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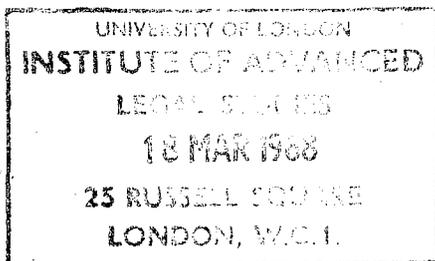
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1.

IN THE PRIVY COUNCILNo. 34 of 1965

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :SIOW WONG FATT Appellant

- and -

SUSUR ROTAN MINING
LIMITED Respondents

- and -

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KOTA MINING COMPANY
LIMITED Pro Forma
RespondentsC A S E FOR THE RESPONDENTSRecord

1. This is an appeal from a judgment of the Federal Court of Malaysia (Thomson, P., Wee Chong Jin C.J., and Tan Ah Tah F.J.) dated the 18th September 1964, which allowed the Respondents' appeal from a judgment of the High Court of Malaya (Azmi J.) dated the 22nd January 1964 which had dismissed the Respondents' claim for specific performance of an agreement to grant a mining lease, or for damages for breach of such agreement. The Respondents were ordered by the Federal Court to be paid compensation under Section 71 of the Malayan Contracts Ordinance. pp.153-167
- 20 2. The relevant statutory provision is : pp.117-133
- MALAYAN CONTRACTS ORDINANCE p.167
- Section 71

Where a person lawfully does anything for

Record

another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

pp.1-3
pp.4-10

3. The Respondents began the present proceedings by Writ dated the 17th September, 1962. By their Statement of Claim, dated the 13th October 1962, the Respondents alleged that in February 1961 they had entered into an oral agreement with the Appellant to be granted a mining sub-lease in respect of an area of land in the State of Johore; the Respondents further alleged certain acts of part performance in pursuance of such agreement, including in particular the construction of a road (hereinafter called "the said road") at a cost of \$140,000 into such area in order to facilitate mining there and transport iron ore therefrom. The Respondents also claimed against the Pro Forma Respondents damages for breach of a written agreement of the 19th September 1960 whereby the Pro Forma Respondents had agreed to permit the Respondents on payment of \$40,000 to enter on the said area of land and mine there subject to certain terms.

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p.7

pp.11-15

4. The Pro Forma Respondents filed a Defence on the 20th December, 1962. The Appellant filed a defence on the 11th February 1963, which was amended and re-delivered in November, 1963. By that defence, the Appellant denied the contract alleged in the Statement of Claim, raised certain grounds in law why any such contract as alleged was null and void, and pleaded to the acts of part performance alleged. In particular by Paragraph 5 of the Defence it was pleaded in relation to Paragraph 6(9) of the Statement of Claim that the Appellant admitted that the Respondents had constructed the said road but alleged that the Respondents did so on their own behalf. The Defence denied that the Respondents were entitled to any relief.

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pp.16-21

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LEGAL STUDIES
18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

5. The trial of the action was held in the High Court at Johore Bahru (Azmi J.) between the 10th November, and the 25th November 1963. At the opening the Pro Forma Respondents settled the Respondents' claim against them and by consent submitted to judgment for \$30,000 and certain further terms. The Pro Forma Respondents have since taken no further part in the proceedings.

p.25

10 6. At the trial the Respondents' case was based on the oral contract alleged and alternatively upon a claim for compensation under Section 71 of the Contracts Ordinance in respect of expenditure connected with the building of the said road at a cost of \$140,000. The alternative form of claim was made clear by counsel for the Respondents both in his opening speech and in his final speech, to which no objection was raised by counsel for the Appellant.

p.27 1.22

p.33 1.17

p.113 1.19

20 7. A considerable amount of evidence was given on behalf of both parties at the trial. The undisputed facts giving rise to the Respondents' claim were later summarised by Thomson L.P. in the judgment of Federal Court of Malaysia as follows:

pp.153-155

"This litigation arises from a somewhat complicated series of dealings in relation to certain mining land in the State of Johore.

30 On 10th April, 1957, Siow Wong Fatt who is the respondent to the present appeal applied to the Johore State Government for a prospecting licence in respect of an area of land near the Sungei Susur Rotan in the Mukim of Ulu Sungei Sedili, District of Kota Tinggi, in the State of Johore, which I shall call "the land". The licence, which took the form of a permit to search for iron ore in a forest reserve under the Forest Rules, was issued on 21st June, 1960, and on the 28th September, 1961, the State Government approved the grant to Mr. Siow of a mining lease in respect of the land.

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That lease was issued on 23rd January, 1962, and contains the usual provision that no transfer, sub-lease or other dealing in respect of the land should be permitted without the prior approval of the Ruler-in-Council. On the same day (23rd January 1962) a Mining Certificate (No.603) was granted in respect of a portion of the land.

It would appear that at first Mr. Siow had no intention of exploiting the land himself and on 17th June, 1958, he entered into an agreement with Tan Gek Piah and Tan Song Chiang who carried on business under the style of Tan Hai Mining Company ("Tang Hai"). Briefly, the effect of this agreement (as varied by a supplementary agreement on 2nd December, 1958) was that it purported to assign to Tang Hai such prospecting and mining rights as Mr. Siow might subsequently obtain in respect of the land and to execute in their favour a sub-lease of any mining lease he might obtain. In return Tang Hai was to pay the expenses of obtaining these rights and developing the mine on the land and to pay Mr. Siow a tribute of 50 cents a ton on the ore won. Then, on 3rd July, 1959, Tang Hai entered into an agreement with one Chan Sai Sow by which in consideration of a tribute of \$1.40 per ton (of which, of course, 50 cents a ton would have to be paid over to Mr. Siow) they purported to assign to him their rights under their agreement of the previous year with Mr. Siow.

A company was then formed, of which Mr. Chan was a director, for the purpose of exploiting the "rights and benefits" of Mr. Chan under his agreement of 3rd July, 1959, with Tang Hai. This was the Kota Mining Company Limited ("Kota") and on 4th December, 1959, Mr. Chan executed a Declaration of Trust to the effect that he held the rights he had obtained from Tang

Hai in trust for Kota. Subsequently Mr. Siow became a director of Kota at a date which is not altogether clear in the evidence but could not have been later than April, 1961.

10 Some time in 1960 Chua Ho San, said to be a wealthy miner of considerable experience, came to interest himself in the land. The evidence is silent as to his activities but he died during the year and on his death his widow and daughter formed a Company which was incorporated under the name of Susur Rotan Mining Limited in September, 1960. This Company ("Susur Rotan") is the appellant in the present appeal.

20 On 19th September, 1960, Susur Rotan entered into two agreements with Kota. By these agreements Kota purported to assign their rights in respect of the land to Susur Rotan in return for a tribute of \$4.80 a ton and the same day they were paid \$40,000 by way of an advance of consideration. It was probably at some time after this that Mr. Siow became a director of Kota.

30 Soon after their formation in September, 1960, Susur Rotan started to prepare for the exploitation of the mining rights which in view of the series of agreements which have been related they entertained reasonable hopes of obtaining in the more or less near future. And, in circumstances which were the subject of controversy at the subsequent trial, they spent a great deal of money mainly in connection with the making of a road to the mining land, which thitherto was only accessible by sea, which they hoped might
40 accelerate the granting of the necessary instruments by the State and would also, of course, be necessary for the future working of the mine."

8. Miss Chua, the daughter of the deceased

<u>Record</u>	Chua Ho San, and a director of the Respondents gave evidence in support of the oral contract, in the course of which she said that the Appellant had suggested the construction of the said road, which had been accepted by the Respondents after they had overcome the question of the sub-lease; the whole of the construction had been done directly by the Respondents, between April and December 1961. In cross-examination, she denied that the said road had not been built to help the Appellant obtain a mining certificate, and said that she had thought that the permit would be issued to the Appellant once the road was built.	10
p.37 1.21		
p.44 1.15		
pp.69-75	Chua Kim Yong had been in charge of the construction of the said road, and said that the Appellant had promised to grant the Respondents a sub-lease if the said road was built; during the building the Appellant had been present every day; he was then the owner of the mine and the witness used to consult him every day; the Appellant had praised the work done and had been satisfied with it.	20
p.94 1.12	9. The Appellant in his evidence denied that he had asked the Respondents to build the said road. In cross-examination the Appellant said that the said road was built for the Pro Forma Respondents; he agreed that he was at the time of the trial using the said road for his own mining operations, which was producing roughly 5,000 tons a month. He denied that Chua Kim Yong had consulted him during the road building, but said that he had often seen him in connection with the work on the mine.	30
p.100 1.29		
p.101 1.1		
p.104 1.6		
pp.117-133	10. Judgment in the High Court was given by Azmi J. on the 22nd January 1964, dismissing the action.	
	The learned Judge said that the only parts of the pleadings to which he needed to refer were paragraphs 5 and 6 of the Statement of Claim, which referred respectively to the oral agreement and the acts of part performance claimed by the Respondents. He then referred to the pleas in	40

the Defence, denying these claims, and also to paragraph 4A of the Defence, which raised an alternative ground of defence.

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10 The learned Judge stated some of the uncontested facts underlying the case, and then reviewed the evidence given by the witnesses during the hearing, without however making any particular findings in relation thereto. He stated that it was the Respondents case that the said road had been built as a result of an oral promise by the Appellant to grant a sub-lease. He considered the evidence relating to the alleged oral agreement and held that no such oral contract had been entered into. In regard to the acts of part performance set out in Paragraph 6 of the Statement of Claim, the Learned Judge held that they had been done by the Respondents on their own initiative in anticipation of obtaining a sub-lease from the Appellant pursuant to the various agreements in a letter to him from the Respondents' Solicitors dated the 27th March 1962.

p.267-268

The Respondents had failed to make out their claim and the suit would be dismissed with costs.

11. The Respondents appealed to the Federal Supreme Court of Malaysia, where the appeal was heard on the 17th and 18th September 1964. Ground 8 of the Notice of Appeal, dated the 18th March 1964 had specifically raised the issue that the learned trial Judge had failed to award the Respondents compensation under Section 71 of the Contracts Ordinance.

pp.139-153
p.138 l.7

12. The judgment of the Federal Court of Malaysia (Thomson L.P. Wee Chong Jin C.J., and Tan Ah Tah F.J.) was delivered by Thomson L.P. on the 18th February 1965.

pp.153-167

40 The learned Judge began by stating the history of the case and its surrounding facts, as set out in Paragraph 7 above. He then considered the evidence relating to the oral agreement claimed by the Respondents to have

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been made about the time of the Chinese New Year (February 15th) 1961. As the trial Judge had not expressed any views as to the relative credibility of the witnesses, it was open to the Federal Court to consider the whole question in the light of the recorded evidence. After making that review of the evidence, the learned Judge held that there was a strong balance of probability against there having been any oral agreement of the sort alleged by Miss Chua, and that ground of appeal failed.

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13. The second part of the appeal related to the question of compensation under Section 71 of the Contracts Ordinance. That Section, which was the same as Section 70 of the Indian Contract Act, went far beyond anything in English Law. After considering some observations by the Privy Council on the Section on the need to distinguish such provisions from English law, the learned Judge turned to the relevant facts. The Respondents had spent a great deal of their own money on things that were highly desirable for the profitable development of the mine. The money had been spent "for" the Appellant since at the relevant time only he had any standing in relation to the land, and the money had not been spent gratuitously. The learned Judge went on:

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"It was not spent gratuitously because Susur Rotan clearly had no intention that anybody else should have the benefit of it for nothing. And the person who has enjoyed the benefit is Mr. Siow. The money had to be spent by somebody to transform Mr. Siow's prospects and then his lease into a profitable mining proposition, it had to be spent by somebody at some time, and it seems a matter of ordinary common sense that the fact that it had been spent and did not have to be spent in future must have affected the nature of Mr. Siow's subsequent arrangements with Siow Wong Fatt Mining Company Limited, and Kota. In the circumstances it seems clear that Mr. Siow must pay compensation under Section 71."

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10 The learned Judge then dealt with an argument on behalf of the Appellant that no claim for compensation had been pleaded. He described the point as technical and pointed out that counsel had made the claim twice in the trial Court. The point failed because there was not a true analogy between compensation under Section 71 and a claim for special damages under English law. After referring to several Indian authorities, which supported his view, he concluded that the Respondents were entitled to compensation equivalent to all the moneys spent by them in relation to the Appellant's mining land, to be ascertained, in default of agreement, by the Registrar.

The Judgment appealed from was accordingly varied, and the Appellant ordered to pay half the Respondents' costs.

p.168

20 14. On the 20th August 1965 the Appellant was granted final leave to appeal to His Majesty the Yang Di-Pertuan Agong.

30 15. The Respondents respectfully submit that the judgment of the Federal Court of Malaysia was correct and should be upheld. The Respondents do not seek in this appeal to challenge the conclusion that there was no oral agreement between Miss Chua, on behalf of the Respondents, and the Appellant. Nevertheless, the Respondents are entitled to the compensation described by the learned President under Section 71 of the Contracts Ordinance. It is respectfully submitted that the facts of the present case and the expenditure incurred by the Respondents in relation to the Appellants land in particular relating to the said road fall entirely within the said Section 71. The authorities in relation to the identical Section 70 of the Indian Contracts Act are consistent in supporting the submission that the Respondents are entitled to such compensation.

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16. It is further submitted that the Respondents are not debarred from compensation on the ground that no specific claim was made

Record

therefor in the Statement of Claim. Such a claim is not analogous to a claim for special damages in English law. The facts supporting the claim were fully pleaded; and even though the contract alleged was not upheld by the Courts below, the Respondents alleged and proved every material matter upon which they were entitled to compensation. It is further submitted that no objection was taken on behalf of the Appellant at the trial to the claim for compensation then put forward.

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17. The Respondents, therefore, respectfully submit that this appeal should be dismissed with costs, and that the judgment of the Federal Court of Malaysia should be affirmed, for the following, among other

R E A S O N S

1. BECAUSE the Respondents are entitled to compensation under Section 71 of the Contracts Ordinance;
2. BECAUSE the Respondents did work for the Appellant who has enjoyed the benefit thereof.
3. BECAUSE the said work was not done gratuitously.
4. BECAUSE the Respondents are not debarred from claiming such compensation in these proceedings.
5. BECAUSE the Respondents were not bound to make a particular claim in their pleadings for compensation.
6. BECAUSE of the other reasons in the judgment of the Federal Supreme Court.

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MERVYN HEALD.

No. 34 of 1965

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MAYALSA

(APPELLATE JURISDICTION)

BETWEEN:-

SIOW WONG FATT Appellant

- and -

SUSUR ROTAN MINING
LIMITED Respondents

- and -

KOTA MINING COMPANY
LIMITED Pro Forma
Respondents

C A S E

FOR THE RESPONDENTS

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