

~~GM/452~~

8, 1962

IN THE PRIVY COUNCIL

No. 59 of 1960

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

B E T W E E N:

CHAI SAU YIN (Defendant) Appellant

- and -

LIEW KWEE SAM (Plaintiff) Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON INSTITUTE OF ADVANCED LEGAL STUDIES 29 MAR 1963 25 RUSSELL SQUARE LONDON, W.C.1.

68172

GRAHAM PAGE & CO.,
41, Whitehall,
S.W.1.

Solicitors for Appellant.

SYDNEY REDFERN & CO.,
1, Gray's Inn Square,
Gray's Inn,
W.C.1.

Solicitors for Respondent.

ON APPEALFROM THE SUPREME COURT OF THE FEDERATION OF MALAYAB E T W E E N:CHAI SAU YIN (Defendant) Appellant

- and -

LIEW KWEE SAM (Plaintiff) RespondentRECORD OF PROCEEDINGSI N D E X

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NOTE:- Documents marked x are those which in the opinion of the Respondent it is unnecessary or irrelevant to include herein and to the inclusion of which he objects but which said documents have nevertheless been included at the insistence of the Appellant.

DOCUMENT TRANSMITTED TO H.M. PRIVY COUNCIL BUT NOT PRINTED.

Order granting Conditional Leave
to Appeal

23rd September 1959

1.

IN THE PRIVY COUNCIL

No.59 of 1960

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

B E T W E E N :

CHAI SAU YIN (Defendant) Appellant

- and -

LIEW KWEE SAM (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1.

In the
High Court

10

STATEMENT OF PLAINT.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

Civil Suit No. 55 of 1951

No. 1.
Statement of
Plaint.
30th July, 1951.

BETWEEN:- Liew Kwee Sam Plaintiff

- and -

1. Yap Seow Leong of No.37,
Jalan Tuan Sheik, Seremban
2. Chai Sau Yin of No.114,
Birch Road, Seremban.
3. Eng Yong Ngi of No.62B,
Paul Street, Seremban.
4. Ang Yee Khoon (f) of No.214B
Temiang Road, Seremban
trading under the style of
Tong Seng Rubber Company Defendants

20

STATEMENT OF PLAINT

This above-named Plaintiff states as follows :-

30 1. The Plaintiff is a land owner re-
siding at No.1A, Setul Road, Seremban[⊠] and the
Defendants are the partners of Tong Seng Rubber
Company carrying on business at No.27, Jalan Tuan
Sheikh, Seremban.

⊠ Seremban is in the State of Negri Sembilan.

In the
High Court.

No. 1.

Statement of
Plaint.

30th July, 1951
- continued.

2. From January, 1951 the Plaintiff sold and delivered smoked sheet rubber to the Defendants and on 1st April, 1951 the balance still due for rubber sold and delivered is ~~£~~1,779.60.

3. Between the 11th May, 1951 and the 12th June, 1951 the Plaintiff sold and delivered further smoked sheet rubber and scrap to the Defendants to the total value of ~~£~~10,416.82 towards which the Plaintiff has received various payments amounting to ~~£~~7,099/-. The balance still due amounts to ~~£~~3,317.82 which added to the sum of ~~£~~1,779.60 makes a total of ~~£~~5,097.42. A copy of the statement of accounts is annexed herewith and marked "L.K.S.1". 10

4. The Defendants have failed to pay the said sum of ~~£~~5,097.42 though requested to do so.

The Plaintiff prays judgment for :-

- (i) The sum of ~~£~~5,097.42.
- (ii) Interest at the rate of 8% per annum from date of judgment to date of payment. 20
- (iii) Costs.

(Sgd.) Yong Sze Lin (Sgd.) Liew Kwee Sam
Solicitor for Plaintiff Plaintiff

I, Liew Kwee Sam of Seremban, the above-named Plaintiff, do hereby declare that the above statement is true to my knowledge except as to those matters stated as information and belief and as to those matters I believe the same to be true.

DATED this 30th day of July, 1951.

(Sgd.) Liew Kwee Sam 30
Plaintiff.

FILED on behalf of the above-named Plaintiff by
Mr. Yong Sze Lin, Advocate and Solicitor of No.13,
Cameron Street, Seremban.

No. 1. (Annexure)
STATEMENT OF PLAINT (Continued) - STATEMENT OF
ACCOUNT

In the
High Court.

No. 1.

(Annexure)

Statement of
Plaint

- continued

Statement of
Account.

30th July, 1951.

Plaintiff

	1st April 1951	To balance of amount due		
		\$1,779.60.		
10	11.5.51.	To Rubber 21 PK. 59 Kts.		
		\$53/- per pound	\$	3,303.27
	"	To Scrap 5 PK. 15 Kts.		
		\$62/- per pound		381.30
	29.5.51.	To Rubber 13 PK. 14 Kts.		
		\$154/- per pound		2,023.56
	"	To Scrap 1 PK. 43 Kts.		
		\$ 55/- per pound		78.65
	2. 6.51.	To Rubber 6 PK. 44 Kts.		
		\$155/- per pound		998.20
20	"	To Scrap 3 PK. 04 Kts.		
		\$ 55/- per pound		167.20
	13.6.51.	To Rubber 11 PK. 16 Kts.		
		\$158/- per pound		1,763.28
	"	To Rubber 9 PK. 87 Kts.		
		\$158/- per pound		1,559.46
	"	To Scrap 2 PK. 58 Kts.		
		\$ 55/- per pound		141.90
				<u>\$ 10,416.82</u>
	By Payments			
30	8th May 1951	Cash	\$	1,000.00
	10th May 1951	Cash		500.00
	11th May 1951	Transport Expenses		38.00
	11th May 1951	1 Jar Cetic Acid		44.00
	21st May 1951	Cheque		2,000.00
	29th May 1951	Transport Charges		17.00
	30th May 1951	Cheque		1,000.00
40	6th June 1951	Cheque		2,500.00
				<u>7,099.00</u>
		Balance due		3,317.82
		To Balance as on 1st April 1951		<u>1,779.60</u>
				<u>\$ 5,097.42</u>

In the
High Court

No. 2.

STATEMENT OF DEFENCE OF SECOND DEFENDANT

No. 2.

Statement of
Defence of
Second
Defendant.

31st August,
1951.

The above-named 2nd Defendant states as follows:-

1. The 2nd Defendant denies that he was a partner of the Tong Seng Rubber Company as alleged at the date of the transactions named in the Plaint.

2. The 2nd Defendant admits that the Plaintiff is a land-owner residing at No.1A Setul Road, Seremban. 10

3. By an agreement of partnership dated the 14th day of January, 1946, and made between the 2nd Defendant and other persons named therein and duly registered in pursuance of the registration of Businesses Ordinance, 1947, the 2nd Defendant purported to enter into partnership to carry on the business of rubber dealers on the licence of Yap Seow Leong.

4. The said business was prohibited by law and the partnership was dissolved by law. 20

5. By virtue of the registration of the partnership agreement the Plaintiff had notice of the said dissolution.

6. The 2nd Defendant had no knowledge of the transactions referred to in the Statement of Plaint and has not adopted any of them.

7. The 2nd Defendant denies that any rubber was sold and delivered by the Plaintiff to a partnership and will allege that the said rubber was sold and delivered to Yap Seow Leong personally. 30

8. The said Yap Seow Leong had a licence to carry on the business of a rubber dealer trading as Chop Tong Seng Rubber Co. The said licence was not in force for any partnership as alleged or at all.

9. If the Plaintiff purported to sell and deliver rubber to a partnership as alleged the said sale and delivery was illegal and the Plaintiff can maintain no action thereon for the price or otherwise, and the 2nd Defendant will rely on the Rubber Supervision Enactment 1937. 40

10. The 2nd Defendant denies that he has received any of the rubber stated in the Statement of Plaint or that he has received any benefit therefrom.

11. The 2nd Defendant denies that he is indebted to the Plaintiff in the sum of \$5,097.42 or any other sum as alleged or at all.

In the
High Court

Save as is expressly admitted or denied the 2nd Defendant denies each and every allegation contained in the Statement of Plaintiff as if the same had been separately set out specifically denied.

No. 2.
Statement of
Defence of
Second
Defendant.

(Sgd.) Chai Sau Yin
2nd Defendant.

31st August,
1951
- continued.

10 (Sgd.) Donaldson & Burkinshaw
Solicitors for 2nd Defendant.

I, Chai Sau Yin of Seremban, the above-named 2nd Defendant, do hereby declare that the above statement is true to my knowledge except as to those matters stated on information and belief and as to those matters I believe the same to be true.

Dated this 31st day of August, 1951.

(Sgd.) Chai Sau Yin
2nd Defendant.

20 FILED on behalf of the above-named 2nd Defendant by Messrs. Donaldson & Burkinshaw, Advocates & Solicitors of Johore Bahru, c/o Edgar Joseph, Advocate & Solicitor, 43, Jalan Tanku Hassan, Seremban.

No. 3.

NOTES OF PLAINTIFF'S COUNSEL'S OPENING

Cor: Smith, J. Thursday, 13th November, 1958

Balwant Singh: For Plaintiff.

Smith: For 2nd Defendant.

Balwant Singh: opens.

No. 3.

Notes of
Plaintiff's
Counsel's
Opening.

13th November,
1958.

30 Issue: Was Defendant 2 a partner at date of transaction?

2. Was alleged partnership illegal?

3. Was sale of rubber to partnership illegal?

4. Whether partnership entered into by licence with 3 others amounted to an assignment of licence.

In the
High Court

No. 4.

NOTES OF EVIDENCE OF LIEW KWEE SAM

Plaintiff's
Evidence.

P.W.1.: Liew Kwee Sam: affirmed states in Hakka.
16, Limbok Road, Seremban, Landowner.

No. 4.

I dealt with Tong Seng Rubber Company for 2 -
3 years in 1951.

Notes of
Evidence of
Liew Kwee Sam.
13th November,
1958.

On 12th June, 1951 was ~~15~~5,097.42. This Ex.P.1
(for identification) is a statement of account
owing given to me by Defendant 1 who signed it.

A cheque was issued in part payment Ex.P.2 10
(for identification). It was returned.

Examination.

This Ex.P.3 (for identification) is a receipt
relating to last sale of rubber.

The cheque dated 15th June, 1951 was handed
on or about 5th or 6th June, 1951. Rubber in re-
spect of last instalment. I cannot remember exact
date I handed rubber to the shop. I did not hand
it over on any particular day. When I had rubber
I handed it over and got a receipt.

I know Defendant. He is Chai Sau Yin one of 20
the partners at time when I sold rubber.

None of balance has been paid to me.

CROSS-EXAMINED

Cross-
Examination.

Cross-Examination - Smith

(Ex.P.1 put to witness) Yap Seow Leong was
managing partner. What I sold to shop he gave a
receipt.

I closed all accounts on 12th June. He issued
this on 13th June. Yes, it was issued at my re- 30
quest. I went to ask for payment. He said - you
take this statement of account and I will pay you
later.

Yes, I had no record of what I had sold and I
wanted a record.

Ex.P.3 was not only receipt I had like this.
I had many but they were missing.

When I got account Ex.P.1 I compared it with
the receipts in my possession.

(Ex.D.4 for identification - rubber dealer's
licence). I cannot read it. It was a registered 40
partnership business.

(Ex.D.5 partnership agreement put to witness)
I did not inspect it at office of Registrar of
Businesses.

I know I could only deal with a licensed dealer,
of course.

Licensed dealer must display his licence.

I don't know that on licence is written name
of person licensed to deal.

10 Defendant was always in shop and said "You
can send rubber to us". There must be a licence.

I know Defendant 1 for years. He had no sign
Tong Seng Rubber Company outside. In 1946 I knew
him. In 1945 I also knew him. If he was in 1945
a rubber dealer at same place as 1946 I cannot say.

He is a well-known rubber dealer now. He was
an employee long ago. I cannot remember if he was
a dealer before war.

20 I knew Yap Seow Leong was a licensed rubber
dealer. I knew he had no money to run business.
He took in partners. I say Defendant 2 was one.
He was unable to run without partners.

I do not know if other partners' names are in
licence.

Yap Seow Leong got others to put up money;
Defendant was one of his supporters.

I do not know how many names in licence. I
handed over matter to my Solicitor.

I am not a lawyer. I do not know if all part-
ners have to be named in rubber dealer's licence.

30 Yap Seow Leong was licensed and he took in
partners to run the business.

I know that I can only sell to a licensed
dealer. Defendant 1 is licensed and can represent
all the partners.

I know it was a partnership business.

Defendant 1 or a clerk gave receipts. He
signed important documents.

After 13th June I had no dealings. I do not
know if it still exists.

40 Only when I knew Defendant 2 was a partner did
I send rubber on credit.

I knew Yap Seow Leong was licensee and Defen-
dant 2 a partner.

In the
High Court

Plaintiff's
Evidence.

No. 4.

Notes of
Evidence of
Liew Kwee Sam.
13th November,
1958.

Cross-
Examination
- continued.

In the
High Court
Plaintiff's
Evidence.

This cheque Ex.P.2 was post-dated. I asked Mr. Yong Sze Lin to find out who were partners. He told me to issue summons.

On 15th June Defendant 2 was still a partner my lawyer said.

No. 4.

RE-EXAMINED

Notes of
Evidence of
Liew Kwee Sam.
13th November,
1958.

Re-Examination:

I don't know inner affairs of business. I sold rubber to company not to Defendant 1 alone. I don't know if all partners were licensed.

10

Cross-
Examination
- continued.

I know Defendant for long. He was always in shop. He said he was a partner. He did not tell me he was retiring nor did he give me notice in writing.

Re-Examination.

By Court: On 13th June I wanted money. I stopped because he did not pay me.

I had not heard his partners would no longer give him financial backing.

No. 5.

No. 5.

Notes of
Evidence of
Yap Seow Leong.
13th November,
1958.

NOTES OF EVIDENCE OF YAP SEOW LEONG.

20

Examination.

P.W.2.: Yap Seow Leong: affirmed states in Hakka.
27, Jalan Tuan Sheikh. Rubber dealer.

I started my business in 1937. After war I started again in 1945. Licence is in my name under style of Tong Seng Rubber Company.

I know Defendant 2 since 1928. He joined me in business in 1946. This is a certified copy of registration I submitted Ex.P.6 (admitted).

At first there were 9 partners.

In June 1954 there were 4 partners. Defendant 2 joined in 1946 and retired on 11th or 12th June, 1951. In 1945 he gave financial backing. I assigned my licence to no one. I knew it could not be sold. I was managing director.

30

On 13th June, 1951 I gave this Ex.P.1 to Plaintiff. I signed as managing partner. Statement is correct.

I issued this cheque P.2 on or about 3 days

before 15th. I think Defendant 2 was still a partner when I handed over the cheque.

This receipt P.3 is in name of Company. It is in form prescribed under enactment.

(Ex.D.5 put to witness). This agreement, paragraph 2 of recitals refers to rubber or any other business.

All brought in money.

10 1946-49 we made over \$10,000 profit. Defendant 2 received no profits. All were reinvested in business. All profits were put to reserve.

CROSS-EXAMINED

Cross-Examination:

I have been a dealer since 1937. I had a licence before Jap. occupation as Tong Seng Rubber Company. I started up under same style in 1945.

Annually up to this year this licence has been renewed to me. I produce them (Ex.P.7 - 6 1945, 47, 48, 49, 50 & 52).

20 I had to apply on statutory form (Ex.D.8 put to witness).

I and 2 sureties entered into recognizance. (Ex.D.9).

In 1946 there were 9 partners. I alone was to hold dealer's licence. It is written into agreement. That was important: I was the recognised dealer. I was to control: I was sole managing proprietor.

30 I am now sole proprietor. Board says Tong Seng Rubber Company. Same board throughout since 1945 and since 1947. Licence was exhibited in shop. They know I was rubber dealer. I was well known.

I know Plaintiff. He owns rubber land. He sold to me. He sold to me before war when I had no partners. He did not come in 1945. When he opened up he came back to me. No trouble over paying him.

40 Ex.P.1 is what I owed Plaintiff. It was drawn up on 13th June, 1951. I cannot say time. Defendant 2 had withdrawn on 11th or 12th. When I drew Ex.P.1 Defendant 2 had withdrawn. Ex.P.3 was prepared and issued on 13th July and related to rubber delivered on 13th July, 1951.

In the
High Court

Plaintiff's
Evidence.

No. 5.

Notes of
Evidence of
Yap Seow Leong.
13th November,
1958.

Examination
- continued.

Cross-
Examination.

In the
High Court

Plaintiff's
Evidence.

No. 5.

Notes of
Evidence of
Yap Seow Leong.
13th November,
1958.

Cross-
Examination
- continued.

Re-Examination.

We gave a provisional receipt on taking rubber and this formal receipt was drawn up later.

Pink receipts were issued in respect of all dealings on Ex.P.1 before it was drawn up.

Ex.P.3 appears a last transaction in Ex.P.1. That may be 13th June not 12th June.

I made up P.1 from pink slips except P.3.

Duplicates are in my shop of all pink slips.

I issued by or within the month a pink slip.

I cannot say when I issued pink slip, in respect of June 2nd transaction.

Plaintiff never asked me and I never told I had partners.

10

RE-EXAMINED

Re-Examination:

Ex.P.3 and P.1 - chop clearly shows managing partner.

I think 13th July, 1951 is date I wrote Ex.P.3.

Except rubber on Ex.P.3 all rubber was delivered before 12th June, 1951.

20

By Court: 2 partners worked in shop, not every day. Defendant 2 also came from time to time to ask about price of rubber.

Plaintiff's Case.

Exhibits admitted by consent.

Smith: Does not open.

Defendant's
Evidence.

No. 6.

No. 6.

Notes of
Evidence of
Chai Sau Yin.
13th November,
1958.

Examination.

NOTES OF EVIDENCE OF CHAI SAU YIN.

D.W.1.: Chai Sau Yin: affirmed states in English.

114, Birch Road, Seremban, Landowner.

30

In June 1946 with others I purported to enter into a partnership. Plaintiff was a dealer. He wanted money. This D.5 is agreement.

I had no personal knowledge of these transactions. No partner other than D.W.1. applied for a

licence. I got no benefit from purchase and sale of rubber.

I cannot remember, I may have said to Plaintiff I was a partner.

CROSS-EXAMINED

Cross-Examination:

10 I had no occasion to check accounts. If I am not mistaken there was never a quorum. I went to all partners but they would not gather round. I did not forget my \$15,000. I was not aware \$10,000 profit. It was agreed any profit should be invested in business. I do not know if there was any. Business was so brisk, no chance to inquire. Not necessarily profit. I went to ask about rubber price. I paid no attention to business.

I am not trying to avoid paying. I did ask him for accounts.

On 12th June when I withdrew I did not tell Plaintiff. I could not meet him.

20 "Other business" was put in as lawyer's routine.

Licence was never put in my or other partners' names.

Re-Examination: Nil.

By Court: I was surprised to hear that most partners had left without telling me. So I decided to leave. I was also advised that the arrangement was illegal.

No. 7.

NOTES OF EVIDENCE OF YAP SEOW LEONG (RECALLED)

30 P.W.2.: recalled by Smith.

I produce memoranda under Supervision Enactment Ex.D.10 (7 books).

A7080 29th May. I cannot say when it was dated.

A7368 13th June.

A7155 2nd June.

I cannot say for certain deliveries were made that day. I issued temporary receipt and a formal one later. That was my practice.

Cross-Examination: Nil.

In the High Court

Defendant's Evidence.

No. 6.

Notes of Evidence of Chai Sau Yin. 13th November, 1958.

Examination - continued.

Cross-Examination.

Plaintiff's Evidence.

No. 7.

Notes of Evidence of Yap Seow Leong (Recalled)

13th November, 1958.

Examination.

In the
High Court

No. 8.

NOTES OF DEFENDANT'S COUNSEL'S ADDRESS

No. 8.

Notes of
Defendant's
Counsel's
Address.

13th November,
1958.

Defendant's Case.

Smith: Arrangement was to do business on other person's licence. Rubber Supervision Enactment, 1937. Not a revenue Enactment - Long title. S.5(i) Licences. S.16 duration of licence. Not solely revenue. S.17(i) partners. (ii) defences. Law does not say only one partner shall be licensed. Application form provides for partners. S.6(iv) "every application". Form is in conformity with S.17. Licence form provides for partners. S.17 no provision for admission of a new partner. Evasion of objects by not disclosing partners. Statutory vicarious liability. Not lawful for one person to take a licence and then go into partnership with others. S.20 penalty for incorrect information. If Defendants purchase as a partnership they were not licensed as dealers. S.35 makes vendor an abettor. S.26 details of Vendor. Brown v. Duncan 109 E.R. 385. A partner not disclosed - only legal because a revenue law. Lindley p.144. particeps criminis. Illegal act to sell to an unlicensed partnership. Halsbury 3rd Edition, Vol.8 page 140. Hill v. Clifford 1907 2 Ch. p.255. South Wales Atlantic Steamship Co., 1875-76 2 Ch.763. At p.779 Mellish, J. Solicitor knew it was illegal. At p.767 Malins, V.C. - All must know the law. Illegal to knowledge of Plaintiff. p.771. Machinery here exists to know who are persons dealing with. Partners' names will be on licence. You deal with an illegal association at your peril. Purchase and sale of rubber is hit at. Possibility (a) he knew (b) he had means of knowing. His safeguard - name in licence. Displayed as required by Rule. Failure to deliver receipt at time of transaction makes it illegal transaction. Halsbury p.141. B. & B. v. Losane.

No. 9.

In the
High Court

NOTES OF PLAINTIFF'S COUNSEL'S ADDRESS

No. 9.

Notes of
Plaintiff's
Counsel's
Address.

13th November,
1958.

10 Balwant Singh: S.17(i). If two or more want to
 carry on sufficient if one is licensed. S.16(ii)
 - was taking partners an assignment - not so. It
 is a revenue statute. No penalty for assignment
 of licence. Lindley p.144 not particeps criminis.
 He sold to a licensed company. Only licensed
 partners' names have to appear. Lindley 124 - 5
 true construction of statute. 1887 12 Bombay 422.
 20 in pari delicto. 1913 37 Bombay 320 - liquor
 licence - not prohibited taking partners. 1944
 A.I.R. S. Venkataratnam p.394 - not against
 public policy to take in a partner. Only licensee
 could purchase rubber. Rest were sleeping partners.
 Taking partners not assignment. I.L.R.1880 p.411
 Gouri Chanker. Pollock p.162 8th Edn. p.153 6th
 Edn. Plaintiff not negligent. Mason v. Clark
 1955 1 A.E.R. (HL) 194. Initial Agreement was for
 sale of rubber. Too late now to say it is illegal.
 Profit not taken out. S.16 should not be con-
 30 strued to prevent taking in partners. 1946 M.L.J.
 p.131 Yep Peck Chie - literal meaning. No sub-
 lease no assignment. Plaintiff entitled to a
 written notice of termination of partnership.

C.A.V. (Sgd.) B.G. SMITH,
Judge.

Thursday, 27th November, 1958.

Balwant Singh for Plaintiff.

V.C. George for Defendant No.2.

30 I read judgment.

(Sgd.) B.G. SMITH,
Judge.

No. 10.

JUDGMENT.

No.10.

Judgment.

27th November,
1958.

This is a claim by the Plaintiff against the
alleged partners of a rubber dealer's business for
the sum of ~~5~~5,097.42 due on an account for rubber
sold and delivered to the alleged firm.

40 The first and third Defendants have submitted
to judgment. The fourth Defendant is out of the

In the
High Court

No.10.
Judgment.
27th November,
1958
- continued.

jurisdiction and unserved. The second Defendant has contested his liability.

The basic facts of the case are not in dispute. The first Defendant before the war was a rubber dealer in Seremban carrying on business under the style of Tong Seng Rubber Company. He started up his business again at the end of 1945 still under the style of Tong Seng Rubber Company and took out a rubber dealer's licence for himself alone trading as Tong Seng Rubber Company. on 14th January, 1946, he took in eight other partners. These partners were in accordance with the terms of the partnership agreement, sleeping partners. The sole management of the business was to be in the hands of the first Defendant and the rubber dealer's licence was to be in his name and his alone. Accordingly when it became necessary to apply for renewal of the rubber dealer's licence the first Defendant applied in his own name indicating that he was trading as the Tong Seng Rubber Company, but did not disclose the fact that he had eight sleeping partners. This state of affairs continued down to 1951. Throughout all this period the Plaintiff had been selling his rubber to the Tong Seng Rubber Company. The Plaintiff has said that he was aware that the first Defendant had a rubber dealer's licence but that he did not know and took no steps to ascertain whether any of his partners' names were included in the licence. He was aware that there were other partners since he says and the second Defendant does not deny, that the Plaintiff had met the second Defendant on the premises of the first Defendant, and that the Second Defendant had said that he was a partner. The Plaintiff said he knew that the first Defendant was licensed and considered that the first Defendant represented all the partners. He also said, and it was not denied, that the second Defendant did not tell him that he was retiring from the partnership.

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From time to time various members of the partnership withdrew therefrom and on 11th June, 1951 the second Defendant also withdrew. He did not give notice of his withdrawal to the Plaintiff. The last dealing of the Plaintiff with the Tong Seng Rubber Company was on 13th June, 1951 when he delivered some rubber and scrap.

40

On these facts there can be no doubt that the second Defendant would be liable, provided that the contract between the Plaintiff and the partners was

legal. In so far as the last delivery of rubber is concerned, the second Defendant would still be liable because he had not given express notice of his retirement from the partnership to the Plaintiff.

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No.10.

Judgment.

27th November,
1958

- continued.

10 The Plaintiff's case (sic)[ⓧ] is either that the Plaintiff contracted solely with the first Defendant, or alternatively, if he considered himself to be contracting with the partnership, then that contract was illegal because the sleeping partners had not been duly licensed under the Rubber Supervision Enactment, 1937.

20 It is first necessary to decide whether all the partners in a rubber dealer's business are required by law to be licensed as rubber dealers. Section 5(i) of the F.M.S. Rubber Supervision Enactment, 1937, provides that " no person shall purchase rubber unless he shall have been duly licensed in that behalf under this Enactment". Section 17(i) reads as follows :-

" Two or more persons carrying on business in partnership shall not be obliged to obtain more than one licence appropriate to the circumstances in respect of which the licence is issued, and a licence to two or more persons shall not be determined by the death or retirement from business of any one or more of the partners"

30 The effect of Section 5 is that all persons purchasing rubber must be licensed, and Section 17(i) provides that where two or more persons are in partnership it is not necessary for each of them to have a separate licence but that the names of each partner shall be included in the licence. I cannot see that because certain partners in a partnership have handed over all powers of management to a single partner that they are any the less carrying on the business than when each and every one of them takes an active part. They are
40 not carrying on the business personally but they are carrying on the business through their agent, the managing partner. It appears to me to be the very clear intention that each and everyone of the partners shall be licensed. Any interpretation whereby the name of any partner can be suppressed would appear to me to be defeating one of the objects of the Enactment, viz., that reputable persons only shall trade as rubber dealers. If it

ⓧ The second Defendant's case.

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High Court

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Judgment.

27th November,
1958

- continued.

were not necessary to disclose all the partners to the licensing authority it would be possible for a person who had been refused a licence on the ground that he had repeatedly broken the provisions of the Enactment to continue to trade as a rubber dealer by becoming a sleeping partner. This I consider would make a mockery of the law and would not be an interpretation of this Enactment which would "suppress the mischief and advance and remedy" - See Heydon's case quoted in Craies on Statute Law, page 93, 4th Edition.

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I am satisfied, therefore, that all the persons should have been named in the licence and that the partnership was therefore not properly licensed under the Enactment.

It was argued that because the partners are not licensed the partnership has been carried on in breach of the provisions of the Enactment since what has been done is expressly prohibited by the Enactment and that the agreement between the partners is therefore invalid - see Chitty on Contracts, 20th Edition, page 518. It is, however, clearly settled law that where the breach by the partners is of a revenue law persons trading with them are not to be considered as particeps criminis in the partners' unlawful trading. This was the judgment of Lord Tenterden, C.J. in Brown v. Duncan, 109 E.R. page 385.[ⓧ] That was a case in which a firm of five distillers was seeking to recover from a surety the price of spirits sold and delivered. The Defendant raised at his defence the fact that one of the partners was not included in the licence. Lord Tenterden distinguished between breach of revenue enactments where there has been no fraud on the revenue and breaches of the provisions of Acts of Parliament which have for their object the protection of the public such as the Acts against stock-jobbing and the Acts against usury.

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It becomes necessary to consider, therefore, what type of enactments the Rubber Supervision Enactment is. The long title reads as follows :-

40

"An Enactment to consolidate and amend the law relating to the supervision of dealings in rubber and of statistics concerning rubber cultivation and to provide for matters incidental thereto".

Section 32 provides for rules to be made on the following topics:-

- (a) for further securing the effectual control of the sale, purchase, storage, disposal and the packing for export of rubber and the prevention of fraud in connection therewith;
- (b) for regulating or controlling the methods for treatment of rubber;
- (c) for prescribing fees to be charged under this Enactment.

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High Court

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- continued.

10 From the foregoing it appears to me that the principle object of the Enactment is economic, viz. the control of the rubber-producing industry of this country in the best interests of the economy of the country as a whole. Its object is not to protect members of the public against unscrupulous dealers or rubber dealers against dishonest producers. The object of the Enactment is in its broadest sense for the public good. I consider that breach of the Enactment should be regarded in the same way as breach of a revenue Enactment and for this reason I consider that the Plaintiff is entitled to recover against all members of the partnership.

20 If I am wrong in this view and the law, properly construed, is one generally established for the protection of the public, then I consider that the words of Lord Thurlow referred to in Osborne v. Williams, 34 E.R. page 360 at page 361 are in point. Lord Thurlow was dealing with the case² of money paid for an illegal purpose and he appears to have thought "that in all cases, where money was paid for an illegal purpose, it might be recovered back; observing, that 'if Courts of Justice mean to prevent the perpetration of crimes, it must be, not by allowing a man, who has got possession, to remain in possession, but by putting the parties back to the state, in which they were before'." These remarks I consider refer very much to the facts of this particular case. It may well be that the Plaintiff has committed an offence under the Rubber Supervision Enactment by abetting an offence by all the partners who have carried on business without being properly licensed. Even so, it appears to me to be wrong for the Defendants, having got possession of the Plaintiff's rubber, now to set up their own illegal act as a reason for not returning or paying for that rubber. Since the rubber cannot now be returned the only way in

² Neville v. Wilkinson, 28 E.R.1289 at page 1291

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High Court

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1958
- continued.

which the Plaintiff can be put back in the position in which he was before is by the Defendants paying to him the value of the rubber.

I am fortified in this view by some remarks obiter by Mellish, L.J. in In re South Wales Atlantic Steamship Company, 1875-6, 2 Ch. D. page 763. This case concerned an attempt by a firm of Solicitors who had acted for an unregistered company to obtain an order to wind up that company. It was held that the Solicitors could not obtain an order to wind up the company since as the company was illegal no legal debt arose in respect of that part of their demand. Malins, V.C. in the course of his judgment had said²:-

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"All men are bound to know the law. Any man in any way connected with business, and who has business transaction with the world, must know and does know, and must have attributed to him the knowledge of this Act of Parliament, which has become one of the most notorious, from various circumstances, that has ever been put on the statute book".

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Dealing obiter with this in his appeal judgment Mellish, L.J. said at page 781 :-

"I should be very unwilling to hold, unless I find myself absolutely compelled to do so, that a purely innocent person who employs a partnership of this kind can be prevented from maintaining an action against all the members of it who are practically interested in it, because, without his knowing it, they happen to be more than twenty. Suppose a common ordinary partnership were carrying on this business, it seems to me a very extraordinary thing that a creditor should have any obligation put upon him to inquire whether the partners were more than twenty or not. If an action could be maintained, I should have great difficulty in saying that there could not be a winding-up order on the application of a creditor,

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Applying those remarks to the present case I think it is asking a little too much that every person who sells his rubber in a rubber dealer's shop must inspect the dealer's licence and then if he finds that the dealer trades under a name other than his own be obliged to make an enquiry at the Business Names Registry in order to discover

² ibid. page 767.

whether or not he has any partners. I consider that provided that the rubber producer satisfies himself that the person with whom he is dealing is licensed, he may sue any partner whether licensed or not. I do not see that he should be precluded from recovering the value of his rubber. As Sir William Grant M.R. said in Osborne v. Williams^x (see above) "Courts both of law and Equity have held that two parties may concur in an illegal act without being deemed to be in all respects in pari delicto". I cannot see that in the present case the offence by the Plaintiff is as great as the offence by the partners, if any offence there be by the Plaintiff. This is not a case of trading with a completely unlicensed rubber dealer but the case of a person dealing with a licensed dealer in partnership with unlicensed partners. There will therefore be judgment for the Plaintiff against the second Defendant as prayed with costs.

(Sgd.) B.G. SMITH,
Judge,
SUPREME COURT,
FEDERATION OF MALAYA.

Kuala Lumpur,
27th November, 1958.

In the
High Court

No.10.

Judgment.

27th November,
1958

- continued.

No. 11.

ORDER

Before the Honourable Mr. Justice Smith, Judge,
Supreme Court, Federation of Malaya.

No.11.

Order.

27th November,
1958.

30 IN OPEN COURT This 27th day of November, 1958.

This cause coming on for final disposal on the 13th and 27th day of November, 1958 before the Honourable Mr. Justice Smith Federation of Malaya in the presence of Mr. Balwant Singh of Counsel for the Plaintiff and in the presence of Mr. V.C. George for and on behalf of Mr. L.A.J. Smith of Counsel for the second Defendant and UPON HEARING the evidence of the Plaintiff and the second Defendant and their witnesses and the submission of both Counsel IT IS ORDERED that judgment for the sum of \$5,097.42 be entered for the Plaintiff against the second Defendant AND IT IS FURTHER ORDERED that

In the
High Court

No.11.

Order.

27th November,
1958

- continued.

the second Defendant do pay the Plaintiff the costs of this suit to be taxed by a proper officer of this Court.

DATED this 27th day of November, 1958.

(Sgd.) Lee Moh Wah,
Asst. Registrar,
Supreme Court,
Seremban.

In the Court
of Appeal.

No.12.

Notice of
Appeal.

12th December,
1958.

No.12.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

10

IN THE COURT OF APPEAL AT KUALA LUMPUR

Civil Appeal No.59 of 1958

BETWEEN:- Chai Sau Yin, No.114,
Birch Road, Seremban

Appellant

- and -

Liew Kwee Sam, No.16,
Limbok Road, Seremban

Respondent

(In the matter of Civil Suit No.55 of 1951

Between: Liew Kwee San

- and -

1. Yap Seow Leong of No.27, Jalan Tuan Sheikh, Seremban. 20
2. Chai Sau Yin of No. 114, Birch Road, Seremban.
3. Eng Yong Ngi of No. 62B, Paul Street, Seremban.
4. Ang Yee Khoon (f) of No.214B, Temiang Road, Seremban trading under the style of Tong Seng Rubber Company) 30

NOTICE OF APPEAL

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TAKE NOTICE that Chai Sau Yin being dissatisfied with the decision of the Honourable Mr. Justice Smith, Judge, Federation of Malaya given at Seremban on the 27th day of November, 1958 appeal to the Court of Appeal against the whole of the said decision.

DATED this 12th day of December, 1958.

(Sgd.) Chai Sau Yin
Appellant.

No. 13.

MEMORANDUM OF APPEALIn the Court
of Appeal.

No.13.

Memorandum
of Appeal.20th March,
1959.

CHAI SAU YIN, the Appellant above-named, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Smith given at Seremban on the 27th day of November, 1958 on the following grounds:-

1. The learned Judge was wrong in law in holding:

- 10 (a) that the contracts of sale of rubber entered into by the Respondent with the Appellant and his alleged partners and the sales of rubber effected by the Respondent were not illegal;
- (b) that the Rubber Supervision Enactment No. 10 of 1937 is a revenue enactment and not an enactment for the protection of the public and a breach thereon does not make such contracts and sales illegal and void;
- 20 (c) that even if such contracts and the sales of rubber were illegal, the Respondent was not a particeps criminis and could recover from the Appellant the price of such rubber sold;
- (d) that the Respondent having dealt with a licensed rubber dealer, meaning Defendant No.1 in the original action, he the Respondent could recover from all the partners of such licensed dealer, though such other partners were not at any material
- 30 time duly licensed under the Enactment;
- (e) that the Respondent was under no obligation to inquire whether the partners of a rubber dealer's firm are or are not duly licensed under the Enactment so long as one of the partners holds a licence;
- (f) that it is wrong on the part of the Appellant to set up his own illegal act as a reason for not returning or paying for the rubber sold by the Respondent;
- 40 (g) that even if the Respondent committed any offence under the Enactment, he the Respondent was entitled to be put back in the position in which he was before by the Appellant paying the value of rubber sold.

In the Court
of Appeal.

No.13.

Memorandum
of Appeal.

20th March,
1959

- continued.

2. The learned Judge, having held (rightly) that the licence required by the Enactment must be held in the names of all the partners carrying on business as rubber dealers and that the alleged partnership between the Appellant and the other Defendants in the action was illegal, was wrong in holding that all the partners including the Appellant, who was not so licensed, were liable to the Respondent for the price of rubber sold.

3. The learned Trial Judge erred in law in holding that the 2nd Defendant was at any material time a partner of the 1st Defendant and in so doing wrongly disregarded the express provisions of the Contract Enactment which provide specifically that partnerships formed for an illegal purpose are dissolved by law. 10

4. The learned Trial Judge was wrong in law in holding that a sale of rubber to a partnership which was not licensed to purchase rubber, was enforceable and should have held that such a sale was, by virtue of the provisions of the Rubber Supervision Enactment, illegal and unenforceable either directly or indirectly. 20

5. The Appellant submits that the transactions sued upon are illegal and void and the learned Judge was wrong in entering judgment for the Respondent and that such judgment ought to be reversed.

DATED this 20th day of March, 1959.

(Sgd.) B.C. Guha & Co.,

Solicitors for the Appellant. 30

To,
The Registrar,
Supreme Court,
Seremban.

And to,
The Respondent,
and to his Solicitor.
Mr. Balwant Singh,
Seremban.

The address for service of the Appellant is,
40, Jalan Tunku Hassan, Seremban.

No. 14.

NOTES OF ARGUMENT

Cor: Thomson, C.J.,
 Syed Sheh Barakbah, J.
 Neal, J.

21st April, 1959.

For Appellant : Braddell & Ramani

For Respondent: Chelliah & Balwant Singh.

In the Court
 of Appeal

No.14.

Notes of
 Argument.

21st April,
 1959.

Braddell

10 There were 4 Defendants. No.2 is present Appellant. 1 & 3 submitted to judgment. J. gave judgment for Plaintiff. 4 was out of the jurisdiction and not served. Plaintiff sued on contracts - alleged no property in the rubber. We say contracts forbidden by statute and so Plaintiff can recover nothing. Appellant had given no notice of retirement and so if transaction was illegal he cannot be recovered against it. He says:

- 20 (a) Partnership was illegal and therefore dissolved by law.
 (b) The contracts were illegal.

J. did not deal with contracts but treated Plaintiff's claim as one made by an innocent trader suing an innocent partnership. He relied on: Brown v. Duncan 109 E.R. 385. Osborne v. Williams 34 E.R.360. S.W.Atlantic Steamship Coy. L.R.2 Ch. 763.

30 If a contract is forbidden by statute the object of the statute is immaterial. Neville v. Wilkinson 28 E.R. 1289, 1291. J. disregarded the passage at 780 in S.W. Steamship Coy. II Ch.D. Plaintiff here cannot recover without producing the illegal contract. Plaintiff is in pari delicto not only technically but substantially. Plaintiff admitted he sold to Defendants partners and he knew Appellant was a partner. He knew he could only deal with a licensed dealer.

40 Assuming the contents are forbidden by statute then Plaintiff cannot recover in any way. Salmond & Williams on Contracts - 344, 346. In para delicto potior est conditio defendentis. Holman v. Johnson 98 E.R. 1120. When a contract is forbidden by statute it is immaterial what the object of the statute is. Cope v. Rowlands 150

In the Court
of Appeal

No.14.

Notes of
Argument.

21st April,
1959

- continued.

E.R. 707, 710. Simpson v. Bloss 129 E.R.99. Here Plaintiff cannot establish his c/s w/o the illegal contract. Taylor v. Chester L.R. 4 Q.B.C. 309, 313. This shows test for determining when parties are in pari delicto. Scott v. Brown (1892) 2 Q.B. 724, 728, 734. Farmers' Mart, Ltd. v. Milne (1915) A.C. 106, 113-4. St. John Shipping Corpn. v. Joseph Rank Ltd. (1956) 3 W.L.R. 870, 879.

If the Rubber Supervision Enact. prohibited this contract the Plaintiff is out of Court and the object of the contract is immaterial. Rubber Regulation Enactment No.37/36. Rubber Supervision Enactment No.10/37. Contract is forbidden by 10/37. Sec.5 of 10/37 forbids purchases save by licensed dealer and Appellant was not a licensed dealer. Every partner must be licensed. Only licensed dealer is 1st Defendant. Producer can only sell to a licensed dealer. This is an executed contract - not merely executory.

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Case for Appellant

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Chelliah

Under R.S. Enactment it is not necessary to have the names of all the partners on the licence. Under 10/37 S.5 and S.15 & 17 must be read together. When there is a partnership there must be one licence at least. All the names can be on one licence. If one dies that does not invalidate the licence. Cf. U.K. Moneylenders Act, 1927. Moneylenders Ord. 1951. Respondent could have been misled by the licence which bears the firm name.

30

Even if the partners did not have their names on the licence the partnership was not thereby illegal. Illegality must be proved. Lindley on Partnership (11th Ed.) p.119. Merely making an illegal contract does not make the partnership illegal.

A contract made in contravention of a law whose object is protection of the revenue is not illegal so as to deprive parties of their rights. Brown v. Duncan 109 E.R. 385.

40

In any event Respondent was not particeps criminis - far from being in in pari delicto. Enactment does not prohibit sale of rubber to an unlicensed dealer. S.5 only refers to purchase. This differs from case where both purchase and sale are forbidden. Mahmoud v. Ispahani (1921) 2 K.B.

716, 730. Bloxsome v. Williams 107 E.R.720. Doe v. Roberts 106 E.R.401. Our Enactment does not prohibit sale so Respondent committed no offence.

But he abetted if he sold with knowledge.

I refer to S.66 of Contracts Ord. r.w. s.2(g). Harnath Kaur v. Indar Bahadur Singh 50 I.A. 69, 75.

Case for Respondent.

Braddell

10 Indian Contract provisions have no application to contract void ab initio. Agreement void ab initio falls within S.66. "Contract" and "Agreement" are different. The Ordinance has no application where, as here, the contract is forbidden by law. Pollock & Mulla p.390. Jagadish v. Produce Exchange Corp. Ltd. 1946 A.I.R. (Cal.) 245, 248. Sri Sri Shiba Prasad Singh v. Maharaja Srish Chandra 76 I.A. 244, 254. Gopaldaswami v. Kattalai (1940) A.I.R. (mad.) 719, 722.

C.A.V.

(Sgd.) J.B. THOMSON
21.4.59.

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No.15.

JUDGMENT OF THOMSON, C.J.

Cor: Thomson, C.J.
Syed Sheh Barakbah, J.
Neal, J.

This is an appeal from a decision of Smith, J., which raises a question as to the effect of the Rubber Supervision Enactment, No.10 of 1937.

30 There has never been any real controversy as to the facts which may most conveniently be stated historically.

40 Before the war one Yap was carrying on business as a rubber dealer at 27, Jalan Tuan Sheikhs, Seremban, under the name of Tong Seng Rubber Company. After the war he resumed business and at all material times he has held a licence to purchase rubber under Section 5 of the Rubber Supervision Enactment issued to himself personally and stating that he trades under the style of Tong Seng Rubber Company.

When he resumed business Yap was apparently

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of Appeal.

No.14.

Notes of
Argument.

21st April,
1959

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No.15.

Judgment of
Thomson, C.J.

26th May, 1959.

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of Appeal.

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Judgment of
Thomson, C.J.

26th May, 1959
- continued.

short of working capital and on 14th January, 1946, he entered into an agreement of partnership with eight other persons including the present Appellant which was duly registered under the Registration of Businesses Ordinance. That agreement recited that Yap was the holder of a rubber dealer's licence and provided that the partners should carry on the business of rubber dealers under the style or firm name of Tong Seng Rubber Company at the premises already occupied for that purpose by Yap. It provided for the distribution of profits in proportion to the capital contributed by the partners and it provided that the partnership business should be managed by Yap who was to be paid a monthly salary of \$120 and 6% of the net profits in addition to his share in those profits based on his share in the capital and who as manager was to call a meeting of the partners once every six months. 10

From time to time one Liew sold rubber to the firm and from time to time he received payments in respect of this rubber, but on 13th June, 1951, there was owing to him for rubber supplied a balance of \$5,097. He was unable to obtain payment of this balance and accordingly on 30th July, 1951, he commenced proceedings to recover it. 20

By this time a number of the original partners had withdrawn from the firm and in fact, although Liew was not aware of this and had had no intimation of it, the present Appellant had withdrawn on 12th June, the day before the last delivery of rubber involved in the account had been made. The proceedings, therefore, were brought against Yap, the present Appellant and two of the other partners, Eng and Ang. Ang was out of the jurisdiction and was never served. Yap and Eng submitted to judgment. The Appellant, however, denied liability. He did not attempt to rely on the fact that he had ceased to be a partner, and indeed he could not do so because it was admitted that the Plaintiff knew he was a partner and had had no intimation of his withdrawal. His defence was that in effect both the partnership and any contracts made with it were illegal as being forbidden by the provisions of the Rubber Supervision Enactment and that therefore the Plaintiff could not recover. 30 40

The trial Judge came to the conclusion, that, because all the partners were not named in the

licence issued under the Rubber Supervision Enactment, the partnership was not properly licensed under that Enactment. He was of the opinion, however, that breach of that Enactment should be regarded in the same way as breach of a revenue statute and that, having regard to the case of Brown v. Duncan (1) the Plaintiff should not be regarded as particeps criminis and was therefore entitled to recover against all members of the partnership. If he was wrong in this view he thought that it was expecting too much to ask that every person who sells rubber should inspect the dealer's licence and then, if he finds that the dealer trades under a name other than his own, be obliged to make an inquiry at the Business Names Registry to discover whether or not there are any partners. The Plaintiff had satisfied himself that the person with whom he was actually dealing was licensed and therefore could not be said to be in pari delicto with the partners. In that view he was fortified by certain observations by Mellish, L.J., in the case of South Wales Atlantic Steamship Company (2). He accordingly held that the Plaintiff was entitled to recover as against the Appellant.

It is against that decision that the Appellant has now appealed.

At this point I will return for a moment to the facts. As regards the partners it has never been in question that the only licence to purchase rubber was issued to Yap whose name was on it and who was described as trading under the style of Tong Seng Rubber Company. Nor is there any suggestion that so far as Yap was concerned there was any breach of the provisions of the Enactment. His licence was displayed at the premises as required by law and again as required by law the premises exhibited a signboard with his name and a statement that he was a licensed rubber dealer. Records were kept by him as required and the necessary receipts for rubber were given by him in the statutory form.

As regards the Plaintiff, he had known Yap and had dealt with him for a long time and he frankly admitted that he knew he had partners who were supporting him financially, and that he knew the Appellant was one of them. He knew that he could only sell to a licensed dealer but he knew that Yap was licensed and in the circumstances did not realise (nor did he admit) that there was anything unlawful in dealing with him.

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(1) 109 E.R.385.

(2) L.R. 2 Ch. D. 763.

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of Appeal.

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Thomson, C.J.

26th May, 1959

- continued.

The Rubber Supervision Enactment, 1937, is entitled "an Enactment to consolidate and amend the law relating to the supervision of dealings in rubber and of statistics concerning rubber cultivation ". It provides for the setting up of Licensing Boards and Licensing Officers who may grant licences relating to rubber and provides (Section 5) that subject to certain exceptions "no person shall purchase, treat or store rubber or pack rubber for export unless he shall have been duly licensed" in that behalf. Such licences (Section 16) are valid only for the places and purposes specified in them; they are not assignable; and they are personal to the holder, lapsing on his death, mental disorder or bankruptcy. Licensees may be required to give security for the observance of the conditions of their licences (Section 15) and are liable for any contravention of the Enactment by their agents or servants (Section 18). There are provisions for the inspection of premises mentioned in licences which (Section 19) must bear a conspicuous sign to the effect that the premises are licensed and must have the licence conspicuously exhibited. There are also provisions for the keeping of records and for the giving of receipts for rubber in prescribed forms.

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Section 17 provides that :-

"Two or more persons carrying on business in partnership shall not be obliged to obtain more than one licence appropriate to the circumstances in respect of which the licence is issued".

30

But it is perhaps significant that there is no provision in terms for the licensing of a limited liability company and in view of the provisions under Section 16(iii) that a licence lapses on the mental disorder of the licensee the licensing of a limited liability company does not seem to be contemplated.

It is not necessary to embark on an inquiry to arrive at an exhaustive list of the purposes of this Enactment. One purpose clearly is to ensure that all dealings in rubber are carried out in such a way as to be capable of inspection and supervision of public officers. As it was put by Stevens, J., in the case of Syn Thong & Co. v. Tong Joo (Hoo) & Co.⁽³⁾ :-

40

" its object is to enable the Government to keep in touch with all dealings in that commodity by compelling dealers to store their rubber only in specially licensed premises, and to furnish information as to the origin and destination of every lot of rubber which forms the subject of a sale."

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Thomson, C.J.

26th May, 1959

- continued.

10 Again it is clear from the provisions of the Enactment that licences may be granted or withdrawn in the entire discretion of Licensing Boards that another object is to ensure that only persons of good character engage in dealing in rubber. Clearly one object of the provisions is to protect to some extent the very large revenue the country derives from rubber but in my opinion they go further than this and for myself I would be quite prepared to accept Sir Roland Braddell's view that they are intended to ensure the orderly carrying on of an industry on which the prosperity of the country is to some extent dependent.

20

30 It seems important to observe, however, that the Enactment seeks to attain this end by regulating actual dealings in rubber, and not to go behind the face of such dealings. In particular, and I am not forgetting Section 17 to which I shall return, there is not a word in the Enactment that relates to the way in which a rubber dealer obtains his working capital. He may trade with his own money or he may trade with borrowed money and it is difficult, though of course not impossible, to distinguish for the purpose of the objects of the Enactment between the case where he trades with borrowed money for which he pays a fixed rate of interest and a case where, as here, he takes in sleeping partners who have no share in the management but who are remunerated by a share in profits.

40 In the present case there is no question that any of the partners except Yap had any dealings of any sort with the Plaintiff or any other Vendor of rubber. It is clear too that it was not contemplated by the partners that any of them except Yap should have the conduct of such dealings. In the circumstances it is important to be clear as to the legal nature of these dealings. It is very probable that the Plaintiff and indeed other Vendors of rubber thought they were selling to the firm and it is equally probable that Yap and the other partners thought that it was the firm that

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No.15.

Judgment of
Thomson, C.J.
26th May, 1959
- continued.

was buying the rubber. This, however, is no more than an example of the legal error that is so prolific of litigation in this country that a partnership firm has a legal existence as distinct from that of the partners composing it. Putting aside for the moment the question of illegality what actually happened when rubber was sold was that it was sold to and bought by Yap as a partner and as agent of the other partners, with a resulting joint obligation on the part of them all to pay for it. When the rubber was delivered to Yap it became the joint property of the partners.

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The question of illegality then reduces itself to the question of whether such dealings as took place in the present case were prohibited by the Rubber Supervision Enactment. If they were, the contract between the partners to engage in them and therefore the partnership were unlawful. Again in that event the contracts of sale into which Yap entered with vendors of rubber were prohibited by law and could not be sued upon.

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If these contracts were prohibited by law it could only be by reason of Section 5 of the Enactment. "No person shall purchase rubber unless duly licensed". On the face of it the answer to the question "Who purchased the rubber?" is "Yap purchased the rubber". And Yap was duly licensed. It is true that by reason of the partnership agreement what he did produced certain legal results as to the property in the rubber and the obligation to pay for it. Nevertheless I am not prepared to think that these results can be held to make illegal purchases which on the face of them were not prohibited by the statute. As has been said, the statute is completely silent on such questions as to how a purchaser of rubber obtains his capital. It is completely silent as to how he deals with the property in the rubber after he has purchased it except that, presumably, if he sells it to some other party who is not licensed he abets the commission of an offence by that other party. In certain circumstances it may be that the expression "purchase" should be interpreted as connoting and including all the legal consequences which arise by reason of external circumstances from any individual purchase. Here, however, having regard to the object and contents of the statute it would in my view be wrong to put such a wide interpretation on the expression. It is clearly one object of the statute to ensure that

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dealings in rubber are conducted in such a way as to ensure publicity and thereby facilitate inspection by public officers. Another is to ensure that liability for compliance with these measures can be definitely and clearly fixed on the shoulders of a person licensed by the authorities, who has when necessary given security and whom the authorities are satisfied is a suitable person. If any person purchases rubber who has no licence then these objects are defeated. If, however, the actual purchaser is licensed it seems to me that the object of the statute is not defeated and that the purchase is not prohibited. On this view the fact that the purchaser is an agent or has entered into an agreement of partnership with other persons providing for the sharing with them of profits is wholly irrelevant.

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That would be the end of the matter if it were not for the provisions of Section 17 on which the main argument for the Appellant has been based.

That section has already been quoted and it is important to observe that it is the only section in the statute which makes any reference to persons carrying on business in partnership. Nowhere is it said that it is forbidden for persons carrying on business in partnership to deal in rubber. What it does say is that no person shall purchase rubber unless he is licensed. Clearly where two persons each purchase rubber each of them would have to be the holder of a licence and the consideration that they happen to be carrying on the business in partnership would be irrelevant and would not excuse either of them from the obligation to hold a licence. All that Section 17 does, to my mind, is to mitigate that and provide that where two persons are carrying on business in partnership one licence is sufficient and enables each of the partners named in it to purchase rubber. In the present case, however, there was no question of two or more persons purchasing rubber. The only person who purchased rubber was Yap. If rubber had been purchased by any other partner then unless he held a licence of his own or was included in a joint licence issued under Section 17 the transaction might well have been prohibited by law and is illegal. There was, however, no suggestion of any such transaction being either carried out or indeed contemplated.

In the Court
of Appeal.

No.15.

Judgment of
Thomson, C.J.

26th May, 1959
- continued.

In the Court
of Appeal.

No.15.

Judgment of
Thomson, C.J.
26th May, 1959
- continued.

In all the circumstances of the case I would
dismiss the appeal with costs.

(Sgd.) J.B. THOMSON
CHIEF JUSTICE,
FEDERATION OF MALAYA.

Kuala Lumpur,
26th May, 1959.

No.16.

Judgment of
Syed Sheh
Barakbah, J.
16th May, 1959.

No. 16.

JUDGMENT OF SYED SHEH BARAKBAH, J.

Cor: Thomson, C.J.
Syed Sheh Barakbah, J.
Neal, J.

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I have had the advantage of reading the judg-
ment of the learned President with which I entirely
agree. I have nothing to add.

Signed: S.S.BARAKBAH.
JUDGE
FEDERATION OF MALAYA.

Ipoh, 16th May, 1959.

K.L. 20.6.59.

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Coram: Shiv Charan Singh, A.R.
Mr. Ramani for Appellant,
Mr. Chelliah for Respondent,
Written Judgment read in Open Court.

Signed: SHIV CHARAN SINGH,
Asst. Registrar,
Court of Appeal,
FEDERATION OF MALAYA.

No.17.

Judgment of
Neal, J.
9th June, 1959.

No. 17.

JUDGMENT OF NEAL, J.

Cor: Thomson, C.J.
Syed Sheh Barakbah, J.
Neal, J.

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I have had the opportunity of reading the
judgment of the learned Chief Justice and I agree
that this appeal must be dismissed.

My reasons for so agreeing are that in my

opinion the partnership in this case was not an unlawful partnership nor was the contract an unlawful contract as pleaded nor in my opinion was either the partnership or the specific contract of such a nature that it would defeat the provisions of the Rubber Supervision Ordinance.

In the Court
of Appeal.

No.17.

Judgment of
Neal, J.

9th June, 1959

- continued.

10 If one examines the provisions of the Rubber Supervision Enactment one finds in Section 5(1), "no person shall purchase, treat, or store rubber or pack rubber for export unless he shall have been duly licensed in that behalf under this En-actment". Sub-section (2) of Section 5 provides, inter alia, that every licence shall be in the prescribed form, and it is to be noted, as Sir Roland Braddell pointed out during the hearing, that the prescribed form provides for the names of the partners being included in the licence where there is a partnership.

20 The next relevant provisions for consideration are the terms of Section 16(ii) and (iii) which provide that no licence shall be assignable and that a licence is personal. To halt at this stage it is obvious that since the singular always include the plural (see Item 61 Sec.2(1) Acts Interpretation and General Clauses Enact. 7 of 1948) and because of the prescribed form under Section 5(ii), if nothing more was said in the Enactment the contention of the Appellant would be correct that a licence in respect of a partnership business must include the names of all the partners. It is also in my opinion important to note at this stage that, having regard to the provisions to which I have referred, no further or additional provision needed to be made to enable a partnership to be licensed under a licence covering the names of all of the partners. So it follows in my opinion that Section 17(i) is completely unnecessary if it went no further than submitted on behalf of the Appellant and held by the learned Judge in the Court below.

30 Section 17(i) reads :-

"Two or more persons carrying on business in partnership shall not be obliged to obtain more than one licence appropriate to the circumstances in respect of which the licence is issued, and a licence to two or more persons shall not be determined by the death or retirement from business of any one or more of the partners".

40 In addition to the fact that Section 17(i) was un-

In the Court
of Appeal.

No.17.

Judgment of
Neal, J.

9th June, 1959
- continued.

necessary if it meant that all of the partners had to be named in the licence there is support, and I think strong support, for the view that I have taken in the wording of Section 17(i) and in particular the following words, "appropriate to the circumstances in respect of which the licence is issued". These words must be given some meaning. In my opinion they can refer to only two things, (1) the terms of the partnership and (2) the type of licence, that is to say purchase, storage or packing etc.

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Dealing with the second alternative first, having regard to the definition of the term "licence" the phraseology used elsewhere in the Enactment and the actual wording in Section 17(i), I have reached the conclusion that the Legislature was referring not to the type of licence but to details of the partnership. I have read and considered at length the reasons given by the Trial Judge for holding that Section 17 does not enable one or more partners to hold licences in respect of a partnership business between the licensed partner or partners and sleeping partners. The learned Trial Judge has based his opinion on the reasoning that the contrary would enable a licensed partner to take in as a sleeping partner a person who has been refused a licence and this would be in breach of the intention of the Legislature. To my mind the learned Trial Judge has read more into the particular Section than he was justified on a reading of the whole of the Enactment in doing. There is nothing in the Enactment to support the suggestion that the Legislature intended to prohibit a man who was refused a licence from having anything to do with a licensed business. This is evident if you consider the wording of Section 18. If the intention of the Legislature had been as suggested by the learned Trial Judge, then that intention was negated completely by the failure of the Legislature to in any way limit the word "agent". I based the opinion that I have come to on the meaning of Section 17(1) having regard only to the Sections that preceded it, but I find further support for it in at least one subsequent section. In Section 18, whilst the draftsmanship of this Section leaves much to be desired, it seems to me that there can only be three types of agent, namely,

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1. Partners.
2. Agents selling on commission or otherwise.
3. Holders of Powers of Attorney.

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10 It seems to me that Section 16(ii) and (iii) rule out commission agents and holders of powers of attorney leaving the only type of agency permissible under the Enactment, viz. a partner. Now, if all the partners have to be as submitted on behalf of the Appellant named in the licence, then having regard to the offences which are covered by Section 18, there was no need for the inclusion of the word "agent" at all because there cannot, if the submission of the Appellant is correct, be an agent who would not be liable to be punished as the actual holder of the licence.

20 Again, although I reached my decision apart from relying upon it my decision is in my opinion supported by the statement of the Privy Council in the case of Gordhandas Kessowji v. Champsey Dossa and others when the Privy Council approved the statement of the law that a licensee entering into partnership with certain other persons sharing in the profits thereof did not contravene the enactment rendering assignment of a licence unlawful. I have not relied upon that decision in deciding this case as I have not been able to obtain either a copy of the Bombay Salt Act (11 of 1890) or the reports of the case in the Courts below the Privy Council to enable me to decide how far I could take this statement of the law. I have preferred to rely upon what to my mind is the clear wording and intention of the Enactment.

30 (Sgd.) M.G. NEAL,
JUDGE,
FEDERATION OF MALAYA.

9th June, 1959.

☒ A.I.R.1921 P.C.137.

In the Court
of Appeal.

No.17.

Judgment of
Neal, J.

9th June, 1959
- continued.

No. 18.

ORDER.

Before: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE, FEDERATION
OF MALAYA.
THE HONOURABLE MR.JUSTICE SYED SHEH
BARAKBAH.
THE HONOURABLE MR.JUSTICE NEAL.

IN OPEN COURT

This 20th day of June, 1959.

THIS APPEAL coming on for hearing on the 21st

No.18.

Order.

20th June, 1959.

In the Court
of Appeal.

No.18.

Order.

20th June, 1959
- continued.

day of April, 1959 in the presence of Dato Sir Roland Braddell (with him Mr. R. Ramani) for the Appellant and Mr. R.R. Chelliah (with him Mr. Balwant Singh) for the Respondent and UPON READING the Record of Appeal herein and UPON HEARING arguments of Counsel aforesaid IT WAS ORDERED that this appeal should stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. R. Ramani for the Appellant and Mr. R.R. Chelliah for the Respondent.

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IT IS ORDERED that this Appeal be and is hereby dismissed.

AND IT IS ORDERED that the Appellant do pay to the Respondent the costs of this Appeal such costs to be taxed by the proper Officer of the Court.

GIVEN under my hand and the seal of the Court this 20th day of June, 1959.

(SEAL)

(Sgd.) SHIV CHARAN SINGH,
Asst. Registrar,
Court of Appeal,
FEDERATION OF MALAYA.

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No.19.

Final Order
allowing Leave
to Appeal to
His Majesty,
the Yang di-
Pertuan Agong.
12th January,
1960.

No. 19.

FINAL ORDER ALLOWING LEAVE TO APPEAL TO
HIS MAJESTY, THE YANG DI-PERTUAN AGONG.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
F.M. Civil Appeal No.59 of 1958

BETWEEN:- Chai Sau Yin Appellant

- and -

Liew Kwee Sam Respondent

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(In the matter of Seremban High Court
Civil Suit No.55 of 1951

Between

Liew Kwee Sam Plaintiff

- and -

1. Yap Seow Leong
2. Chai Sau Yin
3. Eng Yong Ngi
4. Ang Yee Khooon (f) Defendants)

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BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE,
FEDERATION OF MALAYA;

THE HONOURABLE MR. JUSTICE HILL,
JUDGE OF APPEAL; and

THE HONOURABLE MR. JUSTICE GOOD,
JUDGE OF APPEAL.

In the Court
of Appeal.

No.19.

Final Order
allowing Leave
to Appeal to
His Majesty,
the Yang di-
Pertuan Agong.

12th January,
1960

- continued.

IN OPEN COURT This 12th day of January, 1960.

10 UPON Motion made unto the Court this day AND
UPON READING the Notice of Motion dated the 21st
day of December, 1959 and the Affidavit of Chai
Sau Yin affirmed on the 21st day of December, 1959
and filed herein AND UPON HEARING Mr. R. Ramani
of Counsel for the above-named Appellant and upon
his intimation to the Court that Mr. Balwant Singh
of Counsel for the Respondent had no objection to
this application:

20 IT IS ORDERED that final leave be and is
hereby granted to the above-named Appellant to ap-
peal to His Majesty the Yang di-Pertuan Agong
against the judgment of the Court of Appeal herein
dated the 20th day of June, 1959:

AND IT IS ORDERED that the costs of this ap-
plication be costs in this Appeal.

GIVEN under my hand and the seal of the
Court this 12th day of January, 1960.

(Sgd.) Shiv Charan Singh

Assistant Registrar,
Court of Appeal,
Federation of Malaya.

30 (SEAL)

ExhibitsE X H I B I T S

D.8.
Applications
for Licences
to Purchase
Rubber.
27th December,
1945
to
20th November,
1951.

D.8. - APPLICATIONS FOR LICENCES TO PURCHASE
RUBBER, 27th DECEMBER, 1945 to 20th NOVEMBER, 1951

STATE OF NEGRI SEMBILAN

SCHEDULE A.

THE RUBBER SUPERVISION ENACTMENT, 1937.

Stamped \$1/- in Stamps
Stamp Office,
Seremban.
27.12.45.

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APPLICATION FOR A LICENCE TO PURCHASE UNDER SECTION
11 OR A LICENCE TO STORE AND TREAT OR TO STORE
UNDER SECTION 12 or 13.

To,
The Chairman, Licensing Board (Under the Rubber
Supervision Enactment, 1937.)

Sir,

I beg to apply for a renewal of rubber purchase licence No.44/1945 under the Rubber Supervision Enactment, 1937, and append the particulars required.

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(Sgd.) Yap Seow Leong,
Signature.

- (a) Applicant's name - Yap Seow Leong
- (b) Nationality (and in the case of Chinese, the tribe) - Khek, Chinese.
- (c) Names of partners and their addresses - Hiu Poh Khim, 33 Birch Road, Seremban.
- (d) Address of applicant's place of business for which licence is required - Chop Tong Seng Rubber Co., 27, Jalan Tuan Sheikh, Seremban.
- (e) Whether formerly a licensed dealer, and if so in respect of what years - 1937 to 1945.
- (f) Whether in any way previously connected with rubber dealing - Yes. Manager of Tong Seng Rubber Co.

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I hereby solemnly and sincerely declare that the particulars given above are to the best of my knowledge and belief correct, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the

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Statutory Declaration Enactment.

Subscribed and solemnly declared)
 by the above-named Yap Seow) Sgd.
 Leong at Seremban this 27th day) Yap Seow Leong
 of December, 1945)

Before me,

Sgd. Tunku Mustapha R.S.C.
 Magistrate.

(SEAL of the B.M.A.
 Superior Court,
 Seremban)

Exhibits

D.8.

Applications
 for Licences
 to Purchase
 Rubber.

27th December,
 1945

to

20th November,
 1951

- continued.

10 NOTE:- The remainder of Exhibit D.8. consists of
 six Applications similar in form to that set out
 above and differing respectively in the following
 particulars :-

Dated 22nd November 1946 for renewal of licence
 9/46; adding in (d) No.15 in addition to No.27
 Jalan Tuan Sheikh; (e) 1937 - 1946.

Dated 18th November 1947 for renewal of Licence
 9/47; (e) 1937 - 1947.

Dated 15th November 1948 for renewal of Licence
 27/48; (b) Chinese Hakka; (e) 1937 - 1948.

20 Dated 11th November 1949 for renewal of Licence
 27/49; (b) Chinese Hakka; (c) address No. 27 Jalan
 Tuan Sheikh; Seremban; (e) 1937 - 1949.

Dated 3rd November 1950 for renewal of Licence
 27/50; (b) Chinese Hakka; (c) "Names of partners
 and their addresses - "; (e) 1937 to 1950.

Dated 20th November 1951 for renewal of Licence
 27/51; (b) Chinese Hakka; (c) left blank; (e) 1937
 to 1951.

Exhibits

D.9.

D.9. -- RECOGNIZANCES, 17th JANUARY, 1946 to
30th JANUARY, 1952

Recognizances.
17th January,
1946
to
30th January,
1952.

Stamp \$1/-
Stamped at Stamp Office,
Seremban, N.S. on
17.1.46.

SCHEDULE G.

"THE RUBBER SUPERVISION ENACTMENT, 1937"

FORM OF RECOGNIZANCE UNDER SECTION 15.

KNOW ALL MEN BY THESE PRESENTS that we Yap Swee Leong of Seremban hereinafter called the Licensee and Lim Swee Yiak of Mantin and Lim Seh Boot of Seremban hereinafter called the sureties are held and firmly bound to the Government of the Federated Malay States, in the sum of dollars Five hundred (\$500/-) to be paid to the Accountant-General for the time being of the Federated Malay States to which payment we bind ourselves and each of us and our and each of our heirs, executors and administrators firmly by these presents. 10

Now the condition of this obligation is that whereas at our desire a licence is to be granted to the licensee to purchase rubber at No.27 Jalan Tuan Sheikh, Seremban if the said licensee shall observe all the conditions of such licence and comply with all the requirements of "The Rubber Supervision Enactment, 1937", then this obligation shall be void and otherwise remain in full force. And further if the licensee be fined for breach of the requirements of "The Rubber Supervision Enactment, 1937", and the fine be not recovered then this bond up to the amount expressed herein shall remain in full force and otherwise shall be void. 20 30

DATED at Seremban this 17th day of January, 1946.

SIGNED by the) Sd. Yap Swee Leong
above-named) Sd. Lim Swee Yiak (In Chinese)
) Sd. Lim Seh Boot (In Chinese)

Before me,
Sd. TUNKU MUSTAPHA
Dy. Registrar,
Supreme Court, Seremban. 40

Explained by me. (SEAL of the B.M.A.,
Sd. Chung Kon Seong. Superior Court,
Seremban).

NOTE:- The remainder of Exhibit D.9 consists of six Recognizances (in which Yap Seow Leong is described as of Tong Seng Rubber Company) similar in form to that set out above and differing respectively in the following particulars :-

- 10 Dated 14th March 1947. Headed "Government of Negri Sembilan". Sureties: "Leow Meow Kwee of No. 29 Jalan Tuan Sheikh, Seremban and Yap Mau Tatt of No.143 Birch Road, Seremban". Bound to the Government of the Malayan Union.
- Dated 26th January 1948. Headed "Government of Malayan Union". Sureties: "Lim Swee Yiak of Chop Guan Huat, No.94 Main Street, Mantin and Ow Kai Leong of Chop Cheong Kee Leong, No. 52 Main Road, Mantin". Bound to the Government of the Malayan Union.
- 20 Dated 13th January 1949. Headed "Government of Negri Sembilan". Sureties: "Anj Han, Chop Kian Huat, No.24, Mantin, and Ow Kai Leong, Chop Cheong Kee Leong, No.52 Main Road, Mantin". Bound to the Government of the Federation of Malaya.
- Dated 5th January 1950. Headed "Government of Federation of Malaya". Sureties: "Lim Swee Yiak, Chop Guan Huat, No.94 Main Street, Mantin, and Ow Kai Leong, Chop Cheong Kee Leong, No.52 Main Street, Mantin". Bound to the Government of the Federation of Malaya.
- 30 Dated 2nd January 1951. Headed "Government of the Federation of Malaya". Sureties: Teh Min Yeau, Chop Seng Guan, No.29 Cameron Street, Seremban, and Khoo Kim Leong, Yee Foong & Co., Ltd., Railway Goods Yard, Seremban". Bound to the Government of the Federation of Malaya.
- Dated 30th January 1952. Headed "Government of the Federation of Malaya". Sureties: "Lim Swee Yiak, Chop Guan Huat, No.94 Main Street, Mantin, and Ow Kai Leong, Chop Cheong Kee Leong, No. 52, Main Street, Mantin". Bound to the Government of the Federation of Malaya.
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Exhibits
D.9.
Recognizances.
17th January,
1946
to
30th January,
1952
- continued.

Exhibits

P.7.
(including D.4)
Licences to
Purchase Rubber
27th December,
1945
to
5th February,
1952.

P.7 (including D.4) - LICENCES TO PURCHASE RUBBER,
27th DECEMBER, 1945 to 5th FEBRUARY, 1952.

No.11544. British Military (Rub.Sup.3)
Administration, Malaya
Federated Malay States.

"The Rubber Supervision Enactment No.10/37 No.
District. 44/1945.

Licence to Purchase Rubber

This licence authorises[⊠] Yap Seow Leong trad-
ing under the style of Chop Tong Seng & Coy., to
purchase rubber at No.27 Jalan Tuan Sheikh, S'ban,
in accordance with the provisions of "The Rubber
Supervision Enactment (No.10/37) and expires on
31st December, 1945.

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Fee received \$25/- (Dls. Twenty five)

Name of Manager (if different) Hiu Poh Khim

ADDITIONAL PREMISES UNDER SECTION 11A(i) FOR TREAT-
MENT AND STORAGE. NIL.

This licence shall be framed and conspicuously
exhibited on the licensed premises.

Date of issue - 27.12.45.

(a signature)

CHAIRMAN, LICENSING BOARD
S'ban District.

⊠ Names of partners, if any, to be stated.

NOTE:- Exhibit P.7. then includes a licence, 13726,
No.9/1947, dated 14th March 1947 and expiring on
31st December, 1947, but otherwise similar to the
foregoing licence No.44/1945.

No.13812. British Military Administration,
Malaya

Federated Malay States

"The Rubber Supervision Enactment, 1937"

District Seremban No.27/1948

Licence to Purchase Rubber

Exhibits

P.7.
(including D.4)

Licences to
Purchase Rubber

27th December,
1945

to
5th February,
1952

- continued.

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This licence authorises[ⓧ] Yap Seow Leong trading under the style of Chop Tong Seng Rubber Co. to purchase rubber at 27, Jalan Tuan Sheikh, Seremban in accordance with the provisions of "The Rubber Supervision Enactment, 1937", and expires on 31st December, 1948.

Fee received \$100/-

Name of Manager (if different) Hiu Poh Khim.

ADDITIONAL PREMISES UNDER SECTION 11A (i) FOR
TREATMENT AND STORAGE,

CONDITION

A notice board should be exhibited showing :-

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- (i) The date
- (ii) The Singapore standard price of rubber,
- (iii) Samples of various grades of rubber,
- (iv) The prices offered for these grades.

This licence shall be framed and conspicuously exhibited on the licensed premises.

Date of Issue - 27th January, 1948.

(a signature)

CHAIRMAN, LICENSING BOARD
(Rubber Supervision)
Seremban District.

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[ⓧ] Names of partners, if any, to be stated.

NOTE:- Exhibit P.7 then includes licences
13886, No.27/49, dated 14th January, 1949
expiring 31st December, 1949,
13957, No.27/50, dated 5th January, 1950,
expiring 31st December, 1950,

In the same form as the foregoing Licence No.27/
1948.

Exhibits

P.7.

(including D.4)

Licences to
Purchase Rubber27th December,
1945to
5th February,
1952

- continued.

Exhibit D.4 is a Licence, 23426, No.27/51, dated 3rd January, 1951, expiring 31st December 1951, in the same form as the foregoing Licence No.27/1948, except that it is not headed "Federated Malay States" and no name is entered against "Name of Manager".

Exhibit P.7 contains the next Licence in date order, namely,

23502, No.32/52, dated 5th February, 1952, expiring 31st December, 1952,

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which is in the same form as Licence No.27/51 (Exhibit D.4) except that the fee is \$300.

Exhibit P.7 concludes with the following Notice:-

THE RUBBER SUPERVISION ENACTMENT, 1937LICENSING BOARD MEETING.

No.783 - Notice is hereby given that a meeting of the Rubber Supervision Licensing Board for the District of Seremban will be held at the District Office, Seremban, on Friday, 12th December, 1952, at 10.30 a.m. when new applications for :-

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- (i) renewals, transfers and removals of licences to purchase rubber;
- (ii) licences to treat and store rubber now grown or produced on land in occupation of the applicants; and
- (iii) licences to store rubber not grown or produced on land in occupation of the applicants; and
- (iv) licences to pack rubber for export;

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for the year 1953 will be considered.

2. The Town Board number or survey number (as the case may be) of the premises to be licensed should be stated.

3. Every application for a licence must be supported by a statutory declaration in the prescribed form under Section 6(iv), Enactment No.10 of 1937, to be sent to the Licensing Officer, District Office, Seremban, not later than the 15th November, 1952, and in the case of an application for licence to purchase rubber in Seremban Town a Treasury receipt for \$300 and in Rural Areas a Treasury receipt for \$200 respectively should be attached.

40

4. The licensees will be required to enter a bond in \$500 with two sureties or to make a cash deposit of \$500 to secure the due observance of the condition of the licence.

5. Licensees may be required to exhibit at their premises a notice-board showing :-

- (a) the date;
- (b) the Singapore standard price of rubber;
- (c) samples of various grades of rubber;
- (d) the price offered for these grades.

10

MOHD. BAZAIN
Chairman,
Licensing Board (Rubber Supervision)
Seremban.

District Office, Seremban,
1st October, 1952.

(D.O.S. 512/52).

Exhibits

P.7.

(including D.4)

Licences to
Purchase Rubber

27th December,
1945

to

5th February,
1952

- continued.

D.5. - AGREEMENT OF PARTNERSHIP, 14th JANUARY, 1946

D.5.

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THIS DEED OF PARTNERSHIP is made this 14th day of January, 1946 between Chai Sau Yin, Yap Seow Leong, Leow Meow Kwee, Ang Yee Khoon, Yap Seong Lin, Hiu Poh Khim, Ng Sing Teck, Eng Yong Ngi, Chong Kim Choy (hereinafter referred to as the PARTNERS) whereas Yap Seow Leong is the holder of a RUBBER DEALER'S LICENCE.

Agreement of
Partnership.

14th January,
1946.

30

AND WHEREAS Chai Sau Yin, Yap Seow Leong, Leow Meow Kwee, Ang Yee Khoon, Yap Seong Lin, Hiu Poh Khim, Ng Sing Teck, Eng Yong Ngi, Chong Kim Choy are desirous of forming themselves into a partnership to carry on the business of Rubber Dealers or any other business as the partners may decide among themselves as hereinafter provided.

NOW THIS DEED WITNESSETH that the partners hereby mutually covenant and agree as follows :-

1. The partners will after the execution of this agreement commence to carry on the business of Rubber Dealers or any other business as may be decided by the partners.

40

2. The said partnership shall continue for such period as the partners shall determine.

Exhibits

D.5.

Agreement of
Partnership.14th January,
1946

- continued.

3. The style or firm name of the partnership shall be Tong Seng Rubber Company and shall be carried on at Nos.27 and 15 Jalan Tuan Sheikh, Seremban or at such place or places as the partners may determine.

4. The capital of the partnership shall be the sum of ~~80~~80,000/- which sum shall be contributed by the partners as follows :-

Chai Sau Yin	£ 15,000/-	
Yap Seow Leong	£ 20,000/-	10
Leow Meow Kwee	£ 5,000/-	
Ang Yee Khoon	£ 10,000/-	
Yap Seong Lin	£ 10,000/-	
Hui Poh Khim	£ 5,000/-	
Ng Sing Teck	£ 5,000/-	
Eng Yong Ngi	£ 5,000/-	
Chong Kim Choy	£ 5,000/-	

Each partner shall upon the execution of this agreement forthwith pay thirty per centum (30%) of his aforesaid share of the capital. The balance of the capital shall be paid by each of the partners whenever it is considered necessary and expedient for effectively carrying on the business provided no calls on the balance of the capital shall be made unless fourteen days notice in writing shall have been given to all the partners.

5. If any further capital shall at any time or times be considered by the majority of the partners to be necessary or expedient for effectually carrying on the business the amount of such further capital unless otherwise agreed shall be contributed by the partners in the shares in which they are for the time being entitled to the existing capital of the partnership.

6. If any partner shall with the consent in writing of the other partners advance any sum of money to the partnership firm over and above his due contribution to capital the same shall be a debt due from the firm to the partner advancing the same and shall carry interest at the rate of twelve (12%) per cent per annum payable on every first day of the month during the continuance of the loan. No sum so lent shall be deemed an increase of the capital of the partner advancing the same or entitle him to an increased share in the profits of the partnership. Every or any such sum together with the interest for the time being due in respect thereof shall be repaid by the firm

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after the expiration of fourteen days when such partner has signified his intention of demanding such repayment.

Exhibits

D.5.

Agreement of Partnership.

14th January, 1946

- continued.

7. The partnership business shall be managed by Yap Seow Leong who shall be paid a monthly salary of \$120/- Hiu Poh Khim shall be the Assistant Manager and Yap Seong Lin shall be the cashier both of whom shall be paid a monthly salary of \$100/- each.
- 10 8. The usual books of account in respect of the partnership business shall be kept properly posted up to date and a profit and loss account shall be drawn up half yearly ending 30th June and 31st December.
9. The net profits of the partnership business shall be distributed as follows :-
- 6% be paid to the Manager
 - 6% be paid to Cashier and Assistant Manager in equal shares
 - 20 3% be paid to staff and workmen in equal shares
- 85% shall be distributed amongst the partners in proportion to their respective shares unless the partners shall by a majority determine to set apart any portion of the profits as a reserve fund.
10. A meeting of the partners shall be convened by the Manager once in six months not later than January and July of each year, provided the extraordinary meetings may be held at any time as circumstances require.
- 30 11. Any public or charitable donation or contribution not exceeding \$20/- may at the discretion of the manager be paid from the partnership fund and any donation or contribution exceeding \$20/- which has to be paid from the partnership fund shall be decided and authorised by the partners at a meeting. All repairs and other structural alterations to the business premises of the partnership business shall be carried out by the Manager at his discretion.
- 40 12. The bankers of the partnership business shall be the Oversea-Chinese Banking Corporation Limited, Seremban, and all cheques on such account shall be drawn by the Manager and another active partner who shall be either the cashier or the assistant Manager.

Exhibits

D.5.

Agreement of
Partnership.14th January,
1946

- continued.

13. Each partner shall be faithful and just to the other partners in all dealings and transactions relating to or affecting the partnership business.

14. No partner shall without the previous consent in writing of the other partners:-

(i) Employ any of the moneys or effects of the partnership except in the ordinary course of business and upon the account or for the benefit of the partnership.

(ii) Lend any money of the partnership or otherwise give credit to any person or persons when the other of them shall by notice in writing have forbidden him to trust. 10

(iii) Assign mortgage or charge his interest in the partnership.

(iv) Enter into any bond or become surety bail or security for any person or persons whomsoever using the partnership chop or name.

15. If any partner is desirous of selling his share in the partnership business he shall first offer his share to the other partners and should all or any of the continuing partners refuse within 30 days from the date the retiring partner giving such notice of his desire to dispose of his share then the retiring partner shall be at liberty to sell his share to an outsider. 20

16. The death retirement of any partner shall not dissolve the partnership among the other partners.

17. If any partner shall die during the continuance of the partnership the surviving partners or partner shall as from the date of such death and if more than one in the proportions in which they were at such date entitled to share in the net profits of the partnership succeed to the share of the deceased partner in the partnership business and the property and goodwill thereof and shall undertake all the debts and liabilities and obligations of the partnership and pay to the representative of the deceased partner the net value of such share as at the date of such death after providing for the then debts and liabilities of the partnership. 30 40

18. In case of the determination of the partnership a full account shall be taken of all the money debts and effects then remaining in the partnership business or due or belonging to the partnership in

respect thereof and all debts and liabilities due from or by the partnership on account of such business immediately after taking and settling of such account the partners shall make provisions for the payment of the said debts and liabilities due from or by the partnership and the balance of the assets of the partnership and profits after answering all debts and liabilities shall be divided in proportion to the shares contributed by the partners.

Exhibits

D.5.

Agreement of Partnership.

14th January, 1946

- continued.

- 10 IN WITNESS whereof the partners to these presents have hereunto set their names the day, month and year first above written.
- SIGNED by the said Chai Sau Yin }
of Seremban in the presence of:) Sd: Chai Sau Yin.
Sd. Yong Sze Lin,
Solicitor, Seremban.
- SIGNED by the said Yap Seow }
Leong in the presence of:) Sd: Yap Seow Leong
Sd. Yong Sze Lin,
Solicitor, Seremban.
- 20 SIGNED by the said Leow Meow }
Kwee of Seremban in the pres-) Sd: Leow Meow Kwee
ence of :)
Sd. Yong Sze Lin,
Solicitor, Seremban.
- SIGNED by the said Ang Yee Khoon }
of Seremban in the presence of:) Sd: Ang Yee Khoon.
Sd. Illegible,
Solicitor, Seremban.
- 30 SIGNED by the said Yap Seong }
Lin of Seremban in the presence) Sd: Yap Seong Lin
of :)
Sd. Illegible,
Solicitor, Seremban.
- SIGNED by the said Hiu Poh Khim }
of Seremban in the presence of:) Sd: Hiu Poh Khim
Sd. Yong Sze Lin,
Solicitor, Seremban.
- 40 SIGNED by the said Ng Sing Teck }
of Seremban in the presence of:) Sd: Ng Sing Teck
Sd. Yong Sze Lin,
Solicitor, Seremban.
- SIGNED by the said Eng Yong Ngi }
of Seremban in the presence of:) Sd: Eng Yong Ngi
Sd. Yong Sze Lin,
Solicitor, Seremban.

Exhibits

D.5.

Agreement of
Partnership.
14th January,
1946
- continued.

SIGNED by the said Chong Kim
Choy of Seremban in the pre-
sence of :

Sd: Chong Kim Choy

Sd. Yong Sze Lin,
Solicitor, Seremban.

D.5.
(attachment)

List of
Property of
Thong Seng
Rubber Co.

13th November,
1945.

D.5.(attachment) - LIST OF PROPERTY OF
THONG SENG RUBBER CO., 13th NOVEMBER, 1945*

The following are the property of THONG SENG
RUBBER CO: SEREMBAN :-

- 1 Edwin Cotterill Co. Iron Safe.
- 1 W & T Avery (2,000 lbs.) weighing scale.
- 2 Fire extinguishers.
- 1 Underwood Typewriter
- 4 Officer Tables.
- 1 Almeirah.

10

Intld. Yong Sze Lin

Dated this 13th day of November, 1945.

* This document is a separate sheet attached to
Exhibit D.5.

P.6.

Business Names
Registry
Entries.

14th January,
1946

to

18th June,
1951.

P.6. - BUSINESS NAMES REGISTRY ENTRIES,
14th JANUARY, 1946 to 18th JUNE, 1951

20

COPY
CERTIFIED COPY OF THE ENTRIES IN RESPECT OF
THE UNDERMENTIONED BUSINESS ISSUED UNDER
THE PROVISION OF RULE 11(c)

-
- | | |
|--------------------------------|--------------------------|
| 1. The business name | TONG SENG RUBBER COMPANY |
| 2. No. of Certificate | 34645 |
| 3. Constitution of
business | Partnership |

		<u>Exhibits</u>
4.	The general nature of the business	Rubber Dealers. P.6.
5.	The principal place of the business	No.27, Jalan Tuan Sheikh, Seremban. Business Names Registry Entries.
6.	The date of commencement.	14th February, 1946. 14th January, 1946
7.	Branches of the business	Nil. to 18th June, 1951 - continued.
10	Exhibit P.6 in Seremban Civil Suit No. 55/51. Sd. Assistant Registrar Supreme Court, Seremban. 13.11.58.	Certified true copy in respect of entries of Form "A" of 1947. Date this 3rd of Dec. 1956. Sd. Dy. REGISTRAR OF BUSINESSES FEDERATION OF MALAYA.
20	8. The terms of the partnership business and of the associates thereof are contained in a written agreement dated 14-1-46 a copy of which is annexed to this form verified by <u>my</u> signature(s) our	
30	or there is no written agreement as to the terms of the partnership.	

Exhibits

P.6.

Business
Names
Registry
Entries.14th
January,
1946
to
18th June,
1951
- continued.

No.	Name of associate	Chinese characters	Other Names	Chinese characters	Age	Sex	Nationality and race	Date of entry into business	Date of withdrawal from business	Date of registration	Date rule complied with	Particular office held in or nature of association with the business	Usual address	Remarks
1	Leow Meow Kwee	-	-	Chinese Hakka	Male		Chinese Hakka	14.1.46	-	31.8.49	18.6.49	Partner	No.27, Jalan Tuan Sheikh, Seremban.	
2	Chong Kim Choy	-	-	do.	"		do.	"	-	"	"	"	No.102, Paul St., Seremban.	
3	Yap Seow Leong	-	-	do.	"		do.	"	-	"	"	Managing Partner	No.27, Jalan Tuan Sheikh, Seremban.	
4	Yap Seong Lin	-	-	do.	"		do.	"	-	"	"	Partner	do.	
5	Hui Poh Khim	-	-	do.	"		do.	"	-	"	"	Partner	do.	
6	Ng Sing Teck	-	-	do.	"		do.	"	-	"	"	"	No.40, Birch Road, Seremban.	
7	Eng Yong Ngi	-	-	Chinese Teochew	"		Chinese Teochew	"	-	"	"	"	No.62A, Paul St., Seremban.	
8	Chai Sau Yin	-	-	Chinese Hakka	"		Chinese Hakka	"	-	"	"	"	No.114, Birch Road, Seremban.	
9	Ang Yee Khoon	-	-	Chinese Hokkien	Female		Chinese Hokkien	"	-	"	"	"	No.214B, Temiang Road, Seremban.	
<u>REGISTRATION OF CHANGES IN BUSINESS, 1949</u>														
	Leow Meow Kwee	-	-	Chinese Hakka	Male		Chinese Hakka	14.1.46	1.1.49	13.12.49	22.11.49	Partner	No.27, Jalan Tuan Sheikh, Seremban.	
	Chong Kim Choy	-	-	"	"		"	"	"	"	"	"	No.102, Paul St., Seremban.	
<u>REGISTRATION OF CHANGES IN BUSINESS, 1949</u>														
	Yap Seong Lin	-	-	Chinese Hakka	Male		Chinese Hakka	14.1.46	30.6.49	8.12.49	2.12.49	Partner	No.27, Jalan Tuan Sheikh, Seremban.	
	Hui Poh Khim	-	-	"	"		"	"	"	"	"	"	do.	
<u>REGISTRATION OF CHANGES IN BUSINESS, 1950.</u>														
	Ng Sing Teck	-	-	Chinese Hakka	Male		Chinese Hakka	14.1.46	21.8.50	26.8.50	22.8.50	Partner	No.40, Birch Road, Seremban.	
<u>REGISTRATION OF CHANGES IN BUSINESS, 1951.</u>														
	Eng Yong Ngi	-	-	Chinese Teochew	Male		Chinese Teochew	14.1.46	11.6.51	18.6.51	12.6.51	Partner	No.62A, Paul Street, Seremban.	
	Chai Sau Yin	-	-	Chinese Hakka	"		Chinese Hakka	"	"	"	"	"	No.114, Birch Road, Seremban.	

Registrar of Businesses,
Kuala Lumpur.

D.10. - MEMORANDA OF PURCHASE OF RUBBER

A 7080

Exhibits

D.10.

WRITTEN MEMORANDUM OF THE PURCHASE OF RUBBER
SECTION 24(i).

"The Rubber Supervision Enactment (No. 10) 1937"

Memoranda of
Purchase of
Rubber.May and June
1951.

I, Liew Kwee Sam being licensed holder No. dealer
and Registered No. the lawful occupier of a
piece of land held under G.12007/8 in the mukim of
Pertang District of Jelibu State of N.S. certify
that all the rubber as described below, was pro-
duced on the said land.

10

Description	Nett Weight		Price	Total
	Lbs.	Piculs.	per Picul	Value
	Lbs.	Piculs.	K. \$ c.	\$ c.
Ribbed S.Sheet	13	14	154 -	2023 56
Scrap Lump	1	43	55 -	78 65
A/c				
Total	14	57		2102 21

20

Value Received by Seller or his
Representatives.

We, TONG SENG RUBBER CO., of No.27, Jalan
Tuan Sheikh, Seremban, being licensed Dealer's
Licence No. 27/51 certify that we have purchased
14 pikuls 57 katis of rubber as per above particu-
lars.

TONG SENG RUBBER CO.,

Sgd:

Manager.

Dated 29th May, 1951.

Exhibits

A 7155

D.10.

WRITTEN MEMORANDUM OF THE PURCHASE OF RUBBER
SECTION 24(i).Memoranda of
Purchase of
Rubber.May and June,
1951
- continued.

"The Rubber Supervision Enactment (No. 10) 1937"

I, Liew Kwee Sam being licensed holder No. _____
and Registered No. _____ the lawful occupier of a
piece of land held under G.12007/8 in the mukim of
Pertang District of Jelibu State of N.S. certify
that all the rubber as described below, was pro-
duced on the said land.

10

Description	Nett Weight			Price	Total
	Lbs.	Piculs.	K.	per Picul	Value
				₹ c.	₹ c.
Ribbed S. Sheet	6	44		155 -	998 20
Scrap Lump	3	04		55 -	167 20
A/c.					
Total	9	48			1165 40

Value Received by Seller or his
Representatives.

20

We, TONG SENG RUBBER CO., of No.27, Jalan Tuan
Sheikh, Seremban, being licensed Dealer's Licence
No. 27/51 certify that we have purchased 9 pikuls
48 katis of rubber as per above particulars.

TONG SENG RUBBER CO.,

Sgd:

Manager.

Date, 2nd June, 1951.

A 7368

Exhibits

D.10.

WRITTEN MEMORANDUM OF THE PURCHASE OF RUBBER
SECTION 24(i).

"The Rubber Supervision Enactment (No. 10) 1937"

Memoranda of
Purchase of
Rubber.

I, Liew Kwee Sam being licensed holder No. dealer
and Registered No. the lawful occupier of a
piece of land held under G.12008 in the mukim of
Pertang District of Jelibu State of N.S. certify
that all the rubber as described below, was pro-
duced on the said land.

May and June,
1951
- continued.

10

Description	Nett Weight		Price per Picul		Total Value	
	Lbs.	Piculs. K.	₹	c.	₹	c.
Ribbed S.Sheet	11	16	158	-	1763	28
A/c.						
Total	11	16			1763	28

Value Received by Seller or his
Representatives.

20

WE, TONG SENG RUBBER CO., of No. 27, Jalan
Tuan Sheikh, Seremban, being licensed Dealer's
Licence No. 27/51 certify that we have purchased
11 pikuls 16 katis of rubber as per above particu-
lars.

TONG SENG RUBBER CO.,

Sgd.

Manager.

Date, 13th June, 1951.

Exhibits

P.3.

Memorandum
of Purchase
of Rubber.

13th July,
1951.

P.3. - MEMORANDUM OF PURCHASE OF RUBBER,
13th JULY, 1951

A 7549

WRITTEN MEMORANDUM OF THE PURCHASE OF RUBBER
SECTION 24(i)

"The Rubber Supervision Enactment (No. 10) 1937"

I, Liew Kwee Sam being licensed holder dealer No. and Registered No. the lawful occupier of a piece of land held under G.12008 in the Mukim of Pertang District of Jelebu State of Negri Sembilan certify that all the rubber as described below, was produced on the said land

10

Description	Nett Weight			Price	Total	
	Lbs.	Piculs.	K.	per Picul	Value	
13.6.51 Delivered				₹ c.	₹ c.	
Ribbed S.Sheet	9	87		158.00	1559	46
Scrap Lump	2	58		55.00	141	90
Closed at 13.6.51						
Total	12	45		Total	1701	36

20

(Sgd.) (in Chinese) Liew Kwee Sam
Value Received by Seller or His
Representatives. Her

We, TONG SENG RUBBER CO., of No.27, Jalan Tuan Sheikh, Seremban, being licensed Dealer's Licence No.27/51 certify that we have purchased 12 piculs 45 katis of rubber as per above particulars.

TONG SENG RUBBER CO.,
(Sgd.) L. Shing
for Manager.

30

Date, 13 July, 1951.

P.1. - STATEMENT OF ACCOUNT, 13th JUNE, 1951

Exhibits

<u>Translation of Chinese Accounts</u>	
Balance b/f from April	
May 11th Received rubber valued	1,779.60
29th " " "	3,684.77
June 2nd " " "	2,102.21
12th " " "	1,165.40
	1,763.28
	1,701.36
	<hr/>
Total 6 items	12,196.42
	<hr/>
May 8th Paid	1,000.00
10th " " "	500.00
11th Paid (on behalf of ..)	38.00
being transport charges bought rubber	44.00
acid (on behalf of..)	
21st Paid	2,000.00
29th Paid (on behalf of ..)	
being transport charges	12.00
30th Paid	1,000.00
June 6th Paid	2,500.00
	<hr/>
Total 8 items	7,099.00
Balance carried down	5,097.42
	<hr/>
	12,196.42
	<hr/>

To: Mr. Liew Kwee Sam

Dated 13th June, 1951.

Tong Seng Rubber & Co.,

Sgd.

Managing Partner.

I certify that the above translation is correct to the best of my ability and belief.

Sgd. Lim Yu Yong
Chinese Interpreter,
Supreme Court,
Seremban.
16.10.57.

P.1.
Statement of
Account.
13th June,
1951.

Exhibits
P.2.
Cheque and
Letter
attached.
15th June,
1951.

P.2. - CHEQUE AND LETTER ATTACHED, 15th JUNE, 1951
1694 SEREMBAN.
SI 986160 15.6.1951.
OVERSEA-CHINESE BANKING CORPORATION LIMITED
(Incorporated in the Colony of Singapore)
PAY TO LEOU KWEE SAM or Bearer Dollars One
thousand five hundred only.
\$1500/- (Sgd.) Tong Seng Rubber Co.
Managing Partner.

OVERSEA-CHINESE BANKING CORPORATION LIMITED
(Incorporated in the Colony of Singapore -
Head Office, Singapore)

10

Seremban.
15th June 1951.

Dear Sirs,

We beg to advise having debited your account
with \$1500/- for the annexed cheque No.986160 on
us returned for reasons marked "X" on the form en-
dorsed hereon.

Yours faithfully,

20

For Oversea-Chinese Banking
Corporation Ltd.

(Sgd.)

Sub-Accountant.

To:

M/s Yee Seng,
Seremban.
