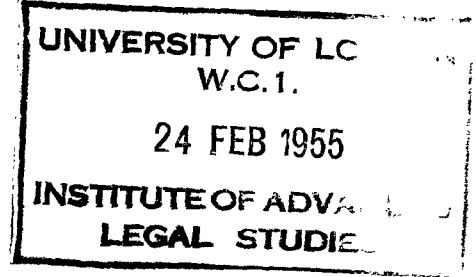


In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL.
SUPREME COURT OF THE FEDERATION OF
MALAYA.



BETWEEN :

- 1. KESARMAL S/O LETCHMAN DAS
- 2. LAKHMI DAS CHHABRA S/O GENDAMAL
(Defendants)

Appellants,

37738

10

AND

N. K. V. VALLIAPPA CHETTIAR S/O NAGAPPA
CHETTIAR (Plaintiff)

Respondent.

Case for the Appellants.

1. This is an appeal by leave of the Court of Appeal of the P. 109.
Supreme Court of Malaya from a Judgment and Order of the said
Court of Appeal dated the 21st March 1952 in Civil Appeal No. 36 P. 106.
of 1951.

2. By the said Judgment the Respondent was held to be entitled P. 104.
as against the Appellants to have set aside a certain conveyance of
20 land on the ground that it was procured by duress within the meaning
of the Titles to Land (Occupation Period) Ordinance of 1949.

3. The aforesaid Ordinance was passed by the Legislative
Council of the Federation of Malaya on 22nd August 1949 as Ordinance
No. 39 of 1949 and the relevant provisions thereof had been duly
brought into force before the commencement of this action. Section
27 of the said Ordinance, so far as relevant, provided as follows :—

“ 27 (1) Notwithstanding the provisions of sub-section (1) of
Section 42 of the Land Code or the corresponding provisions in

the Land Enactment of any Malay State, the title of a proprietor, chargee or lessee under any instrument executed during the occupation period shall not be indefeasible if the execution of such instrument was procured by coercion or duress: Provided that nothing in this sub-section shall affect the title of a subsequent proprietor, chargee, lessee or assignee who has taken *bona fide* and for valuable consideration from such first named proprietor, chargee, lessee or assignee or from any person claiming *bona fide* through or under him

(5) Duress, for the purposes of any action brought to set 10 aside an instrument or the registration of an instrument executed or effected during the occupation period on the ground of duress, includes—

(a) any force or injury applied or caused, or threat of force or injury offered, by an official of, or person on behalf of, the Occupying Power;

and

(b) a threat (other than one ordinarily and lawfully made in the exercise of a legal right or remedy) made by a party to the transaction to inform an official of the Occupying 20 Power of the refusal of the person concerned to execute an instrument or effect a registration,

which caused the person concerned to execute an instrument or effect a registration ”.

4. The Land Code referred to in the above-quoted section is the Land Code of the Federated Malay States enacted on 1st January 1928 being F.M.S. Chapter 138. By the said Section 42 thereof it was provided as follows :—

“ Section 42 (I) The title of a proprietor, chargee or lessee shall be indefeasible except as in this section provided 30

(II) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor, chargee or lessee shall not be indefeasible

(III) If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void

(IV) Nothing in sub-sections (II) or (III) shall affect the title of a proprietor, chargee or lessee who has taken *bona fide* for valuable consideration from any proprietor, chargee or lessee whose registration as such was procured by any such means or by means of any such instrument as aforesaid or of any person claiming *bona fide* through or under him

10 (V) When at the time the proprietor becomes registered a tenant shall be in possession of the land under an unregistered lease or agreement for a lease or for letting for a term not exceeding one year the title of the tenant under such lease or agreement shall prevail

(VI) Nothing in this section shall be construed so as to prevent the title of any proprietor being defeated by operation of law.”

5. By the definition contained in Section 2 of the said Land Code—

20 “ Proprietor means the individual person, incorporated company or body corporate for the time being registered as the owner of land comprised in a grant or certificate of title or entry in the mukim register or as the lessee of State land.”

6. The main questions for determination upon this appeal are :—

(1) whether a transfer dated 20th July 1943 (2603) and made by the Respondent in favour of the Appellants was signed by the Respondent under duress of Japanese Officials;

(2) whether, if there was such duress, the Appellants had actual or imputed knowledge of it at the date of the said conveyance;

30 (3) whether the Respondent is entitled, if there was such duress but the Appellants had no such knowledge, to have the said conveyance set aside under the provisions of the said Titles to Land (Occupation Period) Ordinance 1949;

(4) whether the Appellants may adduce evidence or may contend that the Respondent presented false accounts at the trial and that therefore his oral evidence of duress should be discarded and the findings of fact be treated as vitiated.

7. The lands the subject of the said transfer (hereinafter called "the lands") are situate in the Town and District of Klang in the State of Selangor being Lots 86 and 97 in Section 15. There was a Cinema on part of them called "the Rex" and on another part was the residence of the Klana who is identified in paragraph 8 (2) below, known as the Astana Bank.

8. The facts leading to this Appeal are as follows :—

- P. 13, L. 27. (1) The Respondent is a moneylender carrying on business at 41 Sultan Street, Klang: the Appellants are merchants carrying on business in Kuala Lumpur. 10
- P. 55, LL. 17-24. (2) Prior to 11th March 1941, at all material times the registered proprietor of the said lands under Certificates of Title Nos. 11,285 and 11,299 was one Tengku Musa Edin, who is usually referred to in the Record of Proceedings as Tengku Klana or "the Klana." He was installed in 1942 as Sultan of Selangor by the Japanese; though he was the eldest son of the late Sultan Sulaiman, his father had declared his younger brother Heir Apparent and the latter had become Sultan in 1937 upon the father's death.
- P. 13, L. 30. (3) The Klana repeatedly borrowed money from the Respondent and on the said 11th March 1941 a Memorandum of 20
P. 134. Transfer of the said lands from the Klana to the Respondent was registered in the Registry of Titles for Selangor. The said transfer was expressed to be an absolute transfer in consideration of \$30,000 then paid by the Respondents, but as the Respondent said in evidence, was in fact intended to provide security for monies borrowed. He thought that a charge might not be enforceable against a member of the Ruling House.
- P. 13, L. 32.
P. 14, LL. 12-22.
P. 56, L. 10.
P. 18, L. 7. (4) Accordingly by agreements in writing dated respectively
P. 136.
P. 140. the 18th March 1941 and 20th March 1941, of which the latter replaced the former, the Respondent granted to the Klana an 30
option to purchase the said lands at any time within 5 years for the sum, as stated in the latter agreement, of \$45,000.
- P. 137. (5) The Respondent had to borrow from another Chettiar in order to provide the loan required by the Klana and accordingly executed a memorandum of charge in respect of the said lands dated (apparently) 19th March 1941 in favour of M. A. M. Muthuraman Chettiar, which was duly registered.

(6) The Klana continued to borrow additional sums from the Respondent and accordingly two further similar option agreements were made between them, one dated 11th August 1941 in the sum of \$52,400 exercisable within 4½ years, the second dated 7th October 1941 in the sum of \$68,000 exercisable within 4 years. PP. 111-112.
Not in evidence.

(7) It was an important and indeed, in the Appellants' submission, an essential part of the Respondent's case that he subsequently paid to the Klana on or about 5th November 1941 a further \$5,000 and that on 5th November 1941 the Klana signed and gave to the Respondent a receipt for \$5,000 in the following terms :— P. 14, L. 42.
P. 39, L. 8.

“ I, the undersigned Tungku Musa Edin Ibni Almarhun Sultan Sulaiman Shah of Klang, have received from N. K. V. Valliapa Chettiar \$5,000 for cancelling an agreement dated 7.10.41 between him and myself for the sale of C.T. Nos. 11285 and 11299, Lots 86 and 97, Section 15, in the Town of Klang for the sum of \$68,000. Further, I have no more claim on the above agreement (option). P. 116.

This 5th day of November 1941.

Sd. T. Musa Edin. 5.11.41.” P. 16, L. 16.
P. 39, L. 7.

The Appellants have not accepted the genuineness of this document and desire to adduce fresh evidence indicating its falsity or raising substantial grounds for doubting whether it was signed at any such date as it purports to bear.

(8) The Respondent alleged in evidence that he paid to the Klana the said \$5,000 and asked for the return of the option agreement dated 11th October 1941 but was told that it had been mislaid. This evidence and the contents of the accounts to which reference was made by way of purported corroboration, is set out in paragraph 13 below. P. 16, L. 16.
P. 39, L. 7.

(9) The Klana then went to Penang but returned about 21st November 1941; the Japanese war began on 8th December but did not disrupt business in Selangor for several weeks. During this period he did not ask the Respondent for any fresh option over the lands. P. 40, LL. 1-17.

(10) In March 1942 the Klana, having been installed as Sultan, sent for the Respondent and asked him to return the lands. The Respondent refused and “ the matter rested at that ”. P. 16, L. 26.
P. 18, L. 39.

P. 16, LL. 31-39.

(11) Soon after the Manager of the Rex Cinema began to move some equipment to another theatre and the Klana intervened, claiming that the building and its contents were his. The Respondent was taken by servants of the Klana to a Japanese Officer who decided that the Klana had no right to interfere with the removal of the equipment.

P. 16, LL. 40-47.

(12) In May 1952 the Klana sent for the Respondent, demanded the return of lands and threatened to send the Respondent to the Japanese Governor. The Respondent consulted the District Officer who told him that the lands were his, the Respondent's, property 10 and nobody could do anything to take them from him. The District Officer promised to speak to the Klana if he again threatened the Respondent.

P. 16, L. 48.

(13) In June 1942 the Respondent was summoned to the Japanese Public Relations Office to produce his titles which were inspected and returned to him.

P. 18, L. 36.

P. 64, L. 40.

P. 18, L. 36.
P. 20, L. 3.
P. 19, LL. 11-13. }
P. 63, L. 13 to }
P. 66, L. 34. }

(14) A document bearing date 13th April 2603 (viz., A.D. 1943) was in evidence at the trial which the Respondent admitted that he had signed and which the learned Judge found that he had in fact signed. The Respondent said that it was written out in 20 October 1941 but that the purported date had been subsequently added. The learned Judge accepted the document as genuine and that the date it bore had neither been altered nor subsequently added, though he regarded it as irrelevant. The document, described by the learned Judge as "the oddest and most keenly litigated document in the whole case" read as follows when produced at the trial:—

D. 6, P. 116, L. 22.

" Klang
13th April 2603

TO YOUR HIGHNESS.

30

Lot 86 and 96.* Section 15 Klang Town.

The above land were bought by me for the sum of Dollars Sixty-eight Thousands only (\$68,000).

The said land can be bought back by you within 4 years, for that there is an agreement between us.

The assessment and quit-rent of the said land to be paid by you.

I beg to remain,

Sir,

Your obedient servant,

Sd. Valiappa Chettiar.

Assessment second half-yearly paid to-day \$630.00 and notice warrant of sale \$2, total \$632.

(Signature indecipherable)

14/4/03.

10

Assessment first half-yearly 2603 paid by Mr. Valiappa Chettiar \$168.”

(15) The assessment on the lands, referred to in the note written upon the said document, of \$168, was paid by the Respondent. He did not pay the \$630 assessment referred to in the said note.

D. 8, P. 20, L. 31.

P. 20, L. 21.

P. 21, L. 1.

20

(16) About the end of June 1943 one Maniam Chettiar, who was an agent of the Klana, brought the Appellants to the Respondent's house. The Respondent said in evidence that he told them he would not sell them the Rex Cinema. The Appellants' evidence was that the Respondent then said the cinema was for sale and that it belonged to the Sultan who was indebted to him. The learned Judge made no finding as to what happened at this interview remarking that it was "in dispute" and he "passed it over".

P. 17, L. 8.

P. 21, L. 13.

{ P. 27, L. 22.
P. 32, L. 12.

P. 57, L. 47.

30

(17) The Respondent said in evidence that on 9th July 1943 he was summoned to the Astana Bank to the Klana and was shown into a large hall where he found the Klana and two Japanese officers at a table. The two Appellants were "on or near the verandah".

P. 17, L. 14.

P. 17, L. 18.

(18) According to the Respondent, the Klana then said that "the two Punjabis had bought the Cinema and I should sign the agreement," the Japanese "who were officers because nicely dressed and with swords" said that he, the Respondent, must act according to the orders of the Sultan. The Respondent said that

P. 17, LL. 19-28.

P. 17, L. 27.
P. 113, " P. 4."
P. 114.

he was " shocked " and " did not hesitate " and signed the agreement which lay on the table without reading it. Maniam then came to the Respondent's home, gave him a cheque for \$5,000 drawn by the second Appellant, and asked for the titles which the Respondent took later the same day to the Klana, who was then alone. In cross-examination the Respondent said that he signed two copies of the agreement and may have inserted the date and that both Appellants were present and knew that he was not acting voluntarily.

P. 21, L. 24.
P. 21, L. 29.

P. 27, L. 39.
P. 30, LL. 10-29.

(19) Both Appellants denied that they were at the Astana 10 Bank on 9th July 1943 and said that the Respondent signed the agreement of that date in his own shop and received the \$5,000 cheque there.

PP.114-115, "P. 5."

(20) When the Respondent took the titles to the Klana he received from him a folded paper directing him to transfer the lands to the Appellants for \$105,000 of which he was to keep \$75,300 and pay the balance to the Klana.

P. 36, LL. 42-44.

P. 17, LL. 45-50.
PP. 120-122,
" P. 14."

(21) On 20th July 1943 at the office of a Mr. Bok, Solicitor, the Respondent without making any suggestion that he was not acting willingly, executed a transfer of the lands to the Appellants 20 who paid \$100,000, out of which the \$45,000 loan owing to the M.A.M. Chettiar firm from the Respondent was repaid and their charge was discharged. The Respondent paid \$29,700 to the Klana. In the following January an agreement was signed between the Appellants and the Klana confirming that the Appellants were to retain only that portion of the lands on which was the Rex Cinema, the Klana taking the rest after a formal sub-division.

P. 2, L. 11.

9. This action was commenced by the Respondent by a Statement of Complaint dated 18th April 1950, issued in the High Court of Kuala Lumpur, by paragraph 9 of which it was alleged that the Plaintiff as 30 a result of coercion or duress agreed on 9th July 1943 to transfer and convey the lands to the Appellants and that it was pursuant to such agreement that the transfer in favour of the Appellants was executed on 20th July 1943. The Respondent claimed that the said transfer should be set aside and consequential relief.

P. 4.

10. By their amended Statement of Defence dated 7th August 1950 the Appellants denied the alleged coercion or duress, alleged that the agreement of 9th July 1943 was prepared by the Respondent and

signed on that date in his shop, and that during the same interview the disputed document bearing date " 13th April 1943 " was produced; and they denied that they were present on that date in the residence of the Klana. They averred that they purchased the lands *bona fide* and for value, that there was no duress or coercion, alternatively none to which they were a party or of which they had notice.

11. The action was heard by the Hon. Mr. Justice Taylor on 11th, 12th December 1950, 16th, 17th, 18th, 19th, 22nd, 23rd, 25th and 26th January 1951.

10 12. In the respective openings of the cases of the parties it was P. 9, LL. 1-4.
contended :—

(1) for the Respondent that if there was coercion the transfer could be set aside under the Titles to Land (Occupation) Ordinance even though the transferees did not know of the coercion; *a fortiori*, if they knew of it.

(2) for the Appellants that the contrary was the law and reliance was placed on a comparison of the wording of (a) Section P. 26, LL. 34-43.
42 of the Land Code (b) Section 27 (1) of the said Ordinance.

13. The Respondent gave in evidence a circumstantial account
20 of his alleged payment of \$5,000 to the Klana in November 1941. He P. 14, LL. 29-43.
said that on 7th October 1941 the Klana's debit was \$68,000 and that :—

30 " after 7th October he (the Klana) sent for me to borrow more I refused: finally I said not more than \$1,000 or \$1,500. Next day I went again taking \$1,000 in cash; he took it and pleaded for \$4,000 more because he wanted to go to Penang. I refused. Then he said he would cancel the option which I had signed, so that the property would be mine absolutely. After consideration I agreed: I fetched the \$4,000 in cash and a stamp. I paid him and asked for a receipt to say that the option was cancelled and he had no more connection with the property. He agreed to give it. I wrote it out at his request. I now produce that document, which is marked P.3 for identification." P. 116.

In cross-examination the Respondent referred to an entry in his P. 23, LL. 19-23.
ledger of a debit of \$5,000.

It is probable that he was referring to an entry against date P. 133.
November 5th in the account set out at P. 133 of the Record which

is the posting into that ledger account of the last entry in the account set out at p. 129 of the Record which is as translated :—

“ No. 63. Also to debit towards settlement of agreement ... \$5,000.”

14. This entry has certain readily perceived peculiarities, of which the Appellant's Counsel was aware at the trial but chose to make no point—

viz. (a) “ No. 63 ” and “ towards settlement of agreement ” appear to have been added;

(b) the sum of \$5,000 was originally written as \$1,000.

However, in addition to these matters, which were not in themselves 10 destructive probatively of the Respondent's story, certain other alterations were discovered after the conclusion of the trial and shortly before the hearing of the Appeal, when the Appellants' Counsel more thoroughly examined all the entries in the Respondent's Rough Day Book for 5th November 1941, of which photostat copies and translations are contained in a separate bundle marked “ Appellants' Bundle of Photostats and translations of Respondent's Accounts ”. As originally written none of the entries for that day referred to any transaction with the Klana; alterations have been made purporting to record a payment to him of \$5,000. The relevant Books of Account 20 were made Exhibits in the Court of Appeal, being numbered 21 A,B,C,D,E.

15. There were 8 entries for the 5th November, which have been numbered below for convenience of reference, which as originally written read, when translated, as follows :—

No. 13	(1) Credit : K.P.N. Panikker towards principal	\$20.00	
	(2) further credit, interest for one month	\$2.50	
	(3) Credit : Chartered Bank	\$2,500.00	30
	(4) also credit as on 5.12.41	\$900.00	
	(5) Debit forthwith	\$2,500.00	
	(6) also debit	\$1,000.00	
	(7) also debit	\$22.25	
	(8) Planters Supply Credit	\$1,000.00	

The first four items were not altered : the remainder were altered as follows :—

	(5) Debit forthwith	\$3,500.00	
63	(6) also to debit in settlement of agreement	\$5,000.00	
	(7) To debit Chartered Bank	\$22.25	40
	(8) Planters Supply Credit	\$5,000.00	

It appears that all the alterations including the " 63 " are in different ink and handwriting from the other entries : It is submitted that the Payee as well as the amount of item (6) were altered in order to support the Respondent's story that he paid \$5,000 to the Klana on 5th November 1941.

16. Two other alterations were discovered on a page of the Respondent's Rough Day Book relating to July 1943, the time of the sale to the Appellants which has been impugned. A debit against the Klana was altered from \$7,500 to \$15,000 and a credit for \$15,000
10 interlined. The totals cast for the Indian month do not conform with these alterations. Four pages of the account for the said month in photostat and translation are included in the Appellants' said Bundle.

17. In the respective speeches at the trial it was contended :—

(1) *for the Appellants that—*

(a) the letter of 13th April 1943 destroyed the Respondent's case of coercion and duress :— { P. 48, L. 1.
P. 49, L. 25.

(b) the Respondent's accounts were not consistent with his story, to the extent that the alleged payment of \$5,000 did not
20 appear in the purchase account (Record P.132);

(c) there must have been some arrangement between the Respondent and the Klana later than the alleged document of renunciation dated 5th November 1941 to account for the figure of \$75,300 in fact repaid to the Respondent in July 1943; P. 48, L. 8.

(d) the Respondent received full value and was paid all that he was owed by the Klana and therefore the transaction was not unfair and was consistent with its being voluntary; P. 48, L. 28-35.

(e) the sum received by the Respondent on completion indicated some agreement of the amount with Maniam, now dead, on behalf of the Klana;
30

(f) the Ordinance imported English Equity which requires the third party to know of duress if he is to be affected by it. P. 50, L. 16.

(2) *For the Respondent that—*

P. 50, LL. 32-47.

(a) the Respondent became beneficial owner of the lands by force of document P.3 dated 5th November 1941.

P. 52, L. 18.

(b) duress was established

P. 53, LL. 10-20.

(c) under Civil Law Ordinance it is sufficient to show notice of duress against any party seeking to take advantage of it: Section 27 of the Ordinance extends that doctrine, within the limits of the Ordinance, to cases where the party benefiting has no notice. The object of the Ordinance is to restore properties which changed hands during the Occupation—not by reason of anything that happened between the parties but by reason of something that happened extraneously

P. 53, LL. 21-33.

(d) Section 27 of the Ordinance refers to cases within II, not III, of Section 42 of Land Code. If duress is shown, the title is defeasible—hence it is defeated and the registered proprietor loses his title.

P. 55.

18. By his reserved Judgment delivered on 22nd May 1951 the Hon. Mr. Justice Taylor stated the issues to be :—

1. Was duress applied ?

2. Were the (Appellants) affected either by direct personal knowledge of the duress or by the knowledge of their agents ?

3. Do the provisions of the Occupation Titles Ordinance dispense with notice ?

4. Do those provisions enable (the Respondent) to recover the land without refunding the purchase money ?

19. The learned Judge held that :—

P. 56, L. 22.

(a) early in November 1941 the Respondent in effect bought the Lands outright from the Klana for the amount of the previous advances plus \$5,000 making \$73,000 in all;

P. 57, LL. 28-36.

(b) on the whole the Respondent's accounts were consistent with his case, though the \$5,000 paid on 5th November 1941 did not appear in his purchase account relating to the lands; the accounts were " accepted " as " genuine and contemporary ";

P. 56, L. 33.

(c) early in 1942 the Klana began a series of attempts to recover the property which the Respondent resisted, at first with success;

(*d*) in 1943 the Klana employed one Maniam, since dead, as an agent or broker to arrange the sale of the lands and the Appellants agreed to buy them for \$105,000; P. 56, L. 35.

10 (e) the Respondent's account of what happened on 9th July 1943 was substantially correct, viz. :—that he was called to the Astana Bank by a messenger, Chanan Din; that he saw Raja Wahid, the Comptroller of the Household, and went upstairs; that he there saw the two Appellants with Maniam in or near the verandah; that he saw the Klana and two Japanese officers, wearing swords; that the Klana said, very curtly, that he had sold the Cinema to the two Punjabis and that the Respondent must sign the papers forthwith; that the Respondent hesitated and the Japanese came over and one of them said that he must obey the Sultan's orders; that the Respondent then signed the agreement of sale without reading it; that being told by the Klana to fetch the title deeds he did so, remarking on his way out to Raja Wahid that it was all over and to Chanan Din that the Klana could now do anything, having become Sultan;

20 (f) the signature on the disputed letter bearing date 13th April 1953 was that of the Respondent and the document was genuine and correctly dated, but was "probably procured for the purpose of enabling the Klana to pay the assessment" on the lands, i.e., to arrange with the officials of the Rating Office to accept payment of the rates from the Klana, alternatively it was intended to be shown to prospective purchasers; but was "in the true sense, irrelevant"; P. 65, LL. 40-48. P. 66, L. 33.

(g) the Respondent signed the agreement of 9th July 1943 because the Japanese Official said "You had better obey"; P. 67, L. 49.

30 (h) the Respondent had on one occasion already been detained temporarily for enquiry by the Japanese and in the circumstances a reasonable man of firm character might well fear, as the Respondent did fear, that on another occasion he would not be freed so easily; P. 68, L. 2.

(i) the Respondent was "in exactly the same danger in the Solicitor's office (on 20th July 1943 when he executed the conveyance) as he had been in at the Astana"; P. 68, L. 20.

- P. 68, L. 32. (j) the Appellants were present on 9th July 1943 at the Astana Bank when the threat was made and it was to be inferred that they were near; they personally knew of the duress;
- P. 68, L. 39. (k) Maniam heard what passed and as he was acting as a broker this was “ enough to saddle (the Respondents) with notice of duress ”;
- P. 69, L. 2. (l) the point whether the transaction was voidable even without proof of knowledge of the duress did not arise and could be left entirely open;
- P. 69, L. 45. (m) the Ordinance imports the ordinary law and equity regarding duress and extends the meaning of the term to include cases where advantage was taken of the enemy occupation to exert unfair pressure of a kind which is not available under the rule of British law;
- P. 70, L. 23. (n) the (Respondent) must on recovering the lands refund \$75,300 Japanese currency, without interest.
- P. 74. 20. Judgment was accordingly entered in favour of the Respondent setting aside the said Transfer and ordering consequential Accounts and other relief.
- P. 85, L. 30. 21. The Appellants duly appealed from the said Judgment to the Court of Appeal at Kuala Lumpur and in addition to the arguments previously adduced sought leave, which was refused, to investigate the significance of entries in the Respondent’s accounts not considered in the Court of first instance.
- P. 104. 22. On 21st March 1952 the Judgment of the Court of Appeal was delivered dismissing the said Appeal and holding—
- (a) that it was not possible to disturb the findings of fact as to what took place or the finding that this amounted to duress within the meaning of the Ordinance;
- (b) that it was impossible to disturb the finding that the Defendants at the time of the transfer had knowledge of duress; but
- (c) that from the wording of the Ordinance such knowledge was in any case immaterial;
- (d) that it was impossible to say that the learned Judge of trial was wrong when he treated the letter of the 13th April 1943 as irrelevant.

23. On 16th April 1952 the Appellants were granted leave to P. 107.
appeal against the said Judgment of the Court of Appeal.

24. The Appellants will apply at the hearing of this Appeal for
leave—

(a) to refer to the Respondent's books of account, Exhibits 21
A, B, C, D, E, and the photostats and translations referred to in
paragraph 14 hereof;

10 (b) to submit that the alterations apparent on the face of the
said documents and the inferences to be drawn therefrom are so
significant, in relation to the issues in this case, that had they been
brought to the attention of the learned Judge of trial they would
almost certainly have affected his judgment of the credibility of
the Respondent, on whose evidence he felt able to rely;

(c) to contend accordingly that the findings of fact herein-
before referred to should be regarded as vitiated and of no con-
clusive effect.

25. It is submitted on behalf of the Appellants that their appeal
should be allowed with costs for the following among other

REASONS.

- 20 (1) Because the facts found by the learned Judge of trial set
out under paragraph 19 (e) hereof do not constitute any
duress affecting the voluntary character of the conveyance
sought to be set aside;
- (2) because the finding of the learned Judge of trial that the
letter of 13th April 1943 was genuine and was signed
voluntarily by the Respondent is incompatible with and
destructive of his finding of duress;
- 30 (3) because the purported finding of the learned Judge of trial
that the Appellants knew of the duress set out in paragraph
19 (j) hereof was a mere inference not supported by evidence
and incompatible with the onus of proof resting on the
Respondent and should therefore be reviewed and reversed;
- (4) because the learned Judge of trial erred in law in holding,
as set out in paragraph 19 (k) hereof that the Appellants
were affected by any knowledge possessed by Maniam;

- (5) because the Titles to Land (Occupation Period) Ordinance, Section 27—
- (a) does not affect the title of a registered proprietor unless it be established that the transfer to him was obtained by duress, as therein defined, to which he was a party or of which he had knowledge;
- (b) merely renders a title affected by its provisions “ not indefeasible ” and should not in the circumstances of this case be so applied as to defeat a transfer voluntarily made by the Respondent for fair value received; 10
- (6) because the Court of Appeal should have granted leave to the Appellants to introduce fresh material to which the attention of the learned Judge of trial was not directed and of which the Appellants were not, despite all diligence, previously aware, viz., certain entries in the Respondent’s accounts and alterations of items in those accounts which, when examined, convincingly demonstrate that the Respondent presented a false case to the learned Judge of trial, who expressly relied upon such accounts as corroborative of the Respondent’s case. 20

KENNETH DIPLOCK.

RODGER WINN.

In the Privy Council.
ON APPEAL FROM THE COURT OF
APPEAL.
SUPREME COURT OF THE
FEDERATION OF MALAYA.

BETWEEN :

1. KESARMAL S/O LETCHMAN
DAS
2. LAKHMI DAS CHHABRA S/O
GENDAMAL (Defendants) *Appellants,*

AND

N. K. V. VALLIAPPA CHETTIAR
S/O NAGAPPA CHETTIAR
(Plaintiff) *Respondent.*

Case for the Appellants.

LAWRANCE, MESSER & CO.,
16, COLEMAN STREET, E.C.2,
Appellants' Solicitors.
