

~~C.M.C. & D.~~

Judgment
21, 1959

IN THE PRIVY COUNCIL

No. 35 of 1958

ON APPEAL

FROM THE COURT OF APPEAL OF MALAYA

B E T W E E N :-

CHOW YOONG HONG ... (Defendant) Appellant

- and -

TAI CHET SIANG ... (Plaintiff) Respondent

RECORD OF PROCEEDINGS

DARLEY CUMBERLAND & CO.,
36, John Street,
Bedford Row,
London, W.C.1.
Solicitors for the Appellant.

LIPTON & JEFFERIES,
Princes House,
39, Jermyn Street,
London, S.W.1.
Solicitors for the Respondent.

04
FINCED

- 9 MAR 1960

25 RUSSELL SQUARE
LONDON, W.C.1.

55497

ON APPEAL

FROM THE COURT OF APPEAL OF MALAYA

BETWEEN

CHOW YOONG HONG (Defendant) Appellant

- and -

TAI CHET SIANG (Plaintiff) Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 35 of 1958

ON APPEAL

FROM THE COURT OF APPEAL OF MALAYA

BETWEEN

CHOW YOONG HONG (Defendant) Appellant

- and -

TAI CHET SIANG (Plaintiff) Respondent

RECORD OF PROCEEDINGS

No. 1

Plaint

In the High Court of Kuala Lumpur

10

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

No. 1

Civil Suit No.176 of 1956

Plaint.
21st May 1956

Tai Chet Siang ... Plaintiff

v e r s u s

Chow Yoong Hong ... Defendant

SUMMARY PROCEDURE

Sd:Bannon & Bailey, Plaintiff's Solicitors. Sd: Tai Chet Siang Plaintiff's Signature

20

STATEMENT OF PLAINT

The abovenamed Plaintiff states as follows:-

1. The Plaintiff is a landowner residing at No. 27, Malay Street, Kuala Lumpur.

2. The Defendant is a textiles merchant, carrying on business at No.120 High Street, (back portion) Kuala Lumpur.

In the High
Court of
Kuala Lumpur

No. 1

Plaint.
21st May 1956
- continued.

3. On the 6th day of October 1955 the Plaintiff agreed to purchase from the Defendant and the Defendant agreed to sell to the Plaintiff the house erected on No.27, Malay Street, Kuala Lumpur, together with the land pertaining thereto for the sum of \$33,000/-. A copy of the agreement is attached hereto and marked Pl. The Plaintiff paid to the Defendant a deposit of \$5,000/-.

5. The Plaintiff has on numerous occasions called upon the Defendant to complete the sale on payment to the Defendant of the balance of \$28,000/- but the Defendant has failed or refused to do so. 10

6. In view of the failure of the Defendant to complete the sale the Plaintiff has called upon the Defendant to refund the said Deposit of \$5,000/- but the Defendant has failed or refused to do so.

7. The Plaintiff's claim is for \$5,000/- for a return of money paid as a deposit upon the sale of the premises.

The Plaintiff therefore prays judgment for :- 20

- (1) The sum of \$5,000/-
- (2) Costs.
- (3) Any other reliefs.

I, Tai Chet Siang, the abovenamed Plaintiff do hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe the same to be true.

Dated this 21st day of May, 1956.

Sd: TAI CHET SIANG
Signature.

30

No. 2

WRITTEN STATEMENT AND COUNTERCLAIM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT OF KUALA LUMPUR

Civil Suit No. 176 of 1956

Tai Chet Siang ... Plaintiff

v e r s u s

Chow Yoong Hong ... Defendant

In the High
Court of
Kuala Lumpur

No. 2

Written
Statement and
Counterclaim.
18th September,
1956

WRITTEN STATEMENT AND COUNTERCLAIM

10 The Defendant abovenamed states as follows:-

1. Paragraphs 1 and 2 of the Statement of Plaintiff are admitted.

2. Paragraph 3 of the Statement of Plaintiff is admitted subject to the qualification that liability is denied for reasons hereinafter appearing.

3. There is no paragraph 4 in the Statement of Plaintiff.

4. The allegations in paragraph 5 in the Statement of Plaintiff are denied.

20 5. On 31st January, 1956, the defendant wrote to the plaintiff calling upon him to complete the purchase of the house in question failing which the deposit of \$5,000/- would be forfeited. The said letter was returned to the defendant by the postal authorities with the remarks "Always Out - Unclaimed - Retour" endorsed on the envelope.

30 On 10th February 1956, the defendant sent another letter to the plaintiff calling upon him to complete the purchase of the said house within 7 days from date of the said letter failing which the said deposit of \$5,000/- would be forfeited.

On 29th February 1956, the defendant sent a further letter to the plaintiff calling upon him to complete the transfer of the said house on 1st

In the High
Court of
Kuala Lumpur

No. 2

Written
Statement and
Counterclaim.
18th September,
1956 - continued.

March 1956 failing which the said deposit of \$5,000/- would be forfeited. The plaintiff has failed and/or neglected to complete the said transfer despite the aforesaid written requests and several verbal requests.

5. With regard to paragraph 6 of the Statement of Plaintiff, the defendant denies that he has failed to complete the sale as alleged therein and denies liability to refund the said deposit of \$5,000/- to the plaintiff or any part thereof.

10

6. Save as has been hereinafter expressly admitted, all the allegations contained in the Statement of Plaintiff are denied as if the same were herein specifically set out and traversed seriatim.

7. The Plaintiff is not entitled to any of the reliefs claimed and the defendant prays that this suit may be dismissed with costs.

C O U N T E R C L A I M

8. The Defendant repeats the written Statement aforesaid and says that by reason of the Plaintiff's failure to complete the purchase of the said house No.27 Malay Street, Kuala Lumpur the defendant had to sell the said house for \$25,100/- as against the agreed price of \$33,000/- thereby sustaining a loss of \$7,900/-

9. The Defendant counterclaims for:-

- (a) Judgment for \$7,900/-
- (b) Such further and other relief as appears just and right.
- (c) Costs.

30

Sd: Y.S.Lee
Defendant's Solicitor.

Sd: Chow Yoong Hong
(In Chinese)
Defendant's Signature.

I, Chow Yoong Hong, the defendant abovenamed do hereby declare that the above statement is true to my knowledge and belief except as to matters stated on information and belief and as to those matters I believe the same to be true.

Dated this 18th day of September, 1956.

Sd: Chow Yoong Hong
(In Chinese)
Defendant's Signature.

No. 3

REPLY TO WRITTEN STATEMENT AND COUNTERCLAIM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT OF KUALA LUMPUR

CIVIL SUIT NO. 176 OF 1956

Tai Chet Siang Plaintiff

versus

Chow Yoong Hong Defendant

In the High
Court of
Kuala Lumpur

No. 3

Reply to Written
Statement and
Counterclaim.
22nd October,
1956.

REPLY TO WRITTEN STATEMENT OF COUNTERCLAIM

10 The plaintiff abovenamed states as follows:-

1. With reference to paragraph 4 of the Written Statement and Counterclaim the plaintiff has no knowledge of and does not admit the alleged letter sent to him by the defendant dated the 31st January, 1956. The plaintiff denies that he ever received any letter of such date from the defendant.

20 The plaintiff admits having received a letter from the defendant dated the 10th day of February, 1956. A copy thereof is annexed hereto and marked "A" and is referred to for its terms. The plaintiff replied to the said letter on the 11th day of February 1956 and a copy of the said reply is annexed hereto and marked "B" and referred to for its terms. The plaintiff avers that it was a term of the original agreement that the transfer should be prepared by a lawyer and further avers since he was the proposed purchaser he was entitled to have the transfer prepared by his solicitor.

30 The plaintiff admits having received a letter from the defendant dated the 29th day of February, 1956. A copy thereof is annexed hereto and marked "C" and is referred to for its terms. The plaintiff avers that the defendant was not entitled to require that the transfer should be executed at the office of the defendant's solicitors since the plaintiff was the proposed purchaser and further

In the High
Court of
Kuala Lumpur

No. 3

Reply to Written
Statement and
Counterclaim.
22nd October,
1956 - continued.

avers that the time within which the defendant required the plaintiff to complete the transfer on penalty of forfeiture of the deposit was in any event neither fair nor reasonable. The plaintiff duly replied to the defendant's said letter by a letter dated the 1st day of March 1956 a copy whereof is annexed hereto marked "D" and referred to for its terms. The defendant refused to accept delivery of the plaintiff's said letter.

The plaintiff further avers that he was at all material times ready and willing to complete the transfer and at no time indicated to the defendant in any manner whatsoever that he had any intention of repudiating the agreement. The plaintiff denies that the defendant was at any time entitled to forfeit the deposit since it was the defendant who repudiated the agreement.

10

2. The plaintiff joins issue with the defendant on paragraphs 5, 6 and 7 of the Written Statement and Counterclaim.

20

3. The plaintiff further avers that on the material dates the defendant was not the registered proprietor of the land in question which is the land held under Grant for Land No. 3132 for Lot No.6 Section 53 in the Town of Kuala Lumpur. At all material times the registered proprietor was one Yong Pung Seng. The plaintiff avers that in these circumstances the defendant was at all material times incapable of performing his part of the contract and accordingly was not entitled to call upon the plaintiff for performance.

30

4. With regard to paragraph 8 of the written Statement and Counterclaim the plaintiff refers to paragraphs 1, 2 and 3 hereof and denies that the defendant is entitled to the sum claimed or any sum since the alleged loss to the defendant was not caused by any act or default on the part of the plaintiff. The plaintiff further denies that the defendant sold the land in question at any time and avers that the defendant has never been the registered proprietor of the land in question and was incapable of selling it.

40

5. In the alternative the plaintiff denies that the loss suffered by the defendant on the sale of

the land in question was \$7,900 or any other sum.

Dated this 22nd day of October, 1956.

Sd: Bannon & Bailey,
Plaintiff's Solicitors.

Sd: Tai Chet Siang
Plaintiff's Signature

In the High
Court of
Kuala Lumpur

No. 3

I, Tai Chet Siang, the plaintiff abovenamed do hereby declare that the above statements are true to my knowledge except as to matters stated on information and belief and as to those matters I believe the same to be true.

Reply to Written
Statement and
Counterclaim.
22nd October,
1956 - continued.

10

Sd: Tai Chet Siang
Signature.

P.3.

P.3.

LETTER "A" DEFENDANT TO PLAINTIFF

Chow Yoong Hong,
120, High Street,
Kuala Lumpur.

Letter "A"
Defendant to
Plaintiff
10th February,
1956.

10th February, 1956.

To,

20

Mr. Tai Chit Sen,
27, Malay Street,
Kuala Lumpur.

Dear Sir,

re: House No.27 Malay Street,
Kuala Lumpur.

30

With reference to our Agreement of the 6th October, 1955 and our Telephone conversation in regards to your purchase of the above property, I now write officially to inform you that an Order has been made in the High Court, Kuala Lumpur that the property may be sold. Will you, therefore, within seven (7) days from date hereof come to my shop and complete the transfer of the above property by Cash.

In the event of your failing to complete the purchase of the above property within the period

In the High Court of Kuala Lumpur

No. 3

Reply to Written Statement and Counterclaim
22nd October 1956 - continued.

P.3

Letter "A"
Defendant to Plaintiff
10th February, 1956.- continued.

as aforesaid mentioned the deposit paid down by you will be forfeited by me.

Yours faithfully,

Sd. In Chinese
Chow Yoong Hong.

Exhibit "P3"
No.C.S.176/56
Produced by Pltff.
Date 20-3-57

Sd. ?
f.Senior Asst.Registrar
Supreme Court, Kuala Lumpur.

10

P.2.

Letter "B"
Plaintiff to Defendant
11th February, 1956.

P.2.

LETTER "B" PLAINTIFF TO DEFENDANT

Tai Chet Siang
27, Malay Street
Kuala Lumpur.
11th February, 1956.

Mr. Chow Yoong Hong,
120, High Street,
Kuala Lumpur

20

Dear Sir,
House - 27, Malay Street,
Kuala Lumpur.

I thank you for your letter dated 10th February, 1956 under the captioned subject.

I am in agreement with your suggestions to complete the transfer and purchase of the above property, but would like you to appreciate that this matter should be handled through legal channels.

30

Therefore kindly advise me a date suitable to

you when we both may go to our lawyer's office where the transfer could be best finalised. Please bring along the Title of the Property for my lawyer's scrutiny.

In the High Court of Kuala Lumpur

No. 3

Reply to Written Statement and Counterclaim
22nd October
1956 - continued.

P.2

Letter "B"
Plaintiff to Defendant
11th February,
1956 - continued.

Looking forward to hearing from you soon.

I remain,
Yours faithfully,

Sd. ?
for (TAI CHET SIANG)

10 Exhibit "P2"
No. C.S.176/56
Produced by Pltff.
Date 20-3-57

Sd. ?
f. Senior Asst. Registrar
Supreme Court, Kuala Lumpur.

D.1.

D.1.

LETTER "C" DEFENDANT TO PLAINTIFF

20 Chow Yoong Hong,
120 High Street,
Kuala Lumpur.
29th February, 1956.

Letter "C"
Defendant to Plaintiff
29th February,
1956.

To,
Mr. Tai Chet Siang,
27 Malay Street,
Kuala Lumpur.

Dear Sir,

House - 27 Malay Street, K.Lumpur.

30 With reference to your letter of the 11th instant, I have to request you to be kind enough to call at the office of Messrs. Shearn & Delamore, Advocates & Solicitors of 52 Ampang Road, Kuala Lumpur on the 1st day of March, 1956 between the hour of 10 a.m. to 11 a.m. to complete the transfer of the above property.

In the High
Court of
Kuala Lumpur

In the event of your failing to do so, the
deposit sum of ~~5~~5,000/- paid by you to me will be
forfeited to me without any further dispute.

No. 3

Yours faithfully,

Reply to Written
Statement and
Counterclaim
22nd October
1956 - continued.

Sd. In Chinese

(Chow Yoong Hong)

D.1.

Exhibit "D1"
No. C.S.176/56
Produced by Defdt.
Date 20-3-56

Letter "C"
Defendant to
Plaintiff
29th February,
1956 - continued.

Sd. ?
f. Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

10

Letter "D"
Plaintiff to
Defendant
1st March 1956.

LETTER "D" PLAINTIFF TO DEFENDANT

Tai Chet Siang,
27 Malay Street,
Kuala Lumpur.

1st March, 1956.

Mr. Chow Yoong Hong,
120 High Street,
Kuala Lumpur.

20

Dear Sir,

House - 27 Malay Street, Kuala Lumpur

This is to acknowledge receipt of your letter
dated 29th February, 1956.

I now have to inform that you shall have to
call at the office of my solicitors, Messrs. Au
Yong Brothers, with whom I have arranged for the
necessary transfer of the above property to be
completed. It is essential that you produce the
Title Deed to my solicitor for his scrutiny.

30

To suit your convenience it is agreed that the
meeting at my solicitor's office shall take place
any day after 1st March, 1956.

I trust the above arrangement is fair to you.

Yours faithfully,
(TAI CHET SIANG)

No. 4.

TAI CHET SIANG

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT KUALA LUMPUR
CIVIL SUIT NO. 176 OF 1956

Tai Chet Siang Plaintiff

v.

Chow Yoong Hong Defendant

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence

Plaintiff's
Evidence

No. 4

Tai Chet
Siang.

Examination.

Notes of Evidence

10 Before me in Open Court
this 20th March 1957.

Peddie for plaintiff Sd. W.B. Sutherland
Rawson and T.C.Tang for J.
defendant.

Peddie opens
Refers to plaint, defence.
Defendant must elect between forfeiting deposit
and the counterclaim.

20 Were circumstances such as to warrant forfeiture?
Time can be introduced into the contract at a
later date.

P.W.1. affd. states in Hokkien.

My name is Tai Chet Siang.
I am the plaintiff.
I stay at 27 Malay St., K.Lumpur.

30 On 6.10.55 I entered contract with Chow Yoong Hong
to purchase these premises. The vendor's full name
I do not know. The purchase price was \$33,000.
The deposit was \$5000. I paid that. Document was
signed. It is attached to statement of claim.
This is it. (P.1)
(Translation PLA)
I did not receive a transfer of the house by the
defendant. Defendant did not offer to transfer
the house to me. Never. He did not ask me to pay

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Plaintiff's
Evidence -
continued

No. 4

Tai Chet
Siang.

Examination -
continued.

the balance of purchase money. I do not know whether he asked anyone on my behalf. I asked him to complete the sale to me. I asked him verbally as well as in writing. This is one of my letters asking completion of purchase (P.2).

In P.2. I acknowledge letter of 10.2.56. I received that. This is the letter (P.3).

I received no reply to P.2.

I wrote a further letter, I wrote it in March 1956.

He received it after several attempts were made.

After the second letter to defendant I instructed my solicitors Au Yong Bros. to write defendant. I also instructed Bannon & Bailey to write defendant for transfer of the house. I know they wrote. I know defendant received the letter. At first he refused to receive it.

My younger brother Tai Yee Kheng (id.) helped me with the correspondence.

The previous owner was a Malay who sold the land to defendant. I did not tell defendant I did not wish to purchase the land. I did not know where to pay balance of purchase money. I did not say I did not have the money to pay balance.

When defendant did not give me a transfer I took these proceedings to recover from him. Before proceedings I had asked repayment.

It has not been repaid. I did not engage lawyer when I entered agreement.

Later I engaged Au Yong Bros. Then Bannon and Bailey. I engaged Shearn Delamore & Co. in April '56 on this matter. I retained them to recover my deposit of \$5000. I did not engage Shearn Delamore at any time.

Cross-
Examination.

Cross-exam. On 6.10.56 I was living at 27 Malay Street. I was the tenant of those premises. I paid rent \$125 p.m. I knew who the owners were on 6.10.56. They belonged to Hj. Abdullah bin Mohd Taib who was my landlord.

On 6.10.56 defendant told me he had bought the house from the Malay. He did not say he had an option. I continued to pay the rent for Oct. to Jan. to the Malay, because the Malay collected the rent. The Malay told me he had not completed the transfer to the Chinese.

Q. You knew the defendant had only agreed to buy and was not the owner?

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A. No I believed the defendant. He told me he bought it.

In the High Court of Kuala Lumpur

I believed the Malay. Defendant told me he wanted to buy the house from the Malay and when he had bought it I was going to buy it from him. The person I was buying from was defendant. On 6.10 I paid deposit by way of earnest money of \$5000. I enquired from defendant how long I would have to wait and he said he was not sure. I did not know the conditions on which he was purchasing from the Malay.

Judges Notes of Evidence - continued

Plaintiff's Evidence - continued

He did not tell me the sale was subject to approval by Court order. Nothing was mentioned about Court order.

No. 4

Tai Chet Siang.

Cross-Examination - continued.

I came to know about Court only on receipt of P.3. Thereupon I instructed my solicitors Au Yong to write to complete the transfer. Au Yong telephoned and wrote to defendant. That was 2 or 3 days after P.3. I instructed Au Yong to telephone defendant. My younger brother on my behalf wrote to defendant. I did not know when I paid the deposit the sale was subject to Court order. I did not know or agree the sale was to be completed within 7 days of defendant's calling on me to do so.

I did not know defendant had to complete with the Malay within a specified time of the Court order.

I did not know that if defendant did not complete with the Malay he would forfeit deposit of \$10,000.

When P.1. says "all transfer procedure as drawn up by a lawyer will be followed" that did not mean that the procedure as shown in the letter of 6.10 now shown to me (M for id.) which was shown to me at that time, were to be followed. This letter was not shown to me.

I did not know on 6.10 defendant was forced to complete with the Malay within a specified time. At begin of Feb. '56 I was not in my premises in Malay Street. I was living there then but I might not have been in the shop.

I was in the shop. I did not deliberately refuse to accept letter from Chow Yoong Hong. There was always someone there. The letter now shown to me (N for id) was not delivered to me. I might have been away.

On 1.2 I did not have telephone conversation with

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30

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In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Plaintiff's
Evidence -
continued

No. 4

Tai Chet
Siang.

Cross-
Examination -
continued.

defendant. Before 10.2 I did not have 'phone conversation with defendant. He did not ask me to fulfil my promise to pay balance. There was no telephone conversation. The statement in the letter of 10.2 is not correct. There was no phone conversation. I instructed Au Yong to reply saying I was prepared to complete. I said nothing about the incorrect statement about a phone conversation. I have known defendant 2 or 3 years.

10

On 6.10 I came to meet him when I called on him at his shop in High Street. I was informed about the sale by an Indian. The Indian was not present at the discussions. He told me of prospective sale of house. He did not take me to defendant. I do not know whether he is a land broker. He is Meerah (id) I did not see him when P.1. was signed. After 6.10 I did not see Meerah about completion of the sale. I never saw him again. Defendant never offered to transfer the house and never asked for payment of purchase money.

20

I see P.3.

Defendant could not produce a grant. Defendant did not make a demand for purchase price till P.3. I did not receive another letter in similar terms. All I can remember is that I received 1 letter. I now remember receiving the letter dated 29.2 now shown to me. I cannot remember whether it was received on 29.2. I see the despatch book now shown to me (R for id.). The name of my shop appears there.

30

Later same morning I did not receive visit from defendant and Lee Nget Fah (id). I have never seen Lee Nget Fah. I am not lying. I did not see defendant on morning 29.2. He did not come to my place. The occupier of 31 Malay Street is a Punjabi. I do not know his name. I don't know whether he purchased his house from defendant at same time. The shop next to mine - I do not know whether it was sold at same time. 27 29 and 31 are next to each other.

40

I did not find out the Punjabi was paying \$30,000. I did not refuse to complete unless defendant reduced the price from \$33000. I do not know at what price the other 2 shops were sold.

On 29.2 I did not refuse to complete unless price reduced. When my pleadings say Grant 3132 I do not know whether that is incorrect. I am the owner of 27 Malay Street. I am in possession of

the title. The title is C.T.1653.

I did not give instructions relating to Grant 3132 to my solicitor.

I purchased the property from Madam Ng Choo. I do not know if she had purchased it from defendant.

From 6.10 onwards I did not know that time was of greatest importance in completing my purchase. I do not know my purchase was bound up with the purchase from the Malay

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Plaintiff's Evidence - continued

No. 4
Tai Chet Siang.
Cross-Examination - continued.

10 Re-exam.

P. 1. was written by defendant.

Re-Examination

No. 5

TAI E. KING

No. 5

Tai E. King.
Examination.

P.W.2 affirmed states in English.

My name is Tai E. King 27 Malay St., K.Lumpur.

P.W.1 is my brother.

20 I know details of purchase of property between P.W.1 and defendant (id). P.W.1 was the purchaser. The negotiation was in October, 1955. The premises were 27 Malay St. Price was \$33000. \$5000 was given as deposit. Document was signed by seller. I can identify it.

The receipt was signed by the seller before my brother P.W.1 does not read or write English. I deal with letters.

P.W.1 received P.3 from defendant. Reply was sent the same day. I received the letter. P.2. is the reply.

30 After some time P.W.1 received another letter - 3 or 4 months later. In it, defendant asked us to

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Plaintiff's
Evidence -
continued

No. 5
Tai E. King
Examination -
continued

go to Shearn & Delamore is the further letter.
It is dated 29.2. A reply was sent. We told
defendant to come to Au Yong for the transfers.
The letter was sent by registered post. Defendant
refused to receive the letter. This is it (P.4).

I went to my solicitor to issue another letter to
transfer the titles. My solicitor sent a letter.
It was refused. This is it (P.5.).

Then I went personally to defendant on 13.3. to
hand him a letter requesting the sellers to come
to the office within 7 days. That letter was hand-
ed to defendant. He opened it. He asked me to
take it back, I refused to take it back. I signed
the despatch book (P.6) as having delivered the
letter. The Chinese characters under date 13.3.
are mine. This is a copy of the letter I deliver-
ed (P.7) I approached my solicitor for further
action. I instructed my solicitor to send a fur-
ther letter. This was April. I instructed my
solicitor to write holding him responsible because
he had transferred the land to other people. This
is the letter sent in April (P.8).

As far as I know there was no verbal arrangement,
apart from correspondence.

P.W.I. never instructed me to tell defendant he
never intended to complete.

I was not present at first negotiations. I arranged
with Au Yong to complete the purchase. Transfer
was not completed because defendants did not turn
up.

Cross-
Examination.

Cross-exam.

I arranged with Au Yong on 1.3.

We went to other solicitors on 2.3. because
defendant did not turn up. I heard from my brother
that he had agreed to purchase for \$33000 and had
agreed to pay \$5000 deposit. The owner on 6.10 was
defendant because he had paid the money to the
solicitors of previous owners - that was a few
days before. My brother did not tell me an order
of Court was necessary. I did not know that until
now.

There is a Court order mentioned in P.3. I replied
to P.3 but I did not know the sale was subject
to Court order.

I have never received a telephone conversation
about this. My brother said he had no knowledge
of telephone conversation.

My efforts are not largely after 1.3. All the time
I handled the correspondence

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I did not ask Au Yong to write a letter.

P.8. was written on my instructions. Defendant had sold the property to his wife. The owner on 16.4. I suppose was his wife. P.W.1 purchased from defendant's wife round about 16.4. I have seen Meerah (id.) He is a broker. It was Meerah who arranged the sale to P.W.1. I did not see Meerah. I knew the terms. P.W.1 came back and told me. There was no time limit. That was request of sellers. Whenever we or he wanted to transfer, the transfer would take place. When one party let the other party know, defendant would have to come to my solicitor. That is the usual 4 months delay is usual.

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I do not know the reason for the delay. P.W.1. received D.1.

I do not know how it was delivered. I do not know when he received it. D.1. requests transfer on 1.3. We replied he should come to our lawyers. I knew the transfer was from a Malay estate to defendant or his nominee. I did not know whether Shearn Delamore were acting for the Malay estate. The shop next door is 29. I do not know whether it was sold at same time. I do not know whether 31 is next to it. I do not know the owner of 31. A Punjabi occupies it. He has occupied it for some years. I do not know whether the Punjabi bought 31 from defendant. I do not know whether the Punjabi bought his premises for \$30,000. I never asked reduction in purchase price. I was only anxious to complete. I had the money in the bank. I did not know whether it was true that a Court order was necessary.

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From 11.2 and 1.3 I was waiting for his reply. I deny my evidence is untrue.

D.W.1 knows Chinese. He reads a little. He can sign his name. On 29.2. I did not know whether defendant called at the shop. I was in the shop on 1st and 2nd Feb.

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I know Lee Yat Fah (id). He chatted with me in the shop. He did not chat with P.W.1. I do not know whether Lee and defendant came to see P.W.1 on 29.2.

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Plaintiff's Evidence - continued

No. 5 Tai E. King

Cross-Examination - continued.

Re-exam.

Re-Examination.

P.W.1 never employed Shearn Delamore & Co. as his solicitors.

In the High Court of Kuala Lumpur

No. 6

BAWANTEH BIN DIN

Judges Notes of Evidence - continued

P.W.3 affirmed states in English;

My name is Bawanteh bin Din.

Plaintiff's Evidence - continued

I am registration clerk from K. Lumpur Land Office.

No cross-exam.

No. 6

Witness released

Bawanteh bin Din Examination

Case for plaintiff.

Defendant's Evidence

DEFENDANT'S EVIDENCE

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No. 7

No. 7

Kenneth Marsh Examination.

KENNETH MARSH

Rawson opens.

6.10.55 defendant agreed to purchase from the Malay the 3 houses.

The terms embodied in letter same date sale subject to Court approving the price and defendant would complete the purchase within 14 days of approval and time was of essence and sale to be completed at Shearn Delamore's office. Sale was to defendant or his nominee.

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Plaintiff was tenant of 27 and came to know of sale.

Same day 6.10 agreement between plaintiff and defendant at \$33000. Plaintiff aware of the terms on which defendant was purchasing and that the sale to defendant was to defendant or nominee and sale was to be completed in Shearn Delamore's office. Plaintiff knew he had to complete within 7 days. of order and that time was of essence.

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D.W.1 affirmed states in English.

My name is Kenneth Marsh.

I am partner in Shearn Delamore.

Oct. 1955 I acted for administratrix of estate of

Hj. Abdullah bin Hj. Mohd. Taib deceased. Walter Grenier & Co. were the accountants employed by the estate.

Towards end of 1955 it became necessary to raise money for estate duty. Administratrix proposed to sell 27, 29 and 31 Malay St. held I think under C.t's 1653, 1654 and 1655.

10 Walter Grenier & Co. told me there had been an offer of \$75000. That would be about Sept. or Oct. 1955. I remembered there was an offer by Chow Yoong Hong and by a Sikh.

Chow Yoong Hong came to my office on 6.10.55 agreeing to purchase, subject to the terms of the letter and subject to approval of Court M for id. is the letter (becomes D.2)

I think Chow Yoong Hong was accompanied by a broker name Meerah (id.) I assumed the transfer would be to Chow but he said the transfer might be to someone else.

20 I was merely concerned to see the property was sold at proper time. Same morning defendant paid deposit of \$10000. The deposit was to be forfeited if he did not complete. He understood this. I made application to sell at \$75000. Court ordered the property might be sold at \$80200. That was because there was a subsequent offer of this amount. Order for sale was made on 30.1.56.

This is a sealed copy of the order (D.3).

I gave defendant opportunity to increase his offer.

30 I despatched this letter to him (D.4)

The completion term was extended to one month.

Defendant accepted it by this letter of 3.2.56 (D.5.).

Date for completion was 3.3.56.

On 3.3. defendant owned \$70200 and he paid \$45200 on 3.3. and one Amreek Singh paid another \$25000 on his behalf.

These 3 transfers were executed by defendant's nominees on 5.3 and 10.3 (D.6)

40 These transfers relate to the properties.

None of the transfers was to defendant. They were to his nominees.

This is receipt (D.7) for the deposit on 6.10.

This is receipt for \$45200 (D.8).

I know nothing of agreement between defendant and plaintiff.

I know nothing of agreement between defendant and his nominee. Completion was to take place in my office.

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 7

Kenneth Marsh
Examination -
continued.

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Defendant's Evidence - continued

No. 7

Kenneth Marsh Cross-Examination.

Re-Examination

No. 8

Chow Yoong Hong

Examination.

Cross-exam.

The letter D.2 set out all the terms.

If defendant exhibited the terms to a purchaser, D.2 is the letter he would exhibit but I can't say whether he did.

It might take 14 days to extract the order.

I cannot say when the order was extracted.

I doubt whether it could have been extracted on 31.1.

I advised defendant officially of the new terms on 3.2. 10

In D.2 there is no reference to power to transfer to a nominee.

D.2. binds the defendant. There is no term that completion should take place in my office.

Prior to 3.3. I would not have delivered transfers.

Re-exam.

If the money had been paid before 3.3. I would have delivered transfers. 3.3. was last day for completion. 20

No. 8

CHOW YOONG HONG

D.W.2 affirmed states in Hakka.

My name is Chow Yoong Hong.

I am defendant.

I am a textile merchant at 120 High St. K. Lumpur. Towards end of 1955 I heard of property for sale in Malay St. K. Lumpur.

Meerah told me so. He told me there were 3 houses for sale. 30

They were 27, 29 and 31. He told me they belonged to Malay estate. At first he told me the price was \$70000. He told me to see Mr. Jumeaux. He was accountant. I went to see accountant with Meerah. Jumeaux told me to go to office of Shearn Delamore. I was interested in purchasing. Meerah went with me, and Mr. Ho to Shearn Delamore.

I saw D.W.1.

He told me to pay deposit of \$10000. I paid \$10000 in cheque. I was told conditions. Price 40

was \$75000. Court order for approval of sale must first be obtained.

14 days after an order was made and I did not complete, deposit would be forfeited.

I asked for 1 month. Completion was to take place at Shearn Delamore. I agreed to all these terms. I intended to buy and then sell.

I asked for Meerah's services.

10 Same evening Meerah brought plaintiff to me, i.e. 6.10. He was interested in buying No.27.

He told me he lived in that house. I agreed to sell the house to him. I asked \$38000. Plaintiff offered \$33000. I agreed to his offer. There

were terms of sale. The sale conditions given to me by Shearn Delamore I showed to him. I showed

him the letter. I explained to him the terms on which I was purchasing from the estate. He understood. The sale was subject to order of Court. It

20 was agreed he would complete when the order of Court was received. He agreed to complete on the order of Court. He was to complete at office of Shearn Delamore. He fully understood that. He paid deposit of \$5000.

That is P.1

I wrote P.1.

At time of receipt house was not mine yet. Procedure in completing sale must be completed first. In the receipt, I meant the Court order was to be extracted.

30 I explained Shearn Delamore's letter to plaintiff. I told plaintiff if Court order extracted and he would not complete, the \$5000 would be forfeited. He agreed. I told him I had paid deposit \$10000. I told him in what circumstances I would forfeit my deposit. The order of Court was made granting leave to sell.

I learned from Shearn Delamore on 3.2. This is a letter I received from Walgreens Ltd. dated 31.1 (D.9) N for id. is my letter (becomes D.10). I

40 wrote it because I heard the Court order had been made. On 3.2. I received letter from Mr.Marsh

informing me the price had been raised. I replied same day agreeing to pay the price. D.10 was not delivered to plaintiff. It was returned. I got in touch with him over telephone on 1.2. I told him

about contents of the letter I had tried to send him and asked him why he had refused it. I told him that Court order had been made and transfer could be made any time. I reminded him if he failed to

50 turn up to complete the transfer his deposit would be forfeit. He told me not to worry and that he

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 8

Chow Yoong
Hong

Examination -
continued.

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 8

Chow Yoong
Hong

Examination -
continued.

would any time complete the transfer. He said he would come the following day and when he failed I telephoned and reminded him and he kept on postponing for 5 or 6 days. On 10.2 I wrote him another letter asking him to complete. P.3. is the letter.

Between my letter of 1.2 and 10.2 I had seen plaintiff twice and spoken with him on 'phone 5 or 6 times. After 10.2 I spoke to him on phone and saw him on 29.2. On 29.2 I sent another letter to plaintiff by messenger because I was afraid he would not receive the letter. It was important.

After 1.3. if I failed to complete my \$10000 would be forfeit and plaintiff's \$5000 would be forfeit.

The completion time for the sale to me was getting very close. I went to see plaintiff on 29.2. with a friend Lee Ngat Fah. My object was to take plaintiff to Shearn Delamore. I saw plaintiff. He did not agree to complete. He asked for reduction in price of \$3000. He told me the other 2 houses were sold at \$30000 and there was no reason why he should pay more. I did not agree to reduce price.

He would not complete unless price reduced by \$3000 I warned him if he did not complete his deposit would be forfeit. He was very angry and threatened to assault me. Nevertheless he refused to buy. In fact I had sold one of the houses for \$30000. That was to Amreek Singh. I told Plaintiff his deposit would be forfeited.

Thru' the recommendation of Meerah I sold the houses 27 and 29 to another person on 5.3. I paid the full purchase price to Shearn Delamore in accordance with my agreement. The 5.3 was the day on which the transfers were signed. It was on 5.3 I informed Mr. Marsh to whose names the properties were to be transferred. All the purchase price had been paid on 3.3.

On 1.3.56 I was not at home. I was the whole day at office of Shearn Delamore. I have never refused to accept P.4.

I was in office of Shearn Delamore on 1.3 waiting for the prospective buyers to call at the office to complete transfers. I thought plaintiff might have changed his mind but he did not turn up.

On 1.3.56 I was not at home. I was the whole day at office of Shearn Delamore. I have never refused to accept P.4.

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Cross-
Examination

Cross- exam.
S.A.R.

Adjourned to a date to be fixed by

Sd. W.B. Sutherland
J.

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Continuation of C.S.176/56.

This 7th day of Apr. '57 before me in Open Court.

Sd. W.B. Sutherland
J.

Peddie for plaintiff.
Rawson and Tang for defendant.

D.W.2 affirmed states in Hakka:

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 8
Chow Yoong
Hong
Cross -
Examination -
continued.

10 Cross-exam. I wrote plaintiff on 31.1.56. On 1.2
I telephoned him. I did not enquire why he had
refused my letter of 31.1.56 but I said an order
of Court had been made and I asked him why he had
not come forward to effect the transfer. I made
the enquiry as to why he had refused the letter
after the return of the letter I sent. That was
when I had told him the contents of the letter.
That would be after the 3rd Feb. I wrote to him
on 10th because he failed to turn up as promised.

20 D.2 is the letter of agreement with Shearn Delamore.
It was addressed to me by Shearn Delamore. I do
not know English, Shearn Delamore explained to me
fully the letter. I showed the letter to plaintiff.
I told plaintiff, what Shearn Delamore had told me.
I told plaintiff in Hakka. That is plaintiff's
language. He speaks very good Hakka. Completion
of the contract was to take place in Shearn Dela-
more's office. That was a term of the contract
between me and plaintiff. The money was to be
30 paid in Shearn Delamore's office.

P.3 is signed by me. It says will you come to my
shop within 7 days and complete the transfer by
cash. I suggested to him to come to my shop to
complete because he had failed to keep his promise
to come to Shearn Delamore's office to complete.
In reply to P.3 I received P.2. The term in the
agreement was to go to Shearn Delamore's office
and not to any other lawyer's office. The contents
of P.2 were explained to me. I replied to P.2, by
40 phone. I told plaintiff transfer could be com-
pleted in office of Shearn Delamore D.1. is my
letter.

I paid \$2 for writing this letter. I did mention
about settling at Shearn Delamore's. I did it in
my letter of 29th Feb. (D.1). I am just a layman.
I know nothing about law. I mentioned in the let-
ter to be in Shearn Delamore's to complete. I gave
instructions to the person who wrote my letters
that the agreement was to complete at Shearn

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 8

Chow Yoong
Hong

Cross-
Examination -
continued.

Delamore's. Perhaps he did not put it in my letters.

On 29.2 I went to see plaintiff. I was to take him to Shearn Delamore's office. I did go with a friend. In D.1 I gave date of completion 1.3. I had waited in Shearn's and as plaintiff did not appear I went to look for him. I waited for plaintiff in Shearn's on many occasions. I waited at Shearn's on 29.2 and 1.3. I expected plaintiff to turn up at Shearn's at any time. When I went on 29.2 both plaintiff and P.W.2 were there.

Lee Ngat Fah came. He was a common friend.

The Court order was extracted on 31.1.56.

I do know if that was the day it was made. My solicitors know. I received letter from Shearn's informing me of Court order. Then I wrote plaintiff. In the agreement it is not that the transfer is to be to me. That is not in the agreement.

I completed negotiations with Amreek Singh about 25.2. Only after I had completed with him had I sufficient money to pay. On 31.1. I could pay. I had expected to sell all 3 houses. If the transfers were made on 31.1 I did not have to have the money. I had arranged 3 transfers. They were to Amreek Singh, P. Ahamed and plaintiff. I am not telling lies.

Eventually I transferred the house to Ng Choo (f). She is my wife. She sold to plaintiff for \$33000.

If plaintiff had paid on 10.2 I would have taken him to office of Shearn Delamore for the transfer. Shearn Delamore were in position to execute transfer of individual lots. That is not in agreement.

I did not have \$70200 on 10.2 but that was not necessary. I was told by Shearn's that transfer for separate lots could be made. Mr. Marsh told me that. Originally I wanted \$33000 from Amreek Singh. The offer was only \$30000. I finally accepted. I settled with Amreek Singh on 25.2.

Amreek Singh wanted an agreement first before the transfer. I entered into the agreement. It is with Mr. Yong Kang Lin. That is Amreek's Singh's solicitor. In Amreek Singh's case I did not go to his solicitor.

That was an option drawn up by Mr. Yong.

I am business man. I employ assistants. They receive letters if I am not in.

I did not see P.4.

I have never seen P.5.

In 1949 someone in my office received a letter from the military as a result of which there was a

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lot of trouble. As a result I issued Instructions that no one in my office was to receive a letter on my behalf. I was not in my shop when the 2 letters arrived. I received P.7. I passed it all to my solicitors. I expected my solicitors to reply. Only recently I learned that no reply was given. On 29.2 it was important that plaintiff receive my letter because otherwise my deposit would be forfeited. Because plaintiff had agreed to buy the land I was counting on him for the money, otherwise I could have found another way of obtaining the money.

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No re-exam.

No. 9

MEERAH S/O ABDUL HAMID

D.W.3. affirmed states in Tamil;

Meerah s/o Abdul Hamid.

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I live at 17 Campbell Road, K.L. Land broker. I know about sale of 3 houses in Malay St. I sold the houses. First came to know they were for sale through Mr. Jumeaux of Walter Grenier & Co. I was referred to Shearn Delamore & Co. I was told the price was \$90000 but my offer was \$75000. I said I would find buyer at \$75000. Walter Grenier did not accept my figure of \$75000. I succeeded in getting a purchaser. It was defendant (id).

30

I took him to Walter Greniers. I was referred to Shearn Delamore & Co. As there was a Court order the price would be fixed by them. Defendant and I went to Shearn Delamore. We saw Mr. Marsh. I was told I could deposit for the offer of \$75000 and then I would have to buy at the price fixed by Court. The amount of deposit was \$10000. That was paid. It was paid by defendant. Defendant was asked to sign letter. He signed.

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Defendant's Evidence - continued

No. 8
Chow Yoong Hong
Cross - Examination - continued.

No. 9
Meerah s/o Abdul Hamid Examination.

In the High
Court of
Kuala Lumpur

Judges Notes
of Evidence -
continued

Defendant's
Evidence -
continued

No. 9

Meerah s/o
Abdul Hamid

Examination.-
continued.

The letter set out stipulations. Defendant must be prepared to accept the amount fixed by Court. Defendant agreed. Made deposit. The time limit was within 2 weeks of the receipt of the Court order. The whole sale was subject to order being made by Court. Sale was to be completed at office of Shearn Delamore. If no completion within 14 days deposit will be forfeited.

In respect of sale to defendant I was to be paid 2% commission. Walter Grenier Co. agreed to give me this. I was paid this. Mr. Marsh told me he would communicate with us as soon as order received and then we would pay balance. Defendant went to his shop. I looked for another purchaser because defendant had not enough money. He wanted to make some profit out of the deal. Defendant asked me if I knew any one who wanted to buy. We found 3 individual purchasers. I found plaintiff who would buy No.27. Defendant had bought. I arranged meeting at defendant's place. Plaintiff would come.

This was next day I think after deposit was made. The talks were made the day of deposit, but I took defendant next day. I asked the 2 parties to discuss their terms. There was talk about the Court order. The plaintiff agreed to whatever the Court order was, he should pay the money. I did not know what they said in Chinese, but plaintiff agreed to pay \$5000 deposit some day, and the balance was to be paid on the day defendant wanted him to pay. They said the balance was to be paid at Shearn Delamore's office, the same office at which the original transaction had taken place. It was agreed if plaintiff failed to pay the balance on a date when called upon by Mr. Marsh on receipt of the order of Court, the deposit would be forfeit. This is what the plaintiff told me after the discussions.

The letter defendant had signed in Mr. Marsh's office was shown to plaintiff.

Cross-
Examination.

Cross-exam. The letter signed in Marsh's office was read over to us in Malay by Mr. Marsh. He told us what was in there. He told us that it was in there that completion was to be in Shearn Delamore's office. I don't know whether there is such a term in the letter.

The purchase was a speculation by defendant. He did not have enough money to pay for the houses. When I went to see plaintiff I said defendant had already bought the houses. When plaintiff paid the

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§5000 something was written in Chinese. They told me what was in it. These are the terms I gave in evidence-in-chief.

It was not defendant who told me.

The 2 parties told me that they had agreed to.

Both of them told me.

No re-exam.

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Defendant's Evidence - continued

No. 9

Meerah s/o Abdul Hamid Cross-Examination - continued.

No. 10

LEE NGET FAH

No. 10

Lee Nget Fah Examination.

10 D.W.4. affirmed states in Hakka:

My name is Lee Nget Fah.

I am cloth merchant. 30 Foch Ave. K. Lumpur. Know defendant for last 10 years. I knew in early 1956 he had bought land in Malay St. I know plaintiff (id) used to buy goods from my shop. Known him 2 years. Knew plaintiff interested in the houses in Malay St.

20 29.2.56 defendant took me to shop of plaintiff. At first plaintiff not in. P.W.2 was in. Came later. When plaintiff came I heard defendant telling plaintiff to complete the transfer. Plaintiff refused to go to a lawyer's office to complete transfer because he felt the price asked by defendant was too high. The price was \$33000. Plaintiff offered \$30000. That was not acceptable to defendant.

Cross-exam: Plaintiff sells metals and hardware. P.W.2 sells cloth. My business would always be with P.W.2.

I just knew who plaintiff was. I did not know plaintiff to speak to except on 29.2.

Cross-Examination.

In the High Court of Kuala Lumpur

Judges Notes of Evidence - continued

Defendant's Evidence - continued

No.10

Lee Nget Fah Cross-Examination - continued.

P.W.1 and P.W.2 have separate shops.
 P.W.1. has No.27 Malay St.
 P.W.2 has No.19 Malay St.
 On 29.2 I was in P.W.2's shop. I know P.W.2 well. I talked to him on 29.2 about sale of the house. P.W.2 was friend of mine. I knew plaintiff better than defendant knew him. On 29.2 I heard from defendant there was trouble over sale of house in Malay St. and I intended to settle it. I took part in the discussion. Defendant asked plaintiff to go to his lawyers to complete. Plaintiff said price was too high. He made lower offer of \$30000. Defendant refused to accept. I told plaintiff price asked for by defendant was not high and advised him to buy. I do not know who is present owner. My evidence about 29.2 is true. I deny I was asked to come here and say this by defendant.

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No re-exam.

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No.11

Sinniah s/o Villayan Examination.

No. 11

SINNIAH S/O VILLAYAN

D.W.5 affirmed states in Tamil.

My name is Sinniah s/o Villayan. Tamby employed by Chong Ah Choy. 29.2.56 employed by him. That morning I was instructed to despatch letter. R for Id. is the despatch book (D.11). The entry dated 29.2.56 was written by the clerk in the office. Chong Ah Choy is a petition writer. The signature at the end of the entry dated 29.2.56 is the signature of plaintiff (id.) I saw him sign.

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Cross-Examination.

Cross-exam: I do not know who wrote the letter. Defendant was in our office. The clerk prepared the letter. He put it in envelope and gave it to me for despatch. D.11 is the office despatch book. Chong Ah Choy sends letters for other people thru' this despatch book. I did not know plaintiff before. I only saw him that day I got his sign. Have not seen him since.

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No re-exam.

Case for defendant.

No. 12

ADDRESSES TO COURTIn the High
Court of
Kuala LumpurRawson for Defendant addresses.

No.12

Addresses to
Court.

On 6.10 estate agreed to sell at \$75000 on terms of D.2 subject to consent of Court.

Time of essence. Deposit forfeited if time not observed. Same day defendant agreed to sell to plaintiff.

10

Plaintiff knew on 6.10 property registered in name of estate.

Plaintiff continued to pay rent to estate of deceased Malay even after he paid deposit.

He knew defendant was not registered owner. Plaintiff knew sale subject to Court order.

P.3 of 10.2 refers to order of sale having been obtained.

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"D" to reply to written statement, is the 1st letter by plaintiff calling on defendant to complete and it is dated 1st Feb. 1956 in error should be 1st March, 1956. 5 months after the deposit.

The deposit receipt does not state terms so it is necessary to take into account the oral evidence.

The deposit receipt says all transfer procedure as drawn up by a lawyer will be followed. Defendant says this means the terms of Shearn Delamore's letter of same date are to be complied with.

30

The Plaintiff says it means the transfer is to be drawn up by a lawyer. But this would be necessary in any event and it would have been unnecessary to put it in.

Neither defendant nor Meerah were shaken on this point.

40

The terms of agreement defendant and Plaintiff were that sale subject to order of Court and plaintiff would complete within 7 days of order of Court being made and if he failed to complete his deposit forfeit. Time of essence. He knew. And he knew completion was to take place at office of Shearn Delamore because he knew he would take as nominee of transferee from the estate.

S.56 Contracts Ordinance 14/50.
Contract voidable if time of essence.
Damages if time not of essence.
If time of essence, contract voidable.
Was time of essence?

In the High
Court of
Kuala Lumpur

No.12

Addresses to
Court -
continued.

Time must have been of essence having regard to other purchase from the Malay.

Time can subsequently become the essence. *Stickney v Keeble* 1915 A.C.387.

Attitude of purchaser will be considered in regard to time.

Conveyancing in England difficult.

" here simple.

14 days was sufficient notice in England. All that was required in our case was to pay the money and sign the transfer.

10

Seng v Chew 8 S.S.L.R. 22

The notice to complete need not be in writing.

5 day notice was reasonable. This was in Singapore where conveyancing is more complicated.

In determining what notice was reasonable, Court should consider what had to be done. All that had to be done was to pay the money.

There were phone calls, letters and finally a visit on 29.2 with D.W.4. Plaintiff refused to pay, and tried to get reduction. Reasons for defendant's action on 29.2 are quite apparent. He was liable to lose his deposit of \$10000.

20

Defendant's completion letter had been extended to 1 month. That did not affect the contract between defendant and plaintiff.

Plaintiff avers purchaser is entitled to have transfer prepared by his own solicitor. At common law completion is to take place at office of vendor's solicitor. This is now statutory in England. *Encyclopaedia of Forms and Precedents* Vol.14, 2nd Ed. P.348. Statutory Form of Conditions of Sale.

30

This is universal practice in England.

Condition 2. Completion shall take place at the office of the Vendors' solicitors.

This is clear in principle. The Vendors solicitors are the persons who have to make title.

On the face of this case completion could only take place at Shearn's because the sale was to defendant or his nominee.

40

In absence of agreement, place of completion must be office of vendor's solicitor.

Deposit. Howe v Smith 27 Ch.89 at 101 and P. 98 Deposit forfeited.
Soper v Arnold 14 A.C. 429 at P.435. Deposit forfeited even though it was a defect in title.

In the High Court of Kuala Lumpur

No.12

P.W.2 did not come into it until there had been default for February. He came on the scene after the ship had foundered.

Addresses to Court - continued.

It was by then that the deposit had been forfeited.

10 As to counterclaim, concedes that vendor is only entitled to \$2900 i.e. the extra loss over and above the forfeited deposit.

Plaintiff's suit should be dismissed with costs and defendant should have judgment for \$2900 on counterclaim.

Peddle for Plaintiff addresses

D.W.3 said he told plaintiff defendant had purchased. It is not clear the plaintiff knew the sale was subject to Court order.

20 P.2 dated 11.2.56 says plaintiff was ready to complete. There was no reply till 29.2 when D.1 was sent asking plaintiff to come to defendant's solicitor. The receipt is more than a receipt. But it does not make time of the essence. Transfers can be signed before others besides solicitors.

P.3 of 10.2.56 mentions High Court order but does not say consent was necessary.

No evidence that deposit would be forfeit.

30 There is no term that completion was to be at Shearn Delamore's Defendant said he had put to plaintiff what was in Shearn Delamore's letter. There is nothing in Shearn Delamore's letter about defendant as nominee. Defendant could not pay. He could not produce title to plaintiff. Defendant could not complete. Defendant's case is not supported by documents but plaintiffs is.

40 31.1 defence had no right to call on plaintiff to complete. Court order had not been extracted. He had not got the money.

In the High
Court of
Kuala Lumpur

No.12

Addresses to
Court -
continued.

On 10.2 he calls for completion.

On 11.2 he gets reply calling for title.

29.2 he asks for completion on 1.3. Next day he
refuses letter addressed to him

He says he never saw the letter. This letter P.4.
from plaintiff demands completion.

On 2.3 another letter is refused, still before de-
fendant has to complete.

Plaintiff had never expressed intention to repud-
iate. The burden was defendant's to produce title. 10
Defendant can import time.

Contracts Ordn. 1950. S.52.

Reciprocal promises must be simultaneously per-
formed.

D.2. Para VI Defendant could not deliver a
registrable transfer .

Time cannot be imported into the contract between
defendant and plaintiff.

5 F.M.S.L.R. 233.

Time is not of essence in absence of express stip- 20
ulation. There is no express stipulation. Time
is not of essence.

Was time made of essence.

On 10.2 it was sought to make time of essence. But
he was not in position to complete.

1915 A.C. 386 at 403.

If defendant could not complete he cannot forfeit.

On 29.2 defendant might have imported time. There
the time is less than 24 hours. Even then he still
could not give title. He only got title on 5.3. 30

Eventually he transferred to his wife and plain-
tiff purchased at the same figure \$33000 when he
had a title to give.

Assuming he could have completed defence submits 1
day was sufficient. But he did not have the bal-
ance. He had to get 3 people together. He has not
said he had the other 2 available.

Counterclaim.

27 Ch.104.

If the vendor had chance to re-sell and sue 40
purchaser for deficiency he could have been obliged
to bring the deposit into account.

1949. 1 A.E.R. 921

29 Hals. 2nd Ed. 375.

Where should the contract be completed?

The English conditions only apply where there is

no local law. There is no direct law.
Schedule Advocates & Solrs. Ordinance 1947.,19/47.
The right to complete lies with the purchaser's
solicitor, by virtue of this schedule.

In the High
Court of
Kuala Lumpur

No.12

P.2 asks delivery of title.
The demand for completion in plaintiff's lawyers
office was never discussed.

Addresses to
Court -
continued.

10 Failure was on defendant's part. Defendant has no
right to retain deposit or to moneys lost.
The property was sold to defendant's wife. Asks
that judgment be for plaintiff on claim and counter-
claim.

Judgment will be delivered on date of which notice
will be given to both parties.

Sd. W.B. Sutherland
J.

Before me in Open Court this 4th day of May,
1957.

20

Sd. W.B. Sutherland
J.

No. 13

No.13

JUDGMENT OF THE HIGH COURT AT KUALA LUMPUR

Judgment
4th May 1957

C.S. 176/56

Peddie for Plaintiff
Defendant in person
Case called for Judgment.

30

I have considered the case for plaintiff and
that for defendant. I am not without some sympathy
for the plaintiff as the case has turned out for
him, but in law and in fact I am satisfied that
the transaction could, would and should have been
completed at defendant's solicitors' office. That
this was not done was due to plaintiff's resili-
ing from his contract with defendant because he
felt he had entered into a bad bargain.

I dismiss the claim with costs as taxed by
the Asst. Registrar.

40

On the counterclaim I give judgment for de-
fendant against plaintiff for \$2900 and costs as
taxed by the Asst. Registrar.

Sgd. W.B. Sutherland.
J 4.5.57.

No. 14

In the High
Court of
Kuala Lumpur

O R D E R

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

No.14

CIVIL SUIT NO. 176 OF 1956.

Order
4th May, 1957

Tai Chet Siang Plaintiff

v e r s u s

Chow Yoong Hong Defendant

Before the Hon'ble Mr. Justice Sutherland,
Judge, Federation of Malaya.

10

IN OPEN COURT

This 4th day of May, 1957.

O R D E R

THIS SUIT coming on for hearing before the Hon'ble Mr. Justice Sutherland, Judge, Federation of Malaya on the 20th day of March, 1957 and the 9th day of April, 1957 in the presence of Mr.S.D.K. Peddie of Messrs. Bannon & Bailey of Counsel for the Plaintiff and Mr. T.C. Tang with Mr.D.G.Rawson of Messrs. Shearn Delamore & Co., of Counsel for the Defendant AND UPON READING the pleadings and hearing the aforesaid Counsel IT IS ORDERED that the suit stands adjourned for judgment and the same coming for judgment in the presence of Mr. S.D.K. Peddie of Counsel for the Plaintiff and the Defendant in person IT IS ORDERED that the suit be and is hereby dismissed with costs AND IT IS FURTHER ORDERED that the Defendant's counterclaim be and is hereby allowed at \$2900.00 (Dollars two thousand nine hundred) AND LASTLY IT IS ORDERED that the Plaintiff do pay to the Defendant the costs of this suit and the counterclaim as taxed by the proper officer of the Court.

20

30

Given under my hand and the seal of the Court
this 4th day of May, 1957.

Sd. P. Samuel.
Senior Assistant Registrar,
Supreme Court, Kuala Lumpur.

No. 15

NOTICE OF APPEAL TO THE COURT OF APPEAL

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

CIVIL APPEAL NO. 24 OF 1957.

BETWEEN

Tai Chet Siang Appellant

And

Chow Yoong Hong Respondent

In the
Court of Appeal
at Kuala Lumpur

No.15

Notice of
Appeal to the
Court of Appeal
1st June, 1957.

10 (In the Matter of the Kuala Lumpur High Court
 Civil Suit No. 176/56)

Between

Tai Chet Siang Plaintiff

And

Chow Yoong Hong Defendant

NOTICE OF APPEAL

20 TAKE NOTICE that the Appellant abovenamed
 being dissatisfied with the decision of the Hon-
 ourable Mr. Justice Sutherland given at Kuala
 Lumpur on the 4th day of May, 1957 appeals to the
 Court of Appeal against the whole of the said de-
 cision.

Dated this 1st day of June, 1957.

Appellant's Signature.

To:

The Senior Assistant Registrar,
Supreme Court, Kuala Lumpur.

The abovenamed Chow Yoong Hong or
his Solicitor Mr. T.C. Tang, Klyne
Street, Kuala Lumpur.

30 The Appellant's address for service is care
 of Messrs. Bannon & Bailey, Advocates & Solicitors,
 Laidlaw Building, Mountbatten Road, Kuala Lumpur.

In the
Court of Appeal
at Kuala Lumpur

No. 16

MEMORANDUM OF APPEAL

No.16
Memorandum of
Appeal
29th August,
1957.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
CIVIL APPEAL NO. 24 OF 1957.

BETWEEN

Tai Chet Siang Appellant

And

Chow Yoong Hong Respondent

(In the Matter of Kuala Lumpur High Court Civil Suit No.176/56) 10

Between

Tai Chet Siang Plaintiff

And

Chow Yoong Hong Defendant

MEMORANDUM OF APPEAL

Tai Chet Siang the appellant abovenamed appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Sutherland given at Kuala Lumpur on the 4th day of May, 1957 on the following grounds:- 20

1. The appellant appeals against that part of the decision whereby the appellant's claim was dismissed on the following grounds:-

(a) The learned trial Judge failed to appreciate the distinction between the preparation of the documents of transfer to lead to completion of the contract of Sale and the completion of the Contract of Sale. As a result of such failure, the learned Trial Judge failed to appreciate that it was the appellant's right to have the documents of transfer prepared by his solicitor preparatory to 30

completion itself taking place at the office of the respondent's solicitor.

In the
Court of Appeal
at Kuala Lumpur

No.16

Memorandum of
Appeal

29th August,
1957 -
continued.

- 10 (b) The learned trial Judge was wrong in law in holding, if he did so hold, that the preparation of the documents of transfer should take place at the office of the respondent's solicitors. There was no evidence to show that the parties to the Contract had agreed that the documents of transfer should be prepared by the respondent's solicitors and in the absence of any such agreement it was the right of the appellant to have them prepared by his solicitor.
- 20 (c) The learned trial Judge was wrong in law and in fact in holding that the failure to complete the transaction was attributable to the appellant's resiling from his Contract. The learned trial Judge failed to take into account the fact that the respondent refused and was unable to produce any document of title on the material dates to enable the documents of transfer to be prepared by the appellant's solicitors and that it was for this reason that the transaction was not completed. The learned trial Judge failed to appreciate that the appellant was entitled to insist on production of the document of title to his solicitors for preparation of the transfer documents before he completed the purchase.
- 30 (d) The learned trial Judge was wrong in holding that the appellant had resiled from his contract with the respondent. This finding was in direct contradiction to the documentary evidence which clearly showed that the appellant was at all times ready and willing to complete the purchase subject to the production of the document of title for preparation of the document of transfer.
- 40 (e) The learned trial Judge failed to appreciate that there was no evidence that the respondent had retained any solicitors to act for him in the matter of the sale to the appellant. As such, his finding that the transaction could would and should have been completed at the defendant's solicitors office is wrong and cannot be sustained.
- (f) The learned trial Judge failed to appreciate

In the
Court of Appeal
at Kuala Lumpur

No.16

Memorandum of
Appeal

29th August,
1957 -
continued.

that time was not of the essence of the original contract between the appellant and the respondent. If the learned trial Judge held that time was subsequently made of the essence of the contract then he failed to make any finding as to the date on which time was so made of the essence.

- (g) If the learned trial Judge held that time was made of the essence of the contract by the letter from the respondent to the appellant dated the 31st January, 1956 then the learned trial Judge failed to appreciate that on that date the respondent was unable to complete the sale as he had not then any title to the property nor any expectation of obtaining one within a reasonable time. 10
- (h) If the learned trial Judge held that time was made of the essence of the contract by the letter from the respondent to the appellant dated the 10th February 1956 or at any time prior to the date of that letter, then the learned trial Judge failed to take into account the letter from the respondent to the appellant dated the 11th February 1956 and failed to appreciate that the respondent did not afford to the appellant the opportunity of having the document of title to the property inspected by and the document of transfer prepared by his solicitor, as was his right, prior to the date fixed by the respondent for completion. 20 30
- (i) If the learned trial Judge held that time was made of the essence of the contract at any time subsequent to the 11th February, 1956 then he failed to take into account the letter from the appellant to the respondent dated the 11th February, 1956 and failed to appreciate that the respondent did not afford to the appellant the opportunity of having the document of title to the property inspected by and the document of transfer prepared by his solicitors, as was his right, prior to the date fixed by the respondent for completion. 40
- (j) The learned trial Judge was wrong in holding that the respondent was entitled to rescind

the contract of purchase. The conduct of the appellant at no time showed any intention of repudiating the contract and the respondent was therefor not entitled to rescind it.

In the
Court of Appeal
at Kuala Lumpur

No.16

Memorandum of
Appeal

29th August,
1957 -
continued.

10 (k) The learned trial Judge failed to take into account the fact that at no time during the currency of the contract had the respondent a title to the property the subject matter of the contract to enable him to convey it to the appellant. As such the respondent was at no time entitled to call upon the appellant to complete the contract.

2. The appellant appeals against part of the decision whereby judgment on the respondent's counterclaim was given in favour of the respondent on the grounds set out in paragraph 1 of this Memorandum and upon the following further grounds:-

20 (a) The learned trial Judge failed to take into account the fact that there was no evidence that the respondent sustained any loss on resale of the property. The respondent made no allegation of loss anywhere during the course of his evidence.

30 (b) If the learned trial Judge based his finding on the counterclaim on the difference between the contract price and the price inserted in the Memorandum of Transfer relating to the property then the learned trial Judge failed to consider that there was no evidence as to any factors affecting that price, save and except that the transfer was made to the respondent's wife.

(c) The learned trial Judge failed to take into account the fact that there was no evidence that the respondent had made any attempt to obtain a better price for the property than the price for which he eventually transferred it.

(d) The learned trial Judge failed to take into account the fact that the respondent was admittedly under the necessity of completing his purchase from a third party within a limited period and thereby obliged to sell the property without reference to the best price

In the
Court of Appeal
at Kuala Lumpur

No.16

Memorandum of
Appeal

29th August,
1957 -
continued.

that could be obtained for it. Such facts were material to the final purchase consideration which clearly in the circumstances did not represent the true value of the property as was evidenced by the subsequent purchase by the appellant of the property at a higher price.

Dated this 29th day of August, 1957.

Sd. Bannon & Bailey
Solicitors for the Appellant.

10

Filed this 29th day of August, 1957.

Sd. Yap Yeok Siew.
Senior Asst. Registrar.

No.17

Judgment of
Knight Ag. C.J.
Singapore, dated
17th October,
1957.

No. 17

JUDGMENT OF KNIGHT AG. C.J. SINGAPORE

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

CIVIL APPEAL NO. 24 OF 1957.

BETWEEN

Tai Chet Siang

Appellant

20

And

Chow Yoong Hong

Respondent

(In the Matter of Kuala Lumpur High
Court Civil Suit No.176 of 1956).

Between

Tai Chet Siang

Plaintiff

And

Chow Yoong Hong

Defendant

CORAM: Thomson C.J.
Knight Ag. C.J.,S.
Smith J.

30

JUDGMENT OF KNIGHT AG.C.J.,S.

This is an appeal from a decision of the

learned trial Judge in which he found that the plaintiff/appellant had repudiated a contract he had made with the defendant/respondent on 6th October, 1955 to purchase a house situated at No. 27 Malay Street, Kuala Lumpur.

In the
Court of Appeal
at Kuala Lumpur

No.17

Judgment of
Knight Ag. C.J.
Singapore, dated
17th October,
1957 -
continued.

10 It was admitted in the Court below that towards the end of 1955 the Administrators of the estate of one Abdullah bin Haji Mohamed Taib (deceased) decided to dispose of three houses in Malay Street which were the property of the estate. At
20 or about that same time the defendant/respondent, who is a textile merchant in business in Kuala Lumpur, heard that these houses would shortly be offered for sale and being interested to acquire them as a speculation he visited the Vendor's solicitors (Messrs. Shearn Delamore & Co.) and paid a deposit of \$10,000 towards the then agreed purchase price of \$75,000. He was informed by the
20 solicitors that a Court order approving the sale of these properties would have to be obtained and he undertook to complete the purchase within 14 days of the date of that order failing which he would forfeit his deposit.

30 On the evening of 6th October, 1955 the plaintiff/appellant, who at that time was a tenant of No.27 Malay Street (one of the properties being disposed of by the estate) was brought to the premises of the respondent and, after some discussion, an agreement was drawn up whereby the appellant agreed to purchase the house in which he was living from the respondent for \$33,000 and paid a deposit of \$5000 as "earnest money". The agreement also contained the following words:-

"All transfer proceedings as drawn up by a lawyer will be followed....."

40 On January 30th 1956 the Court gave formal consent to the sale of the three properties but as a higher offer than that made by the respondent had been received from another possible purchaser, it was ordered that the purchase price should be increased to \$80,200. The effect of this order was communicated by letter dated 3rd February, 1956 to the respondent, who agreed to pay the enhanced figure and undertook to complete by 3rd March 1956. The respondent then started to press the appellant for payment of the \$28,000 outstanding under the agreement of 6th October, '55 and finally, on 29th February had an interview with him at which, according to the respondent a friend of his, named LEE

In the
Court of Appeal
at Kuala Lumpur

No.17

Judgment of
Knight Ag. C.J.
Singapore, dated
17th October,
1957. -
continued.

NGET FAH, was present.

At that meeting, says the respondent, the appellant stated that he was unwilling to abide by the terms of his agreement because he had heard that in the meanwhile the respondent had agreed with a purchaser of another of the three houses to sell it to the purchaser for \$3000 less than the price he (the appellant) had agreed to pay for his house. In short, says the respondent, the appellant repudiated the contract of 6th October and with effect from that moment he (the respondent) considered it to be null and void and declared that the appellant's deposit of \$5000 should be forfeited. 10

The appellant denies that this alleged meeting between the respondent, Mr. Lee and himself ever took place. He maintains that at all material times he was ready and willing to complete the purchase but being an ordinary prudent man he explains that he was unwilling to make this very large payment until the respondent's title to the property had been checked by his solicitor. Several letters passed between the parties and there is nothing inconsistent in any of them with the appellant's version of what took place. No letter, I might add, was addressed to the appellant by the respondent referring to his alleged repudiation of the contract on February, 29th; but, on the contrary, the former in fact wrote to the respondent on 1st March asking him to produce his Title Deed at his convenience to a solicitor. Had he in fact repudiated the contract the previous day it is indeed remarkable how this letter came to be written at all and even more remarkable that the respondent did not reply immediately to it saying that the contract had come to an end. 20 30

It was also admitted in the Court below that on 3rd March the respondent paid the purchase price i.e. \$80,200 for the three houses to Messrs. Shearn Delamore & Co., that he subsequently transferred house No.27 Malay Street to his wife for an alleged consideration of \$25,100 (though in fact there is no evidence that she paid anything for it) and that at a later date she sold the house to the appellant for \$33,000. Thereafter the appellant instituted these proceedings to recover the deposit of \$5000 he had made at the time of signing the agreement. 40

Such are the facts of this matter as they were elicited during the course of the trial but they bear no relation at all to the issues pleaded by the respondent. In his Written Statement of Defence he admitted that he had agreed to sell the property to the appellant and nowhere in it does he even mention the whole crux of his case - namely the alleged repudiation by the appellant of the contract on February 29th. Why he was allowed to give evidence of this repudiation without a substantial amendment of his pleadings, escapes me; but, be that as it may, the learned trial Judge, in an extremely short judgment found that the appellant had in fact repudiated the contract, dismissed his claim and entered judgment for the respondent on the counterclaim.

In the
Court of Appeal
at Kuala Lumpur

No.17

Judgment of
Knight Ag. C.J.
Singapore, dated
17th October,
1957.-
continued.

Now this Court will not lightly disturb a finding of fact recorded by the trial Judge, who had the opportunity of seeing and hearing the witnesses - nevertheless it can and should consider whether the proper inferences have been drawn by the Judge from facts which were not in controversy (Senmax v. Austin Motor Co. Ltd. 1955 1 A.E.R.326). Throughout the whole course of these proceedings the appellant has maintained that he agreed to purchase this property from the respondent and that he was at all material times willing to complete - provided only that the respondent should satisfy his solicitor that he had a good title. It is further established that on 13th March i.e. one day before the respondent was in a position to provide any title at all, the appellant once more offered (through his solicitors) to complete and then subsequently he did complete by paying \$33,000 to the respondent's wife.

In these circumstances how can it be said that he repudiated his contract? In my opinion the only possible conclusion to reach is that at all material times he was anxious to complete and that the respondent has fabricated the evidence as to the alleged repudiation and fabricated it, moreover, at some time subsequent to the filing of the Defence, which would explain how so vital an allegation came to be omitted from the pleadings. Had this aspect of the matter occurred to the learned trial judge he must inescapably, in my opinion, have drawn no inference other than one favourable to the appellant.

In the
Court of Appeal
at Kuala Lumpur

No.17

Judgment of
Knight Ag. C.J.
Singapore, dated
17th October,
1957. -
continued

Much play has been made of the suggestion that time was of the essence in this contract - but this presents no difficulty. No mention of time was made in the agreement itself and it is quite impossible to read into it an undertaking by the appellant to complete before he was assured that he was getting a good title; indeed the reference to "the lawyer" would seem to confirm that very understandably he required assurance on this very point. I am also at a loss to see how the learned trial Judge concluded that the transaction should have been completed at the office of Messrs. Shearn Delamore & Co. According to Mr. Marsh of that firm, he had no knowledge whatsoever of the contract between the parties in these proceedings.

10

For the above reasons I would allow this appeal with costs here and in the Court below.

Sd. C. Knight.

Ag. Chief Justice,

Singapore.

20

Kuala Lumpur 17th October, 1957.

True Copy.

Sd. ?

Ag. Private Secretary
to Chief Justice

November, 14 1957.

No. 18

JUDGMENT OF SMITH, J. FEDERATION OF MALAYA

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

CIVIL APPEAL NO. 24 OF 1957

BETWEEN

Tai Chet Siang Appellant

And

Chow Yoong Hong Respondent

In the
Court of Appeal
at Kuala Lumpur

No.18

Judgment of
Smith, J.
Federation
of Malaya,
dated 6th
November, 1957.

10 (In the Matter of Kuala Lumpur High Court
Civil Suit No.176 of 1956)

Between

Tai Chet Siang Plaintiff

And

Chow Yoong Hong Defendant

CORAM: Thomson C.J.
Knight Ag.C.J.,S.
Smith J.

JUDGMENT OF SMITH, J.

20 I have had the benefit of reading the judgment
of the learned Acting Chief Justice of Singapore
and am in agreement with him that there was no re-
pudiation of the contract by the appellant and that
consequently this appeal should be allowed with
costs here and in the Court below.

30 Even in the respondent's own evidence of what
took place on the evening of 29th February, 1956,
I can find no clear proof of repudiation by the
appellant. This is what the respondent said in
evidence:-

"I went to see plaintiff on 29.2 with a friend
Lee Nget Fah. My object was to take plaintiff
to Shearn Delamore. I saw plaintiff. He did

In the
Court of Appeal
at Kuala Lumpur

No.18

Judgment of
Smith, J.
Federation
of Malaya,
dated 6th
November, 1957
- continued.

not agree to complete. He asked for reduction in price of \$3000. He told me the other 2 houses were sold at \$30000 and there was no reason why he should pay more. I did not agree to reduce price. We would not complete unless price reduced by \$3000. I warned him if he did not complete his deposit would be forfeit. He was very angry and threatened to assault me. Nevertheless he refused to buy. In fact I had sold one of the houses for \$30000. That was to Amreek Singh. I told plaintiff his deposit would be forfeited."

10

Even if the words of the appellant did amount to a renunciation the words of the plaintiff that the deposit would be (not 'was') forfeited do not shew that the respondent acted on the renunciation there and then.

Nowhere in that passage does the respondent say that he treated the contract as at an end and the deposit forfeited that night.

20

Reading the passage as a whole it appears to me that the appellant threatened not to complete because the others were getting their houses cheaper and that the respondent in turn threatened that if the appellant did not complete his deposit would be forfeited. The position was clarified the very next day by the appellant writing to say that he was ready to complete and naming his solicitors.

(Signed) B.G. SMITH

JUDGE.
FEDERATION OF MALAYA.

30

Kuala Lumpur
6th Nov., 1957.

Certified true copy

Sd. D.C.Haslam
Secretary to Judge
Kuala Lumpur
15/11/57.

No. 19

JUDGMENT OF THOMSON, C.J. FEDERATION OF MALAYA

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

CIVIL APPEAL NO. 24 OF 1957.

(K.L. Civil Suit No.176/1956)

Tai Chet Siang Appellant

vs.

Chow Yoong Hong Respondent

In the
Court of Appeal
at Kuala Lumpur

No.19

Judgment of
Thomson, C.J.
Federation of
Malaya, dated
8th November,
1957.

10 Coram: Thomson, C.J.
Knight, Ag.C.J., S'pore.
Smith, J.

JUDGMENT OF THOMSON, C.J.

I have had the benefit of reading the judgments which are about to be delivered by the Acting Chief Justice of Singapore and by Mr. Justice Smith and agree that for the reasons stated by Mr. Justice Knight this appeal should be allowed with costs.

20 Kuala Lumpur
8th November, 1957.

Sd. J.B. Thomson,
CHIEF JUSTICE
FEDERATION OF MALAYA.

True Copy

Sd. ?
ag. Private Secretary
to Chief Justice
November, 14 1957.

In the
Court of Appeal
at Kuala Lumpur

No. 20

O R D E R

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

No.20

Order.

FEDERATION OF MALAYA CIVIL APPEAL NO.24 OF 1957

12th November,
1957.

Tai Chet Siang

Appellant

versus

Chow Yoong Hong

Respondent

(In the Matter of Kuala Lumpur High Court Civil
Suit No.176 of 1956)

10

Before :-

The Honourable Mr. Justice Thomson
Chief Justice, Federation of Malaya,
The Honourable Mr. Justice Knight,
Acting Chief Justice, Singapore,
And
The Honourable Mr. Justice Smith.

IN OPEN COURT

This 12th day of November, 1957.

O R D E R

20

THIS APPEAL coming on for hearing on the
14th, 15th and 16th days of October, 1957, in the
presence of Mr. Morris Edgar of Counsel for the
Appellant and Mr. D.G. Rawson with Mr. T.C. Tang of
Counsel for the Respondent and upon reading the
Record of Appeal herein and upon hearing arguments
of Counsel aforesaid IT WAS ORDERED that this
Appeal should stand adjourned for judgment and the
same coming for judgment this day in the presence
of Mr. Henry Cheah for Mr. Morris Edgar and Mr. T.C.
Tang IT IS ORDERED that this appeal be allowed
and judgment be entered against the Respondent for
the sum of \$5,000. AND IT IS FURTHER ORDERED that
the Respondent do pay to the Appellant the costs
of this Appeal and the costs in the Court below as
taxed by the proper Officer of the Court. AND IT
IS LASTLY ORDERED that the sum of \$500.00 deposited

30

in Court be refunded to the Appellant.

Given under my hand and the seal of the Court
this 12th day of November, 1957.

SEAL

Sd. T.K. MAHADEVAN
Acting Assistant Registrar,
Court of Appeal,
Federation of Malaya.

In the
Court of Appeal
at Kuala Lumpur

No.20

Order.
12th November,
1957 - continued.

No. 21

10 ORDER FOR CONDITIONAL LEAVE TO APPEAL TO
HIS MAJESTY THE YANG DI-PERTUAN AGONG IN COUNCIL.

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

F.M. CIVIL APPEAL NO. 24 OF 1957.

BETWEEN

Tai Chet Siang Appellant

AND

Chow Yoong Hong Respondent

(In the Matter of Kuala Lumpur High
Court Civil Suit No.176 of 1956)

20

BETWEEN

Tai Chet Siang Plaintiff

AND

Chow Yoong Hong Defendant

Before:- The Honourable Mr. Justice Thomson, P.M.N.,
P.J.K., Chief Justice, Federation of
Malaya.

IN OPEN COURT

This 22nd day of August, 1958.

O R D E R

30

UPON the application of the Respondent/De-
fendant Chow Yoong Hong made this day by way of

In the
Court of Appeal
at Kuala Lumpur

No.21

Order for con-
ditional leave
to Appeal to
His Majesty The
Yang Di-Pertuan
Agong in Council.
22nd August,
1958 -
continued.

Motion and Upon reading the affidavit of Chow Yoong Hong affirmed the 25th day of November, 1957 and Upon hearing Mr. T.C. Tang of Counsel for the Respondent/Defendant and Mr. S.D.K. Peddie of Counsel for the Appellant/Plaintiff IT IS ORDERED that conditional leave be and is hereby given to the Respondent/Defendant to appeal to His Majesty The Yang Di-Pertuan Agong from the Judgment of the Court of Appeal dated the 12th day of November, 1957 upon the following terms:

- (1) That the Respondent do furnish security in the sum of ~~4~~4,000.00 before 22nd October, 1958 for the prosecution of the appeal and the payment of all such costs as may become payable to the Appellant/Plaintiff in the event of the Respondent/Defendant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of His Majesty The Yang Di-Pertuan Agong ordering the Respondent/Defendant to pay the Appellant/Plaintiff costs of the appeal, as the case may be;

- (2) That the Records herein be despatched to England before the 22nd October, 1958.

Given under my hand and the seal of the Court this 22nd day of August, 1958.

SEAL

Sd. T.V. MAHADEVAN

Assistant Registrar
Court of Appeal
Federation of Malaya.

10

20

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No. 22

ORDER FOR FINAL LEAVE TO APPEAL TO HIS MAJESTY
THE YANG DI-PERTUAN AGONG IN COUNCIL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
F.M. CIVIL APPEAL NO.24 OF 1957.

BETWEEN

Tai Chet Siang Appellant

And

10 Chow Yoong Hong Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No.176 of 1956)

BETWEEN

Tai Chet Siang Plaintiff

And

Chow Yoong Hong Defendant

Before:-

The Honourable Dato Thomson, P.M.N.,F.J.N.,
Chief Justice, Federation of Malaya,

20 The Honourable Mr. Justice Smith,
Judge, Federation of Malaya,

And

The Honourable Mr. Justice Ong,
Judge, Federation of Malaya.

IN OPEN COURT.

This 14th day of October, 1958.

O R D E R

30 UPON the application of the Respondent/De-
fendant Chow Yoong Hong made this day by way of
Motion AND UPON READING the affidavit of Chow
Yoong Hong affirmed the 23rd day of September, 1958

In the
Court of Appeal
at Kuala Lumpur

No.22

Order for Final
Leave to Appeal
to His Majesty
The Yang Di-
Pertuan Agong
in Council
14th October,
1958.

In the
Court of Appeal
at Kuala Lumpur

No.22

Order for final
Leave to Appeal
to His Majesty
The Yang Di-
Pertuan Agong
in Council

14th October,
1958 - continued.

AND UPON HEARING Mr.T.C. Tang of Counsel for the Respondent/Defendant and Mr. J.S.H. Skrine of Counsel for the Appellant/Plaintiff IT IS ORDERED final leave be and is hereby granted to the Respondent/Defendant to appeal to His Majesty the Yang Di-Pertuan Agong in Council against the judgment of the Court of Appeal herein dated the 12th day of November, 1957.

Given under my hand and the seal of the Court this 14th day of October, 1958.

10

Sd. T.V. MAHADEVAN

Assistant Registrar.

Court of Appeal

Federation of Malaya.

PART IIE X H I B I T SExhibits

D.2.

D.2. - LETTER FROM SHEARN DELAMORE TO DEFENDANT

SHEARN DELAMORE & CO.

66, Ampang Road,
Kuala Lumpur.Letter,
Shearn Delamore
to Defendant.

Our: S.D.(M) 6903.

6th October, 1955.

6th October,
1955.Mr. Chow Yoong Hong,
120, High Street,
KUALA LUMPUR.

10 Dear Sir,

Houses Nos. 27, 29 and 31 Malay Street,
Kuala Lumpur.

On behalf of the Administrators of the Estate of Haji Abdullah bin Haji Mohamed Taib (deceased), we write to confirm that the Administrators agree to sell and transfer to you the three houses above described at the total price of \$75,000/- (dollars seventy five thousand only), upon the following terms and conditions :-

- 20 i. The sale is subject to the Administrators obtaining the necessary leave of the Court.
- ii. You pay us a deposit of \$10,000/- forthwith to account of the purchase price.
- iii. The Administrators will apply as quickly as possible for the necessary sanction of the Court.
- 30 iv. Upon the necessary Order of Court being extracted, the Administrators will notify you in writing that this has been done, and will call upon you to complete the purchase.
- v. The purchase will be completed within 14 days of the Administrators extracting the Court Order. In the interpretation of this provision time shall be deemed to be

Exhibits

D.2.
Letter,
Shearn Delamore
to Defendant.

6th October,
1955 - continued.

- of the essence of the contract.
- vi. On the date of completion the Administrators will deliver you a registerable transfer of the above premises and you will pay the balance of the purchase price.
- vii. All outgoings and all rents and profits of the premises to be sold will be apportioned as at the date of completion and any sums found due by virtue of such apportionment will be paid by the party from whom the same is due to the other party on the date of completion. 10
- viii. The Administrators will pay the costs and expenses of obtaining the Court Order, and you will pay the Vendors' and purchaser's Solicitors' scale charges of the Transfer and stamp duty and registration fees.
- ix. In the event of your failing to complete the purchase in the manner herein provided the Administrators will be entitled to determine the Agreement by notice in writing to you, and to forfeit the deposit of \$10,000/- to account of damages for breach of contract without prejudice to their right to recover any other compensation which they are entitled to claim. 20

If you agree to the purchase of the above premises on the above terms and conditions, please signify your consent by signing below. 30

Yours faithfully,

Shearn Delamore.

I agree to purchase houses Nos..27, 29 and 31 Malay Street, Kuala Lumpur on the above terms and conditions.

Sd. In Chinese

Date 6.10.1955

Exhibit "D2"
No. C.S.176/56
Produced by Defdt. 40
Date 20-3-57

Sd. ?
f. Senior Asst.Registrar,
Supreme Court, Kuala Lumpur.

D.7. - RECEIPT 6th OCTOBER, 1955

Exhibits

SHEARN DELAMORE & CO.
and
DREW and NAPIER,
KUALA LUMPUR, MALAYA.

D.7.
Receipt,
6th October,
1955.

No.6885

6th October, 1955.

10 RECEIVED of Chow Yoong Hong, Esq., the sum
of Dollars Ten thousand only being payment of De-
posit to account of purchase price of Nos.27, 29 &
31 Malay Street, Kuala Lumpur from the Estate of
Haji Abdullah bin Haji Mohamed Taib, deceased.

Sd. Shearn Delamore.

RM10,000/00

Stamp 6 ¢
Cheque

Exhibit "D7"
No.C.S.176/56
Produced by Defdt.
Date 20.3.57.

20

Sd. ?

f. Senior Asst. Registrar
Supreme Court, Kuala Lumpur.

Exhibits

D.3 & 6.

D.3 & 6. - ORDER OF THE HIGH COURT AT KUALA LUMPUR RELATING TO THE ESTATE OF HAJI ABDULLAH BIN HAJI MOHAMED TAIB DECEASED

Order of the High Court at Kuala Lumpur relating to the Estate of Haji Abdullah bin Haji Mohamed Taib deceased.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
 IN THE HIGH COURT AT KUALA LUMPUR
 (Administration Petition No. 262 of 1954).
 Originating Summons No. 207 of 1955.

30th January, 1956.

Exhibit "D3"	In the matter of the estate of	
No.C.S.176/56	Haji Abdullah bin Haji Mohamed	
Produced by	Taib alias Haji Abdullah bin	10
Defdt.	Haji Mohamed and Haji Dollah bin	
Date 20.3.57.	Haji Mohamed Taib deceased.	
Sd. ?		
f. Senior Asst.Registrar,		
Supreme Court, Kuala Lumpur.		

BETWEEN

- | | | |
|--|-----------------|----|
| 1.Siti Rahman binte Sutan Baginda | | |
| 2.Aminah binte Abdullah | | |
| 3.Haji Othman bin Haji Abdullah | | |
| 4.Abdul Rahman bin Haji Abdullah | | 20 |
| 5.Abdul Shukor bin Haji Abdullah (an infant) |) By their next | |
| 6.Abdul Hadi bin Haji Abdullah (an infant) |) friend | |
| 7.Rahmat bin Haji Abdullah (an infant) |) Ernest | |
| 8.Abdul Rashid bin Haji Abdullah (an infant) |) Claude | |
| 9.Onn bin Haji Abdullah (an infant) |) Jumeaux | |
| 10.Ainon binte Haji Abdullah (an infant) |) | |
| 11.Aini binte Haji Abdullah (an infant) |) | |
| 12.Robanah binte Haji Abdullah (an infant) |) | 30 |
| 13.Rogayah binte Haji Abdullah (an infant) |) | |

Applicants

and

- | | | |
|--------------------------------|--|----|
| 1.Mahmood bin Haji Abdullah | | |
| 2.Adnan bin Haji Abdullah | | |
| 3.Harun bin Haji Abdullah | | |
| 4.Abdul Moin bin Haji Abdullah | | |
| 5.Alwi bin Haji Abdullah | | |
| 6.Khadijah binte Haji Abdullah | | |
| 7.Aniah binte Haji Abdullah | | 40 |
| 8.Alawiah binte Haji Abdullah | | |
| 9.Mariah binte Haji Abdullah | | |
| 10.Aminah binte Haji Abdullah | | |
| 11.Mariam binte Haji Abdullah | | |
| 12.Rubiah binte Haji Abdullah | | |
| 13.Hindon binte Haji Abdullah | | |
| 14.Fatimah binte Haji Abdullah | | |

Respondents

Before The Hon'ble Mr. Justice Wilson,
Judge, Federation of Malaya.

Exhibits

D.3 & 6.

IN CHAMBERS

This 30th day of January, 1956.

O R D E R

Order of the High Court at Kuala Lumpur relating to the Estate of Haji Abdullah bin Haji Mohamed Taib deceased.

30th January,
1956 - continued.

UPON HEARING Mr. K.J.E.T. Marsh, Counsel for the Applicants AND UPON READING the Originating Summons dated the 31st day of October 1955 the affidavit of Siti Rahmah binte Sutan Baginda,
10 Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah affirmed on the 19th day of October, 1955 and the Certificate of Non-Appearance dated the 9th day of January, 1956 and filed herein IT IS ORDERED as follows :-

1. That the said Siti Rahmah binte Sutan Baginda, Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah as the Administrators of the estate of Haji Abdullah bin Haji Mohamed Taib alias Haji Abdullah
20 bin Haji Mohamed Taib and Haji Dollah bin Haji Mohamed Taib deceased (hereinafter called "the deceased") be and are hereby granted leave to sell and transfer the lands held under Selangor Certificate of Title Nos.1653, 1654 and 1655 for Lots Nos. 53, 54 and 55 respectively in Section 6 in the Town and District of Kuala Lumpur at a total price of not less than £80,200-00.

2. That the Applicants shall be at liberty to

Exhibits

D.3 & 6.

Order of the High Court at Kuala Lumpur relating to the Estate of Haji Abdullah bin Haji Mohamed Taib deceased.

30th January
1956 - continued.

make any further applications relating to the administration of the estate of the deceased by Summons in Chambers under this Originating Summons.

3. Liberty to all parties to apply generally.
4. That the costs of and incidental to this application be taxed as between solicitor and client and be paid out of the estate of the deceased.

Given under my hand and the seal of the Court
this 30th day of January, 1956.

10

Sd. D. Anthony
Senior Asst. Registrar
High Court
Kuala Lumpur.

D.9. - LETTER FROM ADMINISTRATORS OF ESTATE OF
HAJI ABDULLAH BIN HAJI MOHAMED TAIB DECEASED
TO DEFENDANT

Exhibits

D.9.

WALGRENS LIMITED

Kwong Yik Bank Chambers,
Kuala Lumpur.

31st January, 1956.

Letter,
Administrators
of Estate of
Haji Abdullah
bin Haji
Mohamed Taib
deceased to
Defendant.

Chow Yoong Hong, Esq.,
120, High Street,
KUALA LUMPUR.

10

31st January,
1956.

Dear Sir,

ESTATE OF HAJI ABDULLAH bin HAJI
MOHAMED TAIB (D) Houses Nos. 27,
29 and 31 Malay Street, K.Lumpur.

With reference to Messrs. Shearn Delamore &
Co.'s letter No.S.D.(m) 6903 dated 6th October,
1955, addressed to you on the above subject, we
write to inform you that an Order has been made in
the High Court, Kuala Lumpur yesterday by the Judge
to the effect that the properties may be sold by
the Administrators at a price of not less than
\$80,200.--.

20

As the sum offered by you was only \$75,000.--,
we write to inform you that this cannot be accepted
and we will arrange with Messrs. Shearn Delamore & Co.
to have the deposit of \$10,000.- refunded to you in
due course.

Yours faithfully,
Administrators of the Estate of
Haji Abdullah bin Haji Mohamed Taib (deceased)

30

Sd. ?
Agents.

Exhibit "D9"
No.C.S.176/57
Produced by Defdt.
Dated 20.3.57.

Sd. ?
f.Senior Asst. Registrar
Supreme Court, Kuala Lumpur.

Exhibits

D.4. - LETTER, FROM SHEARN DELAMORE
TO DEFENDANT

D.4.

Letter,
Shearn Delamore
to Defendant.

SHEARN DELAMORE & CO.

52, Ampang Road,
Kuala Lumpur.

3rd February,
1956.

Our Ref: S.D.(M) 6903.

3rd February, 1956.

Mr. Chow Yoong Hong,
120 High Street,
KUALA LUMPUR

Dear Sir,

Houses Nos. 27, 29 and 31 Malay
Street, Kuala Lumpur

10

We refer to our letter of the 6th October 1955 addressed to yourself, and write to confirm that an Order was made by the High Court at Kuala Lumpur for sale of the above properties not less than the price of \$80,200.-.

The Administrators of the Estate of Haji Abdullah bin Haji Mohamed Taib (deceased) agree to allow you a period of one month from the date hereof in which to purchase the properties at the price of \$80,200.- if you so wish, and in the meantime they will not attempt to sell the properties to any other person.

20

Yours faithfully,

SHEARN DELAMORE.

Exhibit "D4"
No.C.S.176/56
Produced by Defdt.
Date 20.3.56.

Sd. ?
f.Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

30

P.l. - RECEIPT

Exhibits

TRANSLATION

P.l.

Receipt.

BAN TECK LOONG
(Textiles Merchants)
No.120, High Street, (Back Portion)
Kuala Lumpur.

6th October,
1955.

Kuala Lumpur, 6.10.1955.

10 Received from Mr. Tai Chet Siang earnest money for shop house at No.27, Malay Street, this town. It is stipulated that the price is (thirty-three thousand dollars) only. Received to-day earnest money of \$5,000 by cheque 24269. All transfer procedure as drawn up by a lawyer will be followed. This is proof.

Chow Yoong Hong

(A 10 cent postal stamp and seal of Ban Teck Loong, Kuala Lumpur, affixed here)

20

This is the true translation of the original document produced in serial No.46 of 1956.

Sd. Lee Kong Beng
Senior Chinese Interpreter
Supreme Court,
Kuala Lumpur.

Exhibit "P1" (T)
No.C.S.176/56
Produced by Pltff.
Date 20.3.57.

30

Sd. ?

f. Senior Asst.Registrar,
Supreme Court, Kuala Lumpur.

Exhibits

D.10. - LETTER FROM DEFENDANT TO PLAINTIFF

D.10.

A.R. REGISTERED.

Letter,
Defendant to
Plaintiff.

Chow Yoong Hong,
120 High Street,
Kuala Lumpur.

31st January,
1956.

31st January, 1956.

To,
Mr. Tai Chit Sen,
27 Malay Street,
Kuala Lumpur.

10

Dear Sir,

Re: House No.27 Malay Street,
Kuala Lumpur.

With reference to our Agreement of the 6th
October, 1955 in connection to the purchase of the
above property, I now write to inform you that an
Order has been made in the High Court, Kuala Lumpur
that the property may be sold. Will you, therefore,
within seven (7) days from date of receipt of this
letter come to my house to complete the transfer
by cash.

20

In the event of your failing to complete the
purchase within the period as mentioned above, the
deposit paid down will be forfeited.

Yours faithfully,

Sd. (In Chinese)

CHOW YOONG HONG.

Exhibit "D10"
No.C.S.176/56
Produced by Defdt.
Date 20.3.57.

30

Sd. ?
f. Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.



D.5. - LETTER FROM DEFENDANT TO SHEARN DELAMORE

Exhibits

D.5.

Chow Yoong Hong,
120 High Street,
Kuala Lumpur.

3rd February, 1956.

Letter,
Defendant to
Shearn Delamore

3rd February,
1956.

To,
Messrs. Shearn Delamore & Co.,
Advocates Solicitors and
Notaries Public,
52 Ampang Road,
Kuala Lumpur.

10

Dear Sirs,

Houses Nos. 27, 29 and 31 Malay
Street, Kuala Lumpur.

With reference to your letter in Ref.S.D (M)
6903 of today's date, I write to confirm that I am
prepared to purchase the properties at the price
of \$80,200.- within a period of one month from to-
day.

20

Three days' notice will be given to you in
advance before the transfer takes place.

Yours faithfully,

sd. In Chinese.

Exhibit "D5"
No.C.S.176/56
Produced by Defdt.
Date 20.3.56

Sd. ?
f. Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

30

Exhibits

D.8. - RECEIPT

D.8.
Receipt,
3rd March 1956.

SHEARN DELAMORE & CO.
and
DREW AND NAPIER,
KUALA LUMPUR, MALAYA.

No.A.1049.

3rd March, 1956.

RECEIVED from Chow Yoong Hong Esq., the
sum of Dollars Forty five thousand two hundred
only being payment of balance of purchase price
of Houses Nos. 27, 29 and 31 Malay Street, K.L.
\$45,200/- Cheque.

10

Stamp 6 / Sd. Shearn Delamore.

Exhibit "D8"
No.C.S.176/56
Produced by Defdt.
Dated 20.3.57

Sd. ?
f.Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

20

D.6. - continued. REGISTRATION DATED 14TH MARCH
1956 OF TRANSFER TO AMREEK SINGH

Exhibits

D.6.
continued.

Stamps \$300/-
(Land Code 22)

Registration
dated 14th
March, 1956 of
Transfer to
Amreek Singh.

SCHEDULE XX

(Section 110)

Presentation No.49467

MEMORANDUM OF TRANSFER

CCXXXVII/9.

10 We Siti Rahmah binte Sutan Baginda, Aminah
 binte Abdullah Haji Othman bin Haji Abdullah and
 Abdul Rahman bin Haji Abdullah as Representatives
 being registered as the proprietor(s) subject to
 the leases charges or other registered interests
 stated in the document of title thereto of the
 whole of the land held under Certificate of Title
 No.1655 for Allot No.55 Section 6 in the Town of
 Kuala Lumpur in the district of Kuala Lumpur in
 20 area 0 acres 0 roods 6.1 perches (a) in pursuance
 of an Order made on the 30th day of January 1956
 in Originating Summons No.207 of 1955 in the High
 Court at Kuala Lumpur and the payment of the sum
 of Dollars Thirty thousand (\$30,000-00) only paid
 to us by AMREEK SINGH son of NARAIN SINGH of 31
 Malay Street Kuala Lumpur the receipt of which sum
 we hereby acknowledge (b) do hereby transfer to the
 said AMREEK SINGH son of NARAIN SINGH all our right
 title and interest in the said land

30 R.T.P. of Siti Rahmah binte
 Sutan Baginda.

R.T.P. of Aminah binte Abdullah

Sd. Abdul Rahman.

Sd. Haji Othman.

Signature of transferors.

(Order of Court attached)

NOT NEGOTIABLE FOR REFERENCE ONLY

Exhibits

D.6
continued

Registration
dated 14th
March 1956 of
Acceptance by
Amreek Singh
on 10th March,
1956.

D.6 - continued. REGISTRATION DATED 14TH MARCH
1956 of ACCEPTANCE BY AMREEK SINGH ON
10TH MARCH 1956.

Exhibit "D6"
No.C.S.176/56
Produced by Deft.
Date 20.3.57

Sd. ?
f.Senior Asst. Registrar
Supreme Court, Kuala Lumpur.

10

I Amreek Singh son of Narain Singh of No. 31
Malay Street Kuala Lumpur accept this transfer in
the terms stated.

Sd. Amreek Singh
Signature of transferee

Dated this 10th day of March, 1956.

Memorial made in the register of C.T. volume
XXIII folio 161 this 14th day of March, 1956 at
3.07 p.m.

Sd. S. Raja Ratnam
Dy. Registrar of Titles

20

Seal
L.S. State of Selangor

Prepared by ?

Checked by ?

TRUE COPY

Sd. S. Raja Ratnam
Dy. Registrar of Titles Seal
State of Selangor
16/3/57.

30

NOT NEGOTIABLE FOR REFERENCE ONLY

D.6 - continued. TESTIMONIAL DATED 10TH MARCH 1956 OF SIGNATURE ON TRANSFER TO AMREEK SINGH.

Exhibits

D.6.
continued

SCHEDULE XXXVIII (a)

(Section 178)

Testimonial
dated 10th
March 1956 of
Signature on
Transfer to
Amreek Singh.

10

I hereby testify that the signature/thumb marks of the Transferors above written/affixed in my presence on this 10th day of March, 1956 are to my own personal knowledge the true signature/thumb marks of Siti Rahman binte Sutan Baginda, Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah as Representatives who have acknowledged to me, Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that they are of full age and that they have voluntarily executed this instrument.

Witness my hand.

20

Sd. K.J.E.T. Marsh
Advocate & Solicitor
Kuala Lumpur.

D.6 - continued. TESTIMONIAL DATED 5TH MARCH 1956 OF SIGNATURE ON ACCEPTANCE BY AMREEK SINGH

Testimonial
dated 5th
March 1956 of
Signature on
Acceptance by
Amreek Singh.

SCHEDULE XXXVIII (a)

(Section 178)

30

I hereby testify that the signature of the Transferee above written/affixed in my presence on this 5th day of March, 1956 is (a) to my own personal knowledge (b) according to information given to me by trustworthy and respectable persons, namely which information I verily believe, the true signature of Amreek Singh son of Narain Singh who has acknowledged to me Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that he is of full age and that he has voluntarily executed this instrument.

Witness my hand.

40

Sd. K.J.E.T. Marsh
Advocate & Solicitor
Kuala Lumpur.

ExhibitsD.6 - continued. REGISTRATION DATED 14TH MARCH
1956 OF TRANSFER TO NG CHOOD.6.
continuedRegistration
dated 14th
March 1956 of
Transfer to
Ng Choo.Stamps \$251.00
(Land Code 22)SCHEDULE XX

(Section 110)

Presentation No.49468.

MEMORANDUM OF TRANSFER

CCXXXVII/10

We Siti Rahmah binte Sutan Baginda, Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah as Representatives being registered as the proprietor(s) subject to the leases charges or other registered interests stated in the document of title thereto of the whole of the land held under Certificate of Title No.1653 for Allotment No. 53 Section 6 in the Town of Kuala Lumpur in the district of Kuala Lumpur in area 0 acres 0 roods 6.9 perches (a) in pursuance of an Order made on the 30th day of January, 1956 in Originating Summons No. 207 of 1955 in the High Court at Kuala Lumpur and the payment of the sum of Dollars Twenty five thousand one hundred (\$25,100.00) only paid to us by Ng Choo (f) of No. 100 High Street Kuala Lumpur the receipt of which sum we hereby acknowledge (b) do hereby transfer to the said Ng Choo (f) all our right title and interest in the said land.

R.T.P. of Siti Rahmah binte Sutan Baginda. 30

R.T.P. of Aminah binte Abdullah

Sd. Abdul Rahman.

Sd. Haji Othman.

Signature of transferors

(Order of Court attached
to Transfer CCXXXVII-9)

NOT NEGOTIABLE

FOR REFERENCE ONLY.

D.6 - continued, REGISTRATION DATED 14TH MARCH 1956
OF ACCEPTANCE BY NG CHOO ON
10TH MARCH 1956

Exhibits

D.6.
continued

Exhibit "D6"
No.C.S.176/56
Produced by Defdt.
Date 20.3.57

Registration
dated 14th
March 1956 of
Acceptance by
Ng Choo on
10th March,
1956.

Sd. ?
f.Senior Asst. Registrar
Supreme Court, Kuala Lumpur.

10

I Ng Choo of No. 100 High Street Kuala Lumpur accept this transfer in the terms stated.

Sd. Ng Choo (in Chinese)

Signature of transferee.

Dated this 10th day of March, 1956.

Memorial made in the register of C.T. volume XXIII folio 159 this 14th day of March, 1956 at 3.09 p.m.

Sd. S. Raja Ratnam
Dy. Registrar of Titles
State of Selangor.

20

Seal
L.S.

Prepared by ?

Checked by ?

TRUE COPY

Sd. S. Raja Ratnam
Dy. Registrar of Titles Seal
State of Selangor
16/3/57

30

NOT NEGOTIABLE

FOR REFERENCE ONLY.

Exhibits

D.6 - continued. TESTIMONIAL DATED 10TH MARCH 1956
OF SIGNATURE ON TRANSFER TO NG CHOO

D.6.
continued

SCHEDULE XXXVIII (a)

(Section 178)

Testimonial
dated 10th
March 1956
of Signature
on Transfer
to Ng Choo.

I hereby testify that the signatures/thumb marks of the Transferors above written/affixed in my presence on this 10th day of March, 1956, are to my own personal knowledge the true signatures/thumb marks of Siti Rahmah binte Sutan Baginda, Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah as Representatives who have acknowledged to me, Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that they are of full age and that they have voluntarily executed this instrument.

10

Witness my hand.

Sd. K.J.E.T. Marsh
Advocate & Solicitor,
Kuala Lumpur.

20

Testimonial
dated 5th
March 1956
of Signature
on Acceptance
by Ng Choo.

D.6 - continued. TESTIMONIAL DATED 5TH MARCH 1956
OF SIGNATURE ON ACCEPTANCE BY NG CHOO

SCHEDULE XXXVIII (a)

(Section 178)

I hereby testify that the signature of the Transferee above written/affixed in my presence on this 5th day of March 1956 is (a) to my own personal knowledge (b) according to information given to me by trustworthy and respectable persons, namely Meera s/o Saval Hamid of Kuala Lumpur and S.A.Samy s/o Soosay of Kuala Lumpur, which information I verily believe, the true signature of Ng Choo (f) who has acknowledged to me Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that she is of full age and that she has voluntarily executed this instrument.

30

Witness my hand

Sd. K.J.E.T. MARSH
Advocate & Solicitor
Kuala Lumpur.

40

NOT NEGOTIABLE FOR REFERENCE ONLY.

D.6 - continued. REGISTRATION DATED 14TH MARCH 1956
OF TRANSFER TO CHOW WEEN

Exhibits

D.6
continued

Stamps \$251.00
(Land Code 22)

Registration
dated 14th
March 1956 of
Transfer to
Chow Ween.

SCHEDULE XX

(Section 110)

Presentation No.49469

MEMORANDUM OF TRANSFER

CCXXXVII/11

10 We Siti Rahmah binte Sutan Baginda, Aminah
 binte Abdullah Haji Othman bin Haji Abdullah and
 Abdul Rahman bin Haji Abdullah as Representatives
 being registered as the proprietor(s) subject to
 the leases charges or other registered interests
 stated in the document of title thereto of the
 whole of the land held under Certificate of Title
 No.1654 for Allotment No.54 Section 6 in the Town
 of Kuala Lumpur in the district of Kuala Lumpur in
 area 0 acres 0 roods 6.5 perches (a) in pursuance
 20 of an Order made on the 30th day of January, 1956
 in Originating Summons No.207 of 1955 in the High
 Court at Kuala Lumpur and the payment of the sum of
 Dollars Twenty five thousand one hundred
 (\$25,100-00) only paid to us by Chow Ween alias
 Chow Chap Loong of No.100 High Street Kuala Lumpur
 the receipt of which sum we hereby acknowledge (b)
 do hereby transfer to the said Chow Ween alias Chow
 Chap Loong all our right title and interest in the
 said land.

30 R.T.P. of Siti Rahmah binte
 Sutan Baginda

R.T.P. of Aminah binte
 Abdullah.

Sd. Abdul Rahman.

Sd. Haji Othman.

Signature of transferors.

(Order of Court attached
 to Transfer CCXXXVII-9)

NOT NEGOTIABLE FOR REFERENCE ONLY.

Exhibits

D.6.
continued

Registration
dated 14th
March 1956 of
Acceptance by
Chow Ween on
10th March,
1956.

D.6 - continued. REGISTRATION DATED 14TH MARCH
1956 OF ACCEPTANCE BY CHOW WEEN ON
10TH MARCH 1956

Exhibit "D6"
No.C.S.176/56
Produced by Defdt.
Date 20.3.57.

Sd. ?
f. Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

10

I Chow Ween alias Chow Chap Loong of No. 100
High Street Kuala Lumpur accept this transfer in
the terms stated.

Sd. Chow Chap Loong (In Chinese)
Signature of transferee

Dated this 10th day of March 1956.

Memorial made in the register of C.T. volume
XXIII folio 160 this 14th day of March, 1956 at
3.11 p.m.

Sd. S. Raja Ratnam
Dy. Registrar of Titles

20

Seal
L.S. State of Selangor

Prepared by ?

Checked by ?

TRUE COPY

Sd. S. Raja Ratnam
Dy. Registrar of Titles Seal
State of Selangor
16/3/57.

NOT NEGOTIABLE FOR REFERENCE ONLY.

30

D.6 - continued. TESTIMONIAL DATED 10TH MARCH 1956
OF SIGNATURE ON TRANSFER TO CHOW WEEN

Exhibits

SCHEDULE XXXVIII (a)

D.6.
continued

(Section 178)

Testimonial
dated 10th
March 1956 of
Signature on
Transfer to
Chow Ween.

10

I hereby testify that the signature/thumb marks of the Transferors above written/affixed in my presence on this 10th day of March, 1956, are to my own personal knowledge the true signatures/thumb marks of Siti Rahmah binte Sutan Baginda, Aminah binte Abdullah, Haji Othman bin Haji Abdullah and Abdul Rahman bin Haji Abdullah as Representatives who have acknowledged to me, Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that they are of full age and that they have voluntarily executed this instrument.

Witness my hand.

20

Sd. K.J.E.T. Marsh
Advocate & Solicitor,
Kuala Lumpur.

D.6 - continued. TESTIMONIAL DATED 5TH MARCH 1956
OF SIGNATURE ON ACCEPTANCE BY CHOW WEEN

Testimonial
dated 5th
March 1956 of
Signature on
Acceptance by
Chow Ween.

SCHEDULE XXXVIII (a)

(Section 178)

30

I hereby testify that the signature of the Transferee above written/affixed in my presence on this 5th day of March 1956 is (a) to my own personal knowledge (b) according to information given to me by trustworthy and respectable persons namely Meera s/o Saval Hamid of Kuala Lumpur and S.A.Samy s/o Soosay of Kuala Lumpur, which information I verily believe, the true signature of Chow Ween alias Chow Chap Loong who has acknowledged to me Kenneth Julian Ernle Tytherington Marsh an Advocate & Solicitor of the Supreme Court of the Federation of Malaya that he is of full age and that he has voluntarily executed this instrument.

Witness my hand

40

Sd. K.J.E.T. Marsh
Advocate & Solicitor,
Kuala Lumpur.

NOT NEGOTIABLE FOR REFERENCE ONLY.

ExhibitsP.7. - LETTER PLAINTIFF'S SOLICITORS TO DEFENDANT

P.7.

Letter,
Plaintiff's
Solicitors to
Defendant.

13th March 1956.

BY HAND
A.R. REGISTERED

Exhibit "P7"
No. C.S.176/56
Produced by Pltff.
Date 20.3.57.

Sd. ?
f. Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

13th March, 56.

10

Chow Yoong Hong, Esq.,
No.120 High Street,
Kuala Lumpur.

Dear Sir,

House 27 Malay Street, K.Lumpur.

We have to inform you that we have been instructed by Mr. Tai Chet Siang of No.27 Malay Street, Kuala Lumpur, that on the 6th October 1955 you agreed to sell to our client the land and house erected thereon and known as No. 27 Malay Street, Kuala Lumpur for the sum of \$33,000/- and our client paid you a deposit of \$5,000/-. 20

We are now instructed to request you to call at our office within one week from the date hereof, and on your handing us the title to the land and execute a valid and registerable transfer over the same free from encumbrances, our client will pay you the balance purchase price of \$28,000/-.

Yours faithfully,

Sd. BANNON & BAILEY.

30

P.8. - LETTER, PLAINTIFF'S SOLICITORS TO DEFENDANT

Exhibits

P.8.

BANNON & BAILEY

A.R. REGISTERED

Our ref:ME/S/11633/56.

Letter,
Plaintiff's
Solicitors to
Defendant.

16th April, 1956.

16th April 1956.

Chow Yoong Hong Esq.,
No.120 High Street,
Kuala Lumpur.

Dear Sir,

House 27 Malay Street, K.L.

10

With reference to our letter of the 13th March, 1956 we have to inform you that we have been instructed by our client that you have sold the above house to someone else.

We are now instructed to inform you that our client holds you liable for the repayment to him of the sum of \$5,000/- paid to you on account of the purchase price and all damages.

We are taking action in the Supreme Court, Kuala Lumpur, against you for breach of contract.

20

Yours faithfully,

Sd. BANNON & BAILEY.

Exhibit "P8"
No. C.S.176/56
Produced by Pltff.
Dated 20.3.57

Sd. ?
F.Senior Asst. Registrar,
Supreme Court, Kuala Lumpur.

ON APPEAL
FROM THE COURT OF APPEAL OF MALAYA

B E T W E E N :-

CHOW YOONG HONG ... (Defendant) Appellant
- and -
TAI CHET SIANG ... (Plaintiff) Respondent

RECORD OF PROCEEDINGS

DARLEY CUMBERLAND & CO.,
36, John Street,
Bedford Row,
London, W.C.1.
Solicitors for the Appellant.

LIPTON & JEFFERIES,
Princes House,
39, Jermyn Street,
London, S.W.1.
Solicitors for the Respondent.