Chia's husband ("Yo") trading as Dwidaya Trading Company: one such guarantee, dated 12th January 1962, was for an amount of $Malayan 200,000 and interest, and is referred to as P.2: the other such guarantee was dated 27th January 1965, was for an amount of $Malayan 600,000 and interest, and is referred to as P.3. Chia had previously on 2nd October 1961 signed a similar guarantee for an amount of $Malayan 100,000, referred to as P.1, and ultimately did not dispute liability thereunder.

In the other action Chia as Plaintiff sought to have set aside a consent order dated 12th September 1966 made on an Originating Summons No. 185 of 1966 issued by the Bank. That order recited that it appeared that the title deeds of a property ("Cuscaden" which was owned by Chia and was the home at which she lived with Yo and their children) had

been deposited with the Bank to secure an overdraft on account current in favour of Dwidaya Trading Company: declared that the Bank was entitled to be considered as a mortgagee of Cuscaden to secure the sum of $1,218,009·49 and interest thereon from 30th June 1966 at 8% per annum: ordered and adjudged the same accordingly: and further gave liberty to the Bank to sell Cuscaden and to execute as mortgagee a proper conveyance to the purchaser.

The sum of $1,218,009·49 was the sum standing in the Bank's books to the debit of Yo (in his trading name, which for brevity will not be used hereafter) on the 30th June 1966. It is convenient here to point out that if that consent order cannot be successfully attacked, and having regard to the ultimate value of Cuscaden, it is not necessary for the Bank to rely upon P.2 or P.3, save to the extent that the figure in the consent order does not in fact include a further sum of $231,429 due from Yo to the Bank under two Trust Receipt documents (hereinafter referred to), which further sum had not for some reason at the time of the consent order been debited to Yo's general account.

Their Lordships first consider the attempt by Chia in her action to set aside the consent order. It is rightly contended on her behalf that a consent order is open to attack on grounds upon which a contract is so open. On this appeal three grounds were advanced: others had fallen by the wayside in the course of a compendious rejection of Chia and Yo as untruthful witnesses: of the three certainly one was, as such a ground, advanced for the first time at the hearing of this appeal. Each of the three grounds was rooted in alleged mistake.

The first ground

It was contended that fundamental to the consent order was the mistaken assumption, common to both the Bank and Chia, that the Bank had an effective charge on Cuscaden for moneys owing by Yo to the Bank, whereas there was no such effective charge. This allegation that there was no such effective charge requires reference to a document of Confirmation of Deposit of Title Deeds dated 2nd October 1961 signed by Chia, referred to as P.4. P.4 was a printed form, and so far as material reads as follows:

"To
Bank of China
(Incorporated in China with
Limited Liability) 447
Singapore

Confirmation of Deposit of Title Deeds

I/We, the undersigned Maria Chia Sook Lan alias Tjhia Sioek Lan, of No. 28, Cuscaden Road, Singapore, hereby confirm the terms of my/our 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, Boat Quay, Singapore, either solely or jointly with any other person or persons to you whether on balance of account or by the discount or otheriwth [sic] in respect of bills of exchange promissory notes cheques or other negotiable instruments or in any manner whatsoever including interest with monthly rests at the rate of 8% p.a. commission and other banking charges and costs incurred in connection with the account.

I/We further confirm having agreed to execute in your favour on demand a legal mortgage of such properties in such form and containing such powers and provisions as you may require."

The undermentioned property was Cuscaden. Well prior to that date the title deeds had been delivered to the Bank by solicitors for Chia in circumstances left in some obscurity by the evidence. The argument against the effectiveness of any charge on Cuscaden was based upon the propositions—

(*a*) that P.4 is a memorandum of charge and therefore an assurance by which land within Singapore is affected, and not having been registered under the Registration of Deeds Act was by section 4 thereof " not . . . admissible in any court as evidence of title to such land ":

(*b*) that the very existence of P.4 precluded evidence of a charge by deposit of title deeds with the orally expressed purpose of securing Yo's overdraft, by force of s.91 of the Evidence Act; or alternatively that any such charge that may have existed prior to its execution was wholly superseded by P.4, notwithstanding the language of P.4, and notwithstanding the disabilities said to be inflicted on P.4 by want of registration.

In their Lordships' opinion it is not necessary to embark upon a discussion of these arguments and the answers thereto offered for the Bank: nor is it necessary to embark upon a discussion whether, if there were this alleged common mistake, it would be of the relevant character, whether one of law, private right or fact. The reason is this. It was conceded that P.4 contains an enforceable agreement by Chia to execute a legal mortgage of Cuscaden to secure Yo's overdraft, and that the Registration of Deeds Act would not have stood in the way of such enforcement. Accordingly if the contentions for Chia were sound, on which their Lordships must not be taken to rule, the mistake was one of machinery and not of substance, and on that ground was not in any event such a mistake as would justify setting aside the consent order. The substance of the matter was that in any event the Bank was in a position to insist upon an effective charge on Cuscaden for Yo's indebtedness.

The second ground of attack on the consent order

Under this head it was asserted that the parties laboured under the common mistake that Cuscaden was effectively charged to secure Yo's overdraft, whereas it was not, because Chia's signature to P.4 was procured by a misrepresentation by Djeng on behalf of the Bank that P.4 charged Cuscaden with Yo's overdraft to a maximum of $100,000. It will be recalled that the guarantee P.1 for $100,000 was signed contemporaneously with P.4. Entries in the Bank's records indicate that Yo was being granted at that time overdraft facilities of $200,000, of which $100,000 was secured by guarantee and $100,000 was secured on Cuscaden. This alleged misrepresentation never found a place in Chia's original pleading nor in the copious amendments which followed from time to time. Chia gave no evidence of any such misrepresentation: indeed her evidence about P.4 was that it was nothing at all to do with Yo's overdraft. Counsel for Chia sought to establish the making of such representation from the evidence of Loke (another employee of the Bank) as to what Djeng explained to Chia about P.4: but Loke's evidence, which their Lordships do not propose to set out in detail, was uncertain: it was never suggested to Djeng in cross-examination that he had made such a representation: had the matter been pursued it might well have emerged that Djeng simply referred to $100,000 as being the initial charge on Cuscaden, with an indication that if overdraft facilities to Yo were extended so would be the scope

of the charge, as was plainly so under P.4, which Djeng said (and the judge accepted) he explained to Chia. In their Lordships' opinion the evidence is wholly insufficient to establish the suggested misrepresentation as to P.4. On this point also their Lordships refrain from expressing any opinion whether the mistake alleged under this head is of a character such as can found an attack on a consent order.

It was alternatively submitted that there was in all the circumstances a relationship of confidentiality, involving reliance by Chia upon the Bank through its servants Loke and Djeng, which required the Bank to establish affirmatively by evidence that Chia fully understood the transaction, involving proof that there was no such misrepresentation. Their Lordships are quite unable to find from the circumstances any such situation.

The third ground of attack on the consent order

In summary it is hereunder contended that the order was consented to by the Bank and Chia in the mistaken belief by both that it formed a part of, or step in, a wider agreement having contractual force. Alternatively it is said that if the Bank had no such mistaken belief, Chia or her solicitor Selvadurai had, and the Bank led her to that mistaken belief, or knowing of it did nothing to disabuse her. This requires a certain amount of attention to the correspondence leading up to the consent order, and to some evidence given by Selvadurai. So far as the evidence of Chia herself is concerned, it contains nothing to indicate such a mistaken belief on her part: her discredited evidence was that she never instructed Selvadurai to consent to the order at all. The evidence of the Bank officials Loke and Djeng contains nothing whatsoever to support the contention that the Bank entertained the alleged mistaken belief, or that the Bank induced or knew of such mistaken belief on the part of Chia or Selvadurai.

To understand the correspondence leading up to the consent order it is necessary to refer to another property of Chia known as Thomson Rise. This she had bought in June 1963 for about $400,000 borrowed from the Bank by increasing her overdraft. At the same time she deposited the title deeds of Thomson Rise with the Bank as further security for her own overdraft, and signed a document P.5, a Confirmation of Deposit of Title Deeds in the same form as P.4 but referring of course to her own indebtedness to the Bank and not that of Yo, and to Thomson Rise as the property in question. Chia had been a customer of the Bank since November 1960, it having then been arranged that she should be given overdraft facilities up to half the value of securities deposited by her with the Bank: over the subsequent years and until "confrontation" she had dealt successfully in stocks and shares on a buoyant market.

In March 1965 the Bank wrote to Chia calling in her overdraft, then $1,424,768: and to Yo calling in his, then $1,095,602. Correspondence followed, the Bank threatening legal action, Chia and Yo asking for time, and expressing optimism as to the outcome of current or pending transactions, in a pattern familiar in such cases. Ultimately on 7th April 1966 the Bank sent by registered post "final notices" requiring payment by Chia of her overdraft (then $1,442,468) and by Yo of his overdraft (then $1,193,374) and moneys due under the terms of Trust Receipts ($231,000 odd). Chia and Yo then went to a solicitor Tann and correspondence ensued between Tann and Donaldson & Burkinshaw, the solicitors for the Bank. The Bank's solicitors indicated that the Bank would proceed against Chia on her guarantees and the security of Cuscaden in respect of Yo's liabilities, and against Chia in respect of her deposited investments and Thomson Rise as security for her liabilities. Ultimately the Bank's solicitors wrote on 21st July 1966 that

the Bank was proceeding to sell the investments deposited as security for Chia's overdraft and then to commence proceedings for the enforcement of its security on Thomson Rise in respect of the balance. On 1st August 1966 the Bank issued an Originating Summons for the enforcement of the charge on Cuscaden in respect of Yo's overdraft: and it was in those proceedings that the consent order now in question was made. At that stage, Tann being unwilling to conduct litigation, Chia went to other solicitors, Lee & Lee (Selvadurai). From the correspondence that follows it will be seen that on behalf of Chia an offer was being made to bring in Thomson Rise also as security for Yo's indebtedness. On 25th October 1966 the Bank issued an Originating Summons seeking an order to enforce their security against Thomson Rise in respect only of the balance of Chia's overdraft (after realisation of her deposited investments) of $458,501. Ultimately a consent order was made on those proceedings on 10th November 1966 which brought into the charge on Thomson Rise also the amounts due from Yo on overdraft and under Trust Receipts. Their Lordships understand that that consent order is or may be under challenge in other proceedings, but that question does not arise in these appeals.

The correspondence leading to the consent order in respect of Cuscaden needs to be set out *in extenso* for an understanding of the allegation that there was the mistaken belief already summarised.

On 24th August 1966 Selvadurai wrote on behalf of Chia to the Bank's solicitors as follows:

> " We refer to the above Originating Summons, the hearing of which was postponed to Monday, 5 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.
>
> . . . .
>
> 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.
>
> 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 overdraft.
>
> 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.
>
> The Thomson Rise property, we are instructed is worth about three million dollars.
>
> 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.
>
> Kindly let us have your clients' reaction to the above proposals at your earliest."

On 25th August Selvadurai wrote as follows:

> " 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."

On 3rd September 1966 the Banks' solicitors replied as follows:

" 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.

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 client with the terms of monthly payments to be agreed, the Bank will not enforce the Order and sell the property.

2. For our clients to proceed by way of Orginating 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.

We await hearing from you at your early convenience."

The enclosed letter from the Bank to its solicitors was as follows:

" 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 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 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 us under AB bills.

We will withhold selling No. 28 Cuscaden Road so long as the monthly instalments as determined by 3 above are regularly paid to us."

Selvadurai replied on 6th September as follows:

" . . . .

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.

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."

The Bank's solicitors replied on 9th September 1966 as follows:

> "We have now taken our clients' instructions with reference 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 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."

To complete the relevant material the note of Selvadurai's evidence contains this passage:

> "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 if would be left to the court to decide.
>
> 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 [the bank's Solicitors] treated it as a concluded agreement."

Page 11 of AB5 is the letter dated 3rd September already quoted.

Selvadurai accordingly thought that the correspondence included an enforceable provision for the decision of the amount of the instalments by which the joint indebtedness of Chia and Yo should be progressively reduced when it was ascertained how much was still owing after the Thomson's Rise property had been sold, because he thought that if there was dispute on the amount and frequency of the instalments a Court, on application, would settle the dispute by deciding what was in the circumstances reasonable. Their Lordships are of opinion that in this Selvadurai was in error: it would not be a problem appropriate for resolution by a Court. As has been pointed out there is no evidence that Chia laboured under any such error: but even if the error of Salvedurai is to be regarded as the error of Chia, there still remains the question whether the error was shared by the Bank. There was no evidence of any error in the mind of the officials of the Bank: nor was it suggested to them in cross-examination: nor in their Lordships' opinion can any be inferred from the language of the correspondence quoted. Chia was in a situation in which she and Selvadurai and the Bank all thought that she was defenceless in law: in such a situation it is not surprising that the Bank should intend to retain freedom of action as to future requirements for reducing indebtedness. Further, in their Lordships' opinion the correspondence quoted cannot serve as a basis for concluding that the Bank in any way misled Chia (or Selvadurai) into thinking that any such instalments were otherwise than at large, nor that the Bank realised that there was any relevant misapprehension on the other side but kept silent.

On this aspect of the case also, the fact that their Lordships have considered the evidence is not to be taken as an expression of opinion that the mistake alleged is of a character such as, if proved, would justify the setting aside of the consent order.

Accordingly in their Lordships' opinion the attack on the Cuscaden consent order fails.

There are next for consideration, in the Bank's action, the guarantees signed by Chia in respect of Yo's indebtedness, namely P.2 for $200,000 and interest, and P.3 for $600,000 and interest, on which the Bank sued. As has been remarked the ultimate value of Cuscaden proved such that these guarantees became of academic interest, granted the validity of the Cuscaden consent order, except in relation to the sum of $231,429 due to the Bank from Yo in respect of two Trust Receipts, which admittedly came within P.2 and P.3 on their true construction but was not included in the figure of $1,218,009 in the declaration of charge in the Cuscaden consent order.

P.2 was dated 12th January 1962. It is headed " Letter of Guarantee " and is addressed to the Bank. Relevant extracts are as follows:

" I/We hereby request you to accept Trust Receipts at the request of Madam Chia Sook Lan, 28, Cuscaden Road, Singapore on behalf of M/s. Dwidaya Trading Co., 33 Bank of China Building, Singapore for any sum or sums not exceeding Malayan Dollars two hundred thousand only at any one time, (hereinafter called 'the customer'), and in consideration thereof I/we do jointly and severally agree with and guarantee you as follows, that is to say:—

1. I/We will pay to you on demand in writing all money which now is or may during the operation of this agreement be owing to you from the customer or remain unpaid on the general balance of the customer's account with you including advances, overdrafts, discounts, bills or notes held by you on or in respect of which the customer may be or have been liable to you or commission and other ordinary banking expenses interest at the rate of twelve per cent per annum or such lower rate as may be from time to time agreed between the customer and you or allowed by you with monthly rests although the relation of banker and customer may have ceased and all costs, charges and expenses which you may incur in enforcing or seeking to enforce any security for or obtaining or seeking to obtain payment of all or any part of the money hereby guaranteed.

I/We will pay to you on demand all moneys due to you under any Bank Credit including Documentary Letters of Credit and Authorities to Purchase Acceptances Letters of Hypothecation Packing Loans to finance the purchase manufacture processing and export of goods and other commodities, in accordance with the terms and conditions in any Application Agreement or Letter signed amended extended or renewed from time to time and without notice to me/us by the customer or his authorised representative in your favour.

. . . .

4. This Guarantee shall be a continuing guarantee to the extent of Dollars two Hundred Thousand only (Malayan Currency) ($200,000–00) and interest thereon at the current rate of interest per $100/- per mensem when the amount owing to you from the customer or remaining unpaid as set out in the first paragraph hereof exceeds Dollars Two Hundred Thousand only (Malayan Currency) ($200,000–00) for the purpose of securing not merely an equivalent amount (but subject always to the said limit of Dollars Two Hundred Thousand only (Malayan Currency) ($200,000–00) and the said interest thereon) the whole of the moneys or general balance in the first paragraph hereof mentioned notwithstanding any such payments receipts or dividends as are hereinbefore mentioned with

interest on the sum claimable from me/us at the current rate of interest per $100/- per mensem from the date of my/our receiving demand for payment thereof from which date you may at your discretion refuse further credit to the customer and close his account."

A short explanation of the nature of a Trust Receipt should be given. It is a receipt for goods imported by Yo paid for by the Bank, which goods are released to Yo by the Bank on trust for the Bank but with liberty to Yo to sell the goods for the Bank's account, Yo agreeing by the document to hand the proceeds as soon as received to the Bank. The two Trust Receipts outstanding in respect of which Yo had failed to account to the Bank were dated respectively 16th October 1963 ($213,429) and 16th October 1963 ($18,000).

As to P.2 it is asserted that the Bank through Djeng innocently misrepresented to Chia that P.2 was only a guarantee up to $200,000 for money due from Yo under Trust Receipts, whereas it is in terms a guarantee of sums due to the Bank on general account or otherwise: at the date of its execution Yo was under no liability in respect of Trust Receipts but was overdrawn on general account by $269,000, so that Chia by P.2 undertook an immediate liability for $169,000 additional to her existing liability for $100,000 under her P.1 guarantee. This alleged misrepresentation was not pleaded, nor was any evidence given by Chia in support of it: indeed her (discredited) evidence about P.2 was quite different. Reliance was placed solely upon the notes of Djeng's evidence, which are certainly capable of the interpretation that he told Chia that P.2 was to cover only moneys due in respect of Trust Receipts. But if the matter had been pleaded and pursued it might well have emerged that in truth Djeng's reference to Trust Receipts was a reference merely to the occasion for requiring a further general guarantee, as indeed P.2 shows that it was: and in this connection it is not without interest to observe that the Bank in its pleading refers to P.2 as a Letter of Guarantee " in respect of the acceptance . . . of Trust Receipts ". In their Lordships' opinion it would be quite wrong to find that the evidence satisfactorily establishes the innocent misrepresentation asserted, and P.2 is valid according to its tenor. (There is not lacking an element of paradox in the fact that the Bank need rely upon P.2 only in respect of Trust Receipt indebtedness.)

As to P.3 a quite different attack is made, namely that the Bank by its officials Loke and Djeng extorted it from Chia by improper pressure such that equity will regard as ground for setting the transaction aside. P.3 is a further letter of guarantee in general form of Yo's indebtedness with a limit of $600,000, dated 27th January 1965. At that stage Yo's overdraft was over $1,000,000: and Chia by the indulgence of the Bank had been allowed to maintain an overdraft very greatly in excess of the limits originally agreed, an excess no doubt in part due to a decline in stock exchange values. There is no substantial difference between the versions of Chia, Loke and Djeng as to what passed at the interview at the Bank at which Chia signed P.3. (Yo was not present, though Loke and Djeng when they gave evidence erroneously thought he had been: the absence of Yo can scarcely be regarded as a relevant factor in favour of Chia's case, having regard to the fact that, at least originally, on some aspects of these disputes it was asserted by Chia that the Bank had exercised undue influence *through* Yo.) When asked to give the P.3 guarantee Chia was reluctant to do so: she was shown the extent of Yo's overdraft which appeared to surprise her: she was told by the Bank officials that if she did not give this guarantee the Bank would take legal action and make Yo bankrupt, and also would sell her mortgaged shares to recover or reduce her overdraft. The interview lasted up to half an hour, though Chia sought to bolster her case by saying it was three hours. Their

Lordships are unable to accept that these indications of the courses of action that the Bank would take unless P.3 was signed amount to the kind of improper pressure that requires a Court of Equity to set aside the transaction, whether those indications be taken separately or together. It is of course true that husband and wife are in law quite separate customers of a Bank and cannot in law be treated as one customer. But the whole history of this case presents a picture of Yo and Chia *vis-à-vis* the Bank as a family unit. It is moreover to be borne in mind that Chia's property Cuscaden—which in the view of Loke was at that time worth $800,000 and of Djeng $800,000 to $1,000,000—was already charged with Yo's overdraft liability. Their Lordships do not regard it as relevant improper pressure in the circumstances for the Bank to indicate that it would be unable to continue an indulgence in her favour on her account, and that it would call in Yo's overdraft on his account with the outcome of his bankruptcy, an outcome which scarcely needed express mention. Their Lordships accordingly reject the attack on P.3.

It was additionally contended for Chia, in relation to both P.2 and P.3, that all the circumstances of the case indicate a special relationship between the Bank and Chia which made it incumbent upon the Bank to establish affirmatively in the one case that there was no misrepresentation and in the other that there was no improper pressure. Their Lordships have already rejected the suggestion of such special relationship.

For these reasons their Lordships are of opinion that in each of these two actions the appeal fails and must be dismissed with costs.

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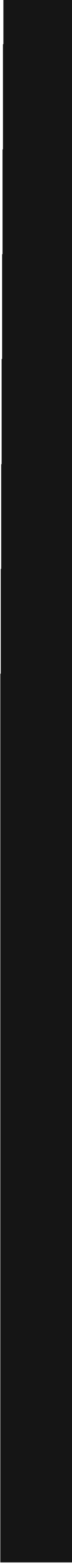

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1975