

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 17 of 1974

---

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

---

B E T W E E N

T. MAHESAN s/o THAMBIAH

Appellant

and

THE MALAYSIA GOVERNMENT OFFICERS'  
CO-OPERATIVE HOUSING SOCIETY LTD.

Respondent

---

RECORD OF PROCEEDINGS

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GRAHAM PAGE & CO.,  
24, John Street,  
Bedford Row,  
London WC1N 2DA.  
Solicitors for the Appellant

COWARD CHANCE,  
Royex House,  
Aldermanbury Square,  
London EC2V 7LD.  
Solicitors for the Respondent

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

---

B E T W E E N

T. MAHESAN s/o THAMBIAH

Appellant  
(Defendant)

and

THE MALAYSIA GOVERNMENT OFFICERS'  
CO-OPERATIVE HOUSING SOCIETY LTD.

Respondent  
(Plaintiff)

---

R E C O R D   O F   P R O C E E D I N G S

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I N D E X   O F   R E F E R E N C E

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT IN MALAYA</u> <u>AT KUALA LUMPUR</u>		
1.	Specially Indorsed Writ (Suit No.1569 of 1969) and Statement of Claim	18th September 1969	1
2.	Statement of Defence	17th October 1969	5
3.	Summons in Chambers	5th October 1971	6
4.	Affidavit of K. Sothinathan	26th October 1971	7
5.	Order appointing Examiner to record evidence of S.M. Manickam Chettiar	1st November 1971	8
6.	Notes of Evidence of Manickam Chettiar recorded in Madras, India <u>Sub-index</u> Examination-in-Chief Cross-examination Re-examination	21st December 1971	10
7.	Notes of Evidence recorded at trial at Kuala Lumpur		40

No.	Description of Document	Date	Page
	<u>Plaintiffs' evidence</u>		
	<u>Sub-Index</u>		
	(i) <u>PW1 Mohd Salleh bin Yusoff</u> Examination-in-Chief Cross-examination	27th March 1972	41
	(ii) <u>PW2 Lim Lai Hin</u> Examination-in-Chief Cross-examination	27th March 1972	42
	(iii) <u>PW3 N. Chellappen</u> Examination-in-Chief Cross-examination	27th March 1972	43
	(iv) <u>PW4 Rengasamy Pillai s/o</u> <u>Nageppa Pillai</u> Examination-in-Chief Cross-examination Re-examination	27th March 1972	48
	(v) <u>PW5 Tan Sri Abdul Jamil bin</u> <u>Abdul Rais</u> Examination-in-Chief Cross-examination Re-examination	28th March 1972	61
	(vi) <u>PW6 Ajeib Singh</u> Examination-in-Chief	28th March 1972	72
	(vii) <u>PW7 Charlie Chandra Stevenson</u> Examination-in-Chief Cross-examination	29th March 1972	75
	(viii) <u>PW8 Abdul Jalil bin Ibrahim</u> Examination-in-Chief Cross-examination	29th March 1972	76
	(ix) <u>PW10 C. Thevarajah</u> Examination-in-Chief Cross-examination	29th March 1972	77
	(x) <u>PW11 Abdul Ghani bin H.J.Reja</u> Examination-in-Chief Cross-examination	29th March 1972	78

No.	Description of Document	Date	Page
	<u>Defendant's evidence</u>		
	<u>Sub-index</u>		
	(xi) <u>DW1 T. Mahesan</u> Examination-in-Chief Cross-examination Re-examination	30th March, 1972 31st March, 1972 10th April, 1972	85
	(xii) <u>DW2 N.S.S. Maniam</u> Examination-in-Chief Re-examination	11th April 1972	119
	(xiii) <u>DW3 Punithawathy</u> Examination-in-Chief Cross-examination Re-examination	11th April 1972	119
	(xiv) <u>DW4 Chan Soong Yoon</u> Examination-in-Chief Cross-examination	11th April 1972	124
	(xv) <u>DW5 alanjappan s/o Muthiah</u> Examination-in-Chief Cross-examination	11th April 1972	125
	(xvi) <u>DW6 Varada Chari</u> Examination-in-Chief Cross-examination	11th April 1972	126
	(xvii) <u>DW7 Dr. Saw Hock Chuan</u> Examination-in-Chief Cross-examination Re-examination	11th April 1972	128
8.	Judgment of Abdul Hamid J	5th June 1972	138
9.	Order	5th June 1972	149
	<u>IN THE FEDERAL COURT OF MALAYSIA</u>		
10.	Notice of Appeal by the Appellant	30th June 1972	150
11.	Notice of Cross-Appeal by the Respondents	19th July 1972	152

No.	Description of Document	Date	Page
12.	Memorandum of Appeal by Solicitors for the Appellant	14th September 1972	154
13.	Judgment of Syed Othman J	28th February 1974	160
14.	Order of Federal Court	28th February 1974	181
15.	Order granting Final Leave to Appeal to His Majesty the Yang Dipertuan Agung	19th August 1974	183

EXHIBITS TRANSMITTED TO THE JUDICIAL COMMITTEE  
BUT NOT INCLUDED IN THE RECORD

In the Federal Court of Malaysia Holden  
at Kuala Lumpur Federal Court of Civil  
Appeal No.70 of 1972 Record of Appeal

Part II Vol. I  
" II  
" III  
" IV

DOCUMENTS TRANSMITTED TO THE JUDICIAL COMMITTEE  
BUT NOT REPRODUCED

Description of Document	Date
<p>IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR</p> <p><u>Record of Appeal Part I</u></p> <p>(1) Submission of Lim Kean Chye Counsel for the Defendant T. Mahesan s/o Thambiah in the High Court in Malaya</p> <p>(2) Submission of Raja Abdul Aziz Counsel for the Plaintiff, The Malaysian Government Officers' Co-operative Housing Society Ltd. in the High Court of Malaya</p> <p>(3) Record of Appeal Part III</p>	<p>12th April 1972</p> <p>12th April 1972</p>

Description of Document	Date
1. Notes of Submission by Counsel for the Appellant	
2. Notes of Submission by Counsel for the Respondent	
3. Notes of Reply by Counsel for the Appellant	
4. Notes of Argument recorded by Tun Azyne L.P.	
5. Notes of Argument recorded by Suffian F.J.	
6. Notes of Argument recorded by Syed Othman F.J.	
7. Notice of Motion	14th March 1974
8. Affidavit of V.C. George in support of Motion	14th March 1974
9. Order granting conditional leave to appeal to His Majesty the Yang Dipertuan Agung	2nd May 1974

1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 17 of 1974

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

---

B E T W E E N :

T. MAHESAN s/o THAMBIAH

Appellant/Defendant

and

THE MALAYSIA GOVERNMENT OFFICERS'  
CO-OPERATIVE HOUSING SOCIETY LTD.

Respondent/Plaintiff

RECORD OF PROCEEDINGS

No. 1

Specially Indorsed Writ and Statement  
of Claim

In the High  
Court in  
Malaya at  
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No. 1

CIVIL SUIT NO. 1569 of 1969

Specially  
Indorsed Writ  
and Statement  
of Claim

Between

The Malaysia Government Officers'  
Co-operative Housing Society Limited Plaintiff

18th September  
1969

And

10 T. Mahesan s/o Thambiah

Defendant

SPECIALLY INDORSED WRIT

The Honourable TAN SRI ONG HOCK THYE, D.P.M.S.,  
P.S.M., Chief Justice of the High Court in Malaya  
in the name and on behalf of His Majesty the Yang  
di-Pertuan Agong,

To:

T. Mahesan s/o Thambiah,  
c/o Pudu Jail,  
Kuala Lumpur,

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 1

Specially  
Indorsed Writ  
and Statement  
of Claim

18th September  
1969  
(continued)

WE COMMAND YOU that within eight (8) days after service of this Writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of The Malaysia Government Officers' Co-operative Housing Society Limited.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS: MOHD. EUSOFF BIN CHIN, Deputy Registrar 10  
of the High Court in Malaya the 18th day of  
September 1969.

Sd. Rithauddeen & Aziz

Sd. Eusoff Chin

Plaintiffs Solicitors

Senior Assistant Registrar  
High 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.

The defendant (or defendants) may appear hereto 20  
by entering an appearance (or appearances) either  
personally or by solicitor at the Registry of the  
High 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 High Court at Kuala Lumpur.

If the defendant enters an appearance he must 30  
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

1. The Plaintiff is a co-operative housing society  
established by law and having its registered office  
at 9th floor, Mercantile Bank Building, Kuala Lumpur.  
The Defendant was at all material times a director 40  
and the Secretary of the Plaintiff Society.



2. On the 15th day of January, 1965 the Plaintiff Society with the knowledge of the Defendant, entered into an Agreement with one Manickam for the purchase of 59 acres of land in Penang in Mukim 13 in the District of Timor Laut, Sungei Dua, for the sum of ~~£~~944,000/- which sum was subsequently paid in full to the said Manickam. The said land was transferred to the Plaintiff Society on the 22nd day of February, 1965.

In the High Court in Malaya at Kuala Lumpur

No. 1

Specially Indorsed Writ and Statement of Claim

18th September 1969

(continued)

10 3. The Defendant, in breach of his duty as a director of the Plaintiff Society, failed to disclose to the Plaintiff Society facts within his knowledge that the said land was purchased by the said Manickam for only ~~£~~456,000/-, and the Defendant, in breach of his duty as such director as aforesaid, and without the knowledge or consent of the Plaintiff Society, subsequent to the date of the agreement, received for himself from the said Manickam a commission of ~~£~~122,000/-, which he did not pay over to the Plaintiff Society.

20

PARTICULARS OF COMMISSION PAID TO DEFENDANT

13th day of May, 1965	<del>£</del> 82,000/-
29th day of June, 1965	<del>£</del> 40,000/-
	<del>£</del> 122,000/-

4. By reason of the neglect or misconduct or breach of duty of the Defendant, the Plaintiff Society has incurred loss or damage.

PARTICULARS OF LOSS OR DAMAGE

30 Excess payment of purchase price made by the Plaintiff Society in respect of the purchase of the said land - ~~£~~488,000/-

And the Plaintiff Society claims:-

- (1) ~~£~~82,000/- being secret commission received by the Defendant, with interest at the rate of 5½% per annum from the 13th day of May, 1965, until payment or judgment;
  - (2) ~~£~~40,000/- being secret commission received by the Defendant, with interest at the rate of 5½% per annum from the 29th day of June, 1965, until payment or judgment;
- 40

In the High Court in Malaya at Kuala Lumpur

No. 1

Specially Indorsed Writ and Statement of Claim

18th September 1969 (continued)

(3) \$488,000/- for compensation for loss to the Plaintiff Society and interest thereon at the rate of 5 1/2% per annum from the 22nd day of February, 1965, until payment or judgment;

(4) further or other relief; and

(5) Costs.

Dated this 18th day of September, 1969.

Sd. Rithauddeen & Aziz

Solicitors for the Plaintiff 10

And the sum of \$300.00 (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 \$60.00 (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.

Provided that if it appears from the indorsement of the writ that the Plaintiff is resident outside the scheduled 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 by order or on behalf of a person so resident, proceedings will 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. 20

This Writ was issued by Messrs. Rithauddeen & Aziz, Bangkok Bank Building (First Floor), Jalan Bandar, Kuala Lumpur, whose address for service is Bangkok Bank Building (First Floor), Jalan Bandar, Kuala Lumpur, Solicitors for the said plaintiff who resides at 9th floor, Mercantile Bank Building, Kuala Lumpur. 30

This Writ was served by me at on the defendant on the day of 19 at the hour of

Indorsed the day of 19

(Signed) .....40

(Address).....

No. 2

Statement of Defence

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

Between:

The Malaysia Government Officers'  
Co-operative Housing Society Limited Plaintiff

And

T. Mahesan s/o Thambiah Defendant

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 2

Statement  
of Defence

17th October  
1969

10 1. Paragraphs 1 and 2 of the Statement of Claim are admitted except that the Defendant avers that his functions with the Society were in the nature of its Secretary rather than a director even though he may have been nominally described as such.

20 2. As to paragraph 3 of the Statement of Claim the Defendant denies that it was within his knowledge that the said land was purchased for only \$456,000/- or that he received for himself a commission of \$122,000/- as alleged therein or at all.

3. Paragraph 4 of the Statement of Claim is denied.

4. The Plaintiff Society did before purchasing the said land have the same valued by its own valuer and architect and the Plaintiff got what it paid for in a normal commercial transaction.

30 Save and except as is hereinbefore expressly admitted each and every allegation in the Statement of Claim is denied as if set out and traversed seriatim.

And the Defendant prays that this action be dismissed with costs.

Dated and delivered this 17th day of October, 1969.

Sd: Shearn Delamore & Co.  
Defendant's Solicitors.

In the High Court in Malaya at Kuala Lumpur  
No. 2

To: The Plaintiff abovenamed and/or its Solicitors, Messrs. Rithauddeen & Aziz, Bangkok Bank Building, Jalan Bandar, Kuala Lumpur.

Statement of Defence  
17th October 1969  
(continued)

This Defence is filed by Messrs. Shearn Delamore & Co. and Drew & Napier, Solicitors for the Defendant herein whose address for service is No. 2, Benteng, Kuala Lumpur.

10

No. 3  
Summons in Chambers  
15th October 1971

No. 3  
Summons in Chambers

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

Between:

The Malaysia Government Officers' Co-operative Housing Society Plaintiff

And

T. Mahesan s/o Thambiah Defendant

LET ALL PARTIES concerned attend before the Judge in Chambers at the High Court at Kuala Lumpur on Monday the 14th day of November 1971 at the hour of 9.30 o'clock in the forenoon for the hearing of an application on the part of the Defendant for an Order that a letter of request may issue directed to the proper tribunal for the examination viva voce of S. M. Manickam Chettiar of No. 2, First Crescent Park Road, Ghandi Neger, Madras, 20, South India.

20

Alternatively, that an examiner of the Court may be appointed to examine the said S.M. Manickam Chettiar.

30

And that the depositions taken pursuant thereto when received be filed in Court and be given in evidence on the trial of this action.

And that the trial of this action be stayed

until the said depositions have been filed and that the costs of this application may be Costs in the Cause.

In the High Court in Malaya at Kuala Lumpur

Dated this 15th day of October, 1971.

No. 3

Sd: Abu Bakar bin Awang,  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

Summons in Chambers  
15th October 1971  
(continued)

To: The Plaintiff abovenamed or his Solicitors,  
Messrs. Ritheuddeen & Aziz,  
1st Floor, Bank of Canton Building,  
Kuala Lumpur.

10

This Summons in Chambers was taken out by Messrs. Sothi & Ang of Room 4, 3rd Floor, M.C.A. Building, Jalan Ampang, Kuala Lumpur, Solicitors for the Defendant.

No. 4

No. 4

Affidavit of K. Sothinathan

Affidavit of K. Sothinathan

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

26th October 1971

CIVIL SUIT NO. 1569 of 1969

Between:

20

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Plaintiff

And

T. Mahesan s/o Thambiah

Defendant

I, K. Sothinathan of full age, a Federal Citizen solemnly affirm and say as follows:-

1. I am the Solicitor to the abovenamed defendant and am authorised by the said Defendant to affirm this affidavit.

30

2. This action is brought for a claim for secret commission obtained by the Defendant, which is \$82,000/- and another sum of \$40,000/- and for compensation to the abovenamed Plaintiff for the loss of \$488,000.00.

In the High Court in Malaya at Kuala Lumpur

No. 4

Affidavit of K. Sothinathan  
26th October 1971  
(continued)

3. The place of trial is Kuala Lumpur.

4. I am advised and verily believe that S.M. Manickam Chettiar of No. 2, First Crescent Park Road, Ghandi Nagar, Madras 20, South India is a material and necessary witness for the Defendant to support his defence to this action and the Defendant cannot safely proceed to the trial thereof or properly support such defence at the trial without his evidence.

5. The Defendant is alleged to have received a large commission from the said S.M. Manickam Chettiar. The said S.M. Manickam Chettiar is therefore, the only person who can give evidence as to the truth on behalf of the Defendant.

10

6. I am advised and verily believe the said S.M. Manickam Chettiar is at present residing at No. 2, First Crescent Park Road, Ghandi Nagar, Madras 20, South India, out of the jurisdiction of this Honourable Court and he is unwilling to come here.

20

7. The Defendant has as I verily believe a good defence to this action on the merits and this application is made bona fide for procuring the evidence of the said S.M. Manickam Chettiar and not for delay.

Affirmed by the said K. Sothinathan )  
at Kuala Lumpur this 26th day of ) Sd: Sothinathan  
October, 1971 at 9.35 a.m. )

Before me,

Sd: Ho Wai Kwong,

30

Commissioner for Oaths,  
Kuala Lumpur.

No. 5

Order appointing Examiner to record evidence of S.M. Manickam Chettiar  
1st November 1971

No. 5

Order Appointing Examiner to Record Evidence of S.M. Manickam Chettiar

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

Between:

The Malaysia Government Officers' Co-operative Housing Society Ltd. Plaintiff

And

T. Mahesan s/o Thambiah Defendant

In the High Court in Malaya at Kuala Lumpur

No. 5

BEFORE THE HON'BLE JUSTICE MOHD. AZMI THIS 1ST DAY OF NOVEMBER, 1971 IN CHAMBERS

Order appointing Examiner to record Evidence of S.M.Manickam Chettiar

1st November 1971 (continued)

O R D E R

10 UPON HEARING Mr. K. Sothinathan of Counsel for the Defendant and Raja Aziz Addruse of Counsel for the Plaintiff AND UPON READING the Summons in Chambers dated the 15th day of October, 1971 and the affidavit of K. Sothinathan affirmed on the 26th day of October, 1971 both filed herein IT IS ORDERED that the Senior Assistant Registrar of the High Court, Kuala Lumpur be and is hereby appointed as examiner to examine viva voce and record the evidence of S.M. Manickam Chettiar of No. 2, First Crescent Park Road, Ghandi Nagar, Madras 20, South India.

20 AND IT IS ALSO ORDERED that the depositions taken pursuant thereto when received be filed in court and be given in evidence on the trial of this action.

30 AND IT IS FURTHER ORDERED that all expenses relating thereto be met by the Defendant in any event AND IT IS ALSO FURTHER ORDERED that the costs of this application be paid by the Defendant to the Plaintiff AND IT IS ORDERED that the costs of one air fare from India to Kuala Lumpur be costs in the cause.

AND IT IS LASTLY ORDERED that this action be stayed until the said depositions have been filed.

Given under my hand and seal of the Court this 1st day of November, 1971.

Sd: Illegible

Senior Assistant Registrar,  
High Court, Kuala Lumpur

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971

Examination

No. 6

Notes of Evidence of S.M. Manickam Chettiar

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

The Malaysia Government Officers' Co-operative Housing Society Ltd. Plaintiffs

And

T. Maheson s/o Thambiah Defendant

21.12.71 This is an examination pursuant to an order of the High Court, Kuala Lumpur in C.S. 1569/1969 dated 1st November, 1971 taken at Madras, India, in the presence of the Sr. Asst. Registrar, Enche A. Baker Awang. 10

Coram: A. Baker Awang SAR at Madras. Mr. Sothi for Applicant/Defendant; Mr. Lim Keen Chye with him. Raja A. Aziz for Respondent/Plaintiff. S.M. Manickam Chettiar witness present.

I declare this as a Court. 20

Mr. Lim addresses:-

1. That this Court allows Mr. Thiru V. Nageswara Sastri, retired sworn interpreter of the Madras High Court to be the interpreter in this examination.
2. That the interpreter need not be sworn.

Raja Aziz: I consent.

Court: By consent O.I.T. (1) & (2).

Mr. Lim: This evidence shall be taken saving with all just exceptions. 30

Raja Aziz: I agree.

Mr. Lim calls Mr. S.M. Manikam Chettiar.

S.M. Manickam Chettiar s/o Somadundram Chettiar



affirms and states in Tamil. Landlord, residing No. 2, 1st Crescent Park Road, Gandhi Nagar, Adyar, Madras. I was formerly living in K.L. I know one Dr. Saw Hock Chuan and have dealing with him. It was in the year 1964.

In the High Court in Malaya at Kuala Lumpur

No. 6

What was this business with Dr. Saw?  
I was borrowing money from Dr. Saw.

Notes of Evidence of S.M. Manickam Chettiar

Why?

I was borrowing money from him for my business.

21st. December 1971

10 What business?

I was purchasing and selling land and lending money.

(continued)

Name of your money lending firm?  
It was "S.M.M. Firm".

Examination

Was there any other firm?  
Previously my father was running one.

Did you run any other firm?  
I have no other firm.

20 Before you started S.M.M. Firm, did you have any other firm?  
No, before that I was merely carrying on my father's firm - "IVE" Firm".

How much money did you borrow from Dr. Saw?  
I borrowed \$225,000/-.

What purpose was it for?  
I had borrowed money from a bank and this money was to repay that loan.

I borrowed \$200,000/- from the bank.

30 Witness is shown Page 1 of bundle. What is it?  
This is my loan account with Indian Overseas Bank, Kuala Lumpur for 1964. It shows the loan of \$200,000/-. The words "Loan" on the top right hand column written in ink over the word "CURRENT" was written by the bank employee.

Who wrote the word "GOMBAK"?  
By me.

"Gombak" signified that I had bought land at Gombak. Gombak is situated at Pahang Road, Kuala Lumpur.

Witness is shown Page 2.

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971 (continued)

Examination

You took \$225,000/- from Dr. Saw and is this shown here?

Yes, Page 2 shows that. This is the original letter.

Shown to Raja Aziz and to Court.

Produced and marked D1.

How was this money paid to you?

Through a cheque. At Page 1 there are these entries.

He paid me in instalments.

On 13th April, 1964 he gave me \$25,000/-. This is shown here, witness shows a Bank Account.

See Page 3. Paid by cheque issued by Dr. Saw. I do not remember what cheque.

10

I paid in this cheque into my current account.

See Page 3.

What was the next payment?

It was for \$30,000/- and this was on 4th May, 1964.

See Page 1.

Next was \$100,000/- and paid in on 14th May, 1964.

See Page 1.

Next was \$70,000/- and paid in on 15th May, 1964.

See Page 1.

20

Whose cheques were these?

They were Madam Punithawathy's cheques.

They are shown here. See Pages 4 and 5.

Whose writings were these?

The first one was my signature. The words "Loan A/C Credited" were written by the bank employee.

The middle cheque "A/c 129-13" was my account number. It is my current account.

How do these 3 amounts appear on Pg. 1?

Because Page 1 is my account.

30

The writings were by my assistant Sockalingam Chettiar.

Page 5 last cheque. The writings were by a bank employee.

Do you know why Dr. Saw gave cheque belonging to Madam Punithavathy?  
He has several accounts and this is one of them.

When Indian Overseas Bank (I.O.B.) lend you money, was there a security for that loan?  
Yes, my land in Gombak was charged to this Bank.

10 According to Page 1, you have paid off this \$200,000/-  
Did you discharge the charge?  
No.

Why not?  
Dr. Saw said that the charge remained as it was.

9 Mr. Lim asks witness to clarify.

Dr. Saw said the charge may remain in favour of the Bank and I would not be able to do anything about that.

You said 'may remain'.

20 Interpreter: The Tamil language is vague in this respect.

After the conversation with Dr. Saw can you do what you like with your land?  
No.

When did you discharge this land?  
1969.

See Pages 6 to 29. What do these contain?  
They are extracts from my Day-book.

I now produce the Day-book marked D.2.  
Pick out from D.2 your dealings with Dr. Saw.

30 Witness points entry 13.1.65 - \$12,000/-.  
This means I paid Dr. Saw \$12,000/-.

Next item 'debit Dr. Saw Hock Chuan \$12,000/-.'  
Pages 8 and 9 refer.

Entry dated 23.1.65. I debited Dr. Saw with \$8,000/-  
next item: "debit Dr. Saw Hock Chuan \$12,000/-."

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971  
(continued)

Examination

Pages 17 and 18 refer.

Entry dated 3.2.65. I debited Dr. Saw with \$3,600/-.

Explain above, why there are two entries each on debits?

What I drew from Bank is written in 1st column and what I paid Dr. Saw is in 2nd column.

What I draw from Bank, I paid to Dr. Saw, the same figure.

Why did you use word "debit"? Shouldn't it be credit?

This is my way of keeping accounts.

Pages 14 and 15 refer.

Entry dated 16.3.65.

I paid Dr. Saw \$4,209.39.

Next item T.T. Commission - \$15.20. This amount is paid to Dr. Saw's account.

\$1,775.41 this is also debited to Dr. Saw.

What do you mean "this is also debit".

This means debit the person referred above.

Entry dated 22.3.65.

The sum 10,000/- was received by me from Dr. Saw.

Pages 16 and 17.

Entry 9.4.65 should read 7.4.65. Original D.2 seen.

The sum \$50,000/- was paid by me to Dr. Saw. "Salleh" There is no such word Salleh in the D.2. The writing therein is "Sar-peiruku" and not "Sallah".

Adjourned for lunch.

Sgd. Abu Bakar bin Awang.  
12.50 p.m.

21st December, 1971 2.15 p.m.

Coram as before.

Page 9 refers.

Entry dated 14.4.65. Credit Dr. Saw Hock Chuan. I received \$5,000/- from Dr. Saw. Page 17 refers.

Entry dated 10th May, 1965. Debit Dr. Saw Hock Chuan 1 cheque \$16,400/-.  
I paid \$16,400/- to Dr. Saw

10

20

30

Entry dated 13th May, 1965 debit Dr.Saw \$82,000/-  
I paid Dr. Saw \$82,000/-.

Page 22 and 23 refer.

Entry 29th June, 1965. I paid Dr. Saw \$40,000/-.

Page 24 and 25 refer.

Entry 2nd July, 1965. I received from Dr. Saw  
\$40,000/-.

Page 26 and 27.

10 Entry 13th July, 1965. I received from Dr. Saw  
\$35,000/-.

Page 28 and 29.

Entry 3rd December, 1965. I received from Dr. Saw  
\$7,000/-.

Page 30 and 31.

Page 30 is a ledger for 1965 ..... produced D. 3.

This is the ledger of my dealing with Dr. Saw 1965  
and it gives all the figures that I gave just now  
of my day-book (D.2).

See Page 32 and 33.

20 I showed D2 and D3 to the Solicitor in the Income  
Tax Department, Kuala Lumpur. Reference is made  
in the 1st paragraph of a letter by E.A. Lister.

Raja Aziz accepts a photostat copy of a letter  
written by E.A. Lister subject to it being proved  
subsequently.

Page 34 refers.

30 Page 34: This is my signature and the other is  
Dr. Saw Hock Chuan's signature. Page 34  
is a confirmation of Page 30. Both of  
us signed at the same time in January  
1966.

Page 35 - 41 refers.

This is my Statement of Account for 1964 prepared  
by Soosai & Co., an accountant in Kuala Lumpur.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971  
(continued)

Examination

Page 39 refers: Shown Dr. Saw Hock Chuan is my creditor for \$225,000/-.

Page 42-47 refers.

This is my Statement of Accounts for 1965.

Prepared by Chari & Co., an accountant in Kuala Lumpur.

Page 46 shows that Dr. Saw was my creditor for \$92,000/-.

This sum \$92,000/- tallies with Pages 31 - 32.

Soosai & Co. had been my auditor from 1947 to 1964. 10

My account - Pages 35-41 was prepared on 9th June 1966.

Mr. Lister's letter referred again line 6 - page 32 - paragraph 2 line 6. Yes, I showed to Mr. Lister 2 accounts and he made a copy of that. He was then referring to D.3 and D.2. But D.3 and D.2 for 1965.

Why did he mention 1964?

Witness refers Pages 48 and 49 and 34. He mentioned 1964 accounts because I showed them Pages 48, 49 and 34. 20

Can you explain Page 48.

Page 48 was prepared by Dr. Saw. Our signature appeared therein. This is our loan account.

What about Page 49?

Dr. Saw prepared it. This is our current account.

Both of us signed thereto in January 1965.

Page 48 was also signed in January 1965.

Mr. Lim shows Page 50-56.

Raja Aziz: I accept subject to proof. 30

Page 50 last paragraph last 7 lines reference is made to Accounts 1964 and 1965.

Explain.

The account 1964 and 1965 are at Pages 48, 49 and 32.

What is the arrangement 3rd April, 1964?  
The arrangement referred to is Page 2.

Page 34 refers.

And entries referred 13th May, 1965 and 29th June, 1965 \$82,000/- and \$40,000/-.

How did you pay this \$82,000/- to Dr. Saw?  
I paid in cash into Mahesan's account.

10 What about the \$40,000/-?  
This is also in cash paid into Mahesan's account.

Pages 20 and 21 and pages 22 and 23.

Entry 13th May, 1965 shows \$82,000/- and entry 29th June, 1965 shows \$40,000/-. These were paid to Dr. Saw - to solve the debt. These were paid into Mr. Mahesan's account. Dr. Saw asked me to pay to Mr. Mahesan's account.

20 Did he explain why this arrangement, that payment be made into Mahesan's account?  
Dr. Saw said he had several accounts and Mr. Maheson's account was also his account.

Mr. Lim shows Page 57.

What books were Mr. Lister talking about?  
D.2 and D.3 and another. This another book is not with us but with the auditor.

What is the loan schedule mentioned therein?  
I cannot remember but it may be my money lending schedule.

30 Can you remember the date when you bought the land at Sungei Dua, Penang?  
It was 4th November, 1964.

What was the purchase price of the land?  
\$456,000/-.

The first payment was \$23,600/- on 26.6.69.  
This was a deposit. It is in the agreement and not here.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971  
(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971

(continued)

Examination

Next payment was on 4th November, 1964 for  
\$182,400/-.

Mr. Lim shows Page 58 and Page 59.

This is a record of telegraphic transfer for sum  
of \$182,400/- this is part of the loan lent to me  
by Indian Overseas Bank.

Page 60 and 61 refers.

The loan of \$240,400/- is shown at Page 60.

I obtain a loan of \$250,000/- from the previous  
owners of the land.

10

Did you have any partners when you made these payments?  
No.

Do you know Periasamy s/o Kuppusamy?  
Yes, but I do not know whether he is alive or not  
today.

Did he have anything to do with this land?  
Yes, he was my agent.

Who was the broker?  
Rengasamy Pillai.

Did Periasamy go to Penang?  
Yes.

20

Who send him there and when was that?  
I did and it was in May 1964.

Mr. Lim shows Pages 62-69.

Raja Aziz: Agrees subject to proof.

Witness refers Page 67.

The date is 22nd May, 1964.

How many times you sent him to Penang?  
Twice. The 2nd time on 26th June, 1964.  
I sent him to Penang to inspect the land.  
Together with him was another man. This  
was on the first occasion. He is a  
Singapore developer. On the second occasion,  
he went with me only. We saw the land and decided  
to buy it. The agreement on this purchase was

30



made which named Periasamy as the purchaser - with the view that my income tax would be less for tax reasons, in short. But later I had some trouble with Periasamy.

Mr. Lim shows Pages 70-72.

What happened further?

As a result of this, I contacted Mr. Shankar and instructed him to write Pages 70-72. This is the originals of Pages 70-72 produced D4.

- 10 Whose signature was at the end of the letter D.4, the one in ink?  
It is Periasamy.  
I also paid Periasamy certain sum of money.

Witness shows Page 73.

Raja Aziz: I agree to admit subject to proof.

Periasamy agreed to assign certain rights to me in the agreement. This was in a form of letter prepared by M/s. Chung & Huang. The letter is with Mr. Mathews Abraham of Penang.

- 20 Adjourned for tea break.

Sgd: Abu Baker bin Aweng.  
21.12.71. 4.30 p.m.

5.00 p.m. Coram as before.

Mr. Lim shows Page 74.

Raja Aziz accepts.

Page 74 is a letter signed by Periasamy and attested by V.R. Somasundram Chettiar and M.K.PRM. Palaniappan as 1st and 2nd witnesses.

- 30 Did Periasamy pay any money for the purchase of this land?  
No.

Did anyone else pay you any money to purchase this land?  
No.

Did you go to Penang with Mr. Mahesan to see land?  
Yes.

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971  
(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971  
(continued)

Examination

When?  
Early June 1964.

Why with him?  
To see whether Mahesan would purchase the land.

Why?  
I know Mahesan was the Secretary of Housing Society.

There were only 2 of us.

After seeing the land what did he say?  
He did not express any opinion.

Did you go around and see the land? 10  
No. We stood on the road and did not enter the land.  
Mahesan saw and did not express any opinion and asked  
that we go away.

Were you surprised?  
No.

Why?  
I was disappointed in fact.

Eventually where did you both go?  
Back to Kuala Lumpur.

Did he say he was going to buy the land? 20  
No.

What did he say about the land?  
He said it was not satisfactory. He said this while  
we were travelling in the train.

Did he say why not satisfactory?  
He said there were several houses there.

What kind of houses?  
Huts and temporary houses.

Any other reason? 30  
No. Except there were houses and he was not in  
favour of that.

Eventually did you sell to him the land?  
No.

Did you try to sell the land to anyone else?  
I tried to sell the land through H.M.S. Ali.

Previously he was working in the Immigration Department.

The price was \$16,000/- per acre without evicting the hut dwellers.

The attempt failed. I tried again to sell it to others. This time through Dato Zainal Abidin sometime in October or September, 1964.

Mr. Lim refers Page 69.

10 What was the \$500 there?  
This \$500/- is a deposit for this land from Dato Zainal Abidin.

Mr. Lim refers Page 32.

There is an option mentioned. This option refers to Zainal Abidin.

What was the price that you wanted through Dato Zainal Abidin.  
Also \$16,000/- per acre.

Was it successful?  
No.

20 Did you make another attempt?  
Yes. This time to sell to a housing society.

You said Mr. Mahesan did not want but why then did you try to sell to the housing society?

Mr. Lim refers Page 76.

I wrote to the Chairman of the Housing Society. The Chairman then was Dato Jamil Rais. The Society eventually bought the land from me for \$16,000/- per acre.

The total cost of the land was \$984,000/-.

30 Who was to clear the hut dwellers?  
I had to see to this.

Did you at any time tell Mr. Mahesan what price you paid for the land?  
No. I did not.

I spent \$82,000/- on stamp duty and other expenses.

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971

(continued)

Examination

The details are shown at Page 67 to Page 69 and this amount is also shown at Page 41. This was in 1964. In 1965 I spent \$33,441.15 and this figure is shown at Page 46.

In addition I paid interests on money borrowed.

See Page 28 the sum of \$2,274.85.

I further paid in interest amounting \$13,796.61.

See Page 47.

You pay interest on several loans but in respect of land at Sungei Dua how much?  
\$15,000/- in all.

10

The total sum on expenditure shown by you as \$130,000/- odd.

The land in fact cost \$586,000/- odd.

The net profit is \$358,000/- odd.

The general condition of land in 1964 in Penang is a land boom. In 1964 I had done 16 land transactions.

Mr. Lim refers Page 41.

How much profit you make on Gombak land?  
Between 90% and 100% profit.

20

Would it be a strange thing for a man to make a profit of 100% in 1964?  
No.

Is it true you gave \$82,000/- and \$42,000/- to Mr. Mahesan as a result of this sale of land to the Society?  
No.

Mr. Lim refers Page 49.

Page 49: It is current account of Dr. Saw and me.

30

Entry 26th June, 1964 two sums of \$30,000/- mentioned.

1st is written as "amount transferred from Punithavathy" and 2nd as "amount Madam Punithavathy".

Mr. Lim refers Page 77.

Yes 2 sums of \$30,000/- mentioned "amount from Madam Punithavathy account".

Mr. Lim refers Page 78.

The 1st amount is shown herein is that of a credit note of \$30,000/- paid to my account.

Mr. Lim refers Page 79.

10 The 2nd item on Page 77 for a sum of \$30,000 refers to cheque shown at page 79. The cheque was from Federation of Malaya Government Services Welfare and Recreational Council.

Why then did you write that the amount was from Madam Punithavathy?

I wrote that after looking Page 77. I though (sic) "CHQ" was a "ditto" so I wrote amount was from Madam Punithavathy.

Cheque at Page 79 was given to me by Dr. Saw.

Were you surprised at seeing this cheque?  
No.

20 Why?

Because Dr. Saw has connection with the Society. He is the agent of the Council for the construction.

The total of both is \$60,000/-.

What was it for?  
To roll my business.

The amount in Page 79. I considered as Dr. Saw's money.

30 Page 49. 1st item 26.6.64. \$30,000/- is also Dr. Saw's money.

Why should she give you the money.  
Dr. Saw has so many accounts and Madam Punithavathy's account is one of them.

Page 49. Cheque. Dr. Saw Hock Chuan. \$48,565.50.

Dr. Saw paid me this amount.

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

21st December 1971

(continued)  
Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971  
(continued)

Examination

Mr. Lim shows page 80. 1st cheque 887177.

It is Punithavathy's cheque. Represents Dr. Saw's money.

Page 49 item \$5,000/- cash Manickam. This shows I received this amount. The 2nd cheque at page 80 shows Punithavathy's cheque.

Mr. Lim shows page 81.

This cheque is also Dr. Saw's money. Page 81 represents the reverse sides of the 2 cheques mentioned. The signature on top of page 81 is mine. The account 129.B at the bottom shows my account number.

10

Page 49 amount \$10,000/-. This amount was paid by me.

Mr. Lim refers page 82 and 83.

Cheque K.967458. This is the cheque. The reverse is at page 83 and was signed by me. Was paid by me to Dr. Saw.

Where does it show?

The 2nd document at page 82.

20

Mr. Lim: Does it say to Dr. Saw?

Witness corrects: I paid to Madam Punithavathy.

Where is that shown?

The 2nd cheque at page 82.

Mr. Lim: But 2nd document shows cash was paid in? I converted the cheque into cash and paid into Madam Punithavathy's account.

Why her account?

On Dr. Saw's instruction.

What was the object here?

This is towards the repayment of my loan from Dr. Saw.

30

Page 49 item \$95,000.00 28.8.64.

This amount was paid by me.

Mr. Lim refers page 84 and 85.

Cheque K. 967455 refers \$75,000/- I credited this sum to Madam Punithavathy's account. This is shown in the documents at the bottom of page 84.

Mr. Lim asks again.

What did you do with the cheque?  
I cashed it and put that amount in Madam Punithavathy's account.

Why?

10 Dr. Saw wanted it that way.

To pay the loan I took from Dr. Saw.

Page 49 item \$9,000/- 21.5.64. This is shown on page 86.

Cheque 885485. This is Punithavathy's cheque. I paid this amount to my account. Dr. Saw gave me this cheque.

Page 49 \$3,100.00 dated 18.8.64.

20 It was a payment to Punithavathy's account for Dr. Saw. I actually paid into Punithavathy's account.

Mr. Lim refers page 87.

It is a paying in slip of Indian Overseas Bank. Handwriting in the hand of Sockalingam.

Page 34.

Item dated 23.3.65. \$10,000/-.  
It is an amount received by me.

Mr. Lim refers page 88.

30 This is Mahesan's cheque K. 946984 dated 23.3.65. The signature at the back is Sockalingam's, my assistant. This was paid in cash in my account.

Mr. Lim refers page 89.

This is my statement of account with Indian Overseas Bank a sum of \$10,000/- is shown as paid-in on date 22.3.65.

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

21st December  
1971  
(continued)

Examination

You said you cashed cheque on 23.3.65?  
Yes, this is found at page 7 of D.2.

See page 14 and 15 item dated 23.3.65.  
I credited this into my account.

"Credit Dr. Saw Hock Chuan" means I received  
\$10,000/- from Dr. Saw.

Why should Mahesan give you money?  
Because Dr. Saw said it was paid on his behalf by  
Mahesan and is not Mahesan's money but Dr. Saw's.  
Dr. Saw has several accounts and this is one of  
them.

10

Adjourned to 8.30 a.m. tomorrow for cross-  
examination.

Sgd: Abu Bakar bin Awang.  
21.12.71 7.30 p.m.

Coram: Enche Abu Bakar bin Awang, Senior Assistant  
Registrar.

Parties as before.

Raja A. Aziz - Cross-examined.

Sgd: Abu Bakar bin Awang.  
22.12.71 9.15 a.m.

20

Cross-  
examination

Cross-examination

Refers page 4

22nd December  
1971

All the cheques signed by Madam Punithavathy. On  
the face of it the moneys had been withdrawn from  
her account.

Madam Punithavathy is a nominee of Dr. Saw and  
also wife of T. Mahesan.

Refer page 79 cheque for \$30,000/- issued by  
Federation of Malaya Government Services Welfare  
and Recreational Council.

30

On the face of it this amount was withdrawn from the  
Council's account on the authority of Mr. Mahesan.

Page 80 of cheque for \$48,565.50 and \$5,000/- both  
issued from the account of Madam Punithavathy.



On the face of it the money was from her account.

Page 82. 1 cheque \$10,000/- and paying in slip.

Yes. This is my cheque and I cashed it and paid into Madam Punithavathy's account. On the face of it this amount was credited into her account.

Page 84. 1 cheque \$95,000 and paying in slip.

Yes, my cheque in favour of myself. Cashed it and paid into Punithavathy's account.

Yes, on face of it she must have received the money.

10 Page 86, Cheque \$9,000/-.

Amount was issued out from her account. Yes, on face of it, it was her money and this was credited to my account (he admitted this yesterday).

Page 88. 1 cheque \$10,000/- amount was from Mahesan's account. Was a cash cheque and this was paid into my account. On face of it what I received was Mahesan's money.

Page 87. Paying in slip \$3,100/-.

20 This was credited into Madam Punithavathy's account  
On my instruction.

On the face of it it must be she who received the money.

Page 90 refers a cheque for \$82,000/-.

This is my cheque for \$82,000/-. I cashed it. I asked my assistant to cash it for me. He is Sockalingam Chettiar.

Page 91 refers.

30 This is a paying in slip. I can recognise the writing therein that of Sockalingam. This is cash paying into Mahesan's account and was at Dr. Saw's instructions.

What was the actual instruction of Dr. Saw as regards this \$82,000/-?  
He instructed me to put this amount into Mahesan's account.

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971

(continued)

Cross-  
examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
examination

What was the manner?

Dr. Saw said it was a nominee account. He did not give me any other instructions as how to pay.

Could it be that he instructed you to pay in cash?  
No, he did not give me such instructions.

And yet you took the trouble to get cash \$82,000/- and paid in Mahesan's account?

There was no trouble at all. First I gave the cheque to the bank, the bank issued a token to identify the person who presented the cheque - the person was Sockalingam. He gave the token and wrote the paying slip to the cashier who then credited the amount \$82,000/- into Mahesan's account. 10

Would it not have been simpler to write a cheque in Mahesan's name?

Mostly it is the practice to change the cheque into cash before crediting.

Did you inform Mahesan about this amount being credit to his account?

No.

Did you obtain any receipt for the payment of this \$82,000/- from Dr. Saw? 20

No. In fact I took the paying in slip page 91 and gave it to Dr. Saw personally.

On the face of it was the money paid into Maheson's account?

Yes.

Page 92 refers a cheque for \$40,000/-.

This is a cheque issued by me for \$40,000/-.  
I asked Sockalingam to cash it for me.

Page 93 - a paying slip for \$40,000/-.

30

This is a paying in slip written by Sockalingam on my instructions. I instructed him to put it into Mahesan's account. It was a cash cheque. Again the procedure is repeated. Sockalingam cashed it, received a token and then paid in vide this slip into Mahesan's account. I did not receive from Dr. Saw any instructions to pay in Mahesan's account in this manner. There was no instruction as how to pay in at all. But this is mostly my practice.

Can you say what is the reason for this practice? If I showed the paying in slip to him disclosing cash payment, he would be satisfied. Both these accounts Mahesan's and Mrs. Mahesan's account were at Indian Overseas Bank.

In the High Court in Malaya at Kuala Lumpur

No. 6

At one time I owed Dr. Saw \$225,000/-

Notes of Evidence of S.M. Manickam Chettiar

10 Can you produce the documents regulating the loan between you and Dr. Saw? Dr. Saw wrote a letter to me offering this loan on 3.4.64.

22nd December 1971  
(continued)

See page 2.

There was another document relating to this loan.

Cross-examination

How long before this date 3.4.64 do you know him? 3 or 4 months.

20 How did you first come to know Dr. Saw  
There was an accountant at Indian Overseas Bank one Tawker. I had borrowed \$200,000/- from this bank but the Bank Head Office wanted to recall the loan as it did not approve it. As I had to repay the loan I requested Tawker to introduce me to anyone who could help me to pay the loan. So I was introduced to Dr. Saw in late 1963 or early 1964. When I met him I asked him for a loan of \$225,000/-. Those \$82,000/- and \$40,000/- were on the face of it paid into Mahesan's account and all the other sums acquired by me have been either from Mahesan's and/or Punithavathy (Mrs. Maheson) accounts and the repayments were either paid into Mahesan's or Mrs. Mahesan's accounts.

30 There is not a single cheque issued by Dr. Saw produced by me herein in this examination. There is no record that I paid directly into Dr. Saw's account here but I am prepared to produce documents which showed that I have paid to Dr. Saw directly.

See page 17 entry dated 7.4.65 \$50,000/-.

Page 6-29 refers.

Those are records of my transaction with Dr. Saw.

40 Similarly pages 30 and 31, pages 35 to 41, pages 42 to 47 contain certain references of my dealings with Dr. Saw. At page 39 there was one item \$225,000/- mentioned.

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
Examination

At page 46 there was one item \$92,000/- mentioned.

At page 34, 48 and 49, there are records of account verified by me and Dr. Saw. Other than these I have some other documents - they are in Malay. I am not in a position to produce them today.

D2 refers. Pages 6-29.

All the entries are made by me. They are records of payment by me or received by me to Dr. Saw.

Other than the documents produced so far are there documents to verify these other entries? 10

Yes, but I am unable to produce them here.

In view of that the entries may not be correct?  
Not possible.

At page 15 you send on 16.3.65 you paid Dr. Saw 'London \$4,209.39'  
Yes.

At page 33 it is recorded at paragraph 2 that 1965 account books were new and accounts newly recorded. What have you to say?

The report by Lister is not correct. 20

At pages 30 and 31, I recorded the summaries of my accounts of D3. At page 35 onwards there are my statement of accounts as prepared by my accountant Mr. Soosai. What ever contained therein are based on my ledger books and day books.

Why moneylending account is also based on the ledger and day book?

My dealing with Dr. Saw is under the heading Sundry Creditors as at 31.12.64. See page 39. Pages 38-41 inclusive of page 39 shows my land dealing account. Page 39 shows my loan from Dr. Saw and this is in connection with land dealing. It is for the purpose of repaying my loan with the Indian Overseas Bank. It is for the purpose of land dealing but there was no such arrangement with him (Dr. Saw) in this respect. This statement of account were based on my ledger, day book and my explanations. 30

10.55 a.m. adjourned.

Sgd: Abu Bakar bin Awang.

40

22.12.71

Coram as before:

At page 32 Mr. Lister's report/letter.

Counsel refers paragraph 1(2).

What accounts were referred to on that paragraph?  
It refers to current account between me and Dr.Saw.

Could they have reference to your ledger and day  
book D2 and D3?  
Yes.

10 What did you say yesterday as regards account for  
1964. What documents did you produce?  
Bank statements.

Why this interview with Lister?  
I gave my statement of account to verify and this  
interview took place.

Which statements of account you mean?  
Pages 35-41.

20 When did you engage Chari & Co. to prepare your  
1965 account?  
In September 1967.  
I also engaged him as my tax agent and adviser.

It was pursuant to this engagement that he prepared  
the Statement of accounts.  
There were disputes between me and Soosai. A copy  
of account prepared by Soosai was handed by me to  
Chari & Co. who had it re-typed according to his  
form and submitted to Income Tax. I also showed  
Chari & Co. D2 and D3.

30 Do you know Chari & Co. is also tax agent and  
adviser for Dr. Saw?  
At that time no.

Do you know whether Chari & Co. is tax agent and  
adviser for Mahesan?  
No, I do not know.

I now say Chari & Co. is not the tax agent for  
Dr. Saw or Mahesan at the time of this interview.

The Statement of Account were prepared from D2 and

In the High  
Court in  
Malaya in  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
examination

In the High  
Court in  
Malaya in  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
examination

D3. So whether the contents of the account is correct or not is dependent upon the correctness of D2 and D3 and any other information you gave to Chari & Co.

Yes.

See pages 34, 48 and 49.

Page 34 was signed by us in January 1965. Page 48 was signed by us in January 1965. Page 49 was also signed by us in January 1965.

Neither you nor Dr. Saw indicated the dates when you signed on pages 48, 49 and 34?  
Correct.

10

I received ~~RM~~60,000/- from Dr. Saw in sums of ~~RM~~30,000/- and ~~RM~~30,000/-. Paid on 26th June, 1964.

See entries on page 49.

These sums are required for my business. They could be for the purchase of land in Penang and/or other matters. Sometime in June 1964, I was required to pay a sum of ~~RM~~43,600/- for the purchase of Penang land.

So was this ~~RM~~60,000/- utilised for the purchase of Penang land?

20

No.

It is not correct to say that after I received ~~RM~~60,000/- I paid this sum towards the purchase of Penang land. This is so because I could get as much money as I wanted from bank and outside. You can see from Bank Statement as at 31st March, 1964, although I had ~~RM~~3,080.20 in my bank, I can withdraw ~~RM~~303,050.00.

See page 94 Bank Statement of March 1964.

The bank after this, did not recall this overdraft but only that previous loan.

30

Therefore it is not correct that you require ~~RM~~60,000/- to pay this ~~RM~~43,600/-?

Yes.

Who introduced you the land in Penang?  
Rengasamy Pillai, a landbroker.

Was there any other person before Rengasamy Pillai?  
Yes, Periasamy s/o Kuppusamy, my agent and broker.  
He told me first.

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

What did you do when Periasamy told you about the  
land?

I sent Periasamy and another Chinese to inspect the  
land sometime in May 1964. Ramasamy and we went to  
see Mahesan also about this land. This was after  
we have seen the land.

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

10 Why did you go to Mahesan's house?  
With a view to sell the land and acquire profit.

22nd December  
1971  
(continued)

Who introduced you to Mahesan?  
None. Periasamy and me made enquiries and went to  
his house.

Cross-  
examination

Wasn't it Dr. Saw?  
No.

20 It is incorrect to say that after Periasamy and I  
went to Mahesan's house that we started to look for  
land in Penang and that I sent Periasamy to look  
for the land. I sent Periasamy before meeting  
Mahesan.

When you saw Mahesan with Periasamy, what happened?  
We told him there was a land for sale in Penang.

What land?  
Housing building site.

Was this land finally purchased by the Society?  
Yes.

30 Was there any discussion with Mahesan as the price  
of the land?  
No.

Wasn't Mahesan interested in the land?  
At that time no.

Then I requested him to see the land. The next  
day or the day after Mahesan and I went to see the  
land.

How did Rengasamy Chettiar come into the picture?  
He brought the car to the airport at Penang to  
meet us. Periasamy had known Rengasamy and he was  
informed of this land. Periasamy then told me about

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
examination

this. Periasamy went to Penang. Periasamy told Rengasamy to make arrangement to buy the land. In that way, Rengasamy became the broker. At the time when I landed in Penang with Mahesan, Rengasamy was there and told us he had the option to buy this land. I told Rengasamy not to disclose the price of land to anyone and we would discuss the same privately. I knew about Rengasamy but we have not seen or spoken to each other before, except I have spoken with him on the telephone before this meeting. It was about the land in Penang and about our going to Penang to see it.

10

Do you know Muthalagu Pillai?

Yes and he came to the airport with Rengasamy.

Adjourned for lunch.

1.00 p.m.

Sgd.: Abu Bakar bin Awang.  
22.12.71

2.00 p.m.

Coram as above.

20

From there, we went to Sungei Dua, including the driver, 5 persons went. Rengasamy, Mahesan, Periasamy, myself and Muthalagu Pillai. On arrival at Sungei Dua we looked at the land and viewed it. We were there for few minutes.

Did you not say yesterday that only 2 of you went to see the land, yourself and Mahesan?  
What I said yesterday was that only two of us left Kuala Lumpur for Penang.

You said you all viewed for few minutes. Is it half an hour?

30

I cannot say exactly. It could be  $\frac{1}{4}$  of an hour. Mahesan stood on the road and saw the land but did not enter the land. After this we went to Rengasamy's house. There was a discussion about the land between me and Rengasamy. I did not discuss the matter with Mahesan at all.

Did anybody tell you or Mahesan about the price of the land?

Rengasamy told me about it - privately - in his house - at the rear portion of the house.

40



Did Rengasamy tell Mahesan that the price of the land is \$10,000/- per acre?

No.

In fact I had previously informed Rengasamy that he should not speak anything to anybody in the presence of anybody, about the price of the land. Generally speaking whenever I purchase land I told no one the price. I keep the purchase price secret. That night I paid Rengasamy some money - to buy that option for \$2,000/-. Mahesan was not interested in the land.

10

Why did you then continue with the auction?  
I was concerned with Mahesan's disinterest on the land as I like that price of the land.

Before leaving the house then, did Mahesan tell Rengasamy that the Society would buy the land if the Board decide it?

No.

20

Didn't Mahesan tell Rengasamy that the Society has certain conditions regarding purchase of land.  
No, no such conversation.

Didn't Mahesan say that this matter would be looked into and the Board would decide?

No.

After this we left to the railway station.  
Rengasamy drove us to the railway station.

30

The reason why I paid \$2,000/- to Rengasamy although Mahesan was not interested, was because that year there was a land boom and I was interested in land dealing as that brought me profit. I had purchased several pieces of lands that year and I had made profits. Even if Mahesan did not want to buy I could sub-divide it and sell them separately and make profits. That year too there is a common practice among businessmen e.g. I bought and sold a land at Ipoh and I got a profit of \$84,000/- though I disclosed only \$10,000/- for purpose of income tax.

40

See on page 40, Ipoh Mukim Ulu Kinta, Grant No.9487 Lot No. 15659 refers.

If Mahesan wanted to buy the land for Society could he have in June negotiated and purchase the

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Notes of Evidence of S.M. Manickam Chettiar

22nd December 1971

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Notes of  
Evidence of  
S.M. Manickam  
Chettiar

22nd December  
1971  
(continued)

Cross-  
examination

\*(sic)

land at less than \$10000/- per acre?  
No, not possible.

Maheson did not know the price.

Did you sell the Gombak land to Dr. Saw?

Yes, on 5th August, 1964. I entered into a sale agreement with Dr. Saw, sold it for \$698,175.00. The purchase money has not been paid to me. But an advance was paid to me. On 15th August, 1964 I received \$5,000/-. On 24.8.64 I received \$95,000/-. On 15.7.65 I received further \$50,000/-. 10  
Dr. Saw gave these amounts. Balance due is \$548,175/-.

Why?

Because of the Indonesian confrontation, land market became unsteady. The agreement was not perfected, so I sold the land to somebody else, in 1969, the agreement of which was made in 1968.

Until the agreement in 1968, was Dr. Saw still interested in this purchase?  
Yes.

These sums of \$5,000/-, \$95,000/- and \$50,000/- 20  
were paid by Dr. Saw.  
This Gombak land was purchased by Dr. Saw on behalf of Suburban Properties Ltd., Kuala Lumpur.

From whom do you expect to receive the balance?  
Dr. Saw.

Why from Dr. Saw and not Suburban Properties Ltd.?  
Well he entered on behalf of that Company. It was agreed that Dr. Saw should pay the money.

Therefore in June 1965, Dr. Saw was owing you money on this land transaction? 30  
Yes.

What you claimed yesterday as owing by you from Dr. Saw was therefore much less than this?  
Yes.

The one loan of \$225,000/- from Dr. Saw was a separate transaction.

Did you know in 1967 police were investigating on Mahesan?  
Yes.

I was interviewed by the police - about 3 times. I made certain statements to the police. First interview could be on 18th July, 1967. I cannot remember now. The following day I was interviewed again, about a month later I was interviewed again. This was in the afternoon. The same evening I could have been examined further. All these interviews were conducted by D.S.P. Stevenson. After this one more interview this time by a different man. (Raja Aziz says D.S.P. Jalil). Uncertified copies of a statements made by witness by police tendered in by Raja Aziz.

10

Mr. Lim: Not admissible - objects to questions being asked on these statements.

Court: I leave to judge to make a ruling on this as there is no case authority on this point.

Q. In your statement of 18th July, 1967 you said this "sometime in 1964 I went to visit T. Mahesan, the honorary Secretary of Government Officers' Housing Society, Petaling Jaya in the company of K. Periasamy, who is a broker and known to me for about 5 years. I was first introduced to T. Mahesan by Dr. Saw Hock Chuan at his dispensary in April 1969".

20

A. I did not say this. The police said that "if you contradict what we said, they would take me to Pudu jail".

Q. "Whilst I was at T. Mahesan's house with K. Periasamy, I enquired from T. Mahesan ..... He informed me the Society was interested in buying land at Penang .... and various other places in Malaya".

30

A. I'm surprised that what I have not stated was written in the police statement.

Q. "After the meeting at T. Mahesan's house I told K. Periasamy (A3) to try and look for some land in Penang .... and made arrangements with him to look for land in Penang".

40

A. I did not say the above.

Q. "Amongst them were several acres. On hearing this I asked K. Periasamy (A3) to go to Penang to see if the land was suitable ..... May 1964".

A. I made this statement.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Notes of Evidence of S.M. Manickam Chettiar

22nd December 1971

(continued)

Cross-examination

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

22nd December 1971  
(continued)

Cross-examination

Q. "We travel to Sungei Dua to view the land in Rengasamy's motor car. We spend  $\frac{1}{2}$  hour .... after which we went to Rengasamy's house".

A. I made the statement but I did not say we spent  $\frac{1}{2}$  hour. It was only for a few minutes.

Q. At Rengasamy's house, he informed us that the land belonged to some Chinese ..... Society as to whether they would buy the land".

I am surprised at the existence of this statement.

Mr. Lim makes further objection.

10

It suddenly occurred to me that the statement that is tendered in is not certified copies and no cross-examination at all should be put to witness.

Raja Aziz: I can. I undertake to show the copies when we are in Malaya. Prays that he be allowed to continue his questions on these statements.

Court: Objection noted.

Did you say to the police "Before leaving Rengasamy's house, T. Mahesan told him that ..... but the Board must decide".

I did not say this.

Court: The judge reading this will be prejudiced.

Court: Raja Aziz is informed to mark the passages for Court's convenience.

I did not say Page 7A.

I did not say Page 9A.

I did not say Page 10A.

Adjourned 4.00 p.m.

Sgd: Abu Bakar bin Awang.  
22.12.1971.

30

4.15 p.m.

Coram: as above.

I left Malaysia and came to India on 17th November, 1968. Sockalingam also left Malaysia for India on - sometime 6 months earlier than me. I

had been in Malaya since 1927 and had been coming in and out ever since then. I do not intend to go back to Malaysia again. I know Mahesan was prosecuted after I had left Malaya. I knew through my friends. Mahesan did not write to me. Mrs. Mahesan did not write either. Mrs. Mahesan knows where I live in Madras only recently.

10 Was there an approach made to you that you would be a prosecution witness in Mahesan's case?  
No, and nobody asked.

Did you know that Mahesan was to be prosecuted when you left Malaya?  
No.

I put it to you that you knew?  
No, I do not know.

I put it to you that because of this you left Malaysia?  
No.

20 Why are you not willing to come to Malaya to give evidence of this Civil Suit?  
It is not that I dislike going to Malaya but it is just that I have no more business there. I have no lands or properties there.

Re-examination:

Mr. Lim: May I ask whether Counsel for Respondent/Plaintiff would produce all these statements in full at the date of hearing should the judge rule in his favour.

30 Raja Aziz: I undertake to produce the whole of this witness's statements to the police at the hearing later before the judge.

Q. You mentioned how you cashed in a cash cheque and how a token is given in return. Is there a physical counting of the cash mentioned in the cheque?

A. No.

40 When Lister said your account books looked new, what did you reply?  
Replied that I keep the account books very carefully. There are earlier books which are newer still. I can produce 2 books as an example.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Notes of Evidence of S.M. Manickam Chettiar

22nd December 1971  
(continued)

Cross-examination

Re-examination

In the High Court in Malaya at Kuala Lumpur

No. 6

Notes of Evidence of S.M. Manickam Chettiar

22nd December 1971

(continued)

Re-examination

Witness produce 1963 Ledger - marked D5 and D6.

I have accounts with Indian Overseas Bank - Loan Account and Current Account. The land at Gombak - the agreement on that sale was with Suburban Properties Ltd. and not with Dr. Saw.

As regards my interview with Lister, despite all what he said, he accepted my explanations.

Sgd: Abu Bakar bin Awang. 22.12.1971

These are the notes of my examination of the witness 10 S.M. Manickam of No. 2, 1st Crescent Park Road, Gandhi Nagar, Adyar, Madras, India, in the presence of Mr. Sothi, Mr. Lim Kean Chye, Raja A. Aziz and Mr. T.V.N. Sastri.

Dated this 22nd December, 1971.

Sgd: Abu Bakar bin Awang. 4.40 p.m. 22.12.1971.

No. 7

Notes of Evidence at Trial before Abdul Hamid J 27th March 1972

No. 7

Notes of Evidence at Trial

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

Between:

20

The Malaysia Government Officers' Co-operative Housing Society Limited Plaintiff

AND

T. Mahesan s/o Thambiah Defendant

IN OPEN COURT This 27th day of March, 1972

NOTES OF EVIDENCE

BEFORE ABDUL HAMID, J.

Raja Abdul Aziz with Wan Ariff for Plaintiff. Mr. Lim Kean Chye with Mr. K. Sothinathan for Defendant.

30

Raja Abdul Aziz opens case. Refers to agreement to purchase land in Penang for \$944,000. Sum of \$122,000 found its way into account of the Defendant.

Refers to evidence recorded in India - that of Manickam - pursuant to Order dated 1.11.71.

Calls witnesses.

In the High Court in Malaya at Kuala Lumpur

No. 7

Notes of Evidence at Trial before Abdul Hamid J 27th March 1972 (continued)

No. 7(i)

Mohd. Salleh bin Yusoff

No.7(i)

"PW1" Mohd Salleh bin Yusoff 27th March 1972

10 PW1: Mohd. Salleh bin Yusoff, affirmed, speaks in English.

I am a partner in Messrs. Azman, Wong & Company, Chartered Accountants, Previously I was Secretary and Treasurer to Plaintiff's Society - since November, 1968. Prior to that we were Treasurers - not Secretaries.

Examination

Plaintiff's Society purchased land from S.M. Manickam in Penang. Total purchase price \$944,000.

20 (Refers to p.47 ABB). This is the voucher and receipt for the sum of \$141,600 - the first payment towards the total purchase price.

(Refers to p.48 ABB). Also a receipt for same sum.

(Refers to p.49 ABB). The lower page shows receipt for payment of \$215,000 towards the purchase price.

(Refers to p.50 ABB). This is a voucher and receipt in respect of third progress payment.

30 (Refers to p.51 ABB). This is the payment sum \$188,800.

(Refers to p.52 ABB). This is the voucher and receipt for the fifth progress payment sum \$122,000.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(i)

"PW1" Mohd  
Salleh bin  
Yusoff  
27th March  
1972  
(continued)

Examination

No.7(ii)

"PW2" Lim Lai  
Hin  
27th March  
1972

Examination

(Refers to p.53 ABB). This is a voucher and receipt for the final payment.

I am aware that Defendant was also Secretary of Federation of Malaya Welfare and Recreational Council.

Cross-examination: I know nothing personally about events prior to November, 1968.

Re-examination: No.

Witness released.

No. 7(ii)

10

Lim Lai Hin

PW2: Lim Lai Hin, affirmed, speaks Hokkien, 52 years. 380, Tyesin Street, Penang, Building Contractor.

Early 1964 I and nine other persons owned land Lot 141 Part I and Lot 114 Part II Sungei Dua Mukim 13. We purchased this land in the month of February, 1957 for \$2,240 per acre.

(Mr. Lim objects to price of land paid by PW2).

(Raja Abdul Aziz says value connected with valuation).

20

Court: Objection overruled.

I gave as option for sale of this land to one Rengasamy Pillai. (Rengasamy Pillai identified). Price stated in option \$8,000 per acre. Finally the two pieces of land were sold at \$8,000 per acre and a commission of 3% was given to him. Before the agreement to purchase was executed, I did not meet the purchaser. I was introduced to purchaser at the office of Mr. Abraham. I did not know the name of purchaser. At the time of signing the agreement I knew his name. His name was Periasamy.

30

The purchase agreement was finalised at the office of Mr. Abraham. A copy of the agreement was sent to my solicitors. The agreement was signed by me and my partners and Periasamy. I and my partners signed in the office of Messrs. Lim Huck Aik Penang.



(Refers to p.54 and p.55). This is the agreement I and my partners signed.

Deposit of \$23,000 (paragraph 6) was paid to my lawyer. A conveyance was subsequently executed. The land was transferred to one Malay Co-operative Society.

Question: What was the price finally paid when the land was transferred?

10 Answer: At the time of signing the agreement, the purchaser (Manickam) through Rengasamy told us a  
(sic) did not like it. The price was reduced to \$456,000.

(Refers to p.44, p.45 and p.46 ABB). This is a copy of the conveyance executed by me and my partners.

Cross-examination by Mr. Lim Kean Chye The conveyance was to Manickam from me and my partners.

20 I know that in 1964 Rengasamy Pillai was a well-known land speculator. I do not know Periasamy in 1964. I do not know he was one of the well-known land speculator.

I came to know of Periasamy's name when I read the agreement. I did not know what business he was in.

I never heard of Periasamy as a housing developer. I do not know what Periasamy bought the land for.

It is difficult to say whether he could make a profit or not on the land. It depends on his luck.

Re-examination: No.

30

No. 7(iii)

N. Chelleppan

PW3: N. Chelleppan, affirmed, speaks in English. Officer in Indian Overseas Bank attached to the Kuala Lumpur Office.

I have been attached to the Kuala Lumpur Office from the year 1963. In the position I now

In the High Court in Malaya at Kuala Lumpur

No.7(ii)

"PW2" Lim Lai Hin  
27th March 1972  
(continued)  
Examination

Cross-examination

No.7(iii)

"PW3"  
N. Chelleppan  
27th March 1972

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iii)

"PW3"  
N. Chellappan  
27th March  
1972  
(continued)  
Examination

hold I can refer to record and position of client's accounts.

In 1964 and 1965 there was a customer of the Bank by the name of Manickam. His account No. was 129-13. Also between 1964-1965 there was a customer by the name of Mahesan Punithapathy - Account No.79-16. Also in 1964/65 the Defendant had an account with my Bank - Account No. 163-13.

On 26.6.64 I received instruction regarding the transfer of \$30,000 from her account to account of Manickam. 10

(Refers to p.82 ABB). This is the transfer document.

(At p.83 ABB) there is the credit entry to Manickam's account.

Also on 26.6.64 (p.84 ABB) there was a credit entry of \$30,000 to Manickam's account. The cheque No. was 629683.

(Refers to p.123 ABB). That is the cheque referred to in the credit note. 20

(Refers to p.77 ABA). This is a statement of Manickam's account from 9.5.64 to 7.7.64.

As at 23.6.64 Manickam had a credit of \$10,000 - balance credit \$100.00.

On 26.6.64 there were two payments of \$30,000 each. Also on that date there was a debit of \$43,600 and another debit of \$20,008.75.

(Refers to p.121 ABB). This is the cheque for which a sum of \$43,600 was debited.

(Refers to p.122 ABB). This is the cheque for which a sum of \$20,008.75 was debited. 30

On 13.5.65 there was a debit entry of \$82,000 from Manickam's account.

(Refers to p.85 ABB). This is the cheque - cash issued by Manickam.

(Refers to p.86 ABB). This is a credit advice into the account of T. Mahesan.

(Refers to P.87 ABB). This is a cheque by Manickam payable in cash for the sum of \$40,000 dated 29.6.65.

(Refers to p.88 ABB). This is another credit advice to the account of T. Mahesan for the sum of \$40,000 - same date.

Against the cheque on p.121 and p.122 (ABB) my Bank issued three Bank drafts at pages 89, 90 & 91 (ABB). The \$8.75 was the commission (p.91 ABB).

10 Cross-examination by Mr. Lim Kean Chye:

(Refers to p.573 DB). That is an Indian Overseas Bank cheque. The signature is that of Saw Hock Chuan.

(Refers to p.574 DB). That is an Indian Overseas Bank cheque. The signature is that of Saw Hock Chuan.

(Refers to p.575 DB). That is an Indian Overseas Bank cheque. The signature is that of Saw Hock Chuan.

20 (Refers to p.576 DB). That is an Indian Overseas Bank cheque. The signature is that of Saw Hock Chuan.

(Refers to p.577 DB). That is an Indian Overseas Bank cheque. The signature is that of Saw Hock Chuan.

(Refers to p.578 DB). That is an Indian Overseas Bank cheque. I cannot identify the signature, It was the account of United Asia Investments Limited.

30 (Refers to p.579 DB). It is the same.

(Refers to p.580 DB). It is the account of United Asia Investments Limited signed by Saw Hock Chuan.

(Refers to p.581 DB). This is issued by our Bank - a Banker's Order in favour of Saw Hock Chuan.

(Refers to p.582 DB). This is a cheque issued by Punipavathy - sum of \$9,000 in favour of S.M. Manickam.

In the High Court in Malaya at Kuala Lumpur

No.7(iii)

"PW3"  
N.Chellappan  
27th March  
1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iii)

"PW3"  
N. Chellappan  
27th March  
1972  
(continued)

Cross-  
examination

(Refers to p.584 DB). The top one is a cheque issued by Mahesan for \$35,000 issued in our favour for purchasing a Banker's Order.

The bottom one was issued by Indian Overseas Bank as Banker's Order in favour of Dr. Saw Hock Chuan for \$35,000.

(Refers to p.585 DB). Top cheque - there is one cheque for \$3,000 issued on 28.8.65.

Bottom cheque - cash cheque issued by Mahesan for \$6,000, \$4,000 and \$3,000 respectively. 10

The centre cheque (original examined). The signature on the reverse is that of Dr. Saw Hock Chuan - (produced and marked D1).

(Refers to p.588 DB). This is the account of Madam Punipavathy - entries in 1964.

(Refers to p.589 DB). Punipavathy's account in 1964.

(Refers to p.590 DB). This is Mahesan's account - entries for 1965.

(Adjourned for 10 minutes. 11.30 a.m. Hearing continues at 11.50 a.m.) 20

Cross-examination by Mr. Lim Kean Chye:

Manickam had several accounts with my Bank. He had a loan account. (Refers ABA p.i). This is a loan account.

He has another account - current account. No. 1 Account. There is another account called No.2 Account.

(Refers p.77 ABA). The balance of \$100,000 as at 23.6.64 is from Manickam's No.2 Current Account - Account No. 129-13. 30

Manickam had large dealings with my Bank. From the account I cannot say whether he is an impecunious person. The officer on duty that period can say.

(Refers to p.94 ABA). On 31.3.64 Manickam had only \$3,081.20 credit. He withdrew \$303,050.00.

He had overdraft facilities for an enormous sum. I cannot say whether on that date he was an impecunious person. He gave security for his overdraft.

In the High Court in Malaya at Kuala Lumpur

(Witness examines entries after 31.3.64 as shown on p.3 ABA and p.77 ABA).

No.7(iii)

Before p.77 ABA there is another statement of account i.e. after 20.4.64 and before 9.5.64.

"PW3"  
N.Chellappan  
27th March  
1972  
(continued)

10 (P.1 ABA referred to). The Bank lent \$200,000. The advance was paid off as shown in deposit column.

Cross-examination

(Witness turns to p.60 ABA). This is part of the loan account. The amount advanced was \$240,000 (4.11.64). This sum was paid back by December, 1964.

In 1965 on January 1st the balance brought forward was \$204,825.88 - sums paid (see p.61 ABA).

(Witness asked to see p.58 ABA). Manickam paid us sum of \$240,000.00.

Question: From those pages I showed you, would you say Manickam was a good customer?

20 Answer: I am unable to answer that question. I could say it was a satisfactory account.

Question: Would you agree as far as the Bank was concerned it was making good business?

Answer: Yes.

Manickam was an old customer of the Bank. I do not know that before that his father was a customer of the Bank.

I do not know of S.M.M. Firm.

30 I do not know whether Manickam was running S.M.M. Firm.

Re-examination by Raja Abdul Aziz:

Re-examination

(P.1 ABA referred to). 31.3.64 - the \$200,000 was a loan to Manickam.

(Refers to p.94 ABA). This is a statement of a current account. The loan of \$200,000 was

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iii)

"PW3"  
N.Chelleppan  
27th March  
1972  
(continued)

Re-  
examination

deposited to his Current Account. On same day two other amounts - \$45,000 and \$20,000. On that day he drew \$303,050.00. He was having an overdraft on that day - only sum of \$34,968.80 overdraft.

The sum overdrawn except for \$34,968.80 at no time exceeded \$31,223,550.00 at the close of the day on 13.4.64.

From my record the highest amount of overdraft recorded is on 11.4.64 - \$8,473.55.

10

(P.1 ABA referred to). As at March and April 1964, he owed \$200,000 and was allowed a few thousand overdraft in the Current Account.

By November 1964 he was given another loan of \$240,400.00. Looking at this and p.1 (ABA) and p.60, I am not in a position to say now of any other loan arrangement between 15.5.64 and November, 1964.

(Refers to p.60 ABA). The loan as at 31.12.64 was brought forward to January 1st 1965.

20

Raja Abdul Aziz likes the witness to answer whether loan at p.1 ABA - i.e. sum of \$200,000 was ever recalled.

I do not have record to show that the loan of \$200,000 was recalled.

Question: If Manickam himself had said it was recalled he must be right?

Answer: Yes, I agree.

(Adjourned to 2.00 p.m.)

(Hearing continues at 2.00 p.m. Parties as before). 30

No.7(iv)

"PW4"  
Rengasamy  
Pillai  
27th March  
1972

Examination

No. 7(iv)

Rengasamy Pillai

PW4: Rengasamy Pillai s/o Nagappa Pillai, affirmed speaks in Tamil. 54 years. 13, Birch Lane, Penang. Retired businessman.

In 1964 I got an option from PW2 to sell two pieces of land at Sungei Dua. Renewed in June, 1964.

(Refers to p.101 ABB). That is the copy of the renewed option. First option I had handed over to Manickam Chettiar. The term of the first option was the same as the one at p.101.

10 In May 1964 I met one K. Periasamy in connection with this land. He is from Kuala Lumpur. He came to look for a piece of land at Paya Terbong Ayer Item. He did not like that piece of land. He came to look for me in my office. I have known him for 18 years. I told him about this land. He like to see this land. I took him to see the land. After inspection I brought him back to my office. Periasamy wanted to call Manickam who was at Kuala Lumpur. He made a telephone call. At this time I did not know Manickam.

20 When Periasamy spoke to Manickam I also spoke to Manickam. Manickam wanted to know more about the land. Manickam said he knew me.

I told Manickam that this piece of land was a good one and if he liked he could come and inspect it. I told him I had an option for \$8,000 per acre and would not sell for less than \$10,000 per acre.

30 Periasamy returned to Kuala Lumpur. On the same night after 10.00 p.m. Manickam spoke to me over the phone. He was with Periasamy in Kuala Lumpur. Manickam said he would buy the land and asked me to complete the sale somehow or other. He said he would send a Chinese to see the land. This Chinese would see the land and if he was satisfied he would inform another person and if he was satisfied he would buy the land.

40 A few days later Manickam informed me that the Chinese would be accompanied by Periasamy arriving by flight to Penang at 10.00 a.m. I was to fetch them and show them the land. I met both of them at the airport. Periasamy told me that the Chinese was an important person and that if he was satisfied, the other would accept. I then took both of them and showed them the land. We were at this land for about one hour. After inspecting the land the Chinese said he was satisfied. Then I took them to Darwood Restaurant for lunch and then sent them off.

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy Pillai  
27th March  
1972

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy

Pillai

27th March

1972

(continued)

Examination

That night Manickam rang me up. Manickam told me the Chinese was very much satisfied and that somehow or other he would make the deal go through. Manickam further said four or five days later that he and one Mahesan from the Prime Minister's Department would come and inspect the land and said that Mahesan was an important person. They came four or five days later by evening flight. I met them at the airport. Manickam informed me that he would be arriving by a certain flight and the time. I was informed of this the afternoon they left Kuala Lumpur.

10

I did not know both of them. At the airport Manickam came to me and introduced himself and Mahesan as a person from the Prime Minister's Department. Manickam was wearing a dhoti. (Defendant is identified as Mahesan).

Both of them wanted to inspect the land. I took them to see the land. This land was on the way going from the airport to Penang. On arrival at the land both of them walked in and around the land. They inspected the land.

20

We saw the land for half an hour. When he was on the land Mahesan said it was a good piece of land and that it could be bought. He said the price of the land should be cheaper. I offered to sell the land for \$10,000 per acre. He wanted for less than that. At that time I knew that through Mahesan the land was to be bought by the Society.

Question: When he asked for the land to be cheaper, was any reason given for the request.

30

Answer: No reason was given. Mahesan and Manickam said the price I offer was dear.

After inspection of the land we went to my house. We discussed the price of the land. Manickam offered to pay \$9,000 per acre. I asked for \$10,000 per acre because of expenses incurred. Then Mahesan fixed it at \$9,500 per acre. We did not discuss at any length of time. I asked for advance of \$10,000. Manickam gave me a cheque for \$2,000 drawn from the Indian Overseas Bank as instructed by Mahesan.

40

There was a consultation between Mahesan and Manickam before the \$2,000 was paid. Defendant was present during the time of the discussion.



Subsequently an agreement was entered into on the sale of the land. The agreed price was \$9,500 per acre. \$750 was to be paid to me separately at first. I had option for \$8,000 per acre from PW2. Manickam wished to make an agreement with the owner of the land in the name of Periasamy.

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

The difference of \$1,500 per acre was for me. I asked for \$1,500 per acre to be paid in one lump sum. Manickam said he did not have money as he had to pay 10% of \$8,000 to the owner of the land.

"PW4"  
Rengasamy Pillai  
27th March 1972  
(continued)  
Examination

It was agreed that \$750 per acre was to be paid to me first and the other \$750 per acre after the conveyance.

An agreement was subsequently signed for the sale and the purchase of the land. The agreement was prepared in the office of Mr. Abraham, Advocate and Solicitor. The Agreement was between Periasamy and Lim Lai Hin and the other shareholders. I was present at the time of the signing of the Agreement.

(Refers to p.54/55 ABB). This is a copy of the Agreement. Before the signing of the agreement I was given \$6,000. On the day the agreement was signed I was given \$20,000 and a cheque (postdated) for \$19,000.

To the owners of the land \$26,000 Bank Draft was paid.

After the agreement was signed, i.e. two weeks after Manickam came to my house with his family, (sic) On the day the agreement was signed he was also present.

Manickam came to my house two weeks later to see the trace of the boundaries of the land and to show the land to his wife. Manickam told me there was going to be a big profit if the Society bought the land and they - he and Mahesan - were trying to sell it to the Society. If the Society delayed in the purchase of the land then the period given for the purchase would lapse. For that reason he would be short of funds. He asked me to make arrangement to raise \$250,000. On the day the agreement was signed he said \$200,000 would be sufficient.

(Witness corrects himself). This request to raise \$250,000 was not two weeks later but before the agreement was signed.

The sum of \$200,000 was for payment of the sum referred to in paragraph 5 of p.54 (ABB).

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy  
Pillai

27th March  
1972

(continued)

Examination

Question: Why was the agreement signed in the name of Periasamy?

Answer: Both Manickam and Periasamy spoke to me about this land. Periasamy was a partner of Manickam. That was the reason why the agreement was signed in the name of Periasamy. This was told by Manickam. Subsequently the land was conveyed to Manickam.

(Refers to p.45, p.46 and p.47 ABB). This is the conveyance.

10

In the agreement the price stated was \$472,000 - in conveyance \$456,000. The difference was due to deduction of over 3½ acres of burial ground.

Periasamy has since passed away. He was also known as Periasamy s/o Kuppusamy.

At the time of the transaction I know him for about 10 years.

Cross-  
examination

Cross-examination by Mr. Lim Kean Chye:

I know one Muthalagu Pillai very well. Muthalagu Pillai did not go to Penang to see the land.

20

I remember receiving a letter from Ponnudurai who was writing on behalf of Muthalagu Pillai (p.507 DB). (Counsel reads paragraph 1 and paragraph 2 of the letter).

I asked Thillamuthu to write my reply (p.508 DB).

Question: Why did you not deny that Muthalagu Pillai had not gone to Penang to see the land?

Answer: Muthalagu Pillai came to see the land at Paya Terbong Ayer Hitam, not this piece of land. It was not necessary to deny.

30

Question: You denied you agreed to share commission. What commission were you referring to?

Answer: My commission.

Question: Thillamuthu denied sharing of commission. Put that you got commission but you denied sharing.

Answer: Muthalagu Pillai was not connected from the beginning.

I received commission. I cannot remember the amount exactly. It was 3% from vendor. No commission was received from the purchaser.

(Refers to p.509 DB). This is the letter written by Thillamuthu for me to Manickam and Periasamy. (Counsel reads the letter).

10 Question: When you said "partners of joint venture" whom were you referring to?

Answer: I was referring to Manickam and Periasamy.

(Counsel asked witness to explain the last four lines of letter - paragraph 2, p.509 DB commencing - "... the difference in price of \$1,500 per acre amounting to \$45,000 at date when the agreement for sale is entered into between you and the vendors, and as to balance \$43,500 on completion of the sale").

20 Answer: I already received \$45,000. There was a balance of \$43,500 to be paid on the date of conveyance. I was not given the \$43,500. I was cheated.

The \$1,500 per acre was my profit.

(Adjourned to 9.30 a.m. tomorrow)

This 28th day of March, 1972

Hearing continues. Parties as before.

Cross-examination by Mr. Lim Kean Chye continues.

PW4: Re-affirmed

30 If I see Periasamy's handwriting I can identify it. I can also identify his signature.

(Page 74 ABA referred to). The signature is that of Periasamy. I can also identify the signature of Somasundram Chettiar - witness.

(Translation at p.75 ABA read by Counsel).

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

"PW4"  
Rengasamy Pillai  
27th March 1972  
(continued)

Cross-examination

28th March 1972

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy  
Pillai  
28th March  
1972  
(continued)

Cross-  
examination

Question: You would agree with me that there is not one allegation that Periasamy was a partner of Manickam?

Answer: Since the words "in connection with the above-mentioned business" are stated it means partnership according to Tamil usage.

This receipt was executed by Periasamy to Manickam in general terms. There is nothing to say it is connected with me or in connection with Sungei Dua property.

10

I agree this receipt is in connection with the transaction between Periasamy and Manickam regarding the buying and selling of immovable property.

Question: I suggest that your letter on p.509 DB in which you alleged Manickam and Periasamy were partners cannot be a true allegation in view of pages 74 and 75 ABA?

Answer: The date on p.74 ABA is 31.7.65 and on letter p.509 DB the date is 8.12.64. They were partners on the date I gave the letter dated 8.12.64 and on the date they purchased the land.

20

They were partners generally. Both of them told me so separately and when they were together.

Question: If Manickam says Periasamy was his nominee he was lying?

Answer: The agreement was made by Periasamy and the money was given by Manickam. What the contract was between them I do not know.

I knew Manickam and Periasamy were partners in connection with the Sungei Dua Land. I knew from their oral statements but what was written I do not know.

30

(Refers to p.519 DB). Every allegation in the letter is false. They owed me \$37,500. As soon as I gave notice they replied and they summoned me. I was advised by Mr. Thillamuthu not to summon. It would be better for my position if they summoned. After I had received the summons, Somasundram Chettiar and Palaniappa Chettiar summoned me to Somasundram's house saying that

40

Manickam wanted to compromise. I went to the house where Manickam was present together with Somasundram Chettiar and Palaniappa Chettiar. Somasundram Chettiar told me to compromise with Manickam with payment of \$15,000 to me. I did not want to accept anything less than \$37,500. This was sometime in 1965 after I had received the summons. In my defence to summons I stated that M.K. Manickam and Mahesan made the deal. Because I brought in Mahesan M.K. Manickam came to compromise.

10

Before I received the summons, they sent word that they wanted to compromise through many persons.

Question: Eventually M.K. Manickam issued writ against you. (Page 511 DB. Pages 511-516). (Also p.521-524 DB).

Answer: Yes.

Question: You filed defence?

(A copy of statement of defence shown to witness - marked D2).

20

Answer: This is my statement of defence.

Question: In 1962/3 you were engaged in the fragmentation of estate?

Answer: I was doing that from 1955 to 1967.

Question: You were well-known in Penang, Kedah and Perak as a big dealer in land?

Answer: Also in Johor.

Question: The size of your operation is so big that in 1965 you got into financial difficulties?

30

Answer: In 1965 I was not in financial difficulties. That was the time I bought Sungei Tukang Estate for \$2,300,000.00.

Question: That is not true?

Answer: That is true.

Arumugam Pillai had no connection with Sungei Tukang Estate. I had no connection with him since 1952. He is my elder brother.

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

"PW4"  
Rengasamy Pillai  
28th March 1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy  
Pillai  
28th March  
1972

(continued)

Cross-  
examination

Arumugam Pillai did not sue me over Sungei  
Tukang Estate. There is no suit at all over  
Sungei Tukang Estate.

I deny that the Official Assignee stepped  
in my shoes in the suit over Sungei Tukang Estate.

I was not in financial difficulties in 1965  
but I was in need of money to buy property. I  
did not borrow money on interest at that time.

Question: You were so much in need of money  
that in 1966 you could not meet your commitments? 10

Answer: I was in difficulties in 1966. I  
was made a bankrupt in 1968 by the Income Tax  
Department. The Income Tax Department started  
proceedings against me in 1967.

Question: In 1966 Lim Lee Chong sued you  
for \$170,000?

Answer: I deny.

Lim Lee Chong and others sued me for \$70,000.  
I appealed. They took steps to make me a bank-  
rupt. They did not succeed. The Income Tax  
Department took action earlier. 20

Question: You owe Mr. Loh Hoot Yeang  
\$50,000?

Answer: True. Since 1966 in connection  
with land purchased in 1962.

Question: You owed United Plantation  
\$200,000 since 1963?

Answer: That was in connection with the  
purchase of land worth over \$2,000,000.00.

Altogether I owed more than \$600,000. 30

Question: Don't you think that with  
financial difficulties you should have issued  
writ against Manickam?

Answer: On the advice of Thillamuthu I  
did not file summons. There was also talk of  
compromise till the issue of writ.

(D2 referred to. Paragraph 3 of D2 read out).

Question: In May 1964 did M.K. Manickam tell you that he was a partner of Periasamy?

Answer: Both Manickam and Periasamy told me that they were partners. That is why I repeated in Court.

D2 was prepared in January, 1966.

(Paragraph 4 of D2 read by Counsel).

10 Question: What was the purpose of putting Mahesan's name in paragraph 4 (D2)?

Answer: To show that Mahesan came and negotiation commenced. The purpose of putting Mahesan's name there is because he visited Penang and asked Manickam to pay deposit to me.

Question: I suggest the real reason for putting Mahesan's name there is to frighten Manickam so that he drops his claim?

Answer: No.

20 As a result of defence there was a compromise. According to Manickam as a result of Mahesan's name being brought in he came to a compromise.

I did not agree to terms of paying me \$15,000.

This action is still pending. Manickam is no longer here. He has not withdrawn this action.

(Paragraph 5 of D2 read by Counsel).

Question: What was the purpose of mentioning Malaysia Government Officers' Co-operative Housing Society Limited?

Answer: I put in what Manickam told me.

30 Question: I suggest you put it in as a threat to Manickam?

Answer: That is not so.

Question: The truth of the matter is that you were paid sums of money by M.K. Manickam for eviction of squatters?

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy

Pillai

28th March

1972

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)

"PW4"  
Rengasamy  
Pillai  
28th March  
1972  
(continued)

Cross-  
examination

Answer: That is not so. Money was paid before purchase of land. How could there be talk of eviction?

Question: Having received \$45,000 you did not use it for what Manickam gave it for?

Answer: It was not given for eviction.

Question: You thought of \$15,00 per acre when you learnt they made a big profit on the land?

Answer: I expected that profit and I offered that price. I was told by them they would make a huge profit. They also told me they would give me a quarter share.

10

The plane that Manickam and Mahesan got in may be at 6.10 p.m. They did not have any baggage with them. They straightaway came out after landing. On the same night they returned by train.

We got to Sungei Dua within 10 minutes. Before 6.30 p.m. we would have arrived at the land. We inspected the land for half an hour. After that all of us drove to my house, arriving there at about 7.15 p.m.

20

I disagree that it took us 45 minutes from Sungei Dua to Birch Lane. It takes 20 minutes from my house to the airport.

It is possible to get to the airport from my house in 20 minutes.

The night mail from Penang was at 8.25 p.m. The train is at 9.15 p.m. They left my house after dinner at 8.05 or 8.10 p.m.

30

There was a bit of a rush. Everything was done within 2 hours.

Question: Your story is very improbable on ground that you could not have had the time to walk round the land in half an hour?

Answer: We did not walk round the whole of the land. We walked only for a short distance. We came to a high piece of ground. 60 acres x 10



is a big piece of land. We more or less could see the locality in half an hour.

Question: In fact you were there only for a few minutes?

Answer: I deny.

Question: Mahesan went there only to see the approach?

Answer: I deny that. We went into the interior of the land.

10 Question: There was no conversation as alleged?

Answer: I deny that.

Question: Mahesan never had discussion with you?

Answer: He had.

Question: Nor did he have discussion with Manickam?

Answer: All three of us discussed.

Question: You are making reckless statements?

Answer: I deny that.

20 Question: You said earlier that in your defence, you stated that Manickam and Mahesan were partners?

(Counsel withdraws the question).

Question: Were you involved in any court action?

Answer: Yes, because of my business activities.

Question: When you were involved in a land deal it always resulted in court action?

Answer: Not in all - merely one or two. I have sued many and some have sued me.

30 Question: Would you agree that you as a businessman were involved in more suits than other businessmen?

In the High Court in Malaya at Kuala Lumpur

No.7(iv)

"PW4"

Rengasamy Pillai  
28th March 1972

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(iv)  
"PW4"  
Rengasamy  
Pillai  
28th March  
1972  
(continued)

Cross-  
examination

Answer: No.

Question: Muthalagu Pillai also threatened to take you to court?

Answer: He sent notice only. He was instigated by Manickam to do so. He came to me later and regretted what he had done.

Question: You were sued by Karthigama?

Answer: I was in 1957.

Question: There were more than ten court actions against you?

10

Answer: That may be so. Likewise I have sued others.

Question: You have never been a Plaintiff?

Answer: I have been a Plaintiff - 7 or 8 times.

Question: All court actions were because you never kept your word?

Answer: Not always because I failed to keep my word - some through jealousy.

Question: Your relationship with Manickam is bad today?

20

Answer: He is no more here. When he failed to keep his word he became my enemy.

Question: I suggest there was so much bad blood between you and him that you wanted him involved in some corrupt scandal?

Answer: I did not take any steps to that end.

Question: To involve him you had to bring Mahesan in as well?

Answer: That is not so.

30

Question: You are telling this to take revenge on Manickam?

Answer: No, I tell only what had happened.

Question: By these allegations you hope to get rid of Manickam's action against you?

Answer: No.

Re-examination: Question: If the commission was 2%, what would have been the amount due to you?

Answer: \$9,200.00.

Question: How much were you in fact paid?

Answer: \$45,000 - \$26,000 in cash and \$19,000 by postdated cheque.

10 Question: When an action was brought against you by Manickam did you counterclaim?

Answer: Yes, for \$136,125.00.

This action is still pending because Manickam is in India. He is a Malaysian citizen. He can come at any time.

20 The purpose of Manickam and Mahesan going to Penang was to visit the land involved and if the Society was willing to buy the land there would be a big profit. That was why Manickam brought Mahesan along.

Witness released.

No. 7(v)

Tan Sri Abdul Jamil bin Abdul Rais

PW5: Tan Sri Abdul Jamil bin Abdul Rais, affirmed, speaks in English. 32, Jalan Kia Peng, Kuala Lumpur.

30 In 1964/5 I was the Chairman of the Plaintiff Society. I know Mahesan. (Defendant identified). He was the Secretary of the Society. As such, he was also a director of the Board. Powers - he had similar powers as the other directors. As Secretary Defendant was responsible for preparing minutes and records.

In early 1965 the Society bought two pieces of land in Penang.

In the High Court of Malaya at Kuala Lumpur

No.7(iv)

"PW4"  
Rengasamy Pillai  
28th March 1972  
(continued)

Re-examination

No.7(v)

"PW5"  
Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972  
(continued)  
Examination

Question: When were you first informed of this land?

Answer: The first indication was the letter from Manickam.

(Refers to p.73 ABB). That is the letter I referred to. I cannot remember the exact date the letter was brought to my attention. Letters were mainly opened at the Society's office.

The letter was addressed c/o Ministry of Youth, Culture and Sports. The Defendant was then working in the Ministry of Youth, Culture and Sports.

10

I was then in the Prime Minister's Department.

When I got the letter I asked that the matter be brought up at Board Meeting. (Page 70 - p.71 ABB - paragraph 5(a) - "Penang Land").

I was not present at this meeting. This was the first time the matter was brought up.

Question: Previous to this, was there any procedure laid down by the Board with respect to negotiation to be conducted for the purchase of land by the Society?

20

Answer: It was decided at Board Meeting that if there was any negotiation it was to be conducted by the Chairman himself; otherwise by the Board. No member of the Board should negotiate individually.

{Page 68/69 ABB referred to). (Sentence beginning - "The Chairman said that ..."). This was the procedure I referred to earlier.

It was decided that the Board should try to have direct dealing with the principal and should avoid as far as possible middlemen.

30

Subsequently (at p.70/71 ABB) it was decided to buy land subject to certain conditions. (Counsel reads the whole of paragraph 5(a)(i)). It was quite proper for the Secretary to make arrangement as to inquiry of suitability of land beforehand.

This decision to buy this land in Penang was subsequently circulated.

Subsequent to this a report from S.P.O. was submitted to the Society (p.75 ABB).

(Refers to p.74 ABB). This is a letter from Defendant as Secretary. This was written on 12.11.64.

Question: Was he on that date authorised to write?

Answer: The Secretary did this on his own. It was part of his usual duty but the words "has negotiated" might not be very proper.

10

On that date the Board made no negotiation - not until 27th November.

(Refers to p.81 ABB). This is a letter from Defendant as Secretary of Kenentarian Kebudayaan, Belia dan Sukan.

The Prime Minister wrote to the State Government to give support to the Society's Scheme.

(Page 2 ABB referred to). This was one of the reports considered by the Board subsequently.

20

(Pages 7, 8, 9 and 10 ABB referred to).

This was also a report considered by the Board before the Board took its decision.

Counsel reads out the last paragraph of 5(a)(i) p.71 ABB - "At this juncture, the Chairman, Enche G Leo read the letter as regards the terms of payment for consideration. After discussion the Board agreed to the purchase of the land on the terms stated, provided the report from the State Planning Officer, report from an Architect and an independent report from a valuer were obtained and the reports circulated to the members of the Board. It was decided that the purchase of the land would only be effected if the reports submitted were not adverse."7

30

Question: Who was to be responsible for engaging and consulting the valuer, architect and Planning Officer?

Answer: The Defendant.

In the High Court in Malaya at Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972  
(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972  
(continued)

Examination

Question: Do you know if the fees of Norman Lehey were paid by Plaintiff?

Answer: I do not know.

Question: Before this land was purchased by the Society, were you ever informed by Defendant that it might have been obtainable at a lower price?

Answer: No.

Question: Did you know a few months earlier the land was transferred at half of the price paid by the Society?

Answer: No.

10

(Refers to p.76 to 80 ABB). I signed the agreement as Chairman.

(Pages 41 to 43 referred to). This is the conveyance by the Society.

(Pages 3 ABB) refers to). This is a letter which I wrote.

Question: What was the report furnished?

Answer: The letter at p.75 was one of it. There was a sort of verbal report made to Defendant. The verbal report was what Defendant stated at Board Meeting.

20

Cross-  
examination

Cross-examination by Mr. Lim Kean Chye:

Question: Defendant - before the purchase Sungei Dua land - saw you in your office and told you of his visit to Penang?

Answer: On the previous occasion when the question of the purchase of the land did not come up he told me of his visit to Penang.

He just mentioned a piece of land that was available. He told me that the land was not suitable and the approach road was not satisfactory.

30

Question: In 1964 the price of land went up in Kuala Lumpur?

Answer: There was a land boom.

Question: In some cases a lot of land doubled in value?

Answer: Yes.

Question: The Society had on hand several housing estates - 2 schemes in Kuala Lumpur?

Answer: Only one.

Question: One scheme in Johor?

Answer: Yes.

10 In these cases we considered land cheap - before 1964. If revalued the value would have increased.

It started with the Sports Council meeting demands for houses from government officers. Subsequently the Society was formed. The Director of Public Works was one of the directors. Also Mr. Eddison from Lalaya Borneo Building Society was to sit but he was not to sit as a member of the Board. The purpose of getting Mr. Eddison was to get advice for large scale housing.

20 Eventually the Society got into difficulties over two schemes in Kuala Lumpur. The basic reason was that the activities went beyond the financial capacity. The problem needed the floatation of big loans if projects were to be carried out.

Question: Throughout you had the experience and advice of Mr. Eddison?

Answer: Not for financial matters.

Question: In agreements?

30 Answer: Yes. Whenever we considered desirable to have his advice we had him.

There was an attempt to raise a loan in London. It failed. It was for a sum of \$150,000.00.

Question: Difficulties the Society faced were not due to wickedness of anybody but due to phenomenal growth of Society's activities beyond financial capacity?

In the High Court in Malaya at Kuala Lumpur

No.7(v)

"PW5"

Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(v)

"PW5"

Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972

(continued)

Cross-  
examination

Answer: The Society's difficulties were in trying to get money - not technical difficulties.

Question: It was then that the Board came to realise that it had to have capital structure like the Malaya Borneo Building Society?

Answer: We did not compare ourselves with the Malaya Borneo Building Society but we realised we needed a great deal of money to carry out the projects.

Question: Am I right in saying that one of the solutions was that United Asia Investments Company would take a hand in relieving the Society of its difficulties? 10

Answer: That is right.

Question: The main director of United Asia Investments Company was Dr. Saw?

Answer: Yes.

Question: Arrangement was put up to the Board to make United Asia Investments Company agents for the building of the Society's houses? 20

Answer: Yes.

Question: The agreements with United Asia Investments Company came before the Board for discussion. Mr. Eddison was present?

Answer: Yes.

There were various objections and suggestions. The agreements later were sent to Legal Advisers for vetting.

The scheme to make United Asia Investments Company agents came through, i.e. it was carried out. Mr. Eddison was the person who recommended United Asia Investments Company. He was supported by the Director of Public Works. 30

Question: At a later stage there was a proposal for United Asia Investments Company to raise more funds?

Answer: I cannot remember.



The whole thing came to a halt after the arrest of Defendant.

(Page 2 ABB referred to). He is an Australian Architect. I saw this report.

Question: Did you think \$15,000 and \$16,000 high?

Answer: In the Board's view it was fair and reasonable. The Board's decision was based on this report.

10 Question: (Page 10 ABB referred to). Opinion given was \$16,000 per acre?

Answer: Yes, it was.

(Page 4 ABB referred to). I have seen this document. It is the position of available lands in the States. In Penang it was not possible to get State Land.

(Page 6 ABB referred to). I have read this valuation of site and development. Penang estimated \$1,500,000.

20 I cannot tell you whether the value of the land in question would be higher or lower than \$1,500,000.

I do not know the extent of development of Penang land. I do not know of any development of any extent.

I am no longer Chairman of the Society.

(Page 103 ABB referred to). It is a letter from the Secretary to all members of the Board of Directors.

30 There was a State Town Planner's report - the one at p.75 ABB. I do not think there was any other written report.

(Page 104 ABB referred to). That is my letter. My proposal was incorporated in the agreement drawn up by my lawyer. The letter was written in 1964.

A provision of \$100,000 was set aside. Detailed works as regards squatters was done by the Secretary - Defendant.

In the High Court in Malaya at Kuala Lumpur

No.7(v)

"PW5"

Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972

(continued)

Cross-  
examination

(Page 105 ABB referred to). Teh Yok See was one of the members of the Board. I saw this letter.

(Page 106 ABB referred to). Mr. Machado was also a member of the Board. I do not know whether further enquiries were made from the State Planning Officer.

Mohd. Salleh Ismail was also a member of the Board at that time (p.107 ABB).

(Page 108 ABB referred to). We did discuss the arrangement itself at Board Meeting. It was during discussion that we had this provision for squatters.

10

I was on the Board until the middle of 1967. There was no development in Penang because we were concentrating on the problem connected with the Kuala Lumpur Scheme.

When we failed to raise the loan in London, the government came into the picture. The government caused a valuation to be done. The Treasury was called in. I did not hear of unfavourable report from the Treasury. The government only decided to come in and help after getting the report from the Treasury.

20

The audited accounts for 1965 were prepared by Messrs. Azman, Wong & Co. (produced and marked D3). For 1966 (produced and marked D4). For 1967 (produced and marked D5).

After investigation by the Treasury the government financed the Society. The whole Board was responsible for the expansion of the Society's activities. The main brunt of the work fell on the Defendant. He had more than one clerk to assist him. Rajagopalan was a part time clerk. I cannot remember who the others were. There was one Suppiah. I do not know which one opens letters. Rajagopalan took notes at Board Meeting. I assume he typed the minutes.

30

(Adjourned to 2.30 p.m.) (Hearing continues at 2.30 p.m. Parties as before).

40

(PW5 on former oath)

(Cross-examination continues). The Defendant had while being Secretary been against the purchase of private land.

(Society's Minutes of 9th Meeting produced and marked D6 shown to witness). The cost of ~~8~~8,000 to ~~10~~10,000 referred to in the minutes refers to private land. This was about the price of land in 1964 - price of land generally.

10 The Society was trying to get State land which would be cheaper than private land. Kampong Tengku - the price of land was ~~8~~8,000 per acre - size - 219 acres. That was in 1963 or 1964.

Before that Defendant was successful in obtaining the Diana Estate. The land consisted of 40 acres.

20 One of the Banks - the Indian Overseas Bank - valued the Diana Estate land and the land at Kampong Tengku at ~~16~~16,000 per acre. Diana Estate land cost ~~6~~6,000 per acre. The Indian Overseas Bank valued for purposes of loan. The whole of the land at Diana Estate was in Defendant's personal name because he himself negotiated for the purchase of the land and the Society had just begun the organisation. The Housing Society had not yet been formed then.

30 I do not know who paid for this land at Diana Estate. The Sports Council did not pass nor any members of the proposed Housing Society. I do not know whether Defendant paid for land with his own money. I suppose the Defendant could sell the 40 acres at a profit after the Society was formed.

Diana Estate adjoins Kampong Tengku Scheme - Sungei Way. Land prices were going up in that area and generally.

When the Co-operative Society was formed Defendant sold Diana Estate at the same price to Society. At the time when Defendant sold I cannot remember what the price per acre was.

40 Question: Would you disagree that Diana Estate land was worth ~~25~~25,000 per acre?

Answer: I cannot say whether I agree or disagree.

In the High Court in Malaya at Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(vv)

"PW5"

Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972  
(continued)

Cross-  
examination

Question: Would you agree with me that Defendant was so keen to get the Society going that he sold the land without profit?

Question: Would you agree that through the Secretary's efforts especially in 1963/4 a lot of the Society's money was saved?

Answer: I agree.

I cannot say whether he saved about \$3,000,000 for the Society.

Question: Are you aware Defendant had an option with Barlow over land at Sungei Way? 10

Answer: Yes. I think it is the land now known as Kampong Tengku.

Defendant could have exercised option with private developers.

Defendant used to discuss and give information regarding the purchase of land. He would give me private information he picked up. In these discussions I had found him to be frank and open.

About the land in Penang, he did not talk to me about this matter. He spoke to me before about approach road and squatter problem concerning a piece of land in Penang and I do not know whether it was related to this particular piece of land. 20

Question: The land at Jalan University - Eng Hian Land - your Society was going to buy this land at \$12,000 per acre?

Answer: We were considering to buy. Defendant had a word with me and said the price was a bit high. 30

(Page 81 ABB referred to). There was a file in the Prime Minister's Department concerning housing for government officers. Later the file was transferred to the Ministry of Youth, Culture and Sports. I cannot say which file from the Prime Minister's Department was transferred.

(Re-examination)

Re-examination by Raja Abdul Aziz:

Question: It was suggested that the Society saved because Eng Hian Land was not bought. Was the land ever valued?

Answer: No.

I decided personally not to buy. Defendant suggested that we should not buy.

Diana Estate land - I do not know under what circumstances he purchased the land.

10 Kampong Tengku is at Sungei Way. It was purchased by the Society some time in 1963/4.

Diana Estate was purchased at about the same time.

The valuation by the Indian Overseas Bank was after the purchase.

(Page 104 ABB referred to). This is my own letter to the Secretary. I had no objection on the basis of the various reports attached.

(Page 2 ABB). I did not consider the price.

20 Question: If you had known that the price paid one month earlier was half of what was valued, what would your reactions be?

Answer: The whole transaction, would, I think, depend on the whole of the circumstances - the reports and the price of land then.

(Page 10 ABB referred to). Architects valued it at \$16,000 per acre. As far as I am concerned it is quite clear - I mean the valuation.

30 There was no attempt on part of Plaintiff to bargain. There was no suggestion by him to bargain.

(Page 103 ABB referred to). (Paragraph 4). We then considered it was urgent for reasons stated in the letter.

(Page 108 ABB). Subsequent to this letter we discussed the agreement.

In the High Court in Malaya at Kuala Lumpur

No.7(v)

"PW5"  
Tan Sri Abdul Jamil bin Abdul Rais  
28th March 1972  
(continued)

Re-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(v)

"PW5"

Tan Sri Abdul  
Jamil bin  
Abdul Rais  
28th March  
1972  
(continued)  
Re-examination  
No.7(vi)

"PW6"

Ajab Singh  
28th March  
1972  
Examination

(Page 75 and p.70 ABB). The report at p.75  
was received subsequent to the Board Meeting.

(Page 6 ABB). I cannot say how much was  
for site and how much was for development.

Witness released.

No. 7(vi)

Ajaib Singh

PW6: Ajaib Singh, affirmed, speaks in  
English, Chairman, Special Commissioner of Income  
Tax.

10

I was the Chief Prosecutor in Public  
Prosecutor v. Mahesan - Criminal Trial No.9/1969.  
Defendant was the accused in that trial. There  
were two charges of corruption in respect of two  
sums of money - \$40,000 and \$82,000 respectively.  
Both these charges were under the Corruption Act  
1961.

In the course of prosecution one Periasamy  
was called as a witness. When Periasamy was called  
he was not promised any immunity from prosecution.

20

Cross-examination: No.

(Defence counsel concedes that Periasamy is  
dead).

(Adjourned to 9.30 a.m. tomorrow).

Sgd. Dato Abdul Hamid,

Judge,

High Court,  
Kuala Lumpur.

This 29th day of March, 1972

Civil Suit 1569/1969 (Continuation).

(Hearing continues).

(Parties as before).

Raja Abdul Aziz makes an application to introduce evidence of K. Periasamy given in Criminal Trial 9/69 at Kuala Lumpur at which he appeared as a witness for the prosecution.

10 Relies on s.32(c) Evidence Ordinance. Refers to De Silva and Another v. The Korossa (Ceylon) Rubber Company Ltd., A.I.R. (1919) P.C. 231 at 232.

(Raja Abdul Aziz hands in a copy of statement for Court's examination. Marked "A" for identification).

Statement relied on underlined on pages 1, 2, 3, 4 and 10.

(Refers to s.32 Evidence Ordinance).

Refers to The Queen v. Gopal Dass and Another A.I.R. (Madras) (1881) p.271 at 276.

20 Submits proved facts show all three of them, Defendant, Manickam and deceased together joint venture to sell land by Manickam to Plaintiff Society and that deceased contributed \$5,000 towards joint venture. Action of Defendant an offence under s.4(a) Prevention of Corruption Act, 1961 and deceased by openly admitting that he participated with Defendant and Manickam was making himself an accomplice. By not availing himself of protection of s.32 Evidence Ordinance he ran risk of prosecution under s.11 of the  
30 Prevention of Corruption Act, 1961.

Mr. Lim Kean Chye: He has not had notice of the application. However submits that it depends on the statement.

On the statement the charge would not stand.

Refers p.317 Sarker on Evidence 10th ed. case of Sahadee v. Kusum 5 Pat. L.J. 164.

In the High Court in Malaya at Kuala Lumpur

No. 7

Notes of Evidence at the Trial (continued)

Application to introduce evidence of K. Periasamy 29th March 1972

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 7

Notes of  
Evidence at  
the Trial  
(continued)

Application  
to introduce  
evidence of  
K. Periasamy  
29th March  
1972  
(continued)

On s.132 Evidence Ordinance - tendency to  
favour absolute privilege p.1193 Sarkar on  
Evidence 10th ed.

Raja Abdul Aziz: Refers to Queen Empress v. Appayya  
I.L.R. (1891) (Madras) p.484.

By consent of counsel for Plaintiff and  
Defendant - charge upon which the Defendant was  
convicted is read out -

(1) That you on 13th May, 1965, at Kuala Lumpur,  
in the District of Kuala Lumpur, in the State of  
Selangor, being an agent of the Malaysian Government  
Officers' Co-operative Housing Society Limited to  
wit its Secretary corruptly accepted for yourself  
a gratification to wit cash \$82,000 from one S.M.  
Manickam as a reward for doing an act in relation  
to your principal's affairs to wit the purchase of  
land at Sungei Dua, Penang, by the said Society  
from the said S.M. Manickam and thereby committed  
an offence punishable under section 4(a) of the  
Prevention of Corruption Act, 42/1961.

10

20

(2) That you on 29th June, 1965, at Kuala Lumpur,  
in the District of Kuala Lumpur, in the State of  
Selangor, being an agent of the Malaysian Govern-  
ment Officers' Co-operative Housing Society Limited  
to wit its Secretary corruptly accepted for your-  
self a gratification to wit cash \$40,000 from one  
S.M. Manickam as a reward for doing an act in  
relation to your principal's affairs to wit the  
purchase of land at Sungei Dua, Penang, by the  
said Society from the said S.M. Manickam and  
thereby committed an offence punishable under  
Section 4(a) of the Prevention of Corruption Act,  
42/1961.

30

Mr. Lim Kean Chye: Points out that relevant  
date 1965 and gives one Manickam.

Court: I shall give my ruling in the course of  
proceedings today.



No. 7(vii)

Charlie Chandra Stevenson

In the High  
Court of  
Malaya at  
Kuala Lumpur

PW7: Charlie Chandra Stevenson, affirmed, speaks in English. Supt. of Police, C.I.D., H.Q., Kuala Lumpur.

No.7(vii)

"PW7"  
Charlie  
Chandra  
Stevenson

I made police report No. 1228/67 in connection with information received relating to Defendant.

29th March  
1972

10

(Page 92 ABB referred to). That is the police report I made. As a result of the police report I carried out the necessary investigation. I recorded from one S.M. Manickam on 18.7.67 12.00 noon. I did so through an interpreter (S. Balasubramaniam identified).

Examination

I did subsequently record further statement on 19.7.67 at 10.55 a.m. I used an interpreter - Chief Inspector Thavarajah identified).

I also recorded a further statement on 22.8.67 at 2.25 p.m. using Chief Inspector Thavarajah as an interpreter.

20

A further statement was recorded on 22.8.67 at 5.30 p.m. I used Chief Inspector Thavarajah as an interpreter.

Chief Inspector is now attached to Anti Corruption Agency at Sarawak.

In course of recording I did not at any time say to Manickam that if he did not say what I wanted him to say he would be sent to Pudu Jail.

Question: Did you record any matter that was not stated by him?

30

Answer: I recorded what was said by him to me through an interpreter. I did not record anything that was not said by him.

I have in my possession statement of Manickam (marked "B" for identification).

Cross-examination by Mr. Lim Kean Chye:

Cross-  
examination

Balasubramaniam I assume was speaking in Tamil. Likewise Chief Inspector Thavarajah.

Witness released.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 7(viii)

Abdul Jalil bin Ibrahim

No.7(viii)  
"PW8"  
Abdul Jabel  
Ibrahim  
29th March  
1972  
Examination

PW8: Abdul Jalil bin Ibrahim, affirmed, speaks in English. Senior Asst. Commissioner of Police, Anti-Corruption Agency H.Q., Kuala Lumpur.

In 1967 I was also in the Agency. I was involved in the investigation of Defendant's case. In course of investigation I recorded statement from one Manickam on 19.10.67. It was recorded through interpreter - (one Thjavarajah identified). 10

I did not during course of recording statement threaten him that he would be sent to Pudu Jail if he did not say the statement recorded by me. There is nothing in statement that was not in fact said by Manickam. I have a copy of the statement (marked "C" for identification).

Cross-  
examination

Cross-examination by Mr. Lim Kean Chye:

At that time I was the Officer-in-Charge of Anti-Corruption Agency Selangor. I was in charge of investigation for this particular case. 20

Manickam was not arrested. I am not sure whether passport was taken away from him.

No charge was made against Manickam. After that he went to India.

Mr. Stevenson took statement from Manickam in July. I do not know where it was taken - at some police premises.

I for one did not say, "You had better co-operate with us - let's get Mahesan".

There was no pressure from any quarters that investigation must be carried out and something must be done. 30

The Government Co-operative Society matter was raised in Parliament. Members of Society dissatisfied with position. I cannot recollect about demand for inquiry.

I don't remember Tun Razak saying that he would set up a commission of inquiry.

Question: Did you at any time say - "Co-operate with us or else you'll be in jail?"

Answer: No.

I only interpreted what was put to him. I had no conversation with Manickam.

Re-examination: The process of recording and interpretation took some time.

Witness released.

No. 7(ix)

C. Thavarajah

PW10: C. Thavarajah, affirmed, speaks in English. A.S.P. Anti Corruption Agency Kuching, Sarawak.

In July/August, 1967 I was in Special Crimes Section in Kuala Lumpur. On 19th July, 1967, 22nd August, 1967 I acted as interpreter in recording statement from Manickam. On 18th October, 1967 I also acted as interpreter when the Jalil recorded statement from Manickam. Manickam spoke in Tamil. I understood what he said. Interpretation was into English.

After recording statement I read it back to Manickam. He agreed with the contents of statement.

(Statement of 19th July marked "B2" - 22.8.67 - 2.25 p.m. "B3" - 22.8.67 - 5.30 p.m. "B4").

I also interpreted "C".

Cross-examination by Mr. Lim Kean Chye:

I used to pick up Manickam in my car and take him for questioning. I was assisting in investigation of the case. At all material times the statements were recorded I was assisting in the investigation.

I took him from Travers Road Office. As we went along I spoke to him. I remember he told me he had a son who was a doctor.

Question: Did you tell him that as his son was a doctor it would be a disgrace?

In the High Court in Mal Malaya at Kuala Lumpur

No.7(viii)

"PW8"

Abdul Jabel Ibrahim  
29th March 1972

(continued)  
Cross-examination  
No.7(ix)

"PW10"

C.Thavarajah  
29th March 1972  
Examination

Cross-examination

10

20

30

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(ix)

"PW10"  
C. Thavarajah  
29th March  
1972  
(continued)

Cross-  
examination

Answer: No. I never said these words even during period in between statement recorded.

I never said, "You'd better co-operate or you would go to Pudu Jail".

I do not know whether passport of Manickam was taken away from him. I did not know that Manickam left for India until after he had left.

I am not in a position to say why he was not charged.

I never said to Manickam about charging him. 10

Re-examination: No.

Witness released.

No.7(x)

"PW11"  
Abdul Ghani  
bin H.J.Raja  
29th March  
1972

No. 7(x)

D.S.P. Abdul Ghani bin H.J.Raja

PW11: D.S.P. Abdul Ghani bin H.J. Raja, affirmed, speaks in English. Head A.C.A. Negri Sembilan.

I was one of the investigating officers involved in Defendant's case in 1967. As a result of investigations Defendant was brought before Magistrate's Court for purpose of conducting preliminary enquiry. A subpoena was issued to Manickam on 8.1.69 to be a witness at the preliminary enquiry. 20

(Pages 93/94 ABB referred to). That is the subpoena issued. I was not able to serve subpoena on Manickam. He had left for India in November, 1968. From further enquiries it was revealed that he had left on 18.11.68 by Air India.

(Pages 95/98 ABB p.97 referred to). (Item 27). (Passenger Manifest - identified). 30

A subpoena was also issued to O. Sockalingam - (p.99/100 ABB referred to) - (identified). I was not able to serve subpoena. From inquiries it was ascertained that he had left for India a few months before Manickam left.

Cross-examination by Mr. Lim Kean Chye:

I did not know that Manickam's wife and daughter were here. I personally caused inquiry to be made. We were looking for Manickam. I did not know he had a doctor son working in hospital.

The shop belonging to Manickam was still open.

(Page 93 ABB referred to). The subpoena was for a case of criminal breach of trust against Dr. Saw.

10 Re-examination: One of the others charged for criminal breach of trust was the defendant.

Witness released.

Raja Aziz asks that statement of Manickam recorded in India be admitted as evidence to be referred to. Refers to Fisher v. C.H.T. Ltd. and Others, (1965) 2 All E.R. p.601. O.37. r.18. Mr. Lim Kean Chye says that the statement shall form part of defence evidence.

20 Subject to admissibility of statement to police by Manickam. Plaintiff's counsel closes case for plaintiff.

Adjourned to 2.00 p.m.

Hearing continues. Parties as before.

(Read written ruling). Court rules that statement "A" admissible - marked as P7.

(Mr. Lim Kean Chye wishes to recall PW3 and PW4 for cross-examination).

30 PW4: Re-affirmed, I remember question asked about Muthalagu Pillai. I remember Periasamy s/o Kuppusamy who is now dead.

I remember he gave evidence in criminal proceedings against Defendant.

(P7 p.5 referred to). "I gave Muthalagu Pillai \$200 to see the land ...." "Later said 'Mahesan and Manickam .....Society'.  
....."

In the High Court in Malaya at Kuala Lumpur

No.7(x)

"PW11"  
Abdul Ghani bin H.J. Raja  
29th March 1972  
(continued)

Cross-examination

"PW4"  
(Recalled)  
29th March 1972

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7

"PW4"

(Recalled)

29th March

1972

(continued)

Question: Would you say Periasamy was telling lies?

Answer: He was referring to different land - at Paya Terong Ayer Itam - earlier piece of land.

(Counsel reads on).

Question: Do you think by that Periasamy was referring to land at Paya Terong Ayer Itam?

Answer: I still say he means land at Paya Terong Ayer Itam.

I understand passage. I still say he was referring to land at Paya Terong Ayer Itam. That land was also under option for \$8,000 per acre.

10

Muthalagu did not stay in my house at about this time. My office was upstairs. He was staying downstairs. This was at Market Street.

Deceased's statement that Muthalagu stayed for 29 days at my house was a lie.

I do not know whether (reference to the passage) deceased was talking about Sungei Dua land.

20

(Witness asked to read statement on pp.3, 4, 5 and 6 of P7).

There is nothing mentioned about Paya Terong Ayer Itam land.

(Page 3 P7 referred to). Commencing from "Before I went with the Chinese ..... Chinese."

Question: You agree Periasamy came to know Sungei Dua land from Muthalagu Pillai?

Answer: I do not agree it is Sungei Dua land he referred to.

30

The passage on p.3 P7 refers to land at Sungei Dua. Muthalagu did not know about this land at all. Periasamy visited Sungei Dua land twice - once with Chinese, once with me.

Question: When Periasamy said, "I came to know of this land through Muthalagu Pillai" he referred to Sungei Dua land?

Answer: It is not true.

If he said he referred to Sungei Dua land he was telling lies.

Question: Can you suggest any reason why Periasamy should be telling lies?

10 Answer: Probably he had forgotten. When he referred to staying in my house he might have meant office. Referring to land he must have referred to land at Paya Terbong Ayer Itam.

(Refers page 21/2 Court Notes).

Question: Do you still maintain you bought Sungei Tukang Estate for \$2,300,000?

Answer: I put in \$115,000 in partnership with another person. After 4 months I paid another \$115,000.

The partnership bought the estate.

20 (Counsel asks witness to see a statement of claim in Civil Suit 8/1966 Penang). This suit was filed by me.

Question: You admit that was signature of your solicitor Kanda Singh?

Answer: It is true.

Question: You sued one Ratnavali?

Answer: Yes.

30 I claimed dissolution of partnership between me and him. The partnership was Sungei Tukang Development Company. I asked for accounts.

The partnership was to buy Sungei Tukang Estate and to make a profit by reselling. Rathavali contributed \$100,000. I contributed \$15,000. The payment of \$115,000 was finally made. We had equal shares.

In the High Court in Malaya at Kuala Lumpur

No. 7

"PW4"  
(Recalled)

29th March  
1972  
(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 7

"PW4"  
(Recalled)  
29th March  
1972  
(continued)

"PW3"  
(Recalled)  
29th March  
1972

Question: On 18.6.71 by Order of Court the Official Assignee of your property became Plaintiff in your place?

Answer: What he did I did not know.

Re-examination: When I said there is no suit at all over Sungei Tukang Estate against me.

Witness released.

PW3: Recalled for cross-examination. Re-affirmed.

(Counsel refers to p.586 DB). (Cheque for \$6,000).

10

This is a signature at the back. I cannot say whose signature. "123" is the entry number.

(Page 628 DB referred to. A cheque also shown to witness). This cheque issued by Defendant (produced and marked D8). It's drawn on my Bank.

At back is written "1269". It indicates probably the account number of person who signed at the back of cheque.

(Six cheques shown to witness). First cheque is dated 23.6.65 issued by Defendant - \$5,000. Paid cash. I cannot say who took the money (produced and marked D9).

20

Second cheque dated 29.6.65 - issued by Defendant - \$5,000 - cleared through Malayan Banking Ltd. (Account of Malayan Finance Corp. produced and marked D10). Signature at the back is that of Saw Hock Chuan.

Third cheque dated 29.6.65 issued by Defendant - \$5,000 - cleared through Malayan Banking per account of Malayan Finance Ltd. - signed on reverse by Saw Hock Chuan (produced and marked D11).

30

Fourth cheque dated 29.6.65 issued by Defendant - \$5,000 - cleared through Malayan Banking per account of Malayan Finance Corp. - signed on reverse by Dr. Saw Hock Chuan (produced and marked D12).



Fifth cheque dated 29.6.65 issued by Defendant - \$1,750 paid cash - cash drawn by Saw Hock Chuan (produced and marked D13).

In the High Court in Malaya at Kuala Lumpur

Sixth cheque dated 7.8.65 issued by Defendant - \$10,000 - cleared by Overseas Union Bank, Kuala Lumpur. I cannot identify the signature overleaf (produced and marked D14).

No. 7  
"PW3"  
(Recalled)  
29th March  
1972  
(continued)

10 (Two documents examined by witness). First is a telegraphic transfer received from H.K. Branch in favour of Saw Hock Chuan - \$100,000 dated 27.10.65 (produced and marked D15). I cannot tell drawn on whose account. Second another telegraphic transfer dated 12.10.65 from Hongkong Branch in favour of Saw Hock Chuan for \$100,000 (produced and marked D16).

From the record in the Bank we can say from whose account these sums were drawn.

20 (Another photostat copy of cheque shown to witness). It is drawn on my Bank - dated 15.3.65 - sum of \$50,000 - paid cash (produced and marked D17). D17 bought the Banker's Order on p.581 DB - issued in favour of Saw Hock Chuan - \$50,000.

I am familiar with Manickam's signature. I see this document (one shown by counsel). It bears the initial of Manickam. (Marked "D" for identification)

(Page 584 DB referred to). The cheque on top was for the Draft Order - below.

30 Re-examination: (Pg.584 DB) and (D17) seen by witness/. D17 was paid cash. It was a loose cheque to cover payment order at p.581.

(D8 to D14 examined). There were six cash cheques - one D14 was drawn in favour of Saw Hock Beng. Of the six - four signed Saw Hock Chuan.

D8 was cleared by Malayan Banking. D9 was paid cash. If a cheque is made to pay cash I cannot say to whose account it will be credited to.

Plaintiff's case closed.

40 Defendant's case opens. Counsel tenders

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 7

29th March  
1972

Manickam's evidence. Marked "Manickam's Evidence".

Counsel reads "Manickam's Evidence".

Page 2 of "Manickam's Evidence". "Pg.1 of  
bundle" refers to ABA.

Adjourned to 9.15 a.m. tomorrow.

Sgd. DATO ABDUL HAMID,

JUDGE,

HIGH COURT,  
KUALA LUMPUR.

30th March  
1972

This 30th day of March, 1972

10

Civil Suit 1569/1969 (Continuation)

Hearing continues at 9.15 a.m.

Parties as before.

Counsel continues to read "Manickam's  
Evidence".

Raja Abdul Aziz says that at p.30 of Manickam's  
evidence the questions he put were pursuant to s.145  
Evidence Ordinance.

Mr. Lim Kean Chye says that in Federal Court  
C.A. 37/1970 (Penang) Gill J. said admissible.

20

But see (1965) A.I.R. Allahabad p.494.  
To note that statement to police not signed and  
not sworn. Refers to Pakala Narayana Swami v.  
King Emperor, 66 I.A. p.66 at 78.

Submits: Gill, F.J.'s judgment on point is  
only obiter and that does not bind this Court.

Court: Rules that question may be to cross-  
examine Manickam and that statement made by  
Manickam to police is admissible.

(Police statement B will be marked P18 -  
P18A, P18B, P18C and P18D. Police statement C  
marked P19. The relevant passage in P18 are  
underlined in red).

30

(Mr. Lim calls Defendant to give evidence.

No. 7 (xi)

T. Mahesan

DW1: T. Mahesan, affirmed, speaks in English.  
No. 7, Road 11/12, Petaling Jaya.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"  
T. Mahesan  
30th March  
1972

Examination

10 I know the Federation of Malaysia Recreational Sports Council. I was the Secretary at one time - from 1956 to 1969. I was a government servant then. In 1956 I was a Welfare Officer in the Telecommunications Department. After that I was Assistant Secretary Sports and Welfare in the Prime Minister's Department. Thereafter I was Assistant Secretary, Ministry of Sports Youth and Culture. I was in the administrative side Division I.

20 The Sports Council decided to go into housing project. The Sports Council under the Welfare Scheme considered the promotion of house ownership scheme. This idea was from the Atkinson Report on housing to the Malaysian Government.

At the beginning, the Sports Council encouraged any group of government officers to start a scheme. As such the first scheme was at Rifle Range. The Sports Council itself did not undertake any project. The government servants themselves started the scheme. I was involved in the scheme - the Rifle Range Scheme - in 1961 or 1962 - involving about 90 lots.

30 This group of government officers had trustees to hold the land. The Rifle Range land was bought at 90 cents per sq.ft. - added 20 cents for development purposes. It was sold at \$1.10 per sq.ft. It was a success. Eventually we found that 20 cents were inadequate for development. According to quantity surveyor you needed 80 cents to \$1.00 for development alone. The quantity surveyors were Messrs. Crisp, Kavanagh & Partners.

40 Dr. Saw was connected with Rifle Range Scheme. He was owner of the land. At that time, 70 cents was very cheap. The price of equivalent land was about \$1.50 to \$2.00 per sq.ft. developed. If undeveloped the price would be about \$1.00 to \$1.10 per sq.ft.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972  
(continued)

Examination

The Rifle Range land was held by Trustees because the Sports Council could not hold land under its constitution. Eventually we decided to form a society called the Government Officers' Co-operative Housing Society Ltd. The Rifle Range land was transferred to the Housing Society. That was in July, 1963.

From then on the Housing Society carried on the housing project at Rifle Range land. The Housing Society had no capital. We needed money. The funds came from Dr. Saw. He undertook the development on the Housing Society's behalf.

10

He developed the land. It was a loose arrangement between the Sports Council and Dr. Saw - not between Dr. Saw and the Housing Society.

Members of the Board of the Sports Council and members of the Housing Society were more or less the same but not fully. There was some confusion. The confusion continued over the Rifle Range Scheme.

20

The Housing Society did complete the development through Dr. Saw. Dr. Saw was not paid for development other than what was collected from members. Development at the rate of 20 cents per sq.ft. was paid to Dr. Saw. This was collected from members.

There was another scheme after that - the Sports Council Scheme - called Diana Estate Housing Scheme. That was the estate bought in my name. \$6,000 per acre was paid for it - 40 acres. I paid for them. It was in 1962 before the Housing Society was formed.

30

The Sports Council decided to develop the land in 1963 or 1964. I transferred the land direct to the Housing Society in 1963 or 1964 at \$6,000 per acre. The development was carried on by the Sports Council. Development went ahead. Funds for the development were obtained from members who booked lots on this sector. For the land, \$1.00 per sq.ft. was charged to members fully developed. We were not short of funds in the development of Diana Estate.

40

The difficulties came almost at the end of development because of the Kampong Tengku Scheme - the third scheme.

The Kampong Tengku land comprises of 219 acres. This land was held by the Housing Society. Before it was transferred, I had an option on the land. This land was purchased from Barlow & Company. When the arrangement was made to purchase 40 acres of Diana Estate, I had a gentleman's agreement with the manager of Barlow and Company that the second part called Sungei Way 219 acres be sold only to me and no one else. This was a private arrangement. I exercised this option in favour of the Housing Society. The Housing Society purchased Kampong Tengku land while developing Diana Estate.

10

The difficulties were due to the P.J. Authority wanting further extension to broaden the road and drainage section and also a high standard of specification so as to enable Kampong Tengku to be included within the boundary of P.J. Authority. As a result we needed more funds.

20

The other difficulty was the water reticulation scheme - to provide water through Diana Estate to Kampong Tengku. The water reticulation rate was raised as a result.

Because of these, \$100,000 or more would be needed. The Sports Council asked the Housing Society to contribute towards this as it was for their own benefit. In principle the Housing Society agreed.

Except for the Rifle Range scheme, we had no financial difficulties.

30

Now says the Housing Society had no money to carry out the project at Kampong Tengku, Johor and Penang. The Housing Society had to look for funds. The Housing Society wanted to raise \$150,000,000.

The Rifle Range land consisted of 22 acres; Diana Estate 40 acres and Kampong Tengku 219 acres. We needed more funds. Attempts were made to raise loans for the Housing Society. Two or three attempts were made in London. They failed.

40

No development at all was made until 1965. It was with government funds.

There was no attempt to raise money locally.

Dr. Saw had nothing to do with the development

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972  
(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972

(continued)

Examination

of Diana Estate. He had something to do with the development of the Kampong Tengku land. He was the agent of the Housing Society. The United Asia Investments Company was the agent of the Housing Society.

In United Asia Investments Company, Dr. Saw was one of the directors. The United Asia Investments Company applied to be agent and the Housing Society appointed them agent. They appointed the United Asia Investments Company because of Dr. Saw's previous connection. The United Asia Investments Company was to be the developer and financier. The Housing Society could not raise any funds at all.

10

The agency was governed by an agreement. The agreement was vetted by the Board of Directors of the Housing Society. A discussion was held on 13.7.63. Mr. Owen said at the meeting that the draft agreement with the United Asia Investments Company was unacceptable. Mr. Mechado and the Commissioner of Co-operative Development were present. The draft agreement was sent to Legal Advisers - vetted and signed.

20

Mr. Eddison, the Legal Adviser of the Malaya Borneo Building Society was also asked to advise on the agreement. The decision of the Board of Directors Meeting was given on 16.7.63.

The United Asia Investments Company did not develop Kampong Tengku land. The United Asia Investments Company only did after getting government funds and after the signing of the agreement. The development of the Kampong Tengku land was under the auspice of the Housing Society. There was no confusion then as to whether it was the Sports Council or the Housing Society that was to develop the land. The Sports Council dropped out of the picture.

30

The Kampong Tengku land was bought at \$8,000 per acre. The Housing Society obtained overdraft from the Indian Overseas Bank.

40

I could have sold the Kampong Tengku land to someone else as I had the option. There was nothing to bind me to exercise the option in favour of the Housing Society.

The Kampong Tengku land was valued by the Indian Overseas Bank before the obtaining of the overdraft.

I bought Diana Estate land with my own money. There was nothing to bind me to sell it to the Housing Society or the Sports Council. I could have sold the land to anyone.

10 After the Kampong Tengku Scheme, the Housing Society was going into a scheme in Johor. The land consisted of 130 acres. It was a piece of private land. The Johor Local Government Officers' Housing Society negotiated. The price paid was 70 cents per sq.ft. That was at the beginning of 1964.

20 The next project was in Penang - housing project at Sungei Dua. None of the land for the housing project was government land. The Housing Society could not get State Land. The Housing Society tried to get land from the State Government but except for Perak and Pahang, failed. We did not develop. The Housing Society wanted to concentrate on the present three States.

In Penang the Housing Society tried to get State Land but there was no State Land.

The Housing Society did get offers for sale of private land. Many brokers and owners tried to push land to the Housing Society. We discussed prices and sometimes we looked at the lands. We did not buy any land in Selangor.

30 There was talk of Eng Hian Land. I believe the land could have been bought at \$12,000 per acre. Although it was brought up at the Board Meeting and the price quoted was \$15,000 per acre and the Board in principle agreed on its purchase, I advised against buying it.

40 Apart from this, there was another instance when I advised against buying. The Bungsar Park land was considered for purchase at \$20,000 or \$30,000 per acre. I advised against buying it. Also I advised against the buying of private land in Seremban. Another offer of sale of land was at Seaport Estate. It was considered by the Board but I advised against buying.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972  
(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972  
(continued)

Examination

They were all recorded in the minutes.

For housing projects the Treasury offered \$10,000,000. Before that the United Asia Investments Company offered to raise \$30,000,000 from European sources. The offer was discussed twice. Eventually the United Asia Investments Company did not raise the funds. The terms were not acceptable to the Housing Society. It was the Board's decision. As a member of the Board I turned it down.

10

Purchase of Penang land - This was not the first purchase of private land. The first was at Sungei Way now known as Kampong Tengku. The second was at Johor and the third was at Penang.

I learnt about this land in 1964. I went to see the land with Manickam from Kuala Lumpur. I saw the land in the company of Manickam, Rengasamy and one or two others. I went to Penang only once. I went in 1963. I went to see this land in Penang to have a general picture of the area and its suitability.

20

In a way the land was attractive. The land was a big piece of land - 60 acres. So I thought it was best to see it to ascertain its suitability.

When I saw it I did not like it. As I was entering Sungei Dua, I saw that the approach road was very narrow. This approach was a public road. It was too small - a 30 feet road.

Adjourned to 2.00 p.m.

Hearing continues at 2.00 p.m.

30

Examination in Chief of DW1 continues.

DW1: On former oath

I did not take measurements. After having a look at this land, I came back to Kuala Lumpur. I spoke to Tan Sri Jamil about this land at his office. I told him I saw the land in Penang. I was not satisfied with it because of the narrow approach road and there were squatters there.

I knew Periasamy. I saw him in connection with this land. He came with Manickam to my house.

40



Before my visit to Penang, Manickam offered this land and asked me to bring it up to the Board for consideration. Periasamy did not talk. I told him I had to look as to the suitability of the land before I could bring it up to the Board. I do not know of the Chinese who accompanied Periasamy to Penang. Periasamy or Manickam did not speak to me about this Chinese man.

10 I cannot remember whether at the airport Manickam introduced himself to Rengasamy. Manickam did not introduce me to Rengasamy, as a person from the Prime Minister's Department. I was introduced thus - "This is Mahesan. He came to see the land".

20 I did not see the land for half an hour. I was there for 5 or 10 minutes. Immediately I formed the impression that it was not suitable. It was full of squatters. Rengasamy did not say it was a good piece of land. I did not bargain with him. We did go to Rengasamy's house at Birch Lane. I did not discuss the price of the land. I do not know about the cheque for \$2,000 that Manickam gave to Rengasamy.

I did not have consultation, as alleged, before the \$2,000 was paid.

I got home by train together with Manickam. I discussed the land with Manickam on the train. I told him I was not interested in the land. I gave reasons.

30 To my knowledge after conversation, Manickam did not try to sell the land to anybody else. I wouldn't know if he tried to sell the land through H.M.S. Ali or Dato Zainal Abidin.

40 Eventually Manickam sold the land to the Housing Society. He wrote a letter to the Chairman offering to sell the land. I did not ask him to write the letter. It was by arrangement with me that this land was sold to the Housing Society. I as the Secretary brought it up to the Board for discussion. At the meeting I took part in the discussion. I gave factual evidence in respect of housing. I told the Board I visited Penang and saw this land and that I was not satisfied because of squatters. I told the Board that Manickam first 50 cents per sq.ft. and now his offer was at \$16,000 per acre and as such the Board should consider seriously. (sic)

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan

30th March

1972

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
30th March  
1972  
(continued)

Examination

The 50 cents offer was made when he came to my house before I saw the land. The Board discussed and agreed in principle to accept.

The late Rengasamy recorded minutes. He was a part-time clerk.

He recorded that the Society had no choice. What I meant was whether the Board should go into housing scheme in Penang. If the Board decided, then there was no choice. (Pg.71 ABB).

At that moment that land was the best choice taking all circumstances into account. The late Mr. Lee was then in the chair. 10

Question: On the face of the minute it never appeared that the Board thought of bargaining. Why?

Answer: Mr. Owen who was the Director of Public Works appointed a valuer to value the land and give a report to the Board. Azman Lehey & Partners were appointed.

Question: It is said that you wrongfully accepted \$40,000 for getting the land sold to the Housing Society? 20

Answer: No.

Question: You were alleged to have received a commission of \$40,000?

Answer: No.

Question: And another \$82,000 from Manickam?

Answer; No.

Question: For this purpose your statement of account at p.126 ABB shows the two entries?

Answer: These were returns of sums borrowed by Manickam from Dr. Saw. 30

Dr. Saw was using my current account.

I have been having dealings with Dr. Saw. He was my childhood friend and wanted to use my account - a very close friend. I did not ask him for what purpose he wanted to use my account.

He wanted to use my account for passing his money through - deposit and withdrawal.

In addition he used my wife's account. He did not give any reason why he wanted to use my wife's account.

(Counsel hands to witness DB). (Refers to p.581 DB). This I cashed cheque and obtained Pay Order in favour of Dr. Saw. Dr. Saw took an overdraft on my account. D17 is the cheque I signed.

10 (Pg. 584 DB referred to). That was my next transaction. The \$35,000 was payment to Dr. Saw. The lower one is the Pay Order. This sum was from my account.

(Pg. 88 ABA referred to). That was my cheque. That was a withdrawal from my account for Dr. Saw.

(Pg.12 ABB referred to). This was also a withdrawal from my account for Dr. Saw.

20 (Pg.628 DB referred to). This is my cheque for \$30,000. Signature at the reverse I cannot recognise. I do not know what this withdrawal was for. It is for Dr. Saw. He asked me to write cheque and I issued.

(Pg.13 ABB referred to). Cheque for \$1,750. Also taken by Dr. Saw from my account. The signature of Dr.Saw is endorsed at the reverse (see D13).

(Pg.13 ABB referred to). The second cheque for \$5,000 was also mine. Also taken by Dr. Saw from my account.

30 (Pg.14 ABB). Cheque for \$5,000 (D10). Also taken by Dr. Saw from my account.

The lower cheque also for \$5,000 was by Dr. Saw from my account.

(A cheque shown to witness - D11). Also withdrawal by Dr. Saw from my account.

(D12 shown to witness). Also drawn from my account for Dr. Saw.

(Pg.15 ABB). This is D14 - my cheque for \$10,000 drawn by me for Dr. Saw - endorsed by his brother Saw Hock beng.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"  
T. Mahesan  
30th March  
1972  
(continued)

Examination

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DWI"  
T. Mahesan  
30th March  
1972  
(continued)  
Examination

(A cheque (D1) shown to witness). This cheque is drawn by me for Dr. Saw from my account.

(g.585 DB). Top - my cheque for \$3,000. Also for Dr. Saw.

(Pg.586 DB). First cheque \$6,000 - my cheque - drawn by me for Dr. Saw. Last cheque for \$3,000 - my cheque - also for Dr. Saw from my account.

(Pg.85/6 ABB). Top cheque - my cheque drawn in United Commercial Bank for Dr. Saw. Endorsed at the back was "Payee's Account Credited". Second cheque 28.6.67 drawn from my account - Payee Dr. Saw - for \$110,000 endorsed "Payee's Account Credited".

10

(Pg.29 ABB) - 29.6.67. Payee Dr. Saw - \$902,069.51. Endorsed "Payee Account Credited".

In all these dealings, i.e. the three cheques on p.28/9 ABB were returns of remittances by Dr.Saw into my account.

Dr. Saw was interested in setting up a milk factory in India and he was sending money abroad through my account.

20

An account was opened in my name at United Commercial Bank Ltd.

I was taxed by the Income Tax Department for nearly \$600,000. So the money was brought back.

The milk project in India progressed satisfactorily and it was abandoned after my arrest and Dr. Saw's arrest.

To my knowledge Dr. Saw has a milk factory in Thailand. There was some correspondence regarding the establishment of milk factory in Ceylon and India (pg.531 DB).

30

Adjourned to 9.15 a.m. tomorrow.

(Sgd.) DATO ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
KUALA LUMPUR.

This 31st day of March, 1972

Civil Suit No. 1569/1969 (Continuation)

Hearing continues.

Parties as before.

DW1 re-affirmed. Examination-in-Chief continues.

(Pg.88 ABA referred to). My cheque for \$10,000 was drawn on my account for Dr. Saw on 22.3.65.

10 (Pg.18 ABB referred to). This is one of the remittance by Dr. Saw - \$141,820 - to my wife's account.

(Pg.19 ABB referred to). Remittance by Dr. Saw credited to my wife's account - \$99,919.42.

(Pg.20 ABB referred to). Remittance from Dr. Saw credited to my account. Sum of \$110,000. Similarly on p.21 - remittance made by Dr. Saw to my account.

20 (Pg.22 ABB) referred to). It is also a remittance made by Dr. Saw to my account - \$80,000.

(Pg.23 ABB referred to) - for \$150,049.28.

(Pg.24 ABB referred to) - for \$113,000 - also by Dr. Saw to my account.

(Pg.25 ABB referred to) - for \$142,000 - also by Dr. Saw to my account.

(Pg.26 ABB) - \$100,000 - remittance by Dr. Saw to my account.

30 (Pg.27 ABB referred to). This was a remittance by Dr. Saw to my account - sum of \$47,587.50 - also for the same purpose - milk factory project.

(Pg.37 ABB referred to). Letter written by Dr. Saw for production to Income Tax Department at the instruction of Messrs. Cooper Brothers. The Income Tax Department was inquiring into my income tax.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
31st March  
1972

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
31st March  
1972  
(continued)

Examination

(Pg.39 ABB referred to). This letter is also for production to Inland Revenue Department at the instruction of my accountants to certify that the monies were Dr. Saw's.

(Pg.40 ABB). This letter is also from Dr.Saw written on the advice of Cooper Brothers.

(Pg.112 ABB referred to). This letter is from United Commercial Bank certifying they had remitted to my account in Madras.

(Pg.561 DB referred to). Advice of credit for sum of £5539.9.7 - from United Commercial Bank to my account in London.

10

Similarly pages 562, 563, 564 DB. These were for Dr. Saw. The account was in my name. These remittances were returned to Dr. Saw. I was not taxed at all on these sums.

(Pg.565 DB) - sum of \$75,000 remittance to Singapore to my account. Also for Dr. Saw.

I have accounts in Singapore, London, Madras and 4 accounts with four different banks in this country.

20

I never paid income tax in all these remittances.

(Pg.566 DB referred to). Remittance to Madras to my account by Dr. Saw.

(Pg.567 DB referred to). This is a document related to (p.566 DB).

(Pg.568 DB referred to). Remittance by Dr. Saw to my account in Madras. (Pg.569 DB is related to p.568 DB).

30

(Pg.570 DB). Also a remittance by Dr. Saw to my account in Madras. (Pg.571 DB) is related to p.570 DB.

(Pg.572 DB). This is a letter showing the total remittances - \$1,124,739.42.

Eventually the monies were sent back to Dr. Saw.

(Pg.583 DB referred to). This is a fixed deposit by Dr. Saw in Hongkong in the name of my wife. On 9.9.64 there was a sum of H.K.\$212,631.64. This was an overdraft facility granted by Dr. Saw to Manickam. This was a security for lending money to Manickam.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

My wife has three accounts - one in Madras, one in Hongkong, and one here - the Indian Overseas Bank.

"DWI"  
T. Mahesan  
31st March  
1972  
(continued)  
Examination

10 My wife was not taxed on these accounts.

(Pg.626 DB referred to). This letter is to certify remittances for the Income Tax, Department.

(Pages 109, 110 and 111 ABB referred to). These were income tax documents connected with my tax matters.

(Pages 113, 114, 115, 116 and 117 ABB referred to). They relate to my income tax matters.

20 (At p.115 ABB - 3rd paragraph). This was Mr. Lister's query. Subsequently he accepted and Dr. Saw was taxed.

(Pg.609 DB shows final settlement).

(Pg.116 ABB referred to). Messrs. Lee & Company are the accountants of Dr. Saw.

(Pg.591 DB referred to). This was a note taken by Cooper Brothers in an interview with Mr. Lister. On p.592 it appears that the representative of Cooper Brothers showed a list of remittances to Mr. Lister.

30 (Pages 592, 594, 595, 596, 597, 598, 599, 600, 601 and 602 DB referred to). All are documents relating to my income tax.

(Pages 606, 607, and 608 DB referred to). These were also documents connected with my income tax.

(Pg.609 referred to). I was assessed for 1965 additional income tax for almost a quarter of a million dollars and for 1966, I was asked for more than \$370,000. By October 1968 I had settled my problem with the Income Tax Department. I settled

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"  
T. Mahesan  
31st March  
1972  
(continued)  
Examination

for \$70,000 eventually up to the end of 1968.  
I gave a Banker's guarantee for that amount.

My passport was released. The guarantee  
appears at p.610(DB). (Pg.611 DB) refers to the  
return of my passport.

(Pg.615 to p.621 DB referred to). These are  
documents relating to my income tax.

Question: Did the Income Tax Department tax  
you on the \$82,000 and \$40,000 alleged by  
Plaintiff to be commissions taken by you? 10

Answer: No.

These sums were credited to my account in  
1965.

(Pg.525 DB referred to). Written by  
Chellapah, a family friend of my wife's parents.  
"Baby" was my wife. Written in 1965 February.  
This was in reply to matter of 21st January  
(p.625 DB).

(Pages 527, 528, and 529 DB referred to).  
Written by T.K. Menon, one of the high executives  
attached to the Birla Group of Industries in India. 20

(Pg.530 DB referred to). Murari's letter  
to me.

(Pg.531 DB referred to). Note of my  
discussion in Madras.

(Pg.533 DB referred to). Another letter  
from Cooper Brothers. I got Cooper Brothers to  
look into this project.

(Pg.535 DB referred to). This was a  
suggested draft letter (p.536 and p.537 DB).  
Cooper Brothers' letter to Murari. 30

(Pg.538 DB). Letter from Murari to Dr. Saw.

(Pg.540 DB referred to). Murari's letter to  
me. Blue Valley Dairy is the project of Dr. Saw.

(Pg.541 DB referred to). Government's  
letter to Murari.



(Pages 545 to 548 referred to). Documents relating to study of milk project.

In the High Court in Malaya at Kuala Lumpur

(Pg.1 ABB referred to). Letter from Goh Hock Guan. Manickam paid for squatters to move out. When Manickam's offer was brought to Board to consider purchase, I informed the Board the condition of squatters as seen by me when I visited Penang. The Board after discussion fixed an amount of \$100,000 to be held by the Housing Society if the proposed land deal went through until the squatters were evicted. The Board also stated that this amount be released on the production of a letter from Goh Hock Guan that the squatters had already been evicted.

No.7(xi)  
"DW1"  
T. Mahesan  
31st March  
1972  
(continued)

Examination

(Pg.74 ABB referred to). This letter was written to the State Planning Officer for his views for production to the Board. The words "has negotiated" should read "is negotiating".

(Pg.587 DB referred to). Written on 8.1.65 by Holman, one of the architects attached to Messrs. James, Terrie & Partners. He was asked to express his views about the land. It was my personal initiative. Mr. Holman was a resident of Kuala Lumpur. I cannot remember what report and drawing were referred to in that letter. It could have been report of valuation by Norman Lehey and Goh Hock Guan and State Planning Officer. Holman did it as a personal favour. I did not show this letter to any member of the Board.

(Pages 623/624 DB referred to). Mr. Eddison's views of draft agreement with United Asia Investments Company.

(Paragraph 3 read by Counsel). United Asia Investments Company did eventually succeed in obtaining a loan of \$150,000,000. The negotiations were done in London with the assistance of Treasury officials. But the loan was never taken because the Malaysian Government did not accept the lender's terms.

(Pg.624- 3rd paragraph referred to). The 10% fee is for United Asia Investments Co. on contraction sum. The members of the Board thought it was too high.

The Board subsequently approved the 10%.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
31st March  
1972

(continued)

Examination

The Kampong Tengku Scheme stopped because the government withhold funds. Before that, the Treasury had lent \$10,000,000. The Treasury investigated before they lent the \$10,000,000. We did not get adverse reports from the Treasury.

When the Kampong Tengku Scheme came to a halt, it was not due to the fault of the Housing Society. If the government had not stopped giving the funds, the scheme would have gone on.

(Pg.33 ABB referred to). My cheque for \$50,000. I withdrew this amount from the bank in favour of Dr. Saw. I do not know what it was for. 10

(Pg.123 ABB referred to). This cheque was signed by me and the Treasurer of the Sports Council. It was a cash cheque - one of many payments due to Dr. Saw in respect of payments for the Rifle Range land. Dr. Saw took the cash. Dr. Saw told me that this was paid to Manickam. He did not tell me why he paid.

(P7 referred to. Refers to the statement taken by Mr. Shankar at pages 501 to 506.) 20

(Referring to P7 says): I did not send Periasamy and Manickam to inspect the land. I did not know that Periasamy and Manickam had gone to inspect the land. When Manickam talked to me he had seen the land.

It is not true that I was waiting for one Chinese from Johor and that we would go and inspect the land together.

I deny that I met the deceased at the Kuala Lumpur Airport. (Passage (1) in P7 denied by DW1). 30

I did not tell him to go and meet Manickam.

(Passage (2) in P7). That is not true.

(Page 4 P7). Allegation of my payment of \$30,000 is not true.

(Page 5 P7, line 5). It is not true I gave draft.

(P7) (Page 5 - 7 lines from the bottom). I told the deceased when he came to my house, that the Housing Society wanted the land in Penang. 40

(Page 6 of P7 - in the middle). It is not true that I told the deceased that I and Manickam paid Rengasamy \$2,000.

(Page 6 P7). I did not buy the plane ticket for the deceased. I did not travel with the deceased to the airport.

(Pg.8 P7) - passage (3)). That is not true.

10 (Page 9 P7 - 13 lines from bottom). There was communication between me and the deceased in the early part of 1967. He told me the police wanted to know about the Penang land. This was some time in January or February 1967. He referred to Sungei Dua Land. That was the first time I was told of some police inquiry about the Penang Land.

I do not know the motive of the deceased when he phoned me.

(Para 10 P7). It is not true that he phoned me many times and that he had been to my house on several occasions.

20 I do not know why Periasamy told so many lies against me. He was a complete stranger to me. I cannot suggest any reason at all as to why he should have told lies against me - probably he was angry with Manickam and put his anger on me.

As for Rengasamy Pillai, I cannot think of any reason as to why he should have told lies against me except for the same reason, i.e. he was angry with Manickam or may be he wanted to involve Manickam in a criminal case.

30 (Allegation in paragraph 3 of statement of claim referred to). I did not know land was purchased for \$456,000 or for any other sum.

In name I was the director of the Housing Society. I was nominated by the Sports Council as their representative. I did not receive any commission at all. The credit to my account of \$82,000 on 13.5.65 is true. Also the credit of the sum of \$40,000 on 29.6.65, but I deny they were for my own account.

40 (Pg.126 of ABB referred to). These are shown on p.126 ABB .

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
31st March  
1972

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
31st March  
1972

(continued)

Examination

Yesterday I produced cheque in respect of the items \$50,000, \$10,000, \$10,000, \$30,000, \$5,000 and \$1,750. These sums - \$82,000 and \$40,000 were part of Dr. Saw's dealings.

(Minute Book of the Housing Society shown to witness). I refer to the following:-

Second Board Meeting - the Board's action on agency agreement.

Third Board Meeting - on the purchase of land under "General". 10

Fourth Board Meeting - on the purchase of land.

Fifth Board Meeting - on the purchase of the Kampong Tengku land (p.2). Also item No.5, page 1.

Ninth Board Meeting - on the purchase of Johor land. Also on p.3 is my recommendation in respect of State Land and private land.

Seventeenth Board Meeting - on Seaport Estate. Item 5(2) p.5. 20

Twenty-seventh Board Meeting - on the purchase of the Seremban land. Also on State Government's offer of land in Ipoh.

Twenty-ninth Board Meeting - on rumours in respect of Housing Society and Chairman's address in respect of item 1.

Thirty-first Board Meeting - on the Board's approval of the history and report of the Housing Society's affairs. I produce the history and report referred to. (Marked D20). 30

Forty-fifth Board Meeting - on sale of the Penang land at \$1.41 per sq.ft.

Tenth Board Meeting - on the arrangement for loan to the Housing Society.

(Minute Book produced and marked D21).

Adjourned to 10th April, at 9.30 a.m.

(Sgd): DATO ABDUL HAMID,  
JUDGE,  
HIGH COURT, KUALA LUMPUR.

This 10th day of April, 1972

Civil Suit 1569/69 (Continuation).

Hearing continues. Parties as before.

DW1 re-affirmed. Mr. Lim Kean Chye, continues examination-in-chief.

(Counsel refers to p.32 of Notes of Evidence at C).

10 I was not responsible for engaging the architects and consultants. It was the Board's responsibility. I was responsible for consulting the valuer, the architect or the Planning Officer.

Approach road. I was mistaken about the approach road being 30 feet. It is 18 feet.

20 The four accounts I had were - two accounts in Kuala Lumpur - one with Hongkong and Sjanghai Bank opened in 1956; another in Indian Overseas Bank opened for securing overdraft by mortgaging my house. Both were current accounts. The Madras account was a deposit account. The Hongkong account was a deposit account and so was the London account. The Madras account was shifted to London after the devaluation.

In 1963 I went to Penang in respect of my official duty for discussion with the State Government about sports activities. Also I discussed with the State Government on the possibilities of obtaining State Land for the Housing Society.

Cross-examination by Raja Abdul Aziz:

30 I was responsible for the establishment of the Sports Council. The membership was by affiliation of heads of departments - Federal and State.

Because the Sports Council could not hold land, I held land in my name and some other trustees.

In July, 1963, the Housing Society was established for purposes of holding land. Five or six members of the Sports Council were on the Board of the Housing Society. Originally there were 3 members and later it was amended to two.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"  
T. Mahesan  
10th April  
1972

Examination

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

Cross-  
examination

The Sports Council and the Housing Society were separate entities. During the material time, I was the Secretary of the Sports Council and Secretary and Director of the Housing Society. I could sign cheques for the Sports Council and the Housing Society.

I advised against the purchase of Eng Hian Estate, Bungsar Park, land in Seremban and Seaport Estate. It was not necessary that the Board should place high regard on my advice. It was not necessary that my recommendations counted very much. It was the Board's decision that counted.

10

The decision on Eng Hian Estate was made in 1963. As Secretary, my duties were secretarial and managerial on the administration of the Housing Society. All major decisions were made by the Board. I only carried out directives of the Board.

Whenever any immediate decision was required, I brought it to the attention of the Board for their decision. I dealt with routine matters such as vouchers done by the accounts department.

20

I had no authority to approve vouchers for payment - only the Board had.

I was responsible for negotiating with State Governments for land. In administration, my position in the Housing Society was a responsible one. I bore the brunt of the work of the Housing Society.

30

Rifle Range Land: I cannot remember the total price. It was about 90 cents per sq.ft. - 19 acres. The purchase price was not paid in full. Periodic payments were made as and when monies were collected from the sales of lots. I cannot remember when the final payment was made. When the land was transferred to the Housing Society, the full price was paid to Dr. Saw.

When the land was transferred to the Housing Society, it was a liability since 20 cents were not enough to cover development. Costs for development over and above 20 cents were paid. It was as a result of an agreement between the sub-committee and Dr. Saw. Not all the Rifle

40

Range lots were sold to members. Some were sold to members of the public - retired government officers. I cannot remember whether there were some buyers who were not retired government officers.

In the High Court in Malaya at Kuala Lumpur

Diana Estate: It was purchased six months after the Rifle Range land. It was purchased in my name. It was not bought for the Sports Council. After its purchase, I sold lots to members on behalf of the Sports Council.

No.7(xi)  
"DW1"  
T. Mahesan  
10th April  
1972  
(continued)

10 I bought the land with a view to selling it to government officers. All proceeds of sale went to the Sports Council.

Cross-examination

When the Housing Society took over Diana Estate, they took over liability under the agreement. Monies collected were passed on the Euco Development Ltd. - the developers. The only benefit to the Housing Society was to utilise the land to raise loans to the Housing Society.

20 Kampong Tengku land: It is adjacent to Diana Estate. To get to Kampong Tengku, one has to go through Diana Estate. To get to Diana Estate, one has to go through Sungei Way New Village. Sungei Way New Village was the approach road to Diana Estate. I do not know the width of the approach road. I have been on the Sungei Way Road. It is a small road. That road was not relevant for purposes of buying Kampong Tengku land. There was a proper approach road through section 14.

30 There were two other pieces of land apart from these three - Johor and Penang lands. The Rifle Range land was purchased by me as trustee of the Sports Council. Diana Estate was purchased by me in my personal capacity. The Kampong Tengku land was purchased by me in capacity as option holder.

The Kampong Tengku land was only a verbal option. It is usual for an option holder to get commission. I did not get the commission.

40 I know Dr. Saw since my school days. My first business contact with Dr. Saw was because of the Rifle Range land.

The account on nominee basis was started in 1962 or 1963. It started with my wife as the nominee.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

T. Mahesan  
10th April  
1972  
(continued)

Cross-  
examination

It started on my account in respect of remittances for the milk factory project in India.

Dr. Saw never asked me the purpose of operating in my or my wife's account. I had great trust in him.

Because of my relationship with him, he would be willing to assist me if I were in difficulties. He has assisted me in respect of my difficulties over tax matters which he himself created. These monies were Dr. Saw's.

10

There was no written agreement about the operation of the account. Dr. Saw first operated an account in the Indian Overseas Bank using me as a nominee - in 1965.

I started an account in the Indian Overseas Bank in 1964 or 1965. The account continued until the end of 1967 or 1968. I cannot say how many cheques I issued in a month. Over the years, I would have an average of 6 or 7 cheques a month. I probably issued about 150 cheques.

20

(D17): It is a blank cheque - a loose sheet.

(Page 88 ABA) This is also a loose cheque.

(Page 12 ABB). That is my cheque.

(Page 628DB, Page 15 AB, Page 14 ABB, D11, 12 and D1, D8, 9, 10 and 13, Page 585 DB and Page 586 DB): All these cheques were made to pay cash. They entitle a person to claim money from the Bank. Not one cheque was made to be paid to Dr. Saw Hock Chuan.

Question: Your only contention was that because of few cheques paid into Dr. Saw's account?

30

Answer: In so far as my account was concerned, it was a dormant account. Dr. Saw started using it in March, 1965. Cheques were written as and when he required drawings. The estimate of 6 or 7 cheques a month was a rough guess.

There was nothing secretive in so far as I was concerned.



Question: Why was it then necessary to issue cash cheques for purposes of purchasing drafts?

Answer: When Dr. Saw wanted cash to the amount of \$50,000 I did not want to take a personal risk by carrying a large amount of money. He asked me to get the cash. The bank manager asked me to get a Pay Order.

10 There were at least two occasions that drafts had been purchased (Pages 584 and 581 DB). I gave bank draft to Dr. Saw. Other cash cheques - I do not know who cashed the cheques. There was no necessity for him to discuss with me to whom he paid the cheques.

(Page 123 ABB): This was one of the many payments to Dr. Saw. He did not tell me that he paid this to Manickam.

(Page 112 ABB to Pages 20, 21-22 ABB): It appears that entries at pages 20, 21 and 22 relate to page 112.

20 (Pages 568, 569 DB): They appear to relate to \$140,000 at p.21.

(Pages 570 - 571 DB): They relate to page 20 ABB.

(Pages 566-567 DB): They relate to p.22 ABB.

Question: In all these documents, no mention of Dr. Saw?

Answer: Monies were remitted in my name.

Question: That applies equally to pages 561 to 565 DB?

30 Answer: Yes.

These pages relate to page 23 to page 27 ABB.

I agree only cheques at pages 28 and 29 connect me and Dr. Saw. These cheques were not issued out of Indian Overseas Bank but United Commercial Bank.

I have an account with the United Commercial Bank. Altogether I have 6 accounts.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

T. Mahesan  
10th April  
1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

T. Mahesan  
10th April  
1972

(continued)

Cross-  
examination

(Page 595 DB): That was not the date that the Income Tax Department started investigation into my financial affairs. It started in March, 1966.

These cheques (pages 28 and 29 ABB) were issued after the investigation was started. I did not keep my money in the Indian Overseas Bank. I kept it in the Hongkong and Shanghai Bank.

Dr. Saw was the Managing Director of United Asia Investments Co., Ltd., United Asia Investments Co. Ltd. was the agent for the Housing Society. I did not come in contact with Dr. Saw in his capacity as Managing Director of agent company.

10

The office of United Asia Investments Co.Ltd. is at Fook Chuen Mansion. Initially the office of the agent was also at Fook Chuen Mansion. Later it was transferred to Lee Wah Bank Building - in 1965.

(Pages 525 to 526 DB) (At page 526 second paragraph read - "I was so very attracted with the scheme that I was wishing in my heart of hearts that Dr. Saw will take me into the concern. You might think I am selfish. But what is to be done, Baby, man is always a greedy animal and I am no exception.").

20

It was not necessary that Dr. Saw could take me in as a partner. If I had wanted and asked him to consider, he would.

I did not disclose to the Housing Society in regard to the nominee account. This has nothing to do with the Housing Society in so far as my duties were concerned.

30

(Page 531 DB paragraph 2 read - "In considering the question of the 500 cattle, Col. Murari stated that he has already made arrangements in London during his stay there and that foreign exchange in respect of this purchase has got to be effected by us. My contention has been that our partners involved in the establishment of this milk factory where we are concerned unhappy in putting up funds in respect of cattle. The fear is there is no security. I have also mentioned to them that should any disease arise and the cattle are lost, the funds utilised for this would

40

10 have to be wasted. At this suggestion, Col. Murari suggested that he would try and get an insurance company to cover losses in case of death due to disease in respect of cattle. The second point was the purchase of machinery. Here again Col. Murari stated that he has arranged in London for this purchase. My suggestions have been that in considering the purchase of machinery, prices should be competitive. I suggested that we should also look into quotations from Australia and from Japan".)

I was not in joint venture with Dr. Saw. It is entirely Dr. Saw's. I used the word "we" because as negotiator I included myself.

Question: I suggest you were some sort of partner?

Answer: No. I was only a negotiator. Because of the Indo China War Dr. Saw said Chinese could not negotiate. I had no vested interest.

20 (Page 534 DB). Letter from Cooper Brothers - draft at p.535 supposed to be from Cooper Brothers to Col. Murari. (Paragraph 4 p.535 DB read - "Regarding the item of finance, your letter of the 29th paragraph 2 indicates that you have contacted a group in U.K. who are keen in financing the whole scheme at a 6% finance charge per year, the capital to be repaid over a period of ten years. To our mind, this is ideal for your purpose and as you indicated in your letter that the whole scheme is to be financed by this U.K. Contract, could we know where Mr. Mahesan fits into all these.")

30 Question: Did Dr. Saw become a director of a company called P.M.T. Organisation (M) Sdn. Bhd?

Answer: My wife was a shareholder of that company and also a director.

I accept that Dr. Saw was director of that company from 7.6.68. I do not know in 1967 Manickam Chari as tax agent.

I in July 1968 also engaged Chari as tax agent. In 1968 Dr. Saw also engaged Chari as tax agent.

40 Question: You were not at all nominee of Dr. Saw in the Indian Overseas Bank?

Answer: He used my current account.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972

(continued)

Cross-  
examination

Payment to Dr. Saw was not payment by me to him.

Question: That was why there was no written evidence of the nominee account?

Income Tax: The Income Tax Department investigated into my tax affairs from 1962 to 1968. They went thoroughly into my accounts. They established that these amounts were not due to me.

I agree that so long as the tax was paid, they would not care who were the owners of the monies. In this case, the Tax Department went further into my financial affairs. Dr. Saw did not pay tax on these sums. 10

When I went into Dr. Saw's tax matters, I knew that he had not paid tax.

My income was obtained from my salary and nothing else. My income was in the form of salary - \$23,000 a year. I had no other sources of income. My wife had no sources of income.

The \$70,000 I paid was accumulated tax from 1962 to 1968. 20

(Page 612 DB) - a sum of \$8,491.32 was payment towards income tax.

(Page 609 DB - letter from Chari - paragraph 2(b)): Altogether I had to pay \$86,000 for income tax in addition to \$8,491.32. These were on account of an unexplained item considered as income by the Income Tax Department. I used to take government officers on tours and tour competitor's funds were given to me and I banked them into my account and I took overdrafts. 30

The \$5,000 was tax for 1968 and the \$10,000 was a fine.

(Page 110 ABB): This was notice of additional assessment for year of assessment 1965 in respect of 1964 income.

\$1,214.31 was the original tax assessed.

(Page 111 ABB): The original tax assessed was \$10,663.14. This was paid separately and

not included in the \$70,000 and \$15,000.

Added together, all these amounts total \$105,368.46. Deducting \$10,000 there was tax for \$95,368.46 - for income tax for 1962 to 1967 (inclusive).

The income tax was not paid by me. It was paid by Dr. Saw. Dr. Saw asked me to settle.

The sums of \$70,000 and \$15,000 were all paid under protest.

10

Penang Land: (Pages 70 to 71 ABB - Paragraph 5(a)(i): A lot of items were discussed. I find that they are not recorded - items such as appointment of Norman Lehey to value the Penang land suggested by Owen, amount fixed in respect of clearance of squatters - amount of \$100,000 and G.Lee's report on his discussion with the State Government of Penang; also Mr. Owen's instruction that on final clearance whether to purchase this land or not would come from him after he had made his investigations through the State Engineer, P.W.D. Penang.

20

The minutes were subsequently confirmed. I was at that meeting.

I did not draw the attention of the Board to these omissions. The writing of the minutes was done by Rajagopalan. He wrote all the minutes.

The minutes I referred to and which I wanted the Court to see might have had omissions in them. For my purpose I accept them.

30

(Page 71 ABB line 3 read - "The Secretary further added that the Society had many requests from Government Officers in Penang for housing schemes and stated that the Penang State's waiting list for Government quarters is the highest in the country."). This is correct. I cannot tell the list as at the beginning of 1964. The figures in the report were given by the sub-committee.

Adjourned to 2.00 p.m.

40

Hearing continues at 2.00 p.m. Parties as before.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

Cross-  
examination

As far as I knew, at the beginning of 1963, Penang was the highest in waiting list - about 4,000. I cannot remember whether the increase was gradual or otherwise.

In the middle of 1964 the pressure was already there.

When I went to Penang in May, 1964, it was for the purpose of seriously considering the buying of any suitable land.

(Page 69 Notes of Evidence line C2 and page 70 Notes of Evidence line D referred). That was an account of my visit. The approach road at Sungei Dua was definitely better than the then existing approach road to Kampong Tengku. The Sungei Dua road was very narrow. I was not interested in the land and so I did not enquire about any other possible proposed approach road.

10

When I went to Penang to see the land, I wanted to form a general impression as to whether the land was suitable to be bought for consideration by the Board. I did not go there to inspect the land.

20

I did not take any further action as I was not interested. Squatters were my main consideration because I had a bitter experience in clearing squatters at Rifle Range.

The frontal impression was that Sungei Dua land was full of squatters.

(Page 70/71 Notes of Evidence referred to):

The question of approach road was not minuted.

30

I did not discuss the price with Rengasamy Pillai. I did not discuss anything at all. I was not interested.

I never became really interested in this land until it was considered by the Board. I expressed my views.

Manickam's letter making an offer to the Housing Society was on 6.11.64. (Page 73 ABB). (Page 74 ABB). I wrote to the State Planning Officer, Penang. I was not instructed to write

40

this letter but it was my duty as Secretary to get preliminary report for submission to the Board. I know it was the same land that I saw with Manickam.

The words "has negotiated" should read "is negotiating". The Chairman had asked me to make preliminary investigation.

10 Page 73 was written at the Chairman's instruction. I never had discussion with the Board yet. The Chairman asked me to make preliminary investigation.

On 27.11.64 before I received a reply to my letter of 12.11.64, I telephoned the State Planning Officer Penang and asked that the Board was considering the Penang land.

The gist of my discussion with the State Planning Officer, Penang is at page 70/71 of minute book.

(Page 103 ABB paragraph 4): Question: What is meant by "bond" and "terms"?

20 Answer: Looking at the date in paragraph 2 of Manickam's letter, I get an extension from Manickam for one month. There is nowhere stated about this extension. Chairman G. Lee informed.

I asked for extension before 20.11.64. I get him to come to the office.

The extension would be up to 6th of December or 20th December. I cannot remember which.

30 (Page 108 ABB): My letter to the Board members was dated 7.1.65. That was after the expiration of the extension. The Housing Society had already considered.

(Letter - p.103 ABB): The purpose was to get approval of the Board members to purchase the land.

After the Board's decision, I informed Manickam of the Board's decision to purchase. That was immediately after the Board members had agreed. I cannot remember the date.

I wrote to Manickam informing him of the Board's decision.

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

Cross-examination

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972

(continued)

Cross-examination

I was to liase and instruct Lehey and Goh Hock Guan about the valuation - as instructed by the Board. I wrote to Norman Lehey. I had a formal discussion with Goh Hock Guan.

I asked Norman Lehey to value the land. Manickam paid the fees of Norman Lehey - direct. I told Manickam that all expenses had to be paid by Manickam. He may have billed the Housing Society. I do not know.

I called up Goh Hock Guan for discussion. I instructed him to value the land.

10

(Page 2 ABB under sub-head "Potential").

The words of valuer were similar to the contents of the letter of the State Planning Officer, Penang (p.75 ABB). I did not show Norman Lehey this letter. I never met him at all.

(Para 2 ABB - last paragraph): The valuation as stated in the last paragraph is sufficient.

There was room for negotiation, I mentioned at the Board Meeting that the Board should seriously consider examining the price because the land was offered to me at 50 cents per sq.ft. by Manickam originally. I told them.

20

That is not stated in the minutes.

(Page 72 Notes of Evidence - Lines A and B):

Because of the unanimous decision to purchase at \$16,000 per acre, I left it like that. I did not take further action to advise the Board to bargain nor did any member of the Board suggest anything.

(Pages 8, 9 and 10 ABB): No mention was made about the approach road in this report.

30

(At p.9 "squatters"): There were 14 huts. These were the huts that bothered me when I saw the land in May.

(Page 10 - "valuation"): The valuation was not based on comparative method. I have no idea what method was used.

During the discussion, he gave me a general



picture. Both Norman Lehey and Goh Hock Guan arrived at \$16,000 per acre. Both did not arrive at the valuation by using comparative method.

Question: Your instruction to both Norman Lehey and Goh Hock Guan was that the offer was \$16,000 per acre. Is that a fair value?

Answer: I did not instruct that to Norman Lehey but I said this to Goh Hock Guan. I showed Goh Hock Guan Manickam's letter.

10

Manickam: I got Manickam's evidence recorded in India. My wife got Manickam's address in Madras some time in 1970. I attempted to trace him earlier during the Federal Court Appeal. Manickam was the one who paid the \$82,000 and \$40,000. His agent Sockalingham who I came to know during the criminal proceedings, was also involved in the payments of the sums. As far as I know, both left the country before the preliminary enquiry into my case was conducted.

20

(Page 70 Notes of Evidence - line E2): I said I did not discuss the price of the land. (Witness also admits line F2).

In Criminal Trial 9/69, I did make unsworn statement during the course of the trial when the defence was called.

I did say that Manickam told me the price was 50 cents per sq.ft. This was said when he first visited me in my house.

30

Question: You said, "When we arrived at Sungai Dua where I was supposed to see this land I got out of the car, stood at the road and looked at the land?"

Answer: Yes.

I did say Rengasamy asked me to inspect the land and I said it was not necessary. He then held by my hand and asked me to walk along which I politely refused.

40

I said, "I have never given any commitments about my views in respect of this land except when I returned to Kuala Lumpur by night train. Manickam accompanied me and in the train I told him my views

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972

(continued)

Cross-  
examination

that I was not satisfied mainly because of the squatter problem and secondly that I felt the approach road was too narrow for the housing scheme".

(Page 11 of Manickam's statement - 14 lines from the bottom): ("Did you walk around and see the land?" and the reply read towitness).

(Page 36 3rd line from bottom to p.27):

Question: Can you explain why Manickam's evidence in India is the same as yours in the criminal trial when a few years before that he stated something different?

10

Answer: What Manickam stated in India is the truth.

(Manickam's police statement recorded on P18A - p.5 read - part underlined in red).

(Page 13 of Manickam's statement - line 9 from the top referred to). ("Did you at any time tell Mahesan about the price of land"). (Council proceeds to refer to page 27 line 9 from the top). ("After this ..... secret.").

20

It is not true that Manickam's departure was pre-arranged. I wanted him for purpose of criminal trial and he was the only one who could clear me especially regarding the transaction between him and Dr. Saw.

(Page 83 Notes of Evidence - line C3 referred to): (Cheque for \$30,000 - "This cheque was signed by me and the Treasurer of the Sports Council. It was a cash cheque - one of many payments due to Dr. Saw in respect of payments for the Rifle Range land. Dr. Saw took the cash. Dr. Saw told me that this was paid to Manickam. He did not tell me why he paid."). I said Dr. Saw told me this was paid to Manickam. I came to know of it only during investigation by the police. Dr. Saw told me.

30

As Secretary I made a report called "Housing Scheme for Government Employees". It was tendered as an exhibit during defence in the criminal trial. It is a standard report made by the sub-committee headed by Mechado.

40

I did say at the criminal trial in my defence that - "As Secretary I prepared a memorandum on housing for the Board's consideration."

In the High Court in Malaya at Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972  
(continued)

10 I tendered this as a memorandum. When I said I prepared, it was I who prepared the paper for discussion by the Board of Directors of the Housing Society. I agreed to some of the recommendation in respect of the purchase of land at p.3; also on financial implications. I was a member of the sub-committee. In the report there is nothing to indicate I disagreed with the recommendations.

Cross-examination

(Copy of Report produced and marked P.22. Page 5 of P22 paragraph 29 - second paragraph of paragraph 30 and last paragraph read).

In the last paragraph I disagree with (a) but I agree with (b).

20 (Page 68 Notes of Evidence - line D2 referred to - "For housing projects the Treasury offered \$10,000,000. Before that the United Asia Investments Company offered to raise \$30,000,000 from European sources. The offer was discussed twice. Eventually the United Asia Investments Company did not raise the funds. The terms were not acceptable to the Housing Society. It was the Board's decision. As a member of the Board, I turned it down."). When I said "terms" it means interest and short-term finance. The Board as a whole disagreed on this - whereas in this report it only mentioned \$30,000,000 offered by United Asia Investments Company, Limited - terms never given.

30

Re-examination by Mr. Lim Kean Chye: P22:

Re-examination

When the sub-committee made the report, the terms and conditions were not known to the sub-committee. United Asia Investments Co. Ltd. did not give the terms.

Dr. Saw told me about \$30,000 was paid by Manickam during police investigation.

Sockalingam left about 8 months earlier than Manickam.

40 One of the members asked that negotiations be held regarding the purchase of Sungei Dua Land. I cannot remember who.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xi)

"DW1"

T. Mahesan  
10th April  
1972

(continued)

Re-  
examination

When building started in Kampong Tengku land in 1966, there was already an approach road through Section 14 - the road was built before 1966 - in 1964 or 1965.

What was needed was a bridge across a drain to connect Kampong Tengku and Section 14. The bridge was made - some time in 1966.

Income Tax: Unexplained receipts: I was entrusted with a sum of \$24,000 to evict squatters at Rifle Range. This sum was taken as income by the Income Tax Department. For group tours, for each tour, \$8,000 to \$10,000 were collected and I banked the money into my personal account at the Hongkong and Shanghai Bank. I took overdraft in my name to be cashed at the destination. There were 6 or 7 tours.

10

(Page 532 DB): "Dear DA" should read "Dear Dr." The note minuted to me was signed

My relationship with Dr. Saw is that of an extremely close friend.

20

On 6 accounts: In 1965 I had two local accounts, three foreign deposit accounts. 1 was closed in the middle of 1965. In 1966 I had 2 local accounts - and foreign deposit account.

The Diana Estate land was transferred to the Housing Society. The Board asked the Sports Council to transfer to the Housing Society without any payment.

Dr. Saw paid over and above 20 cents per sq.ft. for development fearing repercussions. He was trying to protect the Housing Society - to prevent the Housing Society from getting a bad name. When we were in difficulties, Dr. Saw undertook to continue with development and he paid the extra costs. I would describe Dr. Saw as a generous man.

30

Sungei Dua land: Nobody from the Board went to see the land. Immediately on my return from Penang, I went to Penang to discuss with the State Government about State Land. That was in July, August, 1964. The Vice-Chairman went in 1964 - one or two months after the Chairman. They were not successful.

40

Adjourned to tomorrow at 9.15 a.m.

Sgd: DATO ABDUL HAMID,  
JUDGE,

HIGH COURT, KUALA LUMPUR.

This 11th day of April, 1972

Civil Suit 1569/69 (Continuation)

Hearing continues at 9.20 a.m.

Parties as before.

No. 7(xii)

NSS Maniam

In the High Court in Malaya at Kuala Lumpur

No.7(xii)

"DW2"

NSS Maniam  
11th April  
1972

Examination

DW2: N.S.S. Maniam, affirmed, speaks in English. 48 years. Asst. Accountant, United Commercial Bank, Kuala Lumpur. 272 - 1B Jalan Brickfields.

10 I have known Defendant since 1965. I have known Dr. Saw since 1965. They used to come together. I saw them often together.

(Pg. 28/29 ABB referred): Cheques from my bank were drawn by Defendant in favour of Dr. Saw. The proceeds of all these cheques went into the account of Dr. Saw at our bank.

Cross-examination by Raja Abdul Aziz:

Cross-examination

20 Defendant had an account with our bank commencing from 6.4.66. Dr. Saw opened his account on 20.12.65.

Re-examination: Defendant and Dr. Saw used to come together to the bank for remittances to foreign countries from Defendant's account.

Re-examination

Witness released.

No. 7(xiii)

No.7(xiii)

Punithawathy

"DW3"

Punithawathy  
11th April  
1972

Examination

DW3: Punithawathy, affirmed, speaks in English. 42 years. Housewife, 48, Jalan University, Petaling Jaya.

30 (Pg.4 ABA referred): The cheque was signed by me. There are cheques appearing in various bundles signed by me.

Account 79-16 is an overdraft account with the

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xiii)

"DW3"

Punithawathy  
11th April  
1972

(continued)

Examination

Indian Overseas Bank. It is my account. I opened the account myself in 1962 or 1963. I used this account for myself and Dr. Saw. Dr. Saw wanted to get overdraft facilities on my account. I don't know what the money was for. I had another account with the United Commercial Bank. It was opened in 1966. It was only for my purpose.

Outside Kuala Lumpur, I had no other bank account. Only one deposit - I am not sure - was made into this account. The sum deposited was Dr. Saw's money. I do not remember the amount. This deposit in Hongkong eventually was returned to Dr. Saw. The deposit was used to secure an overdraft with the Indian Overseas Bank on my account 79-16.

10

(Pg.36 ABB referred): This is the Hongkong deposit account I was talking about. That was the only amount I had in Hongkong. There is one account in India - I do not know where.

(Witness looks at p.18 ABB): It could be the Indian account. I signed a blank form for money to be sent to India. Dr. Saw asked me to sign the blank form. I did not know where the money was going to. The money came from Dr. Saw.

20

(Pg.19 ABB referred): That also bears my signature. I signed a blank form on the instruction of Dr. Saw. The money came from Dr. Saw. He told me he wanted to start a dairy farm in India.

(Pg.525 DB referred): The letter was written by Chellappah. I know him but I am not related to him. The reference "Baby" was a reference to myself.

30

(Pg.625 DB referred): The letter was written by me. "Anna" means "Brother". I had a reply. That is on page 525 DB.

I do not know whether I have any other account in any other country.

(Pg. 4 ABA referred): The first cheque was signed by me. I do not know what this was for. Dr. Saw asked me to write this cheque.

The second cheque - \$100,000 - was signed by me. I do not know its purpose.

40

The third cheque - \$70,000 - was signed by me. I also do not know what it is for.

(Pg. 80 ABA referred): First cheque - I do not know for what purpose it was used. Second cheque - I do not know what it was for.

They do not represent my money. They were Dr. Saw's money.

I did not know who Manickam was in 1964.

10 The handwriting "S.M.Manickam" was not my writing. The sum of money spelt out was not in my handwriting. Similarly on page 4. Apart from this signature, the others were not in my handwriting. I signed blank cheques.

The same applies to P.86 ABA. I signed in blank because Dr. Saw sent it to my house for my signature.

I did not know Manickam. I did not get information that he was a friend of my husband.

20 (Pg. 82 ABA): This is a sum of \$10,000 paid to my account on 27.8.64. At that time I did not know what the payment was for. At that time I did not know it came from Manickam.

In all these dealings, payments went in and out of the Indian Overseas Bank. I knew nothing. I signed cheques at the request of Dr. Saw. I did not know for whom and what they were for.

30 (Pg. 36 ABB): This is a letter from the Indian Overseas Bank addressed to me in Hongkong. I could have received this letter - I don't remember. If I had received it I would have sent it to Dr. Saw.

Later on I did meet Manickam - some time last year. I saw him about some documents he sent me. I talked to him about the money supposed to have been given by him to my husband - \$82,000 and \$40,000. He said it was a returned loan to Dr.Saw. He had not paid my husband anything.

40 (Bank Statement on p. 588 DB referred): It is the Indian Overseas Bank statement. This bank statement was sent to me by the bank. I used to send it to Dr. Saw.

In the High Court in Malaya at Kuala Lumpur

No.7(xiii)

"DW3"  
Punithawathy  
11th April  
1972  
(continued)  
Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xiii)

"DW3"

Punithawathy  
11th April  
1972

(continued)

Cross-  
examination

(Pg.589 DB referred). This is another bank statement sent to me. I sent it to Dr. Saw.

(Pg.559 DB Referred). This is a Social Welfare Lottery collection. It was paid into a fixed deposit account at the United Commercial Bank and not at the Indian Overseas Bank.

I have known Dr. Saw for a long time - since my marriage. We were very good friends.

Cross-examination by Raja Abdul Aziz:

If an account overseas had in fact been opened, I would have known about it. It is most likely that there can be no other account.

10

(Pg.588/589DB referred): I sent these unopened to Dr. Saw.

(Pg. 559 DB referred): I had a current account with the United Commercial Bank but this amount was placed on fixed deposit. I am not now a business woman. I used to be - P.M.T. Organisation (M) Sdn. Bhd. I had one share in this company. There was one more shareholder holding one share. I was not a 50% participant. There were no other shareholders. I just hold one \$1.00 share. The other shareholder hold one \$1.00 share.

20

Dr. Saw became a director of that company in June, 1968. He was not a business associate in 1968. He became a director at my request. Three or four months later he resigned.

I do not know the implication regarding the liability of obtaining overdraft facilities. I knew that by operating an overdraft facility on my account, it was from me that the bank could recover. The Hongkong money secured the overdraft.

30

I never asked Dr. Saw the purpose of this nominee account. I did not discuss it with defendant. There was no writing to regulate the overdraft arrangement with Dr. Saw. Before the overdraft was effected, the account at the Indian Overseas Bank was my own account. I operated this account about one year before.

40

When Dr. Saw used my account, my monies were



also credited into this account. Money advanced to Dr. Saw would also be debited from that account. I was not interested to see the bank statement because I knew how much I credited and how much I drew. There would be some cheques in that account for my own use.

I am not quite sure how many cheques there were. I signed on behalf of Dr. Saw. I cannot remember the average number of cheques per month.

10 Dr. Saw ceased to use my account in late 1964 or early 1965.

(Pg. 525/526 DB referred): Chellappah is an old friend of the family. He would do it if I asked him for a favour.

I had no idea as to the amounts on the cheques I signed for Dr. Saw.

Chellappah said the sum involved was small - this is what I said in my letter. I was only guessing.

20 I have a separate income of my own. I had given loans - moneylending. Amount was \$25,000/-. I got interest - \$250/- per month. This was in 1964 onwards. The total of interest collected for 1964 was \$3,000. I have no other source of income.

30 (Pg.110 ABB referred): In 1964 I was the only nominee of Dr. Saw. I do not think my husband was then a nominee. The "Lain2 pendapatan" \$500,000 must have been sums involving Dr. Saw. It was not a small amount. Since 1965 my husband was not in a position to trace the whereabouts of Manickam. I made attempts to trace him ever since my husband was convicted.

I never lived in Madras. I have visited Madras. Eventually it turned out that Manickam was in Madras. I came to know of this in 1970. I got the information from the Chettiar Temple in Sentul.

40 I wrote to Manickam and subsequently I met him. He told me that the two sums - \$82,000 and \$40,000 - were not meant for my husband. He told me he had previously made a statement to the police.

I told him that it was mentioned in Court that

In the High Court in Malaya at Kuala Lumpur

No.7(xiii)

"DW3"  
Punithawathy  
11th April  
1972  
(continued)  
Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xiii)

"DW3"  
Punithawathy  
11th April  
1972  
(continued)  
Re-examination

No.8(xiv)

"DW4"  
Chan Soong Yoon

11th April  
1972

Examination

Cross-  
examination

he had run away without having been traced. He was angry and said that in his statement to the Anti Corruption Agency, he had given the address of himself and his family. I asked him to come to Malaysia to testify. He said he couldn't come as he had income tax matters in India to settle.

Re-examination: P.M.T. Organisation (M) Sdn.Bhd. only functioned for a short while. It was formed in 1968. It did business for 2½ years. After court action by creditors the business was stopped.

10

No. 7(xiv)

Chan Soong Yoon

DW4: Chan Soong Yoon, affirmed, speaks in English. Advocate and Solicitor, 58, Jalan Silang.

(Pg.628 DB referred): I recognise the signature. It is my signature. This cheque is paid in respect of account other than defendant. It is in respect of account of the person who authorised me to disclose. It is paid in respect of his account. I have authority in writing.

Cross-examination: Quite often clients present cheques that do not belong to them in the course of some legal transaction. This is nothing unusual.

20

Witness released.

PW3: recalled by defence. (Re-affirmed). The two sums of \$100,000 deposited in Hongkong in favour of Mrs. Mahesan were remitted back in favour of Dr. Saw. The sums were paid back to Dr. Saw.

Re-examination by Raja Abdul Aziz: No.

Witness released.

30

No. 7(xv)

Palaniappan son of Muthiah

In the High Court in Malaya at Kuala Lumpur

DW5: Palaniappan son of Muthiah, affirmed, speaks in Tamil. 56 years. Businessman. 32, Leboh Ampang, Kuala Lumpur.

No.7(xv)

I am a landed proprietor. I know S.M.Manickam. I knew him from the year 1947. I know Periasamy, a broker.

"DW5"  
Palaniappan  
Son of  
Muthiah  
11th April  
1972

10 I knew the connection between Manickam and Periasamy.

Examination

(Pg. 74 ABA). Signatures appearing below are on the right hand side. Periasamy was the person who executed the document. The witnesses were V.R. Somasundram Chettiar and M.K.P.R.Palaniappan Chettiar - my signature.

After the execution of this document. I can say that Manickam did not owe Periasamy any money. As far as I know.

Periasamy was not a partner of Manickam.

20 (Pg. 9 of P7 referred); "Manickam had swindled me ..... was with Manickam."

If Periasamy had stated he was that he was not telling the truth.

The execution of p.74 ABA came about after I became the arbitrator. When the settlements came, the Penang land (Sungei Dua) was taken into consideration.

Cross-examination by Raja Abdul Aziz: (Pg.74 ABA referred):

Cross-examination

30 Question: What land was involved in this document?

Answer: All the lands they had dealt with up-to-date mentioned in the document had been taken into account.

We had taken note of the land as they told us.

Re-examination: No.

In the High Court in Malaya at Kuala Lumpur

No. 7 (xvi)

Varado Chari

No.7(xvi)

"DW6"  
Varado Chari  
11th April  
1972

DW6: Varado Chari, affirmed, speaks in English. 62 years. Chartered Accountant. 64, Lorong Persiaran Lornie, Kuala Lumpur.

(Pg.50 ABA referred): This is my letter. Pages 51, 52, 53, 54, 55, 56; pages 62 to 69 - my letter.

Examination

Handling of defendant's tax matters: Started handling his tax matters in July 1968. I also handled Dr. Saw's tax matters - at the sametime. I also handled Manickam's tax matters. That was in December, 1967. I handled the tax matters of all three of them as all of them had disputes with the Income Tax Department. They wanted me to negotiate and settle the quantum.

10

Defendant's tax matters: (Page 110 to 111 ABB referred): Eventually this was settled for much less. I was aware of this settlement. The settlement was for \$80,000 including penalty. The tax levied was for 5 years - 5 income years.

20

The bank account of defendant was gone into. Defendant claimed that certain sums appearing in his bank account belonged to Dr. Saw.

Question: What was the computation for the figure of \$80,000?

Answer: For 1962 the income was \$75,000; for 1963 \$35,516; for 1964 \$50,000; for 1965 \$21,879 - making a total of \$182,395.00.

These were the figures finally agreed upon between me and the Income Tax Department.

30

There were amounts credited to defendant's account and subsequently paid out.

In 1962 it was Dr. Saw's money that was paid into defendant's account.

In 1963 the money deposited was Dr. Saw's money. Same for the years 1964 and 1965.

Because we were not able to lay hands on any

contemporaneous evidence to connect the deposit with the bank account with the repayments made to Dr. Saw, there was no option but to pay the tax.

A guarantee was furnished to the Income Tax<sup>in</sup> Department. (D2 and D3 referred). D3 is the ledger for 1965. D2 is the day book for 1965.

(Pg.57 ABA referred): The books referred to were these two books. The settlement was reached on the basis of these books.

10 I know that large sums were sent to India and London. Defendant was not taxed on them.

These sums - \$82,000 and \$40,000 - were not included in the tax computation.

Cross-examination by Raja Abdul Aziz: Before I acted, Cooper Brothers were acting for defendant. Subsequently he changed to Lee & Co. After Lee & Co. he changed to me.

Question: Why were there so many changes?

20 Answer: Lee & Co. could not settle the matter with the Income Tax Department. I do not know whether Cooper Brothers too could not settle with the Income Tax. Defendant's tax matters were entrusted to me. Manickam's dispute with the Income Tax Department was settled in July 1968. In the same month Dr. Saw also came to me.

The sums that I stated earlier as belonging to Dr. Saw was as a result of information given to me by defendant.

30 The arrangement with the Income Tax Department was to settle defendant's tax matters first and then Dr. Saw's.

I might have had joint consultations with Dr. Saw and defendant at the same time so far as remittances and these deposits were concerned.

When I earlier said these sums belonged to Dr. Saw, it was as a result of information given by Dr. Saw and the Defendant.

As regards the \$82,000 and the \$40,000 no contemporaneous evidence was available. As regards

In the High Court in Malaya at Kuala Lumpur

No.7(xiv)

"DW6"

Varado Chari  
11th April  
1972

(continued)

Examination

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xiv)

"DW6"  
Varado Chari  
11th April  
1972  
(continued)  
Cross-  
examination

the \$47,250, they were expenses for tours.  
There was evidence on this.

(Pg.110 ABB referred): - ("Lain 2 pendapatan" -  
\$500,000. At p.111 \$780,000, Total about 1.28  
million dollars). These were remittances made  
abroad in the name of defendant and then brought  
back and repaid to Dr. Saw. I also prepared the  
statements of account for Manickam. These state-  
ments were for the year 1965. (Refers to pages 43  
to 47 ABA). It was on the basis of these that I  
settled Manickam's account. I did not have  
consultation with defendant in settling Manicam's  
tax matters. I did not consult Dr. Saw.

10

(Pg.50 ABA referred): This is my letter to  
the Income Tax Department. The letter was based  
on information given by Manickam.

Similarly the statements of account I  
prepared (pages 43 to 47) were based on information  
from these books of accounts and further explanations  
and information from Manickam.

20

Re-examination: No.

Re-  
examination

Adjourned to 2.30 p.m.

Hearing continues at 2.30 p.m. Parties as  
before.

No.7(xvii)

No. 7(xvii)

"DW7"  
Dr. Saw Hock  
Chuan  
11th April  
1972  
Examination

Dr. Saw Hock Chuan

DW7: Dr. Saw Hock Chuan, affirmed, speaks in  
English. Medical Practitioner. No.18, Perry  
Road, Kuala Lumpur.

I lent Manickam money. The first occasion  
was when he offered me a piece of land in Gombak.  
That was my first dealing with him. Land at  
Gombak: He was pressed by the Indian Overseas  
Bank for the repayment of a loan which he owed  
the Bank. He came to see me about a loan. He  
wanted \$225,000. I agreed to lend him the money.  
I lent him the money through Mrs. Mahesan's account  
with the Indian Overseas Bank. I had a fixed  
deposit account in Hongkong used for the purpose  
of granting loan to Manickam. I had this fixed  
deposit account in Hongkong in the sum of \$200,000.

30

40

The fixed deposit account was in the name of DW3.

10 I gave instruction for this money to be put on fixed deposit. I gave the loan by recalling the money from Hongkong. It was paid to Manickam from a cheque issued through DW3's account. This loan was paid back to me by Manickam. I was interested in the Gombak land. In fact I entered into an agreement with Manickam for the purchase of the Gombak land. The agreement was between Manickam and one of my subsidiary companies called Suburban Properties Ltd. The agreement is at p.118 ABB. Eventually the sale fell through when events in 1968 - 1969 brought in personal disturbances to me. I did not complete the sale.

(Pg. 2 ABA referred): This letter refers to the same land.

(Pg. 48 ABA referred): The first sum is payment to me of part of the loan. The other sums were similar repayments.

20 "31.12.64 Balan - \$225,000" - Now says "these sums were not repayments but payments from me to Manickam. These figures were the figures operated on DW3's account.

(Pg. 34 ABA referred): It started off with 1.1.65 balance \$225,000. These figures on the left hand column were payments to me - repayments of that loan of \$225,000.

30 Remittance to London on 16.3.65 - \$4209.39: That was the loan I took from Mr. Tooke. This was repayment of loan. Manickam paid this on my behalf.

Sum of \$82,000 - 13.5.65: This was a payment from Manickam to me. This was not a payment to the defendant.

29.6.65 - \$40,000: It was a similar repayment made to me. This sum was not payment to defendant.

40 (Pg. 49 ABA referred): This represents another account between me and Manickam. This represents some arrangement in a continuing series. The arrangement with him continued over this period. It has something to do with the \$225,000 loan.

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock Chuan

11th April 1972

(continued)

Examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock

Chuan

11th April

1972

(continued)

Examination

(Witness when asked whether p.48 and p.49 ABA refer to the same takes some time to give an answer).

Now says, "Page 49 must refer to the same account. As far as I can recollect my transactions with Manickam were through the Indian Overseas Bank and I have not looked over the records since then."

(Counsel asks witness to look at pp.82 and 83 ABB). As far as I can recollect, these two sums refer to entries on 26.6.64 (at p.49 ABA).

10

I cannot remember when Manickam finished paying off the loan. He has paid off the loan.

(Pg.3 ABA referred): This is Manickam's account.

(Pg.4 ABA referred): I can recognise the signature on the first cheque. It is DW3's signature. Account No.79-16 - that's DW3's account. I was using the account. This was the account I referred to earlier in my evidence.

Question: Would you know, looking at page 41, what these cheques were for?

20

Answer: The first one was a payment to Manickam. It was part of my loan to him. The second cheque, if Manickam says it was payment loan to Gombak land, I would not deny it was wrong.

Court: I myself cannot say unless I see all the payments.

Question: The last cheque for \$70,000 - if Manickam says it was part of the loan - would you be able to contradict him?

30

Answer: No - but it would have to be in the context of debit and credit.

(Pg.80 ABA referred): (2 cheques by DW3):

Question: Can you recall what they were for?

Answer: They represent, I think, another two payments to Manickam. If Manickam says that they were payments to him, I would not be able to contradict him.

(Pg.82 ABA referred): This is a cheque from Manickam to me.

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Question: If Manickam this was paid to account of his loan, would you be able to contradict him?

Answer: No.

(Pg.86 ABA. Pg.87 ABA): If Manickam says these sums were payments in my dealings with him, I would not be able to contradict him.

10 I also used one of defendant's account - the one in the Indian Overseas Bank. It was started in 1965. I had quite many dealings on this account. I had dealings in his name abroad as well.

(Pg.615 DB referred - Page 616 to 621 DB): These letters show my dealings overseas.

Question: If I show you cheque signed by defendant, would you be able to remember what they were for?

Answer: I'll try to remember.

20 (Witness shown Pg.79 ABA): The \$30,000 was for work done in Rifle Range - a payment by Recreational Council.

30 Development costs for the Rifle Range land was estimated at 20 cents per sq.ft. Eventually development costs exceeded 20 cents. I came in to continue the development. I agreed to bear the additional expense. Although we did not set out not to lose money after the land was taken over by the Government servants at low price, at the same time, we had undertaken with the Housing Society to do a very large housing programme. I felt that should the Rifle Range Scheme fail, it might have repercussions on the contract we had undertaken.

By "we" I mean the United Asia Investments Co. Ltd. So while on the one hand we would gain a definite profit, we were not adverse to any losses that we might sustain at Rifle Range.

40 (Pg.12, p.13, p.14 and p.15 ABB referred): I cannot remember what they were particularly for. Account No.163/13 was the defendant's account which I was using.

(Refers to pages 28 and 29 ABB): All were made payable to me. They were sums I sent abroad.

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)  
"DW7"  
Dr. Saw Hock Chuan  
11th April 1972  
(continued)  
Examination

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock Chuan

11th April 1972

(continued)

Examination

They came back to me at my instruction.

(Pg.38 ABB referred): This is a loose cheque to obtain Banker's Order. It may be a loan from defendant to me. At about this time I took a loan from him.

(Pg.126 ABB referred): (Defendant's account): I know about this account. It was an account that I used. I have seen the Bank statement before.

Large amounts were sent to India for establishment of a dairy milk factory. It was envisaged to be a milk factory. That was the first stage. At the same time, the company would embark on the raising of cattle.

10

My brother, Saw Hock Siew, at that time was running a milk factory in Thailand in conjunction with Australian Dairy Board (see letter on p.542 DB). He is again referred to at p.543 and p.545.

The defendant did a lot of initial contact with Indian people. At that time, there was unfriendliness between India and China. I thought he would be a suitable man to do the preliminary negotiation.

20

I did ask Cooper Brothers to look into this project.

(Pg.572 DB referred): These were remittances for the project.

Exhibit D1 was endorsed by me. I do not know what it was for.

Exhibit D8 was payment to him for my legal work.

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Exhibit D9 - I cannot identify it.

Exhibit D10 - I cannot say what the sum was for.

Exhibit D11 - The signature is mine. I cannot say what the sum is for.

Exhibit D12 - I confirm the signature is mine. I cannot say what the sum is for.

Exhibit D13 - It is my signature. I cannot remember what the sum is for.

Exhibit D14 - I can identify my brother's signature. I cannot say what the sum is for.

(Pg.613 DB referred): It was written by me.

I have some faint recollection about defendant's tax settlement. I paid for the tax settlement - \$80,000. I paid through the Indian Overseas Bank account. I think I made a mistake. I think I gave a guarantee to pay this amount through the Chartered Bank Singapore.

Adjourned to 9.30 a.m. tomorrow.

Sgd: DATO ABDUL HAMID  
JUDGE  
HIGH COURT,  
KUALA LUMPUR.

This 12th day of April, 1972

Hearing continues at 9.30 a.m.

Parties as before.

DW7 re-affirmed.

Raja Abdul Aziz cross-examines.

I am not wholly a businessman. At all material time, I was the director of various companies. The United Asia Investments Co. Ltd. was one of them; Kim San Investments Ltd. is another; also Surburban Properties Ltd. I was director of Tahan Mines, Saw & Sons - there may be one or two more.

I first knew Manickam round about the time he approached me for a loan - about that time - that was the first time.

(ABA. p.2 referred). My letter to Manickam - I cannot say how long before the date in my letter I met Manickam.

Question: If Manickam were to say that he first met you some time in April, 1964, would you agree to that?

Answer: I cannot confirm.

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock Chuan  
11th April  
1972

(continued)

Examination

12th April  
1972

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xvii)  
"DW7"  
Dr. Saw Hock  
Chuan  
12th April  
1972  
(continued)  
Cross-  
examination

Letter at ABA p.2 read).

Question: Were you quite prepared to lend money to Manickam on the basis of this letter?

Answer: He had undertaken to go into a sale agreement with me. The sale agreement relates to the Gombak land. This \$225,000/- had nothing to do with the purchase price. It was an advance for the purchase price. (Agreement is at p.118 ABB).

(Refers to p.29 of "Manickam's Evidence, line 3 - "Because of the Indonesian ..... Surburban Properties Kuala Lumpur.")

10

Question: Do you agree with that?

Answer: That is substantially correct.

Question: Were the sums of \$5,000/-, \$95,000/- and \$50,000/-, stated by Manickam to have been paid by you towards the purchase price of the land, in addition to the original price of \$225,000/-.

Answer: I am not in a position to say whether these sums were in addition to the \$225,000/- because in the accounts I always relied on the written records of the accounts.

20

(Page 118 ABB clause 1 referred):

Question: Between the date of this agreement and 1968 when the land was sold to someone else, were you owing Manickam the purchase money under the agreement?

Answer: No, because this money was only due to him if a transfer was effected.

(Paragraph 3 read): Question: We have evidence that \$95,000/- and \$50,000/- had been paid.

30

Answer: That is correct.

Question: So was the sum of \$5,000/-. Is that correct?

Answer: Yes.

Question: Were you owing Manickam \$548,175.00?

Answer: That was contingent upon the transfer being done.

There was the question of squatters on the land and because of the favour of the original loan of \$225,000/-, Mr. Manickam never exercised penalty clauses in the agreement.

10 The \$225,000/- was only repayable to me if I did not complete the purchase. Sometimes to be repaid to me in cash. It could have been that I instructed Manickam to repay the \$225,000/- in cash.

(Page 48 ABA referred): It was prepared at the end of the year. There is no date on it.

(Page 49 ABA referred): I imagine it was prepared at the end of the year.

Question: How is p.48 related to p.49? Can you say?

20 Answer: One is regarding the actual position of the loan - that is at p.48. The other shows detailed movements of receipts and things.

Question: Why is the total on p.48 \$225,000/- and the total on p.49 \$192,765/-? Can you explain or can't you explain?

Answer: I can't explain.

(Page 34 ABA - undated referred). It was prepared at the end of fiscal year 1965.

30 (Page 4 ABA referred) This cheque was issued by me on the account of DW3. She also had some of her money in it. She agreed to keep note of her drawings. She drew very small sums. I did not ask her whether she verified from the statement of accounts which were sent to me.

I operated on defendant's account in 1965 after March or April. It was closed in 1968 or 1969. I issued a lot of cheques on the account. I can't remember how many cheques were issued in a month.

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock Chuan

12th April 1972

(continued)

Cross-examination

In the High  
Court in  
Malaya at  
Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock  
Chuan  
12th April  
1972

(continued)

Cross-  
examination

(Page 615 and page 621 DB referred).

These were receipts or acknowledgments signed by me. This was done for the purpose of income tax.

(Page 621 referred):

Question: These relate to sums at p.37 ABB?

Answer: Yes. I supplied the receipt (at p.621). (At p.37 ABB) I asked for the money.

(Page 572 DB referred): This is for the purpose of defendant's income tax - to clarify the tax position.

10

(Page 11 ABB referred): These are two cheques - defendant's cheques.

(Pages 12, 13, 14 and 15 ABB referred).

Question: Except for cheques at pages 15 and 11 - at the bottom - were they all cash cheques?

Answer: Yes.

All cheques shown to me yesterday and endorsed by me were all cash cheques.

(Page 581 DB referred): That is a banker's cheque payable to me as a result of the cheque at p.33 ABB.

20

Question: Why was it necessary for the cheque and banker's draft to be issued?

Answer: I cannot recall the reason for it.

(Page 584 DB referred): The top cheque is defendant's cheque payable to the Bank. As a result there was a banker's order (bottom) - why was it necessary to go through this procedure?

Answer: I did not specify any instructions as such. All I recollect is that both sums, i.e. \$50,000 and \$35,000/- represent loans payable to me by defendant.

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These two sums were loans made by defendant to me. The money came from loans granted to defendant by the Indian Overseas Bank on this account kept by defendant.

As regards this account, defendant did not have his own money in it. He had a separate account.

Question: Did you give evidence before a criminal court at the trial of defendant? Did you say this - "Accused has a little of his own money in his own account. The position was always regularised. If he took temporary loan for me, he always paid back, meaning he used the money in this account with my permission."

10 Answer: I made that statement. There was his own money in the account - very negligible. I can't remember if he made payment of his own money into the account. I can't remember if he issued cheques for his own purpose. If there were, they were only for small sums.

Re-examination: The \$85,000/- was a loan to me by defendant. He got a loan on a mortgage of his own house to the Indian Overseas Bank. This was at the beginning of the account.

20 Agreement over Gombak land: That agreement was between Suburban Properties Ltd. and Manickam and not between me in my personal capacity and Manickam.

Suburban Properties Ltd. owed Manickam \$225,000/- \$698,000/- or so. When I said I did not owe money under the agreement, it was not I in my personal capacity.

30 I myself lent Manickam \$335,000/- - not Suburban Properties Ltd. The personal loan I lent to him because I wanted Suburban Properties Ltd. to have the option to use the land for building purposes. Manickam used to discharge loans with the Indian Overseas Bank. I can't remember when defendant used the Indian Overseas Bank account to draw his own cheques.

Defendant's case closed.

In the High Court in Malaya at Kuala Lumpur

No.7(xvii)

"DW7"

Dr. Saw Hock Chuan

12th April

1972

(continued)

Cross-examination

Re-examination

(Judgment)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 8

Judgment of  
Abdul Hamid J  
5th June 1972

No. 8

JUDGMENT OF ABDUL HAMID J

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

Between:

The Malaysia Government Officers'  
Co-operative Housing Society Ltd. Plaintiffs

And

T. Mahesan son of Thambiah Defendant

This is a claim by the Malaysian Government Officers' Co-operative Housing Society Ltd. against T. Mahesan for \$610,000/-. It arises out of the purchase of approximately 59 acres of building land situate at Sungei Dua, Penang, by the Society from one Manickam. The price paid by the Society was \$944,000/- pursuant to an agreement made with Manickam on January 15, 1965. The sale was completed by a transfer executed on February 22, 1965. The cause of action is set out in paragraphs 3 and 4 of the statement of claim which alleges that: 20

"3. The Defendant, in breach of his duty as a director of the Plaintiff Society, failed to disclose to the Plaintiff Society facts within his knowledge that the said land was purchased by the said Manickam for only \$456,000/- and the Defendant, in breach of his duty as such director as aforesaid, and without the knowledge or consent of the Plaintiff Society, subsequent to the date of the Agreement, received for himself from the said Manickam a commission of \$122,000/- which he did not pay over to the Plaintiff Society. 30

Particulars of Commission paid to Defendant

13th day of May, 1965	\$82,000.00
29th day of June 1965	\$40,000.00
	\$122,000.00



4. By reason of the neglect or misconduct or breach of duty of the Defendant, the Plaintiff Society has incurred loss or damage.

Particulars of loss or damage

Excess payment of purchase price made by the Plaintiff Society in respect of the purchase of the said land - \$488,000.00."

10 The total sum claimed is thus made up of two items, a secret commission of \$122,000/- alleged received by the defendant from the vendor and \$488,000/- being excess payment of purchase price which was the difference between the purchase price actually paid by Manickam and the sale price he received.

20 I propose to deal first with the claim for loss or damage. There is no dispute on the facts. Manickam had purchased the land for \$456,000/- from its Chinese owners pursuant to an agreement made on June 29, 1964 and completed by a conveyance executed on November 6, 1964. The Society paid him \$944,000/- for the same land. Manickam's gross profit was thus \$488,000/-. As I understand it, the Society claims this sum from the defendant on the ground that by his neglect or misconduct or breach of duty towards his principal, being an agent of the Society, the Society suffered loss or damage. The Plaintiffs who are claiming damages for loss suffered by them necessarily must prove such loss. The Society in this case, must therefore satisfy the Court that it suffered loss, but of such proof there is nothing in the evidence. Presumably, it still owns the land as nothing has been said to the contrary. Had it been sold, there would have been evidence of the price realised, so as to quantify the loss, if any, suffered by the Society. On the other hand, the trend throughout Malaysia, as shown in numerous reported land acquisition cases, has been a steady rise in prices during the past ten years, at least there is nothing to suggest that this land at Sungei Dua, Penang, was an exception. Whether or not the difference should be accountable to the Society for the payment of a higher price than was acceptable to Manickam, it is needless to consider this legal problem any further, because at the outset, no loss has been proved as suffered by the Society arising out of the transaction. The claim in respect of the \$488,000/- must therefore be dismissed.

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In the High Court in Malaya at Kuala Lumpur

—  
No. 8

Judgment of Abdul Hamid J

5th June 1972  
(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 8

Judgment of  
Abdul Hamid J

5th June 1972  
(continued)

The claim for \$122,000/- however, stands on a different footing. It was alleged to have been paid to the defendant by Manickam without the knowledge or consent of the Society. In other words, it was a bribe or secret commission. It is trite law that all such profit made by an agent must be paid over to his principals: (see Halsbury's 3rd ed. Vol. 1 at p.192 and Reading v. Attorney General (1951) A.C. 507.

The defence in respect of this head of claim was a total denial of the allegations in paragraph 3 of the statement of claim. The defendant flatly denied any knowledge of the purchase price paid by Manickam. Being unaware of such price, it follows that he could not have been expected to disclose an unknown fact and therefore there was no reason for Manickam making a handsome gift of this large sum of money to him. The issue in this case is thus a question of fact. Was the defendant aware of the purchase price paid by Manickam before the Society entered into the agreement with him on January 15, 1965? If he was aware of this fact, it is clear from the evidence that he kept this knowledge to himself, so that there would be no impediment to the Society's acceptance of Manickam's offer to sell the land at twice the price he had paid for it less than four months earlier. The defendant therefore would have truly earned what the plaintiffs alleged to have been paid to him by Manickam. On the other hand, if I am not satisfied that the defendant knew the price paid by Manickam, the claim must in my opinion, be dismissed.

I shall now proceed to examine the evidence adduced by the Society in support. First, there is the evidence of Rengasamy (PW4) the option holder who stated that in May, 1964, he accompanied Manickam and the defendant to view the land and he named \$10,000/- per acre as the price he was willing to accept. After discussion, he alleged that the defendant fixed the price at \$9,500/- per acre and Manickam then paid him \$2,000/- by cheque drawn on the Indian Overseas Bank as instructed by the defendant. Rengasamy had obtained his option of purchase at \$8,000/- per acre and he alleged that he was to get half of the profit of \$1,500/- per acre, or \$750/- per acre, amounting to a total sum of \$45,000/- for 60 acres. When the option was exercised on June 29, 1964 by one

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Periasamy on behalf of Manickam, Rengasamy went on to say that he was paid \$20,000/- and given a post-dated cheque for \$19,000/- in addition to an earlier payment of \$6,000/- thus making up the total of \$45,000/-, as agreed. This viewing of the land was a fact admitted by the defendant although he alleged that the visit was made by him in 1963. In my opinion, this was a mistake intentionally or otherwise because Rengasamy did not get his option till 1964 and if the defendant's idea was to contradict Rengasamy to show that he was an unreliable witness, I must say that he has failed. I have carefully considered Rengasamy's evidence and I accept him as a witness of truth. I have noted that the defendant never disclosed his visit relating to this particular piece of land to any director of the Society in spite of the fact that his impressions were unfavourable.

In the High Court in Malaya at Kuala Lumpur

—  
No. 8

Judgment of Abdul Hamid J  
5th June 1972  
(continued)

Secondly, according to the Chairman of the Society, Tan Sri Abdul Jamil Rais (PW5), the first intimation he received of Manickam's offer was the letter from him dated November 6, 1964 which reads as follows:-

"Lots: Nos. 114 parts 1 & 2 in the Mukim of 13 .....N.E.D. Sungei Dua, Penang

I have a piece of land amounting to 59 acres in Sungei Dua, Penang. I understand your Society is interested in land in Penang and I wish to offer this land at a cost of \$16,000/- per acre.

I shall be thankful if you would let me know before the 20th November, 1964 and this option holds good from the date of this letter.

Sgd. SM. MANICKAM."

PW5 could not remember exactly when the letter was brought to his attention although it was addressed to him. It is revealed that the letter was sent to the defendant who was then working in the Ministry of Culture, Youth and Sports. PW5, however, stated that it was he who directed that the matter be brought up for consideration by the Board. The minutes of the board meeting of November 27, 1964 under item 5(a)(i) (p.70 ABB) reads -

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 8

Judgment of  
Abdul Hamid J.

5th June 1972  
(continued)

"(i) Penang Land:

The Secretary Enche T. Mahesan, reported that there was an offer of 59 acres of land at \$16,000/- per acre by letter to the Chairman in respect of land in Penang. He said the Board had agreed to purchase suitable lands in Penang and Malacca at earlier Board Meetings. Continuing, Enche T. Mahesan stated that he had already written to the State Planning Officer, Penang, in respect of this land and requested him to let this Society know of the present position of development and as to whether planning clearance for housing project could be obtained. Up to this moment, he said, no reply had come from him and as such, he discussed with the Planning Officer on the telephone this morning (27.11.64) and the Planning Officer said that the land was suitable for housing development and the State would consider giving planning approval, if required. According to the Planning Officer, the Secretary said, the area would be suitable for bungalow type of houses. As regards the report of the land the State Planning Officer had suggested that an Architect be sent by the Society to survey the land and to submit a report. The Secretary further added that the Society had many requests from Government officers in Penang for housing schemes and stated that the Penang State's waiting list for Government quarters is the highest in the country. Continuing, the Secretary said that the position of land in Penang was such that during a discussion with the State Government some time last year, it had clearly stated that the State would not be in a position to assist in giving lands and the Society if it wished to commence any scheme should think in terms of purchasing private lands, and that is considered to be very expensive in Penang. He further stated that since the principal approval was given by the Board to purchase land in Penang earlier, the Society was trying to get the land in Penang but was not successful. He said lands could only be obtained in 9th and 10th Miles, where there is no water and electricity supply. In short he said there was no choice.

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At this juncture, the Chairman, Enche G. Leo

read the letter as regards the terms of payment for consideration. After discussion the Board agreed to the purchase of the land on the terms stated, provided the report from the State Planning Officer, report from an Architect and an independent report from a valuer were obtained and the reports circulated to the Members of the Board. It was decided that the purchase of the land would only be effected if the reports submitted were not adverse."

In the High Court in Malaya at Kuala Lumpur

—  
No. 8

Judgment of Abdul Hamid J.  
5th June 1972  
(continued)

At this stage, I would pause and note the following significant facts: (a) Manickam made his offer to the Society and to no other on the same date that the land was conveyed to him although the defendant's evidence was that he did not think this land was suitable; (b) The defendant was not shown by the minutes to have disclosed to the board his visit to the land and the impressions he then formed; (c) On the contrary, the defendant appeared to be doing his best to persuade the board to accept the offer; (d) The option had expired on November 20 so that there was clearly no point in considering the offer of November 27 unless the option had been extended of which there was no record in the minutes. When cross-examined on this material omission, the defendant said, "I got an extension from Manickam for one month. There is nowhere stated about this extension. Chairman G. Leo informed. I asked for extension before 20.11.64. I got him to come to the office. The extension would be up to 6th of December or 20th December. I cannot remember which. My letter to the Board members was dated 7.1.65. That was after the expiration of the extension. The Housing Society had already considered. The purpose was to get approval of the Board members to purchase the land. After the Board's decision, I informed Manickam of the Board's decision to purchase. That was immediately after the Board members had agreed, I cannot remember the date. I wrote to Manickam informing him of the Board's decision."

No such letter to Manickam has been produced in evidence. If it was true that the option was extended before its expiry on November 20th, I cannot understand why a man of such intelligence as the defendant failed to get Manickam, when he called at the defendant's office, to endorse the extension on the letter of November 6 or if that

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 8

Judgment of  
Abdul Hamid J  
5th June 1972  
(continued)

letter was not then available, to give his extension in writing. Furthermore, he spoke of only one extension expiring on December 6th or 20th. After this extension had lapsed, I do not understand why the letters of January 7, 1965 need be circulated to the board members. In my view, therefore, the only reasonable explanation is that there was never in fact any extension or further extension after December 20, 1964. Why the defendant proceeded in January 1965 to act as if the option remained valid must be because there was a secret understanding between the defendant and Manickam that the land was to be sold only to the Society. The whole transaction leads me to that conclusion.

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I have noted also that there was no attempt to bargain with Manickam. The board had left most of what was required to be done to the defendant hence he was to liaise and instruct Norman Lehey and Goh Hock Guan and Associates. Manickam paid their fees and so it was not to be expected that they would be disputing the valuation of their client. I should have thought that it was the defendant's duty, knowing that these valuers were employed by Manickam, to have sought independent advice and valuation elsewhere if he was going to do his duty faithfully.

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Thirdly, the defendant was cross-examined on his letter dated November 12, 1964 to the State Planning Officer, Penang, which reads -

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"Lot No.114, Pts. 1 & 2, Mukim N.E.D.  
13 Sungai Dua - acres - 62.0258

The Federation of Malaya Government Officers' Co-operative Housing Society Ltd. has negotiated for the purchase of the above land and before the Board could take a final decision, I should be grateful if you could let me know whether the land concerned is suitable for development for housing for Government officers and your opinion about the locality.

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An early reply in respect of this will be appreciated.

Sgd: T. Mahesan."

The date on it was November 12, 1964. It was written before any instruction could have been given by the Chairman and the words "has negotiated for the purchase" have been explained by the defendant. He said, "The words 'has negotiated' should be read 'is negotiating'. The Chairman has asked me to make preliminary investigation." In my view, whether or not there was a slip of the pen in the statement "has negotiated", the intention to use the words 'is negotiating' was still wrong. The board never knew about this land till November 27. The Chairman was never cross-examined about any instruction he was alleged to have given to write this particular letter or to do anything at all before the Board meeting on November 27.

In the High Court in Malaya at Kuala Lumpur

—  
No. 8

Judgment of Abdul Hamid J

5th June 1972  
(continued)

Fourthly, the underlined caption of this letter of November 12, 1964 stated the exact acreage of the land as 62.0258 acres. Reference to Manickam's letter of November 6, 1964 which must have been the only source of information that was then available, expressly stated 59 acres. Without searching the Land Register in Penang, the defendant, who was in Kuala Lumpur, could not have known the exact acreage of this land. Furthermore, at the board meeting held on December 23, 1964, the defendant again revealed the exact area of the land. I am therefore compelled by this evidence to conclude that the defendant could only have discovered the actual acreage from the sale agreement of Manickam. He must have seen this agreement, then he must also have been aware of the price paid by Manickam. Having considered the whole of the evidence for the plaintiffs as well as the defendant's explanation, I have no doubt whatsoever in my mind, that the defendant's allegation that he was at all relevant times unaware of the purchase price paid by Manickam was untrue.

To put it in a nut shell, I would say that having regard to all the material evidence before me, I am satisfied that the plaintiffs have firmly established that the defendant was engaged in the Penang land deal right from the very beginning. He knew that Penang had the heaviest list of government officers waiting for houses and in view of the unavailability of State land, the Society had no choice but to purchase private land. An opportunity presented itself when the Sungei Dua land was offered for sale. His visit to Penang in the company of Manickam was clearly for the sole

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 8

Judgment of  
Abdul Hamid J  
5th June 1972  
(continued)

purpose of inspecting the land to assess its suitability for housing development. If it was suitable, Manickam was to purchase the land with a view to selling it to the Society. As secretary and director of the Society, the defendant, was, unmistakably the right person to expedite the purchase by the Society. That accounted for the fact that on the very day the conveyance was effected, Manickam forthwith sent the offer to the defendant. From then on, the defendant was solely responsible for expediting the purchase. That explains the manner in which the whole transaction was conducted, Speed evidently was the essence of the defendant's whole operation. Determined not to allow any form of obstacle that might defeat his objective, the defendant had gone so far as to misrepresent to the board at its meeting held on December 23, 1964 that all the members had agreed to the purchase, whilst clearly, the defendant was fully aware of the fact that Mr. Teh Yok See had specifically suggested that the Chairman be empowered to start direct negotiation with the owners regarding price and conditions of sale.

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I shall now state briefly why I hold that the \$82,000/- and \$40,000/- which were paid into the defendant's account at the Indian Overseas Bank were received by the defendant for himself. In determining this question I shall have to evaluate the evidence in the light of my findings of fact. I have already set out my reasons for finding that the defendant was fully aware of the purchase price paid by Manickam when the land was offered for sale to the Society. On such finding, the irresistible conclusion is that the \$122,000/- was a payment for services rendered by the defendant to Manickam. However, it is the defendant's case that the two payments were moneys which belonged to Dr. Saw. Dr. Saw, he said was operating on his account at the Indian Overseas Bank and he was only a nominee of Dr. Saw. It was not in dispute that Manickam did in fact pay the \$82,000/- on May 13, 1965 and the \$40,000/- on June 29, 1965 into the account standing in the defendant's name. The burden, therefore, is on the defence to show that the moneys were Dr. Saw's.

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That brings me to Dr. Saw's evidence. He explained that the two sums were payments by Manickam to him and not to the defendant. If that



was true, why was it necessary that on both occasions Manickam should pay in cash into the defendant's account? A payment by cheque would have been simple and straightforward in the manner that commercial dealings are transacted when there was nothing shady to hide. It is established that in the first place, Manickam issued a cheque for \$82,000/- and after it was cashed, the same sum in cash was then paid into the defendant's account. Manickam could easily have issued a crossed cheque in favour of Dr. Saw if he was in fact paying a loan he had taken from Dr. Saw. It was also useful to Manickam as proof of payment. A crossed cheque is payable by the payee into his account at any bank. Similarly, in respect of the \$40,000/- Manickam elected to follow the same devious method of payment, although Dr. Saw never gave any instruction to Manickam to make payment in this extraordinary manner. At this stage, I might add that Manickam's evidence is, in my judgment, totally unworthy of credit. He had slipped quietly out of this country when investigations were made into the financial affairs of the defendant and he must have realised that if the defendant was to be prosecuted for corruption, he himself, as giver of the bribe, would also be charged for abetment. The fact remains that he never dared to return to this country. In India today, he can tell as many lies as he wants to with complete safety. I therefore reject his evidence altogether.

Dr. Saw, as a witness, is, in my opinion, wholly unworthy of belief. A man of great wealth engaged in a great variety of enterprises, must certainly have kept books of account. I cannot believe that he lent moneys to Manickam without keeping books of account - I.O.U.s. or other evidence in writing. I cannot believe that Manickam, against his own interest, paid two sums in such a way that if Dr. Saw were to deny repayment of any part of the \$122,000/-, he would be faced with the greatest difficulty of proving repayment. Had he paid by crossed cheque, he would not need even a written receipt from Dr. Saw.

Both the defendant and his wife claimed that they operated a number of nominee accounts in various banks, here and abroad, and Dr. Saw confirmed this to be a fact. In my viewpoint, this is wholly incredible. Over a million dollars at some time or other were lying in the bank of which

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 8

Judgment of  
Abdul Hamid J  
5th June 1972  
(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 8

Judgment of  
Abdul Hamid J  
5th June 1972  
(continued)

the defendant and his wife were the ostensible owners. If Dr. Saw were to die suddenly of heart failure or of a road accident, his widow and children would have had no claim to this money. Therefore ordinary common sense requires that there should have been some incontestable proof, in writing, as to the ownership of such huge sums of money, for the protection of Dr. Saw's family in case of accidents. Assuming, for instance, that the defendant should die suddenly, what proof would Dr. Saw have against Mrs. Mahesan if she were to claim that all the moneys in her husband's name belonged to her beneficially? Dr. Saw was unable to produce a scrap of paper signed by the defendant or by the defendant's wife acknowledging that the moneys in the so-called nominee accounts were Dr. Saw's. Such documents should have been executed when each nominee account was opened. I cannot believe that Dr. Saw, as a businessman of such ability as to make fortune in millions, failed to take elementary precautions against death of himself or of the defendant by accident which will leave his beneficiaries without any evidence of his title to the moneys lying in other people's account. In my judgment, the defendant as well as Manickam and Dr. Saw had lied regarding their financial transactions. Having arrived at this conclusion, I have no hesitation in giving judgment for the Plaintiffs for the sum of \$122,000/- as claimed with interest on \$82,000/- from May 13, 1965 and on \$40,000/- from June 29, 1965 at 5½% per annum and costs, taking all the evidence into consideration. I am rather inclined to believe that the defendant's half share of the nett profits of the transaction must have been not less than \$200,000/-, but as the Society claims only \$122,000/- and it has been unable to adduce evidence of further or other payments, I am unable to quantify or assess the amount of secret profit actually received by the defendant so as to increase my award.

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Sgd: (DATO ABDUL HAMID)  
JUDGE,  
HIGH COURT, MALAYA

Kuala Lumpur,  
5th day of June, 1972

Raja Abdul Aziz bin Raja Addruse of Messrs. Rithauddeen and Aziz, Kuala Lumpur, for Plaintiffs.

Mr. Lim Kean Chye of Messrs. Lim Cheng Ean & Co., Penang, and Mr. Sothinathan K. of Messrs. Sothi and Ang, Kuala Lumpur, for Defendant.

In the High Court in Malaya at Kuala Lumpur

No. 8

Judgment of Abdul Hamid J 5th June 1972 (continued)

No. 9

Order

No. 9

Order

5th June 1972

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 1569 of 1969

10 Between:

The Malaysia Government Officers' Co-operative Housing Society Ltd. Plaintiffs

And

T. Maheson s/o Thambiah Defendant

BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID

IN OPEN COURT

THIS 5th DAY OF JUNE 1972

20 This action having on the 27th, 28th, 29th, 30th and 31st day of March 1972 and the 10th, 11th and 12th day of April, 1972 been tried before the Honourable Mr. Justice Abdul Hamid AND UPON HEARING Raja Abdul Aziz with Enche Ariff Wan Hamzah of Counsel for the Plaintiff and Mr. Lim Kean Chye with Mr. K. Sothinathan of Counsel for the Defendant IT WAS ORDERED that this suit do stand adjourned for judgment AND the same coming up for judgment this day IT IS ORDERED that the Plaintiff recover against the Defendant the sum of \$82,000/- with interest thereon at the rate of 5 $\frac{1}{2}$ % per annum calculated from the 13th day of May 1965 and the sum of \$40,000/- with interest at the rate aforesaid from the 29th day of June 1965 and costs on the claim to be taxed AND IT IS ALSO ORDERED that the claim of the Plaintiff for \$488,000/- for

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In the High Court in Malaya at Kuala Lumpur

No. 9

Order

5th June 1972 (continued)

In the Federal Court of Malaysia at Kuala Lumpur

No.10

Notice of Appeal by the Appellant

30th June 1972

compensation for loss with interest thereon be and is hereby dismissed.

GIVEN under my hand and seal of the Court this 5th day of June 1972.

Sd. Illegible

Senior Assistant Registrar, High Court, Kuala Lumpur.

This Order is filed by Messrs. Rithauddeen & Aziz, Solicitors for the Plaintiff and whose address for service is 1st Floor, Bank of Canton Building, Leboh Pudu, Kuala Lumpur.

10

No.10

Notice of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

CIVIL APPEAL NO. 70 of 1972

Between

T. Mahesan s/o Thambiah

Appellant

And

The Malaysia Government Officers' Co-operative Housing Society Ltd.

Respondent

20

(In the Matter of Civil Suit No.1569 of 1969 in the High Court in Malaya at Kuala Lumpur

Between

The Malaysia Government Officers' Co-operative Housing Society Ltd.

Plaintiffs

And

T. Mahesan s/o Thambiah

Defendant)

TAKE NOTICE that the abovenamed Defendant being dissatisfied with the decision of the Honourable Mr. Justice Abdul Hamid given at the

30

High Court, Kuala Lumpur on the 5th day of June, 1972 appeals to the Federal Court against such part only of the said decision as decides:-

In the Federal Court of Malaysia at Kuala Lumpur

Judgment for the Plaintiffs for:-

No.10

- (i) The sum of \$122,000/- as claimed; with
- (ii) Interest on \$82,000/- as from 13th May 1965 and on \$40,000/- as from 29th June, 1965 at 5½% per annum; and
- (iii) Costs.

Notice of Appeal by the Appellant  
30th June 1972  
(continued)

10 Dated this 30th day of June 1972.

Sd: T. Mahesan s/o Thambiah  
The Appellant.

To:-

The Registrar,  
The Federal Court,  
Malaysia,  
Kuala Lumpur.

and to:-

20 The Registrar,  
The High Court in Malaya  
at Kuala Lumpur.

and to:-

Messrs. Ritnsuddeen & Aziz,  
Advocates & Solicitors,  
1st Floor, Bank of Canton Building,  
Leboh Pudu,  
Kuala Lumpur.  
(Solicitors for the Plaintiffs).

30 The address for service of the Appellant is  
c/o Taiping Prison, Taiping, Perak.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.11

Notice of  
Cross Appeal  
by the  
Respondent

19th July  
1972

NO.11

Notice of Cross Appeal

IN THE FEDERAL COURT OF MALAYSIA  
CIVIL APPEAL NO. 70 OF 1972

Between

T. Mahesan s/o Thambiah

Appellant

And

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Respondents

(In the Matter of Civil Suit No.1569 of  
1969 in the High Court in Malaya at Kuala  
Lumpur

10

Between

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Plaintiff

And

T. Maheson s/o Thambiah

Defendant)

Take Notice that, on the hearing of the above  
appeal, the Malaysia Government Officers' Co-  
operative Housing Society Ltd., the Respondent  
abovenamed, will contend that the decision of the  
Honourable Mr. Justice Abdul Hamid given at the  
High Court, Kuala Lumpur on the 5th day of June,  
1972 ought to be varied to the extent and on the  
grounds hereinafter set out:-

20

That the claim of the Respondent for damages  
amounting to \$488,000/- which was dismissed by the  
learned Judge, be allowed on the following grounds:-

30

- (a) The learned Judge erred in holding that there was no evidence that the Respondent had suffered loss as a result of the transaction.
- (b) The learned Judge erred in considering that the fact that the Respondent still owns the land and the price has risen during the past ten years was in any way relevant.

- (c) The learned Judge ought to have held that the evidence as to the various prices paid for the land together with the evidence of the deceit and scheming by Manickam and the Appellant showed that the Respondent was led to pay much more than the market value of the land.
- (d) The learned Judge erred in failing to consider that the Appellant was a director and the secretary of the Respondent, that he was acting as its agent and in a fiduciary capacity and that he was a constructive trustee and was therefore liable to pay to the Respondent all profits made or deemed to have been made by him or by the person with whom he was in complicity or both or all loss suffered or deemed to be suffered by the Respondent in the purchase of the land.

Dated this 19th day of July 1972.

Sd: Rithauddeen & Aziz  
Solicitors for the Respondent.

To:-

T. Mahesan s/o Thambiah,  
c/o Taiping Prison,  
Taiping, Perak.

The Registrar,  
The Federal Court, Malaysia,  
Kuala Lumpur.

The Senior Assistant Registrar,  
High Court, Kuala Lumpur.

This Notice of Cross-Appeal is filed on behalf of the Respondent/Plaintiff by Messrs. Rithauddeen & Aziz, whose address for service is 1st Floor, Bank of Canton Building, Leboh Pudu, Kuala Lumpur.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.11

Notice of  
Cross Appeal  
by the  
Respondent

19th July  
1972  
(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.12

Memorandum  
of Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972

No. 12

Memorandum of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.70 of 1972

Between

T. Mahesan s/o Thambiah

Appellant

And

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Respondent

10

(In the Matter of Civil Suit No.1569 of 1969  
in the High Court in Malaya at Kuala Lumpur

Between

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Plaintiffs

And

T. Mahesan s/o Thambiah

Defendant)

T. Mahesan s/o Thambiah, the Appellant above-  
named appeals to the Federal Court against part of  
the decision of the Honourable Mr. Justice Abdul  
Hamid given at Kuala Lumpur on the 5th day of June,  
1972 on the following grounds:-

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1. The learned judge erred in deciding the  
issues in respect of the claim for \$122,000.00 on  
a balance of probability. He should have required  
and applied a higher standard of proof as the  
Respondent was alleging that the alleged sum of  
\$122,000.00 was paid and received by way of a  
corrupt act.

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2. Even applying the balance of probability test,  
on the evidence adduced the learned judge should  
have found for the Appellant.

3. The learned judge erred in rejecting the  
evidence of the witness Manickam summarily.



4. Particularly as he had erroneously rejected the evidence of Manickam his whole approach towards and in evaluating the rest of the evidence adduced in the case became faulty.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

5. The learned judge if he had not in a cavalier manner rejected Manickam's evidence would have tested Manickam's evidence against the evidence of PW4 Rengasamy Pillai s/o Megappa Chettiar, against the evidence of Dr. Saw Hock Chuan and against the  
10 evidence of the Appellant, and would have come to the conclusion that Rengasamy was not as worthy of credit as he in fact found him.

No.12

Memorandum of  
Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972  
(continued)

6. The learned judge further failed to give any or any due consideration to the unsatisfactory nature of Rengasamy's evidence in the context of credit worthiness.

7. The learned judge erred in not or in not properly testing the evidence of Rengasamy against the other evidence available and had he done so,  
20 he would have come to the irresistible conclusion that Rengasamy was a witness with a purpose to serve and as such his evidence would have to be scrutinised even more carefully than is usual and that on such a scrutiny he would have had to conclude that Rengasamy's evidence was not to be relied upon.

8. The learned judge misdirected himself by picking out what was an obvious mix-up in dates by the Appellant and using that as the only test to  
30 decide whether Rengasamy was a reliable witness or not.

9. The learned judge erred in completely ignoring the deposition (P7) of Periasamy and the statement taken by Mr. Shankar from Periasamy (Pg.501 of DB). Had he given any or any due consideration to these documents he would had to conclude that both Periasamy and Rengasamy were not to be relied on as witnesses of truth.

10. The learned judge erred in finding as he did that the Appellant was engaged in the Penang land deal from its inception and that only if he found it to be suitable for sale to the Society was  
40 Manickam to purchase the land and that it was purchased for the sole reason of reselling it to the Society.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.12

Memorandum  
of Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972  
(continued)

11. The learned judge failed to consider or if he did failed to give any or due weight to the evidence of the fact that the land was viewed by a Chinese before the Appellant visited the land, that attempts were made to sell the land to or through one H.M.S. Ali and one Dato Zainal Abidin.

12. The learned judge misdirected himself in giving undue weight to what can best be described as a grammatical error in the Appellant using the words "has negotiated" in his letter of November 12, 1964 to the State Planning Officer, Penang.

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13. The learned judge misdirected himself and erred in drawing the inferences that he did in respect of the area of the land at Penang being stated to be 62.0258 acres in the letter of November 12, 1964. The learned judge failed to appreciate that in fact the correct area was not 62.0258 or 59 acres but 62.1562 acres and that the acreage of any land in Malaysia could be obtained at Kuala Lumpur from any number of sources.

20

The Appellant was prejudiced in respect of this aspect of the matter in that he was never questioned about the acreage and therefore was not given the opportunity of giving any explanation he might have had as to how he used the figure 62.0258.

14. The learned judge erred in finding that the Appellant had misrepresented to the Board at its meeting on December 23, 1964 that all members had agreed to the purchase.

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15. The learned judge erred in holding that once he had made a finding that the Appellant was fully aware of the purchase price paid by Manickam, the irresistible conclusion is that the \$122,000.00 was for services rendered by the Appellant to Manickam.

16. The learned judge failed to see that the payments in of the \$82,000.00 and \$40,000.00 was not related in time to any of the steps taken in relation to the purchase of the land.

40

17. He failed to see that the modus operandi of payments made into the account was in no way different from other payments made into the same account.

18. He failed to see that neither was there any evidence nor suggestion by the Respondent to show that the payments of the \$82,000.00 and \$40,000.00 was to be treated in any way different from other payments made so as to even suggest that they were related to the sale of the Penang Land.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.12

10 19. The learned judge should have held even without considering the evidence of the Appellant, Dr. Saw, Manickam and Chari and the documentary evidence of the findings of the Income Tax Department and of Lister that the Respondent had failed to prove their contention that the \$82,000.00 and \$40,000.00 were secret commissions received from Manickam in respect of the sale of the Penang land.

Memorandum  
of Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972  
(continued)

20. The learned judge erred in rejecting Dr. Saw's evidence as the evidence of a witness "Wholly unworthy of belief".

20 21. The learned judge erred in evaluating the evidence of the payments in into the Appellant's account at the Bank by narrowing his evaluation to the two items and ignoring all the other payments that were made.

22. The learned judge without justification completely ignored the evidence of Manickam, Dr. Saw, Chari, Mr. S.Y. Chan and the Bank officers as well as the only explanation that was given in the case as to what all the money transactions were about.

30 23. Having conceded that over a million dollars at some time or the other were lying in the Bank in the names of either the Appellant or his wife and it being patent that the money could not possibly be that of the Appellant or his wife and it being patent that there was proof beyond a reasonable doubt that Dr. Saw Hock Chuan was involved with the operation of the accounts, the learned judge erred in ignoring the only conclusion that could be arrived at as to the ownership of the moneys, that is that they were Dr. Saw's.

40 24. The learned judge erred in concluding that because Dr. Saw and Manickam lied about their financial transactions it follows that the \$82,000.00 and \$40,000.00 was a secret commission for the Appellant.

25. The learned judge erred in drawing the inference that because the Appellant failed to obtain

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.12

Memorandum  
of Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972  
(continued)

a binding extension of the option to purchase the land he must have had a secret understanding with Manickam that the land was to be sold only to the Society. He further failed to consider that this was not part of the Respondent's case against the Appellant and that the Appellant was never cross-examined on this.

26. The learned judge erred in assuming that the Minutes of the Meeting of the Board on November 27, 1964 represented everything that was said at the meeting. The learned judge should have invoked a presumption in favour of the Appellant under Section 114(g) of the Evidence Ordinance in the Respondent not calling members of its Board who were at the meeting. 10

27. The learned judge erred in completely overlooking the fact that the Chairman of the Society, Tan Sri Abdul Jamil bin Abdul Rais had been told by the Appellant that the Penang land was not suitable. 20

28. The learned Judge erred by failing to understand that respectable land valuers and architects are expected to and normally give objective valuation reports. He failed to appreciate that the question of who paid the valuer's or architect's fees for the valuation was not relevant. He failed to appreciate that in the instant case the client of the valuer and of the architect in fact was the Society. These misdirections led the learned judge to make adverse inferences in respect of the Appellant which inferences are untenable. 30

29. The learned judge failed to consider that the evidence adduced clearly showed that the Society's Board was not concerned with the price that the Vendor had purchased the property. What was relevant was the market price of the land at the time of the purchase by the Society and that the only manner in which this could be determined was to seek the opinion of experienced valuers and or architects. 40

30. The learned judge misdirected himself by concluding from the Minutes that the Appellant had been doing his best to persuade the Board to accept Manickam's offer.

31. The learned judge further erred in his approach to the case of the defence in that having arrived

at adverse findings against the Appellant without reference to the defence he thereafter proceeded to evaluate the case for the defence in the light of his aforesaid findings of fact which had already led him to the irresistible conclusion that the \$122,000/- was in fact a secret commission. This approach by the learned judge occasioned a failure of justice.

10 32. The learned judge misdirected himself by holding as he did that the burden of proving that the deposits of \$82,000/- and \$40,000/- were not secret commissions was on the Appellant.

33. The learned judge without justification rejecting evidence as being false and further completely overlooking a whole body of relevant evidence occasioned a failure of justice.

20 34. The findings of the learned judge and the orders made in the case in respect of the \$122,000/- are contrary to law and against the weight of evidence adduced in the case.

35. In any event assuming that the findings of the learned judge are tenable he should have made a further finding that of the \$122,000.00 paid, the sum of \$60,000/- was a repayment of money advanced to Manickam and accordingly was not part of the secret commission.

30 36. In any event the learned judge erred in ordering the costs of the action to be paid by the Appellant in that he failed to give due consideration to the fact that the Plaintiff failed in respect of a substantial part of its claim.

Dated this 14th day of September 1972.

Sd: Ng Ek Teong & Partners

Solicitors for the Appellant  
abovenamed.

To,

The Chief Registrar,  
Federal Court,  
Malaysia,  
Kuala Lumpur.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.12

Memorandum of  
Appeal by  
Solicitors  
for the  
Appellant  
14th  
September  
1972  
(continued)

In the Federal Court of Malaysia at Kuala Lumpur

No.12

Memorandum of Appeal by Solicitors for the Appellant  
14th September 1972  
(continued)

and to

The Respondent abovenamed and/or its Solicitors, Messrs. Rithauddeen & Aziz, Bank of Canton Building, Leboh Pudu, Kuala Lumpur.

This Memorandum of Appeal is filed by Messrs. Ng Ek Teong & Partners of 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Klyne, Kuala Lumpur, Solicitors for the Appellant abovenamed.

10

No.13

Judgment of Syed Othman J  
28th February 1974

No. 13

Judgment of Syed Othman J

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.70 OF 1972

Between

T. Mahesan s/o Thambiah Appellant

And

The Malaysia Government Officers' Co-operative Housing Society Ltd. Respondent 20

The Appellant was a director and secretary of the Respondent Society (the Society). The allegations against him were that he knowing that the vendor, one Manickam, had purchase 59 acres of land in Penang for \$456,000 failed to disclose to the Society the transaction; that as a result, the Society purchased the land in February, 1965 for \$944,000; and that he after the purchase of the land without the knowledge and consent of the Society received for himself from Manickam a commission totalling \$122,000 made up of 2 payments; \$82,000 on 13th May, 1965 and \$40,000 on 29th June, 1965. The Society claimed loss or damage i.e. \$488,000 excess payment for the purchase of the land and \$122,000 the secret commission.

30

The Appellant in his defence denied knowledge that the land had been purchased for only \$456,000 or that he had received for himself a commission of \$122,000.

The learned trial judge, after a trial lasting 8 days, gave judgment on the claim for secret commission but dismissed the claim for compensation of \$488,000.

10 The Appellant appeals against the judgment on the secret commission and the Society cross-appeals against the dismissal of the claim for compensation.

I think it is necessary to set out in some details the two versions of the story in order to follow my grounds in the appeal and the cross-appeal.

20 The case of the society at the trial may be put briefly as follows: In 1964, a co-owner of the land gave one Rengasamy an option for sale of the land at \$8,000 per acre. The total area of the land was 62 acres 0 rood 25 poles. In May, 1964 one Periasamy, since deceased, who was known to Rengasamy came to see him in Penang. He telephoned Manickam in Kuala Lumpur. Rengasamy also spoke to Manickam on the telephone and told Manickam that he had an option for \$8,000 per acre but would not sell the land for less than \$10,000. Periasamy returned to Kuala Lumpur on the same night. Manickam telephoned Rengasamy and told him that he would buy the land and that a Chinese would see the land and if he was satisfied another person would buy the land. A few days later the Chinese came to Penang with Periasamy and inspected the land for about one hour. That night Manickam spoke to Rengasamy on the telephone and told him that he and the Appellant would come to Penang from Kuala Lumpur to inspect the land. He informed Rengasamy that the Appellant was from the Prime Minister's Department and an important person. 4 or 5 days later Manickam and the Appellant came to Penang. 30 Rengasamy met them at the airport. From there they went to the land which was on the way to the town and inspected the land for about half an hour. There was some discussion about the price of the land. Rengasamy asked for \$10,000 per acre. Manickam offered \$9,000. The Appellant then put it at \$9,500 per acre. This became the agreed purchase price. Rengasamy wanted an advance of 40

In the Federal Court of Malaysia at Kuala Lumpur

No.13

Judgment of Syed Othman J

28th February 1974

(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J

28th February  
1974  
(continued)

RM10,000. On the Appellant's instruction, Manickam issued a cheque for RM2,000.

After the visit, Periasamy, the nominee of Manickam, on 29th June, 1964 entered into an agreement with the co-owners of the land for the purchase of the land at the agreed price of RM472,000 (Pages 403-4 appeal record).

On 6th November, 1964 the owners of the land conveyed the land to Manickam for RM456,000. Out of the agreed price RM16,000 was deducted in respect of 3½ acres which were used as a grave yard. On the same day, Manickam wrote a letter to the Chairman, Board of Directors of the Society, offering the land at RM16,000 per acre (see page 412 appeal record). On 12th November, 1964 (pg.413) the Appellant wrote to the State Planning Officer, Penang stating that the Society "has negotiated" for the purchase of the land and enquired whether the land was suitable for development of housing for local government officers. The heading of the letter gives the area of the land as 62.0258 acres. On 27th November, 1964 the Board of Directors held a meeting. One of the matters discussed was this offer. According to the minutes (pages 408-9 appeal record), the Appellant reported the offer, that he had written to the State Planning Officer, Penang, and that as there was no reply to the letter he had spoken to the officer on the telephone and the officer had told him that the land was suitable for bungalow type of houses. The minutes also read the Appellant as reporting in effect that the situation in Penang was such that the Society could not get land from the Government; it had to purchase private land which was very expensive; land could only be obtained at 9th and 10th mile, where there was no water and electricity supply; and the Society had no choice (but to accept the offer). After the Chairman had read the letter it was agreed to purchase the land, provided that the reports from the State Planning Officer, an architect and an independent valuer were not adverse. The conveyance of the land to Manickam was registered on 16th December, 1964. On 23rd December, 1964 the board held another meeting, at which the Appellant reported that all the directors had agreed in writing to the purchase of the land. As to payments, he explained that the Society had to make the first two payments and the balance would have to come from either the Indian Overseas Bank or



other co-operative societies. The Society then purchased the land. Payment was by five instalments: the first on 15th January, 1965 and the last on 3rd May, 1965 for \$122,000. On 13th May, 1965 Manickam issued a cash cheque drawn on the Indian Overseas Bank for \$82,000 which was cashed and the cash credited on the same day by one D. Sockalingam, Manickam's clerk, to the Appellant's account in the same bank (see pages 425 and 426 appeal record). Then on 29th June, 1965 Manickam issued another cash cheque for \$40,000 drawn on the same bank. It was cashed and the cash credited the same day into the Appellant's account in the same bank.

In the Federal Court of Malaysia at Kuala Lumpur

—  
No.13

Judgment of Syed Othman J

28th February 1974  
(continued)

The Appellant's version may be put briefly as follows. The Society could not raise funds. The United Asia Investment Company, of which Dr. Saw was a director, was appointed agent, developer and financier of the Society. The Appellant learnt about the Penang land in 1964 when Periasamy came to his house with Manickam. He told Manickam he had to look at the land to determine its suitability before he could bring it up to the board. He went to Penang and with Manickam and Rengasamy, he saw the land for about 5 to 10 minutes. Immediately he formed the impression that the land was not suitable as it was "full of squatters and the approach road was narrow". He did not bargain about the price. He came back by train with Manickam. In the train he told Manickam that he was not interested in the land. At the meeting of the board for the purchase of the land, he told the board that he had seen the land and he was not satisfied with the land because of the squatters; that Manickam had at first made an offer of 50 cents per square foot when he had come to the Appellant's house and that the offer was for \$16,000 per acre and the board should consider it seriously. The Appellant did not dispute having received the \$122,000 from Manickam but claimed that they were "returns of sums" borrowed by Manickam from Dr. Saw who had been using the Appellant's current account. Dr. Saw was his childhood friend and had been using not only his current account but also his wife's, to use his own words, "for passing his money through deposit and withdrawal". Dr. Saw gave no reason as to why he wanted to use his wife's account. Dr. Saw was interested in setting up a milk factory in India and was sending money abroad through the Appellant's account. The Appellant had two bank accounts in Kuala Lumpur, one with Hongkong and Shanghai Bank

In the  
Federal Court  
of Malaysia  
at Kuala  
Lumpur

No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

and other with Indian Overseas Bank. He had 3 deposit accounts abroad. I do not think there is need to go any further.

APPEAL

There are 36 grounds of appeal. Most of them deal with questions of facts and they do not appear to me to merit consideration. I do not propose to go through everyone of them.

The only question to be determined in this appeal is whether the \$122,000 paid by Manickam into Appellant's bank account was a secret commission from Manickam to Appellant (as claimed by the Society and as found by the learned trial judge) or a payment by Manickam to Dr. Saw (as claimed by Appellant.)

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Encik George for the Appellant addressed us for over four days, but his arguments may fairly be summarised as follows. The Appellant's wife had \$1000,000 Malaysian on fixed deposit with Hongkong branch of the Indian Overseas Bank, but this money belonged not to her but to Dr. Saw. The Appellant's wife had an account with the Kuala Lumpur branch of the same bank, but this account was used not by her but by Dr. Saw, who overdrew on it on the security of the money on fixed deposit in Hongkong. Eventually this amount in Hongkong was repaid to Dr. Saw in full, as was shown by a document from the bank. As to the Appellant's account with the Kuala Lumpur branch of the same bank, large amounts passed in and out of that account, but it is said that that account too was operated by Dr. Saw and that the Appellant was only a nominee; by way of proof some cheques were shown to have been either drawn by Dr. Saw or made payable to Dr. Saw.

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Over one million dollars was remitted to India to the Appellant's account. The money was later remitted to London and then from London finally remitted to Dr. Saw. It is said that this money too belonged not to the Appellant but to Dr. Saw, and by way of proof a document from a bank was produced.

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Evidence was produced by the Appellant that there had been dealings between Manickam and Dr. Saw. It is said that on that evidence the court could

and should have found that Manickam was owing money to Dr. Saw, and that therefore it was more probable than not that the \$122,000, which found its way into Appellant's account and which admittedly originated from Manickam, was not for the benefit of Appellant but was in payment by Manickam of part of the money owed by him to Dr. Saw.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J

28th February  
1974

(continued)

10 But throughout Encik George quite frankly admitted that there were no contemporaneous written documents evidencing the financial arrangements either between the Appellant's wife and Dr. Saw or between the Appellant and Dr. Saw; and that such documents as existed and were produced came into being after the alleged events and after the Income Tax Department had become suspicious and started investigation on discovering that large amounts had been passing through the bank accounts of the Appellant, a mere civil servant on an annual salary of \$23,000. Mr. Chari, an accountant employed by 20 the Appellant to look after his income tax affairs, also admitted in evidence that there were no contemporaneous documents to support the Appellant's and his witnesses' contention.

Thus in the words of Lord Diplock when giving the advice of the Privy Council at page 50 in Tan Chow See v. Ratna Ammal (1969) 2 MLJ 49

30 "... this was a classic example of a case in which the decision depends entirely upon which parts of the conflicting testimony of the witnesses who gave oral evidence before the learned trial judge, at the trial, were to be believed."

His Lordship then continued at page 51:

"... this case turned entirely upon the rival credibility of the defendant /and one witness/ on the one hand and the Plaintiff on the other. There was, as is to be expected in so devious a transaction, very little documentary evidence to support the story of one side or another..."

40 I agree with the learned trial judge that it is wholly incredible to accept that the Appellant and his wife could be operating nominal accounts for Dr. Saw involving a sum of over a million dollars at some time or other without any contemporaneous document to safeguard the interest of Dr. Saw

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

in the event of sudden demise of the Appellant or his wife or Dr. Saw.

To the observations of the learned trial judge on this point, I would add that if the money had in fact belonged to Dr. Saw, I should have thought that when the Board of Directors was considering the purchase of the land at the meeting on 23rd December, 1964, the Appellant would have mentioned that Dr. Saw or the United Asia Investment Company, of which Dr. Saw was a director, would have been in a position to meet the balance after the two first payments towards the purchase price, as on the Appellant's own evidence, the company was the developer and financier of the Society. But instead according to the minutes, he "explained" that the balance would have to come from the Indian Overseas Bank or other co-operative societies. Since the Appellant did not mention that the financier of the Society was in a position to meet the balance in circumstances which he should have, the only inference to be drawn is that the money was in fact the Appellant's. The fact that the Appellant had money is supported by his own evidence. He said that he had bought Diana Estate, 40 acres, in 1962 for \$6,000 per acre with his own money and in 1963 or 1964 he sold this land to the Society, according to him, at no profit.

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I would not also believe that there could be any childhood friendship between Dr. Saw and the Appellant. The correspondence between them do not bear this out. They are couched in formalities not showing this friendship, e.g. in page 598 of the appeal record Dr. Saw addressed the Appellant as "Dear Sir", and in pages 601 and 603 Dr. Saw addressed him as "Dear Mr. Mahusan". It will be observed all these letters were written after the event. To my mind they were made up for the purpose of income tax.

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In grounds 10, 11 and 12 it is in effect urged that the learned trial judge erred in finding that the appellant was engaged in the land deal from its inception and that Manickam was to purchase it if the Appellant found it suitable to the Society having regard to the fact that the land had been viewed by a Chinese and there had been attempts to sell the land to 2 other persons. There is nothing to show that

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any of these persons was a bona fide land developer and was in a position to have purchased the land for his own purpose. As to the Chinese, on the evidence of Rengasamy, he was brought into the picture by Manickam; as far as Rengasamy knew, he would only buy the land if another person was satisfied with the land. He was clearly in the same class of persons as Rengasamy or Manickam, i.e. a land speculator. It will be observed that immediately after he left Penang, Manickam telephoned Rengasamy and told him that the Appellant would visit the land. The two other persons were not called to give evidence. It will also be observed that these three persons came in after Manickam, who had connection with Dr. Saw, who in turn had connection with the Appellant, showed an interest in the land. I would therefore be inclined to believe that these attempts were either an eye-wash or put up to make the land look "hot" (to use a local expression), so that the Society would buy it without further investigation or bargaining. Then the evidence shows that Periasamy, the nominee of Manickam, entered into an agreement with the owners for the purchase of land only after the Appellant's visit to the land; and that the conveyance was executed on 6th November, 1964 and on that very day Manickam wrote to the Society making the offer of sale. Then on 12th November, 1964 the Appellant wrote to the State Planning Officer, Penang saying that the Society "has negotiated" for the purchase of the land. It is argued that the expression is a grammatical error and was intended to read "is negotiating" as the Appellant explained during the trial. Even so, as observed by the learned trial judge, the Society did not negotiate at all. To my mind the use of the word "negotiated" by the Appellant is indicative of the fact that it was the Appellant who had negotiated with Rengasamy for the purchase of the land and shows an underlying anxiety of the Appellant that the Society should purchase the land. The fact that he was anxious is supported by his own evidence that Manickam had come to his house and offered to sell the land at 50 cents per square foot. This works out to \$21,780 per acre (43,560 square foot). By this very evidence the suggestion given to the Board was that the offer of \$16,000 per acre made by Manickam in writing was cheap. It is also clear from the minutes that the Appellant was impressing on the board that as far as Penang was concerned it had no choice but to accept the offer. This

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No. 13

Judgment of  
Syed Othman J

28th February  
1974

(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

evidence contradicts his own story that he had told Manickam in the train after visiting the land that he was not interested in the land because it was unsuitable. The claim that he was not interested in the land cannot be the truth is further supported by the fact that Manickam paid the deposit of \$2,000 on his visit to the land with Manickam, and that when Manickam wrote to the Society making the offer, he stated that the area of the land was 59 acres, but when the Appellant wrote to State Planning Officer on the 12th November, he gave the area of the land as 62.0258 acres, which is about correct. By this it is shown that he knew all the details about the land and the impression he wanted to give to the Society and everyone concerned was that the usable part of the land was larger than what it actually was.

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At this stage, I think it is necessary to go into one point which has been raised and that is the valuation by Goh Hock Guan and Associates (page 355 appeal record) and by Norman Lehey (page 348). Both gave the value of the land as about the same as the price offered by Manickam to the Society. They were not called to give evidence to show as to how this could be so. I would discount the valuation by Goh Hock Guan and Associates as they were only chartered architects and town planners. As to Norman Lehey, although he was also a licensed valuer, I would still discount his valuation as it does not show the basis on which he came to his valuation. He did not collate transactions of lands in the surrounding area and did not even mention the recent transaction concerning the very land he valued. The Appellant adduced no evidence to show that land in Penang in the area had jumped up in value to more than double within the few months. The strong impression I have is that it is not by sheer coincidence that the two valuations should have been about the same as the price offered by Manickam and that the Appellant did not choose the proper officers of the Government to value the land before the purchase by the Society. I see no reason why the valuation officer or the commissioner of lands or the collector of land revenues could not give the valuation report. There is ample evidence to show that the Society and the Appellant had access to the services of the various Government departments.

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Regarding the \$122,000, I agree with the finding of the learned trial judge that Dr. Saw or Manickam could not be telling the truth when they said that the sums were in payment of debt by Manickam to Dr. Saw. There ~~was~~ again no contemporaneous written document evidencing any acknowledgment of debt by Manickam to Dr. Saw. It is in evidence that Manickam came to know Dr. Saw only in early 1964 (see pages 44, 189 and 252 appeal record). It is inconceivable that after this short acquaintance, Manickam could have obtained from Dr. Saw and Dr. Saw could have given him a loan of a big sum of money with no security at all and the loan repaid by a method which would not even be evidence of payment. The payment was made surreptitiously and Manickam took great pains to cover his tracks. He did not simply issue a cheque or two cheques to the Appellant. Instead he wrote out a cash cheque for \$82,000. His clerk cashed the cheque and then immediately deposited the cash into the same bank for the account of the Appellant. He did the same thing when paying the \$40,000 about a month later. Obviously Manickam was anxious that nobody should know where the money had come from least of all that it came from him. Further, the payment was made after the Society had paid Manickam the last instalment and the amount was exactly 1/4 of the profits made out of the whole transaction i.e. \$488,000. I do not accept that the figure is a coincidence as submitted by counsel for the Appellant. There is nothing to show that Manickam owed Dr. Saw that very sum. Considering all this, I agree with the learned trial judge that the money was received by the Appellant as a secret commission from Manickam.

I am also of the opinion that the evidence met the highest standard of proof. I do not therefore think that there is any need to discuss the standard of proof and manner of assessing circumstantial evidence raised in the appeal.

Now as to the law, it is my view that the Society, being registered under the Co-operative Societies Ordinance No.33 of 1948, is a body corporate (Section 8 of the Ordinance) and the Appellant being its director and honorary secretary was its agent.

In *Ferguson v. Wilson* (1866) L.R. 2 Ch. 77 Cairns L.C. said at page 89:-

In the Federal Court of Malaysia at Kuala Lumpur

—  
No.13

Judgment of Syed Othman J  
28th February 1974  
(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J

28th February  
1974  
(continued)

" What is the position of directors of a public company? They are merely agents of a company. The company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agents."

The duties of an agent of a corporate body were stated in general terms by Lord Cranworth, L.C. at page 471 in Aberdeen Railway Company v. Balikie Brothers (1854) 1 Macqueen 461 in the following words:-

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" A corporate body can only act by agents, and it is of course the duty of those agents as to act as best to promote the interest of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect."

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More specifically, the law is that where an agent who has been bribed so to do, induces his principal to enter into a contract with a person who has paid the bribe, and the contract is disadvantageous to the principal, the principal may recover from the agent the amount of the bribe which he has received. This was established by the English Court of Appeal in The Mayor, Aldermen and Burgesses of the Borough of Salford v. Lever (Salford's case) (1891) 1 Q.B.D. 168. There the Plaintiff corporation owned gasworks which consumed coal and employed Hunter, their manager, to buy coal at the best terms and Hunter accepted a secret commission of one shilling a ton from the Defendant, Lever, a coalmerchant. Lord Esher M.R. stated the law at page 176 as follows:

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" Hunter, /the Plaintiff's agent/ had received from the Defendant, for the performance of a duty which he was bound to perform without any such payment. Nothing could in law be more fraudulent, dangerous, or disgraceful and therefore



the law has struck at such conduct in this way. It says that, if an agent takes a bribe from a third person, whether he calls it a commission or by any other name, for the performance of a duty which he is bound to perform for his principal, he must give up to his principal whatever he has by reason of such fraud received beyond due."

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J

28th February  
1974  
(continued)

10 Some ten years later, Romer, L.J. (As he then was) elaborated the law in the following words in another Court of Appeal case, Hovenden and Sons v. Millhoff, 83 L.T.R.41 at page 43:-

20 " The courts of law of this country have always strongly condemned and, when they could, punished the bribing of agents, and have taken a strong view as to what constitutes a bribe. I believe the mercantile community as a whole appreciate and approve of the Court's views on the subject. But some persons undoubtedly hold laxer views. Not that these persons like the ugly word 'bribe' or would excuse the giving of a bribe if that word be used, but they differ from the courts in their view as to what constitutes a bribe. It may, therefore, be well to point out what is a bribe in the eyes of the law. Without attempting an exhaustive definition I may say that the following is one statement of what constitutes a bribe. If a gift be made to a confidential agent to act in favour of the donor in relation to transactions between the donor and the agent's principal and that gift is secret as between the donor and the agent - that is to say without the knowledge of the principal - then the gift is a bribe in the eyes of the law."

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His Lordship then went on to state the legal consequence of a bribe:-

40 " If a bribe be once established to the court's satisfaction, then certain rules apply. Amongst them the following are now established, and, in my opinion, rightly established, in the interest of morality with the view of discouraging the practice of bribery. First, the court will not enquire into the donor's motive in giving the bribe, nor allow evidence to be gone into as to the

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

motive. Secondly, the court will presume in favour of the principal and as against the briber and the agent bribed, that the agent was influenced by the bribe; and this presumption is irrebuttable. Thirdly, if the agent be a confidential buyer of goods for his principal from the briber, that the true price of the goods as between him and the purchaser must be taken to be less than the price paid to or charged by the vendor, by at any rate, the amount or value of the bribe. If the purchaser alleges loss or damage beyond this, he must prove it."

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Does the above common law principle apply in the State of Selangor where the Contracts (Malay States) Ordinance, 1950, apply? That Ordinance is in pari materia with the Contract Act that applies in India, and Encik Mooney, on behalf of the Society, argues on the authority of three Indian decisions that the law is the same where the Indian Contract Act applies. With respect I agree. The three Indian decisions cited are Maneklal v. Jwaledutt A.I.R. (1947) Bombay 135, N. Purkavastha v. Union of India A.I.R. (1955) Assam 33, and Gambhirmull v. Indian Bank Ltd. A.I.R. (1963) Calcutta 163. In the first of these cases Chagla J., as he then was, held, relying on Christoforides v. Terry (1924) A.C.566 that (in the words of the headnote) -

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" A principal has three rights as against his agent who fails in his duty - one, to recover damages for want of skill and care and for disregard of the terms of the mandate; second, to obtain an account and payment of secret and illicit profits which have come to the hands of the agent as an agent .....  
(The third right is not relevant to this appeal).

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Then there is the authority of Section 30 of the Prevention of Corruption Act 42 of 1961 which conclusively lays down the law in the following terms:

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" 30. (1) Where any gratification has in contravention of this Act been given by any person to an agent, the principal may recover as a civil debt the amount or the money value

thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of such amount or money value.

10 (2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

(In passing it may be stated that the Appellant has been convicted by the High Court, which conviction was upheld by this court, of two offences under that Act in respect of the two amounts the subject of this appeal, and sentenced to imprisonment.)

20 Applying the above law to the facts, in my view, the learned trial judge was correct in finding that the court should not enquire into Manickam's motive in giving the bribe and that the court presumes in favour of the Society and against the Appellant that the Appellant was influenced by the bribe. I would therefore dismiss the appeal.

#### CROSS-APPEAL

I now come to the cross-appeal. This is against the dismissal of the claim for loss or damage in the sum of \$488,000 being excess payment for the purchase of the land.

30 Salford's case (supra) appears to lay down the principle that the principal can recover from an agent both the secret commission or bribe and compensation for loss. The first paragraph of the headnotes in this case reads:-

40 " Where an agent, who has been bribed so to do, induces his principal to enter into a contract with the person who has paid the bribe, and the contract is disadvantageous to the principal, the principal has two distinct and cumulative remedies; he may recover from the agent the amount of the bribe which he has received, and he may also recover from the agent and the person who has paid the bribe, jointly or severally, damages for any loss which he has sustained by reason of his having entered into the contract,

In the Federal Court of Malaysia at Kuala Lumpur

No.13

Judgment of Syed Othman J

28th February 1974

(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J.  
28th February  
1974  
(continued)

without allowing any deduction in respect of what he has recovered from the agent under the former head, and it is immaterial whether the principal sues the agent or the third person first."

I am aware of course that in that case the claim was by the cheated principal not against their manager and agent but against the briber or of the agent, and therefore anything said in that case relating to the liability of an agent to his principal was not strictly relevant, but the principles are intended to apply to both the briber and the agent.

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And in a later decision of the Court of Appeal, Grant v. Gold Exploration and Development Syndicate (1900) 1 Q.B. 233, A.L. Smith, L.J. at page 244 quoted the headnotes of the above case and said that "it accurately describes what was decided thereon". I am aware too in that case the action was by a cheated principal not against his agent but against the purchaser of his property and that anything said relating to the liability of an agent to his principal was not strictly relevant.

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From the cases cited, it would appear that hitherto cheated principals have been content to sue their agents only for the return of the bribe received by the agents, and have not sued for more. But the authorities appear to be overwhelming in supporting that the principal is entitled to recover from the agent both the bribe and compensation for loss suffered by the principal.

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Paragraph 447 of volume 1 Halsbury's Laws of England (Third Edition) has this to say about the effect of the receipt of a bribe by an agent:

" The agent ... becomes liable to his principal for the amount of the bribe ... In addition, the agent is liable ... for any loss actually sustained by the principal in consequence of any breach of duty on the agent's part ...".

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Encik Mooney, counsel for the Society in the cross-appeal, has candidly brought to our attention Chitty on Contracts (23rd edition), Volume, 2 paragraph 62 (page 34). It reproduces the above rules.

The relevant passage with the editor's observations reads:-

10 "... a principal whose agent has been bribed may recover from the agent the amount of the bribe received, and he may also recover from the agent and the person who paid the bribe, jointly or severally, damages, for any loss that he has sustained, without allowing any deduction in respect of what he has recovered from the agent under the former head. The loss sustained by a party to a contract whose agent has been bribed is, in ordinary circumstances, the amount of the bribe. The way in which these rules are stated in the case seems to allow double recovery, though it does not appear that there has actually been double recovery in any of the cases."

20 And Romer L.J. in the last sentence of the passage from his judgment in *Hovenden's case* (supra) quoted earlier said:

"... If the (principal) alleges loss or damage beyond (the amount of the bribe), he must prove it."

A footnote to the last sentence of the above passage in *Chitty* reads: "In *Cohen v. Kuschke & Co.* (1900) 83 L.T.102-103 Bruce J. said that the plaintiff "cannot, of course, recover the money twice over."

30 The full report of this case shows that the plaintiff claimed a certain sum paid by the defendant, *Kuschke & Co.*, being a sum paid by way of secret commission to the defendant *Koenig*, who was engaged as plaintiff's buyer. The court held that both defendants were liable to the plaintiff for the amount of the secret commission and rules, "the plaintiff cannot, of course, recover the money twice over, but he is entitled to recover it against either or both of the defendants."

40 I do not think there is any need for me to discuss whether the rules do have the effect of allowing double recovery and the implications of the remarks of Bruce J. as against the rules laid down in *Salford's case*, a decision of the English Court of Appeal. It should be noted that in *Cohen's case* the claim was against the briber and the agent

In the Federal Court of Malaysia at Kuala Lumpur

—  
No.13

Judgment of Syed Othman J  
28th February 1974  
(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J.

28th February  
1974  
(continued)

for the sum paid to the agent as secret commission. But in the present case there are two claims against the agent only; recovery of the bribe and damages for loss. The Society cannot sue Manickam at the same time because he has absconded to India. Bruce J's remarks do not appear to me to be relevant to the present case.

So far as the present case is concerned, I do not think that there should be any suggestion that there would be double recovery of the bribe money if the principal is allowed to recover the bribe money (to which I have held the Society is entitled) and then (which is yet to be decided) damages for loss without making any deduction of the bribe, provided, of course, as laid down in Hovenden's case (supra), there is proof of loss beyond the bribe. The no-deduction rule would be clearly in accordance with Salford's case.

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It seems to me that the no-deduction rule in damages to be awarded for loss is so laid down in Salford's case, because the bribe must not be treated as if it were an advance payment or insurance towards any loss which may be suffered by the principal as a result of the bribing of the agent. The payment of the bribe was intended in the first place to the detriment of the principal. It is to remedy the principal for the wrong that the principal is allowed to recover it. To make it deductible from damages to be awarded for the loss would, in my view, nullify the remedy of recovery and give legal sanction to its payment in that it can be used as a set-off.

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The rules are so formulated, I think, because the courts, in the words of Romer L.J. "have always strongly condemned and, when they could, punished the bribing of agents."

In the present case, the Society's claim for \$488,000 excess payment is based on the Appellant's breach of duty in not having informed the Society the price Manickam paid for the land and which was within his knowledge; while the claim for \$122,000 is based on the Appellant's breach of duty in having received it as secret commission.

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The claim for excess payment was dismissed on the grounds in effect that the Society failed to prove loss and, secondly, as the Society still owned the land and had not sold it and it was

well known that lands had increased in price during the past 10 years, it was impossible to quantify the alleged loss suffered by the Society.

I would like to deal with the second ground first. I am of the opinion that the loss or damage to be considered is at the time of transaction, and not at the time of trial. The fact that the land had appreciated, or for that matter depreciated, in value at the time of trial is immaterial. Suppose the purchase had been for rubber instead of land. The price of this commodity fluctuates from day to day indeed from hour to hour, and at times sharply. I think the court will be in a most unsettled position if it has to consider the market of the day in determining the amount of compensation for loss caused by an agent in a claim of this nature. I doubt very much if it would be proper to say that since rubber has gone down in price at the time of the trial, the purchasing agent who caused loss to the principal should pay more compensation, or that since rubber has gone up in price at the time of trial the purchasing agent should pay less compensation for loss.

As to the first ground for dismissal of the claim, considering the basis of the claim, the first question to be determined is whether Mahesan committed a breach of duty in the terms alleged and then proof of loss and, if there is such proof, the measure of damages.

To the allegation of breach of duty, Mahesan denied knowledge of the price Manickam had paid for the land. There seems to be no dispute that if Mahesan knew of the price he was under a duty to disclose it to the Society.

As to proof of loss and measure of damages, Halsbury in the passage quoted above says, so far as applicable to the present case, the agent is liable for any loss actually sustained by the principal in consequence of any breach of duty on the agent's part.

Section 165 of the Contracts (Malay States) Ordinance, 1950 also provides:

"... The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in

In the Federal  
Court of  
Malaysia in  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J

28th February  
1974

(continued)

In the Federal  
Court of  
Malaysia in  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

respect of the direct consequence of his own neglect, want of skill or misconduct..."

Following what Romer L.J. said in Hovenden's case (supra) there must be proof of loss since the claim is beyond the amount of the bribe.

In Taylor v. United Africa Co. Ltd. A.I.R. 1937 P.C.10 and 78 what Lord Maugham said at page 13 when he came to consider the amount of loss may, I think, be paraphrased as having this effect; when the agent is liable on the footing of negligence or breach of contract the court has to decide whether the existing evidence is sufficient to justify the finding that a loss has been sustained by the principal as the direct or indirect result of the act, neglect or default of the agent, or whether some loss, and if so what, loss has been proved to have been so occasioned. 10

It is therefore a matter for the court to determine whether the evidence adduced is sufficient to justify the finding that the loss as claimed was sustained. 20

What the Society says in effect is that if Mahesan had done his duty, the Society could have purchased the land for \$456,000; i.e. the price Manickam paid for it; and it was through Mahesan's breach of duty the Society paid \$944,000, thereby causing loss to the Society in the sum claimed, \$488,000.

The question now is, can the denial by Mahesan of knowledge of the true price of the land be accepted? It is established that Mahesan received a big sum of money as secret commission out of the transaction. I would say that an agent who has been bribed cannot be heard to say that he has no knowledge of the transaction connected with the bribe, let alone when the bribe received is a big sum of money as in the present case. The knowledge must be imputed to him. In any event, the findings of the trial court are that Mahesan was in the transaction from the very beginning and that Manickam was to purchase the land if Mahesan found it suitable to the Society (see page 238 appeal record). I respectfully agree with these findings. I can see many strong and compelling reasons for the learned trial judge to have come to his findings. I have no doubt that when Mahesan went to Penang 30 40



with Manickam, (according to Mahesan to see the land) it was for the purpose of bargaining with Rengasamy over the price of the land and securing the land in Manickam's name so that it could be sold to the Society. He knew very well that the Society would have no choice, as Penang is a small island with limited land space. The evidence also shows that Mahesan took an active part in bargaining over the price with Rengasamy; that it was he who settled the purchase price at \$9,500 per acre; that he directed Manickam to pay Rengasamy the deposit of \$2,000; and that after Manickam had left Penang, Periasamy, Manickam's nominee, stepped into the picture and signed an agreement with the owners for the purchase of the property (see pages 403-4 appeal record). I have no doubt what Mahesan told the board was only for the purpose of persuading the Board not to bargain over the offer of \$16,000 per acre, particularly when he told the board that Manickam had at first offered to sell him the land at 50 cents per square foot, and that the board had to buy the land. Then there is the evidence that Mahesan treated as alive the option letter by Manickam to the Society, which expired on 20th November, 1964, till January, 1965 without any extension from Manickam.

From the findings, on the evidence that was adduced and considering the parts played by Dr. Saw and Manickam in the whole affairs and the active turn over of the accounts of Mahesan and his wife, I am convinced, as I respectfully believe the learned trial judge too although he did not say in so many words, that if there was any milk business to be done, as intended to be shown in evidence, it was to milk the Society. It is significant to note that Dr. Saw's "Milk venture" in India collapsed after his arrest and Mahesan's in connection with this case (see page 131 appeal record). I have no doubt that Mahesan was the chief perpetrator in the grand design to make money out of the Society and Manickam and Periasamy were the front men. To my mind it was because Mahesan had been involved in the transaction from the beginning, not because he did not know the price, he did not inform the board the price that had been paid for the land.

Considering all the circumstances, I would find that Mahesan clearly misconducted himself, and was in breach of duty in the terms alleged. Indeed

In the Federal  
Court of  
Malaysia in  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J

28th February  
1974

(continued)

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

—  
No.13

Judgment of  
Syed Othman J  
28th February  
1974  
(continued)

the evidence does show beyond these terms; that he was acting not only as an agent of the Society but also as the vendor of the property and that he engineered the situation in which the Society had to purchase the land at the price offered without proper investigation and any bargaining. I am also satisfied that if Mahesan had conducted himself in the best interest of the Society from the beginning, the Society could have bought the land direct from the owners through Rengasamy for the price Manickam paid for it (~~8~~456,000), if not less. It should be noted that even at the time when Manickam and Mahesan went to Penang to see the land, Rengasamy had not yet agreed to sell the land to Manickam. It was through his misconduct or breach of duty as an agent that Manickam's nominee, Periasamy, entered into agreement for the purchase of the land with the co-owners and that afterwards the land was transferred to Manickam first and then resold to the Society almost immediately afterwards for ~~8~~944,000. To my mind this very payment in the circumstances of the case is proof of loss to the Society in the sum of ~~8~~488,000, and this loss, in the words of Lord Maugham in Taylor's case, was actually sustained as a direct result of Mahesan's misconduct or breach of duty.

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But from this sum, the amount spent on the clearing of squatters must be deducted, as the Society would have to spend on this if it had purchased the land from the beginning. If I am not mistaken the amount shown for this expenditure is ~~8~~45,000; - see letter at page 724 of the appeal record.

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I would therefore allow the cross-appeal and order Mahesan to pay the Society compensation in the sum of ~~8~~488,000 less ~~8~~45,000 = ~~8~~443,000 with interest at 5½%.

Appeal dismissed.

Cross-appeal allowed. Mahesan to pay compensation in the sum of ~~8~~443,000 with interest 5½%.

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Costs of claim for compensation in the Court below, costs of the appeal and the cross-appeal and deposit to the Society.

Kuala Lumpur  
28th February, 1974

Sgd: SYED OTHMAN BIN ALI  
(SYED OTHMAN BIN ALI)  
Judge, High Court, Malay.

Solicitors:

M/s Ng Ek Teong & Partners for Appellant  
(Counsel V.C. GEORGE).

M/s Rithauddeen & Aziz for Respondent  
(Counsel Raja Aziz Addruse in  
Appeal, P.Mooney in cross-appeal).

AZMI, L.P. and SUFFIAN, C.J. concurred.

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.13

Judgment of  
Syed Othman J

28th February  
1974  
(continued)

No. 14

Order

No.14

Order of  
Federal Court

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR (APPELLATE JURISDICTION)

28th February  
1974

FEDERAL COURT CIVIL APPEAL NO. 70 OF 1972

Between

T. Mahesan s/o Thambiah

Appellant

And

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Respondent

(In the Matter of Civil Suit No.1569 of 1969  
in the High Court in Malaya at Kuala Lumpur

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Between

The Malaysia Government Officers'  
Co-operative Housing Society Ltd.

Plaintiffs

And

T. Mahesan s/o Thambiah

Defendant)

CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT, MALAYSIA;  
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA;  
SYED OTHMAN, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 28TH DAY OF FEBRUARY, 1974

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.14

Order of the  
Federal Court  
28th February  
1974  
(continued)

THIS APPEAL and the CROSS APPEAL coming on for hearing on the 6th to 8th day of August, 1973, in the presence of Mr. V.C. George of Counsel for the Appellant abovenamed and Mr. Peter Mooney and Raja Aziz Addruse of Counsel for the Respondent abovenamed AND UPON READING the Record of Appeal filed herein AND UPON HEARING the aforesaid Counsel IT WAS ORDERED that this Appeal and the Cross Appeal do stand adjourned for continuation of hearing AND the same coming on for hearing on the 15th day of August, 1973 in the presence of Counsel as aforesaid IT WAS ORDERED that the same do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Mr. V.C. George of Counsel for the Appellant and Mr. Peter Mooney and Raja Aziz Addruse of Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS ORDERED that the counterclaim for \$488,000/- be allowed to the extent of only \$443,000/- (being the subject matter of the Cross Appeal less the sum of \$45,000/-) with interest thereon at the rate of 5½% per annum from the 22nd day of February, 1965 until the date of Judgment AND IT IS FURTHER ORDERED that the Appellant do pay to the Respondent the costs of this Appeal, the costs of the Cross Appeal and in the Court below, as taxed by the proper officer of the Court AND IT IS LASTLY ORDERED that the sum of \$500/- deposited in Court by the Appellant as security for costs of this Appeal be paid to the Respondent towards its taxed costs.

GIVEN under my hand and the Seal of the Court this 28th day of February, 1974.

Sgd: E. E. SIM  
.....  
CHIEF REGISTRAR

This Order is filed by M/s Rithauddeen & Aziz Advocates & Solicitors, Solicitors for the Respondent whose address for service is 1st Floor, Bank of Canton Building Leboh Pudu, Kuala Lumpur, Selangor.

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No. 15

Order granting Leave to Appeal to His Majesty the Yang Dipertuan Agung

In the Federal Court of Malaysia at Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

No.15

FEDERAL COURT CIVIL APPEAL NO.70 OF 1972

Order granting Leave to Appeal to His Majesty the Yang di-Pertuan Agung

19th August 1974

Between

T. Mahesan s/o Thambiah

Appellant

And

10 The Malaysia Government Officers' Co-operative Housing Society Ltd.,

Respondent

(In the Matter of Civil Suit No.1569 of 1969 in the High Court in Malaya at Kuala Lumpur

Between

The Malaysian Government Officers' Co-operative Housing Society Ltd. Plaintiff

And

T. Mahesan s/o Thambiah

Defendant)

20 CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA; ALI, JUDGE, FEDERAL COURT, MALAYSIA; ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 19TH DAY OF AUGUST, 1974

O R D E R

30 UPON MOTION made unto Court this day by Mr.V.C. George of Counsel for the Appellant abovenamed in the presence of Raja Abdul Aziz Addruse of Counsel for the Respondent abovenamed AND UPON READING the Notice of Motion dated the 6th day of August 1974 and the affidavit of V.C. George affirmed on the 1st day of August 1974 AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellant to appeal to His

In the Federal  
Court of  
Malaysia at  
Kuala Lumpur

No.15

Order  
granting  
Leave to  
Appeal to  
His Majesty  
the Yang di-  
Pertuan Agung

19th August  
1974  
(continued)

Majesty the Yang Dipertuan Agung from the whole  
of the decision of the Federal Court of Malaysia  
given at Kuala Lumpur on the 28th day of February  
1974.

GIVEN under my hand and the seal of the  
Court this 19th day of August 1974.

Sd: E. E. Sim

CHIEF REGISTRAR.

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N

T. MAHESAN s/o THAMBIAH

Appellant

and

THE MALAYSIA GOVERNMENT OFFICERS'  
CO-OPERATIVE HOUSING SOCIETY LTD.

Respondent

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RECORD OF PROCEEDINGS

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Solicitors for the Appellant

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Solicitors for the Respondent