

~~G.M.A. 62~~
IN THE PRIVY COUNCIL

51, 1961

No. 53 of 1960

ON APPEAL
FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA

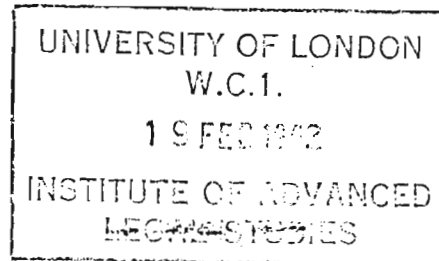
B E T W E E N :-

CHOW YOONG HONG (Plaintiff) Appellant

- and -

CHOONG FAH RUBBER MANUFACTORY
(Defendants) Respondents

RECORD OF PROCEEDINGS



63585

LAWRANCE, MESSER & CO.,
16, Coleman Street,
London, E.C.2.

Appellant's Solicitors.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
Victoria Street,
London, S.W.1.

Respondents' Solicitors.

IN THE PRIVY COUNCILNo.53 of 1960ON APPEALFROM THE SUPREME COURT OF THE FEDERATION OF MALAYAB E T W E E N:

CHOW YOONG HONG (Plaintiff) Appellant

- and -

CHOONG FAH RUBBER
MANUFACTORY (Defendants) RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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LIST OF ORIGINAL EXHIBITS before the High Court but not included in the record for the Court of Appeal, transmitted to the Privy Council at the request of the parties

Exhibit Mark	Description of Document	
D 1.	Letter - 20-3-58	
D 2.	Letter - 25-3-58 (Copy)	
D 3.	B.C. 704965/24-2-58 - £ 6,964-33	P.W.1.
D 4.	B.C. 720210/1-3-58 - £ 2,044-45	
D 5.	B.C. 720227/2-3-58 - £ 1,337-50	
D 6.	B.C. 704991/2-3-58 - £ 521-60	
D 7.	B.C. 720262/4-3-58 - £ 2,517-30	
D 8.	B.C. 720228/4-3-58 - £ 894-38	
D 9.	B.C. 720212/4-3-58 - £ 386-90	
D 10.	B.C. 720263/6-3-58 - £ 768-75	
D 11.	B.C. 704925/3-3-58 - £ 2,000-00	
D 12.	B.C. 694822/5-3-58 - £ 1,250-00	
D 13.	B.C. 694821/5-3-58 - £ 2,000-00	
D 14.	B.C. 704933/6-3-58 - £ 2,036-00	
D 15.	B.C. 694756/5-3-58 - £ 2,406-35	
D 16.	B.C. 704930/9-3-58 - £ 2,500-00	
D 17.	B.C. 704904/10-3-58 - £ 954-50	
D 18.	B.C. 704983/19-3-58 - £ 2,530-00	
D 19.	B.C. 652467/30-12-57 - £ 856-35	
D 20.	B.C. 662918/4-1-58 - £ 415-49	
D 21.	B.C. 662920/7-1-58 - £ 456-70	
D 22.	B.C. 678450/21-1-58 - £ 415-03	
D 23.	B.C. 678449/21-1-58 - £ 560-00	
D 24.	B.C. 678466/24-1-58 - £ 1,056-60	
D 25.	B.C. 678467/4-2-58 - £ 284-00	
D 26.	B.C. 704999/22-2-58 - £ 228-51	
D 27.	B.C. 704997/22-2-58 - £ 460-49	
D 28.	- 51 Note-Books D 28A, D 28B.	

Exhibit Mark	Description of Document
D 29.	- Chit in Chinese (Tr. D 29T)
D 30.	" " " (Tr. D 30T)
D 31.	" " " (Tr. D 31T)
D 32.	" " " (Tr. D 32T)
D 33.	" " " (Tr. D 33T)
D 28A	Note Book Tr. T.
D 28B	" " Tr. T.
D 28C	" " Tr. T.
D 28D	" " Tr. T.
D 28E	" " Tr. T.
D 28F	" " Tr. T.
D 28G	" " Tr. T.
D 28H	- 11 Note Books - Tr. D28HT.
D 28I	- 12 " " Tr. D28IT.
D 28J	- 11 " " Tr. D28JT.
D 28K	- 10 " " Tr. D28KT.
	<u>51</u> Books
P.34	- Book.
P 35	- Entries in P.146
P 35T	- Translation.
P 36	- Receipt Book
P 37T	- Translation
P 38	- Journal A/C. Book
P 39	- P.30.
P 39T	- Translation thereof
P 40	- Page 35
P 40T	- Translation thereof
P 41	- Daily Cash Book
P 42	- Page 7
P 42T	- Translation thereof
P 43	- Daily Sale Wholesale Book 1958

Exhibit Mark	Description of Document
P 44	- Receipt Page 5827
P 45	- Page 170 of P.34
P 45T	- Translation thereof
P 46	- Receipt No.5824
P 46T	- Translation thereof
P 47	- Page 9 of P.41
P 47T	- Translation thereof
P 48	- Page 5 of P.43
P 48T	- Translation thereof
P 49	- Receipt No.5829/17-2-58
P 49T	- Translation thereof
P 50	- Page 10 of P.41
P 50T	- Translation thereof
P 51	-
P 51T	- Translation thereof
P 52	- Receipt
P 52T	- Translation thereof
P 53	- Page 185 of P.34
P 53T	- Translation thereof
P 54	- Page 8 of P.41
P 54T	- Translation thereof
P 55	- Page 8 in P.43
P 55T	- Translation thereof
P 56	- Receipt No.5828/15-2-58
P 56T	- Translation thereof
P 57	- Page 9 in P.41
P 57T	- Translation thereof
P 58	- Page 9 in P.43
P 58T	- Translation thereof
P 59	- Receipt No.5818/12-2-58
P 59T	- Translation thereof

Exhibit Mark	Description of Document
P 60	- Page 16 in P.43
P 60T	- Translation thereof
P 61	- Receipt No.5830/21-2-58
P 61T	- Translation thereof

1.

IN THE PRIVY COUNCIL

No.53 of 1960

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

B E T W E E N :-

CHOW YOONG HONG (Plaintiff) Appellant

- and -

CHOONG FAH RUBBER
MANUFACTORY (Defendants) Respondents

RECORD OF PROCEEDINGS

10

No. 1.

WRIT OF SUMMONS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Civil Suit No.150 of 1958

BETWEEN:- Chow Yoong Hong of
High St. Kuala Lumpur Plaintiff

- and -

Choong Fah Rubber Manufactory,
44, Cross Street, Kuala Lumpur
Defendant

In the
High Court at
Kuala Lumpur.

No. 1.

Writ of Summons.

11th April,
1958.

20

SPECIALLY INDORSED WRIT

The Honourable Mr. James Beveridge Thomson,
P.J.K., Chief Justice of the Federation of Malaya,
in the names and on behalf of His Majesty the Yang
di-Pertuan Agong Abdul Rahman Ibni Al-Marhim Tuan-
ku Muhamad.

To:-

Choong Fah Rubber Manufactory,
44, Cross Street, Kuala Lumpur.

30

WE COMMAND YOU, that within eight (8) days
after the service of this writ on you, inclusive
of the day of such service, you do cause an appear-
ance to be entered for you in an action at the suit
of Chow Yoong Hong of High Street, Kuala Lumpur.

AND TAKE NOTICE that in default of your so

In the
High Court at
Kuala Lumpur.

doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS Sarwan Singh Gill, acting Registrar
of the Supreme Court of the Federation of Malaya.

No. 1.
Writ of Summons.
11th April,
1958
- continued.

DATED this 11th day of April, 1958

Sd: Yap Yeok Siew,
Sen. Asst. Registrar,
Supreme Court, Kuala Lumpur.

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 last renewal including the day of such date, and not afterwards.

10

The Defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the Supreme Court at Kuala Lumpur.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the Supreme Court at Kuala Lumpur.

20

If the Defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

Statement of Claim

The Plaintiff's claim is for sixteen (16) dishonoured cheques valued \$31,112.06 as follows :-

30

Particulars

<u>Bank</u>	<u>Cheque No.</u>	<u>Amount</u>	<u>Date</u>	<u>Payable</u>
Bank of China	KLE 704965	\$16,964.33	24. 2.58	Cash
" "	" 720210	2,044.45	1. 3.58	"
" "	" 704991	521.60	2. 3.58	"
" "	" 720227	1,337.50	2. 3.58	"
" "	" 704925	2,000.00	3. 3.58	"
" "	" 720262	2,517.30	4. 3.58	"
" "	" 720228	894.38	4. 3.58	"
" "	" 720212	386.90	4. 3.58	"
" "	" 694822	1,250.00	5. 3.58	"
" "	" 694821	2,000.00	5. 3.58	"
" "	" 704933	2,036.00	6. 3.58	"

40

Bank	Cheque No.	Amount	Date	Payable	In the
Bank of China	KIE 694755	£ 2,406.35	5. 3.58	Cash	High Court at Kuala Lumpur.
" "	" 720263	768.75	6. 3.58	"	
" "	" 704930	2,500.00	9. 3.58	"	No. 1.
" "	" 704904	954.50	10. 3.58	"	Writ of Summons.
" "	" 704983	2,530.00	19. 3.58	"	11th April, 1958

In the High Court at Kuala Lumpur.
No. 1.
Writ of Summons.
11th April, 1958
- continued.

10 On 20th March 1958 the Plaintiff sent a Notice of demand to the Defendants through his Solicitor Mr.T.C.TANG demanding the whole sum of £31,112.06 by registered post. The Defendants gave a reply through their Solicitor Mr.Kam Woon Wah admitting the sum of £31,112.06 to the Plaintiff's Solicitor.

Sd: in Chinese:
Chow Yoong Hong
Plaintiff's Signature.

20 And the sum of £ (or such sum as may be allowed on taxation) for costs and also in case the Plaintiff obtains an order for substituted service, the further sum of £ (or such sum as may be allowed on taxation) if the amount claimed be paid to the Plaintiff or his advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

30 Provided that if it appears from the indorsement of the writ that the Plaintiff is resident outside the Schedule territories as defined in the Exchange Control Ordinance 1953, or is acting by order or on behalf of a person so resident, or if the Defendant is acting will not only be stayed if the amount claimed is paid into court within the said time and notice of such payment in is given to the Plaintiff, his advocate and Solicitor or agent.

This writ was issued by Chow Yoong Hong of Kuala Lumpur whose address for service is at No. 100, High Street, Back Portion, Kuala Lumpur.

40 This Writ was served by me at _____ on the Defendant on _____ the _____ day of _____ 1958 at the hour of _____

Indorsed this _____ day of _____ 1958.

(Signed)

(Address)

In the
High Court at
Kuala Lumpur.

No. 2.

DEFENCE

No. 2.
Defence.
25th September,
1958.

1. The Defendants will plead that the Plaintiff is an unlicensed moneylender and that this claim is unenforceable under Section 15 of the Moneylenders Ordinance 1951.

2. The Defendants admit that they have had a series of Moneylending transactions with the Plaintiff over a period of three years and that they did draw cheques in favour of the Plaintiff including the cheques set out in the writ but they deny that the cheques were dated as alleged in the writ.

10

3. The Defendants deny receiving the sum of ~~31,112.06~~ as claimed in the writ but if (which is denied) the Defendants received any sums of money in respect of the said cheques such sums were less than the sums alleged in the writ and were not received on the dates alleged in the writ.

4. In the event of the Plaintiff being held to be a licensed moneylender the Defendants will plead that the claim is unenforceable under Section 16 of the Moneylenders Ordinance 1951.

20

5. The Defendants deny that any cheques were given by them to the Plaintiff in payment of goods sold and delivered by the Plaintiff to the Defendants as alleged in paragraph 5, 9, 10, 11, 12, 14, 15 and 16 of the Particulars dated 4th September 1958 supplied by the Plaintiff to the Defendants in pursuance of an order of Court dated 26th August 1958.

DATED this 25th day of September, 1958

30

Sd. Kam Woon Wah & Co.,
Solicitors for the Defendants.

DELIVERED the 25th day of September, 1958 by
Messrs. Kam Woon Wah & Co., Solicitors for the Defendants.

No. 3.

FURTHER AND BETTER PARTICULARS OF STATEMENT OF
CLAIM.

In the
High Court at
Kuala Lumpur.

No. 3.

Further and
Better
Particulars of
Statement of
Claim.

4th September,
1958.

1. Cheque for RM6,964.33 dated 24.2.58. Defendant gave Plaintiff this cheque on 17.2.58 in exchange for several cheques given him by the Plaintiff on the same date. Details of the said cheques are written by the Defendant or his agent at the back of the said cheque for RM6,964.33.
- 10 2. Cheque for RM2,044.45 dated 1.3.58. Defendant gave Plaintiff this cheque on 21.2.58 in exchange for several cheques given him by the Plaintiff on the same date. Details of the said cheque are written by the Defendant or his agent at the back of the said cheque for RM2,044.45.
- 20 3. Cheque for RM1,337.50 dated 2.3.58. Defendant gave Plaintiff this cheque on 22.2.58 in exchange for several cheques given him by the Plaintiff on 22.2.58. Details of the said cheques are written by the Defendant or his agent at the back of the said cheque for RM1,337.50.
4. Cheque for RM521.60 dated 2.3.58. Defendant gave Plaintiff this cheque on 25.2.58 in exchange for three cheques given him by the Plaintiff on the same date. Details of the said cheques are written by the Defendant or his agent at the back of the said cheque for RM521.60.
- 30 5. Cheque for RM2,517.30 dated 4.3.58. Defendant gave Plaintiff this cheque on 25.2.58 in exchange for several cheques given him by the Plaintiff on that date. Details of the said cheques are written by the Defendant or his agent at the back of the said cheque for RM2,517.30.
6. Cheque for RM894.38 dated 4.3.58. Defendant gave Plaintiff this cheque on 26.2.58 in exchange for several cheques given him by the Plaintiff on that date. Details of the said cheques are written by the Defendant or his agent at the back of the said cheque for RM894.38.
- 40 7. Cheque for RM386.90 dated 4.3.58. Defendant gave Plaintiff this cheque on 27.2.58 in exchange for two cheques given him by the Plaintiff on that

In the
High Court at
Kuala Lumpur.

No. 3.

Further and
Better
Particulars
of statement
of Claim.

4th September,
1958

- continued.

date. Details of the said two cheques are written by the Defendant or his agent at the back of the said cheque for ~~£~~386.90.

8. Cheque for ~~£~~768.75 dated 6.3.54. Defendant gave Plaintiff this cheque on 28.2.58 in exchange for several cheques given him by the Plaintiff on that date. Details of the said cheque are written by the Defendant or his agent at the back of the said cheque for ~~£~~768.75.

9. Cheque for ~~£~~2,000/- dated 3.3.58. The Defendant gave this cheque for goods sold and delivered to him by the Plaintiff on 3.11.57. The cheque was given on 3.2.58 and dated 3.3.58. 10

10. Cheque for ~~£~~1,250 dated 5.3.58. This cheque was given by Defendant for goods sold and delivered to him by Plaintiff on 5.1.58. Cheque was given on 12.2.58 and dated 5.3.58.

11. Cheque for ~~£~~2,000 dated 5.3.58. This cheque was given by Defendant for goods sold and delivered to him on 5.12.57. Cheque was given on 8.2.58 and was dated 5.3.58. 20

12. Cheque for ~~£~~2,036 dated 6.3.58. This cheque was given by Defendant for goods sold and delivered to him on 6.1.58. On 17.2.58 the Defendant gave this cheque and was dated 6.3.58.

13. Cheque for ~~£~~2,406.35 dated 5.3.58. This cheque was for goods sold and delivered on 20.10.57 and 25.12.57. The total value is ~~£~~2,406.35. The Defendant gave the cheque on 5.2.58 and it was dated 5.3.58. 30

14. Cheque for ~~£~~2,500 dated 9.3.58. This cheque was given for goods sold and delivered on 9.1.58. The cheque was given on 15.2.58 and it was dated 9.3.58.

15. Cheque for ~~£~~954.50 dated 10.3.58. This cheque was given for goods sold and delivered on 10.1.58. Cheque was given on 1.2.58 and was dated 10.3.58.

16. Cheque for ~~£~~2,530 dated 19.3.58. This cheque was given for goods sold and delivered on 19.1.58. Cheque was given on 21.2.58 and was dated 19.3.58. 40

DATED this 4th day of September, 1958.

Plaintiff's Solicitor

Plaintiff's Signature

No. 4.

OPENING SPEECH FOR PLAINTIFFIn the
High Court at
Kuala Lumpur.

H.Y. Teh for Plaintiff.

Marjoribanks with Kam Woon Wah for Defendants.

No. 4.

Opening Speech
for Plaintiff.Teh opens:13th January,
1959.Claim on 16 cheques given for value: refers
to particulars dated 26.8.58.

10 (1) Cheque for \$6,964.33 bears on reverse the
particulars in pencil written by Defendant
or his agent.

(2) Cheque for \$2,044.45 -do-

(3) " " \$1,337.50 -do-

(4) " " \$ 521.60 -do-

(6), (7), (8) & (13) -do-

(5) Cheque for \$2,000 dated 3.3.58 for goods sold
and delivered on 3.11.57 -

Cheque was given 3.2.58 (goods sold on 3
months credit) and dated 3.3.58 - Entries of
sales appear in Journals etc.

20 Items (9), (10), (11), (12), (14), (15), and
(16) same as (5).

Refers 2 letters:

(1) Letter by Plaintiff's lawyers dated 20.3.58

(2) Reply dated 25.3.58.

Original letters put in by consent: "D1 & "D2"

Plaintiff's case rests on admission of liability
through Defendants' own Solicitor.

Refers Amended Defence - 25.9.58.

Onus on Defendants.

30 Marjoribanks: As goods sold and delivered denied,
onus on Plaintiff.

Court: I hold onus rests on Defendants.

Marjoribanks: Case for Defendants is that cheques
were part of a series of transactions - in-
terest was charged on loans - Plaintiff acted
as banker for Defendants and charged interest.
Purchase of goods is denied. Defendants fac-
tory was burnt down on 28.2.58. - all account
books were destroyed.

In the
High Court at
Kuala Lumpur.

DEFENDANTS' EVIDENCE

No. 5.

EVIDENCE OF LEE CHIN KONG

Defendants'
Evidence.

LEE CHIN KONG (affirmed states in Hakka)

No. 5.
Lee Chin Kong.
Examination.

I am Managing partner of Choong Far Rubber Manufactory. I live in the Factory, at $3\frac{3}{4}$ mile, Pahang Road, K. Lumpur. I have been managing partner from 1.7.54. I have a cashier in the firm: Chow Sek Kim. We have worked the same length of time. I am in charge of whole Factory, and in particular, of the office, the cashier is in charge of cash. I know the Plaintiff - have known him since age of 12, my childhood. Personally, I had no financial transactions with him - but the Rubber Factory had. The Factory's transactions with Plaintiff started about December 1954. Our Factory sometimes received post-dated cheques from customers and when we required cash, we would take the cheques to Plaintiff and ask him for cash. Plaintiff gave me cash for those cheques. He deducted a small sum for interest. Interest was 8 cents per \$100 per day. Some were local and some out-station cheques. Generally the cashier went to the Plaintiff - sometimes I went together with him. Those transactions were very frequent. Plaintiff has in fact filed 16 cases against the Factory in the High Court and 5 in the Lower Court. All the suits were in respect of dishonoured cheques.

In this case there was a claim that some cheques were in respect of goods sold and delivered - and I admit having bought goods on 2 or 3 occasions. Plaintiff would use my firm's name to order goods from Singapore and when the goods were delivered at my Factory. Plaintiff would pay first for the goods and we would repay the Plaintiff. We used to pay him by cheques. As far as I know, since end of 1954, we bought goods from or through him about 3 times. The goods were rough cloth and grey drill, value of each purchase would be \$1,000/-.

I kept accounts of these negotiations of cheques. The Cashier instructed the Clerk to keep accounts. The books of account were burnt in the fire which occurred on 28.2.1958.

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Cross-Examination :-

One man only in the office kept accounts. We have balance sheets prepared each year. Old balance sheets were also destroyed in the fire. I still remember the financial standing of the firm. At the date of burning down the Factory, the firm was owing about ~~₹~~400,000. Value of the assets then, including buildings, was over ~~₹~~500,000/-. By 28.2.58 the balance sheet for 1957 had been prepared. The Clerk prepared the balance sheet. His name is Chong Kim Shin. The accounts were done in Chinese. The copy of balance sheet would be sent to accountant for translation before submission to Income Tax Department - but before that could be done the Factory was burnt down. My accountant is Loh Poh Keong whose office is in Pudu Road, I don't know if he was qualified. I sent my firm's income tax returns through Loh Poh Keong. My annual balance sheets would show correct returns to Income-tax Department. There would be compiled a true profit and loss account. Comptroller of Income Tax would base assessment on my returns submitted to him.

I have submitted returns 4 times to the Income-tax Department. I reiterate that the returns I sent were correct. Copies of these returns were kept in the office and burnt during the fire.

In those various returns - there were no entries of interest paid to the Plaintiff. Payment of interest to Plaintiff were never entered in my account books. Nowhere in my account books were entries made of payments of interest.

(Adjourned at 11 a.m. for 5 minutes as witness complains of stomach-ache)

Resumed 11.15 a.m.

I am Managing partner of the firm. The total paid up cash contributions by the partners towards the capital of the partnership was ~~₹~~87,000. I am sure about this figure. The cashier collected this total from the partners. My share was ~~₹~~5,000. I know all the partners; they are:

Lee Chin Kong - (myself)
 Koo Soon Chin - smaller share than mine
 Lee Koo Fai - bigger " " "
 a K.L.man - he is the head,
 in charge of the Factory
 labourers.

In the
 High Court at
 Kuala Lumpur.

Defendants'
 Evidence.

No. 5.

Lee Chin Kong.

Cross-
 Examination.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

Chow Hon Min - K.L.man - his share I cannot
remember.
Lo Ten - a Singapore man who has
\$20,000 shares
Chow Kwee Lim - \$5,000 shares.
Low Kee Chian - I do not know extent of his
shares.
Chow Hon Kong - I do not know extent of his
shares.

Some other partners are women, whose names I 10
do not remember.

Cross-
Examination
- continued.

Chow Sek Kim was the Organiser - who collec-
ted the moneys from the shareholders. His share
was in his wife's name: I think about \$10,000.
Chow Sek Kim holds office of cashier or treasurer
- though not shareholder himself. Where cash is
concerned he has more say, because he is a known
man in Kuala Lumpur and I came from Singapore. As
to insurance, I arranged the matter myself. In 20
January 1958 the Factory was worth \$540,000/-.
That figure was my estimate. When we took out the
Insurance, the Insurance Company's man also came
to inspect the Factory and to value same.

The Factory was worth \$200,000 -- excluding
the machinery. The Factory building was erected
before I came. It was built by the firm. It was
not built by me - so I cannot say what its cost
was. It was built in 1952 and I do not know its
cost. I paid assessment on the building. I don't
know what assessment was paid. I think Chow Sek 30
Kim knows.

Capital of firm is \$87,000. The building is
worth \$200,000. Friends trusted my company and
gave loans. The land belongs to one Yap Yong Khen.
We paid rent of \$180 p.m. for the land. When I
became Managing partner, I had no ready cash. I
bought goods on credit. I had 3 months credit.

I did buy goods direct from the Plaintiff.

Q. On 3.10.57 did you buy 2,000 yards of grey
drill at 61 cents per yard and 1,200 yards 40
white sheeting at 65 cents - for a total of
\$2,000?

A. I cannot remember.
I don't think I bought 3,600 yards of cotton
grey drill from Plaintiff on 20.10.57. I don't
remember buying such a large quantity from
him.

Q. You remember 3 purchases. What are they?
 A. I cannot remember the exact date, but I remember the goods bought - cloth for the inner sole. Chow Sek Kim bought the goods. He will remember.

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 5.

Lee Chin Kong.

Also insurance - some was taken out by Chow Sek Kim and some by me. I took insurance with China Insurance Co. In all applications by Chow Sek Kim, I signed the application forms.

10 Chow arranged with China Insurance, and I signed. The insurance cover was \$200,000 or over. I insured with Wing On Insurance Co.

(To Court: My policy with Wing On was not burnt. I took out policies with 5 companies).

The total amount insured was \$550,000 - about that.

With China Insurance the amount was over \$200,000.

20 I cannot remember amount of insurance with Wing On. I cannot recollect the amount. Myself, Chow & Lee Koo Fai signed claim forms.

I recovered \$200,000 from all the Companies. Our firm was paid \$75,000 and \$125,000 was deposited in Court.

30 I promised to pay my creditors on recovery of moneys from Insurance Co. Labourers of firm got decree for over \$28,000 - I have not yet paid them. I know there was a decree in the Sessions Court for over \$28,000 and I did tell the labourers I would pay them when I got paid by Insurance Co. I think the labourers had attached the money in court.

My attaching creditors were: Nam Chong Rubber dealer Thoong Lee Pawnshop and European firms. I know who attached.

The cheque for \$75,000 was paid to my Solicitors. We have taken out all the money. I paid out to creditors.

40 Money was borrowed by the cashier and he repaid these creditors. There were many names - they were genuine creditors - some of them had taken judgment, e.g., to Loh Sim Fah \$11,000. He had decree for \$60,000. Loh Sim Fah had loaned money without interest to the firm. I entered no defence. He is a genuine creditor. I paid him

Cross-Examination - continued.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

Cross-
Examination
- continued.

£11,000 only, because there are other creditors. This is the only judgment creditor (apart from the labourers) who did not attach. The Insurance Companies gave me an account of the creditors in respect of whose claims they had paid into court. I was under the impression labourers had attached. As to the balance of £64,000 - other creditors were paid. The cashier keeps account. The Court has already deducted the £28,000 for payment in priority to the labourers. The cashier will be able to tell which creditors were paid. None of the creditors who have been paid had taken judgment against the firm. There are many other creditors who have not been paid. I deny that the payments were made to friends who are not genuine creditors.

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The factory was run on diesel oil. I bought oil from Soon & Co., for factory - also petrol for cars. They are owed over £7,000. I have not paid Soon & Co. I promised them I would pay when I recovered from Insurance Company. It was the cashier who allocated payments to various creditors. Most money transactions were done by the cashier - what he said goes. I did not take any part of the £75,000. Three of us signed to get payment from our solicitors - myself. Chow & Lee Koo Fai. The £75,000 was taken by 3 cheques - the cashier kept the whole sum.

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I know the Plaintiff sues now on 16 cheques. Particulars were given by Plaintiff; and 8 cheques referred to goods. I did not bother to go and inspect the Plaintiff's books.

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Out capital was £87,000 and our debts over £450,000. The £75,000 we recovered was not distributed among the shareholders - but paid to creditors.

This cheque for £6,964.33 dated 24.2.58 was written by Chow Sek Kim (Ex.D3). I signed it, and Chow Kim Lin also, whose wife is a partner. He was authorised by P.A. to sign cheques. The writing in pencil on the back was not by me. P3 was issued by my firm. I was not present when the pencil writing was made. I am a managing partner of the firm. There must have been a purpose for issuing this cheque. The total of the 15 amounts written in pencil on the back of P3 equals the amount of that cheque. If we received the 15 cheques we would have paid them into our account. Chow Sek Kim (not I) endorsed cheques before they were paid in. I admit cheques have been exchanged as shown by D3.

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I know Chow Sek Kim's Chinese handwriting. The pencilled writing on back of P3 is Chow's handwriting.

Cheque No.720210 dated 1.3.58 for ~~2,044.45~~. I admit this is my firm's cheque (D4). The signature on cheque are mine and Chow Kim Lin's. On reverse in pencil is handwriting of Chow Sek Kim. The pencilled writing on back contains 5 items total of which equal the amount of cheque "D4".

10 Cheque No.720227 dated 2.3.58 for ~~1,337.50~~. Amount in Chinese was written by Chow, the word "cash" in English was not written by him. Chow Kim Lin and myself signed this cheque (D5). The pencilled writing on back contains 6 items total of which equal the amount of cheque "D5".

20 Cheque No.704999 dated 2.3.58 for ~~521.60~~. Chow wrote amount of cheque in chinese. "Cash" in English not in his hand. Chow Kim Lin and I signed this cheque (D6). The pencilled writing on back contains 3 items total of which equal the amount of cheque D6.

Cheque No.720262 dated 4.3.58 for ~~2,517~~. Chow wrote amount in Chinese. "Cash" in English not written by him, Chow Kim Lin and I signed this cheque (D7). The pencilled writing on back contains 13 items the total of which equal the amount of cheque D7. The pencilled writing is by Chow Sek Kim.

30 Cheque No.720228 dated 4.3.58 for ~~894.38~~. Figures in Chinese by Chow. Word "Cash" in English not by him. Chow Kim Lin and I signed. (D8). The pencilled writing on back contains 4 items the total of which equals the amount of cheque D8. The pencilled writing is Chow Sek Kim's.

Cheque 720212 dated 4.3.58 for ~~386.90~~ - figures in Chinese in writing of Chow Sek Kim. "Cash" not written by him. Chow Kim Lin and I signed (D9). Overleaf 2 items total ~~386.90~~ - pencil writing is Chow Sek Kim's.

40 Cheque 720263 dated 6.3.58 for ~~768.75~~ - Chinese writing by Chow Sek Kim - "Cash" not by him. Chow Kim Lin and I signed (D10). Overleaf in pencil 4 items total amount equal ~~768.75~~.

Adjourned at 1.50 to 2.30 p.m.

Resumed at 2.30 p.m.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

Cross-
Examination
- continued.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

Cross-
Examination
- continued.

Cheque No.704925 dated 3.3.58 for ~~£~~2,000. Amount in Chinese is in handwriting of Chow Sek Kim. "Cash" in English not his handwriting. Chow Kim Lin and I signed this cheque (D11). I deny that on 3.11.57 I removed from Plaintiff 2,000 yards grey drill and 1,200 yards white cloth. I myself did not remove such goods.

Cheque 694822 dated 5.3.58 for ~~£~~1,250. Amount in Chinese in handwriting of Chow Sek Kim. Word "Cash" not in his handwriting. Chow Kim Lin and I signed this cheque (D12). I deny that on 5.1.58. I removed from Plaintiff 50 pieces of white cloth "Boxing Brand" in all 2,000 yards.

I borrowed money from Plaintiff on this cheque. I borrowed money before the factory was burned down. This cheque was dated 5.3.58. My factory was burnt down on 28.2.58. This was a post dated cheque. I cannot remember when the cheque was given. I cannot say in whose handwriting the date (5.3.58) was entered on the cheque. All the dates in the other cheques referred to this morning were written by Chow Sek Kim.

Cheque No.694821 dated 5.3.58 for ~~£~~2,000. Amount in Chinese written by Chow Sek Kim. I cannot say who wrote the date. Chow Kim Lin and I signed this cheque (P13). I gave this cheque when I borrowed money before factory was burned. The cashier wanted cash for turnover, so I signed it. I deny that on 5.12.57 this cheque was given for 3,200 yards of white cloth. The figure "58" on the date appears to be in handwriting of Chow Sek Kim.

Cheque No.704933 dated 6.3.58 for ~~£~~2,036. Amount in Chinese written by Chow Sek Kim. "Cash" not in his hand. Chow Kim Lin and I signed (P14). The year only of the date appears to be in handwriting of Chow Sek Kim. I deny on 6.1.58 I received from Plaintiff 2,400 yards grey cloth and 2,000 yards unbleached cloth. I borrowed the money. I gave him the cheque for this amount and he gave me this same amount in cash before the burning of the factory.

Cheque No.694755 dated 5.3.58 for ~~£~~2,406.35. Amount in Chinese written by Chow Sek Kim. "Cash" not in his hand. Chow Sek Kim and I signed this cheque (P15). The year only, in the date, appears to be in handwriting of Chow Sek Kim. I deny on 20.10.57 I took delivery of 3,600 yards of "Singlam" grey drill from Plaintiff. I also deny that on 25.11.57 I received 1,860 yards of unbleached cloth from Plaintiff.

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I deny that the cheque for ~~£~~2,406.35 was in payment for those 2 lots of cloth. The cheque was in exchange for ~~£~~2,406.35 cash. We sell shoes - it may account for the odd ~~£~~6.35. Customers' cheques may be for the odd amount - hence Plaintiff would give such odd amount in exchange for cheque. Maybe a few cheques added together would total ~~£~~2,406.35. My books are all destroyed. I deny the ~~£~~2,406.35 was in payment for 2 lots of goods.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

10 Cheque No.704930 dated 9.3.58 for ~~£~~2,500.
Amount written by Chow Sek Kim. Chow Kim Lin and
I signed (P16). Year only of the date is written
by Chow Sek Kim. I cannot say who wrote the month
and date. I deny on 9.1.58. I received 6,280
yards of unbleached cloth from Plaintiff. I deny
this cheque was in payment for those goods. The
cheque was in exchange for cash before the burning
of factory. I cannot remember even the month I
borrowed the money. I received in cash ~~£~~2,500. The
20 money was received by Chow Sek Kim. He told me he
had received this sum. I am not sure who wrote
date and month of the date of cheque.

Cross-
Examination
- continued.

30 Cheque No.704904 dated 10.3.58 for ~~£~~954.50.
Amount in Chinese written by Chow Sek Kim. "Cash"
not written by him. Date: year "58" in his hand,
but I am not sure of day and month. Chow Kim Lin
and I signed this cheque. (P17). I deny on 10.1.58
I received from Plaintiff 1,000 yards of white
canvas. I exchanged post-dated cheques from my
customers for cash. I gave my customers' cheques
to Plaintiff and the Plaintiff not trusting those
cheques, got me to issue also my own cheque. My
customers are so many I couldn't remember which
customers were concerned; I do not know which cus-
tomer. I used to get customers' post-dated cheques.

40 Cheque No.704983 dated 19.3.58 for ~~£~~2,530.
Amount in Chinese written by Chow Sek Kim. "Cash"
in Chinese Character does not appear to be in Chow
Sek Kim's hand. The figure "58" in date line ap-
pears to be Chow Sek Kim's hand, but not date and
month. The cheque now signed by Chow Kim Lin and
myself. (P18) - I deny on 19.1.58 I received 4,000
yards of Indian Beauty Brand white cloth and giving
cheques therefore. I gave cheque in exchange for
cash - before factory burnt down. I went to Plain-
tiff's shop to get the money. I cannot remember
the month. Chow Sek Kim went to get money on this
particular cheque.

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High Court at
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Defendants'
Evidence.

No. 5.

Lee Chin Kong.

(Witness prevaricates; says he did not say "I went to Plaintiff's shop to get the money" but that Chow Sek Kim went. I distinctly heard this witness say in clear terms "I went")

I say Chow Sek Kim went to get the money. I did not go. When Chow Sek Kim wrote this cheque he said he wanted the money. He got cash \$2,500 and told me so.

Cross-
Examination
- continued.

This morning I mentioned Insurance claims and I filled in all the forms. After Insurance effected I held 5 policies. The policies were kept by the cashier. He deposited the policies with other persons. The policies were kept by his friends as security for loans received by him. I was managing partner of firm. Policies belong to firm. The friends were Chow Sek Kim's friends - one friend Loh Sin Fah. That is what he told me. I know and verified it. I surrendered the policies when claims were met. The total insurance cover was \$550,000. I lodged claim for over \$540,000. In making claim I delivered particulars of the loss - all the items particularised total \$540,000. I have copy of the particulars. I did not bring the copy today. We accepted \$200,000 because proofs were burnt.

I have seen particulars of the Plaintiff's claim - and his Affidavit of documents. I did not examine Plaintiff's accounts.

Re Loh Sin Fah - he has stood security for my firm with the Bank of China for \$20,000. When we received the Insurance money we paid \$20,000 to Loh Sin Fah who paid that money into the Bank. I remember this \$20,000 was paid to Loh Sin Fah in the month of December by the Cashier Chow Sek Kim, in my presence. An informed me he paid the bank. That was the only guarantee Loh stood for my firm. The \$40,000 was loaned by him to the firm. I don't know the \$40,000 was borrowed in what amounts and at what times. My firm's only account was in Bank of China. It was paid into firm's banking account. The loan bore no interest. This loan by Loh Sin Fah - (after long pause) I think appears in my balance sheets. The amount was just over \$40,000. We owed him over \$60,000. Actual loan by him was just over \$40,000. His personal guarantee to the Bank was \$20,000. Before I got money from Insurance Company I agreed he could have judgment for \$60,000 against my firm

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Beside Loh Sin Fah other creditors who had taken action against the firm but had not yet obtained judgment are:-

Soon & Co.

(After long pause of 2-3 minutes) I can remember only this creditor.

Loh Sin Fah was not a partner. I don't know if he is related to Chow Sek Kim or any other partner.

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High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 5.

Lee Chin Kong.

10 Re-Examination (Marjoribanks) :-

On some cheques figures and numbers were written in pencil on the back. I had occasion to see that the Plaintiff did give a number of cheques in exchange for the firm's cheques.

Re P11-18 - when we gave cheques to Plaintiff we gave customers' cheques which agreed in amount with the cheques we gave. As to P11 the loan was at interest. The cashier dealt with the matter of interest.

Cross-
Examination
- continued.

Re-Examination.

20 I can give the names of customers who had handed me cheques which I gave to the Plaintiff, e.g.

Wan Foh (Ban Foh)
Yee Lee
Wan Kiong (Ban Kiong)
Thye Thoong
Chin Ching Pui
Chong Sit Min
Lee Chee Chin and very many others.

30 Before the Policies were issued the premises were inspected by the Insurance Companies' surveyors. After the fire the losses were assessed by the surveyors. The claim was referred to arbitration and settled.

Adjourned at 4.05 p.m. to 9.30 a.m. on
14.1.'59.

(Sd.) H.T.Ong.

Hearing resumed at 9.30 a.m. 14th January 1959

Lee Chin Kong (recalled by Court: affirmed)

40 To Court: There were other creditors besides Loh Sin Fah who lent moneys to the firm without interest e.g. Niam Yet Yoong, a business man - I don't know where he stays - but the cashier obtained loans from him, to the extent of about \$10,000. Niam is a friend of Chow Sek Kim.

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Evidence.

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Lee Chin Kong.

14th January,
1959.

Re-Examination
- continued.

Another was Chong Wee Thiam, another friend of the cashier - also about \$10,000.

Also other relatives of the cashier who loaned \$1,000 - \$2,000 free of interest.

The only creditors who lent on interest were the Bank of China and the Plaintiff.

Until factory was burnt my firm enjoyed good credit and standing.

Re purchases of cloth for factory use - we bought from Hongkong and India directly, importing direct - and some quantities through Indian Import firms in Kuala Lumpur. 10

I remembered 3 purchases through Plaintiff. I cannot remember the year of any of these 3 transactions. The cashier would remember.

Loans by Plaintiff were arranged by the cashier. Cashier called the Plaintiff uncle. I cannot say if they were related. Loans were initiated by the cashier - who later informed me. I never had to introduce cashier to the Plaintiff. I am now 33. I have known Plaintiff since my childhood. 20

About P3 I cannot explain what the 15 amounts in pencil in back of cheque refer to. On some occasions when we wanted to cash customers' cheques (post-dated) and the Plaintiff did not trust them I (i.e. my firm) would issue to the Plaintiff our cheque covering the amount of the customers' cheques. When customers' cheques were met he would return me my own cheque. This type of arrangement was made by the cashier, not by me. 30

Loh Poh Kwong the accountant was our firm's accountant ever since I joined firm in 1954 - and since the Balance Sheet and Profit & Loss Statements were prepared by him for submission to Income-Tax Department. His firm is Lo & Lee Company. Lo is no more an accountant. He is still in Kuala Lumpur.

(Marjoribanks: Informs Court a Bankruptcy notice was served on Defendant firm - dated 9.1.1958 and served on 13th on Lee Chin Kong, at instance of Loh Sin Fah as judgment creditor claiming \$61,514 on a judgment dated 24.7.58). 40

No. 6.

EVIDENCE OF WEY YU HSINWEY YU HSIN: (affirmed states in Mandarin)

I am accountant in Bank of China, Kuala Lumpur. I have received subpoena to produce over 100 cheques covering period from 21.8.56 to 25.2.58. These are cheques drawn by Defendant firm. I received subpoena on Saturday 10th and time has been insufficient for me to make proper search. I am able to produce only 9 cheques today. (Dr. Teh questioned relevancy).

- (1) 30.12.57 Cheque No.652467 for ~~8~~856.35 drawn in favour of Toong Hua & Co., Singapore by Defendant firm. Indorser was Ban Teck Loong (D19).
- (2) 4.1.58 Cheque No.662918 for ~~4~~415.49 drawn in favour of S.Pritam Singh & Co., Singapore. Indorsed by (a) S.Pritam Singh & Co., (b) Ban Teck Loong (D20).
- (3) 7.1.58 Cheque No.662920 for ~~4~~456.70 in favour of See Keong Kongsu, Singapore. Indorsed by Ban Teck Loong (D21).
- (4) 21.1.58 Cheque No.678450 for ~~4~~415.03 in favour of V.M.S.Abdul Razak & Co., Singapore. Indorsed by Abdul Razak & Co., & Ban Teck Loong(D22).
- (5) 21.1.58 Cheque No.678449 for ~~5~~560/- in favour of G. Ramchand Ltd., Singapore - indorsed by G.Ramchand Ltd., & Ban Teck Loong (D23)
- (6) 24.1.58 Cheque No.678466 for ~~1~~1,056.60 in favour of Leong Sen & Co., Singapore - indorsed by Leong Sen & Co., & Ban Teck Loong (D24).
- (7) 4.2.58 Cheque No.678467 for ~~2~~284/- in favour of W.Hassaram, Singapore, indorsed by Ban Teck Loong (D25)
- (8) 22.2.58 Cheque No.704999 for ~~2~~228.51 in favour of Toong Hua Co., Singapore indorsed by Thong Hua & Co., and Ban Teck Loong (D26)
- (9) 22.2.58 Cheque No.704997 for ~~4~~440.49 in favour of Sing Lun & Co., Ltd., indorsed by Sing Lun Co., Ltd., & Ban Teck Loong (D27).

I see cheque D20, D23. From the cheque numbers it would appear that the cheque book for D20

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 6.

Wey Yu Hsin.

Examination.

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 6.

Wey Yu Hsin. Examination - continued.

Cross-Examination.

was issued by the Bank to the customer before the book containing D23.

Cross-Examination by Teh: I cannot yet be sure until I have checked up from the Bank record.

(To Court):

Sometimes several cheque books are issued to one customer. Cheques could concurrently be used from any book.

(Witness released)

No. 7.

Chow Sek Kim.

Examination.

No. 7.

EVIDENCE OF CHOW SEK KIM

CHOW SEK KIM: (affirmed states in Hakka).

I am cashier of Cheong Fah Rubber Factory and live at 286 Pudu Road, Kuala Lumpur. I had been cashier since July 1954. Last witness was managing partner.

My duties as cashier are to attend to cheques. I attend to the cash transactions of the firm.

I know Chow Yoong Hong (Plaintiff). He is my uncle. I have had dealings with him, since I took over my duties as cashier in Defendant firm.

Mostly cheques received from customers were post-dated cheques. I must have cash for turnover - so I would go to my uncle for cash. When I took money on such post-dated cheques, interest would be charged at a daily rate of 8 cents per \$100 per day.

In case of outstation cheques if a cheque was for say \$2,000/- and he was doubtful about the cheque, he would ask me for another cheque drawn by my firm and dated for the same day. I paid him interest.

On such transaction, supposing I have 7 - 8 outstation cheques, the various due dates would be different. I would draw up a statement for these cheques, calculating interest to accrue on each till date of due presentation, and the total interest would be deducted from the sum total of the cheques, and I would get payment by cheque of the net amount. For Seremban cheques the Bank Commission

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is 12.5. cents per \$100. For outstation cheques generally 4 days would be added on for calculations of interest. In case of Segamat, Batu Pahat, Kuantan, Kluang, Lipis and Trengganu 7 days would be added. For Kuantan the added time would be 10 days.

From 1954 there are many such transactions with the Plaintiff -- mostly on alternate days.

The very last occasion that I remember was not before 20th February, 1958.

10 All these interest charged were duly recorded in small booklets made by me. I produce them.

(Dr.Teh objects to production and to admissibility of these booklets).

Adjourned at 11 a.m. to 11.30 a.m.

Resumed at 11.30 a.m.

Dr. Teh: refers to Affidavit of documents (Encl. 59) which sets out only 4 letters.

20 I hold the booklets admissible in evidence and not to be excluded by reason of their having not been set out in Encl.59. An Affidavit dated 10.6.58 filed in C.S.149 and entitled in C.S.149, 150, 151, 160, 163 and 164/58 did refer to these note-books. In those cases the Plaintiff in this suit was also the Plaintiff, and one of the Defendants is the Defendant herein. It is only if the Defendant had refused to comply with a notice under o.31. r.15 that the Defendants should be precluded from putting the note-books in evidence.

CHOW SEK KIM (Examination-in-chief resumed):-

30 I produce the note-books (Ex.D28)

The entries in these note-books were made every day since I joined Defendant firm in July 1954. I made my arrangements with Plaintiff first and having brought back the money with the statements. I made entries in these small note-books and subsequently I went to the Factory and caused entries to be made in the firm's account books. These account books were destroyed in the fire.

40 These note-books contain not only records of transactions with the Plaintiff but also with other people.

As cashier of Defendant firm I not only exchanged cheques, but also obtained from Plaintiff loans on which interest was charged. Loans for

In the High Court at Kuala Lumpur.

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No. 7.

Chow Sek Kim.

Examination - continued.

In the
High Court at
Kuala Lumpur.

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Evidence.

No. 7.

Chow Sek Kim.

Examination
- continued.

short periods carried interest at 8 cents per \$100 per day. For longer term interest was at 2 per cent per mensem. When loans were taken I issued cheques to Plaintiff. I filled in the dates on the firm's cheques given to Plaintiff. I post-dated the cheques on date of issue. I have also at times given the Plaintiff cheques with date-line blank. Sometimes blank cheques without dates or amounts, but only bearing firm's signatures were given to the Plaintiff, because I wanted to borrow from him. I trusted him on these blank cheques because he had obliged me.

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Kiew Chee Seng is name of a shop in Sungei Patani, who is agent for our goods. I remember having taken one of Kiew Chee Seng's cheques to Plaintiff to exchange for money. Chop Ban Keong is a shop in Kuala Lipis - also an agent of my firm. I have also exchanged Ban Keong's cheques with Plaintiff. Poh Hin Chan is a shop in Temerloh - another agent. I have also exchanged that shop's cheque with Plaintiff. Nam Seng is a shop in Malacca, our agents also, whose cheque I had exchanged with the Plaintiff. Loh Tham Fook is proprietor of Chop Kwong Chong, Bahau, and my agent. Similarly I have exchanged his cheque with Plaintiff. Hiap Seng & Co. is a shop in Tampin, my agent; whose cheque I had cashed with Plaintiff. Seng Hoe & Co., is a shop in Sungkai, my agent. Their cheque also had been cashed with Plaintiff. Chin Ching Poi is an agent of mine with an office at Ipoh - a travelling salesman. I have cashed his cheque with the Plaintiff. In the case of all these 8 agents, interest was calculated in the same manner. To my knowledge the Plaintiff has instituted proceedings against some of them. These customers gave me post-dated cheques to pay for goods to be delivered at future date. When factory was destroyed I could not deliver goods, and payment of cheques was stopped by the drawers and the Plaintiff then sued them on their cheques.

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As to the annual balance sheet and profit and loss account of the firm, I took part in their preparation. The interest paid to Plaintiff was included in the balance sheet, under the heading of "Interest".

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I see Exhibits D3 to D10. I filled in cheque D3 except word "cash". I cannot write English. On back of D3 the writing in pencil was made by me. All the 15 cheques specified on the back of this cheque were cheques drawn by the Plaintiff's customers of which he was the holder. The total of

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those 15 cheques came to \$6,964.33. Plaintiff had no ready cash in hand so gave me those cheques which could be drawn on the banks the same day. I borrowed that amount from the Plaintiff. He charged interest. I cannot say how much interest was charged, but that was calculated on the number of days I had the loan. It is possible from the note-books "D28" to tell how much interest was paid.

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High Court at
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Defendants'
Evidence.

No. 7.

Chow Sek Kim.

Examination
- continued.

10 From the note-books I can only say how much interest was paid to Plaintiff on each day recorded. I cannot identify any interest payment with any cheque.

To Court: This note-book "D28a" (dated 1.2.58) contains records of transactions with 7-8 persons.

20 Examination by Marjoribanks continued: The clerk transferred entries from my note-books into the firm's account books. There were no payments of interest to any other person beside the Plaintiff I agree with Plaintiff that possibly I did give cheque Ex.D3 to him on 17.2.58.

I see D4. I filled in this cheque. I wrote on the back in pencil. The same transaction took place as in re D3 interest was charged.

I see D5. I filled in this cheque. I wrote on back in pencil. Same as earlier transactions - interest was charged.

I see D6. I filled in this cheque. I wrote on back in pencil. Similar transaction, with interest.

30 I see D7. I wrote it, and wrote on back in pencil. Similar remarks apply.

I see D8 - as above stated.

I see D9 - " " "

I see D10 - " " "

40 In the case of these 8 cheques I did pay interest to the Plaintiff. In ordinary course of business I would record payments of interest in D28. All these transactions cover a period of about 10 days. It was near end of the year, and we required money, so we went to Plaintiff to exchange the cheques for ready cash.

Very rarely did my firm purchase goods from the Plaintiff. In November 1957 my firm did not buy any textiles from Plaintiff. Between November 1957 and the date my factory was burnt down, I remember having bought goods from Plaintiff, but not

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Evidence.

No. 7.

Chow Sek Kim.

Examination
- continued.

more than \$100 each time - only small quantities of cloth and drill for lining shoes. This occurred when goods I ordered did not arrive in time.

Adjourned at 12.45 to 2.45 p.m.

Resumed at 2.45 p.m.

I see D11. I deny that cheque was given to Plaintiff for goods sold to my firm. I made out that cheque. This cheque was issued to cover out-station cheques for that total amount. I received that actual amount in cash. I had to pay interest. 10

I see D12. I deny it was given for goods sold to my firm on 5.1.58. I made out that cheque. The cheque was to cover the cheque of Ban Keong, Kuala Lipis. I received the money from Plaintiff. I paid interest.

I see D13. I deny it was given for goods sold on 5.12.57. This cheque was given to cover cheque of Poh Hin Chan, Temerloh. I received cash from Plaintiff. I paid interest.

I see D14. I made out this cheque. I deny it was for payment of goods sold on 6.1.58. This was to cover cheque of Malacca Chop Nam Seng. I received cash from Plaintiff, and I paid him interest. 20

I see D15. I made out this cheque. I deny it was for payment of goods sold on 20.10.57 and 25.12.57. This cheque was to cover cheque on Loh Tham Fook of Chop Kwong Cheong, Bahau. I received cash from Plaintiff - and I paid him interest.

I see D16. I made out cheque. I deny it was for payment of goods sold on 9.1.58. This cheque was to cover cheque of Heap Seng, Tampin. I received cash and I paid interest. 30

I see D17. I made out this cheque. I deny it was given to Plaintiff for goods sold and delivered on 10.1.58. It was to cover cheque of Seng Hoe & Co., Sungkai. I received cash and paid interest.

I see D18. I made out this cheque. I deny it was for goods sold by Plaintiff on 19.1.58. It was to cover cheque of Chin Ching Poi of Ipoh. I received money and paid interest. 40

In respect of D11 - 18 interest was charged at the rate I have previously described.

I see D19 - 27. These were cheques issued by

my firm. I did not write or fill in either the names of the payees or the amounts or the dates. I did not write anything on any of these cheques. My uncle told me it would be difficult for him to issue cheques on his own for Singapore payees, and he asked for my firm's blank cheques - and I gave them to him. I do not know what the difficulties were.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 7.

Chow Sek Kim.

Examination
- continued.

10 I made payment of interest by taking from the Plaintiff a cheque for an amount arrived at after deduction of interest. If Plaintiff paid me in cash, the cash sum would be less than the total amount of the cheques I gave him. The cheques belonging to my firm which were given as security to cover my customers cheques were given for an amount equivalent to that of customers' cheques. Since July 1957 I think must have issued to the Plaintiff about 1,000 cheques.

20 Cross-Examined by Dr. Teh: The Plaintiff is my uncle, who knew me since my childhood. In July 1954 I joined the Defendant firm. The business was started in 1951 by one Lee Kee Fin. The firm was reorganised in 1954. I was invited to work in the firm. D.W.l. was telling the truth when he said I organised this firm in 1954. My wife Ng Yoke Ying had shares in the firm. The money was contributed by her. Amount was \$10,000. In 1951 the capital was \$200,000. In 1954 over \$40,000 was contributed by the partners in the new partnership, that sum included my wife's \$10,000. The remaining \$30,000 was contributed as follows :-

Cross-
Examination.

30 Yong Mau of Kuala Lumpur - \$10,000
Lo Ten of Singapore - \$25,000
Lee Chin Kong (D.W.l.) - \$ 5,000

40 The other names mentioned by D.W.l were old partners. D.W.l joined the firm at the same time as I did. The assets of old partnership were assessed at \$60,000 when new partnership was formed. The old contributors were given credit for \$60,000. The new partners contributed \$50,000, making the total capital of \$110,000. There was a meeting before commencement of business. I was made cashier and D.W.l manager. D.W.l was present - and would know all the facts. 2 or 3 old partners retired - this leaving the capital as over \$80,000.

From 1954 we insured the firm's property. First policy I took out was for \$150,000 covering the building, machinery and stock. I insured with

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 7.

Chow Sek Kim.

Cross-
Examination
- continued.

China and 2 other Companies. In 1955, insurance taken out was \$200,000. There was a little profit in 1954. There was again a little profit in 1955. In 1956 insurance cover taken was \$200,000. In 1956 there was a little profit. In first half of 1957 I took out insurance to amount of \$250,000, and it was increased to \$550,000 in 2nd half of 1957. There were extensions to the building, new plant and machinery, and new stock. There was profit, I cannot say how much. There was a little profit - \$1,000 to \$2,000.

10

As to Exhibits D19 - 27, whenever my firm required assistance I would go to my uncle. He always obliged.

I did not take D19 to my uncle (Plaintiff). He came and got the cheque from me. I never saw him fill in the cheque. If he asked for 3 blank cheques, I would give him 3. I do not agree these cheques were given for my firm's benefit. Whenever the Plaintiff required a cheque for a payee in Singapore, he would come and ask me for a blank cheque which I would give him. Next day, he would come and inform me of the name of the payee and the amount drawn on such cheque, and at the same time he would pay me the identical amount for me to pay into the Bank to meet the cheque. Plaintiff would give me full value. There is no question of interest involved in such cases. I am putting in these cheques D19-27 for the purpose of my next case (C.S.151/58). These cheques D19-27 have no bearing in the present case.

20

30

I admit the writing on D3 is mine. The date on the back of this cheque (17.1.58) was written by me. It is possible the 17th January 1958 was the date I received the cheques. I now say the date 17.1.58 was not written by me. I admit all the rest of the writing in pencil. I did admit at first because I had not looked carefully.

D4: I admit all the pencil writing on the back of this cheque D4 is mine except the date "21.2.58".

40

D5: Likewise all the pencil writing on back of D5 is mine except the date "22.2.58".

D6: Likewise - except date 25.2.58.

D7: Likewise I admit the writing except the date "25.2.58".

D8: Likewise: except date "26.2.58".

D9: Likewise: except date "27.2.58".

D10: Likewise except date "28.2.58".

When my Counsel asked me examination-in-chief I admitted the pencil writing without looking at the date. I am telling the truth when I deny the pencilled dates were written by me.

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 7.

Chow Sek Kim.

Cross-Examination - continued.

10

I admit I wrote the date on the cheque D3 "24.2.58". There is no mistake. I gave this cheque to the Plaintiff at least 3-4 days before 24.2.58. I do not mean 3-4 months. I received the 15 cheques about 4 days before the date of cheque D3. There is no mistake that I had received the 15 cheques first before I drew cheque D3. I received full value for the 15 cheques totalling \$6,964.33. For the amount on D3 I cannot find anywhere in D28 any entry which I can say was interest paid in respect of D3.

20

These 51 note-books (Ex.D28) were kept by me daily and entries therein transferred to the firm's account books.

I deny these 51 note-books are my records of petty cash expenditure.

I say interest was paid to Plaintiff on all the cheques D3-10.

I cannot point to any entry in D28 as payment of interest on D3.

Adjourned at 4.30 p.m. to 9.30 a.m. 15.1.58.

Resumed at 9.30 a.m. 15th January 1959.

30

CHOW SEK KIM (Cross-examination continued) :- affirmed,

Yesterday I was asked to refer to D3 and trace interest payment in D28. I have searched through the books and I can find no entry therein.

I see D4. I can find no entry in D28 of interest payment in respect of D4.

I see D5. I can find no entry in D28 of interest payment in respect of D5.

Re D6 I can find no entry of interest payment in respect of D6.

40

Re D7 - no entry also
Re D8 - " " "
Re D9 - " " "
Re D10 - " " "

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 7.

Chow Sek Kim.

Re D11 - I can find no interest payment recorded in D28 relating to this cheque D11.

Re D12 - I say the same.

Re D13 - " "

Re D14 - " "

Re D15 - " "

Re D16 - " "

Re D17 - " "

Re D18 - " "

10

Cross-Examination - continued.

As to these 16 cheques, the subject matter of this suit, I can work out the interest figures. I have translations made of entries in D28.

Q. I now ask you to prove in any manner you choose that interest was paid on these 16 cheques?

A. I cannot prove.

As regards D19 to D27 - transactions of this type used to take place more than 10 times each month since 1956. No interest was paid on these transactions. I have not benefit of use of cash pro-tem in such cases. Plaintiff would keep the blank cheques till required. I used to see the Plaintiff every day. I deny that I proposed this arrangement to the Plaintiff so that I could have benefit of using his cash for a few days till the cheques were required to be met.

20

Very seldom did I give Plaintiff my cheques in exchange for money. Usually I gave my customers cheques. Apart from customers cheques I did use my firm's cheques to get temporary loans. I deny he ever told me he had to ear-mark cash for his Singapore creditors. I deny I then proposed the arrangement I have described in order to have use of cash for a few days. I say Plaintiff benefitted from this arrangement - not me. I say he benefitted because he gave me his customers' cheques, to pay into my account, and he used my cheques to pay his creditors, so that his business would not show such a big turnover and he could evade Income-tax. I agree payment to his Singapore creditors were for goods supplied to him. I cannot explain how he benefitted. The explanation was what he gave me. I do not understand his explanation.

30

I deny this arrangement gave me use of his money for a few days. I deny I ever asked him to

40

post-date the Singapore cheques a few days in order that I might have longer use of his cash. I deny that by causing cheques to be post-dated, say, 5 days, I had at least 5 days free use of the Plaintiff's cash.

10 I admit that when I sometimes asked Plaintiff for loan of cash; and he had no ready cash, he would offer me his customers' cheques and I would give to him my cheques post-dated a few days for the total amount of the cheques he had given me. I say he did not do so to oblige me, but for interest. I did record payment of interest on D28 on the very day of payment. I would give my cheque for an amount exactly equal to the total value of his customers cheques passed on to me. I would pay interest on such amount by ready cash at the time of the exchange of cheques.

20 In case of D3 to D10 the exchange of cheques and payment of interest was as I have just described. I did say I made entries in D28 daily. I am unable to show in D28 payment of interest in respect of these cheques.

I admit D28 is used to record petty cash expenditure of the firm. I deny your suggestion that no interest was ever paid by me on any of the 16 cheques.

30 When the factory was burnt, all business ceased. As a result various creditors pressed for payment - Plaintiff was one of them. I admit Defendant firm received letter (D1). I knew about it. D.W.1 informed me about it. Then D.W.1 replied through Solicitors. We decided to consult and engage Solicitors. I went together with D.W.1. Lee Keo Fai - three persons. We three agreed on course of action and then went to engage Solicitors. We then discussed and we jointly instructed Solicitors. On our instructions a reply (D2) was given. I was ill. The letter was read out to us by our Solicitor, and we all agreed that it should be sent. (D2 read out by interpreter to this witness). 40 We agreed to this letter being sent admitting liability. I do not remember whether I went to see Plaintiff after this letter. I was ill for a month after date of this letter, D2. I deny I was frightened rather than ill, because the factory was fully insured for \$550,000/-. I deny I went to Plaintiff and reassured him that he would be paid when money should be recovered from the Insurance Companies. I did not speak to him. I agree that

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 7.

Chow Sek Kim.

Cross-Examination
- continued.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 7.

Chow Sek Kim.

Cross-
Examination
- continued.

Plaintiff required us to give him an agreement authorising him to be paid direct by the Insurance Co. - my partners and I - all refused. I now admit I went to see Plaintiff - it was after I recovered from my illness.

Not Plaintiff alone, but our several creditors - all pressed for payment. I assured all of them I would pay them when I recovered from the Insurance Co. The petrol dealer trusted me and did not take action. I did not pay him a cent. I admit receiving \$75,000 from Insurance - but I paid creditors. I paid not friends - but those who had given loans to the firm without interest. I say the labourers' claims have been paid. I have not paid them. They were not charging interest. I admit I did assure the Labour officer I would pay the labourers when I received the Insurance moneys. China Insurance man told me they had paid the labourers' wages. I think I can recognise the man. I know the manager, Mr. Yu - but it was not Mr. Yu who told me. 10 20

I say I refused to pay those creditors who charged interest. My petrol dealer, whom I have not paid, did not charge interest - but he was a tradesman.

The \$75,000 was spent in this manner:

- (1) Bank of China \$20,000 overdraft - for which Loh Sin Fah was guarantor.
- (2) Loh Sin Fah - \$12,000 over.
- (3) Legal expenses - \$12,000. 30
- (4) Chow Kim Lin - \$900 odd.
- (5) Yu Min - \$500.
- (6) Lee Hin - \$100 odd.
- (7) Su Tong - \$700 odd.

I can produce record of the various payments. I promise to produce statement this afternoon.

Loh Sin Fah stood surety for my firm. I borrowed money from Loh Sin Fah after the fire. About \$12,000 to \$13,000 in all. I now say before the fire Loh Sin Fah had already lent money. We owe Loh Sin Fah in all about \$60,000. At first we owed him \$30,000, he stood surety with Bank of China for \$20,000 and after fire we borrowed about \$12,000 further. Loh Sin Fah is a very good friend of mine - so he gave loans to my factory in 40

sums of \$2,000 to \$5,000 from time to time, up to about \$30,000 before the fire. Records of these loans were in our books which had been burnt. D.W.1 knows. He charged no interest. I deny my uncle charged no interest. I have known Loh Sin Fah for about 25 years. He is a textile dealer.

10 I repaid Loh Sin Fah \$12,000 odd after receipt of Insurance moneys - being the post-fire loans he had given. I admit the \$30,000 owing him before the fire was a genuine debt - and no interest was charged. I did not pay him more than the \$12,000 odd as I had not enough. After \$50,000 owed him without security I say he still gave me further loan after the fire. We gave Loh the factory as security before he guaranteed our Bank of China overdraft. The factory was not totally destroyed and Loh continued to give us advance in sums of \$1,000 to \$2,000.

20 Re-Examined by Marjoribanks:-

I used to see the Plaintiff - almost daily about 2 hours in the forenoon and 1 hour in afternoon. When there was more than 1 cheque transaction in one day, I would make only one entry for each day.

(To Court): D12 was to cover cheque of Ban Keong, K.Lipis. D14 re: Nam Seng, Malacca. I know of this because Plaintiff had instituted a suit for this amount of \$2,036 against Nam Seng. This is how I remembered.

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No. 7.

Chow Sek Kim.

Cross-Examination - continued.

Re-Examination.

30

No. 8.

EVIDENCE OF B.MEENACHISUNDRAM

B.MEENACHISUNDRAM: affirmed states in English

I am civil clerk in Selangor Registry, Supreme Court, I produce file of Selangor Civil Suit 165/58, also file C.S.217/58, C.S.164/58, C.S.216/58, C.S.210/58 and C.S.211/58.

No. 8.

B.Meenachisundram.

Examination.

No. 9.

In the
High Court at
Kuala Lumpur.

EVIDENCE OF CHOW FAN SEONG

Defendants'
Evidence.

CHOW FAN SEONG: (affirmed states in Hakka)

Textile dealer - partner in firm of Keen Fah,
Yap Ah Loy Street, Kuala Lumpur.

No. 9.
Chow Fan Seong.
Examination.

I know Chow Yoong Hong (Plaintiff) who is my
uncle, I have borrowed money from him before. I
borrowed money in 1955 from him in name of my
firm. I paid interest. On long-term loan \$10,000
would carry interest of \$200 p.m. For exchange of
cheques 8 cents per \$100 per diem. I mean exchange
of post-dated outstation cheques. Interest would
be deducted at the time of exchange of cheques.
Only when he suspected a customer's cheque would
be dishonoured that he would ask me for my cheque
to cover the amount.

10

I have documents relating to such transactions
between my firm and the Plaintiff. I have seen
this chit before. It is in handwriting of the
Plaintiff. When I paid him interest he wrote out
this chit for me. Interest as therein stated was
paid by me.

20

Ex.D-29 and translation D29T.

This other chit contains pencil writing in the
hand of my clerk, and writing in ink was by the
Plaintiff. At bottom of chit was stated the amount
of interest paid on each cheque - D30 and D30T.
This chit was handed to me by the Plaintiff.

In this third chit - the writing in black ink
was written by my manager, and the writing in blue
ink was by the Plaintiff - D31 and D31T. It set
out payment of interest, and was given me by the
Plaintiff.

30

I produce 4th chit (D32 and D32T) whereon
writing in black ink was made by my manager and in
blue ink by the Plaintiff. Plaintiff handed me
this chit.

I had transactions with Plaintiff since 1955
- average about 20 times per month.

40

I know Chow Sek Kim (D.W.3 identified). He
addressed Plaintiff as uncle. I know he had fin-
ancial transactions also with Plaintiff in the same
manner as I had. The rate of interest was fixed
by the Plaintiff. Cheques on banks situated far-
ther from Kuala Lumpur have longer period of days
charged for interest.

Cross-Examination by Dr. Teh: requests order for production of this witness account books.

In the High Court at Kuala Lumpur.

(To Court): Interest payments referred to in D29 to D32 were never recorded in the account books of my firm.

Defendants' Evidence.

Adjourned at 11.45 a.m. till 2.30 p.m.

No. 9.

Resumed at 2.30 p.m.

Chow Fan Seong - continued.

CHOW FAN SEONG Cross-Examined by Dr. Teh continued

10 The Plaintiff had sued me and 2 others in this Court claiming \$13,000 odd and that suit is still pending: fixed for hearing on 27th & 28th January 1959.

Cross-Examination. - continued.

I know arithmetic.

I see D30 before me. My manager wrote the body of the note in pencil. My Manager wrote D31, also D32. His name is Ng Chun Sam.

All of D29 was written by the Plaintiff.

20 I produce D29 to prove I paid interest to the Plaintiff. I have in my account books entries regarding the 4 cheques mentioned in D29 - but I cannot show in my account books the interest paid on these cheques. On my account books I did not enter any payment of interest. I keep proper accounts in the ordinary course of business. When I receive payments I duly enter them in my account books. I entered also expenses, such as freight charges etc. I did not enter payment of interest in my books. If I record interest in my books
30 Plaintiff would not lend me money. My books are not false - only entries are not made. He benefited, not me - as he got interest. Plaintiff has no right to examine my books. Naturally he would not know what I entered or did not enter in my books. These 4 chits are the only records I have to prove against Plaintiff that I paid interest. D29 was the only chit entirely written by the Plaintiff. It dealt with 8 cheques:-

40 The 1st cheque was for \$ 423.85
 " 2nd " " " 273.15
 " 3rd " " " 203.00
 " 4th " " " 100.00
 " 5th " " " 1,196.50
 " 6th " " " 1,000.00
 " 7th " " " 1,000.00
 " 8th " " " 941.40

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No. 9.

Chow Fan Seong

Cross-
Examination
- continued.

My account books show how much I received for the above cheques.

I do not know how the interest was calculated.

D31: My Manager wrote on this chit in black ink. I handed the cheques personally to Plaintiff. When this chit was written by my Manager, he gave me this chit and the cheques and I went to the Plaintiff, who made his calculations, totalling up the amount of the cheques, and after deducting interest, sometimes he paid me in cash and other times by cheques. The total amount of the cheques was \$4,253.90. Plaintiff gave me a cheque or cheques for \$2,800/-, cash \$37.37. From the total of the cheques Plaintiff deducted my debt to him of \$1,358.33. Total of last 3 items is \$4,195.70. It was Plaintiff's wish to pay the odd sum \$37.37 in cash. I deny I made private profit from my own firm by charging interest.

10

20

The business belongs to me and my friend. Since we both know - interest need not be entered in our books. We both agreed that interest payment need not be entered. No entries at all, even in disguise, were made in my account books in respect of payment of interest.

I am not good at calculation. I deny I made private profit out of my firm when I obtained loan. I used to see the Plaintiff at his shop. I deny proposing that my firm should pay interest on the loans and that if he would not take interest, he could let me have the benefit, and that he obliged me. This chit (D31) I cannot say in respect of what year. I cannot tell if it was November 1957 or November 1956. I am happy to give evidence here, without subpoena, on behalf of the Defendant and against the Plaintiff. I am telling the truth.

30

Re-Examination.

Re-Examination Marjoribanks: Nil.

No. 10.

EVIDENCE OF HEW LEN FAHHEW LEN FAH (affirmed states in Hakka) -

I am dealer in textiles, foreign goods and medicine. Am sole proprietor of Ban Choon Tong, Triang, Pahang. I knew the Plaintiff Chow Yoong Hong (identified in Court) He has sued me on a dishonoured cheque. I have settled with him.

I knew him since 1955.

10 In 1956 when I was carrying on business in partnership with my elder brother in K.Lumpur under the name of Lian Hup Textile Firm, I had financial dealings with him.

20 I exchanged cheques with the Plaintiff. When I received post-dated cheques from my customers, and I wanted ready cash for turnover I would go to Plaintiff to exchange cheques for cash. He charged me interest at the rate of 8 cents per \$100 per day. A distinction was drawn between a Seremban cheque and say cheques from S.Patani. Four days would be added on for a cheque drawn on Seremban and 7 days for Kluang.

I am not exchanging cheques any more. I have had no financial dealings with Plaintiff since Lian Hup Firm closed down in 1957.

30 I have seen this chit before - which I now produce. (D33 and D33T). The whole chit was written by the Plaintiff. It shows where is situated, the Bank drawn upon, date of cheques, its amount, and interest. The sum of \$201/- is amount of the 1st cheque, item of 90 cents is interest. Another item of "60" means 60 cents which I say was interest on a \$100 cheque, Klang, dated 7th November. Item \$2.40 was interest on \$249 of cheque dated 2nd December. Another item of \$2.40 was interest on \$100 cheque dated 25.12. local. Yet another item \$8.50 was for cheque for \$303.65 dated 25th December, Klang.

40 The five cheques I gave totalled \$953.65, total amount of interest was \$14.80. When I handed the 4 cheques to Plaintiff he handed me only \$938.85 in cash.

Cross-Examination by Dr. Teh :

Reserved till 9.30 a.m. 16.1.59.

Resumed at 9.30 a.m. 16.1.59.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No.10.

Hew Len Fah.

Examination.

Cross-
Examination.

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No.10.

Hew Len Fah

Cross-
Examination.
- continued.

I was working formerly in Lian Hup Textile firm which closed down in 1957. The business was registered in my brother's name. I worked there. It was small business. I managed it. I was salesman. I cannot remember when I got the chit (D33). I believe it was in 1956. I have the account books - my brother was there. The first cheque was for \$201/-; payment made by one of my customers. I gave receipts when I obtained payment. I must check from receipt book to find out which customer gave it. I was called by Defendants Solicitors to give evidence. I knew I was to give evidence concerning interest payment to Plaintiff. I said the transaction was in 1956. Off hand I cannot tell which customer gave the cheque without reference to my account-books. I deny suggestion that no cheque dated "30th November" was exchanged with Plaintiff.

10

I said interest was 8 cents per \$100 per day. I do not understand how the 90 cents interest was calculated. I think 6 days interest was charged. I prefer the date of the exchange transaction with Plaintiff to be fixed as 25th rather than 24th November. Six days at 8 cents would be 48 cents - and properly calculated, the interest should be 96 cents. Why 6 cents less was charged was Plaintiff's business.

20

Re 2nd cheque dated 27th November per \$100 drawn on Klang Bank - 4 days would be added to calculation of interest because it was a Klang cheque. Three days plus four days make 7 days and therefore interest on \$100 would be 56 cents. He charged me 4 cents more. I deny suggestion that there was no such cheque. I deny suggestion that the 5 items do not refer to cheques. I must go back to check up. I deny suggestion that D33 was account of sales of goods sold by me on Plaintiff's behalf and the items 90 cents etc. were profits or commissions paid to me. There is no possibility of my tracing the 5 cheques. I do not know where my brother kept the old account books. My brother is in Kuala Lumpur - but I do not know if he is now at home.

30

40

Post-dated cheques are sometimes dishonoured. Particulars are sometimes, but not always, taken of no. and drawers of post-dated cheques. I was employee of my brother. My receipts never stated particulars of cheques received from customers.

(Dr. Teh applies for further cross-examination

to be reserved pending this witness searching and producing account books of Lion Hup for the relevant period: Marjoribanks has no objection. Application allowed and this witness is allowed to retire).

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No.10.

Hew Len Fah

Cross-Examination
- continued.

10 Marjoribanks: Now produces a bundle of translations made on 1.7.58 of the note-book which are Ex.28. Search was made by Kam (Solicitor for Defendants) among the many files in connected proceedings, and the translations had been found this morning. Marjoribanks applies under Section 138(4) of Evidence Ordinance for recall of D.W.3. After examining the translation and note-books, I am of opinion that there is a proper case where I should allow recall of this witness.

20 Dr. Teh (objects): (1) that the note-books were not disclosed in the Defendants Affidavit of documents, (2) original note-books have been produced in Examination-in-chief - witness had been cross-examined thereon, (3) case must be conformed to pleadings: the relevant period in this case covers only a few months between end of November 1957 to March 1958, (4) witness D.W.3. had been already fully examined-in-chief, cross-examined and examined by Court, (5) it would not be right at this stage to re-open the whole case.

I note the above objections - and I over-rule same.

Adjourned at 10.40 a.m. Resumed at 11 a.m.

30

No. 11.

No.11.

CHOW SEK KIM (Recalled)

Chow Sek Kim (Recalled).

40 I see D28(A) - on cover dated 1.2.58; against date 1.2.58 I see inter alia an entry marked (X) in red ink. It reads "interest to Ban Teck Loong \$60.25" in my handwriting. In this same note-book, under date 2nd, 3rd and 4th February, are other items: "Interest to Ban Teck Loong \$75.85". The whole note-book was written up by me. In this note-book there are altogether 23 items of interest payments to Ban Teck Loong. Certified translation put in marked - D28(AT).

I see next earlier note-book which is D28(B). On its cover is date 1st January 1958. In this booklet are recorded entries of 29 interest payments made to Ban Teck Loong. The whole book is in

In the
High Court at
Kuala Lumpur.

Defendants'
Evidence.

No.11.

Chow Sek Kim
(Recalled)
- continued.

my handwriting. Certified translation put in and marked D28(BT).

I see note-book marked D28(C) dated 1.12.57 all in my handwriting. In it are recorded entries of 30 interest payments to Ban Teck Loong. Certified translation produced and marked D28(CT).

I see note-book marked D28(D) dated 1.11.1957 - whole book in my handwriting - and therein are recorded 24 interest payments to Ban Teck Loong. Certified translation produced, marked D28(DT). 10

I see note-book marked D28(E) dated 1.10.1957 - whole book is in my handwriting. In it are 23 items of interest payments to Ban Teck Loong. Certified translation produced and marked D28(ET).

In another (A continuation) note-book D28(F) - in my handwriting dated 30.10.57 are 2 entries of interest payments to Ban Teck Loong. Certified translation produced and marked D28(FT).

I see note-book in my handwriting dated 1.9.57 marked D28(G) containing 23 items of interest payments to Ban Teck Loong. Certified translation produced and marked D28(GT). 20

I see 11 note-books covering the period from 1st January 1957 to 30th August 1957. All the books were written up by me. In each month there were a number of entries of interest payments to Ban Teck Loong. These 11 books are now marked (together) D28(H). Certified translations of the relevant entries now produced and marked D28(HT).

I see 12 note-books covering the period 1.1.56 to 29.12.56, now marked D28(I) - all in my handwriting. In each month there were a number of entries of interest payments to Ban Teck Loong. I produce certified translation; now marked D28(IT). 30

I see 11 note-books covering 1955 - all in my handwriting with monthly entries of interest payments. Certified translations now produced and marked D28(JT).

I see 10 note-books covering year 1954, from 28th May to 31st December. All in my handwriting. These books contain number of entries of interest payments to Ban Teck Loong. Certified translation produced and marked D28(KT). 40

In every case of entries in D28(A) to D28(K) - the cash figures were interest payments.

No. 12.

EVIDENCE OF HEW LEN FAH

HEW LEN FAH: (now returns to Court (at 11.40 a.m.) and says he could not find his brother and therefore could not get the books of account).

On his former oath: Cross-examined by Dr. Teh:

10 To Dr. Teh: My brother's firm was Lian Hup Textile Firm. I was employed as manager. The firm was not sued by Plaintiff last year. I am sole proprietor of Ban Choon Tong, Triang. I manage the business and travel frequently. Plaintiff did sue me and the present Defendants together. I deny I am angry against the Plaintiff.

20 I deny I came to Court to keep my friends. I have come to give evidence. I brought chit D33 to Defendants' Solicitors. My brother kept the account books of Lian Hup. I do not know where he keeps them. I reside in Triang. When I come to K.Lumpur I live at Ching Lee, Cross Street. My brother lives at Chow Kit Road.

Lian Hup closed down in 1957, about May. It started business about 1954. The business closed down because of heavy liabilities incurred, and was owing about \$60,000; without assets.

Re-Examination (Marjoribanks): I settled Plaintiff's claim last year. My brother was not in when I went to look for him.

30 (To Court): The present Defendants and I were the Co-defendants in the case that I settled with Plaintiff. The claim was for \$2,100 odd. I settled in full. The claim was on a dishonoured cheque which I gave to Choong Fah (present Defendants) who had given the same to the Plaintiff.

I am not related to Plaintiff. I came to know him because I was doing business in Kuala Lumpur.

(Case for Defendants)

40 Dr.Teh: Plaintiff's claim is based on 16 cheques, 8 of which were in exchange for cheques as Defendants required ready cash for turnover. The second lot of 8 cheques were for goods supplied - not given on dates of delivery of goods - because 3 months credit. In case of 2 lots 2 months credit. When Plaintiff went to collect the Defendants gave post-dated cheques. All cheques were cash cheques.

Plaintiff has given particulars of these cheques on 14.9.58. On 25 September amended defence delivered refers para. 2, para. 3.

In the High Court at Kuala Lumpur.

Defendants' Evidence.

No.12.

Hew Len Fah.

Cross-Examination - continued.

Re-Examination.

In the
High Court at
Kuala Lumpur.

PLAINTIFF'S EVIDENCE

No. 13.

EVIDENCE OF CHOW YOONG HONG

Plaintiff's
Evidence.

CHOW YOONG HONG: (affirmed states in Hakka).

No.13.

I live at 100 High Street, Kuala Lumpur. I have business known as Ban Teck Loong, Wholesale dealer in textiles.

Chow Yoong Hong.
Examination.

I know Defendants. D.W.3 is my nephew. In January 1953 he helped me by giving me one of his telephones. We were on very good terms.

10

I see 8 cheques D3 - D10. As to D3, Defence witness 3 (Chow Sek Kim) exchanged cheques with me: he gave me D3 because I gave outstation cheques totalling the amount of D3. He would pay the outstation cheques into Defendants' account in the bank. The Defendants had special arrangements with their bank whereby for a special charge they were allowed to draw on credit of those cheques. Defendants' cheque given me would be post-dated cheque. D3 was given me on 17th February 1958, and dated 24th February 1958.

20

Outstation cheques ordinarily take some days to clear. If I paid the outstation cheques into my account - they would take several days in any case to clear. So it was no matter to me to take Defendants' post-dated cheque in exchange. But Defendants would have advantage of having ready cash for immediate use. The suggestion came from Defence witness (3) (Chow Sek Kim).

There are advantages to both. They have use of money. I save Bank commission on outstation cheques. I charged no interest, and no interest was paid to me.

30

I see D4 dated 1.3.58. Transaction of same nature as in case of D3. It took place on 21.2.58.

D5 was dated 2.3.58. I gave my cheque on 22.2.58 to Defence Witness (3) in exchange for D5.

D6 was dated 2.3.58. I gave my cheque on 25.2.58 to Defence Witness (3) in exchange for D6.

D7 bears date 4.3.58. I gave my cheques in exchange on 25.2.58.

40

D8 bears date 4.3.58. I gave my cheques in exchange on 26.2.58.

D9 bears date 4.3.58. I gave my cheques in exchange on 28.2.58.

I have had dealings with Defence witness 3 since 1953 and with his firm (Choong Fah - Defendants) since 1954. I got Defendant firm's cheques, but person who brought them to me was Defence witness 3.

When I said "my cheques" I mean customers cheques of which I was holder.

10 Defence witness 3 handed me cheque D11, for goods sold on 3.11.57. The transaction was recorded in my 1957 "Daily Sales (wholesale) Book" - now produced and marked (P34). On p. 146 under date 3.11.57 appears an entry of 2 items of sale @ \$1,220 and \$780 totalling \$2,000/-. (Page 146 is marked Ex.P35). I produce certified translation of relevant items, now marked P35T. I sold drill 2,000 yards @ 61 cents per yard and white cloth 1,200 yards @ 65 cts. per yard for \$780: total sale was \$2,000/-. Cheque D11 was subsequently given to me when I pressed for payment. When I was
20 given cheque, I made out as receipt out of my receipt book.

This is my receipt book (P36). The receipt No. for this cheque D11 is No.5819 dated 3.2.58 (P37). The cheque was received on 3.2.58, but cheque was post-dated 3.3.58, as D.W.3 asked me for extension of 1 month for payment. Certified translation of Receipt marked P37(T).

30 I keep Account books in the ordinary course of my business, and I produce my "LOCAL and EAST COAST A/C BOOK" (P38).

Adjourned at 1 p.m. Resumed at 3 p.m.

On page 30 of P38 - against date 3.11.57 appears entry as follows :-

"To Bill 128 - \$1,220/-"

"To Bill 128 - 780/-"

Page 30 is now marked P39. Certified translation now marked P39(T).

40 On page 35 of same book (P38) under Choong Fah Rubber Factory Account dated 3.2.58 appears entry -

"Received cheque No.925 \$2,000/-"

Page 35 is marked P40 and translation P40(T).

This transaction also appears in my Cash Book (P41): and the relevant page is page X 7 (P42) - Certified translation P42(T).

In the High Court at Kuala Lumpur.

Plaintiff's Evidence.

No.13.

Chow Yoong Hong.

Examination - continued.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Examination
- continued.

D12, a cheque for ~~£~~1,250/- dated 5.3.58, was given me in respect of purchase of cloth on 5.1.58. The sale was recorded in my "Daily Sales (Wholesale) Book for 1958 - now produced and marked P43. On page 4 appears entry dated 5.1.58 as follows :-

"42" S.S.Boxing Brand White Cloth 50 pieces,
2,000 yards for ~~£~~1,250/-.

I received a cheque for this subsequently for which I issued Receipt No.5827 dated 12.2.58 (Ex. P44) - Certified translation - P44(T). This receipt gave particulars of cheque No.694882 dated 5.3.58.

10

In Ex.P38, under account of Choong Fah Rubber Factory, at page 35, I see a record of this translation:

On date 12.2.58 - received cheques No.....
827 ~~£~~1,250/- (see P.40 and P.40(T)).

On page 9 of Ex.P41 is an entry for period
10-15 Feb.

"Received from Choong Fah Factory cheque No.
..... 827 ~~£~~1,250/-" (The translation
appears on P40(T)).

20

D13: cheque for ~~£~~2,000 dated 5.3.58 was given me by D.W.3 for purchase of goods on 6.1.58. This transaction is in my 1957 Daily Sales Book (P34), at page 170.

"62½ Cts. 42 GS White Cloth 3,200 yds.
~~£~~2,000/-"

(Page 170 now marked P45, translation P45(T)).

I gave receipt No.5824 now marked P.46: translation. This translation appears on page 9 of Ex.P41. (Page 9 of P41 now marked P47 and translation P47(T)).

30

D14: cheque for ~~£~~2,036 dated 6.3.58 was given me for purchase of goods on 6.1.58. It appears on page 5 of Ex.P43. (Page 5 now marked P48 and translation P48(T)).

I issued receipt No.5827 dated 17.2.58 (Receipt Cash book (Ex.P41) shows entry of this transaction on P10 (marked P50 and translation P50(T) P40 and P40(T)).

Translation appears in Ex.P38 at P.35 (see Ex. P40 and P40(T)).

40

D15: cheque for ~~£~~2,046.35 was given me for goods sold, being 3,600 yds. of grey drill. It appears on page 141 of Ex.P34. (Page 141 now marked P51 and translation P51(T)).

I issued a receipt No.5820 dated 5.2.58 (Carbon copy of receipt now marked P52 and translation P52(T)).

The payment of ~~£~~2,406.35 was in respect of 2 lots of goods. The second lot was sold on 25.2.57 and appears on page 185 of P.34. (Page 185 now marked Ex.P53 and translation P53T). Also show in Cash Book (P41) at page 8 (Page 8 now marked P54 and translation P54T).

10 Item appears also in Ex.P38 at page 35 (which is P40), and in P38 at page 30 (which is P39).

D16: cheque for ~~£~~2,500 dated 9.3.58 for cloth supplied on 9.1.58. Entry appears in Ex.P43 at page 8, (which is now marked P55 and translation P55T).

Receipt No.5828 dated 15.2.58 re cheque 704930 (receipt now marked P56 and translation P56T).

20 Item appears in P41 at page 9 (now marked P57 and translation P57T). And also appears in Ex.P38 at p.35 (see P.40 and P40T).

D17: cheque for ~~£~~954.50 dated 10.3.58 was given for goods supplied.

Entry in Sales Book (P43) at page 9 (now marked P53 and translation P58T).

Receipt No.5818 issued dated 1.2.58 (carbon copy of receipt marked P59 and P59T).

In Ledger entry (38) see page 35 (see again P40).

30 In Cash book (P41) see entry page 7 (Page 7 is P42).

D18: Cheque for ~~£~~2,530 also for goods supplied.

Entry in Ex.P43 at page 16 dated 19.1.58 (now marked P60 and P60T).

Receipt No.5830 dated 21.2.58 (now marked P61 and P61T).

In Cash Book (P41) entry is on page 10: (see Ex.P50). In Ledger (P38) see page 35 - (see P40).

Adjourned at 4.20 p.m. to a date to be fixed.

(Sd:) H.T. Ong -

16.1.59.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Examination
- continued.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Examination
- continued.

Thursday, 29th January 1959: (continued)

CHOW YOONG HONG: (affirmed: Examination continued)

D19: is a cheque drawn by Defendants, cheque was filled in by my son, also its date, and it was indorsed with the rubber stamp, of Ban Teck Loong.

Every morning Chow Sek Kim (D.W.3) would come to my shop to enquire if I had to make any payments outstation: if there was any he would give me a cheque of the Defendants in blank and in his presence the amount and the payees' name would be written and I would give him cash or credit his account. Sometimes the date of the cheque was post-dated a few days to enable him to make use of the cheque for that much time. This happened 10 - 20 times monthly, since 1955 till 1958. I used his cheques in this manner more than 100 times. I have no benefit - but this arrangement was to Defendants' benefit. I charged no interest.

Chow Fan Seong (Defence witness No.5) was a partner of Chop Kean Fah. I filed suit against him and the suit is still pending. He produced certain chits in evidence (Exs.D29, D30, 31 and 32). I received no interest on these chits.

I see Ex.D33 produced by Hew Len Fah (Defence Witness No.6). I deny receipt of any interest. I deny having ever received any interest from the Defendants.

Cross-
Examination.

Cross-Examination by Marjoribanks: The Defendants did sometimes give me outstation cheques in the past, and in the case of cheques marked "A/c Payee Only" drawn in Defendants favour, the Defendants would have to give me a cheque to cover such outstation cheque before they get my own cheque in exchange. Such manner of transaction was discontinued since end of 1956. Where cheques were not marked "A/c Payee Only" the above named arrangement never applied.

I know firm of Ban Chong Chan, Temerloh. I was holder of their cheque and I presented same for payment. It was a Kuala Lumpur cheque - not outstation cheque.

Chop Phang Hin Chan is also a firm in Temerloh. I have received outstation cheques of that firm handed to me by the Defendants - but Defendants did not further give me their own cheque by way of security. I paid cash for Phang Hin Chan's cheque.

10

20

30

40

Since 1954 I have given cash to Defendants for outstation cheques. There were numerous such cheques. I say in such transactions I made no profit. I gave full value in cash for the cheques. Some such cheques I paid into my account - others I gave back to Defendants when they paid me cash - this occurred in case of dishonoured cheques.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Cross-
Examination
- continued.

10

Since 1954 I did not lose money by the above operations. For outstation cheques the Defendants would reimburse me the amount of Bank commission. If I paid outstation cheque into my account, Defendants would reimburse me the amount of commission. But if I make use of that outstation cheque by negotiating same, no Bank commission was payable to me.

I know Chow Fan Seong (Defence Witness No.5). He is my nephew. I knew Hew Len Fah (Defence witness No.6) who is no relation - I had business with his brother.

20

On Ex.D29 the handwriting is all mine. He paid me, gave me cheques - and so I wrote out Ex.D29 for him. On this chit were large amount and small amounts.

Q. What was the meaning of the small amounts?

A. The small figure is commission paid back to the firm, Kean Fah, on purchase of goods - or rebate.

30

The cheques were given to me in payment of goods supplied and I allowed a rebate or commission. The cheques were outstation cheques in favour of Chop Kean Fah. I would not know why those cheques were payable to Kean Fah. Kean Fah made use of these cheques to the credit of his own account with me. Those transactions with Kean Fah appear in my account books.

I can produce book recording payments of commission.

40

On Ex.D30 the writing in ink is in my hand - the pencil writing was not by me. The words "interest" are in pencil not written by me. The smaller amounts are commission. Commission not paid at a fixed rate. He took my goods and when he paid me I wrote out what rate of commission he should get. Commission was not fixed on percentage basis - it depends on amount of my profit. There was no difference to the amount of commission between payments by post-dated cheque or cheque immediately cashable.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Cross-
Examination
- continued.

Ex.D31 - the words and characters in blue ink are in my handwriting - those in black are not.

Ex.D32 - only writing in blue ink is my handwriting.

Ex.D33 - all handwriting is mine. The small accounts are commission. One item shows commission on \$100 to be 60 cts: another item shows commission also on \$100 to be \$2.40 but the goods were more profitable. Ex.D33 was produced by Hew Len Fah (Defence witness No.6). It was a 1955 transaction and does not appear in my account book. This Ex.D33 refers to goods and bills - not cheques. Hew Len Fah gave evidence against me because of grudge. I got payment from him after execution. I can produce my Day Book - in which will appear all payments of commission.

10

I see the bundle of note-books (D28). Chow Sek Kim (Defence witness No.3) alleged there were payments of interest. There were no cheque of Defendants dishonoured before 1958. The note-books were alleged to go back to 1954. I do not know what he has written.

20

Cheques, Ex.D11 to D18 were in respect of goods supplied. I have filed suits against other people for the identical amount as in these cheques.

In C.S.164/58 one of the Defendants is Kiew Chee Seng of Sungei Patani, the other Defendant being Choong Fah Co. The claim was for \$2,000 on a cheque dated 3.3.53. I have here with me the original cheque I was suing upon. It is a Hongkong & Shanghai Bank cheque C.164019, S.Patani, dated 30.2.58 deleted and substituted by date 3.3.58 for \$2,000/-. Ex.D11 is a Bank of China Cheque No. 704925 dated 3.3.58 for \$2,000/- drawn by Defendants. I deny that Defendants gave me Ex.D11 as security when they gave me the S.Patani cheque drawn by Kiew See Cheng. Defendants, I admit, had endorsed the S.Patani cheque to me. I deny one cheque was security for the other. The amounts and dates of the 2 cheques are a coincidence.

30

40

N.B. (The Sungei Patani cheque - not marked A/C Payee only)

In C.S.165/58 Defendants are Lo Tham Fook of Chop Kwong Cheong, Bahau - and the present Defendants. It was a suit on a dishonoured cheque for \$2,406.35 dated 5.3.58. I see D15. It is for \$2,406.35 and date was 5.3.58. I deny that Defendants gave me their own Bank of China cheque as

security for the outstation cheque of Chop Kwong Cheong. I say again this is a coincidence.

In C.S.210/58 - there is a claim for \$2,036/- against (1) Chow Sek Kim (2) Kuan Chee Pong of Nam Seng & Co., Malacca (3) Cheong Fah Rubber Factory. Claim was on a dishonoured cheque dated 6.3.58. After Defendants' factory was burnt down they asked me for loan which I gave, but I did not lend any amount of \$2,036/-. In the present case I have said Ex.D14 was given me for goods supplied. In C.S.210/58 I was suing on a cheque drawn by Nam Seng & Co.

(Marjoribanks refers to an Affidavit dated 28.5.58 by Chow Yoong Hong, filed in C.S.210/58 - Encl.No.3).

I meant that I gave cash in exchange for cheque. I deny that D14 was given me by the Defendants as collateral security for Nam Seng's cheque. The coincidence of the amount and date is brought about by Defendants' manipulation.

In C.S.211/58 there is a claim for \$2,530/- on a dishonoured Ipoh cheque dated 19.3.58 against Defendants (1) Chow Sek Kim (2) Chan Chun Pooi (3) Choong Fah Rubber Co.

Ex.D18 is a Bank of China cheque for same amount and date. In C.S.211/58 I made an Affidavit (Encl.3 in file) in similar terms as my Affidavit in C.S.210/58 as follows :-

"3. The Defendants approached the Plaintiff for an advance of \$2,530/- in order to re-organise their factory business because their factory was burnt down recently by fire.

4. As evidence of such debts the Defendants issued cheque for the aforesaid amount in favour of the Plaintiff as security, etc."

I now say the Affidavit is not correct - I deny the money was for rehabilitation of the factory after the fire. It is not true the Defendants in C.S. 211/1958 approached me for a loan after the burning of the factory. I have filed several suits - and documents were largely prepared by my friend a petition-writer. I again deny that Ex.D18 was given as security for the Ipoh cheque drawn by Chan Choon Pooi.

I filed C.S.216/58 - claiming on 2 dishonoured cheques, one of which was for \$2,500 dated 9.3.58. The Defendants in that action were (1) Chow Sek Kim (2) Heap Seng & Co., of Tampin and (3) Choong Fah

In the High Court at Kuala Lumpur.

Plaintiff's Evidence.

No.13.

Chow Yoong Hong.

Cross-Examination
- continued.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Cross-
Examination
- continued.

Rubber Co. In C.S. 216/58 on 26/5 I swore an affidavit. Defendants gave me outstation cheques and I gave them money. I deny Defendants gave Ex.D16 as security for the 2 outstation cheques. Ex.D16 bears date 9.3.58 - which is same date as the Malacca cheque in C.S. 216/58. The date is the same but the transactions were not - it is due to manipulation of Chow Sek Kim that this coincidence happens. I filed C.S. 217/58 for \$2,000 on a dishonoured cheque dated 5.3.58 and the Defendants are (1) Chow Sek Kim (2) Phan Hin Chan of Temerloh and (3) Choong Fah.

10

I swore an affidavit on 26.5.58 alleging an advance made to Defendants who gave me a cheque as security. The outstation cheque was dishonoured.

I deny that Choong Fah gave me their cheque (Ex.D13) on Bank of China dated 5.3.58 for \$2,000/- as security for the outstation cheque. They came to get the money from me on 28.2.58 about 9 a.m. I say D13 was payment for goods supplied - and not as security for the other cheque.

20

Ex.D12 is a cheque for \$1,250/- dated 5.3.58. I sued Ban Keong and Choong Fah in the Sessions Court on a dishonoured cheque issued by Ban Keong for \$1,250/-.

There is also a suit in the Magistrates Court, K.L. against Seng Ho & Co., for \$954.50 also on a dishonoured cheque. Ex.D17 is a cheque for \$954.50.

If Chow Sek Kim had intention to play me out he could manipulate matters to bring about the coincidences.

30

I have invoice to prove sale and delivery of the goods to Defendants. I can produce my invoice books.

Receipt No.5818 dated 1.2.58 (Ex.P58) was in daily use. I have 3-4 separate receipt books in concurrent use.

On P.15 of Ex.P38 is account of Chop Ban Leong running through whole of 1957 and 1958. In same account book Defendants have one account on page 30 (Ex.P39) and another on p.35 (Ex.P40). In Ex.P38 are several blank pages between customers accounts - the blanks are reserved for continuation of the same current account. At p.37 "Toong Nam Ah A/c" commenced from January 1957 - at page 35 Defendants Choeng Fah Co's. account started in January 1958.

40

Adjourned at 12.40 p.m. to 2.30.

Resumed at 2.30.

Cross-Examination continued: I have now produced books as requested this morning relating to the payment of commissions. This morning you asked me about a cheque dated 16.7.57 for \$1,196.50 - referred to in Ex.D29. Goods to value of \$1,196.50 were purchased on 16.7.57 and payment of total commission on 16.11.57 was \$154.60. Commission on 2392 yards of cloth at 1.2 cts. per yard amounts to \$28.726 cents (in round figures \$28.70) as per my invoice No.4030 dated 16.7.57 sold to Kean Fah.

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Cross-
Examination
- continued.

The pencil writing on Invoice 4030 is mine.

My invoice No.4020 dated 5.7.57 relates to Japanese square-patterned cheap cloth - 5 bales 200 yards costing \$100/-. Commission \$1.60. This chit D.29 was made out in order to work out the total of all commissions, which came to \$154.60. This sum of \$154.60 can be seen in p.51 of my payments and receipts Day Book (1957). Left hand column is for receipts - right hand for payments - according to usual practice.

Now referring to Ex.P34 and P.35: I agree that P.35 being entries in respect of Choong Fah in the left 5 lines of the page. The entry P.45 (also in book P.34) appears also on the left-hand 6 lines of the page. On p.44 and p.48 (being book entries) the entries for Choong Fah also appear on the left-hand edge of the pages.

As to cheque "D3" - given on 17.2 and post-dated 24.2 but presented 18.3. Chow Sek Kim asked me to defer presentation - lack of funds.

Cheque "D4" dated 1.3.58 was presented about 15.3.

Cheque "D5" dated 2.3.58, Chow Sek Kim gave sugar-coated words and I could not refuse to give cash for D4 and D5. D3 to D10 were transactions before the fire.

I see file of C.S.165/58: claim was for \$2,406.35: Ex.D15 was for \$2,406.35 also.

Q. Why was not Lo Tham Fook's cheque used to set off the account for goods amounting exactly to \$2,406.35?

A. I agree Choong Fah (Defendants) owed me \$2,406.35 for goods supplied. I also agree that Lo Tham Fah's cheque for \$2,406.35 was

In the
High Court at
Kuala Lumpur.

Plaintiff's
Evidence.

No.13.

Chow Yoong Hong.

Cross-
Examination
- continued.

given to me by Defendants. But when Lo Than Fah's cheque was handed to me I did not know what exact amount was owing to me by Defendants for goods supplied.

In the case of the other 7 cheques and 7 items due to me for goods supplied, the answer is the same.

The total value of the cheques is \$15,676.85. I had forgotten to contra any of these cheques against this similar sum due to me for goods supplied. 10

My goods sold to him were on 2 months credit and I could not use the cheques to contra the goods account.

I sold goods in November 1957. I gave grace beyond the 2 months.

D11 was for goods sold on 3.11.57. I asked for payment - Defendants asked for time.

Since 1954 I have been helping Defendants by cashing their cheques and taking post-dated cheques for no profit to myself. Each New Year I used to get New Year presents from Defendants. Defendants ordinarily bought their needs from me. I do not know Defendants bought textiles direct in bulk from India and also from Hongkong. 20

Re-examination.

Re-Examination (Dr. Teh):

"D14" was for goods sold on 6.1.58. I received D14 on 17.2.58. D14 was dated 6.3.58.

I have in my possession Nam Seng's cheque for \$2,036/-, it was given to me on 27.2.58 in exchange for my own cheque. 30

On 27.2.58 the goods account had been paid by Defendants' cheque D14 on 17.2.

I have invoices for goods, the subject matter of all the cheques D11 - D18.

I also have account of the commission paid to other dealers - to Choong Fah I pay no commission.

Case for Plaintiff closes.

4 p.m. Adjourned to Saturday 31.1.59
at 10 a.m.

(Sd:) H.T. Ong.

No. 14.

CLOSING SPEECH FOR PLAINTIFFSaturday, 31st January 1959:

Resumed at 10 a.m. Counsel as before.

Dr. Teh: Plaintiff's case based on 16 cheques - 8 in exchange for outstation cheques and 8 in payment of goods.

In the
High Court at
Kuala Lumpur.

No.14.

Closing speech
for Plaintiff.

31st January,
1959.

10

Defendant firm managed by nephew of Plaintiff who although not partner has wife holding shares of \$10,000. A rich uncle helping a poor nephew - who often required help. Uncle always accommodated the nephew.

S/Defence - para 2 - alleges series of money-lending transactions etc. Defendants duty to prove averments. Dates (in evidence) were filled in by Defendants - not by Plaintiff - in all the 16 cheques.

What is a money-lending transaction.

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As regards D3 - D11 - Defendants came to ask for outstation cheques of Plaintiff to whom Defendants gave own cheque in exchange. Defendants could use those cheques by special arrangement with Bank. Submit that is not money-lending.

If Defendants manage to use money earlier by arrangement with the Bank - that is not a money-lending by us.

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Money-lending Ord. 52/51 - para 2 - definition of money-lender. It has not been proved Plaintiff did - or held out or carried on business as money-lender.

S.3 - "in consideration of larger sum being repaid". Defendants gave same amount as value of cheques received.

As to D11-18 - Plaintiff says these cheques were in respect of sale of goods.

Onus of proving para.3 of S/defence on Defendants.

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Plaintiff and Defendants' manager- are uncle and nephew - also Defendant firm was a customer - and Plaintiff merely accommodated them. There was no question of actual moneylending transactions.

The 51 note-books (D28) were in reality petty cash books showing moneys he had taken from the

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firm -- and for those amounts he had a reason -- and if he defrauded the firm -- it was no concern of Plaintiff's. If any money was taken from Defendants' firm -- none was received by Plaintiff. Submit accounts in note-books are of money taken by himself for own benefit. Chow Sek Kim could point to no item in his records -- he could not give calculation. Chow Sek Kim could not correlate any cheques to any item in D28.

Defendants called another nephew who managed Chop Kean Fah. He is D.W.5. He also was customer and his firm also has been sued. He could only produce 4 chits. The word "interest" on chits not written by Plaintiff. This witness, a businessman, could not show how the small items were interest payments. He admitted no interest entered in his own account books. He did not know manner of calculation of any single item appearing in any of the chits.

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D.W.6. Hew Len Fah was called. His brother was proprietor. His evidence was of cheques given in exchange. If he got customers' post-dated cheques, it is surprising he took cheques without noting particulars of cheques.

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It is to be noted that Hew Len Fah did not defend his suit -- if he had a defence as he alleged of having paid interest. On D33 "Klang" & "Local" means place where the goods were sold -- and did not refer to cheques. It is up to them to trace the cheques.

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Onus on proof is on Defendants to prove that in exchange for cheques Plaintiff charged interest. That the Defendants have failed to do.

Cross-examination of Plaintiff by Defendants' Counsel has made Plaintiff produce commission account book even as to Hew Len Fah -- who was only a witness -- and not a party to this suit.

Defendants' Counsel stressed coincidences of amounts of cheques and of dates. Every item was for goods sold and delivered. Defendants having purchased goods of a certain value could have got from their own customers cheques of that value. Chow Sek Kim admitted he was accommodated by Plaintiff who gave him cash for Defendants' outstation cheques to be given to Plaintiff's own customers -- and on his own admission no interest was charged. My suggestion is Chow Sek Kim made money out of his own firm. One must bear in mind relation of uncle and nephew and relation of dealer and customer. All transactions were on cheques.

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CLOSING SPEECH FOR THE DEFENDANTS

Marjoribanks: See s.3 of Evidence Ord. as to "Proof". Demeanour also to be noted.

10 D11 - 18 the crux of whole case. Plaintiff alleged they were for goods. Yet it was clear they were 8 cheques sued on and Plaintiff alleged 'manipulation' of Chow Sek Kim as responsible for the coincidences. If coincidence - the coincidence is extraordinary.

1st explanation - there never was any sale of goods.

2nd explanation - there was a sale: only one can be true - the question is which explanation is the true one?

The affidavits in the various suits must be given some weight though a mistake might have been made by Plaintiff.

20 Plaintiff has tried through his Counsel to restrict "onus" to these cheques only.

The points of coincidence are (1) in value of cutstation cheques and of Defendants sums (2) same date.

Account books of Plaintiff could be fabricated by use of blank pages or portions: e.g. I refer to Ex.P59. (receipt book). In this book (on the page before P59) - there are no receipts for January.

30 Ledger P38: "The General A/c Book" - on p.30 and p.35 is account of Defendants - on p.28 there is a blank - also other pages.

P34 and P43 - (The Day Sales (Wholesale) Book) - Defendants account always appears on edge of the books.

Invoices: triplicate system.

If Plaintiff not telling truth as to the cheques relating to sales - inference is clear as to the others.

Not only few isolated transactions between uncle and nephew.

40 Not a vast business with Defendant - not buying exclusively for Plaintiff. Plaintiff not getting anything for very great trouble.

Secret profit of Chow Sek Kim - as to P28 - the books were from 1954 till the fire.

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The no. and frequency of the transactions.

Could D28 have been fabricated?

As to the chits tendered by D.W.5 and D.W.6.
- what is the more reasonable explanation.

(Ex.D29, 30, 31 and 32) - word "cheque" ap-
pears in all.

Note on D31 - entries of as little as 70 cts.
by way of alleged commission. Plaintiff has ad-
mitted figures in small items to have been in his
handwriting.

11.25 a.m. 31.1.59.

C.A.V.

Certified true copy

(Sd:) H.T.Ong
31.1.59.

Sd: ?

Ag. Secretary to Judge, Kuala Lumpur.

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JUDGMENT

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Civil Suit No.150 of 1958

Chow Yoong Hong

Plaintiff

vs:

Choong Fah Rubber Manufactory

Defendants

JUDGMENT

In this action the Plaintiff is claiming from
the Defendants the sum of \$31,112.06 being the to-
tal amount of 16 cheques issued to him by the De-
fendants which were dishonoured upon presentation.
By their defence the Defendants pleaded that the
claim is unenforceable by reason of the provisions
of Sections 15 and 16 of the Moneylenders Ordina-
nce, 1951.

The Plaintiff is a wholesale dealer in tex-
tiles carrying on business under the firm name of
Ban Teck Loong at No.100 High Street, Kuala Lumpur.

The Defendants are a firm manufacturing rubber

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shoes until 28th February, 1958, in a factory situated at the 8 $\frac{1}{2}$ mile, Pahang Road. There were a dozen partners or more, but apparently the business was managed by two partners and a third person who held the post of cashier or treasurer. He is the husband of a partner, and a nephew of the Plaintiff, and, from the evidence, was the organiser of the business in 1954, since when he had been taking a leading part in operations on the financial side.

10 The Defendants' factory was burned down on 28th February, 1958 and it was stated that all account books were destroyed in the fire. The firm had started with a capital of about ~~RM~~87,000 in July 1954, and appeared to have expanded rapidly in business, if the value of the insurance policies taken out on their property during the succeeding years is any guide. The first policy taken out in 1954 was for ~~RM~~150,000 covering building, machinery and stock-in-trade. In 1955 the policy cover was 20 ~~RM~~200,000; likewise in 1956. In the first half of 1957 insurance cover was taken out for ~~RM~~250,000, and increased in the second half of 1957 to ~~RM~~550,000.

When, after the fire, the Defendants' cheques were dishonoured, the Plaintiff's Solicitors were instructed by him on 20th March 1958 to give notice of dishonour and demand payment from Defendants, who by their Solicitors replied on 25th March and promised settlement when payment should be received 30 from the insurers. On 9th April 1958 Plaintiff commenced this action.

Pursuant to an order for particulars, Plaintiff stated that eight of the cheques had each been given to him in exchange for a number of cheques belonging to the Plaintiff and that the other eight cheques had been given to him for goods sold and delivered by him to the Defendants.

40 The Defendants pleaded Sections 15 and 16 of the Moneylenders Ordinance, 1951 and also denied that any of their cheques had been given for goods sold and delivered as alleged.

I held that on the pleadings the onus rested on the Defendants. Six witnesses gave evidence on their behalf. Lee Chin Kong (D.W.1.), the managing partner, said that he had known Plaintiff since he himself was 12 years old and that since December 1954 the Defendants had had dealings with the Plaintiff. "Our factory" he said, "sometimes

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received post-dated cheques from customers, and when we required cash, we would take the cheques to Plaintiff and ask him for cash. He gave me cash for those cheques. He deducted a small sum for interest. Interest was 8 cents per \$100 per day. Some were local and some were outstation cheques". In respect of dishonoured cheques he said there were 16 cases pending in the High Court and 5 in the lower Court, all of which had been instituted by the Plaintiff, against these Defendants and others. This witness also spoke of certain transactions which to my mind were of an anomalous or abnormal character: "Plaintiff would use my firm's name to order goods from Singapore and when the goods were delivered at my factory, Plaintiff would pay first for the goods and we would repay the Plaintiff. "This was said a propos of purchases of goods by Defendants from the Plaintiff, which this witness said had taken place 2 or 3 times only since 1954, the value of each purchase being about \$100 only. 10 20

Chow Sek Kim (D.W.3.) the principal witness, was cashier of the Defendant firm since July 1954, and his main duties were to attend to cheques and cash transactions of the firm. Plaintiff was his uncle, and transactions between Plaintiff and the Defendants had been going on since 1954. According to this witness, most cheques received from Defendants' customers were post-dated cheques, and to have cash for turn-over, he would go to the Plaintiff, his uncle, and cash such cheques, on which interest was charged at the rate of 8 cents per \$100 per day. In the case of outstation cheques, and if Plaintiff was doubtful about the drawers, Chow would have to give Plaintiff in addition a cheque of the Defendants for the same amount and dated for payment the same day. Chew further explained that in the case of say, 7 or 8 outstation cheques for exchange, bearing different dates, he would draw up a statement, calculating interest to accrue on each cheque to date of its due presentation, whereupon "the total interest would be deducted from the sum total of the cheques and I would get payment by cheque of the net amount". 30 40

He stated the method of calculation of Bank commission and interest in preparing his statements to be as follows: "For Seremban cheques Bank commission is 12.5 cents per \$100. For outstation cheques generally 4 days would be added on for 50

calculation of interest. In case of Segamat, Batu Pahat, Kuantan, Kluang, Lipis and Trenagganu 7 days would be added. For Kelantan the added time would be 10 days. From 1954 such transactions with Plaintiff were numerous, occurring mostly on alternate days. All such interest charges, Chow said, were duly recorded by him in small booklets, of which there were 51, produced and marked "Ex.D.28".

10 Chow gave the names of eight firms or persons who, as outstation agents for the Defendants' goods, had given him these post-dated cheques which were cashed by Plaintiff in accordance with the arrangements above described. In connection with certain of these cheques, the Defendants caused to be produced the High Court files in six pending actions:

- 20 (i) C.S.165/58 by the present Plaintiff against one Loh Tham Fook, of Bahau, and the present Defendants, claiming \$2,406.35 due in respect of a dishonoured cheque dated 5th March, 1958 drawn on the Chartered Bank, Seremban;
- (ii) C.S.217/58 by the present Plaintiff against Chow Sak Kim, Phan Hin Chan of Temerloh and the present Defendants, claiming \$2,000 due in respect of a dishonoured cheque dated 5th March 1958, drawn on the Bank of China, Kuala Lumpur;
- 30 (iii) C.S.164/58 by the present Plaintiff against Kiew Chee Seng of Sungei Patani and the present Defendants, claiming \$2,000 due in respect of a dishonoured cheque dated 3rd March 1958, drawn on the Hongkong & Shanghai Bank;
- (iv) C.S.216/58 by the present Plaintiff against Chow Shek Kim, Hiap Seng & Co., of Tampin and the present Defendants claiming a total of \$3,500 due in respect of one dishonoured cheque for \$1,000 dated 26th February 1958 and another for \$2,500 dated 9th March 1958; both drawn on the Oversea-Chinese Bank, Malacca;
- 40 (v) C.S.210/58 by the present Plaintiff against Chow Shek Kim, Kwan Chee Fong of Nam Sing & Co., Malacca and the present Defendants, claiming \$2,036 due in respect of a dishonoured cheque dated 6th March 1958 drawn on the Oversea-Chinese Bank, Malacca;
- (vi) C.S.211/58 by the present Plaintiff against Chow Shek Kim, Chan Chun Poi of Ipoh and the

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present Defendants claiming \$2,530 due in respect of a dishonoured cheque dated 19th March 1958 drawn on the Chartered Bank.

It has been pointed out by Counsel for Defendants that the amounts and dates of the cheques which were the subject matter of those cases, tallied with six cheques in this action. Chow's explanation is that several customers gave him post-dated cheques to pay for goods to be delivered, and when the factory was destroyed and the goods were not available to those customers they stopped payment on their cheques, for which they and the Defendants are now being sued. 10

As regards eight cheques, exhibits "D3" to "D10" Chow said he issued each of them in exchange for varying numbers of cheques which Plaintiff himself had received from his own customers and delivered to him in lieu of cash. On the back of Ex. "D3" for instance, Chow had written down in pencil particulars of Plaintiff's 15 cheques to the total value of \$6,946.33 for which Plaintiff received in exchange Ex. "D3", which was a cheque for \$6,946.33. Chow asserted that he had paid interest, though he could not tell what the amount of interest was that he paid on each or any occasion. In denying that the other eight cheques Ex. "D11" to "D18", had been issued by him to Plaintiff in payment for cloth sold and delivered, Chow stated that very rarely did Defendants buy any textiles from Plaintiff, and then only in small quantities, not exceeding \$100 in value each time. 20 30

Another witness, an accountant in the Bank of China, had produced nine cheques Ex. "D19" to "D27" drawn by Defendants and endorsed by Plaintiff, of which the payees were Singapore firms. Of these cheques, Chow explanation was: "My uncle told me it would be difficult for him to issue cheques on his own for Singapore payees, and he asked for my firm's blank cheques and I gave them to him. I do not know what the difficulties were. Further on he stated: "Whenever the Plaintiff required a cheque for a payee in Singapore he would come and ask me for a blank cheque which I would give him. Next day he would come and inform me of the name of the payee and the amount drawn on such cheque and at the same time he would pay me the identical amount for me to pay into the Bank to meet the cheque. Plaintiff would give me full value. There is no question of interest involved in such cases". 40

This witness, Chow, was cross-examined at considerable length, but I do not think it is necessary to recapitulate the evidence here. I shall refer to it in some detail at a later stage.

10 The Defendants called two other textile dealers as witnesses to support their allegations that it was Plaintiff's practice to discount cheques for others for a consideration. One of them Chow Fan Seong (D.W.5.) is a textile dealer in Yap Ah Loy Street, Kuala Lumpur, and is another nephew of the Plaintiff. He deposed to paying Plaintiff interest on loans and for exchange of cheques at rates which agreed with the evidence of Chow Shek Kin. He also produced four chits each of which was partly written by Plaintiff. (Ex."D29" to "D32"). He said the cheque transaction between himself and the Plaintiff had been going on since 1955, averaging about 20 times a month. The other
20 witness was Hew Len Fah (D.W.6.), a textile dealer of Triang, who gave evidence of a similar character and produced a chit (Ex. D33), in the handwriting of Plaintiff. The small sums therein were said to be interest.

30 In answer to the evidence for the defence, the Plaintiff was the only witness, and he produced a number of account books and receipt books. He claimed that the eight cheques, Ex.D3 to D10, were given him in exchange for outstation cheques of equal value received by him in the course of his business. His explanation was that since outstation cheques ordinarily take several days to be cleared it would not benefit himself in any event to pay them into his Bank, but as Defendants had special arrangements with their own Bankers whereby, for a special charge, they were allowed to draw immediately on the credit of outstation cheques paid in, they would thus have the advantage of ready cash. He was willing to accommodate the Defendants in this manner, for which he charged no interest.

40 As to the other eight cheques, Ex.D11 to D18, Plaintiff asserted that these cheques were given to him for cloth sold earlier on credit to Defendants, and he produced several books containing entries relating to the disputed transactions. I do not think, for the reasons which will be set out later, that it is necessary to summarise here the evidence given by him.

There is only one question in issue between the parties whether or not the Plaintiff was a

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"moneylender" within the meaning of the Moneylenders Ordinance, 1951. But before proceeding to deal with this question, there are certain preliminary observations I wish to make. In the first place, there is no question that Defendants had received from the Plaintiff the moneys which is now claimed, and that they are now refusing repayment merely on the ground of his failure to comply with the technical requirements of the Ordinance. In the second place I am not impressed by the demeanour of the Plaintiff nor that of the persons in charge of the Defendants' business. I have no doubt in my mind that both the manager and the cashier of the Defendant firm had no compunction about departing from the truth whenever it suited them to do so. As to the Plaintiff, I am unable to accept his evidence as to the alleged sales in the case of cheques Ex.D11 - D18. I do not believe in coincidences occurring quite fortuitously eight times in less than a month. In the third place, I do not think it right and proper to make any comments on the evidence of Chow Fan Seong (D.W.5.) as between whom and Plaintiff there is a case pending in this Court, although his evidence is not on that account to be overlooked. Of Hew Len Fah (D.W.6.) this may be said, that he and the present Defendants were co-defendants in an action by the Plaintiff over a dishonoured cheque drawn by Hew, and issued to Defendants, who gave it to Plaintiff, and judgment having been given against them (against which judgment there was no appeal), they are estopped from alleging any facts to show that such judgment was wrong.

It remains now to consider whether or not in his transactions with the Defendants the Plaintiff was in effect carrying on business as a moneylender. Section 2 of the Ordinance defines a "moneylender" as including every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business. Section 3 has brought about what Thomson J. (as he then was) describes as a "reversal of onus" in *Sadhu Singh v. Sellathurai* (1), by providing that "any person who lends a sum of money in consideration of a large sum being repaid shall be presumed until the contrary be proved to be a moneylender".

Since Plaintiff has denied receipt of any interest from Defendants, it is for them to prove (in the sense that the word bears in Section 3 of

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the Evidence Ordinance) that Plaintiff was, in the course of the cheque transactions, getting back more money than he had laid out. One is apt to assume that ordinarily a person does not do favours to another at some personal inconvenience or expense to himself without some compensation in return. Consequently, when the Plaintiff was, as he admitted, frequently cashing or exchanging cheques to accommodate the Defendants over a long period of time, one is liable to assume that Plaintiff must have been doing so for a consideration, and that such consideration in the usual course must be interest. However, any such assumption must be based on evidence, and it is in regard to the nature and quality of the evidence produced that this case has an unusual character. It is a trite saying that each case must be considered in the light of its own special facts and circumstances, but more particularly in this case it is necessary to come to a conclusion only on evidence which can pass the test of acceptance, and not by surmise drawn from generalities.

I now come to the evidence in this case. The Defendants rely strongly on the 51 note-books which are Ex.D28. Proceeding in reverse chronological order seven note-books have been marked Ex.D28A to D28G, covering the period going back from February 1958 to September 1957. Eleven other note-books going back to 1st January 1957 are marked collectively Ex.D28H. Twelve note-books for the year 1956 are similarly marked Ex.D28I, eleven for 1955 are Ex.D28J, and ten for 1954 are Ex.D28K. The Defendants' cashier, D.W.3. produced translations of 547 items from these books, commencing from 10th June, 1954 and ending 28th February 1958, and the grand total of such items, which Chow, the cashier said were records of interest payments to Plaintiff, came to just under \$66,000, or an average in excess of \$16,000 per annum.

It is to be remembered that these interest payments were payments made by a firm comprising a dozen partners or more, and the partners in charge owed a duty to their other partners to keep true and proper accounts. Chow Shek Kim, the cashier, is not himself a partner, but the husband of one. An average yearly expenditure of over \$16,000 is not an insignificant item by any standards, and yet both the managing partner, Lee Chin Kong, and the cashier, Chow Sek Kim, said that the interest payments recorded in the cashier's little note-books

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appeared nowhere in the books of account of the partnership which had been burnt.

Of their book-keeping methods, Lee Chin Kong said: "I kept accounts of these negotiations of cheques. The cashier instructed the clerk to keep accounts". Chow stated: "The entries in these note-books (Ex.D28) were made every day since I joined Defendants first in July 1954. I made my arrangements with Plaintiff first, and having brought back the money with the statements, I made entries in these small note-books and subsequently I went to the factory and caused entries to be made in the firm's account books". And later he said: "The clerk transferred entries from my note-books into the firm's account books".

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If in fact interest payments were made as recorded in the note-books, and if the entries were duly transferred into the firm's books of account, then how is it that "nowhere in the account books were entries made of payment of interest?". If the firm's account books did not tell the truth, then the persons responsible for falsifying entries of expenditure (in whichever of many ways this might have been done) must have been practising deceit on their other partners. There has been no explanation offered for such highly irregular and improper conduct of the firm's book-keeping. Copies of the annual balance sheets and of the income-tax returns were not produced on the ground that two were destroyed in the fire. But since they could only reflect what did appear in the books of account, there could not have been shown any payments of interest. That being so, it is again a mystery why the management of the firm were content to pay income-tax year after year in respect of a sum which they were entitled to deduct from their taxable income. Would the sleeping partners, or the partner in Singapore who had invested \$20,000, have allowed this if they were aware of the facts? I doubt it. At the time of the fire the Defendants were indebted to various creditors to the extent of \$400,000.

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The income-tax returns were prepared by a firm of accountants having an office in Pudu Road, Kuala Lumpur, and it is common knowledge that accountants in the ordinary course of business retain for their own files copies of their clients' returns. No attempt was made to cause their production. It was however admitted by Lee Chin Kong that there was nothing in the returns to show that interest had ever been paid to the Plaintiff.

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Both Lee Chin Kong and Chow Shek Kim have stated in evidence that of all those who lent moneys to their firm, to only one man were they paying interest, namely, the Plaintiff, all other loans were given by friends free of interest. I find this to be completely untrue, if any evidentiary value is to be credited to these note-books. Upon going through the note-books between 1st September 1957 and 23th February 1958. I have found that, apart from entries for Ban Teck Loong (the Plaintiff's firm) there were 9 items of interest payments to divers persons and firms amounting to ~~£~~716.98 during September 1957, 12 items totalling ~~£~~1,195.97 in October, 10 items totalling ~~£~~656.05 in November, 9 items totalling ~~£~~618.35 in December, 16 items totalling ~~£~~917.14 in January 1958 and 19 items totalling ~~£~~1,513.44 in February. Following this discovery I have looked through the rest of the note-books. Suffice it to say that interest payments to other creditors besides Ban Teck Loong were shown therein, and although I have thought it unnecessary to work out the sum total of such payments, it must be considerable if the figures for September 1957 to February 1958 are any guide.

I have instructed the Court Interpreter to translate all items in the note-books for 3 months, namely, January 1955, January 1956 and January 1957, purporting to be entries of interest payments to others than Chop Ban Teck Loong, and of commissions on cheques. There were 14 such entries in January 1955 totalling ~~£~~253.54; 26 entries in January 1956 totalling ~~£~~1,735.06, and 34 entries in January 1957 totalling ~~£~~3,001.01. Such being the case, it is all the more incomprehensible (and to my mind incapable of any plausible explanation) why all such interest payments, if indeed they were made, should have been suppressed from the account books. It is, of course, abundantly clear that if the manager and cashier of the Defendants' both stated that interest was paid only to Plaintiff, and no others, and that payments to Plaintiff were not recorded in the accounts, it must follow that interest payments to the others could not have been recorded either.

As to the recorded entries in Ex.D28 Show said during his examination-in-chief: "It is possible from the note-books D28 to tell how much interest was paid". But having said so, he found it necessary to add: "from the note-books I can only say how much interest was paid to Plaintiff on each day

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recorded. I cannot identify any interest payment with any cheque". He was cross-examined about the cheque Ex.D3 which was given by him to Plaintiff in exchange for 15 cheques belonging to the Plaintiff. The total of the 15 cheques was the exact value of the cheque Ex.D3, and of this transaction Chow said: "I received full value for the 15 cheques totalling \$6,964.33". He was afforded an opportunity between the close of the day's hearing on 14th January and its resumption the next morning to trace in Ex.D28 the interest payment in respect of Ex.D3, and in due course, to quote his own words, he said: "I have searched through the books and I can find no entry therein". Nor could he find any entry in Ex.D28 in respect of the other cheques, Ex.D4 to D16. He was then challenged by Plaintiff's Counsel to prove in any way he chose that interest was paid on the 16 cheques, and his answer was that he could not do so.

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By reason of the facts which I have already set out I am of opinion that the Defendants' managing partner and cashier are entirely unworthy of credit and I also reject the entries in Ex.D28 as evidence of purported payments of interest to the Plaintiff. I find that the Defendants have failed to discharge the onus on them of proving that interest was collected from them by the Plaintiff and accordingly they have not established that he was a moneylender. I am fortified in this opinion for a further reason which I shall now discuss.

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In coming to the conclusion I have done, I am not oblivious of the fact that the transactions between Plaintiff and Defendants were of great frequency spread over a period of some 45 months. If there were in this case no circumstances of an unusual character one might very well think that Plaintiff's conduct was more consistent than not with his taking interest as consideration for his trouble. When I ask myself, why should the Plaintiff be so accommodating, then I proceed to ask myself, were Defendants not in some way able to repay for favours received? One does not have to be very astute to discover a ready answer to that question. Wei Ju Hsin (D.W.2.), an accountant in the Bank of China, had been served a subpoena to produce over 100 cheques, but by reason of the short notice given, could only produce 9 cheques, Ex.D19 - D27. In an earlier portion of this judgment when I made a summary of Chow Shek Kim's evidence, I have already set out Chow's explanation

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as to how these cheques came to be issued by him for Plaintiff's use to settle Plaintiff's account with textile dealers in Singapore. In Chow's words: "Transactions of this type used to take place more than 10 times each month since 1956.... I say Plaintiff benefitted from this arrangement, not me. I say he benefitted because he gave me his customers' cheques to pay into my account, and he used my cheques to pay his creditors, so that his business would now show such a big turnover and he could evade income-tax. I agree payment to his Singapore creditors were for goods supplied to him. I cannot explain how he benefitted. The explanation was what he gave me. I do not understand his explanation". Chow, in fact was pretending a naivete which he did not have. I am unable to understand what difficulty there was for Plaintiff to pay Singapore dealers with his own cheques. There could not be possibly any.

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There, however, appears to be a simple, logical explanation for the unusual procedure chosen by Plaintiff to pay for the goods he imported from Singapore. The Defendants carried on business as manufacturers of rubber shoes for which they required cloth in large quantities. Manufacturers in the Federation are allowed to import textiles free of customs duty. The Plaintiff, on the other hand, as a wholesale dealer in textiles, has to pay ad valorem duty on imported textiles, and if the purchases were purported to have been made by the Defendants, to whom the goods were sent, there would of course be a considerable saving to the Plaintiff. In this connection, I have looked up the Customs Duties Order, 1953 (L.N.167) which come into force on 1st May, 1953. Under Table A, item 37, "Textiles and Apparel" the full duty is 20%, and preferential duty 10% ad valorem. Under the Customs Duties (Exemption) Order, 1953 (L.N.168), item 26 of the Schedule exempts manufacturers in the Federation from payment of Customs duty on imported textiles, subject to certain simple conditions.

The total value of the 9 cheques, Ex.D19 - 27, covering a period of 2 months only, from 30th December 1957 to 22nd February, 1958 amounts to \$4,733.17. According to Chow, about 10 cheques were used monthly for similar purposes.

I believe that Plaintiff received substantial benefits from the Defendants by the use of their name and their cheques to import textiles, and consequently it would not be unreasonable for them to

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In the
High Court at
Kuala Lumpur.

No.16.

Judgment.

31st March,
1959

- continued.

expect and to receive from him benefits in return
- by cashing their cheques without interest.

In view of the conclusions I have arrived at,
it is unnecessary to discuss the evidence of the
Plaintiff, who does not have to discharge the onus
of disproving anything which had not been proved
against him. There will accordingly be judgment
for Plaintiff for ~~£~~31,112.06 and costs.

Kuala Lumpur
31st March, 1959

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JUDGE,
SUPREME COURT,
FEDERATION OF MALAYA.

Certified true copy

Sd: ?

Ag: Secretary to Judge,
Kuala Lumpur.

No.17.

Order.

31st March,
1959.

No.17.

ORDER.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT KUALA LUMPUR
CIVIL SUIT NO. 150 of 1958.

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BETWEEN:- Chow Yoong Hong of
Kuala Lumpur Plaintiff
- and -
Choong Wah Rubber Manufactory,
Kuala Lumpur. Defendant

Before Justice Ong, Federation of Malaya,
Kuala Lumpur

This 31st day of March, 1959

IN OPEN COURT

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O R D E R

UPON HEARING the Writ of Summons in the pre-
sence of Dr. H.Y. Teh, Counsel for the Plaintiff
and M/s. Kam Woon Wah and N.A. Marjoribanks Coun-
sel for the Defendants. IT IS HEREBY ORDERED that
the Defendant do pay to the Plaintiff the sum of
~~£~~31,112.06 and interest at the rate of 6% per an-
num from date of Judgment till realisation AND IT

IS FURTHER ORDERED that the Defendant do pay to the Plaintiff the costs of this suit as taxed by the proper officer of this Court.

GIVEN under my hand and the seal of the Court this 31st day of March, 1959.

Sd: Gun Chit Tuan
Senior Asst. Registrar,
High Court, Kuala Lumpur.

For approval please.

10 Kam Woon Wah & Co.,
Solicitor for Defendants

Senior Asst. Registrar, Supreme Court,
Kuala Lumpur.

In the
High Court at
Kuala Lumpur.

No.17.

Order.

31st March,
1959

- continued.

No. 18.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

Civil Appeal No. of 1959.

BETWEEN:- Choong Fah Rubber Manufactory Appellants

-- and --

20 Chow Yoong Hong Respondent

(In the Matter of the High Court Civil
Suit No. 150 of 1958)

BETWEEN:- Chow Yoong Hong Plaintiff

-- and --

Choong Fah Rubber Manufactory Defendants

In the
Court of Appeal
at Kuala Lumpur

No.18.

Memorandum of
Appeal.

8th June, 1959.

MEMORANDUM OF APPEAL

30 Choong Fah Rubber Manufactory the above-named Appellant appeals to the Court of Appeal from the whole of the decision of Mr. Justice Ong dated 31st day of March 1959 giving judgment for the Plaintiff for \$31,112.06 and costs.

1. The decision appealed against is based on the following directions as to the law, findings of fact and belief, namely:-

In the
Court of Appeal
at Kuala Lumpur

No.18.

Memorandum of
Appeal.

8th June, 1959
- continued.

- (A) (i) That the Plaintiff does not have to discharge the onus of proving anything which has not been proved against him.
- (ii) That it is for the Defendants to prove (in the sense that the word bears in Section 3 of the Evidence Ordinance) that the Plaintiff was, in the course of the cheque transactions getting back more money than he had laid out.
- (B) (a) That the Defendants' managing partner and cashier are entirely unworthy of credit. 10
- (b) That the evidence of Chow Fan Seong (D.W.5) is not to be taken into consideration because there is a case pending between him and the Plaintiff although on that account his evidence is not to be overlooked.
- (c) That the evidence of Hew Len Fah (D.W.6.) was not to be taken into consideration because he and the Defendants were co-defendants in an action by the Plaintiff over a dishonoured cheque drawn by Hew Len Fah and issued to Defendants who gave it to Plaintiff and judgment having been given against them (against which there was no appeals) they are estopped from alleging any facts to show that such judgment was wrong. 20
- (C) That the Plaintiff received substantial benefits from the Defendants by the use of their name and their cheque to import textiles, and consequently it would not be unreasonable for them to expect and to receive from him benefits in return by cashing their cheques without interest. 30
2. In addition to the above the learned Judge made the following observations:-
- (1) That he was not impressed by the demeanour of the Plaintiff.
- (2) That he was unable to accept the evidence as to the alleged sales in the case of the cheques D11 - D18. 40
3. The learned Judge misdirected himself as to the burden of proof and should have directed himself as follows :-
- (1) That the burden of proof that the Plaintiff was a moneylender rested on the Defendants.

- (2) That after the Defendants had adduced evidence which established a prima facie case the burden of proof shifted to the Plaintiff.
- (3) That the presumption under Section 3 of the Moneylenders Ordinance applied.
- (4) That the burden of proving that the cheques D11 - D18 were given by the Defendants to the Plaintiff in payment of goods sold and delivered was on the Plaintiff.
- (5) That Section 3 of the Evidence Ordinance applied only when both parties had adduced evidence.

In the
Court of Appeal
at Kuala Lumpur

No.18.

Memorandum of
Appeal.

8th June, 1959
- continued.

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4. The learned Judge was wrong in rejecting the evidence adduced by the Defendants for the following reasons :-

- (1) The words "interest to Ban Teck Leong" appeared in the note-books D28 on more than 100 occasions and such entries had been made since 1954 and could not be said to have been fabricated for the purpose of resisting the Plaintiff's claim.
- (2) Although Chow Fan Seong was the Defendant in a case brought against him by the Plaintiff and still pending his evidence in this case should have been considered and not overlooked.
- (3) Hew Len Fah (D.W.6.) gave evidence of transactions in 1956 while he was carrying on business in Kuala Lumpur with his brother whereas the suit brought against him and the Defendants by the Plaintiff was in respect of transactions entered into by him as the sole proprietor of Ban Choon Tong of Triang, Pahang, and there was therefore no reason why his evidence should not have been considered.

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5. The learned Judge after considering the evidence adduced by the Defendant should have held that a prima facie case has been established.

6. In considering the evidence of the Plaintiff the learned Judge should have come to the conclusion that :

- (1) In view of the coincidences occurring in connection with the cheques D11 - D18 and

In the
Court of Appeal
at Kuala Lumpur.

No.18.
Memorandum of
Appeal.
8th June, 1959
- continued.

the statements made in his Affidavits
filed in the other civil suits referred
to the Plaintiff was not telling the
truth; and

- (2) In view of the numerous transactions be-
tween the Plaintiff and the Defendants
spread over a period of some 45 months
the Plaintiff's conduct was more consis-
tent than not with his taking interest as
consideration for his trouble;
- (3) The Plaintiff had not rebutted the pre-
sumption under Section 3 of the Moneylend-
ers Ordinance.

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7. The learned Judge should have dismissed the
Suit accordingly.

8. The Appellant prays that the order of the
learned Judge be reversed and that the appeal be
allowed.

DATED this 8th day of June, 1959.

KAM WOON WAH & CO.,
Solicitors for the Appellants.

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No.19.
Judgment of
Hill, Ag.C.J.
1st August,
1959.

No. 19.

JUDGMENT OF HILL, AG. C.J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No.9 of 1959
(K.L. Civil Suit No.150 of 1958)

Choong Fah Rubber Manufactory

Appellants
Defendants

v.

Chow Yoong Hong

Respondent
Plaintiff

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Cor: Hill, Ag. C.J.
Good, J.
Rigby, J.

JUDGMENT OF HILL, AG. C.J.

In the lower Court the Plaintiff/Respondent's
claim was for \$31,112.06, the value of 16 dishon-
oured cheques issued by the Defendants/Appellants.

In their defence the Appellants asserted and pleaded that the Plaintiff/Respondent was an unlicensed moneylender and that his claim was unenforceable under Section 16 of the Moneylenders Ordinance, 1951.

In the
Court of Appeal
at Kuala Lumpur.

No.19.

Judgment of
Hill, Ag.C.J.

1st August,
1959

- continued.

10 The learned trial Judge stated in his written judgment that there was no question that the Appellants had received from the Respondent the moneys which he claimed and that there was only one question in issue between the parties, whether or not the Respondent was a moneylender within the meaning of the Moneylenders Ordinance.

Very properly in my view the Appellants were put to the proof of their assertion and commenced the proceedings before the learned trial Judge.

20 At the conclusion of the Appellant's case the Respondent gave affirmed evidence. No submission was made that the Appellants had not made out a prima facie case and that therefore no onus was on the Respondent to prove that he had not acted as a moneylender and so rebut the presumption in Section 3 of the Ordinance.

It does not appear from the record that at this stage any test was applied to the Appellant's case and a decision arrived at as to whether they had made out a prima facie or any kind of case for the Respondents to answer. It is only when he came to write his judgment that the learned trial Judge records:-

30 "that the Defendants have failed to discharge the onus on them of proving that interest was collected from them by the Plaintiff and accordingly they have not established that he was a moneylender".

But the learned Judge did not believe the Respondent either. He stated:-

"I am not impressed by the demeanour of the Plaintiff"

and again :-

40 "As to the Plaintiff, I am unable to accept his evidence as to the alleged sales in the case of cheques Ex.D11 - D18".

And finally the learned Judge stated:-

"In view of the conclusions I have arrived at, it is unnecessary to discuss the evidence of

In the
Court of Appeal
at Kuala Lumpur

No.19.

Judgment of
Hill, Ag.C.J.

1st August,
1959
- continued.

the Plaintiff, who does not have to discharge the onus of disproving anything which had not been proved against him. There will accordingly be judgment for Plaintiff for \$31,112.06 and costs".

What were these conclusions? After reviewing the evidence and the numerous exhibits at length the learned trial Judge stated this :-

"There, however, appears to be a simple, logical explanation for the unusual procedure chosen by the Plaintiff to pay for the goods he imported from Singapore. The Defendants carried on business as manufacturers of rubber shoes for which they required cloth in large quantities. Manufacturers in the Federation are allowed to import textiles free of customs duty. The Plaintiff, on the other hand, as a wholesale dealer in textiles, has to pay ad valorem duty on imported textiles, and if the purchases were purported to have been made by the Defendants, to whom the goods were sent, there would of course be a considerable saving to the Plaintiff. In this connection I have looked up the Customs Duties Order 1953 (L.N.167) which came into force on 1st May, 1953. Under Table A, Item 37 "Textiles and Apparel" the full duty is 20%, and preferential duty 10% ad valorem. Under the Customs Duties (Exemption) Order, 1953 (L.N. 168), item 26 of the Schedule exempts manufacturers in the Federation from payment of Customs duty on imported textiles, subject to certain simple conditions.

The total value of the 9 cheques, Ex.D19 - 27 covering a period of 2 months only, from 30th December 1957 to 22nd February, 1958 amounts to \$4,733.17. According to Chow, about 10 cheques were used monthly for similar purposes.

I believe that Plaintiff received substantial benefits from the Defendants by the use of their name and their cheques to import textiles, and consequently it would not be unreasonable for them to expect and to receive from him benefits in return - by cashing their cheques without interest".

It is quite possible that these conclusions are correct and based on the learned trial Judge's

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wide knowledge of local business affairs, but neither in the evidence nor in the pleadings can I find anything to support them and I am compelled to regard them as mere suppositions. I am full of admiration for the learned Judge's ingenuity and penetration, but I must disagree, however regretfully, with findings of fact that are not based on the evidence.

10 It is extremely doubtful if any relevant fact to the issue between the parties was "proved" in accordance with Section 3 of the Evidence Ordinance and it follows from this that any judgment in this matter would almost certainly have to be based on probabilities arising from the evidence.

Here I must quote again from the judgment :-

20 "In coming to the conclusion I have done, I am not oblivious of the fact that the transactions between Plaintiff and Defendants were of great frequency spread over a period of some 45 months. If there were in this case no circumstances of an unusual character one might very well think that Plaintiff's conduct was more consistent than not with his taking interest as consideration for his trouble".

30 Many of these transactions were of a peculiar nature and all concerned with cheques, but this does not detract from the view that I have formed that the Appellants had made out, not necessarily a case proved in accordance with Section 3 of the Evidence Ordinance, but a prima facie case in respect of the cheques sued on by the Respondent. The Respondent was not believed and his case in answer to that prima facie case was rejected in toto by the learned trial Judge.

40 It follows therefore, if I am correct in my view of the Appellants' case, that the legal position was that the Respondent had not discharged the onus placed on him by Section 3 of the Money-lenders Ordinance and was accordingly not entitled to recover.

I find myself entirely in agreement with all the grounds set out in the memorandum of appeal.

I would therefore allow this appeal by reversing the order of the learned trial Judge. The Appellants to have their costs in this appeal and

In the
Court of Appeal
at Kuala Lumpur

No.19.

Judgment of
Hill, Ag.C.J.

1st August,
1959

- continued.

In the
Court of Appeal
at Kuala Lumpur

No.19.

Judgment of
Hill, Ag.C.J.

1st August,
1959

- continued.

in the lower Court.

Kuala Lumpur,
1st August, 1959.

Sgd: R.D.R. HILL
ACTING CHIEF JUSTICE,
FEDERATION OF MALAYA.

True Copy

Sd/- ?
Private Secretary,
to Chief Justice
26.8.59.

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No.20.

Judgment of
Good, J.

22nd August,
1959.

No. 20.

JUDGMENT OF GOOD, J.

I have had the advantage of reading the judgment of the learned Acting Chief Justice. I am in full agreement with it and have nothing to add.

Sd: D.B.W. Good,
Judge,
Federation of Malaya.

Kuala Lumpur 22.8.59.

Coram: Shiv Chanan Singh A.R.

Mr. Kam Woon Wah for Appellant

Dr. H.Y. Teh for Respondent

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Judgment read in open court.

Sd: Shiv Chanan Singh,
Asst. Registrar,
Court of Appeal,
Federation of Malaya.

No. 21.

JUDGMENT OF RIGBY, J.

I have had the advantage of reading the judgment of the President. I agree, in principle, with the conclusions to which he has arrived, and am of the opinion that this appeal should be allowed: the Appellants to have the costs in this appeal and in the lower Court.

DATED at Penang this 3rd day of August, 1959.

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Sd: I.C.C. Rigby,
JUDGE,
Federation of Malaya.

Kuala Lumpur 22.8.59

Coram: Shiv Chanan Singh, A.R.

Mr. Kam Woon Wah for Appellant,

Dr. H.Y. Teh for Respondents.

Judgment read in open Court.

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Sd: Shiv Chanan Singh,
Asst. Registrar,
Court of Appeal,
Federation of Malaya.

No. 22.

ORDER ALLOWING FINAL LEAVE TO APPEAL

UPON MOTION made unto the Court this day by Mr. P. Hall of Counsel for the Plaintiff-Respondents in the presence of Mr. Kam Woon Wah of Counsel for the Defendants-Appellants AND UPON HEARING Counsel as aforesaid AND UPON READING the Notice of Motion dated the 4th day of April, 1960 and the Affidavit of Chow Yoong Hong affirmed on the 26th day of March 1960 and filed herein on the 4th day of April 1960 IT IS ORDERED that final leave be and is hereby granted to the Plaintiff-Respondent to appeal to His Majesty the Yang di-Pertuan Agong AND IT IS ORDERED that the costs of this Motion be costs in the said Appeal.

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GIVEN under my hand and the seal of the Court this 18th day of April, 1960.

Sd: Shiv Chanan Singh,
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

In the
Court of Appeal
at Kuala Lumpur

No.21.

Judgment of
Rigby, J.

3rd August,
1959.

No.22.

Order allowing
Final Leave to
Appeal.

18th April,
1960.