

G.M.F.G. 2

18, 1961

IN THE PRIVY COUNCIL

No. 55 of 1960

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL

In the Matter of an intervention  
by the Attorney-General in Divorce  
Petition No. 3 of 1956

B E T W E E N:

SYDNEY HASTINGS DOWSE

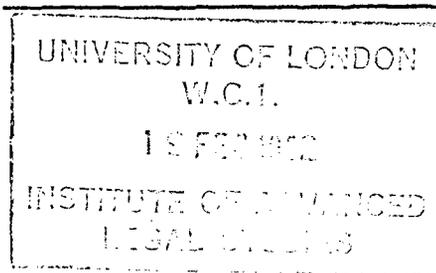
Appellant

- and -

ATTORNEY-GENERAL, FEDERATION  
OF MALAYA

Respondent

RECORD OF PROCEEDINGS



63675

LAWRANCE, MESSER & CO.,  
16, Coleman Street,  
London, E.C.2.

Solicitors for the  
Appellant.

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
London, W.C.2.

Solicitors for the  
Respondent.

i.

IN THE PRIVY COUNCIL

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B E T W E E N:

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- and -  
ATTORNEY-GENERAL, FEDERATION  
OF MALAYA                                      Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF THE FEDERATION OF MALAYA</u>		
1	Decree Nisi	6th November 1958	1
2	Plea of the Attorney General (Respondent)	16th February 1959	3
3	Answer of the Petitioner (Appellant)	23rd March 1959	4
4	Opening Speech for the Attorney General (Respondent)	19th January 1960	4
	<u>Attorney General's Evidence</u>		
5	Ronald Samuel Young, Examination	19th January 1960	5
6	Tan Phaik Kooi, Examination Cross-Examination	19th January 1960 19th and 20th January 1960	6 15
7	Lim Im Chua, Examination Cross-Examination	20th January 1960 20th January 1960	24 25
8	Kee Hup Chye, Examination Cross-Examination	20th January 1960 20th January 1960	26 28

No.	Description of Document	Date	Page
9	Lim Im Swee, Examination	20th January 1960	28
	Cross-Examination	20th January 1960	29
10	Kee Thuan Siang, Examination	20th January 1960	29
11	Chuah Keat Seng, Examination	20th January 1960	30
12	Hashim bin Osman, Examination	20th January 1960	31
	<u>Petitioner's Evidence.</u>		
13	Sydney Hastings Dowse, Examination	20th January 1960	33
	Cross-Examination	20th January 1960	35
	Re-Examination	20th and 21st January 1960	36
	Further Cross-Examination	21st January 1960	38
14	Khaw Beng Seok, Examination	21st January 1960	41
	Cross-Examination	21st January 1960	44
15	Closing Speech for Petitioner (Appellant)	21st January 1960	46
16	Closing Speech for Attorney General (Respondent)	21st January 1960	49
17	Judgment of Rigby J.	22nd January 1960	51
	<u>IN THE COURT OF APPEAL</u>		
18	Notice of Appeal	23rd January 1960	62
19	Memorandum of Appeal	10th February 1960	63
20	Notes of Argument, Thomson C.J.	22nd February 1960	64
21	Notes of Argument, Hill J.A.	22nd February 1960	67
22	Notes of Argument, Good, J.A.	22nd February 1960	70
23	Judgment of Thomson C.J.	29th February 1960	74
24	Judgment of Hill J.A.	24th February 1960	81
25	Judgment of Good J.A.	24th February 1960	81
26	Order dismissing Appeal	24th February 1960	82
27	Order giving final leave to Appeal to His Majesty The Yangdi- Pertuan Agong in Council	13th June 1960	83

iii.

EXHIBITS

Exhibit Mark	Description of Document	Date	Page
C	Affidavit of Tan Phaik Kooi	3rd February 1959	85
D	Affidavit of Tan Phaik Kooi	6th February 1959	87
P3B	Certified translation into English of Police report of Tan Phaik Kooi	22nd August 1958	88
P6	Statement of Dr. Menon	13th August 1958	89
D4	Statement of Claim in Civil Suit No.27 of 1959 - Tan Phaik Kooi v. Dowse	16th March 1959	90
D7	Notice of Action - Tan Phaik Kooi v. Dowse	31st December 1958	91
D8	Notice of Action - Lim Imm Chua v. Dowse	31st December 1958	92
<u>OTHER DOCUMENTS</u>			
-	Letter, Mrs. Dowse to Attorney General	24th January 1959	94
-	Letter, Attorney General to Legal Adviser - Penang	28th January 1959	95

DOCUMENTS TRANSMITTED WITH THE RECORD  
BUT NOT REPRODUCED

Description of Document	Date
Appearance of the Attorney General	3rd February 1959
Order granting Conditional Leave to Appeal	11th April 1960
Exhibit A - Correspondence between Counsel	
Exhibit B - Further correspondence between Counsel	
Anonymous letter received by Rigby J.	24th July 1958

1.

IN THE PRIVY COUNCIL

No.55 of 1960

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL

In the Matter of an intervention  
by the Attorney-General in Divorce  
Petition No. 3 of 1956

B E T W E E N:

SYDNEY HASTINGS DOWSE

Appellant

- and -

ATTORNEY-GENERAL, FEDERATION  
OF MALAYA

Respondent

RECORD OF PROCEEDINGS

No. 1

DECREE NISI

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT PENANG

DIVORCE PETITION 1956 No. 3

BETWEEN: Sydney Hastings Dowse

Petitioner

and

Mary Ann Dowse

Respondent

BEFORE THE HONOURABLE MR. JUSTICE RIGBY

IN OPEN  
COURT

The 6th day of November 1958

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.1

Decree Nisi,  
6th November  
1958.

The Judge having taken the oral evidence of  
the Petitioner and of the witnesses produced on his  
behalf in support of the Petition filed in this  
cause and the oral evidence of the Respondent and  
of the witnesses produced on her behalf in support  
of her amended Answer also filed in this cause and

10

20

30

In the  
Supreme Court  
of the  
Federation of  
Malaya

\_\_\_\_\_  
No.1

Decree Nisi,  
6th November  
1958 -  
continued.

upon reading the evidence of Edwina Dunn taken on commission in England in further support of the said amended Answer and having heard Counsel thereon on behalf of the Petitioner and the Respondent PRONOUNCED that the Petitioner had sufficiently proved the contents of his said Petition and DECREED that the marriage had and solemnised on the 1st day of March 1947 at the Registry of Civil Marriages, Singapore, between Sydney Hastings Dowse the Petitioner and Mary Ann Dowse, then Mary Ann Cook, Widow, formerly Mary Ann Cessaroc (erroneously described in the Marriage Certificate as Mary Ann Cook nee Cicero) the Respondent, be dissolved by reason that since the celebration thereof the said Respondent has deserted the Petitioner without cause for a period of at least three years immediately preceding the presentation of the Petition unless sufficient cause be shown to the Court within three months from the making of this Decree why such decree should not be made absolute and PRONOUNCED that the Respondent had not sufficiently proved the contents of her Amended Answer and DISMISSED the said Answer

10

20

And BY CONSENT IT IS FURTHER ORDERED that the Petitioner do pay to the Respondent as her agreed costs the sum of \$4,000 being the amount paid into Court as security for the said costs AND IT IS LASTLY ORDERED that the said sum of \$4,000 so standing to the credit of these proceedings be paid out to the Solicitors for the Respondent.

30

(L.S.)

By the Court

Sd. Ajaib Singh

SENIOR ASSISTANT REGISTRAR.

Intd. CKA

Intd. RDR

Entered this 6th day of November 1958 No.160/58.

---

PLEA OF THE ATTORNEY GENERAL

THE ATTORNEY-GENERAL, FEDERATION OF MALAYA showing cause.

Dated the 16th day of February, 1959.

The Attorney-General, Federation of Malaya, showing cause why the Decree Nisi pronounced herein on the 6th day of November, 1958, should not be made absolute says:-

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.2

Plea of the  
Attorney  
General  
(Respondent),  
16th February  
1959.

- 10 1. The said Decree was obtained contrary to the justice of this case, by the reason of the material facts hereinafter appearing not having been brought to the notice of the Court.
- 2. On the 26th February, 1958, and on at least 3 other occasions in March 1958, the Petitioner committed adultery with one Tan Phaik Kooi of No.25 Codrington Avenue, Penang at the residence of the Petitioner at Scott Road, Penang.
- 3. The Attorney-General therefore prays:-
  - 20 (a) That this Court will rescind the said decree nisi.
  - (b) That this Court will dismiss the said petition.
  - (c) That the Petitioner may be condemned in the costs of the Attorney-General, Federation of Malaya.
  - (d) For such further or other order as may be just.

Sd. H.S. ONG

Federal Counsel  
for ATTORNEY-GENERAL  
FEDERATION OF MALAYA

In the  
Supreme Court  
of the  
Federation of  
Malaya

No. 3

ANSWER OF THE PETITIONER (APPELLANT)

1. The Petitioner denies paragraph 1 of the Plea of the Attorney-General showing cause.

2. The Petitioner denies paragraph 2 of the said Plea and the Further & Better Particulars thereof.

Dated and delivered this 23rd day of March 1959.

Sd. R.H. Green

SOLICITOR for the PETITIONER.

To: Federal Counsel  
Penang.

10

No.4

No. 4

Opening Speech  
for the  
Attorney  
General.

OPENING SPEECH FOR THE ATTORNEY GENERAL

L.A. Massie, Senior Federal Counsel, for Attorney-General, F.M.

J.L.P. Harris for Petitioner.

Choong Ewe Leong for Lim Ewe Hock holding watching brief. Respondent.

Massie:

Decree nisi granted to Petitioner on 6.11.58  
Intervention under Section 18 of Divorce  
Ordinance, on grounds material facts - adultery  
with Tan Phaik Kooi - not brought to notice of  
the Court.

20

Refer to Attorney-General's plea of inter-  
vention.

Intervention occurred as result of lodging of  
report at Police Station by Tan Phaik Kooi on  
22.8.58 - alleging intercourse by Petitioner  
with her in February.

30

Child born on 7.12.58 of whom Tan alleges  
Petitioner the father.

Blood tests taken on 24th, 26th and 27th August,  
1959 of child, Tan and Petitioner.

Tests inconclusive.  
Right of intervention.  
Crawford v. Crawford & Dilke (1886) 11, P. & D. 150.).  
Produce 4 letters - exchange of correspondence between Counsel - which, by consent, ask to be put in.

In the  
Supreme Court  
of the  
Federation of  
Malaya

\_\_\_\_\_  
No.4

Ex. "A". Correspondence put in and marked "A".

Opening Speech  
for the  
Attorney  
General -  
continued.

No. 5

10

EVIDENCE OF RONALD SAMUEL YOUNG

Attorney  
General's  
Evidence.

RONALD SAMUEL YOUNG - sworn, states:

\_\_\_\_\_  
No.5

Senior Pathologist, Institute of Medical Research Laboratory, Penang.

Ronald Samuel  
Young,

On 19.8.59 took blood sample from the Petitioner - and again on 27.8.59 for additional tests.

19th January  
1960,

On 18.8.59 I took blood samples from Tan Phaik Kooi and her child named Allan - and again blood from both of them on 26.8.59 for additional tests.

Examination.

20

(Both called and identified).

As result of my first examinations I gave a report dated 24.8.59. This is my report.

Ex.P.1. Put in as Ex. P.1.

Tests inconclusive.

Made a further blood grouping and report on 29.8.59. This is my report.

Ex.P.2. Put in as Ex.P.2.

This further test also inconclusive.

No cross-examination

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.6

EVIDENCE OF TAN PHAIK KOOI

TAN PHAIK KOOI, affirmed, states in Hokkien:

Attorney  
General's  
Evidence.

Unemployed. Reside 25, Codrington Avenue,  
Penang. Aged 23.

No.6

I remember making a report to Pulau Tikus  
Police Station on 22.8.58.

Tan Phaik  
Kooi,

I was accompanied there by Lim Im Chua, my  
guardian.

19th January  
1960,  
Examination.

Massie:

Have here a certified copy of the report,  
recorded in Malay, made by the witness -  
together with an English translation thereof.

10

The report translated, sentence by sentence,  
to the witness.

States:

The report is correct save that I stated that  
when I went to Singapore I stayed at my guardian's  
sister's and not at my adopted mother's house - as  
stated in the report.

20

Harris:

Offence allegedly committed five months prior  
to the report made.  
Submit inadmissible in evidence.

Court:

An allegation of rape made five months after  
offence allegedly committed.  
In my view clearly too remote in time as to  
be admissible in evidence.

Witness continues:

30

I was born in Penang.

After my birth - owing to a Chinese super-  
stition - my father took me and left me with Lim Im  
Chua - as my guardian.

To Court:

Chinese superstition was that my day of birth unfavourable to my father's destiny.

Witness continues:

Lim Im Chua has been looking after me ever since.

I was educated at Pulau Tikus Convent English School - from aged 7 to 12.

Passed Standard Three in English.

10 I left School in 1949.

Since that date I have lived with my guardian.

I have never been to work anywhere.

I know one Khaw Beng Seok - consider her as my friend.

(Khaw Beng Seok called and identified)

I knew her in March, 1958.

She was then working for the Petitioner.

(Identified).

20 Q. Did you accompany her anywhere in March, 1958?

A. I accompanied her to the house of the Plaintiff.

Q. Why?

A. She asked me to have a visit to the European's house - to see the house.

I was then aged 20 (in English reckoning - 21 in Chinese).

I accompanied her. We got there about 2 p.m. - and we went to the rear of the house.

At first I refused - then Beng Seok took me by my hand to the rear of the house.

30 Then I saw Dowse. He shook hands with me.

He was then sitting in a chair. Then he took hold of me by one of my hands and pulled me towards him and made me sit on his lap. This was in the sitting room.

Q. Did you object in any way?

A. I did not say anything; I kept quiet.

Q. Where was Khaw Beng Seok at this time?

A. She went to the rear portion of the house.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

Q. What happened after that?

A. He carried me in his arms and took me to his bedroom.

I was then dressed in a gown.

He took off my panties. He pushed me down on the bed and had sexual intercourse with me.

My panties were off, but I still had my gown on.

Q. What about the Petitioner?

A. He had taken off his pants and was wearing a singlet. 10

Q. Did you agree to intercourse?

A. No.

Q. How did you show your disagreement?

A. I struggled - but was no match for him.

Q. Did you call out for help?

A. He told me not to shout.

Prior to this intercourse I was a virgin.

After intercourse with me, he asked me to go to the bathroom - and bathe. 20

I went - and had a wash.

He asked Beng Seok to give me a towel.

After I had washed he asked Beng Seok to take me home.

Q. Did you say anything to Beng Seok?

A. I told Beng Seok that I had been molested by the Petitioner - and that I was in fear of pregnancy. Beng Seok said: "Never mind, if that does happen, I will take you to see him (Dowse) to get some medicine". 30

Dowse had told me not to tell anyone about it.

Beng Seok conducted me part of the way home and then left me. I got home about 3 p.m.

Q. Did you see your guardian then?

A. Yes.

No, I did not tell her about this.

Q. Why not?

A. Because Beng Seok also told me not to tell anyone.

Q. Did you see Dowse again?

A. Yes - six days later. 40

I accompanied Beng Seok to his house.

Q. Why?

A. Because Beng Seok told me that she would get some medicine for me.

Q. That was why you went to his house?

A. Yes.

Arrived there about 2 p.m.

Q. Did you see Dowse?

A. Yes.

Q. Did you say anything to him?

10 A. Yes. I told him I was afraid of becoming pregnant as a result of what he had done to me.

Then he gave me five medicine tablets - and asked me to take three at once. I did so. He told me to take the remaining two when I got home.

Then he told me that if the medicine was effective, if I had a discharge of blood, I should inform him.

Q. What happened then?

A. He told me to go home - and I went.

20 Q. Did you see Dowse again at any time?

A. Yes. About 12 days after the second occasion I went with Beng Seok to his house at about 9 p.m.

Q. Why?

A. In order to tell him that the medicine was not effective.

---

To Court:

I had gone to Beng Seok's house - at 27, Codrington Avenue - which is next door to my house.

Dowse lived at 23, Scott Road.

30 I had gone to Beng Seok's house the previous day - to discuss the situation. She then arranged with me to meet her the following evening at junction of Peel Avenue and Perak Road and she would take me to see Dowse.

I did meet her there the following evening - and accompanied her to Dowse's house.

---

Witness continues:

Got to Dowse's house about 9.30 p.m.

There I saw Dowse.

In the  
Supreme Court  
of the  
Federation of  
Malaya

---

Attorney  
General's  
Evidence.

---

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No.6

Tan Phaik  
Kooi,  
19th January  
1960,  
Examination  
- continued.

Told him medicine ineffective.

He again molested me.

He carried me from the sitting room into his bedroom. There he took off my blouse and trousers and had sexual intercourse with me.

No, I was not agreeable to such sexual intercourse.

I struggled with him, but I was weak.

He hit me with his hand and told me to keep quiet.

Q. Did you try to call out for help?

A. I dare not - because he told me not to shout.

Q. Where was Beng Seok?

A. She returned to her house to take her food.

Q. What happened after this?

A. He took me to town in his car and dropped me at Cantonment Road. I got home about 10.30 p.m.

Q. Did you tell your guardian about this?

A. No - because he had told me not to tell anyone.

Q. Did you see Dowse again after this?

A. Yes about a fortnight later.

Q. In what circumstances?

A. I went to Beng Seok's house (next door to mine). Beng Seok told me Dowse would like to speak to me about 9 p.m. that day.

Beng Seok told me to go to Yeok Guan Seok Road at about 9 p.m. and wait there for Dowse.

I went there - at that time - alone.

Dowse met me there - and took me to his house.

We went into the house. There, Dowse removed my shoes and hid them. Then he asked me to sit in the sitting room with him.

Q. Did you say anything?

A. I told him not to molest me again.

Q. What happened then?

A. Then he pulled me to his bedroom.

He removed my blouse and trousers - despite my protests - and had sexual intercourse with me against my will.

Q. How did you show your disagreement?

A. I dare not do anything this time.

He pressed down my hands and legs and closed my mouth.

10

20

30

40

Q. What happened after that?

A. He asked me to wash and dress. I did so.

Then he drove me home as far as Yeok Guan Seok Road and there dropped me - and from there I walked home.

I got home about 11.30 p.m.

Q. Did you tell anyone what had happened to you?

A. No. Because Dowse and Beng Seok had told me not to tell anyone.

10 I did not see Dowse after that.

Q. How often did he have intercourse with you?

A. Four times.

Court:

Q. You have told us about three occasions?

A. I went there four times and had intercourse with him on these occasions.

Witness continues:

20 On the second occasion I went there, after he had given me the tablets, he also molested me - had intercourse with me. He then carried me into his bedroom, took off my blouse and trousers, pushed me down on the bed, stripped himself completely naked, got on top of me and had intercourse with me - against my will.

Yes, I called out - to Beng Seok.

Q. Did she come?

A. Yes - and she asked Dowse to let me go.

To Court:

Beng Seok stood outside the bedroom door.

30 It was closed. She did not come in.

Q. Was the door locked?

A. I think so - because when Beng Seok came to the door, Dowse opened the door and spoke to her.

Q. What did he say to her?

A. I did not hear. She went away.

Then Dowse went to the bathroom; I was still in the bedroom - I got up and dressed myself.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

Witness continues:

Q. At what stage did you call out?

A. I called out while he was having intercourse with me. When Beng Seok came to the door he stopped.

Q. How did you get home that day?

A. Beng Seok took me home on her bicycle.

Q. What time did you get home?

A. At about 3 p.m.

Q. Did you tell anyone about this?

A. No.

10

Q. Why not?

A. Both Dowse and Beng Seok told me not to tell anyone.

Q. Do you remember an occasion when you went to Singapore in May, 1958?

A. Yes.

Q. Does that date recall anything to your mind about your condition?

A. I think I was then pregnant.

20

Q. What made you think that?

A. I had been molested 4 times; I was feeling giddy and vomiting.

Q. Did you at any time after that see Dowse alone?

A. No.

Q. Or did you see him in company with anyone else?

A. No.

Lim Im Chua is my guardian and aunt.

Q. Did you see Dowse after your return from Singapore?

A. Yes, I went to see him with Lim Im Chua and Lim Im Swee - they are sisters.

30

Q. What date was that?

A. I cannot remember the date - or the month.

Q. Did you all go to his house to see him?

A. Yes.

Q. Did you speak to him?

A. Yes.

Q. What did you say to him?

A. I told him that I was afraid of pregnancy. He said: "Don't worry. I won't get you pregnant."

40

Q. Who was with you on this occasion?

A. My guardian and her sister and Beng Seok.

Q. What happened after that?

A. Dowse told Beng Seok to take me to see a doctor.

Q. Did she do so?

A. Yes - Dr. Menon.

Yes, he examined me - and told me I was 5 months pregnant.

10 Q. Did you go for a blood test to Institute of Medical Research in August, 1959?

A. Yes.

Q. Do you know one Osman bin Darus?

A. No.

\_\_\_\_\_

A man called into Court, who gives his name as Osman bin Darus.

\_\_\_\_\_

Yes, I have seen this man before - but I did not know his name. I know him as a trishaw pedlar.

\_\_\_\_\_

To Court:

20 I have never ridden in his trishaw - but I have seen him.

\_\_\_\_\_

Witness continues:

Q. Has he ever had intercourse with you?

A. No.

Q. Do you know a police constable, Hock Leng?

A. Yes.

Q. Was he a friend of yours?

A. Yes.

Q. Did you ever have intercourse with him?

A. No.

30 Q. Have you ever had intercourse with anyone other than Dowse?

A. No.

Q. On 7.12.58 you gave birth to a child at the Maternity Hospital, Penang?

A. Yes.

Dowse is the father of that child.

In the  
Supreme Court  
of the  
Federation of  
Malaya

\_\_\_\_\_  
Attorney  
General's  
Evidence.

\_\_\_\_\_  
No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Examination  
- continued.

Yes, I registered birth of the child with the  
Superintendent/Registrar of Births and Deaths,  
Penang.

Yes, I was the informant.

12.40 p.m. Adjourned to 2.30 p.m.

(Signed) I.C.C. RIGBY  
JUDGE, 19.1.60

2.30 p.m. - Hearing resumed.

Harris:

By agreement with Mr. Massie produce copies  
of 4 letters passing between Counsel. Only object  
is to show that the request for a blood test  
emanated from Dowse himself.

10

Ex. "B" Letters put in and marked "B".

P.W.2 - Tan Phaik Kooi - recalled - reminded on  
former affirmation - states:-

Harris:

I objected to the Police Report - which Court  
has ruled inadmissible - before I had seen it.  
Having seen it, am of the opinion that it is most  
relevant for purposes of cross-examination as to  
credit.

20

N.B.

At the time the objection was taken by Mr.  
Harris I then and there intimated to him that the  
contents of the report (which I had not and still  
have not seen) might well provide material for  
cross-examination and, indeed, I inquired from him  
whether he wished to persist in his submission it  
was inadmissible. He stated he did wish to do so.  
Since the Report was made 5 months after the event  
complained of I considered it was too remote in  
time to be admissible as against the Petitioner.  
However, since Mr. Harris now wishes to cross-examine  
the witness on the contents of that Report, I now  
allow the Report to go in as evidence.

30

Report, recorded in Malay, together with English Translation, put in - at request of Mr. Harris and with consent of Mr. Ex.P.3A Massie - as Ex. P.3A and P.3B.  
and P.3B

In the Supreme Court of the Federation of Malaya

CROSS-EXAMINED

Attorney General's Evidence

No.6

Tan Phaik Kooi,

19th January 1960,

Cross-Examination.

Yes, I am a member of an old Straits Chinese family.

I can speak a little Malay.

10 Q. Do you understand my questions in English?

A. A little.

Yes, I said this morning that I knew the man Osman bin Darus as a trishaw pedlar.

Yes, I also said he used to take persons to gamble.

Yes, to gamble at house where I live. People come to gamble there once or twice a week.

Yes, I normally wear a samfoo.

I used to wear dresses - before I was molested.

20 Not always.

First time I was molested I was wearing a dress.

Second occasion - a samfoo.

Third occasion - a samfoo.

Fourth occasion - a samfoo.

My father's house is at 28, Perak Road - he died 7-8 years ago. I never lived there with him - but frequently visited him there.

Once I did live there for 2-3 months.

30 My brothers used to live there.

No relationship between Lim Im Chua and myself.

I now pay her for my maintenance.

Every month I come to Public Trustee's Office and draw a monthly sum - whether \$20 or \$40 - which I pay over to her.

I have 4 brothers and 3 sisters.

Q. Has one of these brothers been in a mental hospital for treatment?

40 A. Yes, in Tanjong Rambutan - but he is now discharged.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Cross-  
Examination  
-- continued.

Yes, I have a sister called Tan Phaik Har - I don't know if she lives at the Tokyo Hotel.

Q. What is her occupation?

A. Now unemployed - but formerly, I believe, working as a domestic servant for a lawyer.

I don't know where she now lives and what she does.

Q. Is she not a prostitute?

A. I don't know.

Q. Did she not formerly live at the Shanghai Hotel?

10

A. Once I saw her coming out from there.

I have no idea what she was doing there.

When I went with Lim Im Chua and Lim Im Swee to see Dowse at his house, Beng Seok was already there - she was working for Dowse in his house.

Beng Seok used to go to her own house twice daily for her food. Sometimes a child used to take the food for her from her house to Dowse's house.

Q. Who was that child?

A. I don't know, may be it was Ah Seok's daughter.

20

Yes, I live next door to Ah Seok and know her well.

She told me this child was her adopted daughter. Beng Seok also has a sister who lives with her - No.27.

Q. And you followed this sister and the child to Dowse's house?

A. Not the child - but only the sister.

I accompanied the sister to the house at her request.

30

Dowse shook hands with me and gave me some ice-cream. Then Beng Seok and her sister went to a room to examine some cloth, and I went to the outer compound. I went out of the house because I was afraid of Dowse.

Q. So on this occasion you saw the house?

A. Not the whole house, I just went into the sitting room where Dowse was. Then he went to the refrigerator and gave me some ice-cream.

I had gone to the house with Beng Seok's sister not at the sister's request, but at Beng Seok's request. I did not like to go there, but Beng Seok repeatedly requested me to do so.

40

Q. Do you mean Beng Seok repeatedly requested you on that day?

A. Not going that day, but other days.

Beng Seok had not in fact asked me on that day to go there, but had asked me repeatedly before then.

10 It happened on that day I went over to Beng Seok's house and I saw the sister there and understood from her that she was going to Dowse's house so I accompanied her. Then about 3 p.m. We walked there.

Not true I followed the sister; I accompanied her.

Q. Suggest Dowse not at home on that occasion?

A. He was there - having a nap.

We went to the kitchen; Dowse came into the kitchen.

20 Q. Suggest that in fact he returned home in the afternoon in the company of a lady - and found you there?

A. No.

Yes, I say that Dowse raped me on these four occasions. He forced me to have intercourse with him against my will.

On every occasion he forced me.

Yes, on first occasion I was a virgin.

Q. When you and Lim Im Chua and her sister called at Dowse's house did not one of these ladies accuse him of having caused your pregnancy?

30 A. Yes. Yes, he denied it.

He did say: "Don't worry. I won't get you pregnant".

Q. He denied having had anything to do with you, did he not?

A. Yes. It was because of that denial that I made my report at the Police Station.

Q. The report was made a very short time after this denial?

A. Yes - the following evening.

40 Q. Why in the evening - at 10.45 p.m.?

A. I spoke to Beng Seok, so she might discuss the matter with Dowse. I waited the next day for her reply. She did not turn up - so in the evening I made my report at the Police Station.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Cross-  
Examination  
- continued.

Ex.P.3B Witness referred to her Report - Ex.P.3B.

I gave the name as Sydney Dowse.

I got the name and the spelling from a Sikh  
lawyer.

Court:

Q. When?

A. I had been taken by my brother-in-law to see  
this lawyer when I was 5½ months' pregnant.

I now say that I only saw the lawyer after I  
made my report.

10

I gave the policeman who recorded the report  
the name Sydney Dowse. He did the spelling.

Witness continues:

Q. Had you at that time seen Mrs. Dowse?

A. No - I have never seen his wife.

Q. Had you ever heard of these divorce proceedings?

A. Yes.

Q. Did you read about the case?

A. No, I looked at the photographs, but I did not  
read the contents.

20

Witness referred again to her Report.

No, I did not shout out.

Yes, on that occasion I was wearing a dress -  
not a baju and trousers.

Witness referred to sentence in her Report -  
"I have never been to the European's house since  
that day".

States:

I think there must be some misunderstanding.

I think the words "since that day" must mean  
"since the last occasion".

30

Court:

Q. How many occasions have you referred to in your report?

A. I told the police I had been there four times.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Witness continued:

It is true that I had been to the house the day before I made that report.

The date - 5.5.58 - I have given in my Report I got that from my guardian.

10 It was the 5th Moon Chinese calendar - the month of April, English calendar.

Q. April is not the fifth moon?

A. It is.

Yes, self, guardian and her sister went to Dowse's house about 10 p.m.

Yes, he was in bed. Yes, we got him out.

Q. He denied any responsibility and said that you were not even pregnant?

A. Yes.

20 Q. Your guardian and sister demanded that you be examined by Dowse's doctor?

A. Yes.

Q. And Dowse eventually agreed?

A. Yes.

Q. And on following day you were examined by Dr. Menon?

A. Yes.

Yes, Beng Seok was in the house on three of the four occasions I was molested.

30 On the third occasion I called out to Beng Seok.

The door was closed. She did not come.

On the fourth and last occasion I also called out.

She did come to the door - and it was on this occasion Dowse spoke to her.

It was on the second occasion Dowse gave me tablets.

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

19th January  
1960,

Cross-  
Examination  
- continued.

Q. This morning you said that it was on this occasion you called out to Beng Seok?

A. I now say I called out to her on both the second and fourth occasion.

It was on the fourth and last occasion - the evening occasion - that she came to the door.

No, he never promised to marry me.

Q. Then why are you suing him for breach of promise?

A. Although he did not propose marriage to me, he promised to keep me as a wife.

10

I now say he did not promise to have me as his wife; but all he said was: "I want you".

Q. So that all these allegations that Dowse seduced you under promise of marriage are a pack of lies.

---

N.B. Court points out that no such allegations have been made in this Court.

---

Q. Are you aware that Lim Im Chua has instituted proceedings against Dowse claiming damages for seduction as loss of services to herself?

A. Yes.

20

Q. And you have also instituted proceedings against Dowse claiming damages for breach of promise of marriage? A. Yes.

Q. And is that your Statement of Claim?

A. Yes - but there are some mistakes in it.

He never said he would marry me; he simply said he wanted me. My intention was to ask for maintenance for my child - not for myself.

Ex.P.4. Statement of Claim put in as Ex.P.4.

---

4.55 p.m. adjourned to 10 a.m. to-morrow, 20.1.60.

30

(Signed) I.C.C. RIGBY  
JUDGE.

19th January, 1960.

---

CROSS-EXAMINATION continued:

Yes, I said yesterday I was taken by my brother-in-law to see a Sikh lawyer, Mr. Triptipal Singh.

My brother-in-law is Kee Hup Chye.

Q. Do you remember making an affidavit in these proceedings about a year ago?

A. Yes.

Q. Why did you make it in these proceedings?

10 A. Because it was said that the father of my son was a Malay.

Q. By whom was this said?

A. Beng Seok.

Q. Did she say this to you?

A. No. She did not say this to anyone, but she asked a Malay to admit that he was the father of the child to whom I had given birth.

Q. How do you know?

A. She is not a good woman - thought this to myself.

20 Yes, that was what I thought to myself.

The affidavit in this case was filed by my lawyers, Messrs. Pillai, Lim, Lee & Hwang.

I went to them on my own initiative.

They were then acting for me.

Q. Why did you leave Mr. Triptipal Singh?

A. Because his fee was too high.

---

Witness referred to penultimate sentence in paragraph 8 of her affidavit.

---

30 Yes, Khaw Beng Seok did tell me that Dowse had intercourse with her three times a week and she was not pregnant.

She did, I repeat, say that to me.

Q. Some years ago, did you live at Perak Road, No. 28?

A. No, I stayed there occasionally - for a few days at a stretch.

Q. Yesterday, you said that on one occasion you had stayed there for 3-4 months?

A. That is correct.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

20th January  
1960.

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,  
20th January  
1960,  
Cross-  
Examination  
- continued.

Q. Do you recall a certain Chinese salesman living there as a lodger?

A. No.

Q. Do you recall an occasion some time ago when you were molested in the Botanical Gardens?

A. No - I deny that.

No re-examination.

To Court:

Yes, first time I went to Dowse's house was with Beng Seok's sister. 10

Yes, I also said that Beng Seok had repeatedly asked me to go to Dowse's house - and I did not want to go.

Q. Why had you not wanted to go?

A. Because Dowse not known to me at all; he was a stranger; no reason for me to visit his house.

Yes, Beng Seok was a maid at Dowse's house.

Q. Had she told you why she wanted you to visit Dowse's house?

A. I did not know. 20

Q. And yet you say she asked you repeatedly?

A. Yes.

Q. Didn't you ask her why she wanted you to visit his house?

A. I did.

Q. What did she say?

A. She told me she should like me to go to the house - just to have a look at it.

Q. But if she was a maid at the house - why should you have thought you might have seen Dowse there at all? 30

A. She told me that even if I saw Dowse there I need not worry, because Dowse was the type of person who would not molest a woman.

Q. Having repeatedly refused to go to the house, why did you suddenly change your mind and accompany Beng Seok's sister to the house?

A. As a matter of courtesy - Beng Seok had repeatedly asked me and I decided to go.

Yes, there is a front and back entrance. 40

We entered through the back entrance - and went into the kitchen. Beng Seok, her sister and myself in the kitchen.

After we had been there a few minutes Dowse walked into the kitchen.

Kitchen itself is not a separate building - it is part of the main building.

When Dowse came into the kitchen, Beng Seok, her sister and I were there.

10 Q. Then what happened?

A. He shook hands with me. Then he took me by my hand to sitting room.

I did not say anything - but I was not very happy about it.

Q. Did you say anything to Beng Seok or her sister about it?

A. I spoke to the sister - I said: "I am afraid". The sister said: "Don't be afraid. He won't do any harm to you".

20 It is a single storey house.

Dowse led me along a short passage and into the sitting room - which is in the front of the house - on the left side when coming from the kitchen.

The first occasion I went to Dowse's house was with Beng Seok's sister.

It was on this occasion he gave me some ice-cream - in the kitchen.

On this occasion he did not take me into the sitting room - that was on the second occasion.

30 On this occasion nothing happened.

I now say on this first occasion he did take me into the sitting room. Then he went to the kitchen to get some ice-cream. While he was out of the room I went into the garden through the back door.

Q. Why?

A. Because I was afraid of him - afraid that he might molest me.

40 Yes, later I went to the house on the second occasion - with Beng Seok.

She told me the European was not in the house - so I went with her. We entered the house through the rear door and went into the kitchen.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

20th January  
1960,

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.6

Tan Phaik  
Kooi,

20th January  
1960,

Cross-  
Examination  
- continued.

After we had been in the kitchen a short while Dowse came in - and conducted me into the sitting room.

Q. What happened to Beng Seok?

A. She went with us into the sitting room.

Q. And what happened there?

A. Dowse picked up a book - map of the world - and showed it to me.

He asked me if I knew the meaning of the word "area" in the book. I said I did not know. 10

Then he put aside the book - and asked me if I had a father or mother. I told him no.

He asked me various questions - a general conversation.

I was then sitting on his lap.

Conversation lasted about half an hour.

Q. Where was Beng Seok?

A. She had returned to the kitchen.

Then he carried me into his bedroom.

No.7

Lim Im Chua,

20th January  
1960,

Examination.

No. 7

20

EVIDENCE OF LIM IM CHUA

LIM IM CHUA (f) affirmed, states in Hokkien:-

Reside 25, Codrington Avenue.

P.W.2 is my ward - I am her guardian.

No relationship between us.

In May, 1958 I accompanied her to Singapore.

When we returned from Singapore I found she was pregnant. I asked her about it.

She told me something as a result of which I took her to the house of the European. 30

Q. Is that European in Court?

A. I don't see him.

Asked to look around the Court.

My eye-sight is poor.

We went to 23, Scott Road.

Time then shortly after 9 p.m.

We went to the front door - myself, Lim Im Swee, and P.W.2.

Whilst we were in the compound a European came out of the front door and spoke to us.

His maid-servant, Khaw Beng Seok, had called him out.

10 We had first seen Beng Seok and asked her to call her employer.

I told the European my child had been crying day and night because she was pregnant and that she had told me he was responsible for her pregnancy. I told him to take care of the child. The European did not admit that he was responsible. Then he said: "Don't worry. I'll ask Beng Seok to take her to see Dr. Menon for examination".

20 Q. Did he say anything further?

A. No.

Q. What did you then do?

A. We went home.

Yes, P.W.2 has an aunt called Kee Chuan Siang.

Yes, on 7.12.58 P.W.2 gave birth to a child.

CROSS-EXAMINED

I went to Singapore - with P.W.2 - on 9.4.58 and we returned on 25.4.58.

Yes, it was several months after we got back from Singapore that we went to the European's house.

30 We went to the house a few days after I had discovered that P.W.2 was pregnant.

It was in April - not May - that we went to Singapore.

It was a few days after we came back from Singapore that I discovered she was pregnant - I found her vomiting.

No, we did not scold Khaw Beng Seok when we got to the house.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.7

Lim Im Chua,  
20th January  
1960,

Examination  
- continued.

Cross-  
Examination.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.7

Lim Im Chua,  
20th January  
1960,

Cross-  
Examination  
- continued.

Q. The European was in bed and came out to see what was the matter?

A. He may have heard us calling to Beng Seok.

Yes, he came out.

Yes, we charged him with being responsible for P.W.2's condition.

Yes, he denied it; he said he did not know her.

Q. He also said she did not even look pregnant?

A. He said so.

Q. And you demanded that P.W.2 be examined by his doctor?

A. No, he offered.

10

No re-examination.

No.8

Kee Hup Chye,  
20th January  
1960,  
Examination.

No. 8

EVIDENCE OF KEE HUP CHYE.

KEE HUP CHYE, affirmed, states in English:

Sales Manager, Sathask Ltd.

P.W.2 is my niece.

Q. Have you had any communication from Dowse in connection with this case?

20

A. By telephone - yes.

Towards the end of 1958 I was in my house - at 58, Contonment Road.

About 8 p.m. telephone rang. I answered it.

A voice said: "Is that Mr. Kee?"

I said: "Yes".

The voice then said: "I understand you are the uncle of Tan Phaik Kooi".

I said: "Yes. Who is that calling?"

30

The voice said: "I am Mr. Sydney Dowse".

I said: "Yes, what is it?"

The voice said: "Can I make an appointment with you?" I said: "When - and why do you want this appointment?" The voice said: "I want to speak

about this niece of yours. I understand that she has been to see you. I would like to talk things over".

Then he gave a date - which was inconvenient to me.

He suggested another date - which I accepted.

To Court:

Q. Did he suggest where to meet?

A. In his house at 9 p.m.

10 Witness continues:

Q. Did he give the address of his house, or did you already know it?

A. He gave the address of his house.

I kept the appointment. I went to the house.

Court:

Q. Where?

A. Cannot remember exactly, somewhere in Rose Avenue.

Witness continues:

20 Q. You mean Rose Avenue vicinity?

A. Yes.

Q. Are you acquainted with that vicinity?

A. No.

I went to the house. I saw Dowse (identified) there.

He offered me a drink.

My sister, Kee Thuan Siang, was also present.

30 Then he said that the case with his wife was progressing and there was a certain unpleasantness - and now this girl had brought up accusations against him which were untrue.

He gave me his word as a gentleman that the accusation was false and that, as I was the girl's uncle, I should advise her not to do anything foolish - or he would sue her for defamation of character.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No.8

Kee Hip Chye,

20th January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence

No. 8

Kee Hup Chye,  
20th January  
1960,

Examination  
- continued.

I said: "I don't know. I have taken her to a  
lawyer - and it is now a matter for her and her  
lawyer".

To Court:

I had taken her to Mr. Triptipal Singh.

Witness continues:

Q. Did he ask you to find out anything from the girl  
or her guardian?

A. I cannot remember.

CROSS-EXAMINED

10

Cross-  
Examination.

I am P.W.2's uncle.

Cannot remember when I took her to see Mr.  
Triptipal Singh.

It was at end of 1958.

It may possibly have been in August.

No re-examination.

No. 9

No. 9

Lim Im Swee,  
20th January  
1960,

Examination.

EVIDENCE OF LIM IM SWEE

LIM IM SWEE -- affirmed, states in Hokkien:

Reside 25, Codrington Avenue, Penang.

20

I accompanied my sister Lim Im Chua and P.W.2  
to Dowse's house - some time after they had returned  
from Singapore.

We went there about 9 p.m. Called to Beng  
Seok. She came out after some time - and later  
Dowse came out.

He told us to go away as we were making a  
disturbance; otherwise he would send for the  
police.

Beng Seok then told him the girl was pregnant.

30

Dowse asked the girl to go inside the house with him and Beng Seok. They went inside.

My sister and I remained outside.

After they came out I told him the girl was pregnant and he was responsible. He denied responsibility.

Q. Did he say anything further?

A. I asked him what he was going to do with the girl because we loved her and had taken care of her.

10 He replied that he would help.

I asked him in what way.

He replied he would have her examined by a Doctor.

He then told Beng Seok to take P.W.2 to be examined by a doctor the next morning at 10 a.m.

To Court:

No, he did not then mention the doctor's name.

Witness continues:

He also said he did not know the girl at all.

20

CROSS-EXAMINED

Incorrect that we asked him to have the girl examined by his doctor.

No re-examination.

No.10

EVIDENCE OF KEE THUAN SIANG

KEE THUAN SIANG - affirmed, states in Hokkien:

Reside House No.29 in area of Pulau Tikus.

I am the aunt of Tan Phiak Kooi.

Kee Hup Chye is my younger brother.

30 Khaw Beng Seok lives next door to me - at No. 27.

In the Supreme Court of the Federation of Malaya

Attorney General's Evidence.

No.9

Lim Im Swee,  
20th January 1960,

Examination - continued.

Cross-Examination.

No.10

Kee Thuan Siang,

20th January 1960,

Examination.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No. 10

Kee Thuan  
Siang,

20th January  
1960,

Examination  
- continued.

Q. Do you remember some time in October, 1958 Khaw Beng Seok saying something to you in connection with this case?

\_\_\_\_\_

No objection by Mr. Harris to this question.

\_\_\_\_\_

Massie:

Not myself calling Khaw Beng Seok - for reasons which may well be apparent to the Court.

Harris:

If that is so, how can this question be admissible?

10

Massie:

Upon reconsideration, I withdraw the question.

\_\_\_\_\_

Witness continues:

Q. Were you present with Kee Hup Chye when he had an interview with Dowse at his house?

A. Yes.

\_\_\_\_\_

No cross-examination.

\_\_\_\_\_

12.45 p.m. adjourned to 2.30 p.m.

\_\_\_\_\_

2.30 p.m. Hearing resumed:

No. 11

No.11

20

Chuah Keat Seng,

20th January  
1960,

Examination.

EVIDENCE OF CHUAH KEAT SENG

CHUAH KEAT SENG - affirmed, states in Hokkien:

Police Constable 24580, stationed Pulau Tikus Police Station - now and on 22.8.58.

On 22.8.58 - at 10.45 p.m. - at Pulau Tikus Police Station I acted as interpreter when this report was made by one Tan Phiak Kooi.

She spoke in Hokkien - and I interpreted from

Hokkien into Malay. The report was recorded by Corporal Hashim 4610.

I now read the report. This is an accurate recording of the report she made to me in Hokkien and which I interpreted into Malay.

After the report had been recorded the Corporal read it back to me in Malay and I interpreted it into Hokkien to Tan. She acknowledged it as correct. She signed it. I signed it and the Corporal who recorded it signed it.

10

I now produce the original report.

Ex.P.5 Report put in as Ex. P.5

No cross-examination.

To Court:

That is all she said.

I interpreted everything she said.

No.12

EVIDENCE OF HASHIM BIN OSMAN

HASHIM bin OSMAN - affirmed, states in Malay:

20

Police Corporal 4610 - Bukit Mertajam Police Station.

On 22.8.58 I was station at Pulau Tikus Police Station.

On that day - at 10.45 p.m. - Tan Phaik Kooi - P.W.2 - made a report to me at that Police Station.

Her statement was recorded by me in Malay.

P.W.7 acted as interpreter - from Hokkien to Malay.

Ex. P.5 is the report I recorded.

30

After having recorded the report I read it out in Malay and P.W.7 interpreted it to P.W.2. She then signed it and P.W.7 and I also signed it.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No. 11

Chuah Keat  
Seng,

20th January  
1960,

Examination  
- continued.

No. 12

Hashim bin  
Osman,

20th January  
1960,

Examination.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Attorney  
General's  
Evidence.

No. 12

Hashim bin  
Osman,

20th January  
1960,

Examination  
- continued.

No cross-examination.

Massie:

That concludes the evidence - save for testimony of Dr. Menon.

Dr. Menon in Bangkok - but expected here this evening.

Harris:

Mr. Massie has shown me Dr. Menon's statement.

I accept it as correct in its entirety - as the statement made by Dr. Menon as to what happened. 10

I also accept as correct that the examination was carried out by Dr. Menon at the request of Mr. Dowse and that Mr. Dowse paid to Dr. Menon the examination fee.

N.B. Above note read out to both Counsel and acknowledged as correct.

Ex.P.6 Statement of Dr. Menon put in by consent of both parties and marked Ex.P.6

King's Proctor's Case concluded

Massie:

Mr. Lim Ewe Hock, who holds a watching brief for Mrs. Dowse, has asked me to bring to Court's attention last paragraph of first page of letter at page "A.6". If the reference in that paragraph to Lim "having something up his sleeve" is intended to be a reference to his knowledge of Tan Phaik Kooi's report to Police in this case, then Mr. Lim requests me to say he categorically denies any knowledge by him of the existence of that report at that time. 20 30

Lim Ewe Hock - from the Bar - confirms this.

Massie - in reply to Court:

Agree that corroboration of complainant's evidence essential.

Only corroboration on which I reply is the fact that girl examined by Dr. Menon at Petitioner's request and that Petitioner paid the fee therefor, and the evidence of Kee Hup Chye.

PETITIONER'S EVIDENCE

No.13

EVIDENCE OF SYDNEY HASTINGS DOWSE

SYDNEY HASTINGS DOWSE, sworn, states:-

23, Scott Road, Penang, Petitioner.

I refer to the allegations made by the Attorney-General in his plea dated 16.2.59.

I deny those allegations.

10 p.m. First heard of them on 12.8.58 - about 10.45

I was then in bed. Awakened by noise outside my front gate - which was closed.

Noise persisted. I recognised my servant's voice - shouted to them to keep quiet.

Noise continued - I got up, dressed, and went to front gate. Servant on inside of gate - three persons on outside - gate half open.

The persons were scolding my servant.

I asked what the trouble was.

20 The persons said my servant a bad woman; that the girl with them was pregnant and I was responsible for it.

The three persons were P.Ws. 2, 3 and 5.

30 I told them I did not know what they were talking about; and that as far as I knew I had never seen the girl before. I also said the girl did not look pregnant to me. After a lot of argument amongst the two old ladies - P.Ws. 3 and 5 - they said the girl accused me; that they knew she was a bit "gila" but that if I did not believe she was pregnant would I send her down to my own doctor. I said, no I wouldn't that it was none of my business; and nothing to do with me.

As they refused to go away until I did agree, eventually I gave way and said: "Alright, tomorrow morning I'll ring my doctor and made an appointment for the girl to be examined". At the same time, I again emphatically denied that I had had anything to do with the girl.

40 Q. Did you arrange with the doctor for him to examine the girl?

In the Supreme Court of the Federation of Malaya

Petitioner's Evidence.

No.13

Sydney Hastings Dowse,  
20th January 1960,  
Examination.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,  
20th January  
1960,

Examination  
- continued.

A. Yes, I telephoned Dr. Menon the following morning, the 13th August.

I told him that there had been a commotion outside my house the previous night and that this girl had made accusations and asked me to send her to my doctor. He agreed to see her at 10 a.m.

As an old friend, he asked me if I had had anything to do with the girl, and I said no.

Q. Did you on a later date telephone Kee Hup Chye?

A. No.

10

Q. Did you see him at your house?

A. Yes.

On the 13th August after the girl had been taken to Dr. Menon, when my servant came back she informed me that the Doctor had said the girl was pregnant, and she said that the old auntie - whose name I have since learnt was Kee Thuan Siang (P.W.6) - wished to come and see me with her brother. I told her to inform them that I would see them the following day, Thursday, the 14th August, between 7.30 p.m. - 8 p.m.

20

At 8 p.m. on the 14th I myself received a phone call from Kee Hup Chye saying that he could not come that day, but could he come the following day - at about the same time. I agreed.

Kee Hup Chye and his elder sister did come to my house at about 8.30 p.m.

Kee alone spoke to me. He said he merely wanted me to confirm to him - as a gentleman - as to whether or not I had had anything to do with this girl.

30

I told him I had nothing to do with her.

I told him I had had enough trouble and publicity over my own divorce - and I thought that I was man enough to admit to anything that I had done.

He accepted my denial and then he and his sister left the house.

When I saw the girl on the evening of 12th August at my front gate I honestly believed then that I had never seen her before. I asked my servant - either that same night after they had gone - or the next morning - who she was. The servant then said that the people lived next door to her and that the girl was the girl who once

40

before - earlier in the year - had followed her sister, Khaw Beng Ghiew, to my house, and whom I had seen at the time - in the compound - about to return home. I was at the time in the car, having just returned home from a rubber estate.

My servant - Khaw Beng Seok has worked for me for about three years - up to beginning of January, 1959.

10 Q. Under what circumstances did she cease to work for you?

A. I received two registered letters - Notices of Action.

Exs.D.7 Copies put in, without objection, as  
and D.8 Exs. D.7 and D.8.

When I received them I told her I would have to dispense with her service and have either a man, or a married couple - and I gave her three months' salary in lieu of notice.

CROSS-EXAMINED

20 I went to Ceylon in 1959 - en route for Germany.

Received a cable from my lawyers calling me back.

Q. Isn't that the reason you dispensed with your servant?

A. No, I left on 6.1.59 - and I received these letters on 1.1.59. It was prior to that date I had arranged to go to Germany.

I was in Germany in September, 1959.

30 Q. Why didn't you phone the police when this commotion took place outside your front gate?

A. I had had enough publicity - and I was scared of any more. It is not pleasant.

Not true I did not phone because I knew there was substance in their allegations.

Dr. Menon my regular doctor.

Kee Hup Chye did call again at my house - uncalled and unannounced - on 30th August.

40 I did not mention that in examination-in-chief, because I was not asked.

Yes, he did then accuse me of committing

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,  
20th January  
1960,

Examination  
- continued.

Cross-  
Examination

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No. 13

Sydney  
Hastings Dowse,  
20th January  
1960,  
Cross-  
Examination  
- continued.

adultery with Tan Phaik Kooi. He demanded \$30,000 from me in settlement - otherwise, he said, I would not get my divorce.

Yes, he demanded \$30,000 from me.

I told him I would not be blackmailed and I asked him to leave the house.

Q. Why didn't you report the matter to the police?

A. I was trying to avoid publicity.

He also told me that it did not matter anyhow since he had been in touch with Mr. Triptipal Singh, and my wife and my wife's Counsel when she was here in Malaya.

Q. Put it to you that it was you who phoned Kee Hup Chye and not he you?

A. Incorrect - I have a note in my diary of him phoning me. I record in my diary matters that may be of importance.

I deny ever having had intercourse with Tan Phaik Kooi.

It is untrue that my servant brought the girl to my house at my instigation.

It is untrue that I deliberately withheld this information from the Court in my divorce proceedings.

10

20

Re-Examination.

RE-EXAMINED

I did receive a great deal of publicity in the press with regard to my divorce proceedings.

Q. Did that have any effect on your relationship with people?

A. Yes - I was greatly upset by the publicity I had had.

30

4.25 p.m. Adjourned to 10 a.m. to-morrow.

(Signed) I.C.C. RIGBY  
JUDGE.

20th January, 1960.



In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,  
21st January  
1960,  
Re-Examination  
- continued.

March 1st - "Dowpon - 8 weeks".

That is a reference to weed killer that I put down on the estate that day.

March 6th - "Estate - rubber - pay".

That was a reference to rubber which I took in on that day from the estate to Kulim for sale.

"Pay" - refers to fact I paid the labourers on that day.

March 9th - "Worshipping donation - Govind-  
asamy \$10".

10

That is a reference to fact that on that day at the estate I gave one of the labourers \$10 - as a contribution to religious worship.

March 13th - "Estate".

Means I was on the estate that day.

March 18th - "Replanting - ploughing stock".

A further reference to being on the estate that day.

March 20th - "George to estate - road ploughing".

That is a reference to George Huntsman being at the estate that day. 20

March 31st - "Travelling expenses - start morning".

Another reference to my being on the estate that day.

Cross-  
Examination.

CROSS-EXAMINED

My estate about 20 miles from Butterworth.

My car is a Jaguar. Also drive a Buick.

If I left my house about 8 a.m. - would get to the estate between 10 - 10.30 a.m.

30

Yes, I have a note in my diary of the 30th August - day on which I saw Mr. Kee Hup Chye at my house.

The word "demand" also written in the diary for that day - refers to his demand for \$30,000.

Note also contains a reference to his demand from me for monthly payments for maintenance - and my denial of all responsibility.

Ex.D.9. Diary put in as Ex. D.9.

No re-examination.

TO COURT:

Q. When did you give Beng Seok instructions to take the girl to Dr. Menon for examination?

A. I mentioned it to her the same night - at the gate - because the people would not go away unless I agreed - and I confirmed it again the next morning.

10 Q. You had had time overnight to reflect on the matter. Did it not seem to you a singularly unwise step to take upon yourself the task of sending to a doctor, for examination to ascertain whether she was pregnant, a girl who was a total stranger to you?

A. No, first thing that occurred to me was to find out whether she was or was not pregnant - after an accusation like that against me.

20 Q. What possible interest could it be to you to find out whether a girl whom you had never seen before, was pregnant or otherwise?

A. Because I remembered my wife's threat. When she was here I had a detective to follow her. He reported back that she was being taken round by certain people.

Q. What was the advantage to you of ascertaining whether or not she was pregnant?

A. I did not want a repetition of the commotion.

Q. What was the doctor's fee?

30 A. I don't know. I square up monthly with the doctor.

Q. Why should this girl - a total stranger to you - have chosen you, of all person, to blame as being the father of her child?

A. Because I believe that she being paid by my wife to make this allegation.

Yes, I think that is the only reason.

Q. When did your wife leave Malaya?

40 A. I did not record it, but I am almost certain that it was Monday, August 4th.

These persons came around my house on August 12th - but my wife had told me in Court that she

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,

21st January  
1960,

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,  
21st January  
1960,

Cross-  
Examination  
- continued.

had seen a Chinese girl whom she accused me of having got into trouble. She said that after she had asked me to call off Mr. Green's rather drastic cross-examination, and I told her that it was nothing to do with me.

In answer to her accusation I told her that it was nothing to do with me, and she had better repeat it to the Court.

Q. How did you think that your wife was able to get in touch with a girl who happened to be pregnant, and was prepared to accuse you of being the father?  
A. I have a lot of enemies in Penang as Your Lordship will recall when an anonymous letter was sent to you during the course of this case.

10

(N.B.: The letter was nothing to do with the facts of this present case.

(Signed) I.C.C. Rigby, Judge.)

There was a whispering campaign in Penang against me.

Yes, I say that someone, out of spite against me, and at the instigation, direct or indirect, of my wife, must have induced this girl to make this false charge against me.

20

The girl's house is a gaming house.

A lot of people go there to gamble.

I myself have reported it to the police and they have taken no action.

I had at first refused to send this girl to my doctor for examination - because I could see the danger and it was nothing to do with me.

30

But when they insisted I did send her.

Q. Did you appreciate the dangerous position in which you had placed yourself if the report came back from your doctor - to whom you had sent this stranger for examination that she was in fact pregnant?

A. At the time - No. Because I did not really believe that she was pregnant.

Massie - with the leave of the Court:

Q. Looking at your diary for Wednesday, 13th August, what does the entry "Request two A's to come and see me - deny - discuss - deny" mean?

A. Beng Seok returned from the Doctor and told me the girl was pregnant and that her two "Assams" (servants) wanted to come and see me about it. I said: "Yes". I was prepared to see them - in order to avoid publicity. I was determined to avoid publicity, at all costs.

10

TO COURT:

The entry in diary relating to incident at 10 p.m. on 12th August, I made that entry the following morning - before I sent Beng Seok with the girl for examination.

The word "pros" means prostitute.

Q. So that you thought the girl was a prostitute?

A. No, Beng Seok told me so.

20

Q. So that despite Beng Seok's statement to you that this girl - a total stranger to you - was a prostitute, you were still prepared to send her to your Doctor for examination to ascertain whether or not she was pregnant?

A. Yes, because I did not want publicity.

Because of my wife's threat to me - during the divorce case, I was quite prepared for her to do anything to seek revenge on me or quash my divorce.

30

Harris: - in reply to Court - Do not wish to re-examine on any answers arising out of questions from the Court.

No.14

EVIDENCE OF KHAU BENG SEOK

KHAU BENG SEOK - affirmed - states in Hokkien:

Reside 27, Codrington Avenue. Aged 41.

Formerly employed as a maidservant by Mr. Dowse at 23, Scott Road, Penang.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.13

Sydney  
Hastings Dowse,

21st January  
1960,

Cross-  
Examination  
- continued.

No.14

Khaw Beng  
Seok,

21st January  
1960,

Examination.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.14

Khaw Beng  
Seok,  
21st January  
1960,  
Examination  
- continued.

Yes, he gave me 3 months' salary in lieu of notice.

I know Tan Phaik Kooi - she lives next door to me - at 25, Codrington Avenue.

I have known her since childhood.

She is no friend of mine.

She is in no position to criticise me - she has "mixed up" with several men.

25, Codrington Avenue is used as a gaming house - gambling goes on there at all times - from morning till evening. 10

I eat Chinese food. Cook the rice at my employer's house - but the relish is brought to me by my younger sister - Khaw Beng Chew, now aged 19 - from our house.

Early part of 1958 she was at school - and she is still at school.

In 1958 she used to attend afternoon school - and would bring me relish after 4 p.m.

Sometimes my daughter would bring me relish. 20

On Sundays I would take my midday and evening meals at my house.

Q. Miss Tan alleges that you brought her to Scott Road where Mr. Dowse had intercourse with her?

A. I deny it.

Nor did I ever make any appointment for her to meet Mr. Dowse at Peel Avenue.

Q. To your knowledge, did this girl ever come to your house at Scott Road?

A. Once only. 30

Untrue I ever pressed her come. She followed my younger sister to the house.

Q. Do you remember the occasion?

A. Yes. Mr. Dowse not at home on that occasion.

Q. Did Mr. Dowse see her there?

A. About 4 p.m. that day Mr. Dowse returned from the estate. He saw the girl and asked my younger sister who she was.

My sister often used to bring her school friends along. 40

From kitchen to sitting room:

Kitchen is directly off the dining room.

To go from kitchen to sitting room one must go through the door opening into the dining room - through the dining room - and then through the door from the dining room directly into the sitting room.

Sitting room is main part of the house - with bedroom on either side.

The front door opens straight into the sitting room.

10 There are houses on either side and across the road.

Yes, I remember an occasion when Miss Tan and her two aunts came to Mr. Dowse's house late one evening.

I was having my evening meal in the kitchen when I heard shouts - Time then about 8.05 - 8.10 p.m.

I heard shouts calling "Pimp. Old Pimp".

I went to the sitting room to look for my employer.

20 He was not there - the lights were all out.

He was awakened by the noise. He came out - and spoke to these persons at the gate.

The girl said she was pregnant - but she did not look pregnant to me.

The two old ladies also said the girl was pregnant and that my employer was responsible. I said it could not be true - because she had been mixed up with some men.

30 Q. Was this said in pleasant language or was there a certain amount of shouting and rude talk?

A. It was said in loud and rude language.

They asked Mr. Dowse to have the girl sent to his doctor for examination. He refused. They kept on making a noise. Eventually, because of the noise Mr. Dowse asked me to take the girl to see his doctor. Then I asked Mr. Dowse to give me \$2 - to take the girl next day to see the doctor. The \$2 was to pay for transport.

Then these people went away.

40 Next morning I took the girl and one of the two old ladies to see the doctor.

Q. Did Mr. Dowse say anything to you - as to whether or not he knew the girl?

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.14

Khaw Beng  
Seok,

21st January  
1960,

Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No.14

Khaw Beng  
Seok,  
21st January  
1960,

Examination  
- continued.

A. He told me - the next day and also that same night - that he did not know the girl. He asked me who she was. I told him she was the girl living next door to me.

I went on my cycle to the Doctor. They went by trishaw.

The doctor examined the girl - confirmed she was pregnant.

Witness referred to penultimate sentence in paragraph 8 of Miss Tan's affidavit.

10

It is utterly untrue - I never said it to her, and it never happened.

My sister Khaw Beng Chew is at school this morning.

Cross-  
Examination

CROSS-EXAMINED

Q. You have told us that Miss Tan was mixed up with other men?

A. Yes.

Q. What evidence have you of this?

A. She said so.

20

I have seen her with other men - 3-4 years ago she was in the company of a policeman.

On day of the Municipal Centenary Celebrations (1957) I saw her sitting in a bus with a Malay.

Untrue that I had been repeatedly asking her to come to Mr. Dowse's house. I never asked her to come to the house.

Untrue I ever saw her sitting on Mr. Dowse's lap.

Untrue I went about my work in the kitchen while Miss Tan was in the bedroom.

30

Untrue she later told me she had been molested by Mr. Dowse.

Untrue I told her that I would take her to see him and get some medicine.

Untrue about six days later I asked her to come again to Mr. Dowse's house.

Untrue that about 12 days later I again asked her to come to Mr. Dowse's house. Almost all the time the mem was in the house. Throughout the period of my employment - which was over three years - the lady was in the house - almost every day - from about 9 a.m. until the evening.

---

Harris: Not anxious for name of lady to be disclosed in open Court.

---

10 Witness cannot write in any language - but states:

I don't know the name of the lady.

Q. So that this lady must have seen Miss Tan when she came to house?

20 A. Whether or not she saw her I don't know - but she was in the car with Mr. Dowse when he arrived at the house whilst Miss Tan was there with my sister. Miss Tan was just about to leave the house as Mr. Dowse arrived. Mr. Dowse did not speak to her - but he did ask me who the girl was - and I told him.

Untrue I ever gave Miss Tan instructions that she should meet Mr. Dowse at junction of Peel Avenue.

Untrue that there was a further occasion when I told Miss Tan Mr. Dowse wanted to see her at his house about 9 p.m.

Q. Put it to you that on four occasions you procured this girl for Mr. Dowse at his request?

A. No.

30 Q. Did you ever tell Mr. Dowse the girl was a prostitute?

A. Yes - the night of the commotion.

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No re-examination.

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Adjourned to 2.30 p.m.

(Signed) I. C. C. RIGBY,  
JUDGE,  
21.1.60.

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In the  
Supreme Court  
of the  
Federation of  
Malaya

Petitioner's  
Evidence.

No. 14

Khaw Beng  
Seok,

21st January  
1960,

Cross-  
Examination  
- continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

2.30 p.m. Hearing resumed.

No.15

CLOSING SPEECH FOR PETITIONER (APPELLANT)

No.15

Harris Address:

Closing speech  
for Petitioner  
(Appellant),

By consent - put in two affidavits made by  
Miss Tan - dated 3rd and 6th February, 1959 - in  
support of Attorney-General's plea of intervention.

21st January  
1960.

Exs. "C"  
and "D". Put in and marked "C" and "D".

Harris (continues)

10

Refer to Attorney-General's plea of Intervention  
and the Further and Better Particulars contained  
in Attorney-General's letter dated 2.3.59.

Miss Tan's evidence:

A virgin - taken forcibly by Mr. Dowse on 4  
separate occasions at his house.

Said never had intercourse with anyone other than  
Mr. Dowse.

First complaint made to Mr. Dowse on some date in  
August.

20

Mr. Dowse said on 12th August.

Girl - in her report to Police - says 20th August.

Dr. Menon - in his report - says examined girl on  
13th August.

As to Mr. Dowse agreeing to have the girl examined:  
May be he was indiscreet. But, if in fact she was  
not pregnant, then what better way of scotching a  
false accusation?

Submit many people would have done the same thing -  
would at least have found out whether the girl was  
pregnant.

30

Undisputed that on that occasion - and to Dr. Menon  
- he categorically denied having had anything to  
do with the girl.

Submit mere fact of sending the girl for examination  
by no means consistent only with his guilt.

Nor should any importance be attached to fact that

Mr. Dowse paid the Doctor's fee and cost of their conveyance.

Even as an act of charity - not an unnatural thing to do.

Ask Court to view Mr. Dowse's conduct in the light of the ordeal of the divorce proceedings through which he had just undergone some 11 days previously.

Divorce proceedings which had occasioned great publicity and been vigorously contested.

10 Eleven days later, faced with this accusation.

If he was not guilty - then must have felt that this accusation inspired by malice.

His first reaction was to find out whether she was, in truth and in fact, pregnant.

Suggested he should have phoned the police - Hardly a matter for the police at that stage.

Mr. Kee Hup Chye's evidence - does not assist the Attorney-General.

20 Even assuming Court believes Mr. Dowse did phone Mr. Kee asking for an interview - consider Mr. Kee's evidence as to what happened at that interview. Mr. Kee says Mr. Dowse then said not responsible for girl's condition and that if she persisted in her allegation he would sue her for defamation of character.

Mr. Dowse had reason to believe that threat successful, since hears nothing until receives the two Notices of Action dated 31.12.58 and thereafter the Attorney-General's Notice of Intervention.

30 Then Miss Tan's affidavits dated 3rd February and 6th February, 1959.

Miss Tan's evidence in Court:

She confirms the truth of her report to the police on 22.8.58.

Note that in that report she mentions only one act of rape - and that she never went to the house after that occasion.

Her explanation: "Oh, that must have been the last occasion".

40 Then said: "I told the police there were 4 occasions". The latter statement denied by the police.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.15

Closing speech  
for Petitioner  
(Appellant),

21st January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No. 15

Closing speech  
for Petitioner  
(Appellant),  
21st January  
1960 -  
continued.

In evidence in chief she seeks to make it clear that she went to house on 4 occasions - and raped by Mr. Dowse on each occasion;

In cross-examination she admitted there was an early occasion when she went to the house - and nothing happened to her on that occasion.

As to her report:

Sydney Dowse.

Normal way of spelling Christian name is "Sidney".

How did she know the unusual spelling of "Sydney".

10

Court:

Miss Tan said the police constable recording the statement spelt the name himself. Police constable not cross-examined on this point.

Harris (continues):

Miss Tan further said she went to give this statement because she thought that Khaw Beng Seck was going to say that a Malay was the father of the child. A remarkable statement.

As a matter of law, onus of proof on the Attorney-General.

20

Standard of proof required as in a criminal trial.

Fairman v. Fairman (1949, P.D., 341).

Regard as most difficult part of my case not the details of the allegations made by this girl, but the fact that the allegations themselves have been made by her at all against the Petitioner.

As to that matter, ask Court again to consider the Petitioner's evidence and the divorce proceedings. Do submit that the girl suborned by some to take this false charge against the Petitioner.

30

An allegation by her of four separate charges of rape.

Submit the evidence incredible.

No complaint or report made by her.

Petitioner not approached till 12th August.

First written complaint made by the girl to the Police on 20th August - of one occasion of rape.

Her own Statement of Claim - dated 31.12.58 -  
one act of intercourse alleged.

If Petitioner has got to prove why this girl has  
made these false allegations - then he is faced  
with the impossible.

If anyone wished to ruin the Petitioner then the  
whole course of action in these proceedings wholly  
consistent with such a desire.

10 The charge is rape. Submit Attorney-General's  
case must stand or fall on that allegation.

Submit no corroboration of her allegations.

Petitioner's approach to Mr. Kee Hup Chye - a much  
older man. If these allegations false, was it not  
perfectly reasonable for the Petitioner to approach  
Mr. Kee, to deny the charges to him, to warn the  
girl that if she persisted in those charges he would  
have no alternative but to bring an action against  
her for defamation, and to ask Mr. Kee to try and  
influence the girl to drop her allegations.

20 Girl has made so many different statements that  
her evidence should be entirely discarded.

Leonard Harris (20, Cr. App. R., 144).

Lastly, these allegations being made and particulars  
being given, they must be strictly proved.

Submit they have not been so proved.

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No.16

CLOSING SPEECH FOR ATTORNEY GENERAL (RESPONDENT)

Massie:

30 As to particulars of the dates on which the acts  
occurred:

Refer to Federal Counsel's letter of 2.3.59.

As to date of alleged "commotion" outside Peti-  
tioner's house;

Concede a discrepancy in the report.

But now established it took place on 12.8.58.

The point made "What better way of scotching this  
girl's complaint than by sending her to Doctor and  
verifying she was not pregnant";

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.15

Closing speech  
for Petitioner  
(Appellant),  
21st January  
1960 -  
continued.

No.16

Closing speech  
for Attorney  
General  
(Respondent),  
21st January  
1960.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.16

Closing speech  
for Attorney  
General  
(Respondent),  
21st January  
1960 -  
continued.

Submit normal reasonable person would have said it was a tissue of lies and told the persons to go away.

Submit he did not do that because he felt responsible for the girl's condition.

Extraordinary that he should - with knowledge she was a prostitute - have sent her to his Doctor for examination.

Mr. Kee Hup Chye:

Submit to be believed when he says Petitioner phoned him to come and discuss the matter.

10

Again, consistent with guilty conscience of Petitioner.

The Writ for breach of promise:

Miss Tan said this matter handled by her relatives. She frankly admitted in evidence no promise of marriage made to her - and that Petitioner simply told her he "wanted" her.

As to standard of proof required:

Not a case of one person's word against the other.

20

But her evidence corroborated by that of the Doctor - and to a lesser extent - by Mr. Kee Hup Chye.

Court has seen this girl. Submit she does not look the type of girl who would be a party to such a conspiracy as alleged by Petitioner.

The girl never wished to make any report against the Petitioner. Only did so - after she and her aunts had gone to his house - and he then denied responsibility for her condition.

Beng Seok said a lady constantly in Petitioner's house. That lady never called. I have been denied the opportunity of cross-examining her. Ask the Court, under Section 114 of Evidence Ordinance, to draw an adverse presumption against the Petitioner.

30

Submit ample evidence that the Decree Nisi obtained contrary to justice by reason of suppression of material facts - adultery of Petitioner.

Adjourned to 10 a.m. to-morrow, 22nd January, 1960.

(Signed) I.C.C. RIGBY

JUDGE

21st January, 1960.

40

No.17

JUDGMENT OF RIGBY, J.Sydney Hastings Dowse Petitioner

v.

Mary Ann Dowse Respondent

and

The Attorney-General,  
Federation of Malaya.In the  
Supreme Court  
of the  
Federation of  
MalayaNo.17Judgment of  
Rigby, J.,22nd January  
1960.

10 In these proceedings the Attorney-General  
intervenes to show cause why a decree nisi for the  
dissolution of marriage granted to the Petitioner,  
Sydney Hastings Dowse, by this Court on the 6th  
November, 1958, should not be rescinded on the  
ground that material facts, namely the Petitioner's  
own alleged adultery, were not disclosed by him to  
the Court. The decree nisi was granted on the 6th  
November, 1958. The Attorney-General entered  
appearance for the purpose of intervening on the  
3rd February, 1959. His plea making specific  
20 allegations of adultery was filed on the 16th  
February, 1959. The Petitioner's answer to that  
plea was filed on the 23rd May, 1959.

2. The Attorney-General's plea of intervention  
was founded upon the allegation that on the 26th  
February, 1958, and on at least three other  
occasions, the Petitioner committed adultery with  
a Miss Tan Phaik Kooi at his house at 23, Scott  
Road.

30 On the 22nd August, 1958, at about 10.45 p.m.  
Miss Tan had made a report at Pulau Tikus Police  
Station alleging that she had been raped by the  
Petitioner at his house some five months previously.  
Having regard to the lapse of time between the date  
of the alleged offence and the making of the report,  
the report itself, for evidential purposes, was  
quite useless.

40 On the 7th December, 1958, she gave birth to  
a male child of whom, she alleges, the Petitioner  
is the father. In her evidence in this Court and  
also in an affidavit made by her on the 3rd February,

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,  
22nd January  
1960 -  
continued.

1959, which, at the request of Mr. Harris, Counsel for the Petitioner, was admitted in evidence, Miss Tan has alleged that she was a virgin at the time the Petitioner forcibly had intercourse with her.

Let me say at once that I am in no way concerned in deciding whether or not Miss Tan was a virgin at the time - as it is alleged - that the Petitioner had intercourse with her, nor am I concerned in deciding whether or not in fact the Petitioner raped Miss Tan, nor whether or not he is the father of her child. In fairness to the Petitioner I would say at once that on the evidence that I have heard in this Court in my view no Court could, as a matter of law, and, indeed, on the facts, possibly have convicted the Petitioner on the alleged charge or charges of rape. The allegation of rape, is, no doubt, relevant for the purpose of considering the discrepancies in Miss Tan's evidence and the credit and credibility to be attached to her testimony.

But the primary and substantial issue before me is as to whether or not it has been proved to my satisfaction that the Petitioner had intercourse with this girl on one or more occasions on or about the 26th February, 1958.

3. Miss Tan is a young and attractive girl, aged 23. She lives with her elderly guardian and her guardian's sister at 25, Codrington Avenue. Next door to her lived the woman, Khaw Beng Seok, a woman a great deal older than herself. At the material period Khaw Beng Seok was employed as servant by the Petitioner. She was, in fact, his only servant at that time.

Miss Tan's story, in her examination-in-chief, was that Khaw Beng Seok was repeatedly requestedly requesting her to visit her at the house of the European where she worked. One afternoon in March, in response to Khaw Beng Seok's request, she accompanied her to the European's house and they entered the rear part of the premises. After they had been there some time the Petitioner, whom she did not know before, entered and took her into the sitting room. He made her sit on his lap and, after some general conversation, he picked her up and carried her into his bedroom where he had intercourse with her against her will. Prior to that, according to her testimony, she had been a virgin. Later, he

asked Beng Seok to conduct her home. She told Beng Seok what had happened and told her that she was frightened she might become pregnant. Beng Seok told her not to worry and said that if she did become pregnant he, the Petitioner, would get her some medicine. She told nobody else what had happened.

10 About six days later, in the afternoon, she again accompanied Beng Seok to the Petitioner's house. She did so because Beng Seok had told her that the Petitioner had some medicine for her. On arrival at the house she saw the Petitioner, who gave her 5 tablets and told her to take 3 at once and the rest when she got home. After having given her the tablets, according to her evidence, he carried her into the bedroom and had intercourse with her against her will.

20 About 12 days later she again accompanied Beng Seok to the Petitioner's house, arriving there about 9 p.m. According to her evidence, she went there on this occasion because she had earlier been to see Beng Seok to discuss the situation and she wished to see the Petitioner and tell him that the medicine was ineffective. On arrival at the house she saw the Petitioner and told him that the medicine was ineffective. According to her evidence, he again carried her into his bedroom and had intercourse with her against her will. After that he drove her part of the way home.

30 About a fortnight later she again went to the Petitioner's house sometime after 9 p.m. Earlier that day Beng Seok had seen her and told her that the Petitioner would like to see her about 9 p.m. Beng Seok further told her to go to Yeoh Guan Seok Road at about 9 p.m. and the Petitioner would pick her up there. She did so. The Petitioner picked her up and drove her to his house. According to her testimony, the Petitioner again had intercourse with her against her will. Afterwards he again  
40 drove her part of the way home. She did not visit his house again after that occasion. According to this witness, the Petitioner had four times - on occasions during the month of March, 1958 - had intercourse with her against her will. She told no one - other than Beng Seok - what had happened. In May, 1958 she went to Singapore with her guardian. About that time she realised she was pregnant. Some time after her return she went with her guardian

In the  
Supreme Court  
of the  
Federation of  
Malaya

            
No.17

Judgment of  
Rigby, J.,  
22nd January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,

22nd January  
1960 -  
continued.

and the guardian's sister to see the Petitioner. I will refer to that visit at a later stage.

In cross-examination the girl admitted that she had, in fact, been to the Petitioner's house on an occasion earlier than that mentioned in her evidence. On this occasion, and in response to Beng Seok's repeated requests that she would visit the house, she accompanied Beng Seok's sister to the house. On this occasion she also saw the Petitioner. He came into the kitchen, saw her there, took her into the sitting room, and left her there while he went out to fetch some ice-cream. According to her evidence, she took advantage of his absence to slip out of the house and return home. 10

The Petitioner's defence, to which I will refer in detail at a later stage, is an emphatic denial that the incidents complained of ever took place at all. He said that, to the best of his knowledge, he had only seen the girl once before in his life, and that was on the occasion when he returned home in his car from work and saw the girl as she was leaving his premises in company with Khaw Beng Seok's younger sister. He then asked Khaw who she was and was told by her that she was her next door neighbour. The witness, Khaw Beng Seok, confirmed this evidence. 20

Having heard this girl's testimony and watched her demeanour for several hours in the witness box, I am certainly not prepared to say that her story, in so far as it concerns the Petitioner, is a tissue of lies. On the contrary, subject to what I shall later say, I formed the impression that, in substance, her evidence was true. 30

4. But the law is abundantly clear that the same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so-called.

If the case against the Petitioner rested solely upon the testimony of this girl, even if I implicitly believed her evidence to the very hilt, I would have no alternative but to dismiss this plea of intervention. For the plea of intervention to succeed not only must I be satisfied that this girl's evidence is, in substance, true, but there must be some independent evidence which corroborates 40

her testimony in some material particular and tends to show that her allegations against the Petitioner are, in fact, true.

Mr. Massie, for the Attorney-General, relies on two such pieces of evidence as corroboration. I shall refer first to the least important. A man named Kee Hup Chye gave evidence. He is Miss Tan's uncle, either by birth or by adoption. He said that one evening towards the end of 1958, at about 8 p.m. his telephone bell rang. He answered it and a voice, which described itself as Mr. Sydney Dowse, said he understood that Mr. Kee Hup Chye was the uncle of Tan Phaik Kooi and he, Mr. Dowse, would like to make an appointment with him to discuss the matter of his niece. He agreed. The speaker suggested 9 p.m. at his, the speaker's, house and gave the address of the house. Mr. Kee kept the appointment at that address, going there with his sister. It was, in fact, the address of the Petitioner. On arriving at the house they were greeted by the Petitioner who told them that the divorce case with his wife was then proceeding and that it involved a certain amount of unpleasantness. The Petitioner added that now this girl had brought up these accusations against him which were untrue. He gave his word as a gentleman that the accusations were false, and he asked Mr. Kee to advise the girl not to do anything foolish, otherwise he would be compelled to sue her for defamation of character. Mr. Kee said that he had already taken the girl to a lawyer and the matter was virtually out of his hands.

The Petitioner, whilst admitting that such a conversation took place at his house, denied that it was he who had telephoned Mr. Kee Hup Chye to suggest such a meeting, and said it was Mr. Kee who had phoned him to ask for the appointment. That piece of evidence, in my view, certainly does not afford corroboration such as is required of the complainant's story. In my view, on those facts, and for reasons to which I will later refer, the conduct of the Petitioner was entirely consistent with his defence, that he was at that time involved in unpleasant divorce proceedings, that he entirely denied the allegations of this girl and that he asked Mr. Kee Hup Chye, as the girl's uncle, to advise her to drop the allegations which she made against him otherwise he would have no alternative

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,  
22nd January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,  
22nd January  
1960 -  
continued.

but to sue her for defamation of character. I therefore attach no weight to this particular piece of evidence.

The other piece of evidence to which I will now refer appears to me of very much greater significance and importance. It is common ground that on a date which can now be fixed with certainty as the 12th August the girl, Tan Phaik Kooi, and her guardian and the guardian's sister, appeared at the front gate of the Petitioner's house at 23, Scott Road. The time at which they arrived there has been variously estimated by the witnesses - at 8.05 to 8.10 p.m. (by Khaw Beng Seok), shortly after 9 p.m. (by the guardian), and at 10.45 p.m. (by the Petitioner). Despite the fact that the Petitioner said in evidence that it was 10.45 p.m. his diary records it as 10 p.m. However, the Petitioner said that he was in bed when they arrived. The object which these three persons had in mind when they got to the Petitioner's house was undeniably to see the Petitioner and to ask him what he intended to do about the child. Apparently, there was a commotion outside his front gate and the Petitioner went down to see what the trouble was about. There he found his maidservant, Khaw Beng Seok, on the inside of the gate and the three persons on the outside. The Petitioner, in response to the accusations levelled against him, denied that he was the father of the child. He further added that the girl did not look to him pregnant. How he was able to express an opinion of that nature at 10 o'clock at night at the front gate of his house, is a matter that seems to me difficult to explain. The Petitioner stated, and I accept it as accurate, that the guardian and her sister asked him to send the girl to his doctor for examination. He refused to do so, saying that it was none of his business. However, as they refused to go away until he did agree, eventually - and in order to get rid of them - he told them that he would ring up his doctor and make an appointment for the girl to be examined. At the same time, he emphatically denied that he had had anything to do with the girl. They were satisfied and left. The following morning he telephoned Dr. Menon, told him what had happened, and told him that he was sending the girl round to him for examination. Dr. Menon asked him if he had had anything to do with the girl, and he said "No".

That same morning he confirmed his instructions to his maidservant, Khaw Beng Seok, to collect the girl and take her to Dr. Menon for examination. He did this in spite of the fact that Khaw Beng Seok had told him the girl was a prostitute - a matter which he thought of sufficient importance to include in his diary for the 12th August in which he recorded the incident, adding the word "pros".

10 Dr. Menon examined the girl and found her about 5 months pregnant. The Petitioner admittedly paid the Doctor's fees for the examination.

20 Mr. Massie relies upon this evidence as strong corroboration of the girl's story. I feel bound to agree. It seems to me impossible to believe that the ordinary, reasonable man, in similar circumstances, faced with a similar commotion outside his front gate at 9 or 10 p.m. at night and an accusation by strangers that he was responsible for the pregnancy of a girl he had never seen before in his life, would have prepared to give an undertaking that he would send the girl to his own doctor for examination to see whether she was pregnant - merely in order to get rid of the commotion. And even if he had given such an undertaking in order to get rid of the persons causing the commotion, I find it impossible to believe that on the following morning in the cold light of reason, he would have been prepared to implement that undertaking - particularly after he had been told by his servant 30 that the girl in question was a prostitute. It seems to me that the only reasonable inference is that the Petitioner, for obvious reasons, had a guilty conscience, and he wished to find out whether the girl was, in truth and in fact, pregnant.

40 5. The Petitioner has said that the reason why he took this action was because he was already the victim of a great deal of unpleasant publicity as the result of the bitterly contested divorce proceedings which had been going on the previous month (and, indeed, on the 1st August) and which were not yet completed and he wished at all costs to avoid any further publicity. Indeed, he attributed this very charge itself as having been created and inspired by his wife.

In fairness to the Petitioner, and since this case may go to another Court, I think it proper to

In the  
Supreme Court  
of the  
Federation of  
Malaya

—  
No. 17

Judgment of  
Rigby, J.,

22nd January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,

22nd January  
1960 -  
continued.

record the fact that the lengthy and bitterly defended divorce proceedings between himself and his wife did undoubtedly create a great deal of sensational, unpleasant and vulgar publicity, which must, indeed, have caused the Petitioner much distress. Further, the Petitioner's wife, not merely in these divorce proceedings, but in earlier proceedings in this Court which resulted in an earlier decree nisi obtained by the Petitioner being set aside, in my view, revealed herself as a thoroughly vindictive woman who, for motives that can be actuated by little else but pure spite, would go to considerable lengths to resist the dissolution of a marriage irretrievably broken and ruined by the patently irreconcilable relationship of the parties. Indeed, on a statement made by Mr. Massie from the Bar I have been informed that this very intervention itself was set in motion as the result of a letter from the Petitioner's wife to the Attorney-General, dated the 24th January, 1959, bringing to his attention the allegations of the girl who, at the date the letter was written, had already given birth but who, according to the letter itself, was pregnant to the knowledge of the Petitioner's wife when she was in Penang in July, 1958, for the purpose of these proceedings.

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6. But be that as it may, and making every allowance for the state of mind of the Petitioner, his anxiety to avoid further unpleasant publicity and his belief - and I am satisfied that it was a genuine belief - that his wife would resort to any steps to prevent him from obtaining the decree nisi for which he was then asking, I cannot and do not believe that his sole reason for sending the girl to his doctor for examination was to avoid publicity at all costs. As I have said, his conduct, in my view, was wholly consistent with the girl's story that he had had sexual intercourse with her and that he was fully prepared to accede to the request of these women that he should send the girl for examination in order that he might find out for himself whether or not the girl was, in fact, pregnant. In my view such evidence affords ample corroboration in a material particular of the truth of the girl's story that the Petitioner had had sexual intercourse with her. Vindictive as I consider the Petitioner's wife to be, I do not for a moment believe that either side, or anyone else, has suborned this girl to give evidence against the Petitioner, falsely accusing him of

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having had sexual intercourse with her.

I am satisfied that the girl was speaking the truth when she said that the Petitioner had had sexual intercourse with her on 4 occasions. In so far as the 2nd, 3rd and 4th occasions are concerned, I do not believe her when she says that it was against her consent. It is difficult to believe that she would have returned to the house on these subsequent occasions if she had not anticipated a reasonable possibility that what had occurred on the first occasion might well occur again. I am satisfied that there must have been at least on the last three occasions - and probably on the first as well - a substantial measure of consent on her part as to the events that occurred.

The Petitioner's servant, Khaw Beng Seok, said in her evidence that when the girl and the two women arrived at the Petitioner's gate on the evening of the 12th August, she heard them shouting out the words "Pimp. Old Pimp". I assume those words were directed to Khaw Beng Seok. But whether or not they were so directed to her, I am wholly satisfied that they accurately describe the part played by her in her repeated requests to this girl to visit the Petitioner's house.

7. Mr. Harris, for the Petitioner, submitted that the case against the Petitioner must stand or fall on the girl's allegations - contained in her affidavit of the 3rd February, 1958 - and repeated in her evidence in this Court - that she was raped on each of these 4 occasions by the Petitioner. I do not agree with that submission. The issue before me is not whether the Petitioner is proved to have raped the girl, but whether he is proved to have had sexual intercourse with her. Having seen the girl and having seen the two elderly women with whom she lived, I do not believe for a moment that she is a girl of loose morals - a prostitute as it was suggested. The two old ladies with whom she lived appeared to me to be perfectly respectable old ladies, whom I would describe as belonging to the "old school", colloquially known as "Straits Chinese". The fact that they may from time to time carry on a little gambling at their home - as was suggested - does not in any way detract from my view as to their respectability. In such circumstances, it seems to me perfectly intelligible that

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,  
22nd January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

—  
No.17

Judgment of  
Rigby, J.,

22nd January  
1960 -  
continued.

this girl should have been ashamed to admit that she was in any way a consenting party to the acts of sexual intercourse that she alleged took place between her and the Petitioner.

8. Again, Mr. Harris very properly drew attention to the fact in her report to the police, dated the 22nd August, 1958, the girl complained of only the one act of sexual intercourse by force and went on to say that she had never been to the Petitioner's house since that day. In cross-examination, the explanation given by the girl herself to this apparent discrepancy was that there must have been some misunderstanding and that the words "since that day" must mean "since the last occasion" the act occurred. She then went on to say, in answer to a further question in cross-examination, that she did, in fact, tell the policeman who interpreted at the time the statement was recorded, that she had been there four times. The policeman, who was called as a witness, himself denied it. I attach little importance to this apparent discrepancy. In my view, the main object in her going to the police station at that time was to report the fact that she had, as she alleged, been raped and that as a result she was pregnant and that a record should be made of that allegation. In any event, I think her explanation may well be true that the reference to "since that day" in the statement was a reference to the last occasion when the act complained of occurred.

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9. For the reasons I have given I am satisfied that the girl's story that the Petitioner has had intercourse with her is true and that her story is corroborated in a material particular by the Petitioner's conduct in sending the girl for examination as to her condition.

I have put on record my comments on the publicity given to the divorce proceedings and my observations on the Respondent - the Petitioner's wife - not as gratuitous comment or criticism of the Respondent, but simply and solely in fairness to the Petitioner so that these matters may be before another Court, if it is called upon to consider the correctness of my conclusions and, in particular, the view I have taken as to the conduct of the Petitioner - even allowing for his state of mind by reason of the publicity given to the divorce

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proceedings - in sending the girl for examination, as constituting corroboration in a material particular of her story that he had had sexual intercourse with her.

On my finding of fact, it follows that the Petitioner committed adultery with this girl, and he failed to disclose that material fact when his petition was before this Court. I should have preferred to have taken some less drastic course than to rescind the decree nisi I have already granted in respect of a marriage which, as I have said, I can only regard as irretrievably ruined and broken beyond repair. But speaking as one charged with the administration of the law - and certainly not as a moralist - it seems to me of paramount importance that it should be clearly understood that where a petitioner seeks for a divorce and has himself been guilty of the matrimonial offence of adultery, it is his duty fully to disclose that fact to the Court in what is known as a discretion statement and ask for the discretion of the Court to be exercised in his favour. If a petitioner wilfully chooses to suppress such material facts and they are subsequently brought to the notice of the Court - the petitioner has nobody but himself to blame if the decree nisi granted to him is rescinded by the Court. In this case I have no doubt whatsoever, having regard to my findings of fact, that the Petitioner has deliberately and wilfully - and for reasons which are self-apparent - suppressed the fact of his own adultery with this girl. The Respondent herself, in the course of the divorce proceedings, filed a discretion statement. The Petitioner, I have no doubt, knew full well what his duties were in this matter.

The decree nisi granted by this Court on the 6th November, 1958, must accordingly be rescinded. The Petitioner must pay the costs of these proceedings including, of course, the Attorney-General's costs of intervention.

Order of rescission will be stayed pending the filing of the notice of appeal and thereafter until further order.

Dated at Penang this 22nd day of January, 1960.

(Signed) I.C.C. RIGBY,

JUDGE.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,

22nd January  
1960 -  
continued.

In the  
Supreme Court  
of the  
Federation of  
Malaya

No.17

Judgment of  
Rigby, J.,  
22nd January  
1960--  
continued.

TRUE COPY

Signed. Chee Tin Poh  
Secretary to Judge,  
Supreme Court,  
PENANG.

26th January, 1960.

Mr. L.A. Massie. Senior Federal Counsel, for  
Attorney-General, F.M.

Mr. J.L.P. Harris, for Petitioner.

Mr. Lim Ewe Hock holding watching brief for  
Respondent.

10

Solicitors for Petitioner: Messrs. Braddell  
Brothers, Singapore.

In the  
Court of Appeal

No.18

Notice of  
Appeal,  
23rd January  
1960.

No.18

NOTICE OF APPEAL

TAKE NOTICE that Sydney Hastings Dowse the  
Petitioner/Appellant abovenamed being dissatisfied  
with the decision of the Honourable Mr. Justice  
Rigby given at Penang on the 22nd day of January,  
1960, appeals to the Court of Appeal against the  
whole of the said decision.

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Dated at Penang this 23rd day of January, 1960.

Sd: J.L.P. Harris for R.H. Green.

Solicitor for the Appellant abovenamed.

To:

1. The Senior Assistant Registrar,  
Supreme Court,  
Penang.
2. The Attorney-General,  
Federation of Malaya.

30

The address for service of the Appellant is care of  
Messrs. Presgrave & Matthews, of No. 9 Beach Street,  
Penang.

No.19

MEMORANDUM OF APPEALIn the  
Court of Appeal

No.19

Memorandum of  
Appeal,10th February  
1960.

The Appellant, the abovenamed Petitioner appeals to the Court of Appeal against the Judgment of the Honourable Mr. Justice Rigby dated the 22nd day of January 1960 on the following grounds namely:-

- 10 1. That there was no evidence upon which the Learned Judge could find that the Plea of the Attorney-General should be allowed.
2. That the Learned Judge misdirected himself in law in holding that there was corroboration of the adultery alleged by the Attorney-General.
3. That the Learned Judge misdirected himself in accepting the evidence of the alleged adulteress as to the alleged adultery, she on her own admission being an accomplice and having been discredited upon material points.
- 20 4. That the alleged corroboration was more consistent with the Appellant's innocence than with his guilt and that the Learned Judge failed to recognise this and misdirected himself.
5. That the Learned Judge failed to give due or any weight to the evidence of one Khaw Beng Seok in support of the Appellant's Answer to the Plea and erred in preferring the evidence of the discredited adulteress-accomplice.
6. That the decision of the Learned Judge was against the weight of evidence.
- 30 7. That in fact the Appellant was proved not to have committed adultery.

Dated this 10th day of February, 1960.

R.H. GREEN

Solicitor for the abovenamed  
Appellant/Petitioner.

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In the  
Court of Appeal

No.20

No.20

JUDGE'S NOTES OF ARGUMENT  
(THOMSON C.J.)

Judge's Notes  
of Argument  
(Thomson C.J.),  
22nd February  
1960.

22nd February, 1960.

For Appt : Rintoul & Harris

For Respt: Massie

Rintoul:

Divorce Ord. S.18.

D. n. wd. have been made absolute 7.2.59 &  
appearance by A.G. on 3.2.59. 10

Intervention as a result of a letter from wife  
to A.G.

Complaint of rape not made till 22.8.59 (p.88).  
But wife says complaint was made in July.

According to the girl all the acts of adultery  
amounted to rape.

26. 2.58 - First alleged rape.

March 58 - 3 more alleged acts of rape.

24. 7.58 - Anonymous letter (not re-produced).

12. 8.58 - Visit to Dowse's house by girl and her  
relatives. 20

13. 8.58 - Confirmation of pregnancy by Menon.

22. 8.58 - Report to Police (p.88)

6.11.58 - Decree Nisi.

7.12.58 - Birth of girl's child.

31.12.58 - Two letters from girl's solicitors  
alleging breach of promise and seduc-  
tion.

24. 1.59 - Letter from wife to A.G.

3. 2.59)

)- Affidavits by the girl (pp.85 & 87). 30

6. 2.59)

3. 2.59 - Appearance by A.G.

16. 2.59 - Plea by A.G.

16. 3.59 - Statement of Claim in girl's action,  
(p. 90).

Aug. 59 - Blood tests - inconclusive.

There was no corroboration of the alleged  
adultery.

Did what happened on 12.3.58 amount to cor-  
roboration or not? If it did that is the end of  
the matter. 40

Issue is whether this Court is satisfied it  
amounted to corroboration.

Law as to position of appellate Court -  
Putra v. Sivagnanam & Anor. (1959) M.L.J. 259, 263.

On corroboration in a bastardy case -

Jones v. Thomas (1934) 1 K.B. 323, 328.

This Court should criticise the evidence of corroboration closely.

Charge must be proved as if it were criminal.

Rayden (7th Ed.) 133.

On corroboration -

10 Fairman v. Fairman (1949) P.341

No case on point whether party must have knowledge that what she is doing is taking part in a matrimonial offence.

The question of whether she knew he was married was never gone into.

23rd February, 1960.

Rintoul (continuing)

The girl's evidence called for corroboration whether she knew apt. was married or not.

20 Adultery is intercourse between a married person and an unmarried person. Mens rea on the part of both parties is not necessary.

What requires corroboration is the act of intercourse because of the seriousness of the consequences to the married party.

I return to -

Fairman v. Fairman (1949) P. 341.

See definition of "adultery" in -

Rayden (7th Ed.) P.131.

30 Abson v. Abson (1952) P. 55.

And see portion on co-respondent's costs in Rayden (7th Ed.) P.559.

She denied knowledge in her Statement of Claim in the seduction c/s but later admitted that S/C contained errors.

Actually the girl said she went to the house on 5 occasions - nothing happened the first time.

In the  
 Court of Appeal

No.20

Judge's Notes  
 of Argument  
 (Thomson C.J.),

22nd February  
 1960 -  
 continued.

In the  
Court of Appeal

No.20

Judge's Notes  
of Argument  
(Thomson C.J.),

22nd February  
1960 -  
continued.

Corroboration must be the same as required in  
The King v. Baskerville (1916) 2 K.B. 658, 667.

The fact that the girl was pregnant was not  
corroboration.

If the Court finds there was no corroboration  
the judgment shd be set aside.

Jones v. Thomas (1934) 1 K.B. 323, 328.

(A false statement is not necessarily corroboration).

Reg. v. Thomas (1959) 1 W.L.R. 1086.

Trowell v. P.P. (1946) M.L.J. 41

10

In this case there was no real corroboration.

Appt's conduct consistent with his having lost  
his head by reason of his fear of publicity.

Arranging for medical examination is as con-  
sistent with innocence as with guilt.

Thomas v. Jones (1921) 1 K.B. 22.

- The girl was discredited on material points -
- (1) Discrepancy between her evidence and the Police Report
  - (2) In fact she could not have been raped on 4 occasions.
  - (3) Appt's diary makes clear on 26.2.58 he was not in Penang at the material time. Time alleged was in the afternoon (? 2 p.m.) and Dowse's diary said he was in Ipoh.

20

Evidence Ord. s.155.

Case for Appt.

### Massie

The whole case is adequately discussed in the  
judgment.

30

There was corroboration in terms of Baskerville. In this connection circumstantial evidence is sufficient. The evidence does tend to show that Dowse had intercourse with the girl.

His conduct was not more consistent with innocence than with guilt. Any reasonable man wd. have chased the girl and her aunts away.

Girl came from a respectable family, she was pregnant, it is understandable she shd. say she did not consent.

40

Rintoul

Was it more consistent with innocence?  
To 24.2.60 for judgment.

24th February, 1960.

Judgment. Appeal dismissed.

Sgd. J.B. Thomson  
C.J.

In the  
Court of Appeal  
                      
No.20

Judge's Notes  
of Argument  
(Thomson C.J.),  
22nd February  
1960 -  
continued.

True copy.

Sd. Tneh Liang Peng  
Private Secretary  
to Chief Justice.

10

No.21

JUDGE'S NOTES OF ARGUMENT  
(HILL, J.A.)

22nd February, 1960.

Mr. Rintoul. Appearance 4 days before absolute.  
Letter at page 112. Complaint not made in July but  
in August - p.85.

Type of marriage - p. 76.

20 p.9 - reason for intervention. p.85 - p.76

Four acts of rape - p.13 - according to girl. P.15  
and 16 P.24 - C 3.

26-2-58 - first alleged act of rape - p.7

Three in March. Letter at p.114.

5th August - visit to house.  
13th August - Pregnancy confirmed.

22nd August - Report - p.113

6th November - Decree nisi

7th December - Child born

30 31st December - Letters from Solicitors

24th Jan. 1959 - Letter from wife

3rd February - Affidavits p.90-93

No.21

Judge's Notes  
of Argument  
(Hill J.A.),  
22nd February  
1960.

In the  
Court of Appeal

No. 21

Judge's Notes  
of Argument  
(Hill J.A.),  
22nd February  
1960 -  
continued.

5th February - Intervention  
16th February - Plead  
16th March - pp.88-99 - Claim  
August - blood tests.

Grounds 1, 6 and 7 out.

Grounds 2 and 4 - main submission -

"Did what happened on night of 12/8 amount to  
corroboration?" Court must decide this.

Judgment - p.71 - C.

Court in just as good opposition as trial Judge re corroboration. 10

1959 M.L.J. p.259 Putra v. Sivaganam and anor.

Jones v. Thomas (1934) 1 K.B. 328 - "criticise  
closely"

Rayden 7th edition p.133

Fairman v. Fairman 1949 Pro. Div. 341.

Adjourned to 23/2.

Sgd. R.D.R.H.

23-2-60. As before.

Rintoul.

20

Girl's evidence had to be corroborated in any  
event, whether there is mens rea or not. Act of  
intercourse must be corroborated. Fairman v.  
Fairman - Accomplice.

Rayden 7th edn. 131 - definition of adultery - 1952  
Pro. Div. 55

Absom v. Absom - knowledge not necessary. A Res-  
pondent's liability for costs. Further rape should  
be corroborated - p.27 and 88. No real evidence as  
to knowledge by girl - p.12 A 4 - p.23 C 2 five 30  
visits to house - p.32 C 4 - p.24 D.

Corroboration must be as laid down in Basker-  
ville 1916 2 K.B. 568 (667). 173 E.R. 694 Reg. v.  
Birkett.

Pregnancy not corroboration.

If this Court finds no corroboration allow  
appeal.

1934 1 K.B. 323 R. v. Thomas - 1959 (1) W.L.R.  
1086.

1946 M.L.J. 41 No corroboration.

40

What was it in present case? p.73. Dowse's conduct that of man who lost his head in the circumstances, publicity.

Evidence p.26 - 27 p. 38A 3 - p. 43 B 2.

Dowse's evidence corroborated by girl and witness. P.50 D 4 - 5. p. 92 para 9.

10 Judge overlooked the publicity of the divorce and the commotion outside the house. Time, place and date. If guilty, why have girl examined at all? Examination non-consistent with innocence than otherwise. 1921 I K.B. 22 - Thomas v. Jones.

Ground 3. Discredited report and innocence - could not have been raped on 4 occasions. Appellant's diary shows on 26/2 he was not in Penang - p. 49.

Girl's discrepancies made her unworthy of belief.

Massie.

20 Grounds 2 and 4. Circumstantial evidence can be corroboration - here it corroborates intercourse - unreasonable conduct even in the circumstances in which he was placed.

Ground 3. Judge did not accept the girl's evidence in toto - rejected parts.

Ground 5. Not argued.

Adjourned to 10 a.m. on 24/2. C.A.V.

Sgd. R.D.R.H.

24-2-60. As before.

Appeal dismissed with costs.

Deposit to be paid out.

30 Sgd. R.D.R.H.

Certified true copy.

K.S. Menon  
Secretary to Judges of Appeal  
Court of Appeal  
Federation of Malaya.

25.5.60

In the  
Court of Appeal

No.21

Judge's Notes  
of Argument  
(Hill J.A.),

22nd February  
1960 -  
continued.

In the  
Court of Appeal

JUDGE'S NOTES OF ARGUMENT  
(GOOD, J.A.)

No.22

22nd February, 1960.

Judge's Notes  
of Argument  
(Good J.A.),  
22nd February  
1960.

Mr. Rintoul:

The proceedings were initiated as a result of the letter at p.118.

Formal complaint not made by the girl until 22-8-58 (as a result of Dowse's refusal to admit paternity). It is not true, as stated at p.112, that she made a complaint to the D.P.P. in July.

10

p.76.

p.85 is a report of rape. No prosecution but report used as the basis of this intervention. But the intervention was set in motion by the letter at p.112.

According to the girl, all four acts were acts of rape:

p. 15	B + 2	26-2-58
p. 16	A + 1	10-3-58
p. 17	C + 1	16-3-58
p. 19	A + 3	22-3-58

20

Also at p.26 C + 3.

12-8-58	Visit to house
13-8-58	Confirmation of pregnancy
22-8-58	Report to police
6-11-58	Decree nisi
7-12-58	Child born
31-12-58	Solicitor's letter.
24-1-59	Wife's letter p.118
16-3-59	Statement of claim

30

Not arguing grounds 1, 6, 7.

Grounds 2 and 4 together.

Did what happened outside appellant's house on 12-8-58 amount to corroboration?

This is not a matter of discretion. The appellate Court must look at the evidence and decide whether there is corroboration or not.

p.76.

p.75 overlooks the vital passage in the judgment (record p.72).

40

Jones v. Thomas (1934) I K.B. 323  
per Avery J. at 328

Appellate Court will "criticise closely" the alleged corroboration.

See Rayden 7th Edn. p.133 for burden of proof.

The girl committed adultery and was therefore an accomplice.

Where a matrimonial offence is alleged there must be corroboration.

Fairman v. Fairman (1949) P.341.

10 (Q. Does the principle extend to sexual acts not constituting matrimonial offences?)

The issue of whether she knew he was married or not was never gone into.

4.30 p.m. adjourned to 23-2-60.

23-2-60. As before.

Rintoul continues:

20 Corroboration necessary. Adultery connotes an act of intercourse whether there is mens rea or not. It is a question of fact whether one of the parties is married. "Adultery" - intercourse between A and B provided either A or B is married. Evidence of such intercourse must be corroborated because of the serious consequences to the married party.

Fairman v. Fairman.

Nothing to indicate that Warner knew Mrs. Fairman was married.

Warner was treated as an accomplice: P.343.

"Adultery" Rayden 7th Edn. p.136

"Consensual sexual intercourse".

30 Absom v. Absom (1952) P.55 @ 64.

The test is: Did the unmarried party "defile the marriage bed" of the married party? Knowledge does not enter into it.

Rayden 559 - guilty co-respondent's liability for costs. As the girl's allegations were in fact rape, the Judge was entitled to direct himself that corroboration was necessary. Para 9 p.89. p.27 F and 28 C.

Complainant threw her statement of claim overboard.

In the  
Court of Appeal

No.22

Judge's Notes  
of Argument  
(Good J.A.),

22nd February  
1960 -

continued.

In the  
Court of Appeal

No.22

Judge's Notes  
of Argument  
(Good J.A.),

22nd February  
1960 -  
continued.

The girl went to the house on 5 occasions - the first occasion was the "ice cream" incident.

P.25 - it does not matter if she knew Dowse was married or not.

The corroboration must measure up to the Baskerville case. (1916) 2 K.B. 658 @ 667.

Reg v. Birkett 173 E.R. 694.

The fact that the girl was found to be pregnant was not corroboration per se.

Jones v. Thomas (1934) 1 K.B. 323.

10

R. v. Thomas (1959) 1 WLR 1086.

Trowell v. Public Prosecutor (1946) M.L.J.41.

The corroboration in this case is dealt with at p.73

Dowse's conduct consistent with his having lost his head in a desire to avoid publicity.

P.27 - p.38 - p.43 (Dowse's evidence, which is corroborated by the girl and by P.W.5).

P.50 - this is a reasonable explanation. At that stage the girl herself knew perfectly well that she was pregnant.

20

The Judge found that Dowse sent the girl for examination at the request of the guardian and her sister.

P.74 E - F.

P.94 D - Dowse went to see the doctor.

The critical passage on corroboration is at p.75. That overlooks the vital finding that there had been vulgar publicity in connection with the divorce proceedings - p.76.

Why should he consent to the examination if he had a guilty mind. His conduct was more consistent than not with innocence.

30

Thomas v. Jones (1921) 1 K.B. 22.

Statements equally consistent with the story of either party cannot be corroboration.

Neither can evidence of mere opportunity, which by itself raises no presumption.

Lord Atkin @ p. 48.

Ground 3: The Complainant was completely discredited:

40

- (a) discrepancies between evidence and report;
- (b) impossibility of story of rape;
- (c) Dowse was not in Penang at the material time (his diary) - p.49 line 2.

P.85.

P.79 overlooks the fact that the report must relate to the first occasion she went to Dowse's house.

10     Until cross-examined the girl had on oath confirmed the accuracy of the report - p.11A.

Leonard Harris and s.155 Evidence Ordinance.

The "Rape".           p. 13 B - C  
                           p. 15 D  
                           p.16 C - D  
                           p.17 B

Judgment p.77.

The girl's charges in this case had to be proved as in a criminal case.

Massie:

20           Judge correctly applied Baskerville.

The evidence here is indicative of a guilty conscience - a reasonable man with a clear conscience would have sent his callers away and had nothing more to do with them - even in his existing circumstances. Sending the girl to his doctor was tantamount to accepting responsibility for her condition.

She is not completely discredited by being disbelieved in certain parts of her evidence.

30           Ground 5. (Rintoul - I didn't argue that).

Judgment 24-2-60.

Sgd. D.B.W.G.

24-2-60. As before.

Judgment read by C.J.

Appeal dismissed with costs.

Deposit to be paid out to the Attorney-General against his taxed costs.

Sgd. D.B.W.G.

Certified true copy.

40           Sd. K.S. Menon  
               Secretary to Judges of Appeal  
               Court of Appeal  
               Federation of Malaya  
               21.5.60.

In the  
 Court of Appeal

No.22

Judge's Notes  
 of Argument  
 (Good J.A.),

22nd February  
 1960 -  
 continued.

In the  
Court of Appeal

No.23

JUDGMENT OF THOMSON, C.J.

No.23

Judgment of  
Thomson C.J.,

29th February  
1960.

Sydney Hastings Dowse

Appellant

v.

The Attorney-General, F.M.

Respondent

This appeal arises out of divorce proceedings in which the present appellant was the petitioner. He sued for divorce on the ground of desertion and was granted a decree nisi on 6th November, 1958. On 3rd February, 1959, that is to say four days before the decree nisi would normally have been made absolute, the Attorney-General entered appearance for the purpose of intervening. That intervention was based on the allegation that material facts had not been disclosed to the Court, these facts being that on 26th February, 1958, and on at least three other occasions in March, 1958, the appellant had committed adultery at his house in Scott Road, Penang. Perhaps it should be said at this stage that the intervention was admittedly instigated by the appellant's wife in the sense that it was she who communicated the information on which it was based to the Attorney-General.

10

20

In the event Rigby J., found the allegations of the Attorney-General to be proved and he accordingly made an order rescinding the decree nisi, dismissing the petition and ordering the appellant to pay the Attorney-General's costs.

Against that order the appellant has now appealed.

30

The alleged adultery was committed with a certain Miss Tan Phaik Kooi. This Miss Tan is a young woman, aged 23, who lived with an elderly guardian and her guardian's sister at 25, Codrington Avenue, Penang. Next door to her lived a woman Khaw Beng Seok, a woman a great deal older than herself, who at all material times was employed as a domestic servant by the appellant.

Miss Tan's story was that the woman Khaw Beng Seok had repeatedly requested her to visit her at

40

10 the house of the European where she worked. One afternoon in February in response to Khaw's request she accompanied her to this European's house and they entered the rear part of the premises. After they had been there some time the appellant, whom she did not know before, entered and took her into the sitting room. He made her sit on his lap and, after some general conversation, he picked her up and carried her into his bedroom where he had intercourse with her against her will. Prior to that, she said, she had been a virgin. Later he asked Khaw to take her home. Miss Tan told Khaw what had happened and told her that she was frightened she might become pregnant. Khaw told her not to worry and said that if she did become pregnant he, the appellant, would get her some medicine. She told nobody else what had happened.

20 About six days later, in the afternoon, she again accompanied Khaw to the appellant's house. She did so because Khaw had told her that the appellant had some medicine for her. On arrival at the house she saw the appellant who gave her five tablets and told her to take three at once and the rest when she got home. After having given her the tablets he carried her into the bedroom and again had intercourse with her against her will.

30 Some twelve days later she again accompanied Khaw to the appellant's house, arriving there at about 9 p.m. According to her she went there on this occasion because she had earlier been to see Khaw to discuss the situation and she wished to see the appellant and tell him that she suspected she was pregnant and that his medicine was no good. On arrival at the house she saw the appellant and told him the medicine was ineffective. He again carried her into his bedroom and had intercourse with her against her will. After that he drove her part of the way home.

40 About a fortnight later she again went to the appellant's house some time after 9 p.m. Earlier that day Khaw had seen her and told her that the appellant would like to see her about that time. Khaw further told her to go to Yeoh Guan Seok Road at about 9 p.m. and the appellant would pick her up there. She did so. The appellant picked her up and drove her to his house and again had intercourse with her against her will. Afterwards he drove her part of the way home. That was the last

In the  
Court of Appeal

No.23

Judgment of  
Thomson C.J.,

29th February  
1960 -

continued.

In the  
Court of Appeal

No. 23

Judgment of  
Thomson C.J.,  
29th February  
1960 -  
continued.

occasion on which he had intercourse with her.

Some two months later Miss Tan had more solid reason than before to suspect that she was pregnant and she consulted a Doctor who confirmed her suspicions, and on 7th December, 1958, she gave birth to a child.

That, putting aside an incident which occurred on 12th August and to which I shall return later, was Miss Tan's story. It was emphatically contradicted by the appellant who denied that the incidents of which she spoke ever took place at all. He had only once set eyes on her before the incident of 12th August. That was on an occasion when he returned from work and saw her leaving his house in company with Khaw Beng Seok's sister. For some reason which he did not explain he asked Khaw who she was and she said she was her next door neighbour. Khaw, who was called as a witness for the appellant, was equally emphatic in denying Miss Tan's allegations.

10

20

Now, it is unlikely that the whole of Miss Tan's story was true. In all the circumstances it is highly incredible that on every occasion the appellant had intercourse with her by force and against her will. That, however, does not mean that her story of having intercourse with him was necessarily untrue and the allegation that she was forced may well be nothing but the pathetic excuse that is put up at some time or another by every young girl who "finds too late that men betray". In any event the trial Judge was of the opinion that she was a witness of truth. His conclusions on the point were as follows:-

30

"Having heard this girl's testimony and watched her demeanour for several hours in the witness box, I am certainly not prepared to say that her story, in so far as it concerns the Petitioner, is a tissue of lies. On the contrary, subject to what I shall later say, I formed the impression that, in substance, her evidence was true."

40

And again he said at a later stage:-

"I am satisfied that the girl was speaking the truth when she said that the Petitioner had had sexual intercourse with her on 4

occasions. In so far as the 2nd, 3rd and 4th occasions are concerned, I do not believe her when she says that it was against her consent."

In the  
Court of Appeal  

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No.23

Judgment of  
Thomson C.J.,  
29th February  
1960 -  
continued.

10 Having come to these conclusions, however, the Judge took the view, with which with respect I agree, that what he was concerned with was an allegation of a matrimonial offence and he was bound by authority to hold that it must be proved by the Attorney-General who was setting it up as the basis of his plea with the same strictness as that with which a criminal offence would require to be proved. He took the view that Miss Tan was an accomplice in the offence of adultery and that he was not free to find that adultery was made out unless there was independent corroboration of her evidence.

20 Now, I am not sure that here the Judge did not go too far. In particular, I have doubts (which the case of Fairman v. Fairman (1949) P. 341 does not wholly dispel) as to whether Miss Tan could properly be said to be an accomplice in adultery as distinct from fornication unless there was some evidence to shew that she knew the appellant was married. Nevertheless, on the view I have taken of the case I do not think any injustice will be done if I myself approach the evidence in the way in which it was approached by the Judge.

30 He looked for corroboration and he thought he found it in the evidence relating to the incident of 12th August, which I have mentioned but which I have hitherto refrained from discussion.

40 Up to a point there is no controversy as to what happened on 12th August. At some time in the evening after the appellant had retired to bed Miss Tan accompanied by her guardian and her guardian's sister came to the front gate of the appellant's house in Scott Road. There is no question that for some reason or another they came to see the appellant about Miss Tan's pregnancy about which, of course, they had had the opinion of the Doctor she had consulted. There was some sort of disturbance at the gate and the appellant went down to see what it was about. He found the woman Khaw inside the gate and Miss Tan and her

In the  
Court of Appeal

No.23

Judgment of  
Thomson C.J.,  
29th February  
1960 -  
continued.

aunts outside. Miss Tan and her aunts were ab-  
juring Khaw as a "pimp" (presumably this is an  
interpretation of some Chinese word meaning "pro-  
curess") and were asserting that Miss Tan was  
pregnant and that the appellant was responsible  
for her condition. They would appear to have  
insisted (although there is controversy as to  
where the suggestion came from in the first place)  
that the appellant should send Miss Tan to his own  
Doctor for examination. Now, whatever the truth  
is about this incident there is no doubt that a  
considerable disturbance was taking place in what  
I have been given to understand is a quiet resi-  
dential suburb. And in the event it is clear,  
though there is confusion as to the details, that  
the appellant said he would send Miss Tan to his  
own Doctor for examination, that the following  
morning he instructed the woman Khaw to take Miss  
Tan to his own Doctor, a leading physician in  
Penang, to be examined and that the morning after  
that he went to see the Doctor himself to ascertain  
the result of his examination (which was that Miss  
Tan was pregnant) and paid him his fee.

10

20

As I have said there is little controversy as  
to the facts of this incident. There has, however,  
been much discussion as to what inferences should  
be drawn from these facts. For the appellant it  
has been urged upon us by Mr. Rintoul, with his  
customary persuasiveness, that the appellant was  
very worried about his divorce proceedings which  
had attracted considerable publicity, that he lost  
his head and in an attempt to avoid unpleasantness  
which might lead to further publicity he complied  
with the request made to him and he proceeded the  
following morning to give effect to the undertaking  
he had given the night before. Moreover, having  
a good conscience himself he hoped that a negative  
finding by the Doctor as to Miss Tan's alleged  
pregnancy would in itself go a long way to exculpate  
him from the allegations made against him. On the  
other side it was contended that the obvious re-  
action of an innocent man in the circumstances would  
have been to warn the intruders off his premises and  
if they refused to go to telephone for the Police.  
This latter was in effect the view of the trial  
Judge.

30

40

My own view is that the crucial question  
regarding this episode is, what was the appellant's  
state of mind? The facts, the proved facts, are

certainly consistent with the proposition put forward by Mr. Rintoul that the appellant lost his head, that he was obsessed by the need to avoid publicity of which he had already had too much and that he clutched to any straw to put an end to a disturbance which might well have attracted the attention of the Police and thus lead to more publicity and possibly to some extent to rebut an unpleasant allegation.

In the  
Court of Appeal

          
No.23

Judgment of  
Thomson C.J.,  
29th February  
1960 -  
continued.

10           On the other hand the appellant's conduct is  
consistent with the proposition that he had a bad  
conscience, that he feared his wrong doing had had  
consequences which in the course of nature could not  
be concealed for very much longer and which would  
involve him in many years of expense and embarrass-  
ment and that he hoped that his fears might be  
unjustified. It is to be remembered here that he  
said on the evening of 12th March that Miss Tan did  
not look as if she was pregnant and that was cer-  
20           tainly a curious observation to make if he was  
taken by surprise by an allegation that a woman,  
with whom on his own showing he had never had  
relations, was pregnant by him.

          On this part of the case there is no question  
of credibility because as I have said there is very  
little controversy. My own view is that the facts  
go to show that the appellant's state of mind was  
that he was more interested in the question of  
whether or not Miss Tan was pregnant than in any-  
30           thing else. The evidence is that he rang up  
Doctor Menon on the telephone and arranged for his  
examination of Miss Tan but afterwards he was not  
content to ring him up but went round in person to  
see him and ascertain the result of his examination.

          And if the appellant's real anxiety was as to  
whether or not Miss Tan was pregnant it does seem  
to me that that was ample corroboration of Miss  
Tan's allegations.

40           I am content for the purpose of the present  
case to be guided by the following passage from the  
judgment of Lord Reading, C.J., in the well-known  
case of Rex v. Baskerville (1916) 2 K.B. 658, 667.

"We hold that evidence in corroboration  
must be independent testimony which affects

In the Court of Appeal

No.23

Judgment of Thomson C.J.,

29th February 1960 - continued.

the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

.....

corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused."

10

Considering the matter in the light of that passage it seems to me that evidence as to the appellant's state of mind on 12th August showing that he entertained anxiety as to whether or not Miss Tan was pregnant considered in the light of all the surrounding circumstances afforded ample independent corroboration of her story implicating him. It was not, of course, necessarily inconsistent with the appellant's innocence but it was certainly consistent with his guilt and to that extent it was available in law as corroboration.

20

After all, evidence corroborating the evidence of an accomplice need not be in itself conclusive of the guilt of the accused person. If it were in itself conclusive there would be no need to call the accomplice as a witness. It is independent evidence which tends to prove that the offence has been committed and that the person accused of the offence has committed it.

30

The trial Judge's conclusion as to the credibility of Miss Tan is one with which in itself no Court of Appeal could interfere and having come to the conclusion that there was corroboration (if corroboration is necessary) I can only say that I would dismiss the appeal with costs.

Taken down by me and seen by the Hon. the C.J.

Sd. Teh Liang Peng

40

Private Secretary to Chief Justice.

Kuala Lumpur, 29th February, 1960.

No.24

JUDGMENT OF HILL, J.A.

I agree and I wish to add nothing to what His Lordship the Chief Justice has said.

Sd. R.D.R. Hill

24th February, 1960. Judge of Appeal,  
Federation of Malaya.

Certified true copy.

Sd. K.S. Menon

Secretary to Judges of Appeal,  
Court of Appeal,  
Federation of Malaya.

10

In the  
Court of Appeal

No.24

Judgment of  
Hill J.A.,

24th February  
1960.

No.25

JUDGMENT OF GOOD, J.A.

I also agree and I have a few words only to add and I do so because Mr. Rintoul, in the course of his argument yesterday, referred to the case of Leonard Harris, 20 C.A.R. 144, which case is authority for proposition that where a witness gives evidence which is in conflict in material respects with a former unsworn statement the evidence of that witness should be disregarded in toto; but in my view that case must be read subject to the qualification that where a satisfactory explanation of the discrepancy or apparent discrepancy is given by the witness, then the proposition does not apply. So far as the apparent discrepancies between Miss Tan's evidence and her report to the Police are concerned, the learned trial Judge gave them very careful consideration. He heard Miss Tan's explanation of

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No.25

Judgment of  
Good J.A.,

24th February  
1960.

In the  
Court of Appeal

No.25

Judgment of  
Good J.A.,

24th February  
1960 -  
continued.

them and it satisfied him and I do not think that it is open to this Court to say that he was wrong in coming to that view and with this addition, therefore, I agree with the judgment of My Lord and I too would dismiss this appeal with costs.

Sd. D.B.W. Good

24th February, 1960.

Justice of Appeal,  
Federation of Malaya.

No.26

Order dis-  
missing Appeal,

24th February  
1960.

No.26

ORDER DISMISSING APPEAL

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Coram:- The Honourable Dato Sir James Thomson,  
P.M.N., P.J.K. Chief Justice, Federation  
of Malaya,

The Hon'ble Mr. Justice Hill,  
Judge of Appeal

and

The Hon'ble Mr. Justice Good,  
Judge of Appeal.

IN OPEN COURT

This 24th day of February,  
1960

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This Appeal coming on for hearing on the 22nd and 23rd days of February, 1960, in the presence of Mr. R.H.V. Rintoul (with him Mr. J.L.P. Harris) of Counsel for the Appellant and Mr. L.A. Massie, Senior Federal Counsel, for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsels for the parties as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment to the 24th day of February, 1960, and the same accordingly coming on for judgment this day in the presence of Mr. J.L.P. Harris of Counsel for the Appellant and Mr. L.A. Massie, Senior Federal Counsel, for the Respondent IT IS ORDERED that the Judgment of the Honourable Mr. Justice Rigby given at Penang on the 22nd day of January, 1960, in favour of the Respondent be affirmed and that this Appeal be and is hereby dismissed AND IT IS FURTHER ORDERED that the Appellant do pay to the Respondent

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the costs of this Appeal as taxed by the proper officer of the Court AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars five hundred only) lodged in Court as security for the costs of this Appeal be paid out to the Respondent against such taxed costs.

Given under my hand and the Seal of the Court this 24th day of February, 1960.

(L.S.)

Sd. Shiv Charan Singh  
Assistant Registrar,  
Court of Appeal,  
Federation of Malaya.

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In the  
Court of Appeal  
            
No.26  
Order dis-  
missing Appeal,  
24th February  
1960 -  
continued.

No.27

ORDER GRANTING FINAL LEAVE TO APPEAL TO  
HIS MAJESTY THE YANG DI-PERTUAN AGONG IN COUNCIL

Sydney Hastings Dowse Appellant  
and  
Attorney-General, Federation of Malaya Respondent  
(In the Matter of Penang Divorce Petition No.3  
of 1956)

20

In the Matter of an intervention by the Attorney-  
General in Divorce Petition No.3 of 1956

Between

Sydney Hastings Dowse Petitioner  
and  
Mary Ann Dowse Respondent)

O R D E R

UPON Motion made unto the Court this day by  
Mr. J.L.P. Harris of Counsel for the abovenamed  
Appellant in the presence of Syed Othman bin Ali,  
Federal Counsel AND UPON READING the Notice of  
Motion dated the 9th day of June 1960 and the  
Affidavit of Sydney Hastings Dowse affirmed on the  
7th day of June 1960 and filed herein AND UPON

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No.27  
Order granting  
final leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong in  
Council,  
13th June 1960.

In the  
Court of Appeal

            
No.27

Order granting  
final leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong in  
Council,

13th June 1960  
- continued.

HEARING Counsel as aforesaid for the parties IT IS  
ORDERED that final leave be and is hereby granted  
to the abovenamed Appellant to appeal to His  
Majesty The Yang di-Pertuan Agong against the  
Judgment of the Court of Appeal dated the 24th day  
of February 1960.

Given under my hand and the Seal of the Court  
this 13th day of June, 1960.

(L.S.)

Sd. Shiv Charan Singh

Assistant Registrar,  
Court of Appeal,  
Federation of Malaya.

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E X H I B I T SExhibits

"C"

"C"  
AFFIDAVIT OF TAN PHAIK KOOIAffidavit of  
Tan Phaik  
Kooi,  
3rd February  
1958.

I, Tan Phaik Kooi (aged 22 years) of No. 25  
Codrington Avenue, Penang, solemnly and sincerely  
affirm and say as follows :-

1. I am a next door neighbour to S.H. Dowse's  
female servant named Khaw Beng Seok.
- 10 2. On 26.2.1958 at about 2 p.m. Khaw Beng Seok  
invited me to go to Dowse's house just to see the  
place. Khaw Beng Seok told me that Dowse would  
not be at home at the time. As I have nothing to  
do that afternoon I accompanied Khaw Beng Seok to  
Dowse's house. The house is situated at Scott  
Road, Penang.
- 20 3. When I arrived at the house Khaw Beng Seok  
introduced me to Dowse. I did not know Dowse at  
the time. After the formal introduction I had a  
chat with Dowse and Khaw Beng Seok went to the  
kitchen apparently to work leaving me alone with  
Dowse. I am English educated and so I could  
converse with Dowse in the English language.  
Suddenly Dowse carried me to his room. I called  
out to Khaw Beng Seok for help. Khaw Beng Seok  
came but Dowse asked Khaw Beng Seok to keep a look  
out and watch that no one was around. Dowse pulled  
down my underwear and he then stripped himself naked.  
I tried to struggle and free myself from his grip  
but he was too strong for me. He pushed me on to  
30 the bed and had sexual intercourse with me. I was  
a virgin and he had deflowered me. The sexual  
intercourse lasted for about one hour.
4. After the sexual act I was taken home by Khaw  
Beng Seok.
5. I am an orphan and I am living with my guardian.  
I dared not report the incident to my guardian as I  
was afraid I would get a scolding.
- 40 6. About 12 days later as I was afraid I would  
become pregnant I accompanied Khaw Beng Seok to  
Dowse's house to see what Dowse could do for me.  
Khaw Beng Seok told me that Dowse would give me  
some tablets to take to prevent pregnancy. Dowse

Exhibits

"C"

Affidavit of  
Tan Phaik  
Kooi,

3rd February  
1958 -  
continued.

gave me 5 tablets and I took 3 of them. On this occasion Dowse again took me to his room and Khaw Beng Seok was just outside the room watching that no one was around. Dowse again had copulation with me and it lasted about half an hour.

7. About 6 days later after the incident as related in paragraph 6 hereof Khaw Beng Seok took me to Dowse house as she said that the latter want to see me. When I arrived at the house, Dowse was not at home but Khaw Beng Seok forced me to remain in the house. When Dowse came back home he again had intimacy with me. It lasted half an hour. I returned home at about 10.30 p.m.

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8. About 6 days after the incident as related in paragraph 7 hereof Khaw Beng Seok again took me to Dowse's house. Dowse was again intimate with me and the sexual intercourse lasted about 1½ hours. After the sexual act I told Khaw Beng Seok that I would be pregnant but she told me not worry as she herself had intercourse with Dowse 3 times a week and yet she was never pregnant. On this occasion Dowse took me home in his car.

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9. Sometime in May 1958 I went to see Dr. Yeok Cheang Hoe at his dispensary about my condition and he told me that I was 2 or 2½ months pregnant.

10. Sometime in August 1958 I went to Dowse's house and asked Khaw Beng Seok to take me to see Dr. Menon who confirmed that I was with child.

11. On 7.12.58 a baby was born to me at the Mater-nity Hospital Penang of whom Dowse is the father.

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Affirmed by the abovenamed Tan )  
Phaik Kooi at Penang on the )  
3rd day of February 1959 the )  
deponent having been identi- )  
fied to me by Phor Eng Guan )  
clerk to M/s. Pillai Lim Lee & )  
Hwang who is personally known )  
to me. )

Sd. Tan Phaik  
Kooi.

Before me,  
sd. Cheah Kim Aw  
Commissioner for Oaths.

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EXAMINED BY (SEAL)  
Sd. Illegible HIGH COURT  
CLERK FEDERATION OF  
MALAYA.

TRUE COPY.  
Sd. Illegible  
Senior Assistant  
Registrar,  
Supreme Court,  
Federation of Malaya.  
JAN 12 1960 PENANG.

"D"  
AFFIDAVIT OF TAN PHAIK KOOI

Exhibits

"D"

I, Tan Phaik Kooi (aged 22 years) of No. 25  
 Codrington Avenue, Penang, solemnly and sincerely  
 affirmed and say as follows :-

Affidavit of  
 Tan Phaik  
 Kooi,

6th February  
 1959.

With regard to paragraph 10 of my affidavit  
 filed on the 3rd day of February 1959 I now say  
 that :-

10 (10) Sometime in August 1958 I and my aunt Lim Im  
 Chuah went to see Dowse about my condition and he  
 arranged for me to see Dr. Menon. Dowse asked his  
 servant Khaw Beng Seok to take me and my aunt to  
 Dr. Menon's office. Dr. Menon examined me and  
 confirmed that I was with child. I did not pay  
 for Dr. Menon's medical fees.

20 Affirmed by the abovenamed Tan )  
 Phaik Kooi at Penang on the )  
 6th day of February 1959 the )  
 deponent having been identi- ) Sd. Tan Phaik Kooi  
 fied to me by Khor Eng Guan )  
 clerk to M/s. Pillai Lim Lee & )  
 Hwang, who is personally known )  
 to me. )

Before me,

Sd. Cheak Kim Aw

Commissioner for Oaths.

EXAMINED BY  
 Sd. Illegible  
 Clerk

SEAL:  
 HIGH COURT  
 FEDERATION OF  
 MALAYA.

TRUE COPY  
 Sd. Illegible

Senior Assistant  
 Registrar,  
 Supreme Court,  
 Federation of  
 Malaya,  
 PENANG.  
 JAN. 12 1960.

Exhibits

"P. 3 B"

Certified  
translation  
into English  
of Police  
Report of Tan  
Phaik Kooi,  
22nd August  
1958.

"P 3 B"  
CERTIFIED TRANSLATION INTO ENGLISH OF  
POLICE REPORT OF TAN PHAIK KOOI

Report No.1643/58                      Pulau Tikus Police Station  
At 10.45 p.m. on 22.8.58  
Complainant Tan Phaik Kooi i/c P. 256138 a female  
Race Teochew Age 22 years Occupation Domestic  
Residing at No.25, Codrington Avenue, Penang. <sup>duties</sup>  
Interpreter PC 24584 from Teochew into Malay  
Complainant states:

Five months ago, I do not remember the date, an Amah friend of mine named Khaw Beng Seok took me to a European's house, where she is working, at No.23, Scott Road, Penang. I know the name of the occupant of the house is Sydney Dowse. On my arrival, this Amah took me and introduced me to the European and straightaway he carried me in his arms and took me into his room. At that time I did not shout and straight away he took off my blouse (baju) and trousers. He then stripped himself naked. He straightaway worked on me and it lasted for an hour. Then he asked me to take a bath and then asked me to go home. I then called the Amah and we returned together to my house. The Amah then returned home. I did not inform anybody then. I have never been to the European's house since that day. Then on 5.5.58 my guardian (adopted mother) and I went to Singapore and stayed at my adopted mother's sister's house for 19 days. Then we returned to Penang and stayed at my house. At that time I felt as if I was three months in pregnancy. I went for an examination at a dispensary at Penang Road and it was by Dr. Yeok Chiang Hoo who confirmed that I was three months in pregnancy. Then at about 10.00 p.m. on 20.8.58 I went to see the European at his house and informed him of my six months pregnancy. He did not admit it and said that it was not his child. I then returned home. Today, 20.8.58 I came to the Police Station and lodged a report.

Sd. Complainant Tan Phaik Kooi  
Sd. Interpreter PC 24584  
Sd. Officer Cpl.4610

Certified True Copy  
Sd. Lee Yoke Lim  
A.I. Patani Road,  
George Town, Penang.

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"P6"  
STATEMENT OF DR. MENON

Exhibits

"P6"

No.(6) in LAP. 366 Pt. I

Statement of  
 Dr. Menon.

Office: 84, King St.,  
 Tel : 2058  
 Residence : Tel. 3383  
 73 Perak Road,  
 Penang,  
 Malaya.

2/2/1959.

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Dr. N.K. Menon  
 L.R.C.P. & S. (EDIN)  
 L.R.F.P. & S. (GLAS)  
 M.D. (Germany) J.P.

Wednesday,  
 13th August, 1958.

No. 42073

Miss Tan Phaik Kooi I/C. No. P. 256138 of 25  
 Codrington Avenue

20 Penang born 1936 - 22 yrs. old.

Patient sent to me for consultation by Mr. Sidney  
 Dowse by phone request (Tel. 5369)

She was accompanied by an older woman, her  
 guardian. Miss Tan says she is pregnant & alleges  
 Mr. Dowse responsible. The guardian wants to know  
 if the girl is really pregnant, & if so how far  
 advanced.

30 On examination - Miss Tan is about 5 months  
 advanced, & milky fluid can be pressed out of both  
 nipples.

I told the patient & guardian that no special  
 medicine is necessary & I gave a Tonic prescription  
 for FERRADOL (parke Davis), which patent prepara-  
 tion can be got from any Dispensary she wished to  
 go (Iron + Cod Liver Oil + Vitamins)

The next day Mr. Dowse came to pay the con-  
 sultation fees & flatly denied that he was in any  
 way responsible for the girl's condition.

I have not seen the girl since.

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Sd. Illegible.

Exhibits

"D4"

Statement of  
Claim in Civil  
Suit No.27 of  
1959 - Tan  
Phaik Kooi  
v. Dowse,  
16th March  
1959.

"D4"

STATEMENT OF CLAIM IN CIVIL SUIT  
NO. 27 OF 1959 - TAN PHAIK KOOI v. DOWSE

(1) The plaintiff is a spinster and resides at No.25 Codrington Avenue, Penang.

(2) The Defendant is an Estate Manager and resides at 25 Scott Road Penang.

(3) On the 26th day of February 1958 the plaintiff was invited by Khaw Beng Seok a servant girl employed by the Defendant to visit premises No. 23 Scott Road, Penang. On arrival at the said premises at 2 p.m. on the 26th February 1958 the plaintiff was introduced to the Defendant. 10

(4) The Defendant then carried the plaintiff into the Defendant's bedroom. The Defendant persuaded the plaintiff to allow Defendant to have sexual intercourse with her but the plaintiff refused. The Defendant persisted and told the plaintiff not to be afraid. The Defendant further told the plaintiff that he would take care of her and that he would marry her. The Defendant then had sexual intercourse with the plaintiff. 20

(6) About 12 days after the 26th day of February 1958 the Plaintiff accompanied by the servant girl of the Defendant called on the Defendant at 23 Scott Road, Penang as the plaintiff was afraid she would become pregnant. The Defendant gave the plaintiff 5 tablets to take and again had intercourse with the plaintiff.

(7) About 6 days after the incident as related in paragraph 6 of the Statement of Claim the servant girl of the Defendant again brought the plaintiff to the Defendant who had sexual intercourse with the plaintiff. 30

(8) As a result of the aforesaid sexual intercourse the plaintiff became pregnant.

(9) Later the plaintiff discovered that the Defendant was a married man and is not able to marry the plaintiff as promised.

(10) On the 7th December 1958 the plaintiff gave 40

birth to a baby boy at the Maternity Hospital, Penang.

Exhibits

"D4"

(11) The plaintiff therefore claims for :-

- (a) General Damages
- (b) Costs.

Statement of Claim in Civil Suit No.27 of 1959 - Tan Phaik Kooi v. Dowse,

Dated at Penang this 16th day of March, 1959.

Sd. Pillai, Lim, Lee & Hwang  
Plaintiff's Solicitors.

16th March 1959 - continued.

"D7"

NOTICE OF ACTION  
TAN PHAIK KOOI v. DOWSE

"D7"

PILLAI, LIM, LEE & HWANG  
Advocates & Solicitors

Notice of Action, Tan Phaik Kooi v. Dowse,

20A, Beach Street,  
PENANG.

31st December 1958.

LCP/JP

A.R. Registered

Sydney Hastings Dowse, Esq.,  
23 Scott Road,  
Penang.

Notice of Action No. 191 of 1958

We act on behalf of Miss Tan Phaik Kooi alias Tan Phaik Quee of 25, Codrington Avenue, Penang.

On or about the 26th of February 1958 our client who was then a minor and an unmarried virgin girl was invited by your female servant to visit premises No. 23 Scott Road, Penang. On arrival at the said premises our client was introduced to you and you invited her into the house. You promised to marry our client and acting on your promise you seduced our client and had intercourse with her in your bedroom. As a result of the aforesaid intercourse our client became pregnant and a baby boy was born to her at 9.03 p.m. on the 7 December 1958 at the Maternity Hospital, Penang.

After the seduction of our client and before

Exhibits

"D7"

Notice of  
Action,  
Tan Phaik  
Kooi v.  
Dowse,  
31st December  
1958 -  
continued.

the birth of the child our client discovered that you are already a married man.

We are instructed by our client to give you notice which we hereby do and demand from you the sum of \$30,000/- being damages for breach of promise of marriage committed by you.

We are further instructed by our client to give you notice which we hereby do and demand from you the sum of \$2,500/- being confinement and maternity expenses by our client for the birth of the baby boy and to further demand from you monthly maintenance for the child born to our client as aforesaid of which you are the father. 10

Failing compliance with our demands within 7 days from the receipt of this notice by you our client will institute legal proceedings against you in the High Court at Penang for damages for breach of promise of marriage and seduction and will further file a complaint in the Magistrates Court, Penang for the maintenance of the child under the Maintenance of Women and Children Ordinance. 20

Dated at Penang this 31st day of December 1958.

Sd. Pillai Lim Lee & Hwang  
Advocates & Solicitors  
Penang.

"D8"

Notice of  
Action.  
Lim Im Chua  
v. Dowse,  
31st December  
1959.

"D8"  
NOTICE OF ACTION  
LIM IM CHUA v. DOWSE

PILLAI, LIM, LEE & HWANG  
Advocates & Solicitors

20A Beach Street,  
Penang.

A.R. Registered

LCP/JP

Mr. Sydney Hastings Dowse,  
23, Scott Road,  
Penang.

Notice of Action No. 190 of 1958

We act on behalf of Md. Lim Im Chuan of 25,

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Codrington Avenue, Penang. Our client is the de-facto, guardian of one Miss Tan Phaik Kooi alias Tan Phaik Quee also of 25 Codrington Avenue, Penang.

Exhibits

"D8"

Notice of  
Action,  
Lim Im Chua  
v. Dowse,  
31st December  
1959 -  
continued.

10

On or about the 26th of February 1958 the said Tan Phaik Kooi who was then a minor and an unmarried virgin girl was invited by your female servant to visit premises No.23 Scott Road, Penang. On arrival at the said premises she was introduced to you by the female servant and you invited her into the house. You then seduced her and had intercourse with her in your bedroom. As a result of the aforesaid intercourse the said Tan Phaik Kooi became pregnant and a baby boy was born to her at 9.03 p.m. on the 7th December 1958 at the Maternity Hospital, Penang.

As a result, the said Tan Phaik Kooi, since your seduction, became ill both physically and mentally. She was unable to attend to the house work which she used to perform for our client.

20

By your seduction our client has suffered much damage and we are now instructed by our client to give you notice which we hereby do and demand from you damages for seduction of the said Tan Phaik Kooi.

Failing compliance with our demand within 7 days from the receipt of this notice by you our client will commence legal proceedings against you as she may be advised.

Dated at Penang this 31st day of December, 1958.

Sd. Pillai Lim Lee & Hwang  
Advocates & Solicitors.

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Other  
Documents

OTHER DOCUMENTS

Letter, Mrs.  
Dowse to  
Attorney-  
General,  
24th January  
1959.

LETTER - MRS. DOWSE TO ATTORNEY GENERAL

No.(1A) in LAP.366 Pt.I.

54, Blandford Street,  
Baker Street,  
London, W.1.

24th January, 1959.

The Attorney-General,  
Kuala Lumpur,  
Federation of Malaya.

10

Sir,

Dowse v. Dowse  
Divorce Petition 1956 No.3

I am writing to you with regard to this Divorce  
Petition which was brought by my husband Sydney  
Hastings Dowse, and which was heard in July and  
November last, in Penang, before Mr. Justice Rigby.

My husband's petition for desertion was suc-  
cessful, and my Cross-Petition was dismissed. I  
had alleged cruelty and adultery against my husband,  
but I was gravely handicapped through being unable  
to produce witnesses in Malaya who could have  
helped to come forward and speak in my support.

20

Further, the Solicitors who acted for me in  
Malaya, Messrs. Hogan, Adams & Allan, of Penang,  
were unable to get any Enquiry Agent to undertake  
investigations I desired as to my husband's  
associations with other women although such asso-  
ciations were a matter of common knowledge in Penang.

While I was in Penang in July for a hearing of  
the case, it came to my knowledge that a Miss Tan  
Phaik Kooi, of 25, Codrington Avenue, Penang, had  
made a complaint to the Director of Public Prose-  
cutions that Mr. S.H. Dowse had committed an offence  
against her, as a result of which she was pregnant  
by him.

30

This information came to me too late for me to  
obtain any evidence in support of my Petition. I  
now understand that Miss Tan Phaik Kooi has given

birth to her child, and that her present Solicitors, Messrs. Pillai, Lim, Lee & Hwang, of Penang, are pursuing a claim on her behalf against Mr. Dowse. I do not know what action has been taken by the Director of Public Prosecutions.

Other  
Documents

Letter, Mrs.  
Dowse to  
Attorney-  
General,  
24th January  
1959 -  
continued.

10 I further understand that in this matter Mr. Dowse had not consulted Mr. Green of Messrs. Braddell Bros., of Singapore, the Solicitor who acts for him in connection with his divorce, but Mr. Chung Kok Soon, of Messrs. Murphy, Dunbar and Chung (Singapore). These Solicitors have, I am informed, asked Miss Tan Phaik Kooi's Solicitors for two months' grace, doubtless in the hope that the Decree of Divorce will be granted in the meantime.

20 My purpose in writing to you, therefore, is to draw your attention to these matters, so that they may be investigated before the Decree Absolute of Divorce is awarded to my husband. This Decree will be made, I understand, on Friday, 6th February, except on some intervention by your Department.

Yours faithfully,  
Sgd. MARY ANN DOWSE (Mrs.)

LETTER - ATTORNEY-GENERAL TO LEGAL ADVISER, PENANG

No.(1) in LAP.366 Pt.I.

Tel: No.83822. ATTORNEY-GENERAL'S CHAMBERS,  
A.G., F.M.NO. FEDERATION OF MALAYA,  
T/O/806/52/125. KUALA LUMPUR.  
28th January, 1959.

Letter,  
Attorney-  
General to  
Legal Adviser,  
Penang,  
28th January  
1959.

30 The Hon'ble Mr. H.S. Ong,  
Legal Adviser, Penang,  
Legal Adviser's Chambers,  
High Court Building,  
Penang.

re Dowse v. Dowse - Divorce Petition

The Attorney-General has asked me to send you a copy of a letter he has today received from Mrs. M.A. Dowse, and to request you to be so good as to take what action may be necessary in connection therewith.

40 Sd. Illegible  
Personal Assistant to  
the Attorney-General.

P.S. The Attorney-General would like to know in due course what action you have taken in this matter.