

~~LM 52~~

29/62

IN THE PRIVY COUNCIL

No.16 of 1961

ON APPEAL FROM THE SUPREME COURT  
OF THE FEDERATION OF MALAYA

B E T W E E N

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA (Plaintiff) Appellant

- and -

RIMAU OMNIBUS COMPANY LIMITED  
OF IPOH (Defendants) Respondents

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

68255

WRAY SMITH & CO.,  
1, Kings Bench Walk  
Temple, E.C.4.  
Appellant's Solicitors

PEACOCK & GODDARD,  
1, Raymond Buildings,  
Grays Inn, W.C.1.  
Respondents' Solicitors.

ON APPEAL FROM THE SUPREME COURT  
OF THE FEDERATION OF MALAYA

B E T W E E N

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA (Plaintiff) Appellant

- and -

RIMAU OMNIBUS COMPANY LIMITED  
OF IPOH (Defendants) Respondents

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IN THE PRIVY COUNCIL

No.16 of 1961

ON APPEAL FROM THE SUPREME COURT  
OF THE FEDERATION OF MALAYA

B E T W E E N

THE GOVERNMENT OF THE  
FEDERATION OF MALAYA (Plaintiff) Appellant

- and -

RIMAU OMNIBUS COMPANY  
LIMITED OF IPOH (Defendants) Respondents

RECORD OF PROCEEDINGS

NO.1 - SPECIALLY INDORSED

WRIT OF SUMMONS

(C.2 r.3).

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT IPOH

CIVIL SUIT 1959 No.63

BETWEEN

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

PLAINTIFF

And

RIMAU OMNIBUS CO.LTD., of  
NO.88, BREWSTER ROAD, IPOH

DEFENDANTS

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
Ipoh

No.1

Specially  
Indorsed Writ  
of Summons,  
28th March  
1959.

Dato Sir James Thomson, P.M.N., P.J.K.,  
CHIEF JUSTICE OF THE FEDERATION OF MALAYA IN THE  
NAME AND ON BEHALF OF HIS MAJESTY THE YANG DI-  
PERTUAN AGONG.

To RIMAU OMNIBUS CO. LTD., the above-named  
Defendants whose registered office is at  
No.88, Brewster Road, Ipoh.

WE COMMAND you, that within 8 days after the  
service of this Writ on you, inclusive of the  
day of such service, you do cause an appearance

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.1

Specially Indorsed Writ of Summons, 28th March 1959 continued

to be entered for you in an action at the suit of the Government of the Federation of Malaya

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

WITNESS Sarwan Singh Gill Registrar of the Supreme Court of the Federation of Malaya the 28th day of March, 1959.

Sd: Frederick G.Cooke  
Plaintiff Solicitors  
SENIOR FEDERAL COUNSEL,  
PERAK

Sd: E.E. SIN  
SENIOR Assistant Registrar,  
High Court,  
Ipoh.

10

N.B. - This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of the last renewal, including the day of such date and not afterwards.

The Defendant (or Defendants) may appear here- to by entering an appearance (or appearances) either personally or by Solicitor, at the Registry of the High Court at

20

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order of \$3-00 with an addressed envelope to the Assistant Registrar of the High Court at

If the Defendant enters an appearance he must also deliver a Defence within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for Judgment.

30

STATEMENT OF CLAIM

1. The Plaintiff's claim is for the sum of \$7,793/- payable by the Defendants to the Plaintiff as a debt due by virtue of Section 40 of the Income Tax Ordinance.

40

Particulars:

2. The Defendants are a Company incorporated in the Federation of Malaya under the Companies Ordinance.

3. The Defendants deducted tax from their dividends paid during the period 1st January to 31st December, 1956, the sum of \$22,515/-.

4. The tax assessed for the year of assessment 1956 was \$14,722/-.

10 5. The balance of \$7,793/- is therefore due and owing by the Defendants to the Plaintiff.

6. The Plaintiff claims -

(a) the said sum of \$7,793/-;

(b) Costs of this Action.

Dated this 26th of March, 1959.

Sd: Das & Co.  
Solicitors for  
Defendants.

Sd: Frederick G. Cooke.  
Senior Federal Counsel on  
behalf of  
The Government of the Feder-  
ation of Malaya.  
Plaintiff.

20

And the sum of \$ - (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$ - (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or his advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

30

Provided that if it appears from the indorsement of the Writ that the Plaintiff is resident outside the schedule territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, or if the Defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
Ipch

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No.1

Specially  
Indorsed Writ  
of Summons,  
28th March  
1959  
continued

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.1

Specially Indorsed Writ of Summons, 28th March 1959 continued

claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his advocate and solicitor or agent.

This Writ was issued by Mr. F.G. Cooke, Senior Federal Counsel, Federation of Malaya, whose address for service is Legal Adviser's Chambers, Ipoh, Solicitors for the said Plaintiff who resides at Ipoh.

This Writ was served by me at On the Defendant on the day of at the hour of Indorsed this day of

19 10  
19 .

(Signed)

(Address)

No.2

Statement of Defence and Counterclaim 16th May 1959.

No.2 - STATEMENT OF DEFENCE AND COUNTERCLAIM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
CIVIL SUIT NO. 63 OF 1959

20

BETWEEN

THE GOVERNMENT OF THE FEDERATION OF MALAYA ...

PLAINTIFF

And

RIMAU OMNIBUS CO. LTD., of No.88, BREWSTER ROAD, IPOH ...

DEFENDANTS

STATEMENT OF DEFENCE AND COUNTER-CLAIM

DEFENCE

1. The Defendants admit paragraphs 2 and 4 of the Statement of Claim.

30



2. The Defendants deny the allegations in paragraph 1, 3 and 5 of the Statement of Claim.

3. The Defendants state that during the assessment years 1948 to 1956 inclusive they the Defendants paid dividends without deduction of tax and that during the said assessment years the taxes paid by them amounted to \$81,503-40, particulars whereof are set out hereunder. And the Defendants claim that the balance required to be carried forward to the assessment year 1957 pursuant to section 40 of the Income Tax Ordinance is the said sum of \$81,503-40, which is a balance in favour of the Defendants.

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.2

Statement of Defence and Counterclaim  
16th May 1959  
continued

PARTICULARS

<u>Assessment year</u>	<u>Tax Paid</u>
	\$ cts.
1948	3,119-20
1949	3,119-20
1950	2,969-20
1951	7,959-90
1952	6,847-80
1953	13,758-00
1954	16,161-30
1955	12,846-90
1956	<u>14,721-90</u>
	81,503-40

4. The Defendants state that their only assets are shares in a company known as the General Omnibus Co. Ltd. and their only source of income is the dividends declared and paid by the said General Omnibus Co. Ltd. The Defendants further state that during the assessment year 1956, the General Omnibus Co. Ltd. in fact deducted at source \$23,394-00 as tax out of the gross dividend of \$77,980-00 payable to the Defendants and paid to the Defendants the balance of \$54,586-00. And the Defendants distributed amongst their shareholders by way of dividend \$52,535-00 during the said assessment year. The Defendants further state that at no time during the assessment year 1956 they had in their hands the sum

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

of \$22,515/- alleged by the Plaintiff to have been deducted out of such dividends.

5. The Defendants deny that they are liable to the Plaintiff in the sum of \$7,793/- or any part thereof.

No.2

COUNTER-CLAIM

Statement of Defence and Counterclaim 16th May 1959 continued

And, by way of counter-claim against the Plaintiff, the Defendants repeat the allegations in their defence and claim:

- (a) A declaration that the said sum of \$81,503-40 is the balance in favour of the Defendants to be carried forward during the assessment year 1957 pursuant to section 40 of the Income Tax Ordinance; 10
- (b) Costs;
- (c) Further or other relief.

Sd: DAS & CO.  
DEFENDANT'S SOLICITORS

Delivered this 16th day of May, 1959, by Messrs. Das & Co. of Nos.8-10 Station Road, Ipoh, Solicitors for the Rimau Omnibus Co. Ltd. the above-named Defendants. 20

No.3

No.3 - AMENDED REPLY AND DEFENCE  
TO COUNTERCLAIM

Amended Reply and Defence to Counterclaim 19th April, 1960.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
CIVIL SUIT NO. 63 OF 1959

BETWEEN

THE GOVERNMENT OF THE FEDERATION OF MALAYA PLAINTIFF 30

And

RIMAU OMNIBUS COMPANY LIMITED DEFENDANTS

of No.88, Brewster Road, Ipoh

AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

1. The Plaintiff joins issue with the Defendants

on their Defence.

~~2. As to the Counterclaim, the Plaintiff says that as there was no sum of \$81,503.40 in favour of the Defendants to be carried forward during the Assessment year 1957 pursuant to Section 40 of the Income Tax Ordinance, the Defendants are not entitled to any declaration.~~

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
Ipoh

                      
No.3

10 2. As to the counterclaim the Plaintiff does not admit that during the assessment years 1948 to 1956 inclusive, the Defendants paid any dividends without deduction of tax or that there was a sum of \$81,503.40 or any sum in favour of the Defendants which could be carried forward during the assessment year 1957, and the Plaintiff denies that the Defendants are entitled to a declaration that the sum of \$81,503.40 or any other sum is the balance in favour of the Defendants to be carried forward during the assessment year  
20 1957 pursuant to Section 40 of the Income Tax Ordinance.

Amended Reply  
and Defence to  
Counterclaim  
19th April,  
1960  
continued

2A. Further and in the alternative, if, which is not admitted the Defendants did pay any dividends without deduction of tax, the Plaintiff will maintain that under the provisions of subsection 6 of Section 40 of the Income Tax Ordinance the said dividends are deemed to be dividends of such gross amounts as after deduction of tax at the rate deductible at the date of payment would be equal to the net amount paid, and  
30 that therefore there was no balance to be carried forward as alleged or at all. The Plaintiff will further maintain that the actions of the General Omnibus Company Limited as set out in paragraph 4 of the Statement of Defence and Counterclaim are irrelevant to these proceedings.

3. WHEREFORE the Plaintiff prays that the Counterclaim be dismissed with costs.

~~Dated at Ipoh this 15th day of June, 1959.~~

40 Dated and re-delivered this 19th day of April, 1960.

Sd: Rodyk & Davidson,  
SOLICITORS FOR THE PLAINTIFF.

To the abovenamed Defendants and  
their Solicitors, Messrs. Das &  
Co., of Nos.8-10, Station Road,  
Ipoh, Federation of Malaya.

Amended 19th day of April 1960, pursuant to  
order of Court dated the 18th day of April,  
1960.

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.4 - AGREED STATEMENT OF FACTS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
CIVIL SUIT NO.63 OF 1959

No.4

Agreed Statement of Facts  
25th April, 1960.

BETWEEN

THE GOVERNMENT OF THE FEDERATION OF MALAYA

PLAINTIFF

And

RIMAU OMNIBUS CO. LTD., of No.88, Brewster Road, Ipoh

DEFENDANTS

10

AGREED STATEMENT OF FACTS

1. The only assets of the Defendant Company were at all material times certain shares in another undertaking known as the General Omnibus Co. (Perak) Ltd., and its only income is from dividends declared and paid from time to time by General Omnibus.

2. In respect of each of the assessment years 1948-1956, General Omnibus declared gross dividends less tax at the appropriate rates and paid out to its shareholders, including the defendant company, such dividend. A specimen copy of such a dividend warrant issued by the General Omnibus to the Defendant Company is annexed hereto and marked "A".

20

3. The statement annexed hereto and marked "B" contains particulars of the total of the net dividends paid out by General Omnibus to all its shareholders, with the respective dates of such payments, the number of shares held by the Defendant Company in General Omnibus, the actual sums received by the Defendant Company by way of dividends, the balance of moneys in the hands of General Omnibus after payment of each dividend. General Omnibus had, at all material times, other moneys on fixed deposit with its bankers

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which have not been included in the statement.

4. General Omnibus had at all material times sufficient moneys in its hands to pay out the gross dividends declared by it. Such dividends as has been already stated were paid out less tax deducted at the appropriate rate.

10 5. Except in respect of the year 1948, the Defendant company, by resolutions, declared gross dividends less tax at the appropriate rates. It will be an issue before this Honourable Court whether or not such resolutions were made in fact or were only purported to be made. A copy of the resolution is set forth in the annexed document marked "C". In the dividend warrants issued by the Defendant Company to its shareholders were set forth the gross dividend, the tax deductible and the actual amount paid. Specimen copies of such dividend warrants are annexed hereto and marked "D 1" and "D 2".

20 There is also annexed hereto marked "E" the Defendant Company's balance sheet, appropriation and profit and loss accounts for the year 1956. The Company's accounts for each year were drawn up in the same manner.

30 6. There are set forth in the annexed document marked "F" particulars, in respect of the years 1948-1956, of the gross dividends declared by General Omnibus and payable to the Defendant Company, the tax deducted at source by General Omnibus, the actual amounts paid to and received by the Defendant Company, the actual sums paid out by the Defendant Company to its shareholders by way of dividends, the chargeable income of the Defendant Company and the income tax thereon. It will be an issue before this Court whether or not the tax deducted at source and shown in "F" as nil was in fact nil.

40 7. The Defendant Company obtained credit under Section 42 of the Income Tax Ordinance in respect of tax assessed on it in each succeeding year.

8. At no material time did the Defendant Company have sufficient moneys to pay the gross dividends it declared (or, as is contended by the Defendant, purported to have declared) by

In the Supreme  
Court of the  
Federation of  
Malaya In the  
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Ipoh

No.4

Agreed State-  
ment of Facts  
25th April  
1960  
continued

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.4

Agreed Statement of Facts 25th April 1960 continued

the resolutions referred to in paragraph 5 hereof. The actual sums paid out by the Defendant Company from time to time to its shareholders by way of dividends as set forth in the statement marked "F" almost wholly exhausted the funds in its hands. And the Defendant Company did not have sufficient funds to enable it to retain in its hands the appropriate tax it is authorised to deduct under sub-section 1 of section 40.

9. The individual shareholders of the Defendant Company obtained credit under Section 42 of the Income Tax Ordinance in respect of tax assessed on each of them during the relevant years in each succeeding year.

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10. There are annexed hereto copies of letters to the Comptroller of Income Tax dated 22nd September, 1956, 10th May 1957, 22nd May 1957 and 24th August, 1957, marked respectively "G", "H", "I" and "J" setting forth the claim made in this action.

20

Dated this 25th day of April, 1960.

Sd: Rodyk & Davidson  
PLAINTIFF'S SOLICITORS

Sd: Das & Co.  
DEFENDANT'S SOLICITORS

No.5

No.5 - JUDGMENT

Judgment of Smith J. 21st May 1960

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH

CIVIL SUIT No.63 of 1959

THE GOVERNMENT OF THE FEDERATION OF MALAYA

PLAINTIFF

vs.

RIMAU OMNIBUS COMPANY LIMITED

DEFENDANT

30

J U D G M E N T

In this case Government seeks to recover

from the Defendant Company a sum of \$7.793/- which Government alleges is a debt due to Government by operation of the provisions of sub-section 4 of Section 40 of the Income Tax Ordinance, 1947. The Defendant Company denies that any such debt is due and counterclaims for a declaration that a sum of \$81,503.40 is a balance in favour of the Defendant Company to be carried forward during the assessment year 1957 pursuant to the proviso to sub-section 5 of the said Section 40. In so far as the counterclaim is concerned, the Plaintiff denies that the Defendant Company is entitled to any such declaration.

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.5

Judgment of  
Smith J.  
21st May 1960  
continued

The facts of the case are not in dispute. The only assets of the Defendant Company are certain shares in another limited company known as the General Omnibus Company Perak Limited. The whole income of the Defendant Company (which I will hereafter refer to as "the Company") is derived from these shares. For all practical purposes the Company passes on to its shareholders all the income which it receives from the General Omnibus Company (a small amount is expended by the Company on Directors', Secretaries' and Auditor's fees, and printing stationer, and incidental expenses). In the year 1955 the General Omnibus Company paid to the Company a net dividend of \$34,935.04 which represented a gross dividend of \$49,907.20 from which tax had been deducted at source by the General Omnibus Company to the extent of \$14,972.16 which the General Omnibus Company was entitled to do by virtue of the provisions of sub-section 1 of the said Section 40. The total income of the Company for the year 1955 therefore was this dividend to which reference has been made. Tax on this income was payable during the year 1956 by virtue of the provisions of sub-section 1 of Section 31. The chargeable income for the year of assessment 1956 was found by the Comptroller of Taxes to be \$49,073/- (it will be noted that this figure is slightly less than the gross dividend paid by the General Omnibus Company, the difference being accounted for as explained above). On this chargeable income of \$49,073/- the tax payable was \$14,721.90 which tax has been paid by set-off by virtue of the provisions of Section 40(2) of the Ordinance, the Company

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
Ipoh

No.5

Judgment of  
Smith J.  
21st May 1960  
continued

having claimed the benefit of the tax deducted at source by the General Omnibus Company. During the year 1956 the General Omnibus Company declared a gross dividend of \$77,980/- from which tax was deducted at source amounting to \$23,394/- leaving a net dividend received by the Company of \$54,586/-. In accordance with its usual practice the Company proceeded during the year 1956 to distribute the income which it had received. The amount which has been in fact distributed was \$52,535/- in the form of a dividend of 500 per cent less income tax at 30 per cent. The Appropriation Account of the Company for the year 1956 expresses it in this manner:

Dividend paid	\$75,050.00
Less Income Tax	<u>22,515.00</u>
Net	\$52,535.00

On the face of the Company's dividend warrants it appeared that it had deducted \$22,515.00 tax out of a dividend paid of \$75,050.00. The Comptroller claims that because the tax allegedly deducted in the year 1956 (i.e. \$22,515.00) exceeds the tax payable by the Company in the year 1956 (i.e. \$14,721.90) the difference of \$7,793.10 is a debt due from the Company to Government and is recoverable as such by virtue of the provisions of sub-section 4 of Section 40.

The principle argument of the Company is that it has in fact deducted no tax at all, and that it is not caught by the provisions of sub-sections 3, 4 and 5 of the said Section 40. The claim and the defence will require a very close consideration of Section 40 and its precise wording. It is to be noted that Section 40 of the Ordinance was amended in the year we are discussing 1956, and that the amendment was effective from 1st January, 1956. It is profitable therefore to examine first what the position was before 1956 and then to see what the amendments of 1956 were trying to do and what in fact they have done.

On the 31st December, 1955, the relevant sections of the Income Tax Ordinance read as follows:

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30

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"40.(1) Every company which is resident in the Federation shall be entitled to deduct from the amount of any dividend to any shareholder tax at the rate paid or payable by the company....on the chargeable income of the year of assessment within which the dividend is declared (then followed two provisos with which we are not concerned).

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

\_\_\_\_\_  
No.5

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(2) Every such company shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend."

Judgment of Smith J.  
21st May 1960  
continued

20

Early in 1956 by slightly retrospective legislation Section 40 was amended with effect from 1st January, 1956, in the following manner. There was a new sub-section (1) reading as follows:

"Every company which is resident in the Federation shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at a rate not exceeding thirty per centum on every dollar of such dividend."

30

Sub-section (2) remained the same. Four entirely new sub-sections were inserted which I set out in full -

40

"40. (3) At the end of each year of assessment every such company shall render to the Comptroller a Statement in such form as the Comptroller may direct, showing the total amount of the tax which has been deducted from all dividends paid to shareholders during such year of assessment, and the Comptroller shall compare the amount of tax so deducted with the aggregate of the following amounts, namely, the amount of the tax payable by the company in respect of such year of assessment in accordance with the provisions of this Ordinance and

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
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No.5

Judgment of  
Smith J.  
21st May 1960  
continued

the amount of the balance (if any) carried forward from any previous year of assessment in accordance with the provisions of sub-section (5) of this section.

(4) Notwithstanding any other provisions of this Ordinance, where the amount of tax so deducted exceeds the aggregate of the said amounts, a sum equal to the amount of such excess shall be a debt due from the company to the Government and shall be recoverable as such.

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(5) Where the aggregate of the said amounts exceeds the amount of tax so deducted, a sum equal to the amount of the excess shall be carried forward as a balance to the immediately ensuing year of assessment, and such balance shall be available to be set off against the amount of tax deducted from dividends in such ensuing year of assessment in accordance with the provisions of this section:

20

Provided that at the end of the year of assessment 1956 the amount of the balance to be carried forward shall be the amount (if any) by which the tax paid or payable by the company in the said year of assessment and in all previous years of assessment under this Ordinance exceeds the amount of tax deducted by the company from all dividends paid to shareholders in all such years of assessment.

30

(6) For the purposes of this section, where any dividend has been paid without deduction of tax, such dividend or part thereof from which there was a title to deduct tax shall be deemed to be a dividend of such a gross amount as after deduction of tax at the rate deductible at the date of payment would be equal to the net amount paid; and a sum equal to the difference between such gross amount and the net amount paid shall be deemed to have been deducted from such dividend or part thereof as tax."

40

I am aware that the objects and reasons of

the Parliamentary Bill are not material from which one may seek assistance in interpreting the statute. Nevertheless it is helpful to see what the Legislature purported to do and then to discover whether it has in fact achieved that result. The reason given for the amendments to Section 40 were first that it had been represented that the restriction of the rate at which tax may be deducted from dividends was unreasonable and that the new provisions were intended to remove this restriction. The objects and reasons went on, "In order to avoid any loss of tax, however, provisions are included the effect of which is that where tax deducted from dividends exceeds the tax paid by the company, the excess shall be made good by a direct contribution to the Comptroller."

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

\_\_\_\_\_  
No.5

Judgment of Smith J.  
21st May 1960  
continued

As is often the case these objects and reasons appear to have been sugaring the pill. The principal objective appears to have been not to make things easier for the tax-payer but to ensure that the revenue did not suffer. These provisions in fact attempted to incorporate in the Federal law provisions which had been found necessary in the United Kingdom as a result of two cases upon which the Defendant relies to a considerable extent. These cases are the cases of Neumann v. The Commissioners of Land Revenue (18 T.C.332) and Commissioners of Inland Revenue v. Cull (22 T.C.603). The facts of Neumann's case are complicated and need to be set out in full in order that their application to the facts of this may be considered. They are as follows :-

"The Appellant was a shareholder in the Salisbury House Estate, Ltd. On the 4th April, 1930, the House of Lords, in the case of Salisbury House Estate, Ltd. v. Fry (15 T.C.266), decided that the rents of the company's properties, which greatly exceeded the annual values as assessed to Income Tax under Schedule A, were profits arising from the ownership of land, in respect of which the assessments under Schedule A were exhaustive, and that such rents in excess of the Schedule A assessments could not be included in assessments under Schedule D as trade receipts of the company.

In the Supreme  
Court of the  
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No.5

Judgment of  
Smith J.  
21st May 1960  
continued

Pending the final decision in the case, the company had created a reserve fund representing a surplus of accumulated rents which remained in its hands after profits had been distributed to the amount of the Schedule A assessments on its properties. Immediately upon the decision of the House of Lords, the company distributed the whole of the reserve fund by way of dividend to its shareholders.

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The dividend was described by the company, at the time of payment, as an "Interim dividend of five per cent., free of tax" and the proportionate part paid to the Appellant, amounting to £4,275, was stated to be equivalent to a gross amount of £5,343.15s.0d., less Income Tax £1,068.15s.0d. Later, in consequence of the decision in *Gimson v. Commissioners of Inland Revenue* (15 T.C. 595), the company informed the Appellant that their earlier description of the dividend as a dividend of five per cent., free of tax, was erroneous, and that the dividend should have been described as a dividend of "five per cent., actual", being a distribution of untaxed income which was not taxable in the hands of the company or in his hands and, therefore, should not be included in any Income Tax or Sur-tax returns made by him.

20

30

The Appellant was assessed to Sur-tax in respect of the dividend in the amount of £5,343.15s.0d. He appealed, contending, inter alia, that the dividend had been paid out of profits which were not liable to Income Tax, and that accordingly there was no liability to Sur-tax. The Special Commissioners confirmed the assessment."

The case had a long history and finally went to the House of Lords where it was held that the sum paid to the appellant, namely, £4,275 was not a "net amount" to which an addition was required in order to arrive at the amount returnable for sur-tax purposes. I would here draw attention to one very big difference between the facts of Neumann's case and the facts of

40

10 this case. In Neumann's case the dividend declared by the company which was in Mr. Neumann's hands was finally expressed to be a dividend of "five per cent actual" and was a distribution of untaxed income. In the case with which we are dealing all the dividends purport to be dividends in respect of which a deduction of tax has been made. The dividend which has been declared in 1956 by the company is one of dividend paid less income tax leaving a net amount of \$52,535/-. The company has not "corrected" its dividend in the way that Salisbury House Estate, Ltd., corrected its dividend in Neumann's case. I would here point to an important part of the argument of the Plaintiff. It is that the company chooses to conduct its business in this particular manner. The Plaintiff's argument is that if the Company issues dividend warrants stating that if it has in fact made deduction of tax then it cannot be surprised if it is to be treated as though it had done so, and that it is useless for it to say that in fact no deduction has been made at all, that all that has happened is that the company has distributed exactly what it received and has in fact made a distribution of profit without deduction of income tax.

20

30 Although estoppel under Section 115 of the Evidence Ordinance was not argued before me it appears to me that the Plaintiff's argument on this point comes under that head. The company by its declaration of dividend has permitted the Comptroller to believe that it has in fact made a deduction of income tax and is therefore in no position to deny the truth of the dividend warrants. It appears to me to be vital to this case that corrective dividend warrants have not been issued as in Neumann's case.

40 The next case which was considered in some detail was that of Commissioners of Inland Revenue v. Cull (supra). I do not consider it necessary to go into the details of this case since it was a decision that a dividend paid without deduction of tax but not declared "free of tax" was not within the grossing-up provisions of the Finance Act, 1931, Section 7 (2) All the dividends in this case purport to be paid with deduction of tax.

In the Supreme Court of the Federation of Malaya In the High Court at Ipoh

No.5

Judgment of Smith J.  
21st May 1960  
continued

In the Supreme  
Court of the  
Federation of  
Malaya In the  
High Court at  
Ipoh

No.5

Judgment of  
Smith J.  
21st May 1960  
continued

The Company's main argument is that it is impossible to read sub-sections 3, 4 and 5 as being modified by sub-section 2 so as to impute to a company a deduction of tax not in fact made because to do so would be to do violence to sub-sections 3, 4 and 5. The argument is that to impose a charge words must be plain and unambiguous. In sub-sections 3 and 4 there is reference to tax deducted; these words it is submitted can mean, only and precisely, deducted in fact; nowhere in the section is there any reference to any sums being deemed to be deducted except in sub-section (6).

10

Sub-section (6) tells us something about the dividend when it comes into the hand of the shareholder. It speaks about a net amount deemed to have been deducted as tax. One might have expected some reference to tax in certain circumstances being deemed to have been deducted in the earlier sub-sections but such is not the case. It is true, as the Plaintiff argues, that the cases of Neumann and Cull were decided expressly on the actual language of the statute but nevertheless as Mr. Das says they can be looked to for guidance in construing our Ordinance. Lord Wright at page 647 of Cull's case refers to the words of Lord Tomlin at page 230 of Neumann's case. Lord Tomlin had said :

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"Now I think it would be repellant to most minds that the Appellant should be charged as a part of his income with a sum which not only has never come to him but has never existed in fact."

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The Company has argued strenuously that to impose a charge the words must be plain and unambiguous and since sub-section 3 refers to tax so deducted it must mean tax in fact deducted. It is clear from the facts of this particular case that the company made no deduction of any kind whatsoever. It performed the purely ministerial function of distributing a dividend received from the General Omnibus Company.

40

When we come to the Plaintiff's argument the logic of it is unimpeachable. The company has taken the benefit of the tax deducted by virtue of the provisions of Section 40(2) and then

passed on to its shareholders the benefit of the tax deducted by way of a dividend warrant. I quite agree that the procedure adopted must in all sense be one whereby the company must be deemed to have deducted tax. Nevertheless subsections 1-5 have no reference to any tax being deemed to have been deducted and in this case in fact none was.

In the Supreme Court of the Federation of Malaya In the High Court at  
Ipoh

No.5

10 To my mind the strength of the Plaintiff's case is that the company is estopped from denying that it has in fact deducted tax. If a company declares a dividend of a certain size and proceeds to distribute that dividend after deduction of tax I cannot see that it is entitled at a later stage to turn round and deny that it has in fact done so. If it does wish to do this then it must do what Salisbury House Estate Ltd., did in Neumann's case, namely, issue corrected dividend warrants. What would be the effect of this does not concern me. However I consider that the company is estopped from denying that they have deducted the tax because they have elected, as the Plaintiff said, to conduct their business in this particular manner. There must therefore be judgment for the Plaintiff as prayed.

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Judgment of Smith J.  
21st May 1960  
continued

30 With regard to the counterclaim for a declaration I cannot see that any such declaration is merited since as a result of the judgment on the claim having gone to the Plaintiff there is no credit balance of any kind to be carried forward in favour of the Defendant.

Judgment for the Plaintiff on the claim as prayed. Defendant's counterclaim is dismissed. The Plaintiff is awarded costs as taxed by the proper officer of the Court.

Sgd: B.G.Smith,  
Judge,  
Federation of Malaya.

40 21st May, 1960

For Plaintiff ... Inche H.E. Cashin  
(Messrs.Rodyk & Davidson,  
S'pore)

For Defendant ... Inche B.K. Das  
(Messrs. Das & Co., Ipoh)

In the Supreme Court of the Federation of Malaya in the High Court at Ipoh

No.6 - ORDER

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
CIVIL SUIT NO.63 of 1959

BETWEEN

THE GOVERNMENT OF THE FEDERATION OF MALAYA

PLAINTIFF

And

RIMAU OMNIBUS COMPANY LIMITED of No.88 Brewster Road, Ipoh

DEFENDANTS

No.6

Order  
21st May 1960

BEFORE THE HONOURABLE MR. JUSTICE SMITH  
JUDGE, OF THE FEDERATION OF MALAYA  
THIS 21ST DAY OF MAY, 1960.

10

IN OPEN COURT

J U D G M E N T

This action coming on for trial on the 26th and 27th days of April, 1960 in the presence of Counsel for the Plaintiff and for the Defendants And Upon reading the pleadings filed herein, and the evidence agreed upon by Counsel aforesaid And Upon hearing what was alleged by Counsel for both sides IT WAS ORDERED that this action should stand adjourned for Judgment and this action standing for Judgment this day in the presence of Counsel aforesaid IT IS ORDERED that the Plaintiff do recover against the Defendants the sum of \$7,793-00 AND IT IS FURTHER ORDERED that the Defendants' Counterclaim herein be dismissed AND IT IS LASTLY ORDERED that the costs of this action and of the Counterclaim be taxed as between Party and Party under the Higher Scale of Costs in the Second Schedule of the Rules of the Supreme Court 1957 and be paid by the Defendants to the Plaintiff.

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GIVEN under my hand and the Seal of the Court this 21st day of May, 1960.

Sd: B.E. Sim  
Senior Assistant Registrar,  
Supreme Court,  
Ipoh.

L.S.



No.7 - NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT IPOH  
CIVIL APPEAL NO. 44 OF 1960

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

BETWEEN

No.7

RIMAU OMNIBUS COMPANY LIMITED OF  
IPOH ...

APPELLANT

Notice of  
Appeal  
8th June 1960

And

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA ...

RESPONDENT

10

(In the matter of Ipoh High Court Civil Suit  
No.63 of 1959

Between

The Government of the  
Federation of Malaya

Plaintiff

And

Rimau Omnibus Company  
Limited of Ipoh

Defendants)

NOTICE OF APPEAL

20

TAKE NOTICE that Rimau Omnibus Company  
Limited the Appellant abovenamed being dissatis-  
fied with the decision of the Honourable Mr.  
Justice Smith given at Ipoh on the 21st day of  
May, 1960 appeals to the Court of Appeal against  
the whole of the said decision.

Dated this 8th day of June, 1960.

Sd: Das & Co.,  
Solicitors for the Appellant.

To:

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1. The Senior Assistant Registrar,  
Supreme Court,  
Ipoh.
2. The Government of the Federation of Malaya  
or its Solicitors, Messrs. Rodyk & David-  
son, of Room 207, Kwang Tung Association  
Building, 44, Pudu Road, Kuala Lumpur.

The address for service of the Appellant is  
care of Messrs.Das & Co., Advocates and Solici-  
tors, of Nos.8-10, Station Road, Ipoh.

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.8 - MEMORANDUM OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT IPOH  
CIVIL APPEAL NO. 44 OF 1960

No.8

Memorandum of  
Appeal  
10th July 1960

BETWEEN

RIMAU OMNIBUS COMPANY LIMITED of  
Ipoh

APPELLANT

And

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

RESPONDENT

(In the matter of Ipoh High Court Civil Suit  
No. 63 of 1959

Between

The Government of the  
Federation of Malaya

PLAINTIFF

And

Rimau Omnibus Company  
Limited of Ipoh

DEFENDANTS)

MEMORANDUM OF APPEAL

Rimau Omnibus Company, Limited, the Appellant above-named, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Smith given at Ipoh on the 21st day of May, 1960 on the following grounds:

1. The learned Judge was wrong in holding that by reason of the form of dividend certificates issued to its shareholders the appellant is estopped from denying that it had in fact deducted tax before payment of dividends to its shareholders.

2. The Appellant submits:

- (a) That the dividend certificates issued to its shareholders took the form they did by reason of the mandatory provisions of sub-section (2) of Section 40 of the Income Tax Ordinance, which required and requires every company to set forth in each dividend certificate the amount of tax it is entitled to deduct under sub-section (1), whether or not tax is in fact deducted from the dividend;
- (b) That by reason of the positive duty imposed on the Appellant, as on all companies, by sub-section (2), failure to comply therewith being an offence under Section 90, the Appellant could not by any representations (which are denied) contained in its dividend certificates raise an estoppel against itself; nor is it open to the Respondent to set up an estoppel to prevent the Appellant from establishing the true facts;
- (c) the dividend certificates contained no representations to the Respondent or the revenue authorities that tax had in fact been deducted before payment of dividends by the Appellant to its shareholders;
- (d) neither the Respondent nor the revenue authorities were induced to believe, nor did they believe, in the representations, if any, (which are denied), contained in such dividend certificates, nor did they act to their detriment on such representations;
- (e) the Respondent could not found its cause of action on such estoppel.

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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No.8

Memorandum of  
Appeal  
10th July 1960  
continued

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3. The Appellant submits that the dividend certificates issued to its shareholders and its annual balance sheets, appropriation and profit and loss accounts are matters of domestic accounts and were and are irrelevant for the purposes of ascertaining its liability in these proceedings. The Appellant was entitled to have

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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No.8

Memorandum of  
Appeal  
10th July 1960  
continued

a different account drawn up as between itself and the Revenue for the purposes of ascertaining its liability under the provisions of Section 40, as amended by Ordinance No. 4 of 1956, as was, in fact, done and set forth in the document marked "F" referred to in paragraph 6 of the Agreed Statement of Facts.

4. The Appellant having, in each of the years 1948-1956, paid out to its shareholders by way of dividend practically the whole of the net dividend it received from General Omnibus Co. (Perak) Ltd. in each such year, such shareholders became entitled to tax credits under Section 42 the year following the receipt of such dividends, in which year the Appellant became liable to pay and did pay tax on its income for the preceding year. The Respondent could not and did not suffer any loss by reason of the course of business followed by the Appellant.

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5. The Appellant submits that, upon a true construction of Section 40, no account is required to be taken under sub-section (3) where there has been no deduction in fact, as was the case with the Appellant. The right to deduct under sub-section (1) being optional, no deduction, not in fact made, can be imputed to the Appellant. The Appellant had not at any time sufficient funds to enable it to retain in its hands the appropriate tax it is authorised to deduct. And the learned Judge was wrong in giving judgment for the Respondent which amounted to double taxation of the Appellant, contrary to the provisions and intent of the Ordinance.

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6. Alternatively, if an account is required to be taken, then by reason of sub-section (5) the first account should have been for the years 1948-1956 inclusive. There was thus a large "balance" in favour of the Appellant to be carried forward to the assessment year 1957 and the learned Judge ought to have given judgment for the Appellant on its counterclaim.

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7. If, contrary to the Appellant's contention, a deduction is to be imputed to the Appellant though no such deduction was in fact made at any relevant time, then such deduction can only be imputed in respect of the year 1956 and not in

respect of any of the preceding years, by reason of the limited retrospective operation of sub-sections (3) (4) (5) and (6). And the Appellant submits that there was still a large "balance" in its favour to be carried forward to the assessment year 1957 and the learned Judge ought to have given judgment for the Appellant on the counter-claim accordingly.

In the Supreme Court of the Federation of Malaya in the Court of Appeal at Ipoh

No.8

Dated this 10th day of July, 1960.

Memorandum of Appeal  
10th July 1960  
continued

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Sd: Das & Co.  
SOLICITORS FOR THE APPELLANT

To,  
The Senior Assistant Registrar,  
Supreme Court,  
Ipoh.

and to

The Government of the Federation of Malaya  
or its Solicitors, Messrs.Rodyk & Davidson,  
Kwang Tung Association Building,  
44, Pudu Road,  
Kuala Lumpur.

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The address for service of the Appellant is care of Messrs. Das & Co., Advocates & Solicitors, Nos.8-10, Station Road, Ipoh.

No.9 - JUDGMENT OF THOMPSON, C.J.

No.9

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
F.M. Civil Appeal No.44 of 1960

Judgment of Thompson C.J.  
12th December 1960.

(Ipoh High Court Civil Suit No.63 of 1959)

RIMAU OMNIBUS COMPANY LIMITED APPELLANT

v.

30

THE GOVERNMENT OF THE FEDERATION OF MALAYA RESPONDENT

Cor: Thompson, C.J.  
Hill, J.A.  
Ong, J.

JUDGMENT OF THOMPSON, C.J.

The facts of this case are not in dispute

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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No.9

Judgment of  
Thompson C.J.  
12th December  
1960  
continued

dispute although there is considerable controversy as to the legal consequences which flow from them regarding the liabilities of the Appellant Company towards the Government.

The Appellant is a limited liability company known as the Rimau Omnibus Company Limited. Its share capital consists of 15,010 fully-paid shares of \$1 each. Its only asset, apart from a small sum in cash at the Bank, consists of 31,192 fully-paid shares of \$1 each in another company, the General Omnibus Company (Perak) Limited which carries on what would seem to be a highly profitable business as a transport undertaking. The only business which the Rimau Company carries on in fact is to receive dividends from the General Company and distribute them to its shareholders.

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The Rimau Company, the General Company and the shareholders in both companies are all resident in the Federation and all of them are of course liable to be assessed separately to Income Tax as individual taxpayers. I say "of course", and the truth of that proposition is obvious, but at times it seems to have been lost sight of by the Rimau Company in the arrangement of its affairs, although here it is to be observed that both companies were in existence in the halcyon days when there was no Income Tax.

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The general practice of the Rimau Company was to distribute to its shareholders by way of dividends practically all the money it received from the General Company. The present litigation arises from what it did in the year 1956 in accordance with that practice.

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In 1956 the tax liability of the Rimau Company was \$14,722, that sum being calculated on its actual profits for the year 1955. In 1956, however, the General Company paid out a substantially larger sum by way of dividends than it did in 1955. The gross dividends payable in the year 1956 to the Rimau Company amounted to \$77,980 from which the General Company deducted \$23,394 for Income Tax under the provisions of Section 40 of the Income Tax Ordinance. The amount actually received by the Rimau Company in 1956 thus amounted to \$54,486, but at the same time it received from the General Company

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certificates of deduction under Section 40 amounting to \$23,394 which would in due course be available to set off against its own income Tax Liability. In its accounts the Rimau Company then treated the sum of \$77,980 as a receipt and treated the sum of \$23,394 as a payment and after taking into account the trifling administrative expenses of the Company this produced a profit for the year of \$54,257.

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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No.9

10           It was for the Directors of the Rimau Com-  
pany to decide how much of this profit should  
be distributed to the shareholders during the  
year and they passed two resolutions declaring  
dividends amounting in all to 500% on the share  
capital less 30% Income Tax, these dividends "to  
be payable forthwith". In pursuance of these  
resolutions they made payments to the sharehold-  
ers, all in 1956, amounting in all to \$52,535  
but they accompanied these payments with Divi-  
20           dend Certificates purporting to be "pursuant to  
section 40(2) of the Income Tax Ordinance" stat-  
ing that the dividends amounted to \$75,050; which  
is 500% on the share capital, and that \$22,515  
had been deducted being "Income Tax at 30%".

Judgment of  
Thompson C.J.  
12th December  
1950  
continued

30           Now, as has been pointed out the tax pay-  
able by the Company for the year 1956 was  
\$14,722. The Income Tax authorities took the  
view that what the Rimau Company had done was  
to pay dividends amounting to \$75,050 from which  
there had been made an Income Tax deduction of  
\$22,515 and that therefore by reason of the pro-  
visions of Section 40 of the Ordinance there was  
constituted a debt to the Government consisting  
of the amount by which the amount of the deduc-  
tions exceeded the amount of Income Tax payable  
by the Company, that difference being \$7,793.  
The Company did not accept that view of their  
position and after some preliminary discussion  
the present proceedings were commenced by the  
40           Government for the recovery of that sum of  
\$7,793.

Throughout, the position of the Company has  
been that they never in fact deducted anything  
for Income Tax from the dividends they distri-  
buted to their shareholders, that they were com-  
pelled to issue the dividend certificates in the  
form in which they did issue them by the manda-  
tory terms of Section 40, that they never in

In the Supreme  
Court of the  
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No.9

Judgment of  
Thomson C.J.  
12th December  
1960  
continued

fact had the money they are said to have deducted and that in fact all their liabilities to Income Tax had from time to time been discharged in full by the General Company out of the deductions made by them, which were in fact made, from the dividends paid by the General Company to the Rimau Company. This was set out in their defence and counterclaim.

In the event Smith, J., gave judgment for the Government as prayed and against that decision the Company have now appealed.

10

Smith, J., held that deductions of \$22,515 had had in fact been made by the Company from the dividends paid but the reason he so held was that in his opinion by reason of the Dividend Certificates they had issued they were estopped from saying anything else. That reasoning has been strongly attacked before us and indeed has not been supported by the Respondent. For myself, with great respect for the learned Judge I am unable to accept it. The law relating to estoppel is the same here as in England (see Sarat Chunder Dey v. Copal Chunder Laha (1)) and is set out in Section 115 of the Evidence Ordinance which reads as follows:-

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"When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and such person or his representative in interest to deny the truth of that thing."

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Here there is no question of the Government being caused or permitted to believe anything other than the true and exact state of affairs. The Company's candour has at all times been complete and beyond criticism and at all times the Income Tax authorities have been fully aware of the way in which it was managing its affairs.

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But although the reasoning of Smith, J., be not accepted it does not follow that his ultimate conclusion, which was that the Company

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(1) XIX I.A. 203, 215.



owes the Government \$7,793, is wrong and I now propose to state my own views on the point.

Before doing so I would make two preliminary observations which may help to clarify a not very simple issue.

In the first place, what the Government is suing for is not Income Tax as such but a debt which has come into existence by reason of the provisions of Section 40 of the Ordinance.

10 In the second place, it is not correct to say that the Company was compelled by law to issue the Dividend Certificates it did issue. It is true that it was in effect compelled by the provisions of Section 40, to which I am coming shortly, to issue certificates in that form but the contents of these certificates was something that was within the control of the Directors. Once the Directors had declared a dividend then the amount of the dividend so  
20 declared had to be stated and the amount of the deduction, which also had to be stated, was 30% of that sum. But the amount of the deduction depended on the amount of the dividend and that was something in the control of the Directors. If, for example, the Directors had declared a dividend of 250% instead of 500% the amount of the deduction shown on the certificates would have been less than \$14,722, the amount of the  
30 Income Tax payable, and the present proceedings could not have arisen. I am not saying for one moment that the Directors are not at liberty to arrange the affairs of the Company as they see fit or that they are not at liberty to declare such dividends as they see fit. The point is that if they arrange their affairs in the light of an incorrect view of the taxation law and if this produces unfortunate consequences they can have no complaint as to the operation of that law. They may complain as to the law itself,  
40 but that is a different matter.

Turning now to Section 40 of the Income Tax Ordinance, that section has been amended several times since its original enactment but during the whole of the year 1956 its provisions were as follows.

In the Supreme Court of the Federation of Malaya in the Court of Appeal at Ipoh

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No.9

Judgment of Thomson C.J.  
12th December 1960  
continued

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.9

Judgment of  
Thomson C.J.  
12th December  
1960  
continued

Under Section 40(1) a company is entitled to deduct from any dividend paid to a shareholder "tax" at the rate of 30% of such dividend. There is no need to make any such deduction, though it is the usual practice of companies to do so, but if the deduction is made it must be at the rate of 30% of the dividend. "Tax" means Income Tax (see Section 2) but it is to be noted that so far as the section goes it is not Income Tax for any particular year and the amount of the deduction has no relation to the amount of Income Tax paid or payable by the Company in any particular year, it is in all cases 30% of the dividend paid. By Section 42, however, when any such deduction is made and the dividend from which it is deducted is included in the chargeable income of any person then the amount of the deduction can be set off against the "tax charged on that chargeable income". I shall return to the point but I would observe here, for to my mind it goes to the root of the matter, that for income tax purposes a dividend is normally deemed to be part of the recipient's chargeable income not for the year in which it is received but for the year after the year in which it is received.

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Returning to Section 40, sub-section (2) goes on to provide that when a company pays a dividend it must, whether or not it makes a deduction under sub-section (1), furnish each shareholder with a certificate showing the amount of the dividend paid and in addition one of two things, either the amount that has in fact been deducted by reason of sub-section (1) or, if there has been no deduction, the amount which the company was entitled to deduct.

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Sub-section (3) requires that at the end of each year a company shall make a return to the Comptroller of Income Tax of deductions made from dividends during the year. Then comes sub-section (4) which is the crucial one here. Disregarding sub-section (5) which has no application in the present case but read in the light of so much of sub-section (3) as is applicable it provides that where the amount of the deduction made by the company under sub-section (1) in any year of assessment exceeds the amount of tax payable by the company in respect of the same year of assessment as the year in which the deduction is

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made, then the amount of such excess shall be a debt due by the company to the Government and shall be recoverable as a debt.

10 Finally, sub-section (6) deals with the case where no deduction has in fact been made under sub-section (1). It provides that for the purposes of the section as a whole, which include of course the provisions of sub-section(4) which have just been mentioned, where no deduction has in fact been made from any dividend then two things are to be deemed to have happened. One is that the amount of the dividend, whatever it may have been in fact, is to be deemed to be the greater amount which if 30% had been deducted from it would have left the amount actually paid. The other is that from this notional dividend 30% has in fact been deducted.

20 To my mind what happened in the case of the Rimau Company in 1956 fell fairly and squarely within the provisions of the section. The section deals with dividends paid, not with dividends declared. In 1956 the Company paid in dividends the sum of \$52,535. That was the amount they actually paid and that was the amount the shareholders actually received. But by reason of sub-section (6) the amount paid and received was to be deemed to be \$75,050 and a sum of \$22,515 was to be deemed to have been deducted from that sum of \$75,050. This lead to two results. One result was that these figures were the ones which had to be shown in the dividend certificates, as was indeed done. And here it has to be borne in mind that section 42 which provides for such certificates being used as a set off against the shareholders' tax draws no distinction between certificates showing tax actually deducted and certificates showing as deductions amounts which have not in fact been deducted but which the company is entitled to deduct. 30 The other result is that the provisions of sub-section (4) are attracted. The tax payable by the Rimau Company in respect of the year 1956 was in fact \$14,722 and the difference between this amount and \$22,515, the amount deemed to have been deducted, became a debt due to the Government. 40

In the Supreme Court of the Federation of Malaya in the Court of Appeal at Ipoh

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No.9

Judgment of Thomson C.J. 12th December 1960 continued

The truth is that confusion may have arisen

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.9

Judgment of  
Thomson C.J.  
12th December  
1960  
continued

here by reason of some failure to appreciate that in each year income tax is charged not on the taxpayer's actual income for that year but on what is called his statutory income for that year, the measure of which is his income for the previous year (see Section 31).

Thus in the case of the Rimau Company the Income Tax payable by them for 1956 was not to be calculated on the profits they made in the year 1956 but on the amount of profits they made in the year 1955. It is admitted that the amount of tax payable in 1956 was \$14,722 and not \$22,515 which would probably be the amount of Income Tax payable by them in 1957. In the present proceedings, however, we are only concerned with the position as at 31st December, 1956.

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The provisions of Section 40 may in some cases appear to be oppressive. The object of them, however, is clear.

By Section 42 when there has been a deduction either actual or notional by reason of Section 40 from a dividend then the amount so deducted can be set off by the recipient of the dividend against any tax payable by him when the dividend in question is included in his chargeable income on which the tax against which the deduction is being set off is chargeable. There are two points to be observed here. Whenever a deduction is made or is deemed to be made by reason of Section 40 there comes into existence a credit which in effect will be used by some person at some time in settlement of income tax and in pro tanto diminution of the amount payable by him in cash. But such a deduction can only be set off against tax charged on the dividend from which it has been made when the dividend becomes part of the recipient's chargeable income which will be in the year after it is received because chargeable income for any year is based and calculated on the actual income for the preceding year (see Sections 31, 33 and 34).

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For example, if a company in 1955 made a profit of \$10,000 and then in 1956 it made a profit of \$20,000; then in 1956 the tax payable by it would be \$3,000 (see Section 39) but if it distributed all its profits in dividends the

amount it would be entitled to deduct under section 40 would not be \$3,000 but \$6,000. In consequence of this deduction, to put it in popular language, \$6,000 worth of certificates that would in effect be as good as money for payment of income tax in the future came into existence whereas only \$3,000 had been payable. What happens after 1956 is of course irrelevant. The company may die, or it may run into a period of loss, or it may make greater profits. The truth however, is that by its own voluntary act in paying a dividend of a certain amount it has created a position at the end of 1956 that has resulted in the creation of \$3,000 worth of tax credits which do not correspond to any tax actually paid in the past and may or may not correspond to any tax payable in the future.

I would dismiss the appeal with costs.

Kuala Lumpur,  
12th December, 1960.

Sgd. J.B. Thomson  
CHIEF JUSTICE,  
Federation of Malaya.

B.K. Das, Esq., for Appellant,  
H.E. Cashin, Esq., for Respondent.

Sd: Illegible  
Private Secretary  
to Chief Justice.  
16/12

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.9

Judgment of  
Thompson C.J.  
12th December  
1960  
continued

No.10 - JUDGMENT OF HILL, J.A.

No.10

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
F.M. Civil Appeal No.44 of 1960

Judgment of  
Hill J.A.  
12th December  
1960.

(Ipoh High Court Civil Suit No.63 of 1959)

RIMAU OMNIBUS CO.LTD.

Appellants  
Defendants

v.

THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

Respondent  
Plaintiff

Cor: Thomson, C.J.  
Hill, J.A.  
Ong, J.

JUDGMENT OF HILL, J.A.

This is an appeal from the decision of

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.10

Judgment of  
Hill J.A.  
12th December  
1960  
continued

Smith, J., in the High Court at Ipoh that the Plaintiff/Respondent should recover against the Appellants/Defendants the sum of \$7,793/-. The Respondent's claim was brought by virtue of Section 40 of the Income Tax Ordinance and was based on the following assertions:-

" The Defendants deducted tax from their dividends paid during the period 1st January to 31st December, 1956, the sum of \$22,515/-.

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The tax assessed for the year of assessment 1956 was \$14,722/-.

The balance of \$7,793/- is therefore due and owing by the Defendants to the Plaintiff."

Against this claim the main argument of the Company was that infact it deducted no tax at all. On this issue Smith, J., found in its favour. He stated :-

" It is clear from the facts of this particular case that the company made no deductions of any kind whatsoever. It performed the purely ministerial function of distributing a dividend received from the General Omnibus Company."

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Thereafter the learned trial Judge reasons as follows :-

" To my mind the strength of the Plaintiff's case is that the company is estopped from denying that it has infact deducted tax. If a company declares a dividend of a certain size and proceeds to distribute that dividend after deduction of tax I cannot see that it is entitled at a later stage to turn round and deny that it has in fact done so. If it does wish to do this then it must do what Salisbury House Estate, Ltd., did in Neumann's case, namely, issue corrected dividend warrants. What would be the effect of this does not concern me. However I consider that the company is estopped from denying that they have deducted the tax

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because they have elected, as the Plaintiff said, to conduct their business in this particular manner. There must therefore be judgment for the Plaintiff as prayed."

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.10

Judgment of  
Hill J.A.  
12th December  
1960  
continued

The question of estoppel was not raised or pleaded before Smith, J., by the Respondent for the good and sufficient reason that estoppel never arose. It is certainly all too clear that the Company made no tax deductions and the question now to be decided is whether sub-section 6 of Section 40 of Ordinance No.48 of 1947 as amended by Section 6 of Ordinance No. 4 of 1956 should apply. Sub-section (1) reads as follows:-

" (1) Every company which is resident in the Federation shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at a rate not exceeding thirty per centum on every dollar of such dividend."

The rate incidentally is now 40% increased by Ordinance No. 53 of 1958.

The original Section 40(1) read as follows:-

" (1) Every company which is resident in the Federation shall be entitled to deduct from the amount of any dividend to any shareholder tax at the rate paid or payable by the company ..... on the chargeable income of the year of assessment within which the dividend is declared....."

Sub-section (2) of Section 40 reads as follows:-

" (2) Every such company shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend."

The underlining is mine.

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

                      
No.10

Judgment of  
Hill J.A.  
12th December  
1960  
continued

In view of sub-sections (1) and (2) it seems to me that for any part of Section 40 to apply the following conditions must be present, namely (i) the Company must be resident in the Federation, and (ii) the Company itself must have paid tax or be liable to pay tax at the fixed rate so as to be entitled to deduct tax in respect of dividends.

The income received and distributed by the Appellate Company was not a chargeable or assessable income as tax deductions in full had already been made by the General Omnibus Company and in my view no further deductions could legally be made therefrom and the appellate Company was not therefore entitled to make any.

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In my view Sec.40(1) and indeed the whole section must necessarily deal with and refer solely to an income from which tax is deductible. I am of opinion therefore that the section does not apply in the present case.

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It is significant that the basis of the claim brought by the Government of the Federation of Malaya was that the Company had deducted tax from their dividends paid during 1956, not that the Company had conducted its business in such a manner as to render it liable for a debt under sub-sec. (6) of sec.40 and sec.41.

The fact that the Company unnecessarily, in my opinion, and incidentally incorrectly attempted to comply with sub-section (2) in issuing certificates to shareholders relating to tax deductions cannot and does not render them liable for a debt to Government. I feel satisfied that in such circumstances it is not intended to penalise a local company by rendering it liable for a debt to the Government and that on a correct interpretation of Section 40, which I can only hope mine is, no such injustice is in fact inflicted.

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I would therefore allow this appeal.

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With regard to the Appellant's counter-claim for \$81,503.40, this appears to me to be just as fictitious as the Respondent's claim and I would dismiss that part of the appeal relating to it.



I would award costs to the Appellate Company here and in the court below.

In conclusion I must confess that what I have written above has been written with considerable diffidence, for in considering this appeal I have been acutely aware of my own lack of knowledge and experience in the subject matter involved. I console myself, however, with the thought that what is involved appears to me to be a question of interpretation and it is as such that I have tried to deal with the matter.

(Sgd.) R.D.R.Hill

Kuala Lumpur,  
12th Dec.,1960.

Judge of Appeal,  
Federation of Malaya.

Certified true copy.

Sd. C.S. Kumar  
(C.S.Kumar)

Secretary to Judges of Appeal.  
13.12.60.

In the Supreme Court of the Federation of Malaya in the Court of Appeal at Ipoh

No.10

Judgment of Hill J.A.  
12th December 1960  
continued

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No.11 - JUDGMENT OF ONG, J.

No.11

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
F.M. Civil Appeal No.44 of 1960.

Judgment of Ong, J.  
12th December 1960

RIMAU OMNIBUS CO.LTD. OF IPOH

APPELLANTS

vs.

THE GOVERNMENT OF THE FEDERATION OF MALAYA

RESPONDENT

JUDGMENT OF ONG, J.

This is an appeal from the judgment of Smith J. given in the High Court at Ipoh allowing a claim by the Government for a sum of \$7,793 alleged to be a debt due by the Appellants by

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In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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No.11

Judgment of  
Ong, J.  
12th December  
1960  
continued

virtue of subsection 4 of Section 40 of the In-  
come Tax Ordinance, 1947.

The statement and particulars of claim are  
very brief and may usefully be set out in full:

1. The Plaintiff's claim is for the sum of  
\$7,793/- payable by the Defendants to the  
Plaintiff as a debt due by virtue of Sec-  
tion 40 of the Income Tax Ordinance.

Particulars:

2. The Defendants are a Company incorporated  
in the Federation of Malaya under the  
Companies Ordinance. 10
3. The Defendants deducted tax from their div-  
idends paid during the period 1st January  
to 31st December, 1956 the sum of \$22,515/-
4. The tax assessed for the year of assessment  
1956 was \$14,722/-.
5. The balance of \$7,793/- is therefore due  
and owing by the Defendants to the  
Plaintiff. 20

The facts are fully set out in the judgment  
of Smith, J., and in that of the learned Chief  
Justice, and I need not repeat them. What I  
would emphasise is that the material facts were  
never in dispute, namely, that the Appellants  
made no deductions whatsoever under Section 40  
(1) before proceeding to distribute to their own  
shareholders the dividends paid by the General  
Omnibus Company which had made the appropriate  
deductions at source. Moreover there is no sug- 30  
gestion that there ever had been anything clan-  
destine in the conduct of the Appellants' af-  
fairs, or that in any of their dealings with the  
Comptroller of Income Tax they had failed to  
show the utmost candour.

The Appellants' contention is that, if no  
deductions were in fact made, as is admittedly  
the case here, Section 40 has no application,  
because subsections 3, 4 and 5 refer only to de-  
ductions actually made. It is, however, con- 40  
tended on the part of the Government that in

such event the deeming provisions of subsection 6 come into operation, and, notwithstanding that no deductions had in fact been made, the Appellants were caught squarely by this subsection as by a Morton's fork. The subsection reads as follows:

40(6): "For the purpose of this section, where any dividend has been paid without deduction of tax, such dividend or part thereof from which there was a title to deduct tax shall be deemed to be a dividend of such a gross amount as after deduction of tax at the rate deductible at the date of payment would be equal to the net amount paid; and a sum equal to the difference between such gross amount and the net amount paid shall be deemed to have been deducted from such dividend or part thereof as tax."

In the Supreme Court of the Federation of Malaya in the Court of Appeal at Ipoh

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No.11

Judgment of  
Ong, J.  
12th December  
1960  
continued

This case falls within a branch of the law that has been variously described by the most eminent of Judges as difficult, extraordinarily obscure and "illogical from top to bottom and any attempt to make it logical is necessarily open to criticism." Judicial interpretations of the provisions of income tax legislation dealing with the system of deduction of tax from dividends have revealed such divergences of opinions that I comfort myself with the reflection that in case I should err I do so in illustrious company if I differ, as I do with the deepest regret, from the opinion of the learned Chief Justice.

My views may be set out within a small compass. First, by subsection 1 the Company has the option, but is not under any legal compulsion, to deduct. In my opinion the wording of subsections 3, 4 & 5, where the words "has been deducted" have been followed repeatedly by the words "so deducted", is a compelling reason why I should hold that, where no deduction had in fact been made, subsection 4 does not apply and no debt arises by operation of law. The claim therefore fails on this ground.

The further or alternative claim by the

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

—————  
No.11

Judgment of  
Ong, J.  
12th December  
1960  
continued

Government rests on subsection 6. It is said that if the Appellants so chose to arrange their affairs that by a statutory fiction a debt was created they had only themselves to blame. It seems to me that between this argument and the ground upon which Smith J. based his decision there is no perceptible dividing line. The learned Judge had said this:

"If a company declares a dividend of a certain size and proceeds to distribute that dividend after deduction of tax I cannot see that it is entitled to turn round and deny that it has in fact done so."

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The question that falls to be decided is whether the true facts must perforce be shut out by the "deeming" provisions of the subsection. In my opinion, subsection 6 does not have that effect. It is true that when a thing is "deemed" something else, it is to be treated as that something else with the attendant consequence ; but it is not that something else: (per Cave J., in R. v. Norfolk Co.(1)). Nevertheless, as James L.J. said in Exp. Walton:(2)

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" When a statute enacts that somethings should be "deemed" to have been done which, in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

The subsection commences with the words : "For the purpose of this section". Section 40 relates to deduction of tax from dividends of companies. Subsections 3, 4 & 5 cover cases of actual deductions. Where no deductions are in fact made, the provisions of subsection 6 come into play for the purpose of calculating the gross amount of dividend cum tax, "and a sum equal to the differences between such gross amount and the net amount paid shall be deemed to have been deducted from such dividend or part thereof as tax."

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All these subsections 3, 4, 5 & 6 must, in

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(1) 60 L.J. Q.B. 380  
(2) 17 Ch.D. 756

my view, be read with and in the light of subsection 2, which is as follows :

" (2) Every such company shall upon payment of a dividend, whether tax is deducted therefrom or not furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend."

Subsections 2, 3 & 4 come within one compartment and subsection 6 within another distinct compartment. They cover the two alternatives, when a company chooses to deduct, or not to deduct. Provisions made to apply where no deduction is made cannot, in my opinion, be construed to modify provisions which create a debt to the Government only when an actual deduction has been made.

What if so, it may be asked, is the purpose of subsection 6? For answer I cannot do better than quote Sir Wilfrid Green M.E. (as he then was) in Inland Revenue Commissioners v. Cull (3):

" A company pays tax on its profits measured by the rules for the time being in force. It pays a dividend out of its profits. In making the payment it is entitled to deduct tax at the standard rate current at the time irrespective of the rate of tax prevailing when the profits were made and irrespective of the fact that for the year in which the dividend is paid the profits as assessed to tax may be nil or less than the actual profits of the year used for payment of the dividend. The shareholder for all purposes of his return of total income is treated as having received a dividend equal to the net amount plus the tax deducted, that is, his dividend is grossed up by adding back the tax."

The subsection only provides, in effect, that for the purposes of ascertaining a taxpayer's taxable income the dividends

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.11

Judgment of  
Ong, J.  
12th December  
1960  
continued

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

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in his hands must be grossed up in compiling his tax returns, the grossed-up figure being that on which his tax is assessed. Such is the object and purpose of the subsection, not to create a debt when none in fact exists. I am therefore of opinion that the claim of the Government under subsection 6 cannot be sustained.

No.11  
Judgment of  
Ong, J.  
12th December  
1960  
continued

Whether I am right or wrong in my decision on the grounds above-stated, it also seems to me that, under subsection 3 "the tax which has been deducted from all dividends paid to shareholders during such year of assessment" should be compared with "the amount of the tax payable by the company in respect of such year of assessment." The tax payable by the Appellants in 1956 was \$14,722/- and not \$22,515/-; the larger sum was the amount payable by them in 1957. The tax paid by the Appellants for the year of assessment 1956 was \$14,722. In expressing my own view on this point, I would say, with the greatest respect for views to the contrary, that I think the amount of tax deducted and paid during any year of assessment should be compared only with the tax payable in the same year of assessment, and not with that of a different year, which was the year subsequent in the instant case. On the figures of tax payable and the tax paid for the year of assessment 1956, there was clearly no debt due under subsection 4.

I have also had the advantage of reading the judgment of Hill, J.A. while in course of preparing my own, and with his opinion and the reasons given I respectfully express my concurrence and also with the order proposed.

Kuala Lumpur,  
12. 12. 1960.

(Sgd.) H.T.ONG  
J U D G E,  
SUPREME COURT,  
FEDERATION OF MALAYA.

Certified true copy  
Sd. Illegible  
Ag: Secretary to Judge,  
Kuala Lumpur.

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No.12 - ORDER OF COURT OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
FEDERATION OF MALAYA CIVIL APPEAL NO.44 OF 1960

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

BETWEEN

No.12

RIMAU OMNIBUS COMPANY LIMITED  
OF IPOH

APPELLANTS

And

Order of Court  
of Appeal  
12th December  
1960

10 THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

RESPONDENT

(In the Matter of Ipoh High Court Civil  
Suit No.63 of 1959

Between

The Government of the  
Federation of Malaya

PLAINTIFF

And

Rimau Omnibus Company  
Limited of Ipoh

DEFENDANTS)

20 BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,  
P.M.N., P.J.K.,

CHIEF JUSTICE, FEDERATION OF MALAYA.

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,

JUDGE OF APPEAL:

AND

THE HONOURABLE MR. JUSTICE ONG. IN OPEN COURT

This 12th day of December 1960.

O R D E R

30 THIS APPEAL from the decision of the Honour-  
able Mr. Justice Smith given on the 21st day of  
May, 1960 coming on for hearing on the 10th day  
of October, 1960 in the presence of Mr.B.K. Das

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.12

Order of Court  
of Appeal  
12th December  
1960  
continued

of Counsel for the Appellants and Mr.H.E.Cashin  
of Counsel for the Respondent AND UPON READING  
the Record of Appeal filed herein AND UPON  
HEARING Counsel as aforesaid for the parties  
IT WAS ORDERED that this Appeal do stand adjourn-  
ed for judgment:

AND THIS APPEAL standing this day in the  
paper for judgment in the presence of Mr.B.K.Das  
of Counsel for the Appellants and Mr.S.K. Tan of  
Counsel for the Respondent: 10

IT IS ORDERED that this Appeal be and is  
hereby allowed and the decision of the Honourable  
Mr.Justice Smith whereby judgment was entered for  
the Respondent for \$7,793-00 (Dollars seven  
thousand seven hundred and ninety-three only) and  
costs against the Appellants be and is hereby set  
aside:

AND IT IS ORDERED that the Respondent's  
action do stand dismissed:

AND IT IS ORDERED that this Appeal in so far 20  
as it relates to the dismissal of the Appellants'  
counter-claim by the said decision of the Honour-  
able Mr.Justice Smith be and is hereby dismissed:

AND IT IS ORDERED that the Respondent do pay  
to the Appellants the costs of this Appeal and of  
the proceedings in the Court below as taxed by  
the proper officer of the Court:

AND IT IS ORDERED that the sum of \$500/-  
(Dollars five hundred only) deposited by the 30  
Appellants in Court as security for costs of  
this Appeal be paid out to the Appellants or  
their solicitors:

AND IT IS LASTLY ORDERED that the Respond-  
ent do repay to the Appellants the sum of  
\$10,031-35 (Dollars ten thousand and thirty one  
and cents thirty five only) paid by the Appell-  
ants under the said decision of the Honourable  
Mr. Justice Smith of the 21st day of May, 1960.

Given under my hand and seal of the Court  
this 12th day of December, 1960. 40

Sd. Shiv Charan Singh  
Assistant Registrar,  
Court of Appeal,  
Federation of Malaya.

L.S.



No.13 - ORDER GRANTING CONDITIONAL  
LEAVE TO APPEAL

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
FEDERATION OF MALAYA CIVIL APPEAL No.44 of 1960

No.13

Order Granting  
Conditional  
Leave to Appeal  
7th February  
1961.

BETWEEN

RIMAU OMNIBUS COMPANY LIMITED  
OF IPOH

APPELLANTS

And

10 THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

RESPONDENT

(In the Matter of Ipoh High Court Civil  
Suit No.63 of 1959

Between

The Government of the  
Federation of Malaya

PLAINTIFF

And

Rimau Omnibus Company  
Limited of Ipoh

DEFENDANTS)

20 BEFORE THE HONOURABLE DATO SIR JAMES THOMSON,  
P.M.N., P.J.K.,

CHIEF JUSTICE, FEDERATION OF MALAYA.

THE HONOURABLE MR. JUSTICE GOOD,  
JUDGE OF APPEAL

AND

THE HONOURABLE MR. JUSTICE ISMAIL KHAN.

IN OPEN COURT

This 7th day of February, 1961.

O R D E R

30 UPON MOTION made unto this Honourable Court  
this day by Mr. S.K. Tan of Counsel for the  
above-named Respondent, in the presence of Mr.R.  
R. Chellioh of Counsel for the above-named Ap-  
pellants AND UPON READING the NOTICE OF MOTION  
dated 5th day of January, 1961 and the affidavit  
of Ronald Geddes affirmed on the 5th day of Jan-  
uary, 1961 and filed herein AND UPON HEARING  
Counsel as aforesaid for the parties IT IS

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.13

Order Granting  
Conditional  
Leave to Appeal  
7th February  
1961  
continued

ORDERED that leave be and is hereby granted to the Government of the Federation of Malaya, the abovenamed Respondent, to appeal to His Majesty The Yang di-Pertuan Agong from the judgment of the Court of Appeal dated the 12th day of December, 1960 upon the following conditions :-

- (a) That the abovenamed Respondent do within a period of three months from the date hereof furnish security in the sum of \$5,000/- (Dollars Five Thousand Only) for the due prosecution of the Appeal and the payment of all such costs as may become payable to the abovenamed Appellants in the event of the abovenamed Respondent not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the abovenamed Respondent to pay the abovenamed Appellants' costs of the Appeal, as the case may be, and that a written undertaking of the Attorney General, Federation of Malaya, on behalf of the Government of the Federation of Malaya, the abovenamed Respondent, in the aforesaid amount of \$5,000/- (Dollars Five Thousand Only) and in the aforesaid terms, be deemed good and sufficient security; and
- (b) That the abovenamed Respondent do within a period of three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

AND IT IS FURTHER ORDERED that the abovenamed Respondent do pay to Messrs.Das & Co., the Solicitors for the abovenamed Appellants, the costs of the proceedings before the High Court and the Court of Appeal as soon as they are taxed by the proper officer of the Court, subject to an undertaking by the said Messrs.Das & Co., to refund the same to the abovenamed Respondent in the event of the abovenamed Respondent succeeding in their appeal to His Majesty the Yang di-Pertuan Agong.

Given under my hand and seal of the Court this 7th day of February, 1961.

Sd. Shiv Charan Singh  
ASSISTANT REGISTRAR,  
COURT OF APPEAL,

SEAL OF  
( COURT OF APPEAL ) FEDERATION OF MALAYA.  
FEDERATION OF MALAYA

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No.14 - ORDER GRANTING FINAL LEAVE TO  
APPEAL

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR  
FEDERATION OF MALAYA CIVIL APPEAL NO.44 of 1960.

No.14

Order Granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong  
1st May 1961

BETWEEN

RIMAU OMNIBUS COMPANY LIMITED  
OF IPOH

APPELLANTS

And

10 THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

RESPONDENT

(In the Matter of Ipoh High Court Civil  
Suit No.63/1959

Between

The Government of the  
Federation of Malaya

PLAINTIFF

And

Rimau Omnibus Company  
Limited of Ipoh

DEFENDANTS)

20 BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,  
P.M.N., P.J.K.,

CHIEF JUSTICE, FEDERATION OF MALAYA;

THE HONOURABLE MR.JUSTICE HILL, B.D.L.,

JUDGE OF APPEAL;

AND

THE HONOURABLE MR. JUSTICE GOOD

JUDGE OF APPEAL

IN OPEN COURT

This 1st day of May, 1961.

O R D E R

30 UPON MOTION being made unto this Honourable

In the Supreme  
Court of the  
Federation of  
Malaya in the  
Court of Appeal  
at Ipoh

No.14

Order Granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong  
1st May 1961  
continued

Court on the 1st day of May, 1961 by Mr. S.K. Tan of Counsel for the Respondent, in the presence of Mr. R.R. Chelliah of Counsel for the Appellants, AND UPON READING the NOTICE OF MOTION dated 25th day of April, 1961 and the affidavit of Herbert Walter Trevor Pepper affirmed on the 25th day of April, 1961 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that FINAL LEAVE be and is hereby granted to the Government of the Federation of Malaya, the above-named Respondent, to Appeal to His Majesty The Yang di-Pertuan Agong from the judgment of the Court of Appeal dated the 12th day of December, 1960 AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the cause.

10

Given under my hand and seal of the Court  
this 1st day of May, 1961.

Sd. Shiv. Charan Singh

20

ASSISTANT REGISTRAR

COURT OF APPEAL

FEDERATION OF MALAYA

SEAL OF  
( COURT OF APPEAL )  
FEDERATION OF MALAYA

---

E X H I B I T S

Exhibits

A

EXHIBIT A - DIVIDEND CERTIFICATE  
(GENERAL OMNIBUS CO.(PERAK) LTD).

Dividend  
Certificate  
(General Omni-  
bus Co.(Perak)  
Ltd.)

GENERAL OMNIBUS CO., (PERAK) LTD.

DIVIDEND CERTIFICATE

(Pursuant to Section 40 (2) of Income  
Tax Ordinance)

Name of Shareholder Rimau Omnibus Co.Ltd.

10 Address of Shareholder 13, Belfield Street,  
Ipoh.

Number of Shares held 31192

1st Interim Dividend of 60% for the financial  
year ended 31.12.55.

This is to certify that the above Dividend  
was declared on 5.1.55 60 per cent 1st Interim  
Dividend.

on 31192 Shares	...	\$18715-20
Less: Income Tax at 30 per cent		<u>\$ 5614-56</u>
		<u>\$13100-64</u>

20 88, Brewster Road,  
IPOH.

GENERAL OMNIBUS CO.(PERAK)  
LTD.

Sd: x x x  
Secretary.

(N.B. This certificate is given in accordance  
with Section 40(2) of the Income Tax  
Ordinance and should be submitted to the  
Income Tax Department in support of any  
claim for refund or set off of Tax  
deducted.)

30

Exhibits

B

Dividend  
Schedule  
(General  
Omnibus Co.  
(Perak)  
Ltd.EXHIBIT B - DIVIDEND SCHEDULE  
(GENERAL OMNIBUS CO. (PERAK) LTD.)

Date of payment of dividend	Total of not dividend paid to all shareholders	No. of shares held by Rimau Omnibus Co.Ltd.	Share of net dividend of Rimau Omnibus Co.Ltd.	Balance cash in hand after payment of dividends	C.B. Folio	Ledger Folio
18/5/48	₹34,701-60	15596	₹6,238-40	₹57,879-65	69	206
29/12/48	34,701-60	15596	6,238-40	97,811-66		206
18/5/49	35,350-80	15596	6,238-40	90,497-85	98	206
19/9/49	35,350-80	15596	6,238-40	116,935-04	6	206
21/1/50	53,026-20	15596	9,357-60	68,264-94	11	137
24/4/50	36,503-20	15596	6,238-40	93,588-31	15	137
23/6/50	36,503-20	15596	6,238-40	100,356-54	18	137
27/1/51	63,880-00	31192	10,917-20	62,617-05	31	137
23/7/51	31,940-30	31192	5,458-60	127,877-26		137
7/1/52	127,761-20	31192	21,834-40	101,752-87	55	137
4/6/52	63,880-60	31192	10,917-20	60,651-53	65	137
19/1/53	127,761-20	31192	21,834-40	46,985-73	79	137
7/7/53	95,820-90	31192	16,375-80	61,120-28	91	137
14/1/54	127,761-20	31192	21,834-40	104,758-95		171
28/7/54	51,104-48	31192	8,733-76	36,774-68		171
7/1/55	76,656-72	31192	13,100-64	114,060-91	28	171
8/6/55	127,761-20	31192	21,834-40	125,531-23	38	171
20/1/56	191,641-80	31192	32,751-60	164,756-89	52	171
25/6/56	127,761-20	31192	21,834-40	190,231-29	60,	171

## EXHIBIT C

EXTRACT OF DIRECTORS RESOLUTION  
RE PAYMENT OF DIVIDENDS  
(RIMAU OMNIBUS CO. LTD.)

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Exhibits

## C.

Extract of  
Directors  
Resolutions  
re Payment  
of Dividends  
(Rimau  
Omnibus Co.  
Ltd.)

1st June 1948

Interim Dividend - Resolved that an Interim Dividend of 41% be declared and paid to shareholders.

30th December 1948

10     Interim Dividend - Resolved that an Interim Dividend of 37% be declared and paid to shareholders.

15th August 1949

Interim Dividend - Resolved that an Interim Dividend of 50% less 20% Income Tax be declared and paid to the shareholders.

5th October 1949

20     Interim Dividend - Resolved that an Interim Dividend of 50% less 20% Income Tax be declared and paid to the shareholders.

30th January 1950

Interim Dividend - Resolved that an Interim Dividend of 75% less 20% Income Tax be declared and paid to the shareholders.

29th April 1950

Dividend - Resolved that an Interim Dividend of 50% less 20% Income Tax be declared and paid to the shareholders.

30th June 1950

30     Dividend - Resolved that an Interim Dividend of 50% less 20% Income Tax be declared and paid to the shareholders.

Exhibits30th January 1951

C.

Extract of  
Directors  
Resolutions  
re Payment  
of Dividends  
(Rimau  
Omnibus Co.  
Ltd.)  
continued

Interim Dividend - Resolved that an Interim Dividend of 100% less 30% Income Tax be declared and paid to the shareholders.

16th January 1952

First Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, we, the undersigned Directors hereby resolve that a First Interim Dividend of 200 per cent for the year ended 31st December 1952, less 30 per cent Income Tax be declared and paid forthwith.

10

9th June 1952

Second Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, we, the undersigned Directors, hereby resolve that a Second Interim Dividend of 100 per cent for the year ended 31st December 1952, less 30 per cent Income Tax, be declared and payable forthwith.

20

24th January 1953

First Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, we, the undersigned Directors, hereby resolved that a First Interim Dividend of 200 per cent for the year ended 31st December, 1953, less 30 per cent Income Tax, be declared and payable forthwith.

13th July 1953

Second Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, we, the undersigned Directors, hereby resolve that a Second Interim Dividend of 150 per cent for the year ended 31st December 1953, less 30 per cent Income Tax, be declared and payable forthwith.

30

16th January 1954

First Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a First Interim Dividend of 200 per cent for the year ended 31st December 1954, less 30 per cent Income Tax, be declared and payable forthwith.

40



3rd August, 1954Exhibits

Second Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a Second Interim Dividend of 100 per cent for the year ended 31st December, 1954, less 30 per cent Income Tax be declared and payable forthwith.

C.

Extract of  
Directors  
Resolutions  
re Payment  
of Dividends  
(Rimau  
Omnibus Co.  
Ltd.)  
continued

11th January 1955

10

First Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a First Interim Dividend of 140 per cent for the year ended 31st December, 1955, less 30 per cent Income Tax, be declared and payable forthwith.

9th June, 1955

20

Second Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a Second Interim Dividend of 200 per cent for the year ended 31st December 1955, less 30 per cent Income Tax, be declared and payable forthwith.

21st January 1956

First Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a 1st Interim Dividend of 300 per cent for the year ended 31st December 1956, less 30 per cent Income Tax, be declared and payable forthwith.

28th June, 1956

30

Second Interim Dividend - Pursuant to Article 103 of the Company's Articles of Association, it is hereby resolved that a Second Interim Dividend of 200 per cent for the year ended 31st December, 1956, less 30 per cent Income Tax, be declared and payable forthwith.

Certified True Copy  
RIMAU OMNIBUS CO., LTD.

Sd: Illegible  
Secretary.

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Exhibits

D1

EXHIBIT - D1 - DIVIDEND CERTIFICATE  
(RIMAU OMNIBUS CO.LTD.) 21-1-56.Dividend  
Certificate  
(Rimau  
Omnibus  
Co. Ltd.)  
21st January  
1956Certified True Copy

RIMAU OMNIBUS CO., LTD.

RIMAU OMNIBUS CO., LTD.Sd. Illegible  
Secretary.Dividend Certificate(Pursuant to Section 40 (2) of Income Tax  
Ordinance)

9 SEP 1959.

10

Name of Shareholder Mr. Ong Kong Chee

Address of Shareholder 47 Hale Street, Ipoh

Number of Shares held 2152

1st Interim Dividend of 300% for the financial  
year ended 31-12-56This is to certify that the above Dividend  
was declared on 21-1-56 300 per cent 1st In-  
terim Dividend

on 2152 Shares \$6456-00

Less: Income Tax at 30 per cent \$1936-80

20

\$4519-2088, Brewster Road,  
IPOH.

RIMAU OMNIBUS CO., LTD.

Date 21-1-56

TEOH CHYE HIN  
Secretary

(N.B. This certificate is given in accordance

with Section 40(2) of the Income Tax Ordinance and should be submitted to the Income Tax Department in support of any claim for refund or set off of Tax deducted.)

Exhibits

D1

Dividend Certificate (Rimau Omnibus Co. Ltd.) 21st January 1956 continued

.....

RIMAU OMNIBUS CO., LTD.

RECEIPT OF INTERIM DIVIDEND FOR THE YEAR ENDED 31st DEC. 19 .

10

Received from Rimau Omnibus Co., Ltd. the sum of Dollars ..... being .....per cent ..... Interim Dividend on .....shares for the year ended 31st December 19 , made up as follows :-

.....per cent ..... Interim Dividend on .....Shares \$ Less: Income Tax at 30 per cent. \$ \$

20

Name: .....

Folio No: .....

STAMP

.....

(Signature)

Date.....

Please sign and return this receipt.

\_\_\_\_\_

Exhibits

D.2

EXHIBIT - D.2 - DIVIDEND CERTIFICATE  
(RIMAU OMNIBUS CO.LTD.) 28-6-56Dividend  
Certificate  
(Rimau  
Omnibus  
Co. Ltd.)  
28th June 1956.Certified True Copy

RIMAU OMNIBUS CO., LTD.

RIMAU OMNIBUS CO., LTD. Sd. Illegible  
Secretary.Dividend Certificate(Pursuant to Section 40(2) of Income Tax  
Ordinance)

9 SEP 1959

10

Name of Shareholder Mr. Ong Kong Chee

Address of Shareholder 47, Hale Street, Ipoh

Number of Shares held 2152

2nd Interim Dividend of 200% for the financial  
year ended 31-12-56This is to certify that the above Dividend  
was declared on 28-6-56 200 per cent 2nd  
Interim Dividend

on 2152 Shares \$4304-00

Less: Income Tax at 30 per cent \$1291-20

20

\$3012-8038, Brewster Road,  
IPOH

RIMAU OMNIBUS CO., LTD.

TEOH CHYE HIN

Secretary

Date: 28-6-56.

(N.B. This certificate is given in accordance

with Section 40(2) of the Income Tax Ordinance and should be submitted to the Income Tax Department in support of any claim for refund or set off of Tax deducted).

Exhibits

D.2

Dividend Certificate (Rimau Omnibus Co. Ltd.)  
28th June 1956  
continued

.....

RIMAU OMNIBUS CO. LTD.

RECEIPT OF INTERIM DIVIDEND FOR THE  
YEAR ENDED 31ST DEC. 19

10 Received from Rimau Omnibus Co., Ltd.  
the sum of Dollars.....  
being..... per cent .....  
Interim Dividend on ..... shares  
for the year ended 31st December 19 , made  
up as follows :-

.....per cent.....Interim  
Dividend on.....Shares \$  
Less: Income Tax at 30 per cent \$  
\$  
=====

Name: .....

20 Folio No:.....

STAMP

.....

(Signature)

Date:.....

Please sign and return this receipt.

\_\_\_\_\_

Exhibits

E

EXHIBIT - E - RIMAU OMNIBUS CO. LTD.PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER 1956

To Profit and Loss Account, Appropriation Account and Balance Sheet (Rimau Omnibus Co. Ltd.) Year ended 31st December, 1956.			
To Income Tax deducted at source	\$23,394-00	By Dividend Received from General Omnibus Co. (Pk.) Ltd.	\$77,980-00
Secretarial Fee	200-00		
Audit Fee	100-00		
Filing Fee	10-00		
Printing & Stationery	12-00		
Postages	2-00		
Bank Charges	5-00		
Profit carried down to Appropriation Account	<u>54,257-00</u>		
	<u>\$77,980-00</u>		<u>\$77,980-00</u>

APPROPRIATION ACCOUNT

To Dividend Paid	\$75,050-00	By Balance as per last Balance Sheet	\$ 2,348-64
Less: Income Tax	<u>22,515-00</u>	Profit brought down	54,257-00
Directors' Fees - 1955	500-00		
Balance carried down to Balance Sheet	<u>3,820-90</u>	Income Tax Refund - Y/A 1956	<u>250-26</u>
	<u>\$56,855-90</u>		<u>\$56,855-90</u>

BALANCE SHEET AS AT 31ST DECEMBER 1956

<u>LIABILITIES</u>	<u>ASSETS</u>
<u>SHARE CAPITAL</u>	
Authorized: 20,000 shares of \$1/- each	INVESTMENT - 31,192 shares of \$1/- each fully paid up in General Omnibus Co. (Perak) Ltd.
Issued: 15,010 shares of \$1/- each fully paid up	\$31,192-00
<u>SUSPENSE BONUS SHARES</u>	
15,596-00	FURNITURE & FITTINGS - as per last Balance Sheet
814-00	27-50
<u>ACCRUED CHARGES</u>	
814-00	CASH - At Bank
<u>PROFIT &amp; LOSS ACCOUNT</u>	4,021-40
Balance as per Appropriation Account	<u>\$35,240-90</u>
<u>3,820-90</u>	
<u>\$35,240-90</u>	

We have examined the above Balance Sheet with the Books and Vouchers of the Rimau Omnibus Co. Ltd. and having obtained all the information and explanations required by us, we certify that, in our opinion, such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the Company's affairs at 31st December 1956 according to the best of our information and explanations given to us and as shown by the Books.

Sd: Illegible  
CERTIFIED ACCOUNTANTS,  
AUDITORS.

IPOH: 13th February, 1957.

## EXHIBIT - F - SCHEDULE "A"

Exhibits

F

## Schedule "A"

Year	Gross Dividend From General Omnibus	Tax deducted at source by General Omnibus	Net dividend received from General Omnibus	Actual Cash paid out by way of dividend	Tax deducted at source	Chargeable Income	Tax payable or paid
	¢	¢	¢	¢	¢	¢	¢
1948	15,596-00	3,119-20	12,476-80	11,707-80	Nil	15,596-00	3,119-20
1949	15,596-00	3,119-20	12,476-80	12,008-00	Nil	15,596-00	3,119-20
1950	27,293-60	5,458-60	21,834-40	21,014,00	Nil	14,846-00	2,969-20
1951	23,394-00	7,018-20	16,375-80	10,507-00	Nil	26,533-00	7,959-90
1952	46,788-00	14,036-40	32,751-60	31,521-00	Nil	22,826-00	6,847-80
1953	54,586-00	16,375-80	38,210-20	36,774-50	Nil	45,860-00	13,758-00
1954	43,668-80	13,100-64	30,568-16	31,521-00	Nil	53,871-00	16,161-30
1955	49,907-20	14,972-16	34,935-04	35,723-80	Nil	42,823-00	12,846-90
1956	77,980-00	23,394-00	54,586-00	52,535-00	Nil	49,073-00	14,721-90

RIMAU OMNIBUS CO. LTD.

EXHIBIT G - PLAINTIFF'S LETTER  
TO DEFENDANT - 22-9-56.

Exhibits

G.

FEDERATION OF MALAYA  
DEPARTMENT OF INLAND REVENUE

INCOME TAX COLLECTIONS BRANCH

Suleiman Building,  
Kuala Lumpur.

Plaintiff's  
Letter to  
Defendant  
22nd September  
1956

Our Ref: C.548/I.R.265 22nd September, 1956

10 The Secretary,  
Rimau Omnibus Co., Ltd.,  
88, Brewster Road,  
IPOH.

Dear Sir,

Thank you for your statement of dividends paid and tax deducted.

20 The dividends paid on 1st June 1948 and 30th December, 1948 were paid out of profits not liable to tax and therefore the amounts shown as tax deducted from these dividends in your statement should be excluded. After this adjustment I compute the total of tax deducted at ~~5~~70,847-20.

The tax payable by the Company is as follows:-

	1948	53,119-20
	1949	3,119-20
	1950	2,969-20
	1951	7,959-90
	1952	6,847-80
30	1953	13,758-00
	1954	16,161-30
	1955	<u>12,846-90</u>
	Total	<u>566,781-50</u>

The Company therefore has a deficiency at 31st December 1955. This will not be carried forward but only the tax payable for 1956 will be available to frank any tax deducted or deemed to be deducted from dividends paid in 1956.

Yours faithfully,

40 Sd:  
Senior Asst. Comptroller,  
Headquarters.



ExhibitsEXHIBIT H - PLAINTIFF'S LETTER  
TO DEFENDANT

H.

DEPARTMENT OF INLAND REVENUE

Plaintiff's  
Letter to  
Defendant  
10th May 1957

Ref: C.548

94, Brewster Road,  
P.O. Box 250,  
IPOH.

The Secretary,  
Rimau Omnibus Co.Ltd.,  
88 Brewster Road,  
IPOH.

10th May, 1957.

10

Dear Sir,

Assessment Year 1957

I have much pleasure in informing you that your computation for the assessment year 1957 is agreed. A/Y 1956 The amendment to Sec.40(4) provides that in certain circumstances the balance of the account set up by the section represents a debt due from a Company to Government, and is recoverable as such.

The Section 40 computation for the Assessment year 1956 is set out below:-

20

Credit Balance B/fwd.	Nil	
Tax payable	\$14,722	
Tax deducted from dividends declared on 21.1.56 and 28.6.56		22,515
Debt due by the Company	<u>7,793</u>	
	<u>\$22,515</u>	<u>\$22,515</u>

I.T. 95 will be sent to you in due course for \$7,793-00.

30

The refund of \$248-70 for the Assessment Year 1957 is being made to the Comptroller of Inland Revenue, for the credit of Sec.40 Account of your Company, and you will need to settle only the difference, viz \$7,793 - 248-70 = \$7544-30

Yours faithfully,

Sd: (J. Cruise)

Sg.Sr.Asst. Comptroller of Inland,  
Revenue, Perak.

DA/TCC

40

EXHIBIT I - PLAINTIFF'S LETTER  
TO DEFENDANT

Exhibits

I

FEDERATION OF MALAYA  
INCOME TAX

Plaintiff's  
Letter to  
Defendant  
22nd May 1957

Asst.No:C.548

OFFICE OF THE COMPTROLLER  
INCOME TAX,  
P.O. BOX 250,  
IPOH.

Date 22nd May, 1957.

10 Rimau Omnibus Co.Ltd.,  
88 Brewster Road,  
IPOH.

In accordance with the provisions of Section 40 of the Income Tax Ordinance, 1947, as amended, application is hereby made for the payment of the under-mentioned sum for the year 1956.

Credit balance brought forward from the year 1955	Nil
--	-----

20 Tax payable for the year of assessment 1956	<u>14,722</u>
	(B) 14,722

Tax deducted/deductible from dividends paid in	(A) <u>22,515</u>
---	-------------------

Excess of (A) over (B) now due and payable	<u>7,793</u>
---	--------------

Sd:

Comptroller of Income Tax.

Method of Payment:-

30 Cheques, Money Orders and Postal Orders  
should be crossed and made payable to the  
"Comptroller of Income Tax" and sent to Sulei-  
man Building, Kuala Lumpur. Payment may be  
made only at Suleiman Building, Kuala Lumpur.

Exhibits

J

Plaintiff's  
Letter to  
Defendant  
24th August  
1957

EXHIBIT J - PLAINTIFF'S LETTER  
TO DEFENDANT

---

FEDERATION OF MALAYA  
DEPARTMENT OF INLAND REVENUE  
INCOME TAX COLLECTIONS BRANCH

Our Ref: X/C/548  
Suleiman Building,  
Kuala Lumpur.  
24th August, 1957.

The Director,  
Rimau Omnibus Co.Ltd.,  
38 Brewster Road,  
IPOH.

10

Dear Sir,

The position of your account is as follows :-

Section 40 assessment for 1956 as per assessment notice dated 25.5.57	...	...	\$7793-00	
Repayment due re Credit from 1957	...	...	<u>248-70</u>	20
		Balance payable	<u>\$7544-30</u>	

This outstanding balance is now overdue for payment. Will you please let me have a remittance in clearance if the imposition of a penalty is to be avoided.

Yours faithfully,

Sd:

Assistant Comptroller, Collections.

HSC/KSP:

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30