

PC  
1954-64

7, 1957

No. 50 of 1954.

In the Privy Council

On Appeal from The Court of Appeal of  
Sarawak, North Borneo and Brunei

UNIVERSITY OF LONDON  
25 FEB 1958  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

49809

BETWEEN THE CHARTERED BANK OF INDIA,  
AUSTRALIA & CHINA ... (*Defendants*) *Appellants*

AND

WEE KHENG CHIANG ... (*Plaintiff*) *Respondent*.

Case for the Appellants

RECORD.  
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10 1. This is an appeal from a judgment of the Court of Appeal of Sarawak, North Borneo and Brunei dated the 30th January, 1953, which allowed the Respondent's appeal from a judgment of the High Court of Sarawak, North Borneo and Brunei given at Kuching and dated the 5th July 1952. The Appellants are the original Defendants, the Respondent having brought an action in the High Court against them claiming payment of a sum of \$72,792.44 with interest thereon from the 7th March 1950 at 6% per annum and costs.

20 2. The appeal raises a question as to the effect at common law of enemy occupation of territory belonging to or under the protection of the Crown upon the authority of an agent in such territory when his principal is absent and also questions as to the construction of certain sections of the Debtor and Creditor (Occupation Period) Ordinance of the Colony of Sarawak, No. 18 of 1949.

3. At all material times prior to the 24th December 1941 Sarawak was an independent state enjoying the protection of the British Crown, who controlled its foreign policy and was responsible for its defence. From the 24th December 1941 until the 11th September 1945 the p. 51, l. 25.

RECORD.  
— territory of Sarawak, including its capital city Kuching, was occupied by the Japanese, then at war with the British Crown. In 1946 Sarawak became, and remains today, a colony of the British Crown.

p. 12. 4. The Respondent at all material times prior to the occupation of Sarawak by the Japanese carried on a banking business in Kuching, under the name and style of the "Bian Chiang Bank". The Appellants are a company incorporated under Royal Charter in England who had at all material times prior to the occupation carried on the business of bankers in Kuching by means of a branch office established there. At close of business on the 23rd December 1941 the Respondent had an account in the name of the Bian Chiang Bank at the Appellants' branch office in Kuching, and that account was in credit in the sum of \$242,641.48. The Respondent was not then present in Sarawak. He was in Singapore, where he remained until he returned to Kuching in 1945. Singapore was occupied by the Japanese in February 1942. 10

p. 17, l. 5.  
pp. 62-63. 5. On the 24th December 1941 the Bian Chiang Bank was closed down and prevented from carrying on any banking business by the Japanese authorities. The Appellants had no representative functioning in Sarawak during the Japanese occupation and the Japanese "froze" all credit balances of customers of the Appellants whose accounts were kept at their Kuching branch office. 20

p. 17.  
pp. 62-63. 6. During the occupation neither the Bian Chiang Bank nor the Appellants carried on any banking business in Sarawak, but a Japanese organisation known as the Yokohama Specie Bank was appointed by the Japanese authorities to act as the common liquidator of a number of banks, including the Bian Chiang Bank and the Appellants. The liquidator thus appointed (hereinafter called "the common liquidator") did no more than recover certain debts owing to the banks until the establishment by the Japanese of the Kyoei Bank on the 10th October 1944. 30

p. 12, l. 10.  
p. 66.  
p. 19.  
p. 40, l. 30.  
p. 66. 7. On the 16th October 1940, i.e. before the entry of Japan into the War, the Respondent addressed a letter to the Appellants informing them that in future Mr. Wee Hian Teck had his authority to sign all cheques drawn on the Appellants' branch office at Kuching on behalf of the Bian Chiang Bank. Wee Hian Teck was the Respondent's son and in fact used the authority so conferred upon him on only one occasion, namely on the 10th October 1944, when he signed a bearer cheque drawn on the Appellants for a sum of \$72,792.40, which was the sum claimed in the action.

8. The circumstances in which that cheque came to be signed are material to the determination of this appeal. From the 24th December 1941, when the occupation began, until the 10th October 1944, when the Kyoei Bank opened, no banking business was transacted in Kuching. From the 10th October 1944 until the occupation ended on the 11th September 1945, banking business was transacted by the Kyoei Bank.

RECORD.

pp. 17-18.

pp. 62-63.

9. The Kyoei Bank was a Japanese joint stock company established by an order printed in the record and there described as "Bank Order". Paragraph 3 of the Order provided that the capital of the Bank should be six hundred thousand dollars divided into four thousand ordinary shares and eight thousand deferred shares, the proposed value of each share being fifty dollars. Paragraph 27 of the Order provided that the Kyoei Bank should amalgamate with the Bian Chiang Bank, the Kwong Lee Bank and the WahTat Bank and that there should be allotted to the shareholders of these three Chinese Banks eight thousand paid up deferred shares. Paragraph 28 provided that in case a shareholder of the three banks should be deemed an enemy, or if his address was unknown the shares allotted to him should be taken charge of by the Chief Custodian of enemy property. Paragraph 29 provided that the Bank should take over the claims and liabilities of the three banks.

p. 63.

p. 108.

10. At the date of the amalgamation of the three Chinese Banks with the Kyoei Bank, the Bian Chiang Bank had claims against pre-occupation customers to whom it had lent money of \$734,917.13 and it had liabilities to pre-occupation customers of \$986,765.18. As stated in paragraph 9, these claims and liabilities were taken over by the Kyoei Bank.

pp. 97,  
101-102.

11. The working capital of the Kyoei Bank was provided by the three Chinese Banks. The contribution of the Bian Chiang Bank was \$346,178.91, made up of \$273,386.47 collected during the occupation by the liquidator of the Bian Chiang Bank from that Bank's debtors and of a sum of \$72,792.44 provided in the manner described in paragraph 12 of this Case.

pp. 97-98.

12. In September 1944, a month before the Kyoei Bank was opened, the Japanese issued notices to the effect that anyone who held a pre-occupation credit balance with the Appellants' branch office might withdraw 30% of that balance subject to compliance with certain formalities. In October, 1944, Lim Thian Liang, a cashier in the Bian Chiang Bank and then working for the common liquidator, was asked by Lim Seong Khan (the newly-appointed Vice-President of the Kyoei Bank) to draw a cheque upon the Appellants for 30% of the Bian Chiang

p. 99.

p. 15.

RECORD. Bank's credit balance with the Appellants. Lim Thian Liang was  
 pp. 15, 19. unwilling to sign the cheque, but asked Wee Hian Tek to do so. Wee  
 Hian Tek then drew on the Appellants a cheque dated the 10th October,  
 1944, payable to the Bian Chiang Bank or bearer for \$72,792.40. This  
 p. 63. cheque was met and its proceeds were credited by the common liquidator  
 to the Bian Chiang Bank. Thereafter the amount of the credit was  
 pp. 103-104. transferred from the books of the Bian Chiang Bank to those of the  
 Kyoei Bank. The Balance sheet of the Kyoei Bank when it commenced  
 trading credited the Bian Chiang Bank with shares to the value of  
 \$157,700 and with a suspense account to the amount of \$238,452.13. 10

13. The Kyoei Bank conducted banking business from the 10th  
 October, 1944, until the end of the occupation, and during this time  
 collected moneys owed to the Bian Chiang Bank by its pre-occupation  
 customers and paid money owed by the Bank to such customers. A  
 p. 114. summary of these collections and payments is contained in Appellants'  
 Exhibit 10. During this period the payments out of the moneys owed  
 by the Bian Chiang Bank to its pre-occupation customers were about  
 \$675,000 and on the 11th September, 1945, when the occupation ended,  
 exceeded by \$151,802.36 the collections of moneys owed by such  
 customers. On the 30th January, 1946, the excess of payments out 20  
 over collections was \$281,978.65.

14. On the 1st February, 1950, the Debtor and Creditor (Occupation  
 Period) Ordinance (No. 18 of 1949) came into effect "to regulate the  
 relationship between debtors and creditors in respect of debts incurred  
 prior to and during the period of the enemy occupation of Sarawak".  
 The sections relevant to the present appeal are:—

S.4. (1) Subject to the provisions of subsection (2) of  
 this section, where any payment was made during the occupation  
 period in Sarawak currency or occupation currency by a debtor  
 or by his agent or by the Custodian or a liquidation officer 30  
 purporting to act on behalf of such debtor, to a creditor, or  
 to his agent or to the Custodian or a liquidation officer  
 purporting to act on behalf of such creditor, and such payment  
 was made in respect of a pre-occupation debt, such payment  
 shall be a valid discharge of such pre-occupation debt to the  
 extent of the face value of such payment.

(2) (a) Where the acceptance of such payment in  
 occupation currency was caused by duress . . . such payment  
 shall be revalued in accordance with the scale set out in the  
 Schedule to this Ordinance and shall be a valid discharge of 40  
 such debt only to the extent of such revaluation.

\* \* \* \* \*

(5) For the purposes of this section " duress " means force, injury or detriment applied or caused, or threat of force, injury or detriment offered, to the creditor or debtor, as the case may be, or his agent or another person by the debtor or creditor, as the case may be, or his agent or an official of, or person acting on behalf of, the Occupying Power.

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In this subsection " threat of force, injury or detriment " includes a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the creditor or his agent to accept payment in occupation currency or of the refusal of the debtor to make payment, as the case may be.

\* \* \* \* \*

S.7. (1) A transfer of money by a customer to another account of that customer in the same bank or the renewal of a fixed deposit from time to time in the same bank shall not be deemed to be a payment by the bank to the customer for the purposes of this Ordinance.

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(2) Subject to the provisions of subsection (3) of this section, a payment by a bank to a Custodian or liquidation officer of any pre-occupation credit balance or part thereof of a customer shall not be deemed to be a payment to the customer for the purposes of this Ordinance.

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(3) Where during the occupation period the whole or a percentage of the pre-occupation balance of the account of any person with a bank was credited to an account of that person with a Japanese bank or the Kyoei Bank and the account of such person with the first-mentioned bank was debited accordingly, such debit shall be deemed to be a payment to the customer unless he can prove that he did not draw the whole or any portion of the amount so credited to him, or that he obtained no benefit from such credit or part thereof, and in any such case—

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(a) if the pre-occupation balance or the percentage thereof, as the case may be, was credited to such person's account with the Japanese bank or the Kyoei Bank, as the case may be, otherwise than at the request or with the consent of such person or his agent, such debit, except to the extent of the face value of any amount which such person has failed to prove was not drawn by him or to the extent that he has failed to prove that he obtained no benefit from such credit, shall be cancelled and shall not be deemed to be a payment to the customer for the purposes of this Ordinance ;

RECORD.  
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(b) if the pre-occupation balance or the percentage thereof, as the case may be, was credited to such person's account with the Japanese bank or the Kyoei Bank, as the case may be, at the request or with the consent of such person or his agent, one half of the amount which, if paragraph (a) of this sub-section applied, would be reinstated to the credit of such person in the first-mentioned bank shall be reinstated to the credit of such person in such bank.

(4) In this section "the Kyoei Bank" means the 10 bank bearing that name constituted by enactment of the Occupying Power and registered in the office of the Shiho Kacho as an incorporated company on or about the 10th day of October, 1944.

\* \* \* \* \*

15. The Appellants' case may be summarized thus:—

(i) Wee Hian Tek was the Respondent's agent to draw the cheque dated the 10th October, 1944.

(ii) When the liquidation officer honoured this cheque, this was a payment made by a liquidation officer to a "creditor or to his agent or a liquidation officer purporting to act on behalf of such creditor" within the meaning of section 4(1) of the Ordinance, and was under the provisions of the same sub-section a valid discharge of the pre-occupation debt to the extent of the face value of that payment. 20

(iii) The case fell exclusively within section 4(1) of the Ordinance and was not in any way affected by the provisions of section 7(2).

(iv) Alternatively, if the case fell within section 7(2), it also fell within section 7(3) on the ground that a percentage (30%) of the pre-occupation balance of the Respondent's 30 account with the Appellants had been credited to an account of the Respondent with the Kyoei Bank, and the Respondent's account with the Appellants had been debited accordingly.

(v) If the case fell within section 7(3), then the debit of the Respondent's account with the Appellants was a discharge of that account except to the extent to which the Respondent proved that he had obtained no benefit for his credit with the Kyoei Bank.

(vi) The Respondent had failed to prove that he had not obtained benefit from that credit. He had in fact obtained benefit for the whole of the credit by reason of the discharge by the Kyoei Bank of the debts owed by him to his pre-occupation creditors and by reason of the shares in that Bank allotted to him. RECORD.

10 (vii) If, notwithstanding the Appellant's contentions in (v) and (vi) above, it were held that it was unnecessary for the Respondent to prove that he had obtained benefit, or if it were held that the Respondent had proved that he had not obtained benefit from any part of that payment, even so the Appellants were entitled to debit the Respondent with half the amount of the credit, on the ground that the credit had been made "at the request or with the consent" of the Respondent's agent within the meaning of section 7(3)(b).

16. The Trial judge, Mr. Justice Fletcher Rogers, negatived the Respondent's contention that the agency of Wee Hian Teck had been abrogated, and found that the transfer of the sum claimed by the common liquidator from the Respondent's account with the Appellants to the books of the Bian Chiang Bank was done upon the authority of the bearer cheque signed by Wee Hian Teck, and that there was no duress. Accordingly, he held that the transfer upon such authority was a valid payment to the creditor and a sufficient discharge to the debtor to the extent of the face value of the cheque within s.4(1) of the Ordinance. p. 8-9.

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17. The Court of Appeal (the Respondent's Counsel having challenged the adequacy of the notes of evidence before it) decided "to rehear the whole case" and by agreement with the parties there was in effect a re-trial, all the evidence being called afresh. p. 11.

18. The leading judgment in the Court of Appeal was delivered by Smith, Acting Chief Justice. His reasons may be summarized thus:— p. 51.

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(i) The transfer of the credit was made by the Japanese authorities in pursuance of their policy to establish the Kyoei Bank. p. 53.

(ii) Wee Hian Tek had not taken the initiative and drawn the cheque voluntarily. The drawing of the cheque could be disregarded. pp. 53-54.

(iii) Therefore the case must be governed solely by section 7(3). p. 54.

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p. 55-56.

(iv) A further reason for holding that the case was governed solely by section 7(3), and not by section 4, was that the Respondent during the war was in Singapore, which was occupied by the Japanese, and that the Courts of Sarawak (which was also occupied by the Japanese) would have been bound to treat the Respondent as an enemy. Therefore the contract of agency between Wee Hian Tek in Sarawak and the Respondent in Singapore was abrogated by operation of law.

pp. 54-55.

(v) On the true construction of section 7(3), the debit in the Appellants' accounts could not operate as a discharge if the Respondent could prove *either* that he had not drawn the whole of the amount credited to his account with the Kyoei Bank *or* that he had obtained no benefit from the credit. 10

p. 55.

(vi) The Respondent had not drawn any part of the sum credited to his account with the Kyoei Bank.

p. 55.

(vii) Therefore the debit must be cancelled either in whole under section 7(3)(a) or as to half under section 7(3)(b).

pp. 55-56.

(viii) To come within section 7(b) there must be a consent by the agent to the debit. Wee Hian Tek had acquiesced but not consented. Therefore the case came within section 7(3)(a), and the Appellants were not entitled to debit the Respondent with any part of the amount. 20

**19.** *As to paragraph 18(i), (ii) and (iii).*

If, by his finding that Wee Hian Tek did not act "voluntarily", the Acting Chief Justice meant to hold that he acted under duress, it is submitted that there was no evidence to support the finding. If the finding is not one of duress, then it is submitted that it can have no bearing on the issues between the Appellants and the Respondent. Even if the finding were one of duress and if it could be supported on the evidence, the only consequence under section 4(2) of the Ordinance would be that the Respondent would be entitled to claim a revaluation of the payment made by the liquidator in honouring the cheque, and the Respondent has never claimed a revaluation. Further, even if the cheque were disregarded, there was still a payment by a liquidation officer purporting to act on behalf of a debtor to a liquidation officer purporting to act on behalf of a creditor within the meaning of section 4(1). 30

**20.** *As to paragraph 18(iv).*

It is submitted that there was no ground for holding that the Courts of Sarawak during the occupation of that country by the Japanese would have treated the Respondent as an enemy while he was living in 40



Singapore, which was also occupied by the Japanese. Singapore and Sarawak during the Japanese occupation were part of the same Japanese occupied territory. A resident of Singapore was not an "enemy" in Sarawak, and a resident of Sarawak was not an "enemy" in Singapore.

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**21.** *As to paragraph 18(v).*

It is submitted that the Acting Chief Justice erred in his construction of section 7(3) of the Ordinance. Upon its true construction the debit of the Respondent's account with the Appellants operates as a discharge of the debit if *either* the Respondent drew the sum credited to his account with the Kyoei Bank *or* if he failed to prove that he had received no benefit from that credit.

**22.** *As to paragraph 18(viii).*

It is submitted that the agent's act in drawing the cheque was a "request" or a "consent" within the meaning of section 7(3)(b).

**23.** Both Lascelles J. and Blagden J. agreed with the judgment of the Acting Chief Justice. Blagden J. gave as a reason for denying the Respondent interest on the sum claimed that there was evidence that the Respondent had obtained benefit from the sum credited to him at the Kyoei Bank by its use to discharge part of his obligations to his customers.

p. 57.  
pp. 58, 59.

**24.** The Appellants submit that this appeal should be allowed and the judgment of the High Court at Kuching be restored for the following (among other)

RECORD.

## REASONS

- (1) Because the payment made by the liquidator in honouring the cheque drawn by Wee Hian Tek was a payment made "by a liquidation officer purporting to act on behalf of a debtor" within the meaning of section 4(1) of the Ordinance.
- (2) Because that payment was one made "to a creditor, or to his agent or . . . a liquidation officer purporting to act on behalf of such creditor" within the meaning of section 4(1) of the Ordinance. 10
- (3) Because the payment made in those circumstances operated as a valid discharge of the Appellants' pre-occupation debt to the extent of the face value of the payment under the provisions of section 4(1) of the Ordinance.
- (4) Because in the alternative the payment fell within the provisions of section 7(3) of the Ordinance.
- (5) Because the Respondent had failed to prove that he had derived no benefit from the payment.
- (6) Because the Respondent had in fact derived benefit 20 from the payment.
- (7) Because even if the Respondent had proved that he had derived no benefit from the payment, the same was credited to the Respondent's account at the Kyoei Bank at the request or with the consent of the Respondent's agent, and for this reason operated as a discharge of the Appellants' debt to the extent of half the payment.
- (8) Because the judgments of the Court of Appeal were wrong for the reasons given in this Case. 30
- (9) Because the judgment of the High Court was right and ought to be restored.

B. MACKENNA.

L. G. SCARMAN.

In the Privy Council

On Appeal from The Court of Appeal of  
Sarawak, North Borneo and Brunei

BETWEEN

THE CHARTERED BANK OF INDIA,  
AUSTRALIA & CHINA ... (*Defendant*)  
*Appellants*

AND

WEE KHENG CHIANG ... (*Plaintiff*)  
*Respondent.*

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Case for the Appellants

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LINKLATERS & PAINES,  
59/67, Gresham Street,  
London, E.C.2.