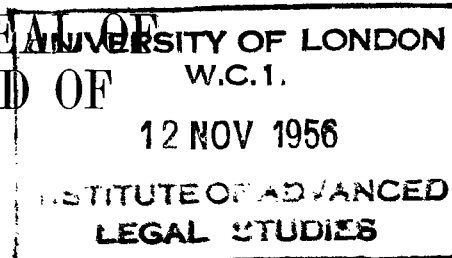


# In the Privy Council.

No. 1 of 1953.

## ON APPEAL FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE

Civil Appeal No. 8 of 1952. Suit No. 784 of 1950.



33600

BETWEEN

GUAN SENG KEE LIMITED ... .. *Plaintiffs—Appellants*

AND

BUAN LEE SENG LIMITED ... .. *Defendants—Respondents.*

## RECORD OF PROCEEDINGS

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# In the Privy Council.

No. 1 of 1953.

## ON APPEAL FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE

Civil Appeal No. 8 of 1952. Suit No. 784 of 1950.

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BETWEEN

GUAN SENG KEE LIMITED ... .. *Plaintiffs—Appellants*

AND

BUAN LEE SENG LIMITED ... .. *Defendants—Respondents.*

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### RECORD OF PROCEEDINGS

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No. 1.

Judgment of Rogers, J.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.  
ISLAND OF SINGAPORE.

Suit No. 784 of 1950.

Between

GUAN SENG KEE LIMITED ... .. *Plaintiffs*

and

BUAN LEE SENG LIMITED ... .. *Defendants.*

In the  
High Court  
of the  
Colony of  
Singapore.

No. 1.  
Judgment  
of Rogers.  
J., 8th  
March,  
1952.

10 Coram : ROGERS J.

#### JUDGMENT of ROGERS J.

On 2nd June 1950 the Plaintiffs in this case purchased from the concern known as United Engineers Ltd. the premises No. 7 Read Street, of which the tenants were at that time Messrs. Harper Gilfillan & Co. Ltd. who held a monthly tenancy.

In the  
High Court  
of the  
Colony of  
Singapore.

No. 1.  
Judgment  
of Rogers,  
J., 8th  
March,  
1952—  
*continued.*

On 8th July 1950 the solicitors who were then acting for the Plaintiffs served on Messrs. Harper Gilfillan & Co. Ltd. a Notice to Quit to take effect on 31st August 1950, and on that latter date Messrs. Harper Gilfillan wrote to the Plaintiff's solicitors confirming that they were giving up their tenancy forthwith. Meantime Messrs. Harper Gilfillan had sublet the said premises to the present Defendants as far back as 1st January 1947. For the purpose of this case there was no prohibition against subletting. The Defendants have been and still are in possession of the premises as from the time of the sublease. The Plaintiffs now bring this action to recover possession from the Defendants. The Defendants rely 10 on the provisions of the Control of Rent Ordinance 1947.

It is common ground between the parties that Section 15 of the Ordinance does not apply, and the Defendants look to the provisions of Section 16 (a), which constitute them as statutory tenants subject to their remaining in possession after the determination of their tenancy, and to their not being in a position to be deprived of such possession by reason of the provisions of the Ordinance.

It was laid down by the learned Chief Justice in the case of *Fernandez v. Murugiah* 1950 M.L.J. 83 that such protection is to be found in Section 14, and for the landlord to be in a position to recover possession he must bring 20 his case within one of the exceptions therein set out. It has been argued by Mr. Massey however, that the Defendants cannot rely on Section 14 as the premises are not comprised in a tenancy. The tenants Harper Gilfillan & Co. he alleged had given up their contractual tenancy and were no longer in possession. The definition of the word "tenant" in Section 2 of the Ordinance includes "in the case of a subtenancy" a subtenant to whom the premises or any part thereof is sublet. I therefore come to the conclusion for the purposes of this case that the Defendants were tenants and as such entitled to the protection of Section 14. I further hold that when the interest of Messrs. Harper Gilfillan ceased as from 31st August 1950, 30 their lawful subtenants, the present Defendants began to hold as tenants immediately from the head landlords. This being so, the Plaintiffs are unable to bring themselves under exception 14 (1) (i), as their new tenants are in possession, and I can find no other facts present which would justify me in holding that the Defendants were disentitled to the protection of the section as from the 31st August 1950.

Judgment for Defendants with costs on the higher scale.

Sgd. M. R. F. ROGERS,  
*Puisne Judge,*  
Singapore. 40

Singapore, 8th March 1952.

No. 2.  
Court Notes

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.

No. 2.  
Court  
Notes, 27th  
June, 1952.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.  
IN THE COURT OF APPEAL.

Civil Appeal No. 8 of 1952.  
Suit No. 784 of 1950.

Between

GUAN SENG KEE LIMITED ... .. *Appellants-Plaintiffs*  
and  
10 BUAN LEE SENG LIMITED ... .. *Respondents-Defendants.*

Coram : MURRAY-AYNSLEY, C.J.  
MATHEW, C.J., Federation.  
BROWN, J.

NOTES OF ARGUMENT TAKEN BY MURRAY-AYNSLEY, C.J.

27.6.52.

MACASSEY for Appellants.  
HARRIS for Respondents.

MACASSEY :

20 Does sub-tenant enjoy protection against superior landlord after  
determination of head tenancy by consent or otherwise than where order  
made against head tenant.

FACTS :

30 Tenancy of Harper Gilfillan.  
Purchase by Appellants subject to—  
1947 subletting to Respondents  
subletting lawful in origin—  
— sub-tenants would have no rights—  
English cases don't help—  
Statute 1920  
English s. 5 (5)  
15 (3)  
15 (2)  
Local s. 16 (b)  
English s. 15 (5) cf. local 15 (1)  
Only refers to position where order for possession against tenant.  
English s. 15 (3)  
“ any other reason ”  
defines status of sub-tenant ;  
deals with cases where no order for possession against tenant.

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.  
—  
No. 2.  
Court  
Notes, 27th  
June, 1952  
—continued.

Local Ordinance s. 14, 15 does not give protection in this case.

Local s. 16 (b)

14 (1) “comprised in a tenancy.”

Effect of s. 14

These premises are not comprised in tenancy—

No tenancy between head landlord and sub-tenant.

Definitions sec. 2

*tenancy*—

*tenant*—

*landlord*—

10

Definitions do not make relations of superior landlord and sub-tenant as that of landlord and tenant.

(1920) Act 12 (1) (f) (g)

Decision of Judge based on 16 (a).

Does tenant include sub-tenant here ?

If it does 16 (b) unnecessary.

Sec. 17 (a)

*Proviso* :

limited sec. 15 (2)

supposed anomalous position—

protection of 15 illusory—

claim against sec.

20

absurd to suppose that landlords are deprived of rights against sub-tenants.

16 (b)

15 envisages only proceedings against tenant.

English

Lord Hylton *v.* Hael (1921) 2 K.B. 438

*ratio decidendi*—ground for possession good against tenant good against sub-tenant.

30

*Enniskillen Urban District Council v. Bartley* (1947) N.I. 177.

14 (1) (i)

(g) employment of tenants

“Comprised in tenancy”

tenancy must have ceased to exist.

(1941) F.M.S. 166.

E. 14/1946

sec. 15 and 16 (b)

only confer a form of protection where order has been made against tenant.

40

14 (i)—“comprised in a tenancy”

tenant does not include sub-tenant as against head landlord.

sub-tenant enjoys no greater protection than tenant

ex under (b) (m)

entitled to possession under (i)

effect of sec. 15

HARRIS :

Sec. 14

restrictive of rights.

no rights except as given by 14

These premises were comprised in tenancy.

16 (a) tenant includes sub-tenant—*tenant* of premises

no evidence that H.G. could have remained possession.

17 (a)—proviso—

Stat. tenant 15 (2) implies ground for possession by landlord.

10 Is protection illusory ?

Can't be compared with English cases—

tenant *not party*—order for possession

Intention of Ordinance—Landlord

must show ground

(1950) M.L.J. 83

MACASSEY :

All come to section 14—

“ comprised in tenancy.”

C. A. V.

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.

—  
No. 2.  
Court  
Notes, 27th  
June, 1952  
—*continued.*

20

NOTES OF ARGUMENT TAKEN BY BROWN, J.

MACASSEY for Plaintiffs-Appellants.

HARRIS for Defendants-Respondents.

MACASSEY :

Section 5 (5) and 15 (3) of English Act cf. s. 15 and 16 (b) of our Ordinance.

*Hylton v. Heal* (1921 2 K.B. 438).

*Enniskillen Urban District Council v. Bartley & Lynch* (1947 N.I. Reports 177).

30 (1) S. 15 and 16 (b) only operate to confer form of protection on sub-tenant when an order has been made against tenant.

(2) S. 14 (1) has no application to possession which arises between landlord and sub-tenant because it is a prerequisite that relationship of landlord and tenant should exist between the parties.

(3) Definition makes it clear that “ tenant ” only includes “ sub-tenant ” in relation to his immediate landlord.

(4) Sub-tenant enjoys no greater protection but tenant does.  
*Abdul Hameed v. Nainam Sahib* (1951 17 M.L.J. 103) Harris.

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.

No. 3.

Judgment of Murray-Aynsley, C.J.

IN SUPREME COURT OF THE COLONY OF SINGAPORE.

IN THE COURT OF APPEAL.

No. 3.  
Judgement  
of Murray-  
Aynsley,  
C.J., 11th  
July, 1952.

Civil Appeal No. 8 of 1952.

Suit No. 784 of 1950.

Between

GUAN SENG KEE LIMITED ... .. *Appellants-Plaintiffs*

and

BUAN LEE SENG LIMITED ... .. *Respondents-Defendants.* 10

Coram : MURRAY-AYNSLEY, C.J.

MATHEW, C.J., Federation.

BROWN, J.

This case raises a point of some practical importance under the Control of Rent Ordinance (No. 25 of 1947), namely, whether the protection of the Ordinance extends to sub-tenants where the sub-letting was not unlawful and no judgment has been obtained against the head tenant. The matter is not free from obscurity. It is clear that the Ordinance was intended to protect, among others, sub-tenants. Where a judgment is obtained against the head tenant the position is quite clear. It cannot be supposed that this protection was intended to be limited to such cases. 20

I agree with the conclusions reached by the learned Judge and with his reasons. I do not think there is any reason to say anything more. In my opinion this appeal should be dismissed with costs and the deposit paid out to the Respondents.

(Sgd.) C. M. MURRAY-AYNSLEY,  
*Chief Justice,*  
Singapore.

Singapore, 11 July 1952  
Read by Brown J. in  
Open Court on  
15th July 1952.



## No. 4.

## Judgment of Mathew, C.J.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.  
IN THE COURT OF APPEAL SINGAPORE.

Civil Appeal No. 8 of 1952.  
Suit No. 784 of 1950.

GUAN SENG KEE LTD. ... .. *Appellant*  
... .. *against*  
BUAN LEE SENG LTD. ... .. *Respondent.*

10 Cor: MURRAY-AYNSLEY C.J. (Singapore);  
MATHEW C.J. (Federation);  
BROWN J.

## JUDGMENT OF MATHEW C.J.

I have had the advantage of reading the judgment of the learned President in this appeal with which I agree and have nothing to add.

Sgd. CHARLES MATHEW,  
*Chief Justice,*  
Federation of Malaya.

Kuala Lumpur,  
20 7th July, 1952.

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.

No. 4.  
Judgment  
of Mathew,  
C.J., 7th  
July, 1952.

## No. 5.

## Judgment of Brown, J.

I concur.

Sgd. T. A. BROWN.

Read by Brown J.  
on 15th July 1952.

No. 5.  
Judgment  
of Brown,  
J., 15th  
July, 1952.

No. 6.

Formal Judgment.

In the Court of Appeal of the Colony of Singapore.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.

ISLAND OF SINGAPORE.

No. 6. Formal Judgment, 24th July, 1952.

IN THE COURT OF APPEAL.

Suit No. 784 of 1950.

Appeal No. 8 of 1952.

Between

GUAN SENG KEE LTD. ... .. Plaintiffs (Appellants) 10

and

BUAN LEE SENG LTD. ... .. Defendants (Respondents)

18th July, 1952.

This appeal coming on for hearing on the 27th day of June 1952 before the Honourable the Chief Justice of the Colony of Singapore, the Chief Justice of the Federation of Malaya and Mr. Justice Thomas Algernon Brown in the presence of Counsel for the Plaintiffs (Appellants) and for the Defendants (Respondents) and upon reading the Record of Appeal and upon hearing Counsel as aforesaid IT WAS ORDERED that this appeal should stand for judgment and the same coming on for judgment this day in the presence of Counsel as aforesaid THIS COURT DOTH ADJUDGE that this appeal be dismissed with costs to be taxed and paid by the Plaintiffs (Appellants) to the Defendants (Respondents) AND THIS COURT DOTH FURTHER ADJUDGE that the sum of \$500/- now in Court standing to the credit of these proceedings be paid out to the Defendants (Respondents) or to their Solicitors Messrs. Braddell Brothers. 20

Entered this 24th day of July, 1952 at in Volume LVII Page 175.

Sd. C. C. EU, 30 Dy. Registrar.



No. 7.

Petition for Leave to Appeal to Her Majesty in Council.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.  
ISLAND OF SINGAPORE.  
IN THE COURT OF APPEAL.

Suit No. 784 of 1950.  
Appeal No. 8 of 1952.

	Between					
GUAN SENG KEE LIMITED	...	...	...	...	...	<i>Plaintiffs</i> <i>Appellants</i>
	and					
10 BUAN LEE SENG LIMITED	...	...	...	...	...	<i>Defendants</i> <i>Respondents.</i>

In the Court of Appeal of the Colony of Singapore.

No. 7.  
Petition for Leave to Appeal to Her Majesty in Council, 1st August, 1952.

Let this Petition stand for hearing on Monday, the 11th day of August, 1952, at 10.30 a.m.

Dated this 6th day of August, 1952.

Sgd. H. A. FORRER,  
*Ag. Registrar.*

To :

The Honourable the Judges of the Court of Appeal The Humble Petition of GUAN SENG KEE, LIMITED, the above-named Plaintiffs (Appellants).

20 SHOWETH :

1.—In this action your Petitioners claimed from the Defendants Respondents possession of the premises known as No. 7 Read Street, Singapore, and mesne profits from the 1st September, 1950, to the date of delivery at the rate of \$221.25 per month.

2.—The facts of the case appear in brief from the Judgment of the learned trial judge :—

30

“ On the 2nd June, 1950, the Plaintiffs in this case purchased  
“ from the concern known as United Engineers, Ltd., the premises  
“ No. 7 Read Street, of which the tenants were at that time Messrs.  
“ Harper, Gilfillan & Co., Ltd., who held a monthly tenancy.  
“ On 8th July, 1950, the solicitors who were then acting for the  
“ Plaintiffs served on Messrs. Harper, Gilfillan & Co., Ltd., a Notice  
“ to Quit to take effect on 31st August, 1950, and on that latter  
“ date Messrs. Harper Gilfillan wrote to the Plaintiff’s solicitors  
“ confirming that they were giving up their tenancy forthwith.

In the  
Court of  
Appeal  
of the  
Colony of  
Singapore.

No. 7.  
Petition for  
Leave to  
Appeal to  
Her  
Majesty in  
Council, 1st  
August,  
1952—  
*continued.*

“ Meantime Messrs. Harper, Gilfillan had sublet the said premises  
“ to the present Defendants as far back as 1st January, 1947.  
“ For the purposes of this case there was no prohibition against  
“ subletting. The Defendants have been and still are in possession  
“ of the premises as from the time of the sublease. The Plaintiffs  
“ now bring this action to recover possession from the Defendants.  
“ The Defendants rely on the provisions of the Control of Rent  
“ Ordinance, 1947.

“ It is common ground between the parties that Section 15 of  
“ the Ordinance does not apply, and the Defendants look to the 10  
“ provisions of Section 16 (a), which constitute them as statutory  
“ tenants subject to their remaining in possession after the deter-  
“ mination of their tenancy, and to their not being in a position  
“ to be deprived of such possession by reason of the provision of  
“ the Ordinance. It was laid down by the learned Chief Justice in  
“ the case of *Fernandez v. Murugiah*, 1950, M.L.J. 83 that such  
“ protection is to be found in Section 14, and for the landlord to be  
“ in a position to recover possession he must bring his case within  
“ one of the exceptions therein set out. It has been argued by  
“ Mr. Massey, however, that the Defendants cannot rely on 20  
“ Section 14 as the premises are not comprised in a tenancy. The  
“ tenants, Harper Gilfillan & Co. he alleged had given up their  
“ contractual tenancy and were no longer in possession. The  
“ definition of the word ‘tenant’ in Section 2 of the Ordinance  
“ includes ‘in the case of a subtenancy’ a subtenant to whom  
“ the premises or any part thereof is sublet. I therefore come to  
“ the conclusion for the purposes of this case that the Defendants  
“ were tenants and as such entitled to the protection of Section 14.  
“ I further hold that when the interest of Messrs. Harper, Gilfillan  
“ ceased as from 31st August, 1950, their lawful subtenants, the 30  
“ present Defendants, began to hold as tenants immediately from  
“ the head landlords. This being so, the Plaintiffs are unable to  
“ bring themselves under exception 14 (1) (i), as their new tenants  
“ are in possession, and I can find no other facts present which  
“ would justify me in holding that the Defendants were disentitled  
“ to the protection of the section as from the 31st August, 1950.  
“ Judgment for Defendants with costs on the higher scale.”

3.—It was accordingly ordered and adjudged that your Petitioners  
claim to be dismissed with costs.

4.—Your Petitioners appealed to the Court of Appeal against the 40  
aforesaid judgment in Civil Appeal No. 8 of 1952 on the grounds following :—

“ The learned Judge was wrong in law and/or in fact in  
“ holding that the Respondents became or at any material time  
“ were the tenants of the Appellants. Further, or alternatively,  
“ the learned Judge was wrong in law in holding that the

“ Respondents were entitled to the protection of the Control of Rent Ordinance, and in particular the learned judge was wrong in holding that the definition of the word ‘ tenant ’ in Section 2 of the said Ordinance included a sub-tenant as against the superior landlord.”

In the Court of Appeal of the Colony of Singapore.

5.—The said Civil Appeal was heard on the 27th day of June, 1952, and on the 15th day of July, 1952, the Court of Appeal gave judgment dismissing the appeal with costs.

No. 7. Petition for Leave to Appeal to Her Majesty in Council, 1st August, 1952—*continued.*

6.—The Court of Appeal gave judgment as aforesaid on the ground that they agreed with the reasoning of the learned trial judge as set forth in paragraph 2 hereof.

7.—Your Petitioners are dissatisfied with the aforesaid Judgment of the Court of Appeal and desire with the leave of Your Lordships to appeal therefrom to Her Majesty in Council.

8.—Your Petitioners are advised and humbly submit that the aforesaid Judgment of the Court of Appeal is wrong in law and ought to be reversed on the same grounds as are set out in paragraph 4 hereof *mutatis mutandis*.

9.—The subject matter in dispute in this Appeal involves a claim in respect of property the amount or value of which exceeds the sum of \$2,500.00.

Your Petitioners therefore pray for a Certificate that this case as regards value and nature is a fit one for appeal to Her Majesty in Council and Your Petitioner as in duty bound will ever pray, etc., etc.

Dated this 1st day of August, 1952.

Sgd. BATTENBERG & TALMA,  
*Solicitors for the Petitioners* GUAN SENG KEE LIMITED, whose address for service is Nos. 30/31, Chartered Bank Chambers, Singapore.

30

It is intended to serve this Petition upon the Defendants/Respondents.

\* \* \* \* \*

I, GOEI SIANG HOEY, of 19 Leedon Park, Singapore, Director of the Plaintiff Company duly authorised to make this Affidavit on behalf of the Plaintiffs/Appellants make oath and say that the statements contained in

In the Court of Appeal of the Colony of Singapore.

the foregoing petition are to the best of my knowledge information and belief in all respects true.

Sworn to at Singapore this 1st day of August, }  
 One thousand nine hundred and fifty-two } Sgd. GOEI SIANG HOEY.  
 (1952)

No. 7.  
 Petition for Leave to Appeal to Her Majesty in Council, 1st August, 1952—  
*continued.*

Before me,  
 Sgd. CHIM KIM FAH,  
*A Commissioner for Oaths.*

To the abovenamed Defendants/Respondents or their Solicitors,  
 Messrs. Braddell Brothers, Singapore.

10

No. 8.  
 Order granting Leave to Appeal to Her Majesty in Council, 8th December, 1952.

No. 8.

**Order Granting Leave to Appeal to Her Majesty in Council.**

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.  
 ISLAND OF SINGAPORE.

Suit No. 784 of 1950.

L.S.

Between

GUAN SENG KEE LIMITED ... .. *Plaintiffs Appellants*

and

BUAN LEE SENG LIMITED ... .. *Defendants Respondents.* 20

BEFORE THE HONOURABLE THE CHIEF JUSTICE IN CHAMBERS.

Upon the application of the abovenamed Plaintiffs Appellants made by way of Summons-in-Chambers No. 916 of 1952 this day and upon hearing Counsel for the Plaintiffs Appellants and for the Defendants Respondents and the Court being satisfied that Goel Lim Lian and Goei Siang both of No. 19, Leedon Park, Singapore, executed a bond in the sum of \$2,000.00 as security for costs of the appeal to Her Majesty in Council required by Order 57 Rules 11 IT IS ORDERED that the appeal herein to Her Majesty in Council be admitted.

Dated this 8th day of December, 1952.

30

Sd. TAN THOON LIP,  
*Registrar.*

# In the Privy Council.

No. 1 of 1953.

ON APPEAL FROM THE COURT OF APPEAL OF  
THE COLONY OF SINGAPORE.

Civil Appeal No. 8 of 1952.  
Suit No. 784 of 1950.

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BETWEEN  
GUAN SENG KEE LIMITED  
*Plaintiffs—Appellants*

AND

BUAN LEE SENG LIMITED  
*Defendants—Respondents*

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## RECORD OF PROCEEDINGS

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CHALTON HUBBARD & CO.,  
Victoria House,  
Southampton Row, W.C.1,  
*Solicitors for Appellants.*

SYDNEY REDFERN & CO.,  
1 Gray's Inn Square,  
Gray's Inn, W.C.1,  
*Solicitors for Respondents.*