Judgment No. 13, 1974

IN THE PRIVY COUNCIL No. 1 of 1973

ON APPEAL

FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

KEPPEL BUS COMPANY LIMITED Appellants

- and -

SA'AD BIN AHMAD Respondent

CASE FOR THE RESPONDENT Record

1. This is an Appeal from a Judgment dated 31st July 1972 from the Court of Appeal in Singapore pursuant to leave of that Court dated 20th November 1972 dismissing with costs the Appellants appeal from a Judgment of the High Court of Singapore dated 5th April 1971. p.54 p.55

2. Under the said Judgment of the High Court, the Respondent as Plaintiff was awarded $20,290.00. by way of damages against the Appellants who were the first Defendants and Chiu Eng Kiam the second Defendant. p.42

The Pleadings

3. In paragraph 1 of the Statement of Claim the Plaintiff (Respondent) alleged that on 8th May 1967 he was travelling as a fare paying passenger from the West Coast Road to Jurong on a bus operated by the 1st Defendants when the 1st Defendants servant or agent, namely the 2nd Defendant who was then the conductor of the said bus, assaulted the Plaintiff by striking him with his fists and by striking him in his left eye with a ticket puncher. p.3

4. In paragraph 2 of the Statement of Claim the Plaintiff alleged that he had suffered personal injuries including the loss of his left eye and claimed damages. p.3

5. In their amended Defence, the 1st Defendants admitted that at the material time the 2nd Defendant was their

employee but said that the alleged assault was not within the scope of his authority and was an
p.4 independent act unconnected with his employment. Further or in the alternative the 1st Defendants said that the act of the 2nd Defendant was committed in the course of defending himself against the act, namely, the striking of a blow, by the Plaintiff by reason whereof the Plaintiff is deemed to have consented to the 2nd Defendant's act within the meaning of the principle of law known as volenti non fit injuria. 10

p.5 6. The 2nd Defendant signed his own defence. The substance of it was as follows :

(a) there was an altercation between him and the Plaintiff about a Malay woman who wanted to alight from the bus. The Plaintiff was abusive and finally aimed a blow at the 2nd Defendant which missed. The 2nd Defendant retaliated but his blow also missed. They were then separated by the passengers.

(b) The Malay woman then alighted from the bus and 20 the 2nd Defendant started to prepare himself to collect the fares when all of a sudden the Plaintiff struck him with a blow. He blocked it with both his hands, but unfortunately when so doing, his right hand which was holding a ticket cutter, hit into the face of the Plaintiff smashing his spectacles.

Main points arising in this Appeal

7. It was common ground that the Plaintiff's injuries were caused by a ticket punch held by the 30 2nd Defendant. The main questions which arise on this Appeal are:

(a) whether or not the 2nd Defendant at the time was acting in self defence;

(b) whether or not the injuries so caused were accidental;

(c) whether or not at the time the 2nd Defendant was acting in the course of his employment as the conductor of the bus.

Respondent's primary contentions 40

8. In the first place the Respondent contends that the issue arising on 7(a) and (b) above were simple

questions of fact on which there are concurrent findings of fact in favour of the Respondent.

9. The Respondent concedes that the issue raised in 7(c) involves a mixed question of fact and law. None the less the Respondent contends that both Courts, properly directing themselves, gave concurrent findings of fact in favour of the Respondent.

10. On 21st January 1971 the case came on for hearing before Kulasekaram J.

The Evidence

11. There were only three witnesses, namely, the Plaintiff, an independent witness called by the Plaintiff, and the 2nd Defendant who was called as a witness by the 1st Defendants.

12. It was common ground that what gave rise to the incident was the fact that the Plaintiff took exception to the conduct of the 2nd Defendant towards a female passenger who wished to alight from the bus. The following passage from the Record appears in the evidence of the 2nd Defendant :-

" Q. I put it to you seated where he was the plaintiff heard you shout angrily at her. p.26 ll.9-13

A. I agree. That was how the argument started.

Q. It started through your rudeness to this lady. (Mr. Hilborne objects to the word rudeness.

Court: Overrules.)

A. Yes. "

13. Further it is common ground that before the Plaintiff's injuries were caused the bus had stopped, the female passenger had alighted and a few more passengers had boarded the bus. Although none of the three witnesses quantified the exact time, it is a fair inference that the injuries were caused within seconds of the female passenger alighting.

14. According to the Plaintiff's evidence, the 2nd Defendant merely abused him before the moment p.9 ll.18-23

when the female passenger alighted and the only violence was after this incident. The Plaintiff said that after female passenger alighted the 2nd Defendant continued to abuse him and there was an exchange of blows after which the passengers separated them. At the time when he was struck by the ticket punch he was seated.

p.14 11.20-26 " 30-32

15. The 2nd Prosecution Witness was Mohamed Daud Bin Aman, a galvaniser with Malaysia Steel Pipe Ltd. This witness stated that after heated words, the 2nd Defendant suddenly punched the Plaintiff when he was seated and then the Plaintiff stood up and there was an exchange of blows. This was before the female passenger alighted. After the female passenger had alighted, he heard the 2nd Defendant abusing the Plaintiff. At one stage both were standing facing each other. Then the Plaintiff sat down and it was after that that the 2nd Defendant struck the Plaintiff with the ticket punch. The witness demonstrated how the blow was struck.

p.15 23-39 p.16 11. 2-16 11.17-36

16. Both the Plaintiff and the 2nd Prosecution Witness agree that there was only one exchange of blows. The 2nd Prosecution Witness stated that it was immediately before the female passenger alighted and the Plaintiff said that it was immediately after this incident.

17. The 2nd Defendant gave evidence. According to him there was an exchange of blows before the female passenger alighted. He stated that the Plaintiff struck the first blow and that they were then separated by the passengers. After the bus had restarted he stated that he was punching tickets when the Plaintiff was standing in front of him. Suddenly the Plaintiff punched him on the left cheek (and he produced a medical report corroborating that he had a haematoma on the cheek) and this excited him. He hit the Plaintiff and accidentally the ticket punch touched the Plaintiff's glasses.

p.22 11.27-44 p.23 11.1-19

18. On 5th April 1971 Judgment was entered for the Plaintiff against both Defendants for $20,290.00. There has been no appeal on the question of the amount of the damages.

19. In the course of his Judgment, the Trial Judge said :-

"On the day in question I find that the conductor spoke to the elderly Malay lady in a loud and rude manner. The plaintiff clearly took exception to this and that is why he questioned the conductor regarding this request to the Malay lady in the manner he had narrated in his evidence. The conductor resented this intervention by the plaintiff and an altercation developed followed with some exchange of blows. The passengers in the bus promptly intervened and separated the two. The plaintiff went back to his seat and the conductor began collecting fares from his passengers standing near the plaintiff and facing him then. He was then uttering abusive words in Chinese probably at the plaintiff and evidently not having cooled off from the earlier incident. p.39 l.30 to p.40 l.28

The plaintiff stood up at this and asked him not to use abusive words and then sat down.

It was as soon as the plaintiff sat down that the conductor hit him on his left eye with the ticket punch. Having seen and heard P.W.2. and his demonstration of how this punch was delivered I accept his evidence on this point. I find that this blow was delivered by the conductor when the plaintiff was seated. I find that there was only one scuffle between the two and only one intervention by the passengers as the plaintiff and P.W.2 say and not two of each as stated by the conductor. I do not accept the conductor's version that he was struck by the plaintiff suddenly on his cheek and that it was after that that he got excited and hit back at the plaintiff and accidentally broke his glasses with the ticket punch. Any injury that the conductor received on his cheek was not caused in the manner suggested by the conductor. Having heard him give evidence I do not consider him to be a truthful witness. I do not accept his evidence that this ticket punch accidentally struck the plaintiff's glasses. I find the conductor hit the plaintiff with the ticket punch and even though he may not have intended such an injury to his eye he should have been aware that it is likely

that such an injury was likely to be caused. He clearly knew what he was doing when he struck the plaintiff with the ticket punch."

p.41 11.17-41

" I find that the conductor when he hit the plaintiff was acting in the course of his duties. He was then maintaining order amongst the passengers in the bus. He was in effect telling the plaintiff by his act not to interfere with him in his due performance of his duties. He may have acted in a very high handed manner but nonetheless I am of the opinion that he was acting in the due performance of his duties then.

A bus conductor's lot in quite often a very harassing one especially in a busy metropolis and particularly during peak hours of traffic. He is often, in the proper discharge of his duties, called upon to show qualities of patience, tolerance, tact and forbearance. In the course of his duties he will have to deal with all kinds of passengers.

Apart from collecting the appropriate fares from the passengers and seeing that they get in and alight from the bus properly he is also responsible for the maintenance of order in the bus and the general welfare of all the passengers. Bus companies should take good care to see that people with the wrong temperament are not employed by them in this capacity. Otherwise they may run the risk of having to meet situations such as this."

20. The 1st Defendants only appealed and the Appeal came on for hearing before Wee Chong Jin, C.J. and Chua and Tan, J.J. on the 2nd and 3rd March 1972 and by Order dated 31st July 1972, the Appeal was dismissed.

21. The Judgment of the Court which was signed by all the Judges contains the following passages:-

(Having first quoted the first passage from the Judgment of the Trial Judge set out above the Judgment of the Court of Appeal continued to read as follows):-

"It is contended on behalf of the appellants that the trial judge ought to have

found the following facts, namely:

(i) That it was the plaintiff who aimed the first blow in the incident which led to his injury; p.50 l.9 to p.51 l.28

(ii) That the conductor received his injuries from a blow by the plaintiff;

(iii) That there was a distinct break between the first incident prior to the Malay lady passenger alighting from the bus and the second incident which occurred after she had alighted, and the conductor had resumed his collection of fares;

(iv) That the breaking of the plaintiff's spectacles was not deliberate but accidental and that the injuries sustained by him were not intentional but consequential upon the breaking of the spectacles.

The principles which an appellate tribunal ought to bear in mind when considering a complaint that the trial court has made wrong findings of primary facts have been stated by numerous authorities but it will be sufficient to cite a passage from Lord Sumner's opinion in the Hontestroom case (1927) A.C. 37 at p.40.

> "Of course, there is jurisdiction to retry the case on the shorthand note, including in such retrial the appreciation of the relative values of the witnesses . . . . It is not, however, a mere matter of discretion to remember and take account of this fact; it is a matter of justice and of judicial obligation. Nonetheless, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own

comparisons and criticisms of the witnesses and of their own view of the probabilities of the case".

Bearing these principles in mind we are of the opinion, with regard to (i) that the trial judge's finding that the conductor struck the first blow ought not to be reversed and that it was amply supported by the evidence. With regard to (ii) it is immaterial whether or not the cheek injury suffered by the conductor was inflicted by the respondent. What is material is the finding that it was not caused in the manner suggested by the conductor and this is a finding of fact which is supported by the evidence. With regard to (iii) what is material is that after the break, the finding of the trial judge is that while the respondent was seated the conductor standing over him hit him on the eye with the left hand in which was the ticket punch. Finally, with regard to (iv) the trial judge was justified in rejecting the conductor's evidence that the breaking of the respondent's spectacles with the resultant eye injury was purely accidental."

(Having then quoted the 2nd passage from the Judgment of the Trial Judge set out above, the Judgment of the Court of Appeal continued as follows) :-

"It is argued for the appellants that as the trial judge found there was a distinct gap in the events between the conductor and the respondent being separated by the passengers after the exchange of blows and the second incident when the conductor hit the respondent, the conductor's act which caused the eye injury was clearly outside the scope of his employment and not an unauthorised mode of doing an authorised act. It is conceded, however, that one of the duties of a bus conductor is the maintenance of order in the bus but it is submitted that the trial judge was wrong in holding that the conductor when he hit the respondent in the eye was then maintaining order in the bus.

p.52 l.21 to p.53 l.13

The applicable law is not in dispute and

is contained in a passage from Salmond on Torts cited with approval by the Privy Council in Canadian Pacific Railway Co. v. Lockhart (1942) A.C. 591 at p. 599:

> "It is clear that the master is responsible for acts actually authorised by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they may rightly be regarded as modes - although improper modes - of doing them. In other words, a master is responsible not merely for what he authorises his servant to do, but also for the way in which he does it. On the other hand, if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible: for in such a case the servant is not acting in the course of his employment, but has gone outside of it."

. . . . . .

"On the evidence before him the trial judge found that although there was a distinct gap, as stated above, the lapse of time between the two incidents was so very short that for all intents and purposes the whole incident should be considered as one continuous event. This, finding, which is a matter for trial judge, disposes of the contention that the eye injury was caused by the conductor in the course of a private quarrel. p.53 ll.24-41

In our judgment there was sufficient evidence for the trial judge to come to the conclusion that the conductor in hitting the respondent on the eye was acting in the course of his employment albeit acting in a very high handed manner. In our opinion on the facts of the present case the appellants have been rightly held to be vicariously liable

for the assault committed by the conductor and we would accordingly dismiss the appeal with costs."

22. Accordingly the Respondent humbly submits that the Appeal should be dismissed for the following amongst other

R E A S O N S

(a) BECAUSE the proper conclusion from the evidence is that the second Defendant was not acting in self defence. 10

(b) BECAUSE there are concurrent findings of fact in favour of the Respondent on (a) above.

(c) BECAUSE the proper conclusion from the evidence is that the second Defendant did not strike the Respondent accidentally.

(d) BECAUSE there are concurrent findings of fact in favour of the Respondent on (c) above.

(e) BECAUSE the proper conclusion from the evidence is that the second Defendant was acting in the course of his employment when he struck the Respondent with the ticket punch.

(f) BECAUSE there are concurrent findings of fact in favour of the Respondent on (e) above.

IAN BAILLIEU

No. 1 of 1973

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LE BRASSEUR & OAKLEY,
71 Great Russell Street,
London WC1B 3BZ.