

Judgment
29, 1959

~~PC G.M.L. G. 2~~

IN THE PRIVY COUNCIL

No. 19 of 1957

ON APPEAL FROM THE SUPREME COURT
OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N

SAJAN SINGH Appellant

- and -

SARDARA ALI Respondent

RECORD OF PROCEEDINGS

HY. S.L. POLAK & CO.,
20/21 Tooks Court,
Cursitor Street,
London, E.C.4.

Appellant's Solicitors

IN THE PRIVY COUNCILNo. 19 of 1957ON APPEAL FROM THE SUPREME COURT
OF THE FEDERATION OF MALAYAIN THE COURT OF APPEAL AT KUALA LUMPURB E T W E E NSAJAN SINGH Appellant

- and -

SARDARA ALI RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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E X H I B I T S

| Exhibit Mark | Description of Document | Date | Page |
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| P.1. | <u>Bundle of correspondence containing :-</u> | | |
| | 1. Letter from Defendant to Koh Aik | 30th Nov. 1954 | 43. |

E X H I B I T S

| Exhibit Mark | Description of Document | Date | Page |
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| P.1. | 2. Letter from Defendant to Koh Aik | 7th Dec. 1954 | 43. |
| | 3. Copy letter from M/s. Lovelace & Hastings, K.L., to Commissioner for Road Transport K.L. | 29th Dec. 1954 | 44. |
| | 4. Headquarters, Road Transport Dept., K.L., to M/s. Lovelace & Hastings, K.L. | 7th Jan. 1955 | 45. |
| | 5. Letter from Headquarters Road Transport, K.L., to M/s. Lovelace & Hastings K.L. | 7th June 1955 | 46. |
| | 6. Copy letter from Plaintiff's solicitor to Defendant | 29th Oct. 1955 | 47. |
| | 7. Letter from Defendant's solicitor to Plaintiff's solicitor | 1st Nov. 1955 | 48. |
| | 8. Copy letter from Plaintiff's solicitor to Defendant's solicitor | 2nd Nov. 1955 | 49. |
| | 9. Letter from Defendant's solicitor to Plaintiff's solicitor | 3rd Nov. 1955 | 50. |
| | 10. Letter from Headquarters, Road Transport Dept., K.L. to Plaintiff's Solicitor | 4th Nov. 1955 | 51. |
| | 11. Letter from Headquarters, Road Transport K.L., to Plaintiff's solicitor | 11th Nov. 1955 | 51. |
| P.2. | <u>Bundle of Documents containing :-</u> 1. Particulars of Registration | Undated | 53. |

E X H I B I T S

| Exhibit Mark | Description of Document | Date | Page |
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| P.2. | 2. Police Report No. 75/55 | 26th Jan. 1955 | 54. |
| | 3. Translation of Police Report No. 75/55 | 26th Jan. 1955 | 55. |
| | 4. Police Report No. 78/55 | 27th Jan. 1955 | 56. |
| | 5. Translation of Police Report No. 78/55 | 27th Jan. 1955 | 57. |
| | 6. Copy of Haulage Permit | 18th Feb. 1953 | 58. |
| | 7. Copy Policy No. OV/19221 (1948-1949) | 21st Dec. 1948 | 63. |
| | 8. Copy Policy No. OV/71904 (1953/1954) | 5th Dec. 1953 | 64. |
| | 9. Copy Bill (Kim Hin & Co.) | 31st Aug. 1953 | 65. |
| | 10. Copy Bill (Kim Hin & Co.) | 31st Oct. 1953 | 65. |
| | 11. Copy Bill (Kim Hin & Co.) | 30th Nov. 1953 | 65. |
| | 12. Copy Bill (Chop Kow Tong) | 28th Feb. 1954 | 66. |
| | 13. Copy Bill (Mak Sang Motor Service) | 20th Mar. 1954 | 67. |
| | 14. Copy Bill (Chop Ben Hoe Hin) | 21st June 1954 | 67. |

LIST OF EXHIBITS NOT TRANSMITTED TO
THE PRIVY COUNCIL

| Exhibit Mark | Description of Document | Date |
|--------------|---|----------------|
| P.3. | Letter from Defendant to Koh Aik of 32 Kg. Anam 1½ m.s. Bachang Malacca | 30th Nov. 1954 |

LIST OF EXHIBITS NOT TRANSMITTED TO
THE PRIVY COUNCIL continued

E X H I B I T S

| Exhibit Mark | Description of Document | Date | |
|-----------------|---|---------------|----------------|
| P.4. | Letter from Defendant to Koh Aik of 32, Kg. Anam, 1½ m.s. Bachang Road, Malacca | 7th Dec. 1954 | |
| P.5. | Document written in Punjabi with translation | | |
| P.6. | Negatives of Photographs | | |
| P.7. | Enlarged Photograph of Signature | | |
| P.8. | - do - | | |
| P.9. | - do - | | |
| P.10. | - do - | | |
| P.11. | - do - | | |
| P.12. | - do - | | |
| P.13. | - do - | | |
| P.14. | - do - | | |
| P.15. | - do - | | |
| P.16. | - do - | | |
| P.17. | A,B,C. - do - | | |
| P.18. | Letter from Defendant to Registrar & Inspector of Motor Vehicles, Malacca | | 17th Nov. 1949 |

LIST OF EXHIBITS NOT TRANSMITTED TO
THE PRIVY COUNCIL continued

E X H I B I T S

| Exhibit Mark | Description of Document | Date |
|-----------------|---|---------------|
| P.19. | Page 370 of Cash Book of the Malacca Sikh Temple written in Punjabi script | |
| P.20. | A Punjabi Script pertaining to the Sale of share in Motor Lorry M.2207 to Plaintiff | 3rd July 1953 |
| D.21. | Identity Card bearing No. M No. 037412M of Plaintiff produced & returned to Plaintiff | |
| D.22. | Income & Expenditure Book written in Punjabi Script | |
| D.23. | Specimen of Signatures of Defendant | |
| D.24. | Driving Licence No. 810729 produced and returned to Defendant | |

IN THE PRIVY COUNCIL

No. 19 of 1957

ON APPEAL FROM THE SUPREME COURT
OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N

SAJAN SINGH Appellant

- and -

SARDARA ALI Respondent

RECORD OF PROCEEDINGS

10

No. 1

WRIT OF SUMMONS

In the Supreme
Court
Settlement of
Malacca.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
SETTLEMENT OF MALACCA

No. 1

SUIT No. 47 of 1955

Writ of
Summons
4th November
1955.

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant

20

ELIZABETH II by the Grace of God, of the
United Kingdom of Great Britain and Northern
Ireland and of Her Other Realms and Territories
Queen, Head of the Commonwealth, Defender of the
Faith.

To Sajan Singh of Bukit Asahan Estate, Malacca
and/or his Solicitor S. Shunmugam Esqr., No.
30 Riverside, Malacca.

We command you, that within eight days

In the Supreme
Court
Settlement of
Malacca.

No. 1

Writ of
Summons
4th November
1955 -
continued.

after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court at Malacca, in a cause at the suit of Sardara Ali of No. 132 Lorong Panjang, Malacca, and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS The Honourable Sir Charles Mathew, Knight Bachelor Companion of the Most Distinguished Order of Saint Michael and Saint George one of Her Majesty's Counsel learned in the law, Chief Justice of the Federation of Malaya at Malacca aforesaid this 4th day of November, 1955.

10

Sd: C.S. Jayaswal
Solicitor for the Plaintiff

N.B.:- This writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of such renewal, including the day of such date, and not afterwards.

20

The defendant (or defendants) may appear hereto by entering appearance (or appearances) either personally or by solicitor at the Registry of the Supreme Court at Malacca.

The plaintiff's claim is for :-

1. At all material times the plaintiff was and is the owner of and entitled to possession of Dodge Motor Lorry No. M 2207.

2. On or about the 27th day of January, 1955 the Defendant wrongfully took and carried away the said lorry.

30

3. By a notice dated the 29th day of October, 1955 the plaintiff demanded the return of the said lorry but the Defendant refused to return the lorry and has wrongfully detained and still detains the said lorry whereby the plaintiff has suffered loss and damage.

PARTICULARS OF SPECIAL DAMAGE

Special damage claimed for loss of use and earning from 27th day of January, 1955 till date of return at \$400/- per month ... \$

40

And the plaintiff claims :-

- (i) A declaration that the Dodge motor lorry No. M 2207 in the Defendants possession is the property of the plaintiff
- (ii) The return of the said lorry or \$5000/- as its value
- (iii) Damages for detention and/or conversion of the said lorry at \$400/- per month from the 27th day of January, 1955 till date of return.

In the Supreme Court Settlement of Malacca.

No. 1
Writ of Summons
4th November 1955 - continued

10

Dated the 4th day of NOVEMBER, 1955.

Sd: C.S. Jayaswal
Solicitor for the Plaintiff

This Writ was issued by Mr. C.S.Jayaswal of No.118 First Cross Street, Malacca, Solicitor for the Plaintiff.

This Writ was served by
on the Defendant
on the day of 19

20

No. 2.

No. 2.

STATEMENT OF CLAIM

Statement of Claim.
4th November 1955.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

SETTLEMENT OF MALACCA

Suit No. 47 of 1955

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant

30

STATEMENT OF CLAIM

1. The plaintiff is a lorry driver living at No. 132 Lorong Panjang, Malacca.

In the Supreme
Court
Settlement of
Malacca.

No. 2
Statement of
Claim
4th November
1955 -
continued

2. The defendant is a Haulier living at Bukit Asahan Estate, Malacca.

3. Sometime in December 1948 the plaintiff paid to the defendant \$1500/- with which the defendant purchased six second-hand motor lorries from the British Military Disposals' Board on condition that one of the motor lorries a Dodge lorry bearing registration No. M 2207 registered in the name of the Defendant was to be the plaintiff's.

4. The Defendant obtained a Haulage Permit No. 164A for the Dodge motor lorry No. M 2207 for the transport of public goods for hire or reward and made the Dodge Motor lorry No. M 2207 an authorised vehicle for use by the Plaintiff. 10

The Dodge Motor lorry No. M 2207 is hereinafter referred to as the "Authorised Vehicle".

5. On the 4th day of August, 1950 the plaintiff together with one Nihal Singh paid to the defendant a sum of \$3500/- and the defendant therefor gave to the plaintiff a document in Punjabi in the following terms :- 20

" 4.8.1950

" I Sajan Singh (Malacca) have sold a Dodge lorry No. M 2207 to Nihal Singh and Sardara Ali jointly for \$3500/-. Both of them can sell this lorry but cannot sell the Haulage Permit. The Haulage Permit is to be returned to Sajan Singh. If anyone asks for the lorry after my death he cannot get it. Even if (anyone) takes it by force then (he or she) must pay \$3500/-. If there is anything concerning the lorry then Nihal Singh and Sardara Ali can represent. 30

" Sajan Singh."

6. (i) On the 3rd day of July, 1953 the said Nihal Singh sold his half share in the authorised vehicle to the plaintiff for \$1,750/- and gave a written acknowledgment in Punjabi therefor to the plaintiff.

(ii) The plaintiff thus paid to the defendant \$1500/- and \$3500/- = \$5,000/-.

7. The plaintiff is an illiterate man but he can sign his name in Punjabi. 40

8. From the 4th day of August 1950 the plaintiff

has been carrying on a haulage business using the authorised vehicle without let or hindrance by the defendant until the 27th day of January, 1955, during which period the authorised vehicle was in the sole possession of and maintained by the plaintiff.

In the Supreme Court
Settlement of
Malacca.

No. 2
Statement
of Claim
4th November
1955 -
continued.

10 9. During the said period between the 4th day of October, 1950 and 27th day of January, 1955 the average nett income to the plaintiff from the haulage business by the authorised vehicle was \$400/- per month.

10. On the 27th day of January, 1955 without the plaintiff's knowledge or permission and during the plaintiff's absence from his house the defendant took away the authorised vehicle and has refused to return it to the plaintiff in spite of repeated demands.

20 11. The plaintiff has suffered damages by being wrongfully deprived of the authorised vehicle and the use and benefit therefrom.

12. The plaintiff therefore claims and prays :-

(i) For a declaration that the plaintiff is the owner of the authorised vehicle despite that it is registered in the defendant's name and that the Haulage Permit No. 164A is in the defendant's name.

30 (ii) For the return of the Dodge Motor lorry No. M 2207 as an authorised vehicle i.e. together with the use of the Haulage Permit No. 164A until the plaintiff sells the Dodge Motor lorry No. M 2207 as agreed to by the defendant in his document dated the 4th day of August, 1950, as described hereinbefore in paragraph 5.

(iii) In the alternative damages for detinue \$5000/-.

(iv) Damages at \$400/- per month for loss of earning or profit from the 27th day of January, 1955 till date of payment.

(v) Costs.

40 (vi) Such further reliefs as may be deemed fit in the circumstances.

Dated the 4th day of NOVEMBER, 1955.

Sd: C.S. Jayaswal

Solicitor for the Plaintiff

This Statement of Claim is filed by Mr. C.S. Jayaswal Solicitor for the plaintiff whose address for service is No. 118 First Cross Street, Malacca, top floor.

In the Supreme
Court
Settlement of
Malacca.

No. 3.

DEFENCE

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No. 3
Defence.
19th November
1955.

SETTLEMENT OF MALACCA

Suit No. 47 of 1955

B E T W E E N

SARDARA ALI Plaintiff

- and -

SARJAN SINGH Defendant

D E F E N C E

10

1. Paragraphs 1 and 2 of the Statement of Claim are admitted. The Defendant's present address is No. 168 Pringgit Road, Malacca. Bukit Asahan Estate was the base for Lorry No. M 2207 under the permit referred to in paragraph 4 of the Statement of Claim.

2. The defendant denies receiving \$1,500/- in 1948 or at any time from the Plaintiff to purchase lorries from the British Military Disposals Board or agreeing to give Dodge Lorry M 2207 to the Plaintiff.

20

3. The Plaintiff never at any time applied for the Haulage Permit in connection with Dodge Lorry No. M 2207 for Defendant's use. It was the Defendant who obtained the Haulage Permit in his own name. The Plaintiff was employed as a driver in 1954 by the Defendant at a salary of \$180/- per month with 15% commission on the gross takings as hire for goods transported in Lorry No. M 2207.

4. The Defendant denies the whole of paragraphs 5 and 6 and puts the Plaintiff to strict proof of the document referred to in paragraph 5 herein. The Defendant denies having signed the said document and says that the Plaintiff's statements are wholly untrue and contrary to the statements contained in paragraph 2 of the Statement of Claim.

30

5. The Defendant says that while Plaintiff

may be illiterate the Plaintiff was at all times consistent with the statements of accounts with reference to the business done on behalf of the Defendant from day to day records of which were kept by the Defendant.

In the Supreme
Court
Settlement of
Malacca.

No. 3.
Defence
19th November
1955 -
continued.

10 6. The Defendant denies that Dodge Lorry No. M 2207 was ever owned or registered in the name of the Plaintiff or that the business of hauliers was carried on by the Plaintiff. The Plaintiff had the possession of the Lorry as its driver and the said vehicle was sometimes kept at No. 132 Lorong Panjang (Templer Avenue) Malacca at the house of the Plaintiff while the said lorry was according to the Haulage Permit based and garaged at Bukit Asahan Estate where it was repaired at the workshop of the said Estate on various occasions.

20 7. The Defendant admits removing his lorry No. 2207 from Plaintiff's premises after the Haulage Permit of the said lorry expired on the 31st December, 1954.

8. The Defendant will contend at the hearing of the case that the cause of the cessation of business is due to the malicious letters forwarded by the Plaintiff to the Commissioner for Road Transport at Kuala Lumpur.

9. The Defendant in reply to paragraph 12 of the Statement of Claim says that :-

- 30 (a) the claim is false and not supported by any legal document and that the statements of the Plaintiff are contradictory;
- (b) The document referred to in paragraph 5 and 12(ii) of the Statement of Claim **is** false and denied in toto;
- (c) Plaintiff has not established his claim as owner of the lorry and the detention of the said lorry was by its registered owner;
- 40 (d) Haulage Permit expired on the 31st December, 1954 as a result of which Lorry No. M 2207 could not have hauled any goods after that date and the Defendant prays that this claim be dismissed with costs.

Dated this 19th day of November, 1955.

Sd: S. Shunmugam
Solicitor for the Defendant

In the Supreme Court Settlement of Malacca.

No. 4.

REPLY TO DEFENCE

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No. 4.
Reply to Defence.
24th November 1955.

SETTLEMENT OF MALACCA

Suit No. 47 of 1955

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant

R E P L Y

10

1. The plaintiff joins issue with the defendant on his Defence.

2. And in further answer to paragraph 7 thereof the plaintiff says that the Haulage Permit No. 164A did not expire on the 31st day of December, 1954 but was cancelled by the Commissioner for Road Transport, Kuala Lumpur, with effect from the 29th day of April, 1955 for causes not known to the plaintiff.

3. (1) As to paragraph 8 thereof the plaintiff says that there was no malice in the plaintiff's letter of the 29th day of December, 1954 or any other letter to the Commissioner for Road Transport, Kuala Lumpur and the plaintiff shall refer to it at the hearing hereof for its full meaning and import. 20

(ii) Upon the application of the plaintiff to have a Haulage Permit granted in the plaintiff's own name the Commissioner for Road Transport ordered an Inquiry which was held on the 7th day of February, 1955 at Malacca. 30

(iii) The Commissioner for Road Transport, Kuala Lumpur on the 7th day of June, 1955 refused the plaintiff's application saying "that in view of the decision of the Federal Legislative Council taken on the 4th day of May, 1955 to implement the Report of the Select Committee appointed to consider the entry of the Malays into the Road

Transport Industry this application (the plaintiff's) cannot be granted".

(iv) The plaintiff puts the defendant to strict proof of the allegations in paragraph 8 of the Defence.

Dated the 24th day of NOVEMBER, 1955.

Sd: C.S. Jayaswal

Solicitor for the Plaintiff

In the Supreme Court
Settlement of
Malacca.

No. 4
Reply to
Defence.
24th November
1955 -
continued.

No. 5.

OPENING PROCEEDINGS

IN THE HIGH COURT AT MALACCA

Civil Suit No. 47 of 1955.

Sardara Ali
(C.S. Jayaswal)

v.

Plaintiff

Sajan Singh
(S. Shunmugam)

Defendant

No. 5
Opening
Proceedings
17th July
1956.

NOTES OF EVIDENCE

Jayaswal for plaintiff
Shunmugam for defendant
Correspondence P1
Documents P2

Jayaswal opens

If forgery has been pleaded there should be a criminal charge first. White Book p 420 Smith v Selwyn P 1 pages 1 and 2 have been admitted for

Original of P1 (1) as P3) admitted by defendant to be his

P1 (2) as P4)
Letter in S.C. para 5 as P5(for id).

30 By leave expert is called

10

20

In the Supreme Court Settlement of Malacca.

No. 6.

PURAN SINGH

PLAINTIFF'S EVIDENCE

No. 6 Plaintiff's Evidence Puran Singh Examination in Chief.

Puran Singh Manak A.S.E.

I live at 41A Limbong Kapar, Alor Star. I am a handwriting and fingerprint expert. I passed course of instruction of International Criminalologist School, Washington, U.S.A. I have practised as a handwriting expert since 1936. I have been consulted by C.P.O. Kedah, Penang, Selangor, N.S. and Pahang. I have appeared as an expert in High Court before and after war at Penang, Alor Star and Ipoh many times.

10

I have examined P3, 4 and 5 and compared the signatures. After careful inspection and comparison I consider that all 3 signatures are written by the same hand.

I photographed the 3 signatures together. This is the negative P6.

I produced from it this enlargement. The date against the signature is the date of the document P7.

20

There is an obvious failure of the pen to write in the first letter of P5 which indicates no attention is paid to process of writing. A condition inconsistent with the act of forgery. I have marked it in green on the Exhibit P7.

Secondly all signatures are written in lower order of movement, skill and speed. Skill can be judged from freedom and continuity of strokes and speed from equal number of pen lifts which are also located at similar places.

30

Thirdly the manner of presenting pen (i.e. angle of pen) to paper surface and quality of beginning and ending strokes in all signatures is similar.

In this photo P8 I have cut the beginning and ending of strokes from P3 and P4 and placed them with those of P5. In all respects they are similar.

40

Fourthly all these letters are written with

a similar number of pen operations in all these signatures. I have shewn these operations in this photo P9.

Manner of holding pen in all is similar. He holds it in a horizontal position with the result that on horizontal strokes one nib is closely following of another and on vertical strokes full width of pen is visible. See this photo P 10.

In the Supreme Court Settlement of Malacca.

No. 6
Plaintiff's
Evidence
Puran Singh
Examination
in Chief -
Continued.

10 Proportionate distance between extremity of strokes is also similar. I have marked the distances on this photo P 11.

The size of letters in all signatures is also similar. It is high and narrow. See this photo P 12.

Spacing between the letters in all signatures is also similar. I have dissected that on P3 and placed it on P 5 and it is similar - see P 13.

20 Arrangement of letters in all signatures is also even - all lie evenly between top and bottom parallel line - P 14.

The slant of letters in each signature is also similar. Angle of slant is 72° from horizontal - P 15.

General writing characteristics have following details of similarity - see P 16.

30 1st letter - initial horizontal line parallelism of strokes - position of middle horizontal line - size and direction of letter.

2nd letter - manner of presenting pen at beginning - quality and formation of loop - Parallelism of strokes second vertical line comparatively shorter than the first.

3rd letter - typical formation of letter pen pressure in the path of stroke. Size of letters comparatively smaller than others.

4th letter - pen position of vowel initial start of stroke - quality of line.

40 5th letter - initial start of stroke first curved round, second broad.

In the Supreme
Court
Settlement of
Malacca.

No. 6
Plaintiff's
Evidence
Puran Singh
Examination
in Chief
Continued.

Re-tracing of strokes. Extent of last down stroke.

For these reasons I say P5 has a genuine signature.

Shunmugam

I ask leave to reserve technical question.

Cross Examination I have been consulted by Government. I do not know if Government have experts of English writing.

I have mentioned all my reasons.

10

A man usually signs the same way. No forger can get away with it. I do not know.

Each man writes according to his distinctive stroke. It is physically and mentally for a forger to imitate one or two characteristics but no forger can imitate all in the same degree.

Dash below a signature may be there or not. But when there it generally remains a constant characteristic but in this writing dash cannot be compared because it is not there.

20

P5 has a bold dash under it. It is a bold stroke. No full stop or comma in P3 or P4 after the signature.

P3 and P4 are illiterate signatures. I attach no significance from underlining as indicating literacy. It is used by illiterates as well.

First characters in P3 or P4 are similar except for slight variations. Despite normal variations P5 is similar.

2nd letter P4 and P5 general appearance not similar but they are similar.

3rd letter - slight variations normal in signatures.

Variation is normal in P4

4th letter - P4 and P5. Dissimilarities are normal. First stroke is similar - there is a dissimilarity. In this character dissimilar. P4 and P5 the loop is absolutely dissimilar.

P3 and P5 the loops are formed in different ways due to mental uncertainty of form of letter.

Last character in P4 and P5 have dissimilarity.

Re-examination nil

Adjourn to 23 August. 9.30 a.m.
Leave to recall witness for further examination, if costs deposited.

Sd/- B.Smith.

In the Supreme Court
Settlement of Malacca.

No. 6.
Plaintiff's Evidence
Puran Singh Examination in Chief - Continued.

10

No. 7.

PROCEEDINGS IN COURT

In Open Court at Malacca this 23rd day of August, 1956

C.S.
47/55 as before.

Jayaswal asks to put in 3 photos P17 A.B.C.
Also Document Ex report.

Shunmugam agrees to photos (P17 objects to report. Report returned to Mr.J.

20

By consent a file P18. and a minute book P19 admitted.

Jayaswal continues with opening.
Ex P1 p 3 of para 8 page 15

I say RIMV was deceived in BMA period

Jayaswal agrees it was so

P 1 page 4 } no malice
page 5 } no malice
page 6 } formal
page 7 allegation
page 8 particulars demanded
page permit cancelled 29th April 1955

30

P 2 page 32 cf p 15 para 7
cf p 15 para 6

Malacca bills in defendant's name.
Insurance is in defendant's name.

No. 7.
Proceedings in Court.
23rd August 1956.

In the Supreme Court Settlement of Malacca.

Pleadings p 13 para 4

When a vehicle is registered that does not mean 'registered owner' is L.N. 713/53 Regulation 6(3) and (4) and (5)
Reg. 29(2)

No. 7.
Proceedings in Court
23rd August 1956 -
Continued.

No. 8.

Plaintiff's Evidence.

SARDARA ALI

No. 8.
Sardara Ali Examination in Chief

PW 1 Sardara Ali s/o Kheon a.s. Malay
132 Lorong Panjang Templer Ave Malacca; a motor lorry driver since 1939.

10

I know defendant for last 18 years. He operated lorries to carry goods since before war.

In 1948 defendant bought lorries from Military disposal board. He bought 6. I paid \$1,500 towards purchase price. He promised to give me a lorry; he did lorry No. M 2207 a Dodge. It was registered in his name and is still now.

It was because I trusted him and the haulage permit was in his name. I could not get a haulage permit.

20

After this lorry had been passed fit by RIMV Nihal Singh and I paid \$3,500 to the defendant (altogether \$5000) for the \$1500 I had no receipt. For the \$3500 I received this Ex.P5.

Shunmugam objects to document going in. It purports to bill of sale. Section 4 of B of S Ord. 1950 (No. 30/50) not in favour.

cap 61

It does not comply with law

Jayaswal sec 4 void against 3rd parties only. I admit document 30

(Examination Court) Defendant gave the document his son wrote it and the defendant signed it. I bought Nihal Singh's share for \$1750. I received this document Ex P 20. Nihal Singh is in India. He is not related to defendant. I told defendant at his house I had bought that share. Nihal Singh

and I went together. Altogether I paid \$5000 to defendant.

I was not an employed driver. Lorry was based at 132 Lorong Panjang. My address. I paid the bills in defendant's name as lorry was in his name so I paid in his name. Net profit was about \$400/- p.m. after I had paid all outgoings.

10 On 27 January 1955 last year defendant took lorry from my house without my consent. I went to police. I now ask return of lorry or its value and damages for detention and loss of earnings from 27 January 1955 - 29 April 1955.

Cross Examination My name is Dardar Ali. I agree my i/c says Sarakdar Lee alias Sardara Ali (I noted the alias Sardara Ali is an amendment dated 14. 3.56)

I had NRIC corrected this year.

(NRIC No. M037412 admitted as Ex D21 and handed back to PW 2 for safe custody)

20 In 1948 I did not apply for a haulage permit. I asked and was told at Transport Department that only former holder of permits would get them.

I applied later for a haulage permit in my own name SARDAR ALI

I have only applied in name of SARAKDAR LEE. (Ex P1 p5 put to witness). I applied in name of Sardar Ali but person who typed mis-typed as Sarakdar Lee. It was misunderstood.

I am over 40 (NRIC shows 50 in 1948)

30 In 1948 I was not a small business man. I knew I should get a receipt but I trusted defendant. I paid in cash. There was no witness. It was paid in my house.

When I paid \$1500 in 1948 no document was entered into

At no time did I go to RIMV to get my interest noted

Until haulage permit was withdrawn no notice of my interest.

40 Ex P5 was drawn up in defendant's house by his son who is grown up. I have not subpoenaed. Only 3 of us were there. I have owned no cattle. I

In the Supreme Court Settlement of Malacca.
Plaintiff's Evidence
No. 8.
Sardara Ali.
Examination in Chief-

Continued.

In the Supreme
Court
Settlement of
Malacca.

Plaintiff's Evidence

No. 8.

Sardara Ali
Examination
in Chief -

Continued.

have not purchased other articles when document is drawn up.

I consider it an important document. I did not ask RIMV to register it.

I did not attempt to register P. 20 with RIMV.

Vehicle's registered base was Asahan. I kept it in Lorong Panjang. I was not told where I should keep the lorry so I kept it at my place.

10

I did not drive the lorry. It was my partner who drove it. I gave all the accounts to defendant. My driver wrote them all out. I am not calling him.

I checked the monthly profits. I cannot read or write any language. All insurance, taxes and dues were paid by me to defendant.

In 1954 the vehicle was in my custody all the time. Every day accounts were delivered by driver at end of month they were all delivered to defendant.

20

I paid petrol bills.

From 1948 I have some receipts - rest are in defendant's hand.

Jayaswal: They are here.

Cross
Examination

Cross Examination Court Most have been in hands of defendant.

Q Why did you not take charge of all receipts?

A Because lorry was in his name it was necessary for Income Tax - He paid income tax of the business. I paid \$25/- each year for business tax to defendant as my contribution.

30

(Ex P 18 Business Licence in name of Sajan Singh as sole proprietor). I had no share in business. I have not been a money lender. I had a share in transport only.

Lorry was mine and I was not employed. I was not paid commission. It was not kept at my house for convenience.

Ex P5 is a genuine document. I did not ask

for Ex P5 the defendant gave it saying should he die his son would take it. He said his son would not be able to claim interest. We trusted each other I did not ask for it. I even now trust defendant.

In the Supreme Court Settlement of Malacca.

Plaintiff's Evidence

No. 8.

Sardara Ali Cross Examination and

Re-examination

Re-examination I paid yearly my contribution of income tax and business tax. I can sign my name but not well.

10 By Court I partnered with Nihal Singh. The reason why it was necessary because he had transport licence. I did not think it was a deceit.

I paid him nothing for use of permit or keeping accounts. He volunteered to do it.

Plaintiff's case.

No. 9.

CLOSE OF PLAINTIFF'S CASE

No. 9.

Close of Plaintiff's Case.

Jayaswal Claim of plaintiff under Ex P5 is not barred as against defendant.

20 Corpe Rd Hlge Licensing 1st edition p 34 what was done was not illegal.

No. 10.

DEFENCE EVIDENCE

OPENING

No. 10.

Defence

Counsel's Opening

Shunmugam opens

Defence denies the transaction and Ex P5 and the sum of \$1500.

Experts on handwriting in this country have been principally on English documents. Chary on allegation of forgery.

30 Criminal proceedings not taken because police usually do not accept cases on Asian writing Ex P5 had been before R.I.M.V.

In the Supreme
Court
Settlement of
Malacca.

No. 11.

EVIDENCE OF SAJAN SINGH

Defence
Evidence.
No. 11.

Sajan Singh s/o Sunder Singh a.s. p'bi
168 Parringgit Rd Malacca.

Sajan Singh
Examination
in Chief

I bought 5 lorries from B.M. Disposals Board.
Dodge Lorry M 2207 was one.

I had no transactions with plaintiff
I deny receiving \$1,500 from him
I deny that there was any understanding
that Dodge lorry was his
I proceeded to get haulage permit for the
lorry.

10

Nihal Singh was my driver. In 1948 Asahan
was base and was mentioned in the permit.

Ex P5 is not my signature. It is not in my
son's handwriting.

By Court. He is in Court.

Examination Continued I received no \$3500 as
stated by him

Vehicle stayed registered in my name until
29th April 1955

20

The vehicle was never in custody of plain-
tiff. It was in custody of driver Nihal Singh.
Sometimes it might be kept at Lorong Panjang. He
stopped employment with me on 8 September 1952
then Sardar Ali was driver. Lorry was based at
Asahan Estate but sometimes it would be kept at
Lorong Panjang and also at my place.

Haulage permit was cancelled because it
was kept at Malacca away from its base.

30

Its operation stopped from 1 January 1955.
I took it off operation because I wanted to buy
a new lorry. I took from premises of plaintiff
the lorry. I had seized the lorry with help of
Inspector after making a report. It was still re-
gistered in my name at that time.

I employed him at \$180 p.m. and 15% commi-
ssion on net earnings of that lorry. I was kee-
ping the accounts personally. This is the book
Ex D22.

40

Book is in my own hand. I paid all taxes myself. None of bills were in fact paid by plaintiff.

In the Supreme Court Settlement of Malacca.

The receipts in his possession might have been kept dishonestly but all had been paid by me. They might have been given to him to pass to me.

Defence
Evidence.
No. 11.

/Defendant signs his name - Ex D23/

Sajan Singh
Examination
in Chief.

That is my ordinary signature.

10 Ex P 18 contains copies of letters which I have signed and it includes copies of P3 and P4. It also appears on a P.A. in P 18 also on Federal Certificate of Citizenship in P 18.

Continued.

This is minute book of Sikh Temple P.19. My signature is on pp 370, 372, 374, 376

I never put a dot after my signature even the dash under the signature is not mine.

None appear in all documents before the Court. I deny signing Ex P5 or receiving \$3,500. I also deny that my son wrote this letter.

20 Adjourn to 2.15 p.m. at 12.45 p.m.

Cross Examination (Jayaswal)

Cross
Examination

I bought five cars from disposal board. I operate two now. Three sold.

P 22 put to witness Monthly average for M 2207 was between 150-300 p.m. I have not referred to it.

30 I am about 61 or 62. I have known plaintiff for 15-16 years. I cannot say I treated him like a son or nephew. I do not know his place in India. I am from Punjab. I do not know whence he comes.

I appeared at RIMV inquiry; not when plaintiff applied for a haulage permit for himself. He applied to Registrar to say lorry was his. Ex P5 was produced. It was on 7 February 1955. From then until now I made no complaint to police that P5 was false, my counsel had not thought it advisable. I know to get property on forged document is serious.

Plaintiff is not a simple; he drinks from

In the Supreme Court
Settlement of
Malacca.

Defence
Evidence

No. 11.

Sajan Singh
Cross
Examination

morning to night he only tries to cheat me.

Lorry was suspended for 2 months in 1950, maybe, for overloading. Bt Asahan manager asked for suspension to be lifted. It was off road full two months. Initial suspension was for more than two months. We kept lorry at Bt Asahan Estate but plaintiff told lies that it was kept at Malacca. This suspension was for overloading. The permit was cancelled for operating from Malacca, that was when plaintiff told lies.

10

Continued.

I am still a licensed money lender.

I have never had misunderstanding with employees. Till today I have never asked for a receipt for salary.

Trouble started when he asked for a haulage permit for himself. (See Ex P1 page 3). Before then no misunderstanding.

I agree that inquiry by Road Transport Department for a new permit is searching. Application was turned down because he was a mere driver not a haulier. Telal Khan told me: the plaintiff's cousin. Government will not give to Malays now. Yes. I am an influential and respectable man in the Settlement.

20

I do not know that plaintiff's solicitors took matter of Inspection up with Government.

P 5 was not written by my son. Signatures are regular. I simply say this is not my signature.

PW 1 was not a truthful witness.

30

Re-examination Nil

Examination
by Court

By Court Plaintiff was employed by me for about 2 years. He stopped in December 1954. His wages were \$180/-. At end of 1954 I had 5 employees including the plaintiff.

Q Shew me wages for 1st 3 months of the plaintiff.

A Indicates D22 p 139
p 137

P 117 relates to Nihal Singh December 1953
He started in January 1954 (page 119)

40

I examine driving licence D24 I note that years 1955-56, 54-55 and 53-54 signature has no full stop or underlining. (Returned to witness 810729)

Defence Case.

In the Supreme Court Settlement of Malacca. Defence Evidence. No.11.

Sajan Singh Examination by Court.

Continued.

No. 12

FINAL ADDRESSES BY COUNSEL

No.12. Final Addresses by Counsel 23rd August 1956.

Shunmugam Not much law involved.No fact to support payment of \$1500.00

10 If plaintiff was real owner, if P5 was genuine, plaintiff should have had his interest endorsed.

Statements all in defendant's name.

Keeping of accounts.

P5 The expert. Minor variations.

P17 A(P5) Two attempts at first character. Obvious variations between P2, P4 and P5

No habit of dashing and dotting.Whoever wrote P5 was a literate man. Precise dot. Different character.

20 Jayaswal

If forged forged by plaintiff

Defendant has not tried to get matter before a criminal court.

Plaintiff a simple man. He has honestly stated his case.

No record of employees was produced.

P 24 is equivocal

Matter of fact.

C.A.V.

In the Supreme
Court
Settlement of
Malacca.

No. 13.

JUDGMENT OF MR. JUSTICE SMITH

No. 13.
Judgment of
Mr. Justice
Smith.
14th
September 1956.

The plaintiff's case was that in December, 1948 he paid \$1,500/- to the defendant towards the purchase of 6 secondhand motor lorries from the British Military Disposals Board. It was a condition that one of the motor lorries purchase, No. M 2207 should be the plaintiff's even though it was to be registered in the name of the defendant.

10

The reason for this was that the defendant had been a haulier before the war and the policy of the Road Transport Department at the time was to grant haulage permits only to those persons to whom they had been granted before the war. Consequently it was impossible for the plaintiff to obtain a road haulage permit and it was necessary that the lorry should be registered in the defendant's name (see letter 3 on the Bundle of Correspondence Ex. P 1).

20

In 1950 the plaintiff and a friend named Nihal Singh paid a further sum of \$3,500 to the defendant as a result of which the defendant gave the plaintiff a document which has been produced in this case and is numbered Ex P 5. This document purported to transfer the lorry M 2207 to Nihal Singh and Sardara Ali, but expressly excluded from that sale the benefit of the haulage permit.

On the 3rd day of July, 1953 Nihal Singh transferred his half share in the lorry to the plaintiff. In January 1955 the defendant took the plaintiff's lorry away from him without his permission.

30

The defendant's case was that the lorry had always belonged to him, that the defendant and Nihal Singh had at various times been the drivers of the lorry and that the document Ex. P 5 was a forgery.

At first sight the defendant's story is the more probable. On consideration however it appeared to me that if the plaintiff's evidence were false he could have invented a very much simpler story than he did. In particular he would have forged a document which accounted for the full payment of \$5000 by him. I also

40

agreed with his counsel that he did not appear to have the intelligence to make up the story which he told.

In the Supreme Court Settlement of Malacca.

No.13.
Judgment of Mr. Justice Smith.
14th September 1956
Continued.

10 I found that my preference from the evidence of the plaintiff was confirmed by my finding of fact that the vital document the receipt Ex. P 5 was signed by the defendant. I was impressed by the evidence of PW 1, the handwriting expert, and particularly by his evidence that a forger never commences with a blurred stroke. The enlargement of the signature to Ex. P 5 shews clearly that on the first stroke the ink failed to flow.

20 Although the defendant satisfied me completely that he is not in the habit of underlining his signature, as appears in Ex. P 5, it was the very fact of its being underlined which confirmed my belief that the signature was genuine. A forger would follow slavishly his model and would never add an unnecessary stroke. In addition the more signatures which the defendant produced to shew that he did not underline his signature the more convinced I became after examination of each signature produced that Ex. P 5 was signed by him. I am satisfied of the truth of the plaintiff's claim.

30 I considered that there was nothing in the defendant's argument that because Ex. P 5 was an unregistered bill of sale the plaintiff could not sue upon it. Section 4(1)(b) of the S.S.Bills of Sale Ordinance (Cap.22) is quite clear: the bill of sale is void in so far as certain third party rights are concerned but binding on the parties to the transactions.

40 There is an important aspect of the plaintiff's case which I considered and mentioned during the course of the trial. It concerns 'moral estoppel'. The plaintiff to prove his case has to prove that he and the defendant practised a deceit on the public administration of this country in order to get a haulage permit for his vehicle. The question is does his conduct raise a 'moral estoppel' which will prevent him succeeding in the Courts of this country. He asks the Courts to assist him when he is cheated by his fellow conspirator.

The first point is that generally estoppel of any kind must be expressly pleaded if it appears on the pleadings otherwise it must be raised at the first opportunity. This rule does not appear to apply to moral estoppel. I am of opinion

In the Supreme
Court
Settlement of
Malacca.

No.13.
Judgment of
Mr. Justice
Smith.
14th
September 1956-
Continued.

that the defendant could have applied to have the pleading struck out since the enforcement of a judgment based on the facts alleged would be contrary to public policy. The question is whether the Court, of its own motion, should refuse to grant the plaintiff his remedy because he seeks the Court's assistance to enforce his claim in a transaction which is contrary to public policy. The authorities are set out in Spencer Bower on Estoppel by Representation 1st Edition paragraph 426 at page 383. In my opinion it is not necessary that moral estoppel should be pleaded: it is the duty of the court when it realises that a litigant is setting up his own fraud to refuse him aid. The principle is "Ex turpi causa non oritur actio." The arguments advanced by Mr. Jayaswal from English road transport law did not appear to me to be applicable. What was done may not have been illegal in England. The plaintiff on his own shewing was party to a deceit whereby the Registrar of Motor Vehicles issued a haulage permit for lorry M 2207 which he would not have done if he had not been deceived.

10

20

For these reasons I consider myself obliged to find for the defendant. I make no order as to costs since I consider that the estoppel could have been raised on the pleadings.

There is one further matter. I do order that the papers of this case be sent to the Public Prosecutor for consideration whether the defendant should be prosecuted for giving false evidence before this Court regarding the signature to Ex. P 5.

30

Sd: B.G. Smith.

JUDGE
Supreme Court
Federation of Malaya

14th September, 1956.

No. 14.

ORDER OF MR. JUSTICE SMITH

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

SETTLEMENT OF MALACCA

Suit No. 47 of 1955

In the Supreme
Court
Settlement of
Malacca.

No.14.
Order of Mr.
Justice Smith
19th
September
1956.

B E T W E E N

SARDARA ALI

Plaintiff

- and -

SAJAN SINGH

Defendant

10 BEFORE THE HONOURABLE MR. JUSTICE SMITH IN OPEN

COURT

20 This suit coming on for hearing on the 17th day of July, 1956 and the 23rd day of August, 1956 in the presence of Mr. C.S. Jayaswal of Counsel for the Plaintiff and Mr. S. Shunmugam of Counsel for the Defendant and upon hearing the evidence adduced and what was alleged by Counsel on both sides IT WAS ORDERED that this Suit should stand adjourned for judgment and this Suit standing for judgment this 19th day of September, 1956 in the presence of Counsel for the Plaintiff and the Defendant.

30 AND THIS COURT being of opinion that the document dated 4th August, 1950 for \$3,500/- marked Exhibit P 5 purporting to transfer lorry M 2207 was signed by Sajan Singh the Defendant and that the Plaintiff Sardara Ali's claim in this Suit is true but the Court suo motu considers that the Court should refuse to grant the Plaintiff his remedy because he seeks the Court's assistance to enforce his claim in a transaction contrary to public policy.

AND IT APPEARING that the Defendant having failed to have the pleading struck out on the ground that the enforcement of a judgment based on the facts alleged would be contrary to public policy.

In the Supreme Court Settlement of Malacca.

THIS COURT DOTH ADJUDGE AND DECLARE that the Plaintiff's claim be dismissed.

AND THIS COURT DOTH MAKE NO ORDER with regard to the Costs of this action.

No.14. Order of Mr. Justice Smith 19th September 1956 - Continued.

DATED this 19th day of September, 1956.

(L.S.) BY THE COURT

Sd: K. Somasundram Assistant Registrar, Supreme Court, Malacca.

10

In the Court of Appeal Kuala Lumpur

No. 15.

NOTICE OF APPEAL

No.15. Notice of Appeal 3rd October 1956.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

CIVIL APPEAL NO. 48 OF 1956

B E T W E E N

SARDARA ALI Appellant

- and -

SAJAN SINGH Respondent

(IN THE MATTER OF MALACCA SUIT No. 47 of 1955 20

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant)

NOTICE OF APPEAL

Take Notice that the Plaintiff being

dissatisfied with the decision of the Honourable Mr. Justice B.G. SMITH given at Malacca on the 19th day of September, 1956 appeals to the Court of Appeal against such part only of the said decision as decides that the Plaintiff's claim be dismissed.

In the Court of Appeal
Kuala Lumpur

No.15.
Notice of Appeal
3rd October 1956 -
Continued.

Dated this 3rd day of OCTOBER, 1956.

Sd: C.S. Jayaswal
Solicitor for the Appellant

To
The Assistant Registrar
Supreme Court,
Malacca.

10

and to
Sajan Singh Defendant/Respondent and/or his
Solicitor S. Shunmugam Esqr., of No. 30,
Riverside, Malacca.

The address for service of the Appellant is No. 118 First Cross Street, Malacca.

No. 16.

MEMORANDUM OF APPEAL

No.16.
Memorandum of Appeal.
22nd
October 1956

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

CIVIL APPEAL NO. 48 OF 1956

B E T W E E N

SARDARA ALI Appellant

- and -

SAJAN SINGH Respondent

(IN THE MATTER OF MALACCA SUIT No.47 of 1955

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant)

30

MEMORANDUM OF APPEAL

SARDARA ALI the appellant above-named, appeals to the Court of Appeal against part of the decision of the Honourable Mr. Justice B. G. SMITH given at

In the Court
of Appeal
Kuala Lumpur

No.16.
Memorandum
of Appeal.
22nd
October 1956-
Continued

Malacca on the 19th day of September, 1956 on the following grounds:

A. The learned judge misdirected himself on Law that the transaction was against public policy because of Ex.P 1 p3, when there is no statute prohibiting the transaction or declaring it illegal or unlawful.

B. In the alternative the learned judge should have separated the legal part from the illegal part of the transaction and ordered the defendant/ respondent to return the motor lorry No.M 2207 or its value \$5000/- and to pay general damages to the plaintiff/appellant for the wrongful conversion. 10

Dated this 22nd day of October, 1956.

Sd: C.S. Jayaswal
Solicitor for the Appellant/Plaintiff

To

The Assistant Registrar,
Supreme Court,
Malacca.

20

and to

Sajan Singh Respondent/Defendant and/or his
Solicitor S. Shunmugam Esqr., of No. 30
Riverside, Malacca.

This Memorandum of Appeal is filed by Mr. C.S. Jayaswal Solicitor for the Appellant and his address for service is No.118 First Cross Street, Malacca.

No. 17.

JUDGMENT OF CHIEF JUSTICE THOMSONIn the Court
of Appeal
Kuala LumpurIN THE SUPREME COURT OF THE FEDERATION OF MALAYAIN THE COURT OF APPEAL AT KUALA LUMPURCivil Appeal No: 48 of 1956
(Malacca C.S. No.47 of 1955)No.17.
Judgment of
Thomson C.J.
7th March
1957.

SARDARA ALI

Appellant
Plaintiff

-v-

SARJAN SINGH

Respondent
Defendant

10

Cor: Thomson, C.J.
Hill, J.
Syed Sheh Barakbah, J.JUDGMENT OF THOMSON, C.J.

In this case the Plaintiff sued for a variety of remedies in respect of the taking out of his possession by the Defendant of a motor lorry which he, the Plaintiff, alleged to be his property.

20

The Plaintiff's case was that in December, 1948, he paid \$1,500 to the Defendant and that the Defendant then purchased six second-hand motor lorries from the Military Disposals Board. It was agreed between the parties that in respect of the payment of \$1,500 one of these lorries, the subject of the present proceedings, should become the property of the Plaintiff although it was to be registered in the name of the Defendant. The reason for this was that it was thought that the Defendant would be able to obtain a haulage permit in respect of the lorry, which he in fact did, while the Plaintiff would be unable to do so.

30

In 1950 the Plaintiff and one Nihal Singh paid a further sum of \$3,500 to the Defendant as a result of which the Defendant executed a document which purported to transfer the lorry and the benefit of the haulage permit in respect of it to Nihal Singh and the Plaintiff, and on 3rd July, 1953, Nihal Singh transferred his half share in the

In the Court
of Appeal
Kuala Lumpur

No.17.
Judgment of
Thomson C.J.
7th March
1957 -
Continued.

lorry to the Plaintiff.

At some time the lorry passed into the possession of the Plaintiff and he proceeded to operate it, probably under the haulage permit issued to the Defendant. The date on which the Plaintiff thus obtained possession of the lorry is by no means clear from the evidence, and unfortunately the learned trial Judge neither considered nor decided the point. It is, however, clear, and indeed on this point there is no dispute on the evidence, that it was some considerable time prior to January, 1955. In January, 1955, the Defendant removed the lorry from the Plaintiff's possession without his consent and is still in possession of it.

10

The Defendant's case was that the lorry had always belonged to him, that the Plaintiff had never been more than the driver of it and that the document which purported to be executed in 1950 was a forgery.

20

The learned trial Judge found as a fact that the document executed in 1950 was not a forgery and in effect accepted the Plaintiff's story as substantially true. He thought, however, (although this was not pleaded or in any way set up by the Defendant) that he was bound to hold that the Plaintiff's claim was defeated by what he has described as "moral estoppel" and gave judgment for the Defendant, but without costs.

For myself I am not at all sure that I know what "moral estoppel" is. It is not a term which is very commonly used in our legal literature, and I really do not think any useful purpose would be served by embarking at any length on an examination of what exact significance is to be attached to it, for in the present case the learned trial Judge has treated it as a convenient shorthand way of referring to the general principle that a party is not to be allowed "either in support of his claim, or in answer to that of his opponent, to set up his own fraud, illegality, or wrong". (Spencer Bower on Estoppel by Representation, p.383.)

30

40

In the course of his long and careful judgment the learned trial Judge said :-

"The plaintiff to prove his case has to prove that he and the Defendant practised a deceit on the public administration of

this country in order to get a haulage permit for his vehicle. The question is does his conduct raise a 'moral estoppel' which will prevent him succeeding in the Courts of this country. He asks the Courts to assist him when he is cheated by his fellow conspirator."

In the Court
of Appeal
Kuala Lumpur

No.17.
Judgment of
Thomson C.J.
7th March
1957 -
Continued

At a later stage he said :-

10 "It is the duty of the Court when it realises that a litigant is setting up his own fraud to refuse him aid. The principle is 'Ex turpi causa non oritur actio' The plaintiff on his own shewing was party to a deceit whereby the Registrar of Motor Vehicles issued a haulage permit for lorry M 2207 which he would not have done if he had not been deceived."

On these grounds he considered himself obliged to find for the Defendant.

20 With great respect I am unable to agree either with the learned trial Judge's course of reasoning or with his views as to the extent of the principle of law which he applied to the results to which that course of reasoning led him.

30 For the purpose of the present argument it may be accepted that the Plaintiff and the Defendant practised a deceit on the public administration of this country in order to get a haulage permit for the vehicle. I am unable to agree, however, that the Plaintiff had to prove this in order to prove his case in the present proceedings. The action was not in contract. It was an action for trespass to goods. In order to succeed in it the Plaintiff had to prove that he was in possession of the lorry and that the Defendant seized and took it away. The defence was that it was not the Plaintiff's lorry. The plaintiff's reply to that was that it was his lorry. There was no need for him to go into the question of how the lorry came to be registered in the name of the Defendant except by way of anticipating any argument that might be set up on behalf of the Defendant based on that registration. The lorry became his as a result of one or possibly two agreements with the Defendant which may well have been bad as being contrary to public policy, but the consideration that these agreements were bad did not prevent the property in the lorry passing to him (see Simpson v. Nicholis(1) and Scarfe v. Morgan(2)). The property having passed and the Plaintiff having obtained

(1) 3 M & W 240, 244
(2) 4 M & W 270, 281

In the Court
of Appeal
Kuala Lumpur

No.17.
Judgment of
Thomson C.J.
7th March
1957 -
Continued.

possession I fail to see why the Plaintiff should not have his possession protected and his property or its value restored to him. As was said by Parke, B. in Scarfe v. Morgan (Supra) :-

" this is not the case of an executory contract; both parties were in pari delicto - it is one which has been executed, and the consideration given; and although in the former case the law would not assist one to recover against the other, yet if the contract is executed, and a property either special or general has passed thereby, the property must remain;"

10

I am fortified in these conclusions by a consideration of the case of Bowmakers, Ltd. v. Barnet Instruments, Ltd., (3) the headnote to which reads :-

"No claim founded on an illegal contract will be enforced by the court, but as a general rule a man's right to possession of his own chattels will be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim. An exception to this general rule arises in cases in which the goods claimed are of such a kind that it is unlawful to deal in them at all."

20

30

In that case the Plaintiffs had acquired certain machine tools and let them out to the Defendants on hire-purchase in circumstances which involved serious contraventions of certain Defence Regulations and which indeed amounted, it was said, to nothing less than a criminal conspiracy. The Defendants converted the tools and it was held that the Plaintiffs were entitled to damages. In delivering the judgment of the Court of Appeal Du Parcq, L.J. said (at page 70) :-

40

"Prima facie, a man is entitled to his own property, and it is not a general principle

(3) (1945) 1 K.B. 65

In the Court
of Appeal
Kuala Lumpur

No.17.
Judgment of
Thomson C.J.
7th March
1957 -
Continued.

10 of our law (as was suggested) that when one
man's goods have got into another's possession
in consequence of some unlawful dealings be-
tween them, the true owner can never be all-
owed to recover those goods by an action. The
necessity of such a principle to the intere-
sts and advancement of public policy is cer-
tainly not obvious. The suggestion that it
exists is not, in our opinion, supported by
authority. It would, indeed, be astonishing
if (to take one instance) a person in the
position of the defendant in Pearce v Brooke
20 (4), supposing that she had converted the
plaintiff's brougham to her own use, were to
be permitted, in the supposed interests of
public policy, to keep it or the proceeds of
its sale for her own benefit. The principle
which is, in truth, followed by the courts is
that stated by Lord Mansfield, that no claim
founded on an illegal contract will be enfor-
ced, and for this purpose the words 'illegal
contract' must now be understood in the wide
sense which we have already indicated and no
technical meaning must be ascribed to the
words 'founded on an illegal contract'. The
form of the pleadings is by no means
conclusive.

30 In our opinion, a man's right to possess
his own chattels will as a general rule be
enforced against one who, without any claim
or right, is detaining them, or has converted
them to his own use, even though it may
appear either from the pleadings, or in the
course of the trial, that the chattels in
question came into the defendant's possession
by reason of an illegal contract between
himself and the plaintiff, provided that the
plaintiff does not seek, and is not forced,
40 either to found his claim on the illegal
contract or to plead its illegality in order
to support his claim."

It is true that that was a case of conversion.
But for myself I can see nothing in His Lordship's
statement of the law which is not applicable with
equal force to a case of trespass.

For these reasons I am regretfully forced to
say that I would allow the appeal and set aside
the judgment entered in favour of the Defendant.

(4) (1886) L.R. I Ex. 213

trespass to his goods, namely a lorry, which he had purchased from the Respondent and which he alleged the Respondent had taken out of his possession on 27th January 1955 without his knowledge or permission. The claim prayed for the return of the lorry or its value and also for damages.

In the Court
of Appeal
Kuala Lumpur

No.18.
Judgment of
Mr. Justice
Hill.
7th March
1957 -
Continued.

10

The defence was a total denial of the plaintiff's claim. It denied that plaintiff was the owner of the vehicle, clearly alleged fraud and forgery by the plaintiff and maintained that the lorry was the property of the defendant who employed the plaintiff as his driver.

On the evidence the learned trial Judge found wholly in favour of the plaintiff. So much so, indeed, that he ordered the papers should be sent to the Public Prosecutor for consideration whether the defendant should be prosecuted for giving false evidence.

20

In spite of this the learned trial Judge found himself obliged to find for the defendant for the following reasons. I quote from his written judgment.

" There is an important aspect of the plaintiff's case which I considered and mentioned during the course of the trial. It concerns 'moral estoppel'."

30

" The plaintiff to prove his case has to prove that he and the defendant practised a deceit on the public administration of this country in order to get a haulage permit for his vehicle. The question is does his conduct raise a 'moral estoppel' which will prevent him succeeding in the Courts of this country. He asks the Courts to assist him when he is cheated by his fellow conspirator."

40

" The question is whether the Court, of its own motion should refuse to grant the plaintiff his remedy because he seeks the Court's assistance to enforce his claim in a transaction which is contrary to public policy. The authorities are set out in Spencer Bower on Estoppel by Representation 1st Edition paragraph 426 at page 383. In my opinion it is not necessary that moral estoppel should be pleaded: it is the duty of the Court when it realises that a litigant is setting up his own fraud to refuse him aid. The principle

In the Court
of Appeal
Kuala Lumpur

No.18.
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Mr. Justice
Hill.
7th March
1957 -
Continued.

" is 'Ex turpi causa non oritur actio.' The arguments advanced by Mr. Jayaswal from English road transport law did not appear to me to be applicable. What was done may not have been illegal in England. The plaintiff on his own shewing was party to a deceit whereby the Registrar of Motor Vehicles issued a haulage permit for lorry M 2207 which he would not have done if he had not been deceived." 10

" For these reasons I consider myself obliged to find for the defendant. I make no order as to costs since I consider that the estoppel could have been raised on the pleadings." 20

Now it seems to me that, in order to succeed in his claim, all that the plaintiff had to prove was that he was in entitled possession of the lorry and that the defendant had taken it away. He did not strictly have to prove ownership, though he did so, and I hold this view because, as I stated above, the plaintiff's claim was essentially and basically an action for trespass to his goods. 20

If this view is correct, it follows that the plaintiff was under no obligation whatever, in order to prove his case, to prove in addition that he and the defendant practised a deceit on the public administration of this country with regard to a haulage permit. It is in this connection that I feel, with great respect, that the learned trial Judge was mistaken. Indeed, the pleadings shew that the plaintiff was forced to refer to the haulage permit issue by the defence set up. 30

The judiciary has adopted for its own guidance, and in the public interest, a rule of conduct that any party litigant shall not be allowed, either in support of his claim, or in answer to that of his opponent, to set up his own fraud, illegality or wrong. Winfield (3rd edition page 28) suggests an acceptable rule namely that a plaintiff can sue for, and recover, damages in tort, unless allowing him to do so would be against public policy in general, or would be the condonation of a breach of public morals or public safety in particular. 40

In the present case I do not consider that the plaintiff was setting up against the defendant

any fraud, illegality or wrong. Nor can I see that the straightforward transaction of sale between the parties was against public policy or a breach of public morals or safety. In the circumstances I am of opinion that to invoke 'moral estoppel' against the Appellant was not justified.

In the Court
of Appeal
Kuala Lumpur

No.18.
Judgment of
Mr. Justice
Hill.
7th March
1957 -
Continued.

10 In this connection I must refer to the case of Bowmakers, Ltd. v. Barnet Instruments, Ltd. (1945) 1 K.B. 65. That case was one of conversion and the parties had committed a breach of certain Defence Regulations. I quote from the judgment of the Court of Appeal delivered by Du Parcq, L.J. -

20 "Prima facie, a man is entitled to his own property, and it is not a general Principle of our law (as was suggested) that when one man's goods have got into another's possession in consequence of some unlawful dealings between them, the true owner can never be allowed to recover these goods by an action. The necessity of such a principle to the interest and advancement of public policy is certainly not obvious. The suggestion that it exists is not, in our opinion, supported by authority.

xxx

xxx

xxx

30 " In our opinion, a man's right to possess his own chattels will as a general rule be enforced against one who, without any claim or right, is detaining them, or has converted them to his own use, even though it may appear either from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract or to plead its illegality in order to support his claim."

I can see no reason why the terms of this judgment should not be equally applicable to a case of trespass to goods.

40 I would therefore allow this appeal and enter judgment for the appellant, giving him the declaration he sought and ordering the Respondent to return lorry No. M. 2207 or to pay in the alternative its value at the time of seizure. That value to be ascertained by the Registrar, with interest at the rate of 6% per annum. In addition, I consider that the appellant should have the costs of this appeal

In the Court
of Appeal
Kuala Lumpur

and the taxed costs of the proceedings in the
lower Court and that the deposit should also be
paid out to him against his taxed costs.

No.18.
Judgment of
Mr. Justice
Hill.
7th March
1957 -
Continued.

Sd. R.D.R. Hill
J U D G E

Judge's Chambers,
Supreme Court,
Alor Star.

No.19.
Judgment of
Mr. Justice
Syed Sheh
Barakbah.
6th March
1957.

No. 19.

JUDGMENT OF MR. JUSTICE SYED SHEH BARAKBAH

10

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. CIVIL APPEAL NO. 48 OF 1956
(Malacca C.S. No. 47 of 1955)

SARDARA ALI

Appellant

- against -

SARJAN SINGH

Respondent

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

JUDGMENT OF SYED SHEH BARAKBAH, J.

20

I have had the advantage of reading the
draft judgment of the learned Chief Justice in
this appeal, with which I am in full agreement,
and have nothing to add.

Sd. Syed Sheh Barakbah
J U D G E
Federation of Malaya.

Ipoh, 6th March, 1957.

No. 20.

ORDER ON APPEAL

In the Court
of Appeal
Kuala Lumpur

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. CIVIL APPEAL NO. 48 OF 1956

No.20.
Order on
Appeal.
15th March
1957.

B E T W E E N

SARDARA ALI Appellant

- and -

SAJAN SINGH Respondent

10 (In the matter of Malacca Suit No.47 of 1955

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant)

BEFORE THE HONOURABLE MR. JUSTICE THOMSON IN
CHIEF JUSTICE OF THE FEDERATION OF MALAYA OPEN
THE HONOURABLE MR. JUSTICE HILL AND THE COURT
HONOURABLE MR. JUSTICE SYED SHEH BARAKBAH

This 15th day of March, 1957

20 O R D E R

THIS APPEAL coming on for hearing on the 21st day of January, 1957 in the presence of Mr. C. S. Jayaswal of Counsel for the Plaintiff-Appellant Sardara Ali and Dato Sir Clough Thuraisingham of Counsel for the Defendant-Respondent Sajan Singh AND UPON reading the records AND UPON hearing Counsel for both parties this Court did Order that this appeal should stand for judgment and the same standing for judgment this day in the presence of 30 Mr. C.S. Jayaswal for the Appellant and Mr. Sundaramoorthy for Dato Sir Clough Thuraisingham for the Respondent THIS COURT DOTH ORDER that

In the Court
of Appeal
Kuala Lumpur

No.20.
Order on
Appeal.
15th March
1957 -
Continued.

this appeal be and is hereby allowed IT IS FURTHER ORDERED THAT the Respondent-Defendant do pay to the Appellant-Plaintiff the value of Lorry No.M2207 as at the time of trespass i.e., the 27th day of January, 1955 with interest at the rate of 6% per annum and that such value be assessed by the Registrar on inquiry AND IT IS FURTHER ORDERED that the Costs of this Appeal and in the Court below be taxed and paid by the Defendant-Respondent to the Plaintiff-Appellant AND IT IS LASTLY ORDERED that the sum of \$500/- deposited in Court by Plaintiff-Appellant be paid out to his Solicitor Mr. C.S. Jayaswal.

Given under my hand and the seal of the Court this 15th day of March, 1957.

Sd/- P.Samuel

L.S. Senior Assistant Registrar,
Court of Appeal
Federation of Malaya
Kuala Lumpur.

10

No.21.
Order
granting
final leave
to appeal
to Her
Majesty in
Council.
23rd July
1957.

No. 21.

20

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL
IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
F.M. CIVIL APPEAL NO. 48 OF 1956

B E T W E E N

SARDARA ALI Appellant

- and -

SAJAN SINGH Respondent

(In the matter of Malacca Suit No.47 of 1955)

30

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant)

Before: THE HONOURABLE MR. JUSTICE HILL, Acting
Chief Justice, Federation of Malaya,
THE HONOURABLE MR. JUSTICE KNIGHT,
Acting Chief Justice, Singapore

- and -

THE HONOURABLE MR. JUSTICE SUTHERLAND,
Judge, Federation of Malaya.

40

IN OPEN COURT

This 23rd day of July, 1957.

O R D E R

Upon the application of the Defendant/Respondent Sajan Singh made this day by way of Motion and upon reading the affidavit of Sajan Singh affirmed on the 11th day of June 1957 and filed herein on the 1st day of July 1957 and upon hearing Mr. C.K. Mohan of Counsel for the Defendant/Respondent and Mr. C. S. Jayaswal of Counsel for the Plaintiff/

50

Appellant, IT IS ORDERED that final leave be and is hereby given to the Defendant/Respondent to appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated the 15th March, 1957.

GIVEN under my hand and the seal of the Court this 23rd day of July, 1957.

P. SAMUEL

Senior Asst: Registrar
Court of Appeal,
Federation of Malaya.

In the Court
of Appeal
Kuala Lumpur

No.21.

Order
granting
final leave
to appeal
to Her
Majesty in
Council.
23rd July
1957 -
Continued.

10

(SEAL)

PLAINTIFF'S EXHIBITS P.1.

Supreme Court, Malacca.
Civil Suit No. 47 of 1955.
Exhibit "P1"
Date 17.7.56.

Sd/- A. Thomazios
f. Assistant Registrar.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

SETTLEMENT OF MALACCA

SUIT NO. 47 of 1955

10

B E T W E E N

SARDARA ALI Plaintiff

- and -

SAJAN SINGH Defendant

BUNDLE OF CORRESPONDENCE

C.S. JAYASWAL,

SOLICITOR FOR THE PLAINTIFF,

MALACCA.

FILED THIS 29th DAY OF MAY, 1956.

P.I. - (1) Letter from Defendant
to Koh AikExhibit
P.I.Bundle of
Correspondence
(1) Letter
from Defendant
to Koh Aik.
30th November
1954.Sajan Singh,
Pringgit Road,
Malacca.
30th November, 1954.10 To
Mr. Koh Aik,
No. 32 Kampong Anam,
1½ m.s. Bachang Road,
Malacca.

Dear Sir,

I am in receipt of your Notice dated 26.11.54
demanding the sum of \$67.50 being the cost of
supplying sand in September, 1954 (nine trips).May I inform you that my lorry was hired for
the carrying of the sand in question, but I do not
know who actually received the sand.20 Now within 7 days from date hereof, you please
let me know the reason of your claiming the above
amount from me, failing with, I am to inform you
that I shall take legal proceedings against you.

Yours faithfully,

(sd) Sajan Singh.
(In Punjabi).

P.I. - (2) Letter from Defendant
to Koh Aik(2) Letter
from Defendant
to Koh Aik.
7th December
1954.Sajan Singh,
Pringgit Road,
Malacca.
7th December, 1954.30 To
Mr. Koh Aik,
32 Kampong Anam,
1½ m.s. Bachang Road,
Malacca.

Dear Sir,

I am in receipt of your letter dated 4.12.54

Exhibit
P.I.
 Bundle of
Correspondence
 (2) Letter
 from Defendant
 to Koh Aik.
 7th December
 1954 -
 Continued.

P.I. - (2) Letter from Defendant to Koh Aik
(Continued)

and note the contents therein.

The sand in question was actually transported by my lorry from the River Bed at Durian Tunggal (lorry M.2207) but the sand in question was taken by my driver for his own use and that you should put in your claim to him direct and not to me.

If the Receipt which my lorry driver - Sardara Ali gave to you for the sand taken was signed by me, then in that case I am responsible for the payment of your claim. 10

I therefore request that you put in your claim to him direct and not to me.

Yours faithfully,

(sd) Sajan Singh.
 (In Punjabi)

(3) Copy
 letter from
 Lovelace &
 Hastings to
 Commissioner
 for Road
 Transport.
 29th December
 1954.

P.I. - (3) Copy letter from M/s. Lovelace and
Hastings, K.L., to Commissioner for
Road Transport K.L.

20

DGI/CYC/767/54

29th December, 1954

The Commissioner for Road Transport,
 Federation of Malaya,
 Kuala Lumpur.

Sir,

We have the honour to state that we have been consulted by Mr. Sardara Ali alias Sarakdar Lee son of Kheon, 123 Lorong Panjang, Malacca. From what our client had to say, it appeared to us that the wisest course to follow was to put the whole facts before you. 30

We understand that in the B.M.A. period, our client and one other (with whom we need no longer concern ourselves since he assigned his 'rights' some time ago to our client) provided

P.I. - (3) Copy letter from M/s. Lovelace and Hastings, K.L., to Commissioner for Road Transport K.L. (Continued)

Exhibit
P.1.
Bundle of Correspondence
(3) Copy letter from Lovelace & Hastings to Commissioner for Road Transport. 29th December 1954 - Continued.

a lorry and in the name of Mr. Sajan Singh son of Sunder Singh, Bukit Asahan Estate, Malacca, obtained a haulage permit i.e. HP. 164A. Our client states that this was done since at that time nobody other than a prewar operator had any hope of being granted a permit.

10 It appears that since then our client made three applications in his own name for the granting of a permit unsuccessfully.

20 Since our client has got himself so entangled with the nominal permit holder's demands and since there does not seem to be any doubt (assuming that the documents he has shown us say what he tells us they say) that he has been the actual operator of the vehicle and since we are aware that you deal with cases of this nature most reasonably, we have therefore got him to agree to our writing this letter.

It is clear, of course, that what we are asking for is the removal of the present permit holder and the re-issue of the permit in our client's own name.

Will you be good enough to look into the matter and to get in touch with us if you require any further information.

30 We have the honour to be,
Sir,
Your obedient servants.

Sd/- Lovelace & Hastings.

P.I. - (4) Letter from Road Transport Department to Lovelace & Hastings

(4) Letter from Road Transport Department to Lovelace & Hastings. 7th January 1955.

Teleg.Add. "TRANCO"

Tel.No. 4471

Ref.No.X/995

M/s Lovelace & Hastings,
Advocates & Solicitors,

62, Klyne Street,
Kuala Lumpur.

Headquarters,
Road Transport Department
Federation of Malaya,
Kuala Lumpur.
7 January, 1955.

40

Gentlemen,

I am directed by the Commissioner for Road

Exhibit

P.I.

Bundle of
Correspondence

(4) Letter
from Road
Transport
Department to
Lovelace &
Hastings.
7th January
1955 -
Continued.

P.I. - (4) Letter from Road Transport Department
to Lovelace & Hastings (Continued)

Transport to acknowledge receipt of your letter Ref.DGI/CYC/767/54 dated 29.12.54 written on behalf of your client Mr. Sardara Ali alias Sarakdar Lee son of Kheon, 123 Lorong Panjang, Malacca.

2. I am to say that the Commissioner, before he can consider your client's request, must have sight of any evidence your client may have. 10

I am, Gentlemen,
Your obedient servant,
F (sd) Illegible.
(D.SKINGLEY)
for Controller.

(5) Letter
from Road
Transport
Department to
Lovelace &
Hastings.
7th June 1955

P.I. - (5) Letter from Road Transport Department
to Lovelace & Hastings

Teleg.Add. "TRANCO" Headquarters,
Tel. No.4471 Road Transport Department,
Ref.No.AP-4361 Federation of Malaya, 20
Kuala Lumpur.

Messrs.Lovelace &
Hastings,
Advocates & Solicitors,
62, Klyne Street,
Kuala Lumpur.

7 June, 1955.

Gentlemen,

I have the honour to refer to the application dated 17/5/55 for an Emergency Haulage Permit submitted by you on behalf of your client Mr. Sarakdar Lee of 132 Templer Avenue, Malacca, to authorise the use of a 5 ton vehicle for the carriage of goods for hire or reward within the Settlement of Malacca and to inform your client that his application is refused. 30

The grounds for refusal are that in view of the decision of the Federal Legislative Council taken on 4/5/55 to implement the Report of the Select Committee appointed to consider the entry of the Malays into the Road Transport Industry this application cannot be granted. 40

P.I. - (5) Letter from Road Transport Department to Lovelace & Hastings (Continued)

Exhibit
P.I.
Bundle of Correspondence
(5) Letter from Road Transport Department to Lovelace & Hastings.
7th June 1955 -
Continued.

Your client's supporting Documents are returned herewith.

2. Your attention is directed to Regulation 5 (1)(b) of the Motor Vehicles Commercial Use Regulations, which states :-

10 "Where any application for a permit has been refused under these Regulations, no further application in the same manner shall be made by the same applicant without the prior permission in writing of the Commissioner at any date before the expiration of a period of six months from the date of the refusal of the application".

I have the honour to be,
Gentlemen,
Your obedient servant,
f sd: Illegible
(D. SKINGLEY)

20 f. Commissioner for Road Transport.

c.c. to

Mr. Sarakdar Lee alias Sardara Ali,
132 Templer Avenue,
Malacca.

LSI.

P.I. - (6) Copy letter from Plaintiff's Solicitor to Defendant

(6) Copy letter from Plaintiff's Solicitor to Defendant.
29th October 1955.

30 A.R.

CSJ/SSJ/100/55

29th October 1955

Dear Sir,

Dodge Lorry No. M.2207

I am instructed by my client Sardara Ali, Lorry driver, of No. 132 Lorong Panjang, Malacca to write to you as below.

On or about the 27th day of January, 1955

Exhibit
P.I.
Bundle of
Correspondence

P.I. - (6) Copy letter from Plaintiff's Solicitor to Defendant (Continued)

(6) Copy letter from Plaintiff's Solicitor to Defendant. 29th October 1955 - Continued.

you took away from my client's house during his absence therefrom and without his permission or consent his Dodge lorry No. M.2207 together with a Haulage Permit No. 164A attached thereto obtained and registered by you in your own name at the request and expense of my client for his sole use and benefit (hereinafter referred to as "the lorry") and you have failed or refused to return the lorry to my client in spite of repeated requests.

10

I am further instructed to and hereby do give you notice and demand from you :-

(a) the return of my client's lorry to him or payment of \$5,000/- in lieu thereof

and (b) payment of a sum of \$400/- per mensem from 27th January 1955 till the date of its return, or payment therefor as damages, for loss of use of the lorry.

20

within seven days from the receipt hereof failing which my instructions are to issue a Writ of Summons against you without further reference.

Yours faithfully,

Sd: C.S. Jayaswal.

Mr. Sajan Singh,
Bukit Asahan Estate,
Malacca.

(7) Letter from Defendant's Solicitor to Plaintiff's Solicitor. 1st November 1955.

P.I. - (7) Letter from Defendant's Solicitor to Plaintiff's Solicitor

30

SS/CHAN

COPY

1st November 1955.

C.S. Jayaswal Esq.,
Advocate & Solicitor,
Malacca.

Dear Sir,

Re: Dodge Lorry No. M2207

I am now acting for Mr. Sarjan Singh who has handed me your letter dated 29th October, 1955

P.I. - (7) Letter from Defendant's Solicitor to Plaintiff's Solicitor (Continued)

Exhibit
P.I.
Bundle of Correspondence
(7) Letter from Defendant's Solicitor to Plaintiff's Solicitor.
1st November 1955 -
Continued.

with instructions to reply thereto which I hereby do.

Re: your paragraph 2.

My client says that he removed Lorry No. M 2207 from your client's premises where the latter has dismantled one or two wheels. This was done in the presence of the Police as your client refused to return same on my client's demand.

10 The question of the ownership of the lorry was raised by your client during an inquiry held by the Registrar of Vehicles, Malacca, when your client was represented by I think Mr. Ironside of Messrs. Lovelace & Hastings, Kuala Lumpur.

My client denied the allegations made during the inquiry above referred to and has now instructed me to do so again.

I have instructions to accept service of any process you may deem fit to take.

20 Yours faithfully,
Sd/- S. Shunmugam.

P.I. - (8) Copy letter from Plaintiff's Solicitor to Defendant's Solicitor.

(8) Copy letter from Plaintiff's Solicitor to Defendant's Solicitor.
2nd November 1955.

C.S. Jayaswal.
CSJ/SSJ

118, First Cross Street
Malacca.

2nd November, 1955.

Dear Sir,

Re: Dodge Lorry No. M 2207

30 I acknowledge receipt of your letter of the 1st instant and note the contents therein. I shall be obliged if you will please let me know as to your penultimate paragraph what allegations were denied by your client specifically.

Exhibit
P.I.
Bundle of
Correspondence
(8) Copy
letter from
Plaintiff's
Solicitor to
Defendant's
Solicitor.
2nd November
1955 -
Continued.

P.I. - (8) Copy letter from Plaintiff's Solicitor to Defendant's Solicitor (Continued)

I am glad to note that you have instructions to accept service. As soon as you have given me the particulars requested above I shall take instructions and issue and serve the Writ on you.

Yours faithfully,

Sd: C.S. Jayaswal

S. Shunmugam Esq.,
Advocate & Solicitor,
Malacca.

10

(9) Letter
from
Defendant's
Solicitor to
Plaintiff's
Solicitor.
3rd November
1955.

P.I. - (9) Letter from Defendant's Solicitor to Plaintiff's Solicitor.

SS/CHAN

3rd November 1955.

C.S. Jayaswal Esq.,
Advocate & Solicitor,
Malacca.

Dear Sir,

Re: Dodge Lorry No. M 2207

I regret that I cannot remember the details of my client's denial. Such details will appear in the Notes of Evidence taken down by the Registrar of Vehicles.

20

As far as I can remember my client denied having sold the said lorry to your client. He further disputed the signature as being his. The said signature appeared on a document which your client called a "Bill of Sale". I regret I cannot enlighten you further. The said Notes of Evidence will be sufficiently revealing I am sure.

30

Yours faithfully,

sd: S. Shunmugam.

P.I. - (10) Letter from Road Transport Department
to Plaintiff's Solicitor

Teleg.Add. "TRANCO" HQ., Road Transport
Tel. No.4471 Department,
Ref. No.164A Federation of Malaya,
Kuala Lumpur.
REGISTERED 4 November, 1955.

Mr. C.S. Jayaswal,
Advocate & Solicitor,
No.118, First Cross Street,
Malacca.

10

Exhibit
P.1.
Bundle of
Correspondence
(10) Letter
from Road
Transport
Department to
Plaintiff's
Solicitor.
4th November
1955.

Sir,

I am directed by the Commissioner for Road Transport to acknowledge receipt of your letter reference CSJ/LEO/100/55 dated 1.11.55. and to forward herewith a certified true copy of Haulage Permit Serial No. 016444 in respect of vehicle M.2207.

2. This Haulage Permit has been cancelled with effect from 29.4.55.

20

I am, Sir,
Your obedient servant,
(sd) D. Skingley.
Controller.

P.I. - (11) Letter from Road Transport Department
to Plaintiff's Solicitor.

Teleg: Add: "TRANCO" Headquarters,
Tel. No.4471. Road Transport
Ref: 164A. Department,
Federation of Malaya,
Kuala Lumpur.
11th November, 1955.

30

Mr. C.S. Jayaswal,
Advocate & Solicitor,
118, First Cross Street,
Malacca.

(11) Letter
from Road
Transport
Department to
Plaintiff's
Solicitor.
11th November
1955.

Sir,

Re: Suit No.47 of 1955
Dodge lorry No. M.2207

I am directed by the Commissioner for Road Transport to acknowledge receipt of your letter CSJ/LEO/100/55 dated 7/11/55 and to inform you that no new haulage permit has been issued in respect of a replacement vehicle.

I am, Sir,
Your obedient servant,
(sd) D. Skingley
Controller.

AWA/-

P.2. - (1) Particulars of Registration

(M.V.20 B.)

Exhibit

P.2.

Bundle of Documents

(1)

Particulars of Registration

M 2207 IM&R.No.

Name & Address of Registered Owner

(a) Class .. Goods
(b) Type of Body .. Lorry.

(1) Sajan Singh
Bukit Asahan Estate
Malacca

(c) Colour .. Green.

(2)

(d) Propelled by ..
Petrol.

.....

10

(e) Manufacturer's

(3)

Name .. Dodge

(4)

Engine No.T110L12704C

.....

Chassis No.T110L12704C

(f) Year of Manufacture ..
1945

(5)

(g) No. of Seats (Inc.
Driver) ..

.....

(h) Horse-power .. 29.4

(6)

20

(i) Unladen Weight ..
59 cwt 21lbs.

.....

(j) First Registered on
22/11/48

(7)

.....

(8)

.....

Exhibit
P.2.
Bundle of
Documents
(2) Police
Report No.
75/55.
26th
January
1955.

P.2. - (2) Police Report No. 75/55

Translation No. 32 of 1955

A..... Page ... 1 ...

FEDERATION OF MALAY POLICE

SALINAN REPORT

No. Report 75/55 Rumah Pasong Banda Hilir.

Pada 3.55 petang. 26.1.1955

Aduan Sarak Dar Lee & Sardara Ali i/c M037412

Sa Orang Laki2 Bangsa Sikh Umor 55

Kreja Driver.

10

Dudok di No. 132 Templer Avenue, Malacca.

Jurubasa Daripada Malay Kepada Malay

Kata Aduan

Lebih kurang pukul 2.45 pm 26.1.55 masa itu jam saya ada dudok di rumah saya yang tersebut, kemudian datang 2 orang Sikh 1. Nama Sarjan Singh, 2. Kahar Singh dengan dua orang police dan ini Sergeant Singh ada minta Lorry M.2207 pada saya, dan saya bilang boleh ambil, kalau lu ambil saya buat report, jadi ia ta' jadi ambil lalu ia pergi ka-mana pergi saya pon tiada tahu saya takut ini Sergeant Singh kalau jadi apa2 balakang hari atau kalau ia pukul ini lah saya datang Station buat report ada nya.

20

Sd: Aduan Tulis Bengali
Sd: Ketua Saibot sgt.7323

Certified true copy
O.C.P.D. Central
Malacca.

Translated by me

30

.....
Certificated Interpreter
Courts, Malacca.

Di-Salin oleh Sd:
Jantan Sgt.5922
10.11.55

P.2. - (3) Translation of Police Report No. 75/55

Translation

Translation No. 32 of 1955.

FEDERATION OF MALAYA POLICE

COPY OF REPORT

Report No. 75/55 Police Station Banda Hilir.

Time 3.55 p.m. 26.1.55 case -

Complainant Sarakdar Lee & Sardara Ali 1/c M.037412

Sex Male Race Sikh Age 55 years Occupation

10 Driver.

Living at 132, Templer Avenue, Malacca.

Interpreter - From Malay Into Malaya

Witness -

Complainant states :-

20 At about 2.45 pm. on 26.1.55 I was sitting in my house mentioned above. Two Sikhs namely Sargent Singh and KAHAR SINGH came with two police constables. Sargent Singh asked for lorry M.2207 from me. I told him that he could take it and if he did I would make a report. So he did not take it. He then left. I do not know where he went. I am afraid that the said Sargent Singh may do anything or assault me later on. So I came to the Police Station to make a report.

Sd: Complainant in Bengali

Sd: Saibot, Sgt.7323, In-charge

Certified True Copy

Sd: ?

30 O.C.P.D. Central
Malacca.

Copied by Jantan, Sgt.5922 Sd/- Jantan Sgt.5922
10.11.55.

Translated by me.

.....
Certificated Interpreter

Courts, Malacca.

16.12.55.

Exhibit

P.2.

Bundle of Documents

(3)

Translation of Police Report

No. 75/55

26th January 1955.

Exhibit
P.2.
Bundle of
Documents
(4) Police
Report No.
78/55
27th
January
1955.

P.2. - (4) Police Report No. 78/55

Translation No. 32 of 1955

A..... Page 1

FEDERATION OF MALAYA POLICE

SALINAN REPORT

No.Report. 78/55 Rumah Pasong Banda Hilir
Pada 7.05 Petang 27th Jan.1955
Aduan Saradar Lee & Sardara Ali i/c M.037412, Laki2
Bangsa Sikh Umor 55 Kerja Lorry Driver
Dudok di No. 132 Lorong Panjang, Malacca. 10
Jurubasa daripada Malay kepada Malay.
Kata Aduan

Lebeh kurang 6.40 petang 26.1.55. Masa itu saya sampai di rumah yang tersebot, bini saya nama embok chek bagi tahu dengan saya M/Lorry No.M.2207 satu laki2 Indian Sikh name Sajan Singh suda bawa kluar mana tempat pergi tiada tahu dia tiada minta apapa sama saya ini Lorry dahulu beli. ini lorry dia sebanyak \$3,500/- wang tunai dan buat surat saja sudah ber-
awan2 dengan dia suda 18 tahun, dari pada negeri 20
dahulu keradaan itu lorry No.M.2207 Bansa Dodge tangki depan chat hijau, pakai tyre depan belakang tiada tahu suda pakai selama 5 tahun harga lebeh kurang \$1,500/- ke-ada an orang itu laki2 Sigh Nama Sajan Singh Umor 60 tahun badan gemok munka panjang tinggi lebeh kurang 6 kaki 2 inche ada simpan bisai, dan janjgot warna putch mata, telenga, sedang, hidong manchong lain tanda ingat pengabisan lehat pakai baju warna tiada ingat datang Station masok report, 30
ada nya.

Sd: Aduan Tulis Bengali
Sd: Ketua Ahmad Sgt.7573

Certified true copy

O.C.P.D. Central
Malacca.

Translated by me

.....
Certificated Interpreter
Courts, Malacca.

Di-salin oleh Sd:
Jantan Sgt.5922
10.11.55.

40

P.2. - (5) Translation of Police Report No. 78/55

Exhibit

Translation

Translation - No. 32 of 1955

P.2.
Bundle of
Documents

FEDERATION OF MALAYA POLICE

(5)
Translation
of Police
Report
No. 78/55
27th
January 1955.

COPY OF REPORT

Report No. 78 Police Station Banda Hilir
Time 7.05 p.m. 27.1.55 Case -
Complainant Saradar Lee & Sardara Ali i/c M.037412
Sex Male Race Sikh Age 55 years Occupation Lorry
10 driver
Living at No. 132 Lorong Panjang, Malacca
Interpreter - From Malay into Malay
Witness -
Complainant states :-

At about 6.40 p.m. on 26.1.55 I arrived at the
abovementioned house. My wife EMBOK CHEK informed
me that a male Sikh Indian named Sarjan Singh had
taken away my lorry M. 2207 (She) did not know where
he took it to. He did not ask me anything. I for-
20 merly bought this lorry from him for \$3,500/- cash
and a document was made out. (I) have been on fri-
endly term with him for 18 years, even in our home
country. Description of the lorry:- No. M.2207. a
Dodge with green tank (bonnet) I do not know the
type of tyres used both in front and rear. I have
used the lorry for 5 years and the value is about
\$1,500/-. Description of the male Sikh:- Name Sarjan
30 Singh age 60 years stout body, long face, height
about 6 feet 2 inches and has grey moustache and
beard, eyes and ears normal and pointed nose. I (do
not) remember other marks. I cannot remember the
clothes he wore the last time I saw him. I come to
the Station to make a report.

Sd: Complainant in Bengali
Sd: Ahmad Sgt.7573 In-Charge

Certified true copy

Sd:?
O.C.P.D. Central
Malacca.

Sd/: Jantan, Sgt. 5922
10.11.55.

Translated by me,

.....
Certificated Interpreter
Courts, Malacca.

Copied by
Jantan Sgt.5922

Exhibit
P.2.
Bundle of
Documents
(6) Copy
of Haulage
Permit.
18th
February
1953.

P.2. (6) Copy of Haulage Permit

CERTIFIED TRUE COPY ISSUED ON 4.11.55
(sd:) D. Skingley.
Commissioner for Road Transport
Federation of Malaya.

Serial No.B.016444.
Ref.No.164A and the serial
number above, must be quoted
in all correspondence
regarding this permit.

10

FEDERATION OF MALAYA

ROAD TRANSPORT PROCLAMATION

THE MOTOR VEHICLE COMMERCIAL USE REGULATIONS.

H A U L A G E P E R M I T

The Commissioner for Road Transport hereby author-
ises SARJAN SINGH s/o SUNDER SINGH
(hereinafter called the permit holder) of Bukit
Asahan Estate, Malacca, to use motor vehicle M2207
for the carriage of Category of Use

A. Goods for hire or reward

Authorised

20

A.

L.S.

subject to the provisions of the Road Transport
Proclamation and Regulations made thereunder and
to the conditions attached hereto.

18th February, 1953.

(Sd:) W.M. FAIRWEATHER
for Commissioner for Road
Transport.

Conditions

30

1. The maximum permissible laden weight of the

P.2. - (6) Copy of Haulage Permit (Continued)

Exhibit
P.2.
Bundle of
Documents
(6) Copy
of Haulage
Permit.
18th
February
1953 -
Continued.

vehicle shall be 143 cwts.

2. The following limitation is imposed on the use of the vehicle as authorised above:

The authorised vehicle shall be used for the carriage of goods for hire or reward and shall not be used on the main North South Trunk Road.

3. The permit holder shall use the vehicle from a base at Bukit Asahan Estate, Malacca.

10 If the vehicle is authorised in Category "A" above, or if in Category "B" and not being used for the conveyance of the goods of the permit holder, it may not travel unladen on any outward journey from such base except in pursuance of a contract of hiring of the vehicle from such base entered into before the journey is undertaken.

20 4. An attendant shall be carried in the rear of the vehicle, so placed that he can signal to overtaking traffic, and to the driver of the vehicle the approach of such traffic.

5. (1) No persons other than the driver or attendant shall be carried on the vehicle save as follows :

(a) Employees of the permit holder numbering not more than Two persons proceeding on the business of the permit holder may be carried.

30 (b) Passengers not exceeding Nil in number provided no fare is charged for such carriage may be carried.

(c) A sick or injured person may be carried in case of an emergency.

(2) The total number of persons or passengers including driver or attendant carried under this condition shall in no case exceed FOUR persons.

6. At all times when the vehicle is used under this permit, the permit shall be displayed, in a suitable frame, in the interior of the cab of the vehicle, so as to be readily legible.

Exhibit
P.2.
Bundle of
Documents
(6) Copy
of Haulage
Permit.
 18th
 February
 1953 -
 Continued.

P.2. - (6) Copy of Haulage Permit (Continued)

7. This permit is personal to the permit holder. It may not be transferred or assigned. Except with the previous consent in writing of the Commissioner the permit holder may not appoint an agent or an attorney for the purpose of exercising any of the rights conferred on the permit holder by this permit. The permit holder shall not permit or suffer any such agent or attorney to exercise any such rights.

10

8. The permit does not confer on the holder thereof any right to operate any service or to use any vehicles on any road in contravention of any prohibition or restriction applying thereto.

9. The permit holder shall notify the Commissioner of any change in his address within seven days of such change and send or deliver to him this permit to be amended.

10. The permit holder shall deliver this permit on demand to the Commissioner or to any person nominated by the Commissioner.

20

11. The permit holder shall keep in the vehicle the following record in relation to the use of the vehicle. The record shall be written up so far as possible before the commencement of a journey and completed within twelve hours of the completion of the journey.

(a) In respect of goods carried for hire or reward: Date; vehicle number; place at which goods were loaded; details of the journey; brief description of goods carried; name and address of the persons owning the goods; details of charges made or to be made in respect of the goods; name and driving licence number of driver or vehicle.

30

(b) In respect of permit holders own goods; Date; vehicle number; details of goods carried; with weights; if goods are being sold, name and address of purchaser; if goods are being bought, name and address of vendor; place of loading; place of unloading; name and driving licence number of driver of vehicle.

40

12. The permit holder shall not suffer or permit

P.2. - (6) Copy of Haulage Permit (Continued)Exhibit

P.2.

Bundle of Documents

(6) Copy of Haulage Permit.

18th February

1953 - Continued.

any authorised vehicle to be driven by a person who is not a bona fide employee of the permit holder.

13. No person shall be carried on the right-hand side of the driver, nor shall any article be so carried as to be liable to obstruct the driver.

10 14. The laden weight of the authorised vehicle including the driver and any persons carried on the vehicle shall not at any time when the vehicle is in use exceed the maximum permissible laden weight specified in this permit.

15. No alteration to an authorised vehicle otherwise than by way of replacement of parts in the structure or fixed equipment of any authorised vehicle shall be made without the prior approval in writing of the Commissioner.

20 16. (a) The permit holder shall stop any authorised vehicle on being so required by a police officer or any officer of the Road Transport Department, Federation of Malaya.

(b) He shall at all times afford to any such officer reasonable facilities for examining the vehicle, checking the goods carried thereon and enquiring into the operation thereof.

(c) He shall produce to any such officer all way bills, consignment notes and other documents relating to the operation of the said vehicle as required.

30 (d) He shall at all reasonable times allow any such officer facilities for inspection of the vehicle and such facilities shall include free access to his premises, parking places or garages, etc.

(e) He shall produce the vehicle at such time and place as any such officer may require.

(f) He shall obey the written instructions of any such officer as to the operation of any authorised vehicle.

40 17. When this permit authorises the use of a vehicle for hire or reward the permit holder shall

Exhibit
P.2.
 Bundle of
Documents
(6) Copy
 of Haulage
 Permit.
 18th
 February
 1953 -
 Continued.

P.2. - (6) Copy of Haulage Permit (Continued)

not ask for or receive or seek to charge or obtain rates of hire in excess of the following :-

Twenty five cents per ton/mile or \$14/- per day whichever is the greater.

If the hirer requires exclusive use of the vehicle (i.e., the owner is not allowed to carry any goods other than the hirer's payment to be made on total mileage, loaded or empty, travelled on the basis of the vehicle carrying full rated capacity regardless of weight of actual load. 10

If the owner is allowed to carry goods other than hirer's payment to be made on a ton/mile basis for the loaded journey only and the weight actually carried.

SPECIAL CONDITIONS

The carriage of employees referred to in 5 (1) (a) is subject to suitable insurance to cover the Third Party Risks involved in the carriage of the employees.

THE SCHEDULE POLICY No. OV/19221.

Exhibit
 P.2

Bundle of
 Documents

(7) Copy
 Policy

No. OV/19221
 (1948-
 1949)
 21st

December
 1948

The Insured: Name SARJIN SINGH ESQ.

Address Asahan Estate, Malacca.

Carrying on or engaged in the business or occupation of
 and no other for the purposes of this insurance

Period of Insurance: From 20th December 1948 { both dates
 To 20th December 1949 } inclusive

Geographical area: Malay Peninsula and that part of Siam within 50 miles of the border
 between Siam and the Malay Peninsula
 Description of Vehicle:

| Index Mark and Registration Number | MAKE | H.P. | Year of Manu- facture | Carrying or Seating Capacity including Driver | Insured's Estimate of Value including Accessories and Spare Parts | |
|--|-------------|------|-----------------------------|---|---|---------|
| | | | | | Vehicle | Trailer |
| M-2207 | DODGE LORRY | - | 1945 | 3 tons | 3rd Party Risks | |

IT IS UNDERSTOOD AND AGREED THAT

SECTION 1 OF THIS POLICY IS CANCELLED

Definitions of "road":

The expression "road" in Proviso (g) to Section II-1 shall mean:-

- (a) road in the Federated Malay States within the meaning of the Road Traffic Enactment 1937 (Federated Malay States)
- (b) a road in the Straits Settlements within the meaning of the Road Traffic (Third-Party Insurance) Ordinance 1938 (S.S.)
- (c) a road in Johore within the meaning of the Johore Road Traffic (Third-Party Insurance) Enactment 1938.

Limits of Liability:

Maximum amount for which the insured is permitted to authorise repairs under

Proviso (a) of Section 1-4 \$100

Limit of the amount of the Company's liability under Section II-I (1) Unlimited

Limit of the amount of the Company's liability under Section II-I (11) in respect

of any one claim or series of claims arising out of one event \$100,000

Limitation as to Use:

Use for the carriage of goods for hire in
 connection with the Policy holder's business

Legislation referred to in "Avoidance of certain terms and right of recovery".

Road Traffic Ordinance 1941 (Colony of Singapore) Sections 51, 52 and 53.

Motor Vehicle Third-Party Risks Regulations (Malayan Union) Regulations 6, 7 & 8.

Premium \$115.00

P/accident benefits to one paid driver & one attendant \$ 20.00

Stamp Duty: .25c.

Date of Signature of

Proposal and Declaration: 20th December 1948

Renewal Date: 20th December 1949

IN WITNESS WHEREOF the ASIA INSURANCE COMPANY, LIMITED has caused this Policy to be executed on its behalf by the undersigned at SINGAPORE, this TWENTY-FIRST day of DECEMBER, 1948.

Intld.
 Examined:
 THKHOO

Countersigned by Sd: Illegible
 Asst. Manager.

Sd: Lee Leung Ki
 Managing Director.

FOR THE ASIA INSURANCE CO., LTD.,

P.2 (8) Copy Policy No.OV/71904 (1953-1954)

AGENCY ' KTS

THE SCHEDULE

POLICY No. OV/71904

Exhibit

P.2
Bundle of
Documents
(8) Copy
Policy
No.OV/71904
(1953-1954)
5th
December
1953

The Insured: Name SARJAN SINGH ESQ., Malacca
Address Bt.Asahan Estate, Malacca
Carrying on or engaged in the business or occupation of
and no other for the purposes of this insurance { both dates
Period of Insurance: From 20th December 1953 } inclusive
To 20th December 1954 }
Geographical Area: Malay Peninsula and that part of Siam within 50 miles of
the border between Siam and the Malay Peninsula
Description of Vehicle:

| Index Mark and Registration Number | MAKE | H.P. | Year of Manu- facture | Carrying or Seating Capacity including Driver | Insured's Estimate of Value Including Accessories and Spare Parts | Vehicle | Trailer |
|--|-------------|------|-----------------------------|---|---|---------|---------|
| M2207 | DODGE LORRY | - | 1945 | 3 tons | 3rd Party Risks. | | |

IT is hereby noted and declared that Section I of the
Policy is deleted.

Definition of "road":

The expression "road" in Proviso (g) to Section II-I shall mean:-

- (a) road in the Federated Malay States within the meaning of the Road Traffic Enactment 1937 (Federated Malay States)
(b) a road in the Straits Settlements within the meaning of the Road Traffic (Third-Party Insurance) Ordinance 1938 (S.S.)
(c) a road in Johore within the meaning of the Johore Road Traffic (Third Party Insurance) Enactment 1938.

Limits of Liability:

Maximum amount for which the Insured is permitted to authorise repairs under proviso (a) of Section 1-4 .. \$100
Limit of the amount of the Company's liability under Section II-I (1) .. Unlimited
Limit of the amount of the Company's liability under Section II-I (11) in respect of any one claim or series of claims arising out of one event .. \$100,000
Limitations as to use:

Use for the carriage of goods for hire in connection with the Policyholder's business

Legislation referred to in "Avoidance of certain terms and right of recovery":

Road Traffic Ordinance 1941 (Colony of Singapore) Section 51, 52 and 53.
Motor Vehicle Third-Party Risks Regulations (Malayan Union) Regulations 6, 7 & 8.

| | |
|------------------|--------------|
| Premium | \$115.00 |
| less 10% for ncb | <u>11.50</u> |
| | 103.50 |
| | 20.00 |
| | <u>4.00</u> |
| | \$127.50 |

P/Accident benefits to 1 paid driver & 1 attendant
Liability at law to 2 passengers travelling on lorry

Date of Signature of

Proposal and Declaration

Renewal Date: 20th December 1954

Stamp Duty: .25c

IN WITNESS WHEREOF the ASIA INSURANCE COMPANY, LIMITED has caused this Policy to be executed on its behalf by the undersigned, at Singapore this 5th day of December, 1953.

Intld.
Examined
THKHOO

Countersigned By Sd: Illegible
Asst. Manager

For THE ASIA INSURANCE CO.LTD.,
Sd: Lee Leung Ki
Managing Director.

P.2. - (9) Copy Bill (Kim Hin & Co.)COPYKim Hin & Co.
No. A Semabok

Malacca 31.8.1953.

Mr. Sajan Singh

M.2207

| | | | |
|----|-----------------|---------------------------|-----------------|
| | 20 | gallons benzine at \$1.45 | \$29.00 |
| | 66 | " " at \$1.48 | \$97.68 |
| | 4 | " cylinder oil | \$17.50 |
| 10 | 2 $\frac{3}{4}$ | " " " | \$ 7.20 |
| | | | <u>\$151.38</u> |
| | | Total <u>\$151.38</u> | |

Exhibit
P.2.
Bundle of Documents
(9) Copy
Bill.
(Kim Hin
& Co.)
31st
August
1953.

P.2. - (10) Copy Bill (Kim Hin & Co.)COPYKim Hin & Co.
No. A Semabok

Malacca Oct.31.1953.

Mr. Sajan Singh

| | | | |
|----|-----|-----------------------|-----------------|
| | 148 | gallons benzine | \$226.44 |
| 20 | 1 | gallon Cylinder Oil | \$ 4.80 |
| | 2 | bottle B Water | \$ 1.00 |
| | | | <u>\$232.24</u> |
| | | Total <u>\$232.24</u> | |

(10) Copy
Bill.
(Kim Hin
& Co.)
31st
October
1953.

P.2. - (11) Copy Bill (Kim Hin & Co.)COPYKim Hin & Co.
No. A. Semabok

Malacca Nov.30.1953.

Mr. Sajan Singh

M.2207

| | | | |
|----|-------------------|-----------------------|-----------------|
| 30 | 150 $\frac{1}{2}$ | gallons benzine | \$230.27 |
| | 4 | pints cylinder oil | \$ 2.00 |
| | | | <u>\$232.27</u> |
| | | Total <u>\$232.27</u> | |

(11) Copy
Bill.
(Kim Hin
& Co.)
30th
November
1953.

Exhibit
P.2.
Bundle of
Documents
(12) Copy
Bill.
(Chop Kow
Tong)
28th
February
1958.

P.2. (12) Copy Bill (Chop Kow Tong)

COPY

Date 28th February 1954.

Mr. Sajan Singh,
133, Pringgit Road,
Malacca.

CHOP KOW TONG
No.114, Egerton Road, Malacca.

| Date | Invoice No. | DESCRIPTION | \$ | cts | |
|---------|----------------|---|-----|-----|----|
| 23.6.53 | 4376 | To 2-34x7 S/Hand Tyres | 140 | 00 | 10 |
| 15.7.53 | 4498 | To 1-34x7 Retread Tyre 35.00 1-34x7 New Tube Net 15.00 | 50 | 00 | |
| 4.8.53 | 4700 | To Labour charges to opening etc. | 2 | 00 | |
| 8.8.53 | 4682 | To 2-34x7 S/Hand Tyres 160.00 2-34x7 New Tubes 30.00 | 190 | 00 | 20 |
| 8.9.53 | 4927 | To 1-34x7 S/Hand Tyre | 70 | 00 | |
| 29.9.53 | 5028 | To 1-34x7 Retread Tyre | 35 | 00 | |
| | 5040 | To 1-34x7 Vulcanizing Tyre | 5 | 00 | |
| 2. 53 | 5318 | To 1-34x7 Retread Tyre | 35 | 00 | |
| | | | 527 | 00 | |

(Dollars Five hundred and twenty seven only)

E & O. E.

P.2. - (13) Copy Bill (Mak Sang Motor Service)

COPY

MAK SANG MOTOR SERVICE.
No.97, Lorong Panjang, Malacca.

Mr. Sajan Singh,

20.3.54.

Lorry Dodge M 2207

Exhibit

P.2.
Bundle of
Documents
(13) Copy
Bill.
(Mak Sang
Motor
Service)
20th
March
1954.

To repair Gen. O/Haul

Complete. 300 00

10

Dollars Three hundred only

E. & O.E.

Paid

Total 300 00

P.2. - (14) Copy Bill (Chop Ban Hoe Hin)

COPY

A. No. 0728

I N V O I C E

CHOP BAN HOE HIN
No.69, Main Road, Jasin.
Tel. No. 259

20

SOLD TO.

M.2207

Date 21.6.1954

(14) Copy
Bill.
(Chop Ban
Hoe Hin)
21st June
1954.

PARTICULARS

Repairs puncture \$ cts
2 00

Paid
8.7.54

Total 2 00

IN THE PRIVY COUNCIL

No. 19 of 1957

ON APPEAL FROM THE SUPREME
COURT OF THE FEDERATION OF
MALAYA

IN THE COURT OF APPEAL AT KUALA
LUMPUR

B E T W E E N

SAJAN SINGH Appellant

- and -

SARDARA ALI Respondent

RECORD OF PROCEEDINGS

HY. S.L. POLAK & CO.,
20/21 Tooks' Court,
Cursitor Street,
London, E.C.4.

Appellant's Solicitors.