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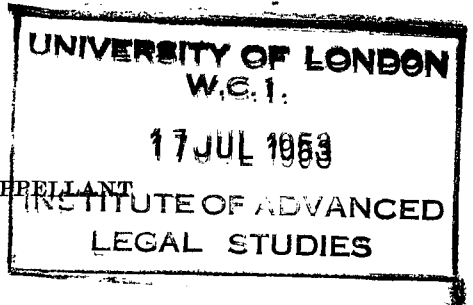
3, 1952

31210

In the Privy Council.

No. 15 of 1949.

ON APPEAL FROM THE HIGH COURT OF
APPEAL OF THE STRAITS SETTLEMENTS,
SETTLEMENT OF SINGAPORE.



BETWEEN

WEE BOO LAT (Married woman) APPELLANT

AND

- 1. JOHN LAYCOCK
- 2. CHUA TIAN CHONG
- 3. OON KENG SAN (substituted by Order of Court dated 9th November 1939) RESPONDENTS.

CASE FOR THE APPELLANT

1.—This is an Appeal by the Appellant (Plaintiff in the action) from a Judgment of the High Court of Appeal (Poyser, C.J., Smith, J.A., and Manning, J.) of the Straits Settlements, Settlement of Singapore, delivered on the 5th December, 1940, dismissing an appeal by the Appellant from a Judgment of Acting Chief Justice the Honourable Mr. Arthur Koberwein A'Beckett Terrell (given on the 2nd August, 1940), in favour of the Respondents in an action instituted by the Appellant in the High Court of the Straits Settlements, Settlement of Singapore.

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p. 45

pp. 38, 39, 40

10 2.—The claim in the action, made by the Appellant (hereinafter called "the Plaintiff") in her Statement of Claim was for a share in the estate of one Wee Siang Tat deceased, who, according to her case, was her natural father. The Defendants in the action (Respondents to this Appeal) were the executors and trustees under the will of a lady (deceased) called Ho Sok Choo Neo, widow of Wee Siang Tat. Wee Siang Tat had died intestate. Ho Sok Choo Neo as his surviving widow had obtained administration of his estate, on the footing that he had no issue entitled to share therein. The Plaintiff's case was that she was the natural daughter i.e., not the adopted daughter, of Wee Siang Tat by Ho Sok Choo Neo;—
20 the wrong done to her by her mother Ho Sok Choo Neo in depriving her of her appropriate share of her father's (Wee Siang Tat's) estate.

p. 3

Ex. 5 (c), p. 92

Ex. 5 (a), p. 91

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
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3.—The fate of the action turned upon the question whether the Plaintiff was, as she claimed to be, the natural daughter of Ho Sok Choo Neo by Wee Siang Tat, or was (as the Defendants alleged) the adopted daughter of Ho Sok Choo Neo.

4.—In the proceedings at the trial married Chinese or Malay women were frequently referred to by their maiden names, but in this “case,” for purposes of clarity, married women (with the exception of the Plaintiff and Ho Sok Choo Neo) are frequently called “Mrs.”—followed by their respective husbands’ names. Occasionally the maiden names will be stated in brackets. In the case of Ho Sok Choo Neo, although this lady is said to have remarried, it is more convenient to call her throughout Mrs. Wee Siang Tat. Sometimes, where no prefix precedes a woman’s Chinese or Malay name, the word “female” follows in brackets. 10

5.—Certain names of persons are variously spelt or named in the record, and accordingly variations in the spelling of names are occasionally indicated in brackets in this “case.” It should be noted too that the first or “seh” name of a Chinese or Malay individual corresponds to an English surname.

6.—The families united by the marriage of Wee Siang Tat and Ho Sok Choo Neo were the Wee and Ho families. The marriage is stated by certain witnesses to have taken place in about 1896 or 1898. At the date of the marriage the couple were both in their early twenties. After three or five years of married life (or less), Wee Siang Tat died, in 1901. He was admittedly not sterile, as he had a son (Wee Eng Cheng) by a concubine or mistress. Mrs. Wee Siang Tat was admittedly not sterile, as she had two children by one Tan Moeng Tho, said to have been her second husband. 20

p. 20, l. 13
p. 29, l. 33
p. 32, l. 15

7.—One of the grounds of this appeal is that the trial Judge must have omitted to give due weight to the inherent improbability that a young couple, neither of whom was sterile, would fail to produce children of their marriage, having regard to the well known desire of Chinese to produce legitimate male offspring—particularly in wealthy families. The Wee family was affluent, as the gross value of Wee Siang Tat’s estate admittedly amounted to over a million and a quarter dollars. There was no suggestion that during Wee Siang Tat’s life his wife sought or obtained any medical advice in respect of sterility. On the contrary, it appeared from evidence incidentally given by a medical witness for the Defendants that shortly after Wee Siang Tat’s death in 1901 (and before she had given birth to any child by Tan Moeng Tho) her mother-in-law (Mrs. Wee Boon Teck) “insisted on the girl Hoe Sok Chew (Mrs. Wee Siang Tat) smoking opium, “the idea being to make the girl sterile.” Such a step could hardly have been necessary, unless Mrs. Wee Siang Tat’s fertility had already been demonstrated during Wee Siang Tat’s lifetime. 30 40

p. 9, l. 13
p. 112, ll. 21, 22, 23
p. 34, l. 42

8.—At the trial the case for the Plaintiff was that she was given birth to by Mrs. Wee Siang Tat some eight or nine months before Wee Siang Tat died. The case for the Defendants was that Mrs. Wee Siang Tat had no issue by Wee Siang Tat, or by anyone before he died, and that she had adopted the Plaintiff after his death.

9.—It is considered that it would assist in the hearing of this appeal that a narrative should be given of material matters and events, substantially in chronological form. Such narrative follows herein. For convenience a genealogical table is set out in Appendix "X." to this case.

- 10 10.—Wee Siang Tat's grandfather was one Wee Bin deceased (sometimes called Wee Sim), a merchant of Singapore. He died on the 19th June, 1869. His eldest son (he had three sons) was one Wee Boon Teck deceased, who married Miss Ang Cheng Ang deceased (Ang Cheng Ang Neo). A woman called Chew Kow Neoh, who gave evidence for the Defendants, said that she when young had been secondary wife to Wee Boon Teck. By inference from her evidence Wee Boon Teck died in about 1883, when she was 20 years old; but it follows from the evidence of a medical witness for the Defendants (if correct) that he could not have died before 1885. By inference from the evidence of another witness for the Defendants, he died in 1889. Mr. and Mrs. Wee Boon Teck had three children. Two of them, girls, were older than Wee Siang Tat who was the third; and Mrs. Wee Boon Teck also adopted, as her daughter, a girl who became Wee Siang Tat's mistress and who bore to him a son (Wee Eng Cheng).
- 11.—The elder Miss Wee, one Wee Guat Kim (deceased), married one Lee Choon Guan (deceased). She had died, at the age of 25, long before the Plaintiff's action was heard in 1940. Lee Choon Guan married as his second wife a Miss Tan Teck Neo, who gave evidence for the Defendants.
- 12.—The younger Miss Wee, Wee Guat Choo Neo, became Mrs. Lim Peng Siang. She likewise gave evidence for the Defendants.
- 30 13.—Mrs. Wee Boon Teck's adopted daughter was one Boh Tan. In due course she had as issue, by Wee Siang Tat, an illegitimate male child called Wee Eng Cheng.
- 14.—At the time (in 1896 or 1898) of Wee Siang Tat's marriage, there were living in the Wee family house in Havelock Road, Singapore, his grandmother (Mrs. Wee Bin), his mother (Mrs. Wee Boon Teck), his younger married sister (Mrs. Lim Peng Siang) with her husband (since deceased), and his adoptive sister Boh Tan.
- 40 15.—According to Mrs. Lim Peng Siang (Wee Guat Choo Neo) she herself married at the age of 22 (i.e. in 1896), and her younger brother Wee Siang Tat married Ho Sok Choo Neo two years later (i.e. in 1898) when

p. 16, l. 1
p. 90, l. 14
p. 88
p. 31, l. 42
p. 29, l. 26
p. 30, l. 8
p. 112, ll. 17, 18, 19
p. 32, ll. 7, 8
p. 16, ll. 38, 39
p. 15, l. 40
p. 32, l. 2
p. 26
p. 31
p. 32, ll. 23 to 27
p. 32, ll. 6 to 9
p. 32, l. 5
p. 32, l. 10

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he reached the age of 22. The date of Wee Siang Tat's death appears from the grant of letters of administration to his estate, and was the 14th March, 1901. Accordingly, by inference from the above, the married life of Mr. and Mrs. Wee Siang Tat lasted some three years. Mrs. Lim Peng Siang also said that her brother's death occurred about five years after his marriage—which, if correct, would put the marriage back to 1896.

p. 32, l. 15

p. 15, l. 33
p. 16, l. 4
pp. 15 to 19

16.—Mrs. Wee Siang Tat had a younger brother, one Ho (Hoe) Siang Toh (deceased), who married a Miss Low Hay Lian. Mrs. Ho Siang Toh was a contemporary of her sister-in-law Mrs. Wee Siang Tat, and she was an important witness for the Plaintiff.

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p. 16, l. 14
p. 16, ll. 12, 16
p. 16, l. 12

p. 16, l. 20
p. 16, l. 8

17.—According to Mrs. Ho Siang Toh, her own grandmother (one Tay Tak Nayo) and Wee Siang Tat's grandmother (Mrs. Wee Bin) were on very friendly terms. Her grandmother at the invitation of Mrs. Wee Bin was present when Mrs. Wee Siang Tat gave birth to the Plaintiff, and the witness (who had accompanied her grandmother) though not present at the birth was in the house at the time and saw the infant girl baby later on the day she (the Plaintiff) was born. The birth took place in the "Ho" family house. The circumstantial detail in her evidence has, it is submitted, the ring of truth.

p. 20
p. 20, l. 15
p. 20, l. 22
p. 20, l. 31

18.—There was also called for the Plaintiff an old widow woman named Tan Cheng Kim, who had been a servant in the Wee household. This witness said that she was present at the Plaintiff's birth, which took place at the Ho family house, and that she cared for the Plaintiff until she was two months old. Her evidence, it is submitted, likewise has the ring of truth.

p. 29
pp. 26, 31

p. 26, l. 25
p. 26, l. 29

p. 33, l. 17

19.—The three ladies who gave evidence for the Defendants, viz., Chew Kow Neoh (secondary wife to Wee Boon Teck), the second Mrs. Lee Choon Guan and Mrs. Lim Peng Siang (Wee Guat Choo Neo), all stated, on the contrary, that the Plaintiff had been adopted by Mrs. Wee Siang Tat. The latter two said the Plaintiff was adopted by Mrs. Wee Siang Tat after Wee Siang Tat's death. Mrs. Lee said that the Plaintiff had first been adopted by Mrs. Wee Boon Teck (Mrs. Wee Siang Tat's mother-in-law) and was four or five years old or even younger when she (Mrs. Lee) first saw her. Mrs. Lim said that the Plaintiff was about three or four years old when she was adopted. There are, it is respectfully submitted, certain material inconsistencies in the evidence of these three witnesses.

p. 20, l. 33
p. 20, l. 36
p. 20, l. 41

20.—On the other hand the Plaintiff's witness Tan Cheng Kim (female) claimed to have nicknamed the Plaintiff "Bulat" (meaning "round" or "fat") on the day that the baby was born, to have attended a feast given one month later by Mrs. Wee Boon Teck in honour of her grandchild, and to have cared for the baby for the first two months of its life. Mrs. Ho

Siang Toh also said that she was present (with her grandmother) at the feast given on the 30th day after the Plaintiff was born, and that more than 100 persons were present. She further said that when the Plaintiff was two months old Mrs. Wee Siang Tat gave it to her (Mrs. Wee Siang Tat's) sister Miss Ho Hong Hay to bring up, that Miss Ho Hong Hay was trusted because she loved children, and that the Plaintiff lived with Miss Ho Hong Hay until she was two years old and was afterwards again brought to the Wee family house (which by that time was in Killiney Road). If Mrs. Ho Siang Toh (as well as Tan Cheng Kim) had invented a story and embroidered it by circumstantial detail to give it verisimilitude, the last detail she would have invented (it is submitted) is that the infant was cared for by its mother's sister for some years after it was two months old.

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p. 16, ll. 31, 32

p. 17, ll. 3, 4, 5

21.—It is respectfully submitted that the learned trial Judge was wrong in not preferring the evidence of Mrs. Ho Siang Toh and Tan Cheng Kim (female) to that of Mrs. Lim Peng Siang, Mrs. Lee Choon Guan and Chew Kow Neoh (female).

22.—After her husband's death Mrs. Wee Siang Tat filed a petition (Ecclesiastical 1901 No. 96) for grant of letters of administration. It appears from the original grant dated 17th June, 1901, that the petition was supported by an affidavit stating that the gross value of the estate amounted to “\$ nil and no more.” In fact the actual gross value of the estate was admittedly over \$1¼ million, viz., \$1,265,421.90¼. Mrs. Wee Siang Tat stated in her petition that the deceased husband's only surviving next of kin were the deceased's mother (Mrs. Wee Boon Teck), his sister Wee Guat Choo Neo (Mrs. Lim Peng Siang) and two infant nephews and infant nieces, the children of his deceased sister Wee Guat Kim Neo (the first Mrs. Lee Choon Guan). She made no mention of the Plaintiff in such petition.

Ex. 5 (a), p. 91

Ex. 5 (c), p. 92

p. 92, l. 32

p. 9, l. 13

p. 91

23.—Apparently on the 26th August, 1901, a further affidavit was sworn by or for the administratrix, stating the estate as “Nil except for partnership property.” On the 21st April, 1902, a third affidavit put the value of the partnership at \$800,000. On the 16th April, 1903, a fourth affidavit swore the value of the estate at \$1,265,421—some \$494,000 being disclosed for the first time. The administration bond, dated 31st December, 1907, was in the sum of \$2,530,863.80½—over 2½ million dollars. Estate duty was paid on a gross value of \$1,265,421.90½.

p. 115, ll. 37, 38

p. 116, l. 1

p. 116, l. 3

Ex. 5 (d), p. 93

p. 95, l. 5

24.—It is respectfully submitted that in these circumstances no reliance could be had on the statements made in Mrs. Wee Siang Tat's petition.

25.—After Wee Siang Tat's death, the Wee family for some time continued to live at the family house at Havelock Road (Sago Kheng),

p. 21, l. 5

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- p. 17, ll. 7, 8
p. 16, l. 40
- and then (with the exception of Mrs. Lim Peng Siang) moved to a house in Killiney Road (Tanglin). Mrs. Wee Siang Tat adopted a boy child, one Wee Eng Wan, also called "William."
- p. 12, ll. 43, 45
p. 28, l. 21
p. 14, l. 43
- 26.—According to the Plaintiff, when she was about 10 years old, one Tan Boon Toh (Tan Moeng Tho) came to live in the house at Killiney Road. Certain witnesses said that Mrs. Wee Siang and Tan Moeng Tho married each other. The Plaintiff said that since childhood she had had two names, viz., Wee Swee Eng and Wee Boo Lat. According to Tan Cheng Kim (female) the grandmother (Mrs. Wee Boon Teck) had named the child Swee Eng, but the child was always called Bulat. Her surname was "Wee." The Plaintiff further stated that Tan Moeng Tho gave to her the name of Tan Swee Eng. 10
- p. 17, l. 23
p. 109, l. 9
- 27.—According to Mrs. Ho Siang Toh (Low Hay Lian), when Tan Moeng Tho came to live with the widow, Mrs. Wee Boon Teck (Mrs. Wee Siang Tat's mother-in-law) left the house, and never went there again up to the time of her (Mrs. Wee Boon Teck's) death. Such death occurred in 1920. It was common ground that Mrs. Wee Siang Tat had two male children (Edward Tan and Farrar Tan) by Tan Moeng Tho.
- Ex. 5 (e), p. 94
Ex. 5 (k), p. 96
Ex. 5 (f), p. 94
- 28.—In the meantime Mrs. Wee Siang Tat on the 3rd March, 1904, had instituted proceeding No. 14 of 1904 for a determination of the shares to which Wee Siang Tat's next of kin were entitled in his estate. The Plaintiff was at that time a mere child, and was not a party to the proceeding. It was in May, 1904, determined, on Mrs. Wee Siang Tat's affidavit of the 30th March, 1904 (which made no mention of the Plaintiff), that Mrs. Wee Siang Tat was entitled to half of the estate, Mrs. Wee Boon Teck to one sixth, Mrs. Lim Peng Siang (Wee Guat Choo Neo) to one sixth, and the four infant children of the first Mrs. Lee Choon Guan (Wee Guat Kim Neo) to one sixth between the four of them. 20
- p. 99, l. 13
Ex. 5 (m), p. 97
Ex. 5 (o), p. 100
Ex. 5 (t), p. 101
Ex. 5 (w), p. 103
p. 82
- 29.—In 1908 and 1909 there were five more proceedings connected with details of administration of Wee Siang Tat's estate, viz., No. 12 of 1908, No. 8 of 1909, No. 42 of 1909, No. 46 of 1910, and No. 171 of 1909. In none of these proceedings was there any mention of the Plaintiff. 30
- 30.—On the 18th May, 1918, the Plaintiff married the Defendant Chua Tian Chong. By this time, according to the evidence of a medical witness for the Defendants, one (if not both) of Mrs. Wee Siang Tat's two male children by Tan Moeng Tho had been born.
- p. 11, l. 42
p. 12, l. 36
p. 11, l. 38
- 31.—According to the Plaintiff she was 17 years old at the time of her marriage. Mrs. Wee Siang Tat was her mother and had told her so. She knew nothing of any adoption of herself by Mrs. Wee Siang Tat. When she was about to be married, her mother told her that Wee Siang Tat was 40

her father—at a time when the Plaintiff was given by her mother (Mrs. Wee Siang Tat) a “red paper.” This red paper stated the date of her birth, and the names of her father and mother. p. 11, l. 39
p. 11, l. 41

32.—This “red paper” is of great importance in this appeal. It is obviously the Chinese original of Exhibit “B.1,” headed “Birth Certificate of Wee Boo Lat,” at p. 81 of the Record. Apart from hour, day and month of birth, it gives the Plaintiff’s name as “Wee Boo Lat” (not “Tan Boo Lat”), and bears the names “Wee Siang Tat” and “Ho Sok Choo Neo” (Mrs. Wee Siang Tat) in positions indicating that they are her parents. Ex. B1, p. 81

10 In reply to a question in cross-examination as to whether the red paper was given to her for the purpose of a horoscope, the Plaintiff said that she knew nothing about horoscopes, and that the red paper was given to her only to show the day of her birth and the names of the father and mother. p. 13, l. 42
p. 13, l. 43

She had never heard the suggestion that she was an adopted child. p. 14, l. 20

33.—There was put to the Plaintiff in cross-examination the certificate in Chinese of her marriage, which recited that Tan Moeng Tho had declared the intended marriage of his adopted daughter “Tan Swee Eng,” “aged 25,” to Chua Tian Chong, aged 32. This certificate was signed by Tan Moeng Tho, Chua Tian Chong, and (in English) by the Plaintiff in the name of Ex. 1A, p. 82

20 “Tan Swee Eng.” She explained that she took Tan Moeng Tho’s surname, or “seh” name, when he came into the house, that she was small at the time and could not go against her mother. p. 13, l. 12

34.—It is submitted that it would be wrong to attach any importance to the Plaintiff’s name as stated in the marriage certificate.

35.—Some point adverse to the Plaintiff was sought to be made as to her age of 25 as stated in the certificate, the suggestion being that since, according to the certificate, she was 25 in 1918, she must have been born in 1893, i.e., long before the earlier of either of the two years (1896 or 1898) given (inferentially) in evidence as the year Wee Siang Tat married. p. 13, l. 23

30 It would then follow that she was not a child of the marriage of Mr. and Mrs. Wee Siang Tat.

36.—It is, however, submitted that various aspects connected with the Plaintiff’s age, and with the age (incorrectly, it is submitted) stated in the marriage certificate, favour the Plaintiff’s case instead of being adverse thereto.

37.—Firstly, if she were 25 in 1918, she would have been 47 in 1940 and not “about 39,” as was pleaded in her Statement of Claim, and sworn to by her in evidence. It is significant that the Defendants, who comprised her husband and Edward Tan (son to Tan Moeng Tho), and later on by amendment Oon Keng San, in their Defence admitted expressly that the Plaintiff, in 1939/1940, was aged “about 39.” Dr. K. S. Oon (Oon Keng p. 3, l. 20
p. 11, l. 34
p. 7, l. 11

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p. 28, l. 25 San) said in evidence that in 1916 he stayed in Mrs. Wee Siang Tat's house.
He would presumably have known the Plaintiff's age in 1916, and would
Ex. C, p. 81 have known whether she was then about 15, or as much as 23 years old.
Secondly, in a passport issued to the Plaintiff's husband in September, 1921,
some 3½ years after the marriage, her age was given as 22—an age
inconsistent with that in the marriage certificate.

p. 11, l. 11 38.—However, the Defendants, having presumably by the date of the
trial become apprised of the contents of the marriage certificate, at the
opening of the Plaintiff's case in July, 1940, asked and were given leave to
withdraw their pleaded admission that she was aged about 39 in September, 10
1939 (the date of the Statement of Claim). They also asked and obtained
p. 11, l. 9 leave to withdraw the admission, in the Defence, of the allegation in the
Statement of Claim that she was aged eight months when Wee Siang Tat
died—an allegation which tied up with the passport and was consistent with
her having been the natural child of Mr. and Mrs. Wee Siang Tat.

p. 32, ll. 21, 30 39.—Thirdly, even on the evidence given by Mrs. Lim Peng Siang
p. 33, l. 18 and Mrs. Lee Choon Guan for the Defendants, the Plaintiff could not have
p. 26, ll. 29, 33 been at most more than 21 or 22 years old respectively in 1918.

p. 34, l. 36 40.—According to the evidence of Sir David James Galloway, a witness
for the Defendants, the elder of Mrs. Siang Tat's two sons by her marriage 20
to Tan Moeng Tho, had been born in 1912 or 1913.

p. 34, l. 23 41.—Sir David's evidence was that after Mrs. Wee Siang Tat had
p. 34, l. 24 married Tan Moeng Tho she had a miscarriage for which he attended her,
and that a year later she gave birth to a male child. He stated that this
male child was the fruit of the lady's first completed pregnancy. He also
p. 35, l. 21 said that he was told by the lady that she had a second male child, but that
p. 35, l. 20 he did not attend her during her second completed pregnancy.

p. 34, l. 29 42.—It is incontestable that if Sir David's evidence that the pregnancy
of 1912/1913 was Mrs. Wee Siang Tat's first completed pregnancy were 30
correct, the Plaintiff could not have been the natural daughter of this
lady, born some 12 or 13 years earlier. The witness said he could tell
that the male child he delivered was the fruit of her first completed
pregnancy.

p. 35, l. 2 43.—It is respectfully submitted that Sir David's evidence of his
p. 34, l. 15 recollection in 1940 (or in 1934 in a previous proceeding) of a particular
p. 34, l. 38 patient having in 1912/1913 (21 years earlier at least) given birth to a first
child, was not to be relied on, particularly as the witness's case notes had
been destroyed in about 1920. He was, in 1940, 82 years old. He had
delivered some 6,000 children during his practice, from 1885 onwards,
about four or five a week. He admitted that there was nothing particular 40

about a "prima paræ" (sic. "primipara" i.e. first birth) to stamp its recollection on his mind for 23 years, and that he would not have made a note that a birth was a first birth. p. 35, l. 24
p. 35, l. 25

44.—It is also submitted that any inference drawn by Sir David from appearances, to the effect that a birth was a first birth, would be an unreliable inference—particularly if that birth had followed a miscarriage.

45.—Expert medical evidence was also given for the Defendants by Dr. Joseph Sandys English, a professor of midwifery at Singapore, in support of Sir David's evidence that a doctor could tell by observation that a child he delivered was the mother's first child. This evidence was of a general character. p. 36
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46.—In 1920 Mrs. Wee Boon Teck died. p. 108, l. 11

47.—In 1925 Mrs. Wee Siang Tat made a Will; and this Will, as well as five subsequent Wills, was put in as evidence for the Plaintiff. In her Will of 1925, Mrs. Wee Siang Tat in addition to precisely describing various persons as "my stepson," "my stepdaughter," "my sons" (meaning her sons by Tan Moeng Tho) and "the son of the late Wee Siang Tat" specifically referred to the Plaintiff as "my daughter Wee Bulat," in distinction to her reference therein to William as "my adopted son." p. 58, l. 2
p. 57, l. 30
20 She made similar references to "my daughter Wee Bulat" and "my adopted son" and to such other persons in her five subsequent Wills made in 1927, 1928, 1929, September, 1930, and December, 1930. pp. 59, 60, 62, 63,
64, 66, 68

48.—It is respectfully submitted that these references by Mrs. Wee Siang Tat to the Plaintiff as her daughter, in six separate Wills, strongly support the Plaintiff's case, notwithstanding the explanation sought to be given by Mr. Laycock in his evidence for the Defendants. p. 28, l. 1

49.—Mrs. Wee Siang Tat died on the 18th September, 1931. The executors of her last Will were (1) the original Defendant Edward Tan (Tan Tat Min), her elder son by Tan Moeng Tho, (2) the Defendant Chua Tian Chong, husband to the Plaintiff, and (3) the Defendant John Laycock. Probate was granted to the two last named in 1931, and double Probate to Edward Tan in 1933. p. 64, l. 38
p. 65, l. 21
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50.—In 1933 Wee Eng Wan instituted proceeding No. 983 of 1933 against the said executors, claiming that he was the natural son of Mr. and Mrs. Wee Siang Tat. Before the action came to trial, evidence was taken, *de bene esse*, from Sir David James Galloway—which was generally to the same effect as the evidence he gave in 1940—viz., that Edward Tan was the lady's first child. The action came on for hearing in 1934. It was conceded by Counsel for Wee Eng Wan in his opening that unless the p. 115
p. 115, l. 25
Ex. 5 (ff), p. 112
p. 113, l. 8

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p. 120, l. 29

Statement of Claim were amended so as to include a charge of fraud, the Defence of the Statute of Limitations relied on by the executors was a good defence. Leave to amend the Statement of Claim was refused, and the action was dismissed without evidence being heard or any decision being given on the merits.

p. 12, l. 22
p. 12, l. 27
p. 12, l. 28
p. 14, l. 23
p. 14, l. 24
p. 15, l. 1

51.—The Plaintiff (in her own action) said that she first knew that her father Wee Siang Tat was wealthy when Wee Eng Wan made his claim in 1934. She was surprised at first. Later she wished to claim a share. Her husband was annoyed. She asked her husband for her share (of her father's estate) three times. On the third occasion he became angry. When she wanted to start proceedings, he became angry; and he took her with him to Batavia where they stayed three or four years. She first made a claim about "a year ago" (i.e. about July, 1939), and gave notice of action in September, 1939. Her husband had said to her that "his rice pot would be split if I made a claim." He had not been on terms with her for over a year, since she made her claim. 10

p. 12, l. 31
p. 15, l. 3
p. 13, l. 29
p. 13, l. 30

p. 12, l. 33
p. 29, l. 23

52.—The Plaintiff further also said in evidence that her husband and Edward Tan had offered her \$60,000 not to pursue her claim. Her husband, called for the Defendants, denied that any offer had been made to her. 20

Ex. 2, p. 83

53.—There was put to the Plaintiff in cross-examination and admitted by her an agreement, made in October, 1939 (i.e., after action brought) whereby she had sold one tenth of her prospects in the litigation to one Wee Tim Thong (Wee Teng Thong) for \$3,000. It is submitted that this matter had no relevance to the issue in the action.

p. 29, l. 14

54.—For the defence, the Plaintiff's husband stated that when he married her he understood "from friends" that the Plaintiff was an adopted daughter. It is submitted that this evidence was hearsay and inadmissible under the Evidence Ordinance, and ought to have been disregarded even if Counsel for the Plaintiff failed to object thereto. The learned trial Judge appears to have placed reliance upon this inadmissible evidence and also upon other (it is submitted inadmissible) general evidence that "everybody knew she was adopted." Sections 32 and 50 of the Evidence Ordinance are set out in Appendix "Y" to this case. 30

p. 26, l. 39

p. 28, l. 31
p. 27, l. 26
p. 28, l. 3

55.—Dr. Oon, for the defence, said in effect that Mrs. Wee Siang Tat had described the Plaintiff to him as an adopted child. Mr. Laycock, for the defence, said that Mrs. Wee Siang Tat had always told him that the Plaintiff was her adopted daughter. She told him so "not once but a dozen times." For various reasons it is respectfully submitted that the evidence of the three Defendants ought to be regarded as of no assistance on the issue in the case. 40

56.—It is submitted that the trial Judge wrongly admitted hearsay evidence and wrongly allowed himself to be influenced thereby.

57.—The Plaintiff's appeal from the adverse Judgment of the learned trial Judge was dismissed by three Judges (Poyser, C.J., Smith, J.A., and Manning, J.) sitting in the Court of Appeal, on the 5th December, 1940. p. 45
It is believed that one or more spoken Judgments were delivered giving reasons for such dismissal, but that the shorthand notes and transcripts of such Judgments have become lost owing to war incidents.

58.—The Appellant respectfully submits that the Judgments of the
10 Court of Appeal and of the trial Judge are wrong and ought to be reversed, pp. 45, 38
for the following, among other

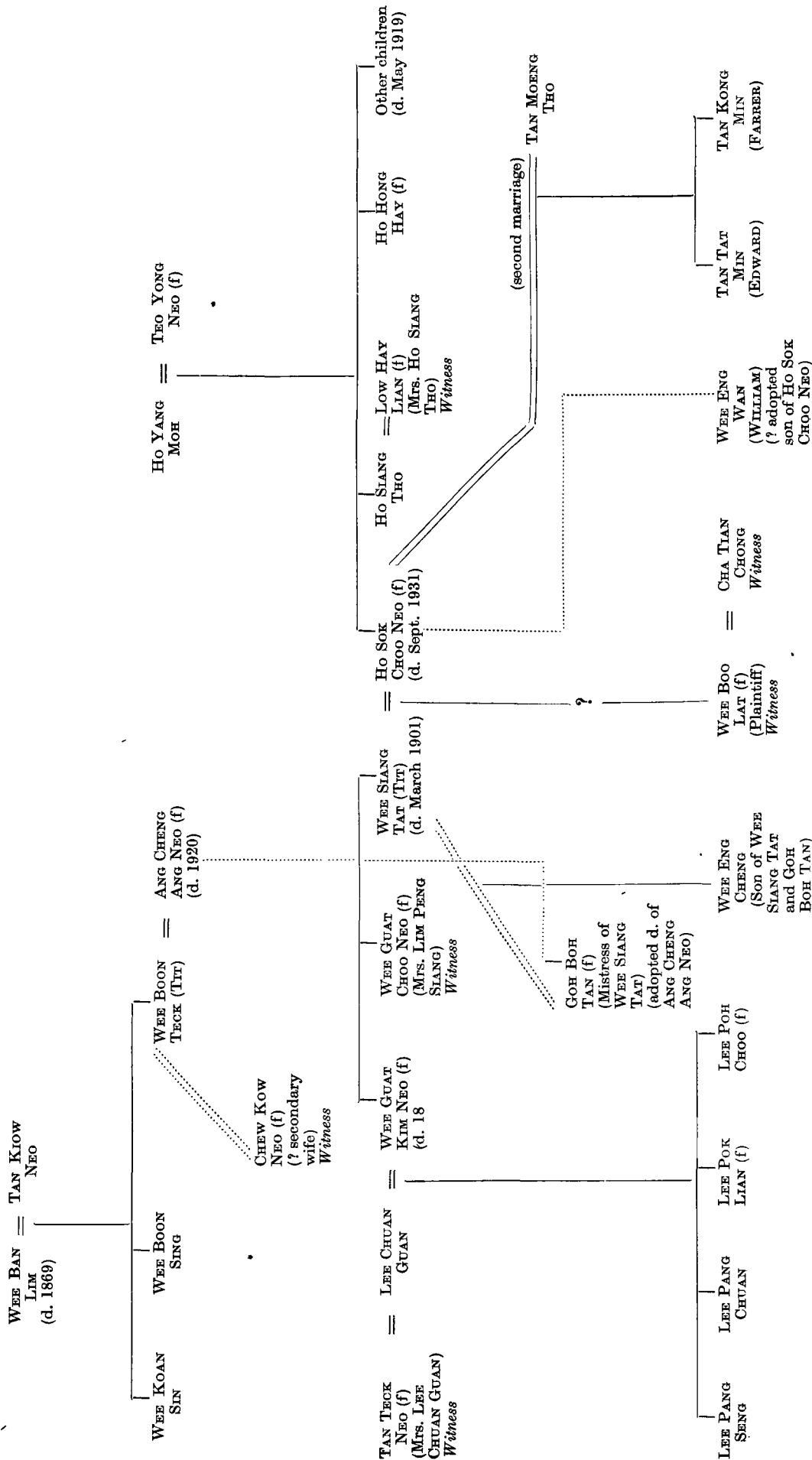
REASONS

- (1) BECAUSE the Judgment of the trial Judge was against the weight of evidence.
- (2) BECAUSE inadmissible evidence was relied on by the trial Judge.

B. B. STENHAM.
S. A. STAMLER.

APPENDIX "X."

FAMILY TREES OF WEE AND HO FAMILIES.



APPENDIX " Y."

Section 32. Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :—

- 10 (i) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

- 20 (ii) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty ; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind ; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

- (iii) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

- 30 (iv) When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

- 40 (v) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement has special means of knowledge, and when the statement was made before the question in dispute was raised.

- (vi) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.
- (vii) When the statement is contained in any deed or other document which relates to any such transaction as is mentioned in section 13 (a).
- (viii) When the statement was made by a number of persons and expressed feelings or impressions on their part relevant to the matter in question.

50.—(1) When the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who as a member of the family or otherwise has special means of knowledge on the subject is a relevant fact.

(2) Such opinion shall not be sufficient to prove a marriage in prosecutions under sections 494, 495 or 498 of the Penal Code.

In the Privy Council.

No. 15 of 1949.

ON APPEAL FROM THE HIGH COURT OF
APPEAL OF THE STRAITS SETTLEMENTS,
SETTLEMENT OF SINGAPORE.

BETWEEN
WEE BOO LAT (Married woman)
APPELLANT
AND
1. JOHN LAYCOCK
2. CHUA TIAN CHONG
3. OON KENG SAN (substituted
by Order of Court dated
9th November 1939) RESPONDENTS.

CASE FOR THE APPELLANT
(WITH TWO APPENDICES)

C. BUTCHER & SIMON BURNS,
Broadmead House,
21 Panton Street,
Haymarket, S.W.1.