

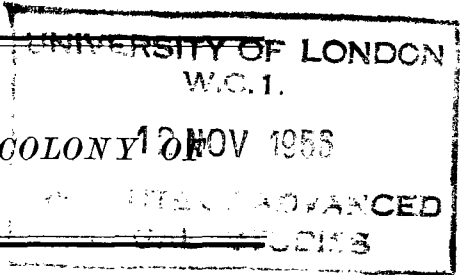
47. 1949

No. 79 of 1947.

# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE.



APPELLANTS CASE

BETWEEN

31010

TAN TECK NEO (Defendant)

- Appellant

AND

1. GEORGE TAN (Defendant)

2. LEE CHIM TUAN (Plaintiff)

3. LEE PANG SOO (Plaintiff)

4. TAN SOON KENG (Plaintiff)

5. S. Q. WONG (Plaintiff) - - Respondents.

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## Case for the Appellant.

RECORD.

1. This is an Appeal by leave of the Court of Appeal of the Colony of Singapore from an Order of the Court of Appeal of the Colony of Singapore dated 8th February 1947 dismissing an appeal by the Appellant from an Order of the High Court of the Colony of Singapore dated 9th August 1946 made upon the hearing of an Originating Summons for the determination of various questions arising in the administration of the trusts of the Will and Codicil of Lee Choon Guan deceased.

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p. 18.  
p. 7.  
p. 1.

2. The facts are not in dispute and the only question in issue in these proceedings is that set out in paragraph 2 of the Originating Summons (as amended pursuant to an order dated 11th June 1946 hereinafter mentioned) namely whether upon the true construction of the said Will and Codicil certain annuities bequeathed by Clause 12 of the Will as modified by Clause 7 of the Codicil and certain annuities bequeathed by Clause 4 of the Codicil should continue to be paid after the date of distribution therein mentioned.

p. 4.

30 3. The facts shortly stated were as follows :—

Lee Choon Guan (hereinafter called "the Testator") died at Singapore on the 27th August 1924. Probate of his Will and Codicil dated respectively 11th March 1913 and 16th April 1919 was granted by the Supreme Court at Singapore on 6th July 1925 to Lee Pang Seng, the Respondent Lee Chim Tuan, Choa Eng Wan and Lee Pang Chuan. The Respondents Lee Chim Tuan, Lee Pang Soo, Tan Soon Keng and S. Q. Wong are the present trustees of the said Will and Codicil.

The Testator left him surviving a widow namely the Appellant Tan Teck Neo and a number of concubines among whom were Ang Lee Neo (alias Ah Lee) Wee Bee Neo (alias Seah Lew) Fan Ah Gan and Tan Chwee Neo all of whom are still living. The Testator also left him surviving a number of children, of whom Lee Poh Neo was one, and other remote issue of whom the Respondent George Tan was one.

The Testator's estate was more than sufficient, after payment of debts, funeral and testamentary expenses, to provide for all the legacies, annuities and bequests contained in his said Will and 10  
Codicil.

4. The following are the material provisions of the Will and Codicil of the Testator :—

(A) Clause 6 of the Will was as follows :—

p. 24.

“ I direct my Trustees, as soon as possible after my death  
“ to purchase out of such part of my real and personal estate as  
“ they may think fit an annuity of Dollars Four hundred and  
“ eighty (\$480) payable in monthly instalments of Dollars Forty  
“ (\$40) each for my concubine Ah Lee, at the date of the execution  
“ of this my Will residing at Majenta Cottage, Killiney Road, 20  
“ Singapore, during her life.”

p. 30.

(B) Clause 4 of the Codicil was as follows :—

“ I hereby revoke Clause 6 of my Will and in place thereof  
“ I direct my Trustees to pay the sum of Dollars One hundred  
“ and twenty (\$120) each per month during their respective  
“ lives to Ang Lee Neo (otherwise known as Ah Lee) Wee Bee  
“ Neo (otherwise known as Seah Lew) Fan Ah Gan and Tan  
“ Chwee Neo. Such payments shall be apportioned equally  
“ between the two funds referred to in clause 11 of my said Will.  
“ I further bequeath to the presently expected child of Tan 30  
“ Chwee Neo a legacy of Dollars Fifteen thousand (\$15,000)  
“ if he or she should survive me.”

p. 25.

(C) By Clause 11 of the Will the Testator gave all the residue of his real and personal estate not thereby or by any Codicil thereto otherwise disposed of to his trustees and directed them to collect the income and rents thereof and to divide such income and rents into two separate funds consisting as to one fund of the income derived from the Testator's house or from other real or leasehold property belonging or mortgaged to the Testator and as to the other part of the income from the Testator's other investments. By the 40  
said clause the Testator gave further directions as to the payment of outgoings and expenses and as to any change of investment.

(D) Clause 12 of the Will was as follows :—

pp. 25-26.

“ After paying all necessary and proper outgoings and  
“ retaining in hand so much as they may think desirable in order  
“ to provide for assessments repairs and emergencies and for  
“ equalization of the monthly divisions hereinafter referred to  
“ I direct my trustees to pay to my wife Tan Teck Neo during

“ her life (so long as she shall remain my widow) the sum of One  
 “ thousand dollars (\$1,000/-) per month but if she shall marry  
 “ again the said sum of One thousand dollars (\$1,000) per month  
 “ shall be reduced to One hundred dollars (\$100) per month.  
 “ Thereafter I direct my Trustees to pay to Lee Chim Tuan in  
 “ addition to the remuneration to which he may be entitled as a  
 “ Trustee the sum of One hundred dollars (\$100) per month  
 “ during his lifetime. The monthly payments set out in this  
 “ clause shall be paid as to one half from out of the income of my  
 10 “ house and other real and leasehold property and mortgages  
 “ and as to the other half by the income from my other  
 “ investments. The first of such monthly payments shall be  
 “ made one month after my death ”.

(E) Clause 7 of the Codicil was as follows :—

p. 31.

“ In lieu of the monthly payments of Dollars One thousand  
 “ (\$1,000) bequeathed to my said wife Tan Teck Neo (reducible to  
 “ Dollars One hundred (\$100) per month if she should remarry)  
 “ I bequeath to my said wife a monthly payment of Dollars  
 20 “ Two thousand (\$2,000) (irrespective of her remarriage) and in  
 “ lieu of the monthly payment of Dollars One hundred bequeathed  
 “ to Lee Chim Tuan by the said clause of my said Will I bequeath  
 “ a monthly payment of Dollars Two hundred (\$200). Such  
 “ monthly payment shall be apportioned equally between the  
 “ two funds referred to in Clause 11 of my said Will ”.

(F) By Clauses 13 and 14 of the Will the Testator disposed of  
 the rest of the income of his house and leasehold property and  
 mortgages and of his other investments respectively upon trusts  
 for the benefit of his children named in Clause 13. Clauses 15 to 19  
 contained ancillary provisions for the benefit of the issue and widows  
 of such children. Then by Clause 24 the Testator provided as  
 follows :—

p. 26.

pp. 26-27.

p. 28.

“ Upon the death of the last survivor of my children referred  
 “ to in clause 13 hereof, I direct that my Trustees shall sell call  
 “ in and convert into money if they in their absolute discretion  
 “ think fit the whole of my said real and personal estate or such  
 “ part thereof as shall not consist of money or at their absolute  
 “ discretion make such partition or appropriation of the property  
 “ and investments (or any part thereof) as they may think fit  
 40 “ and shall divide the whole of my residuary real and personal  
 “ estate among the children then living and the issue of children  
 “ then dead of my children referred to in clause thirteen (13)  
 “ hereof (hereinafter called the “ residuary legatees ”) per stirpes  
 “ in the proportion in which my said children or their issue shared  
 “ in the income thereof but so that the members of each stirpes  
 “ shall inherit as between themselves in the proportion of two (2)  
 “ shares to a male and one (1) share to a female, and in case any  
 “ one or more of the residuary legatees shall have died leaving  
 “ issue such issue shall take the share which his or her or their  
 50 “ parent or ancestor would have taken if he or she, had lived to  
 “ attain a vested interest and if more than one in the proportion  
 “ of two (2) shares to a male and one (1) share to a female ”.

p. 31.

(G) Clause 12 of the Codicil was as follows :—

“ In lieu of the date of distribution being the date of the death of the last survivor of my children referred to in Clause 24 of my said Will I direct that the date of distribution shall be twenty one years after the date of my death ”.

5. The Appellant contends that the annuities bequeathed by Clause 12 of the Will as modified by Clause 7 of the Codicil and also the annuities bequeathed by Clause 4 of the Codicil are all payable during the whole of the remainder of the lives of the respective annuitants.

p. 1.

6. On the 23rd May 1946 the Respondents Lee Chim Tuan, Lee Pang Soo, Tan Soon Keng and S. Q. Wong as Trustees of the said Will and Codicil instituted proceedings against Lee Poh Neo, the Respondent George Tan and the Appellant by Originating Summons whereby the question was raised whether upon the true construction of the said Will and Codicil the hereinbefore mentioned annuities should continue to be paid after the date of distribution therein mentioned.

p. 4.

7. By an Order of the High Court of Singapore dated 11th June 1946 the Appellant was appointed to represent the annuitants named in Clauses 4 and 7 of the Codicil and the Respondent George Tan was appointed to represent all persons interested in opposing the claim of the said annuitants.

p. 7.

8. The Summons was heard before the High Court of Singapore on the 30th and 31st July 1946 and on 9th August 1946 an order was made declaring that the annuities bequeathed by Clause 12 of the Will as modified by Clause 7 of the Codicil and the annuities bequeathed by Clause 4 of the Codicil ceased to be payable after the date of distribution.

p. 18.

9. The Appellant appealed from the said Order to the Court of Appeal of the Supreme Court of the Colony of Singapore and the Appeal was heard on the 11th December 1946 before Carey A/C. J. and Jobling and Brown JJ. who on 8th February 1947 ordered that the Appeal be dismissed and that the costs of all parties be taxed as between Solicitor and Client and paid out of the Testator's estate.

p. 6, ll. 15-41.

10. The reasons given by the High Court were that the annuities in both cases were to be made [sic] out of the income in the hands of the trustees ; that such income ceased on the date of distribution ; and that when such income ceased the annuities must cease too, although expressed to be for life.

pp. 10-18.

11. The Court of Appeal based their judgments upon the same reasoning as the High Court.

p. 13, ll. 8-19.

The Acting Chief Justice pointed out that clauses 4 and 6 of the Codicil expressly revoked Clauses 6 and 8 respectively of the Will and substituted other provisions and held that Clauses 6 and 8 of the Will were thereby entirely eliminated, whereas by Clause 7 of the Codicil the Testator merely substituted certain provisions for those in Clause 12 of the Will so that the said clause of the Will, and that of the Codicil altering it, have to be construed together.

After referring to the case of *Foster v. Smith* 1 Phillips 628 the Acting Chief Justice stated that the principle applied in that case seemed to him to be in point in the present case and went on to say :—

10 “ In the present case the testator specifically directed that the  
 “ monthly payments to his wife under Clause 12 of the Will as  
 “ amended by Clause 7 of the Codicil and those under Clause 4 of  
 “ the Codicil were to be apportioned between the two funds of  
 “ income provided for in Clause 11 of his Will. Such funds were  
 “ more than ample to satisfy the monthly payments, and the  
 “ indications are that the testator did not contemplate or intend  
 “ that the latter should form a charge on corpus. When, by his  
 “ direction, those funds ceased to exist the monthly payments also  
 “ ceased.” p. 15, ll. 6-13.

20 12. Jobling J. in his judgment, after stating that Clause 4 of the  
 Codicil specifically revoked Clause 6 of the Will and disclosed different  
 intentions of the Testator, held that the annuities payable under Clause 12  
 of the Will as modified by Clause 7 of the Codicil and also the annuities  
 payable under Clause 4 of the Codicil are a charge on the income of the  
 residuary trust estate ; that on the date fixed for distribution of the  
 residuary trust estate that estate vested in the beneficiaries and the income  
 therefrom ceased ; and that with the failure of the income the annuities  
 payable out of it must cease too. pp. 15-17.  
 p. 17, ll. 11-17.

13. The judgment of Brown J. is very short and expressed the same  
 conclusions as the Acting Chief Justice and Jobling J. pp. 17-18.

14. On the 21st March 1947 the Appellant presented to the Court of  
 Appeal a Petition for leave to appeal to His Majesty in Council and on the  
 2nd April 1947 the Court of Appeal granted the Appellant such leave  
 subject to security for costs. p. 19.  
 p. 21.

30 By an Order of the Honourable Mr. Justice Brown dated 8th September  
 1947 the Appellant's appeal to His Majesty in Council was admitted. p. 22.

15. The Appellant humbly submits that the order of the Court of  
 Appeal was erroneous and should be reversed and that the Order of the  
 High Court so far as it declared that the annuities bequeathed by Clause 12  
 of the Will as modified by Clause 7 of the Codicil and the annuities  
 bequeathed by Clause 4 of the Codicil cease to be payable after the date of  
 distribution was erroneous and should be reversed and that in lieu thereof  
 it should be declared that the said annuities continue to be payable during  
 the remainder of the lives of the respective annuitants for the following  
 among other

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## REASONS.

- (1) BECAUSE upon the true construction of the Will and  
 Codicil when read as a whole it is clear that the intention  
 of the Testator was to grant the annuities bequeathed by  
 Clause 12 of the Will and by Clause 4 of the Codicil for  
 the whole of the respective lives of the annuitants  
 respectively and not for any shorter period.

- (2) BECAUSE Clause 12 of the Will as amended by Clause 7 of the Codicil expressly bequeaths to the Appellant an annuity “ during her life ” and to Lee Chim Tuan an annuity “ during his lifetime ” and there is no express provision in the Will or Codicil cutting down such bequests.
- (3) BECAUSE the said annuity to the Appellant is a first charge upon the income of the Testator’s estate after payment of all necessary and proper outgoings and expenses and the said annuity to Lee Chim Tuan a 10 second charge thereon ranking next after the Appellant’s annuity and the direction in Clause 12 of the Will “ to pay such annuities out of ” and in Clause 7 of the Codicil to “ apportion ” the same “ equally between ” the funds therein mentioned is merely an administrative direction which does not affect the rights of the annuitants.
- (4) BECAUSE the annuity bequeathed to Ah Lee during her life by Clause 6 of the Will is by that Clause charged upon the whole of the Testator’s estate and the annuities 20 bequeathed by Clause 4 of the Codicil are expressed to be in place of (i.e. in substitution therefor) the bequests in clause 6 of the Will and accordingly are also charged upon the whole of the Testator’s estate.
- (5) BECAUSE the annuities bequeathed by Clause 4 of the Codicil are expressly directed to be paid during the respective lives of the annuitants and there is no provision in the Codicil cutting down such bequests.
- (6) BECAUSE the direction in Clause 4 of the Codicil that the payments in respect of the said annuities shall be 30 apportioned equally between the funds referred to in Clause 11 of the Will is merely an administrative direction which does not affect the rights of the annuitants.
- (7) BECAUSE what is referred to in Clause 12 of the Codicil as the “ date of distribution ” is not upon the true construction of the Will and Codicil strictly a “ date of distribution ” at all but merely a “ vesting date ” and any actual distribution can only be made subject to the rights of the surviving annuitants. 40
- (8) BECAUSE the judgments of both the Court of Appeal and the High Court of the Colony of Singapore were wrong and ought to be reversed.

ANDREW CLARK.

V. M. C. PENNINGTON.

**In the Privy Council.**

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**ON APPEAL**  
*from the Court of Appeal of the Colony  
of Singapore.*

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**BETWEEN**  
**TAN TECK NEO** - - *Appellant*

**AND**

**GEORGE TAN and Others** - *Respondents.*

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**Case for the Appellant.**

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