

BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.1 of 1973

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

KEPPEL BUS COMPANY LIMITED (Defendants)
Appellants

- and -

SA'AD BIN AHMAD (Plaintiff)
Respondent

RECORD OF PROCEEDINGS

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(i)

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RECORD OF PROCEEDINGS

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(iv)

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1.

No. 1

WRIT OF SUMMONS

IN THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

Suit No. 2492
of 1968

Between

Sa'ad bin Ahmad

Plaintiff

- and -

1. Keppel Bus Company Limited

2. Chiu Eng Kiam

Defendants

In the High
Court of the
Republic of
Singapore

No. 1

Writ of Summons
18th December
1968

10 THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF
JUSTICE OF THE REPUBLIC OF SINGAPORE, IN THE NAME
AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC OF
SINGAPORE.

To:-

- 20 1. Keppel Bus Company Limited
a limited company incorporated
in Singapore and having its
registered office at No. 29/30
Nunes Building, Malacca Street,
Singapore.
2. Chiu Eng Kiam,
No. 409E Blk. 55, Lengkok Bahru,
Singapore.

30 We command you, that within eight days after
the service of this writ on you, inclusive of the
day of such service, you do cause an appearance to
be entered for you in a cause at the suit of Sa'ad
bin Ahmad, Labourer, of 159 West Coast Road,
Singapore,
and take notice, that in default of your so doing
the plaintiff may proceed therein to judgment and
execution.

Witness Mr. Eu Cheow Chye, Registrar of the
High Court in Singapore the 18th day of December,
1968.

Sd: Murphy & Dunbar
Plaintiff's Solicitors

Sd: Illegible
Dy. Registrar,
High Court, Singapore.

In the High Court of the Republic of Singapore

No. 1
Writ of Summons
18th December 1968
(continued)

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 such renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Singapore.

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 for \$5.50 with an addressed envelope to the Registrar of the High Court at Singapore.

10

The Plaintiff's claim is for damages for personal injuries and consequent loss and expense caused by the assault and battery of the Plaintiff by the Second Defendant, the servant or agent of the First Defendant; with interest on such damages and costs.

This writ was issued by Messrs. Murphy & Dunbar of Hongkong Bank Chambers (7th Floor), Battery Road, Singapore, Solicitors to the said Plaintiff who resides at 159 West Coast Road, Singapore and is a labourer.

20

The address for service is at No. H-1 Hongkong Bank Chambers (7th Floor), Battery Road, Singapore.

This writ was served by

on

on the day of 19

Signed:-

30

Indorsed the day of 19

(Signed)

(Address)

3.

No. 2

In the High
Court of the
Republic of
Singapore

STATEMENT OF CLAIM

IN THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

No. 2

Statement of
Claim

Undated

10

1. On the morning of the 8th day of May 1967 the Plaintiff was travelling as a fare paying passenger from West Coast Road to Jurong on a bus operated by the 1st Defendant when the 1st Defendant's 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.

2. By reason of the matters aforesaid the Plaintiff suffered personal injuries and has been put to loss and expense.

PARTICULARS OF PERSONAL INJURIES

Loss of sight of left eye.

Laceration of left upper eyelid.

20

PARTICULARS OF SPECIAL DAMAGE

Transport to and from General
Hospital for treatment \$20.00

Loss of earnings for 45
days at \$6.00 a day 270.00

\$290.00

3. And the Plaintiff claims damages, including interest on such damages from the said 8th day of May 1967, with costs.

30

Sd: Murphy & Dunbar
Solicitors for the Plaintiff

In the High Court of the Republic of Singapore

No. 2.

Statement of Claim

Undated

(continued)

To:-

- (1) The abovenamed 1st Defendants, Keppel Bus Company Limited, a limited company incorporated in Singapore and having its Registered Office at Nos. 29/30 Nunes Building, Malacca Street, Singapore.
- (2) The abovenamed 2nd Defendant, Chiu Eng Kiam, No. 409E Blk. 55, Lengkok Bahru, Singapore, (bus conductor).

10

No. 3

Amended Defence of First Defendants

25th February 1971

No. 3

AMENDED DEFENCE OF FIRST DEFENDANTS

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

1. The First Defendants admit that at the material time the Second Defendant was their employee but say that the alleged assault was not within the scope of his authority and was an independent act unconnected with such employment.

20

2. The First Defendants do not admit paragraph 2 of the Statement of Claim and put the Plaintiff to strict proof thereof.

30

3. Save as hereinbefore expressly admitted the First Defendants deny each and every allegation of fact in the Statement of Claim as if the same were set forth herein seriatim and specifically traversed.

5.

Dated and Delivered this 9th day of April, 1969.

In the High Court of the Republic of Singapore

Sgd: HILBORNE & CO.

Solicitors for the First Defendants

No. 3

Re-dated and Re-delivered this 25th day of February, 1971.

Amended Defence of First Defendants

Sgd: HILBORNE & CO.

25th February 1971

Solicitors for the First Defendants (continued)

10 To: The abovenamed Plaintiff and to his solicitors, Messrs. Murphy & Dunbar Singapore

AMENDED in red pursuant to Order of Court herein dated 25th day of February, 1971.

Dated this 25th day of February, 1971.

REGISTRAR

No. 4

No. 4

DEFENCE OF THE SECOND DEFENDANT

Defence of Second Defendant

STATEMENT OF DEFENCE OF SECOND DEFENDANT

Undated

20 I am a bus conductor employed by the Keppel Bus Company. On 8.5.67 at about 7.20 a.m. while the bus was moving in the direction of Jalan Ahmad Ibrahim I saw a middle aged Malay woman who was seated in the front portion of the bus raising her hand as if to indicate that she wants to get down. I went towards her and asked her if she wants to get down and told her that if she wants to get down either stand up or put her hands higher the next time. She did not reply. Then I saw that there was no ticket in her hand and asked her if she has bought her ticket, 30 if not then buy one then. She just replied that she wants to get down as the bus has reached her destination. I told her that if she wants to get down then go over to the door and wait. Then I move over to the middle of the bus and at that

In the High
Court of the
Republic of
Singapore

No. 4

Defence of
Second
Defendant

Undated

(continued)

instance a Malay man who was standing at the back came towards me. He asked me why I had to scold the woman. I replied that I had told her to buy a ticket and she says that she wants to get down, and so I told her to go there and wait until the bus stopped. The Malay man then told me that I am an aggressive individual and that he has never seen anyone like me before. Then he asked me what do I want, and I replied with the same question. After this, he struck me with a blow but missed me and I retaliated with a similar blow but with similar results. We were then separated by the passengers who were near us. Then the bus stopped at the bus section in Kampong Tepan, and the Malay woman got down and about 3 passengers got up. The bus started to move and I started to prepare myself to collect the fares when all of a sudden the Malay man strike me with a blow. I blocked it with both of my hands but unfortunately in so doing, my right hand which was holding a ticket cutter, hit into his face smashing his spectacles. Then the Malay man got hold of my shirt and look as though he wanted to strike me again. I tried to grab hold of his shirt too, but then we were separated by the passengers. The bus stopped in a bus section and the injured Malay man then got down. The bus moved on and later I reported the incident to the police. 10 20

It was because of carrying on my official duties as a bus conductor that I was involved in this sudden fight with another man who mistook my actions (in directing the woman to the door) as uninvited. 30

Signed: Chui Eng Kiam
of

270-A, Tanjong Pagar Road
Singapore, 3.

7.

No. 5

NOTES OF EVIDENCE

Thursday, 21st January, 1971. Coram: Kulasekaram J.

Mr. H.E. Cashin for Plaintiff

Mr. K.E. Hilborne for 1st Defendant.

2nd Defendant in person.

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence

21st January
1971

NOTES OF EVIDENCE

Mr. Cashin opens and outlines his case.

10 Refers to Statement of Claim para 1 and
Defence para 1.

- (1) Was the act an act of self defence?
If it was whether using a ticket puncher
was in excess of that self defence?
- (2) Was it accidental?
- (3) As far as 1st Defendant is concerned
assuming no self defence, no accident
was 2nd Defendant 's act within the scope
of his authority; was he authorised by
the company?

20 Refers. Hals. Vol. 25 P.535 Art. 1021

The authorised acts of the conductor must
cover 3 or 4 different types of work -
- Stopping and starting a bus.
- selling the tickets and operating the
punching machines.
- conductor is clearly in charge of and
control of the passengers.
- must see to their safety in ascending and
descending from a bus.
30 - controlling the passengers from doing wrong.

In this case I submit he was doing -

- (1) He was seeing to the descent of a passenger
from the bus - the old lady.
- (2) If she had no ticket then he was doing
his duty about the fare and ticket.

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence

21st January
1971

(continued)

(3) He was exercising his right of control.

The manner in which he did it was objectionable.(536)

Refers:

(1) Dyer & Wife v Munday 1895 1 Q.B. 742

(2) Goh Choon Seng v Lee Kin Soo 1925 A.P.550

Mr. Cashin:

The 1st defendant admits the loss of sight to plaintiff's eye was occasioned by the blow with the ticket puncher which shattered the glasses that he was wearing. A piece of glass penetrated the left eye and caused the blindness. 10

Mr. Hilborne confirms that.

Special Damages agreed at \$290.00 between plaintiff and 1st defendant.

Refers also to P.106 of Glass & McHugh on "Liability of Employers".

Mr. Cashin:

The subordinate court's jurisdiction has been raised from \$2,000.00 to \$5,000.00 as the value of the money is less. So the damages that are awarded too should reflect the loss of value of money. 20

The damages have stayed constant since 1955 - fracture of a tibia or fibula - \$2,500.00

Hands in a list of awards in 'eye' cases - Marked X.

These awards are about equivalent to £2,000.

Refers to 1967 (1) W.L.R. P.1497 at 1499 - raised it from £2,000 to £2,750.

I submit the proper award here should be about \$24,000.00 from \$18,000.00 for an eye now. 30

The English case is of 1967. During the last 3 years prices have gone up sharply in Singapore.

Calls:

P.W.1 Sa'ad bin Ahmad a.s. in Malay. Living at 159, West Coast Road. A clerk with Bridgestone (Malaysia) Ltd. on 8.5.67 at about 7.10 a.m. I was on board a "Keppel" bus which was along Jalan Ahmad Ibrahim going to Jurong - to my factory. (Bridgestone Factory at Jurong). I was seated in the front portion of the bus. A lady passenger wanted to alight from the bus. The conductor told her to wait at the entrance to the bus. The lady passenger was seated then. The bus was travelling and the conductor had asked her to wait at the door. I told the conductor that she might fall and there might be trouble. What I meant was that she might fall off the bus. I did not know the lady and I did not try to find her later. After I had told this to the conductor there was an altercation between the conductor and me. He first asked me who I was and then abused me in Chinese. I understood the Chinese words and I was very upset. At that time I was seated. On hearing that I got up and told him not to say such things. I was not rude to him.

Q. At any stage during the altercation did the lady get down? A. During the altercation the bus stopped at the bus stop and the lady alighted from the bus. When the conductor told her to wait at the door she got up and waited at the door.

Q. Can you remember the bus conductor asking her if she had bought a ticket and if she had not a ticket then to buy one? A. She had bought a ticket and she wanted to get down.

I did hear the bus conductor ask her about the ticket.

After the lady got down, the altercation continued. The bus after stopping moved on. The moment the bus started moving we exchanged blows. At that time we were standing. I stood up immediately after I had told the bus conductor not to say such things. I cannot remember who hit whom first whether I hit the conductor first or he hit me first. I was wearing glasses at that time. They were sun glasses only and not lenses. My sight then was all right. While we were exchanging blows

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No. 5

Plaintiff's
Evidence

Sa'ad bin Ahmad
Examination

In the High
Court of the
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Singapore

No. 5

Plaintiff's
Evidence

Sa'ad bin Ahmad
Examination

(continued)

people in the bus intervened. I then sat down in my original seat. While I was sitting I felt my eye being poked. I felt something hard hit my glasses. I do not know what that "something hard" was. I do not know who had used that "something hard". As a result my glass broke. Only one of the 2 glasses broke - the one over the left eye. When I sat down after the exchange of blows my glasses were intact.

10

- Q. How soon after you sat down was your glass broken? A. The moment I sat down in a second or two thereafter the glass broke. The bus conductor was in front of me when I sat down. He was 2 feet in front of me and facing me then, I have brought an eye witness. His name is Mohamed Daud bin Aman (id.). Before this incident I did not know this man. I had seen him in the Kampong before. Since this accident I knew him.

20

Cross-
examination

Cross-examined by Mr. Hilborne.

It was the first time I took this bus service to Jurong. I had been working at Bridgestone Factory for 6 months prior to this incident. I usually went by car - a friend's car. On this particular morning the car was out of order and so I went by the bus. Only the friend and I - the 2 of us - went by car. My friend was not with me that morning. I boarded the bus in Jalan Ahmad Ibrahim. It was a quarter of a mile from my home. When I got on the bus it was almost full. The entrance was in the middle of the bus. It was both exit and entrance. I was in the rear half of the bus on the offside - nearer the door - about $\frac{1}{4}$ from the front of the bus. I was seated next to the centre aisle. Someone was seated next to the window - a male Chinese.

30

Adjd. to 2.15 p.m.

2.15 p.m. Hearing resumed.

40

Cross-examined by Mr. Hilborne (continued).

The distance between the place I got on the bus and the place the lady got off the bus was

not very far - about 5 bus stops away. The lady was seated in front of me with one seat in between us.

In the High Court of the Republic of Singapore

Q. She must be almost opposite the door.
A. Yes. She was seated next to the aisle. She was a Malay lady - about 30 plus years.

No. 5

Q. What drew your attention first to this lady?
A. The lady wanted to alight and the conductor wanted her to wait near the door. She said "Hey Berhenti." The bus conductor said "Kalau mahu turun tunggu dekat pintu". "If you want to get down wait near the door". She did not reply.

Plaintiff's Evidence

Sa'ad bin Ahmad Cross-examination

(continued)

Q. What did you think was wrong in the conductor asking her to go and stand near the door?
A. I thought she might fall.

Q. Was there any reason why she more than any other person should fall? A. She was the only female passenger in the bus at that time. All the passengers were going to Jurong. There are female workers in Jurong. It happened then that there was only one female in the bus.

Q. Are you telling that is why you intervened?
A. Yes. I have been on buses many times. I agree it is usual for people who want to get down to go near the door.

Q. What is so unusual about the bus conductor's request? A. The way it was spoken to her. The tone. It was a harsh tone. I told the bus conductor she might fall off the bus.

Q. Did you say anything about the harsh tone in addressing the lady? A. No. If he had spoken in a low tone I would have said nothing.

Q. So why did you not mention about the tone of his voice? A. I did not say anything about that.

Q. Where was he standing when you first spoke to him? A. He was standing in front of me. The lady had moved towards the door. When he asked me who I was the lady was still at the door. He abused me in Chinese. By then the bus had

In the High
Court of the
Republic of
Singapore

No. 5

Plaintiff's
Evidence

Sa'ad bin Ahmad
Cross-
examined
(continued)

stopped and the Malay lady had alighted.
She was the only one to alight.

- Q. Did you see the conductor give the signal to go off? A. No.
- Q. What was the conductor doing then? A. He was selling tickets in front of me.
- Q. So there was a gap between his questioning you and his abusing. A. Yes. The conductor was in front of me. After the Malay lady had alighted he abused me. I agree several passengers would have heard me. I understand some Hokkien. 10
- Q. When he abused you why did you get up?
A. I got up to tell him not to say such things.
- Q. You could equally have done that sitting down.
A. I got up and touched his shoulder and told him "Please don't say such things."
- Q. Are you saying you gently placed your hand on him? A. Yes. (demonstrates - a gentle touch on the shoulder.) 20
- Q. Do you agree it is none of your business to control the passengers in the bus?
A. I agree.
- Q. Do you agree it was not your business to give instructions to the bus conductor about the passengers? A. I agree.
- Q. What did the conductor do when you said that?
A. He further abused me in Chinese using the same words.
- Q. So he used the same expression twice? A. Yes. 30
- Q. Did he say anything else? A. He went on to say if I wanted to complain I may do so. He is not scared.
- Q. Complain to whom? A. To the bus company.
- Q. Did the conductor say anything else other than asking her to go near the entrance?
A. That is all he told her.

- Q. Then why did you say in your examination in chief that you heard some conversation about the ticket? A. I did hear the conductor asking the lady about the ticket
- Q. Then why are you contradicting yourself?
A. How do I contradict myself? The conductor did tell the lady if she wanted to get down to wait at the door. The conductor then said to people around there "Tickets, Tickets".
- 10 Q. So you say he was generally collecting fares.
A. Yes.
- Q. After he abused you in Chinese a second time what happened next? A. Blows were exchanged.
- Q. Why can't you remember who struck the first blow? A. I simply cannot remember.
- Q. I suggest you struck the first blow. A. I cannot remember.
- Q. How many blows were exchanged? A. Two or three blows each and the people intervened. Yes, the passengers in the immediate vicinity. I sat down then and he was in front of me.
- 20 Q. Were you looking at him? A. No, I was rather afraid.
- Q. And then you felt this blow. A. Yes.
- Q. While you were exchanging blows with the conductor where was his ticket "punch"?
A. I don't know.
- Q. Were you told afterwards that you had been hit by a ticket "punch"? A. I was not told.
- 30 Q. Up to date nobody has told you about this.
A. My witness told me. My witness told me that my eye was hit by the ticket "punch".
- Q. When did he tell you that? A. He told me that when I was in hospital.
- Q. He came to see you in the hospital. A. He sent me to the hospital.

In the High
Court of the
Republic of
Singapore

No. 5

Plaintiff's
Evidence

Sa'ad bin Ahmad
Cross-
examined

(continued)

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Sa'ad bin Ahmad Cross-examination

(continued)

Cross-examination by Second Defendant

- Q. Did anybody else take you to the hospital?
A. No.
- Q. Which part of the bus was your witness sitting?
A. He told me that he was seated behind me.
- Q. Did you see him in the bus before the incident? A. No.
- Q. Have you ever spoken to him before the accident?
A. I have spoken to him before. I knew him just by sight. I had met him in the Community Centre.
- Q. Can you see with your left eye at all? 10
A. I cannot see with my left eye. If I close my right eye then there is total darkness.
- Q. I put it to you that it was you who started the altercation. A. No.

Cross-examined by Second Defendant

- Q. I put it to you the bus was full when you got in and you were standing. A. No. I was seated.
- Q. Though 2 or 3 blows each were exchanged none landed on the other person. A. That is so.
- Q. After the lady passenger had alighted we had a second fight. A. No. After the lady passenger had alighted we exchanged blows and that was the only fight. I agree when the lady passenger alighted 2 or 3 passengers boarded the bus there. The bus then moved off. 20
- Q. And I attended to those 2 or 3 passengers. A. Yes.
- Q. While I was punching tickets for them you stared at me. A. I did not.
- Q. You then punched me once on my face. A. No.
- Q. I then punched you back once in return. 30
A. That is not so. You hit me while I was sitting.
- Q. You were hit on the face by me and your glasses broke. A. Yes. (After the question was explained again).

Cross-examined by Court

Q. When you were hit on the glasses were you standing? A. I was sitting then.

NO RE-EXAMINATION

(Mr. Cashin mentions that 2nd defendant had come to his office on his own volition by mistake and a statement had been recorded from him. He thought he was another witness. He does not propose to use it.)

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Sa'ad bin Ahmad Cross-examination

(continued)

10 P.W.2 MOHAMED DAUD BIN AMAN a.s. in Malay.
Living at 230 West Coast Road.

Mohamed Daud bin Aman

Examination

I am a galvaniser with Malaysia Steel Pipe Ltd. On 8.5.67 at about 7.15 a.m. I was at a bus stop in Jalan Ahmad Ibrahim to go to Jurong. I boarded as far as I can remember a Keppel Bus. It was almost full then. I was able to find a seat then. At that time I did not know plaintiff well. I had seen him once or twice before. I boarded the bus and plaintiff

20 boarded the bus later. He was able to get a seat on the bus. He was seated in front of me and there was a seat between us.

Q. There was a scuffle. Can you tell us what happened? A. The plaintiff was seated in front as I have described. I heard a lady about 35 to 40 years of age wanting to alight from the bus. As far as I can remember she was a Malay. When this lady told the conductor that she wanted to get down he told her to wait at the door if she wanted to get down. The plaintiff

30 then told the conductor why she wanted the lady to wait at the door. It was dangerous. The conductor then asked the plaintiff what he wanted. Then plaintiff told the conductor that if he said like that he would report him to the company. The plaintiff was seated at the time and the conductor was standing and facing the plaintiff. Suddenly the conductor punched the plaintiff.

40 Q. When the punching started where was the lady?

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Mohamed Daud bin Aman Examination

(continued)

A. The lady was still seated in the bus.

Q. When the conductor punched the plaintiff was the plaintiff seated at that time or standing?
 A. When the punch was delivered it missed the plaintiff. Then the plaintiff stood up. Not longer after that the bus reached the bus stop and the female passenger alighted. After she had alighted I heard the conductor abusing the plaintiff in Mandarin "Kah nee nau Chee Bah" (Interpreter says it was the same expression used in the morning.) I know what the Chinese expression means. It is a very rude expression. It is an expression which would make me angry if used on me. I heard the conductor use it on the plaintiff. I changed seat and went across to the other side.

10

Q. Why? A. Incidentally I just changed seat. This was after the expression was used. Just before I sat down in my new seat I saw the plaintiff and defendant standing and facing one another. I heard the plaintiff telling the defendant that the words used against him were bad. I saw nothing happened and the plaintiff sat down. The conductor was still standing facing the plaintiff. Then I saw the conductor holding a ticket punch and if I am not mistaken it was in his left hand. The conductor hit the plaintiff on the left eye.

20

Q. With which hand? A. With the left hand using the ticket punch. At that time plaintiff was sitting. The plaintiff was then wearing glasses.

30

Q. Did the glasses break? A. I saw the plaintiff covering his left eye with both his hands (demonstrates).

Q. Did you see that glasses were broken? A. Yes, the glass was broken.

Q. Did you take the plaintiff to the hospital?
 A. Yes.

4.10 p.m.

40

COURT: Adjourned to 10.00 a.m. on 22.1.71

Initialled T.K.

FRIDAY, 22nd JANUARY, 1971

Counsel as before.

P.W.2 (Examination by Mr. Cashin continued).
On former oath.

I have not told the police that I was an eye witness to this incident. I was called by Inspector Mustapha and queried about this incident and my evidence was as I have given here. I have given evidence in connection with this matter in another court.

In the High
Court of the
Republic of
Singapore

No. 5

Plaintiff's
Evidence

Mohamed Daud bin
Aman

Examination

(continued)

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Cross-examined by Mr. Hilborne

Q. Were you seated 4 seats behind the Malay lady?
A. Yes.

Q. Was there another lady in the bus? A. No.
From the moment I boarded the bus she was the only lady in the bus. When the plaintiff got up after the conductor aimed a sudden blow at the plaintiff, the plaintiff also in turn delivered a blow at the conductor. The conductor delivered the first blow at the plaintiff without any warning.

20

Q. Why did this blow miss the plaintiff?
A. Plaintiff warded off the blow.

Q. When the conductor aimed this blow did you see where his ticket punch was? A. It was in his hand. In his left hand.

Q. And with which hand did he aim the blow?
A. With his right hand. After plaintiff stood up I agree they exchanged 2 or 3 blows each and none of the blows landed on the persons. They were using both their arms when delivering these blows. I agree his ticket "punch" remained in his left hand.

30

Q. Would you please describe the ticket "punch"?
A. If a ticket "punch" is shown I can recognise it.

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Mohamed Daud bin Aman
Cross-examination for First Defendant

(continued)

Q. Would you please show the size of this ticket "punch"? A. About 4" to 4½" in length. The width would be about 2½".

(Mr. Hilborne produces a ticket "punch" and put in by consent and marked D1.)

D1 is a ticket punch. I do not speak Mandarin. I have heard such phrases as I have mentioned used by my Chinese friends. I have asked the meaning of that expression from them. I did not know the Malay lady and I did not make any attempt to find this Malay lady. The plaintiff did not ask me if I knew the Malay lady.

10

Q. You would certainly recognise her if you saw her. A. I cannot recognise her. After the lady got off the bus I agree this altercation continued.

Q. Was it a continuous scuffle from beginning to end or was there a definite stop when the bus stopped and the lady got off the bus. A. There was a gap.

20

Q. During the gap what was the conductor doing? A. The conductor was collecting fares from the persons who boarded the bus there.

Q. Did he give the signal for the bus to go off after the persons had boarded the bus? A. Yes he pressed the bell. I agree the conductor was doing his normal duties. That was about the time I changed my seat. I went over to the left side of the bus. It was not the same row but one row behind.

30

Q. Why did you change seat? A. Incidentally.

Q. What do you mean? A. I just happened to be changing seats.

Q. Did it have anything to do with what had just taken place A. No.

Q. Did it occur to you to say something to your friend, the plaintiff? A. No.

Q. Why not? Would it not be natural? You did not think it was a situation that required your

saying something. A. I did not make any comment. He was collecting the fares in front of me.

Q. So he was walking up and down the aisle.

A. Yes, in the immediate vicinity of the plaintiff.

Q. I take it the plaintiff had sat down as the lady got off. A. Yes.

10 Q. So how was that plaintiff came to be standing up when he was collecting the fare? A. The plaintiff stood up as his place of work was nearing.

Q. Are you saying he got up to get off the bus?

A. I believe so.

Q. Did he make a move to get off the bus? A. No.

Q. You knew where he was going to get off the bus.

20 A. I guessed that he was going down. I did not know where he was working. I did not know where he was going down from the bus. I agree I thought he was going to get down when he stood up.

Q. Then why do you think he sat down? A. I do not know why he sat down.

Q. When he stood up how far was he from the conductor? A. The conductor was about $2\frac{1}{2}$ feet away from him.

Q. Still in the process of collecting fares.

A. No.

30 Q. What was he doing? A. The conductor was facing the plaintiff.

Q. Nothing else. A. Yes - nothing else.

Q. Did the plaintiff or the conductor say anything at all? A. Neither said anything.

Q. While standing thus did either of them aim a blow at each other? A. Neither of them aimed any blow. I saw the plaintiff sit down.

In the High
Court of the
Republic of
Singapore

No. 5

Plaintiff's
Evidence

Mohamed Daud bin
Aman

Cross-
examination for
First Defendant

(continued)

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Mohamed Daud bin Aman

Cross-examination for First Defendant

(continued)

Re-examination

Cross-examination by Second Defendant

Q. What happened next? A. I saw the conductor hitting the plaintiff's left eye with a ticket punch which was in the conductor's left hand.

(Examined by Court)

Q. Please show how he did this. A. (Demonstrates with the ticket punch - a forward thrust in the direction of the left eye.)

Q. The front portion of punch was sticking out as what you have shown here. A. Yes, I saw that.

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Q. I am putting it to you that you saw nothing of that. A. I saw that. Yes, the plaintiff was facing the front.

Re-examined by Mr. Cashin.

I heard the conductor use the Chinese expression which I had earlier spoken of.

Q. In your evidence in chief you said this expression was used when the two of them were standing and facing each other. A. Yes, I said that.

20

Q. Is that true? Did the conductor use that Chinese expression when the two were standing and facing each other? A. Yes.

Q. You were asked in cross-examination whether anything happened when they were standing and facing each other and you said "no". You were next asked whether anything was said and you again said "no". What I want to know is which is correct. Was nothing said or did the conductor come out with this Chinese expression? 30
A. The evidence in my examination in chief is correct and the conductor did use that expression at that time

Cross-examined by Second Defendant

Q. Where was I standing when facing the plaintiff? A. You were in the aisle.

Q. You say the plaintiff was seated when I hit him. A. Yes.

Q. I put it to you I am right handed. A. I saw you using your left hand.

No further re-examination by Mr. Cashin.

Initialled T.K.

Mr. Cashin: On Quantum.

(1) refers to 1969 Current Law Damages '963' sight Appleton vs. Greaves £2750.

(2) 1970 Current Law Damages - sight Kempton vs. Dajenher £3000.

Plaintiff's case.

Mr. Hilborne:

If Second Defendant is not going to give evidence then I shall call him.

Second Defendant indicates he desires to remain silent as far as his case is concerned.

Mr. Hilborne calls:

D.W.1 Chiu Eng Kiam a.s. in Hokkien. Living at 151 Prince Charles Square. Now I am a Keppel Bus Co. Driver, number 3543.

In 1967 I was a bus-conductor with the same company - 1st Defendant co. I joined this company in June 1965. On the day of this incident on 8.5.67 my bus was travelling along Jalan Ahmad Ibrahim heading for Jurong. It was shortly after 7 a.m. The seats were all occupied but there was standing room. About ten passengers were standing then. A few passengers were standing in the front half of the bus while a few others were standing in the rear half. Most of the passengers were

In the High Court of the Republic of Singapore

No. 5

Plaintiff's Evidence

Mohamed Daud bin Aman

Cross-examination by Second Defendant

(continued)

Defendant's Evidence

Chiu Eng Kiam Examination

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In the High
Court of the
Republic of
Singapore

No. 5

Defendant's
Evidence

Chiu Eng Kiam
Examination

(continued)

males but there were at least two or three female passengers. One of them was a Malay lady. She was about 40 years old. She was seated in the first row. Immediately behind the driver. The entrance and exit which were both the same was situated in the nearside middle of the bus.

Q. Did you hear the plaintiff say where the lady was seated? A. Yes but that was not the correct position. 10

Q. What attracted your attention? A. She wanted to get down but she did not express herself clearly. I saw her raise her hand but not very high. I then went up to her and asked her if she wanted to alight from the bus but she kept quiet. I then asked her again if she wanted to get down and I told her if so to put up her hand and say "brake" and then I would know. I told her the bus was crowded and if she would please move to the side of the entrance and wait there. But she still sat there and did not say anything. I then pressed the bell for the bus to stop for her to get down. Then I moved to the middle portion of the bus to watch the entrance of the bus. I spoke to her in Malay. 20

When I moved to the middle of the bus the plaintiff walked up to me and stood in front of me and asked me why I chased the female passenger out of the bus. I told him I was teaching the female passengers how to get down from the bus. The plaintiff then said that he had never seen such a bad person like me and that he wanted to lodge a complaint. He did not mention with whom he was going to lodge that complaint. I told him that if he wanted to complain he could do so. I further told him to mind his own business. I asked him in Malay what he wanted. Then he attempted to punch me on my face and I ducked my head to my right. I in turn gave him a punch but I missed hitting him. Passengers in the bus intervened and stopped the fight. At that time the bus stopped and the female passenger got down. This bus stop was at Kampong Tepan. 30 40

I did not notice the plaintiff before he came up to me and so I cannot say from which portion

of the bus he walked up to me. Three or four passengers got on to the bus at that bus stop. I gave the signal for the bus to move off. After that I went on collecting the fares and punching tickets. While I was punching tickets at the middle portion of the bus the plaintiff was standing in front of me facing each other. Then suddenly he punched me once on the left cheek causing a hamaetoma. (produced a photostat copy of a medical report - marked D2. No objections from parties.)

In the High Court of the Republic of Singapore

No. 5

Defendant's Evidence

Chiu Eng Kiam Examination

(continued)

After I received this blow I was excited and I hit him. While I was working I was holding my ticket punch like D1 in my right hand. Accidentally the ticket punch touched his spectacles. I had no grudge against him. Then I caught hold of his shirt and he caught hold of my shirt and we both struggled. Then the passengers in the bus came up and separated us.

Then the bus stopped at the plywood factory bus stop and the passengers assisted him to get down from the bus. My tickets were scattered in the bus. I picked them up and the bus moved on until it reached Jurong Shipyard. I then told the bus driver not to pick up any passengers but to drive the bus to Taman Jurong Police Station where I made a report. At about 9.30 a.m. I was medically examined at the Pasir Panjang Clinic. D2 is the report of that examination.

(Mr. Hilborne puts in by consent a police report of D.W.1 - marked D3 and a police report of P.W.1 marked D4.)

The injuries described in D2 were received during the second episode.

The abrasion on the right second finger was caused by finger nails during the struggle. It was caused by the plaintiff's finger nails.

The abrasion above the left wrist was also caused by finger nails.

I did not notice P.W.2 in the bus.

Adjourned to 2.15 p.m.

2.15 p.m. Hearing resumed.

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In the High
Court of the
Republic of
Singapore

No. 5

Defendant's
Evidence

Chiu Eng Kiam
Cross-
examination

D.W.1 Cross-examined by Mr. Cashin.

When the plaintiff walked up to me I was then in the middle portion of the bus. I saw the plaintiff walk up to me.

- Q. So you know from which direction he came.
A. He came from the front portion of the bus. I now say he came from the rear portion to the middle portion of the bus.
- Q. When you were speaking to this woman did you raise your voice or did you speak to her politely and quietly? A. I spoke to her quite loudly. 10
- Q. Why did you speak to her quite loudly? A. It was an old bus and the engine was noisy
- Q. You said you went up to her and spoke to her. Then why did you speak loudly? A. Because it was very noisy. The passengers who were standing were standing in the aisle. They were scattered about. They were standing one behind the other.
- Q. So to go up to her you had to push your way up the aisle as she was seated in front next to the driver. A. Yes. I agree when I spoke to her there were four or five people standing behind me in the aisle. 20
- Q. Then if the bus was old and noisy how, what you told the lady, was heard by the plaintiff who was in the rear of the bus? A. He had seen what was happening.
- Q. It is not a question of seeing but hearing what you said. A. I would not know. 30
- Q. Unless you spoke very loudly he could not have heard. A. I spoke louder than usual.
- Q. How do you say he saw when between you and the plaintiff there were four or five persons on the aisle? A. The bus was not full though people were standing.
- Q. The plaintiff not only saw but also heard what you said. A. I do not know.

Q. Did not the Plaintiff tell you not to ask the lady to stand near the entrance as it was dangerous. A. Yes, he did say that.

Q. So the plaintiff must have heard you. A. Yes.

Q. So you must have been shouting very loudly or she was much closer to the plaintiff. A. Yes.

Q. Which was it?
(There is a long delay.)

A. I shouted loudly.

In the High Court of the Republic of Singapore

No. 5

Defendant's Evidence

Chiu Eng Kiam Cross-examination

(continued)

10 Q. Were you angry with the woman? Why did you shout? A. I was excited in my work and I was somewhat angry then.

Q. Would you say that it was a polite way to shout at a lady angrily? A. I did not use abusive words. I agree it was not polite to shout at a lady.

20 Q. Then why did you say you spoke to her politely? A. I spoke loudly to her. I told that throughout the lady remained silent. I made a statement of defence. (Statement of defence read).

Q. In the statement you say she spoke. A. Yes, she spoke.

Q. The shouting was also because she had not ticket. Is that so? A. Yes, somewhat like that.

Q. Lastly you did tell her to go and stand by the entrance. A. Yes, I did.

30 Q. P.W.1 and P.W.2 both said that you used a bad Chinese expression on the plaintiff. A. There was a quarrel and I cannot remember if I used such expression. During the quarrel both of us used bad language.

Q. I put it to you the Malay lady was not seated immediately behind the driver but near the middle. A. What I could remember was that she was seated immediately behind the driver.

Q. I put it to you the plaintiff was seated behind

In the High
Court of the
Republic of
Singapore

No. 5

Defendant's
Evidence

Chiu Eng Kiam
Cross-
examination

(continued)

the lady and quite close to her. A. They were seated on the same side.

Q. So you knew where he was. A. I knew where plaintiff was seated.

Q. Was it close to the lady? A. About three or four seats in between

Q. I put it to you seated where he was the plaintiff heard you shout angrily at her.
A. I agree. That was how the argument started.

Q. It started through your rudeness to this lady. 10
(Mr. Hilborne objects to the word rudeness.)

COURT: Overruled.)

A. Yes.

Q. At that stage the plaintiff was still seated.
A. He had already walked up to me.

Q. I put it to you that he was seated and not walking up when he spoke to you. A. No.
If he was seated there and talking I would not know that he was speaking to me.

Q. You were angry with the lady and you were very 20
angry and rude to the plaintiff. A. Yes. The plaintiff was also angry with me.

Q. I am suggesting to you that there was only one scuffle. A. The witness (P.W.2) also said there were two scuffles.

Q. Whether there was one or two scuffles the blow that broke the glasses was delivered while the plaintiff was seated. A. It was delivered while plaintiff was standing and when we were both fighting each other. 30

Q. The glasses broke at the beginning of the second struggle. A. Yes.

Q. I put it to you that you were shouting angrily at a female passenger. A. Yes. I was a little angry.

Q. I put it to you that it was that conduct which

started everything. A. Yes.

Examined by Court

Q. You stated that you hit him when you received the blow. With which hand did you hit him?

A. With my right hand. I am a right handed man.

Q. Was the ticket punch then in your right hand.

A. Yes.

Re-examined by Mr. Hilborne.

10 Q. Did you at any time see the plaintiff seated in the bus? A. No.

Q. When you first saw the plaintiff precisely where was he? A. He was walking from the back of the bus to the middle of the bus to speak to me.

Q. Did you notice whether there was a vacant seat in the rear when he walked to you? A. No vacant seat.

20 Q. So he must have been standing. A. Yes. Only the Malay lady got off the bus. Three or four boarded the bus. There were no vacant seats then when the second scuffle took place. I do not know if the Malay lady had bought a ticket. I saw that she had no ticket in her hand. When I went up to her I noticed she had no ticket in her hand. I asked her if she had bought a ticket and she told me she was getting down.

Examined by Court.

30 Q. Why did you not ask her again if she had bought a ticket? A. I asked her to pay 5 cents and she again kept quiet.

Q. Why did you not ask her to pay? A. She was a woman. She said she was getting down. I did not proceed further.

Re-examination continued.

Q. Why did you say in cross-examination that

In the High
Court of the
Republic of
Singapore

No. 5

Defendant's
Evidence

Chiu Eng Kiam
Cross-
examination

(continued)

Re-examination

In the High Court of the Republic of Singapore

No. 5

Defendant's Evidence

Chiu Eng Kiam Re-examination

(continued)

plaintiff was seated about three or four seats behind the lady? A. He was walking from behind. I thought he may have been three or four seats behind. I saw him walking from behind and I thought he might have been seated there. It was a big bus.

Examined by Court

Q. How far was the plaintiff from the lady when you first saw him? A. He was about two-thirds of the length of the bus from the lady.

10

Initialled. T.K.

First Defendant's Case.

Second Defendant has no witness.

Second Defendant is asked if he has any submission to make in this case.

Second Defendant submits it was merely a fight and he had no intention to cause any injury. The injury was caused accidentally.

"As I was working in the bus I was not aware that I was holding a ticket punch in my hand. I was using my fist to punch the plaintiff and the ticket punch touched the plaintiff's spectacles accidentally.

20

Mr. Hilborne:

Atiyah.

Clarke & Lindsell 13th Edition.

Liability of Master - Assault by servant.

Court: Adjourned to a date to be fixed by the Registrar for submission.

(Witness released).

30

Initialled T.K.
J U D G E

Certified true copy,
Signed:-
Private Secretary to Judge,
Court No.7, Supreme Court, Singapore.
18.11.71.

Thursday, 25th February, 1971.

Coram: Kulasekaram, J.

Mr. H.E. Cashin for Plaintiff.

Mr. K.E. Hilborne for First Defendant.

Second Defendant in person.

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence

NOTES OF EVIDENCE

Mr. Hilborne applies to amend his defence.
Hands up proposed draft amended defence.

Mr. Cashin: No objection.

10 Court. Amendment allowed.

Mr. Hilborne: Puts in a plan of the bus.
Applies to call the witness to
say where they were seated.
To point it out in the plan.

Mr. Cashin: Objects to the calling of these
witnesses. This would serve
no useful purpose. They have
told us where they were seated.
Has no objection to plan going in
20 to assist the court. Plan put
in by consent and marked D5.

Court: Hilborne is allowed to ask P.W.1 where he
was seated in the bus.

P.W.1 (recalled)

Sa'ad bin Ahmad
re-called

Q. Mark with an 'X' in D5 where you were seated
that morning in the bus. A. (Witness P.W.1
marks with an 'X' in Ex.D5.)

Mr. Hilborne:

Submissions for
the First
Defendant

On self defence

30 Refers to N. of E. Page 4. Plaintiff unable
to say who hit whom first.

Page 7.

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence

(continued)

Page 9. P.W.1 on cross-examination says he cannot remember who struck the first blow. If any blow was delivered to Second defendant it was before the glasses was broken.

There is the medical certificate to show that second defendant was hit.

It is reasonable to assume that no blows were struck by the plaintiff after the main blow was struck by the second defendant. There were no further blows by the plaintiff - page 11.

10

Does it mean plaintiff did not strike a blow?
Page 12. P.W.2 says conductor gave the first blow.

Page 13 Page 14 P.W.2 says plaintiff hit the second defendant.

Page 15 is a gap.

Page 18. Evidence in re-examination about use of abusive words is not correct.

Page 20. I say second defendant's account is a candid one.

20

He says the first blow was delivered by the Plaintiff.

If first blow was delivered by the plaintiff then plaintiff must fail for three reasons: .

- (1) Self defence provided he has not exceeded the proper limits of self defence.
- (2) Volenti non fit injuria applies.
- (3) Assault is a crime as well as a tort pari delectio.

Clerk & Lindsell 12th Ed. Para 570.
Para 452

30

Page 106 of 13th Ed. Para 93.

Further in 13th Ed.

Street on Torts Page 77

72

Page 100.

Refers to 1968 1 Q.B. 379 Lane v Hollaway

Adjourned to 2.30 p.m.

Hearing resumes.

If it was conductor who struck the first blow then the issues are :

- (1) Are the first defendants liable for their servants' act?

This act was not an act done in the course of his employment

This is not the case of the second defendant carrying out his duties in a wrongful way.

10

These injuries arose out of an independent and private act.

Refers to Jennings v C.N.R. (1925) 2 D.L.R.

This is different from the present case.

Plaintiff here interfered between the passengers and the conductor.

What conductor did has given no complaint from the Malay lady.

The Malay lady had already left when the main blow was struck.

20

The fight between plaintiff and conductor took place in the bus while the conductor was on duty.

Conductor was then on duty - discharging his duties.

Not collecting tickets, not assisting the plaintiff to board or alight the bus nor eject him from the bus.

1947 4 D.L.R. 49 Griggs v Southside Hotel Ltd. at P.50

30

Patterson v Royal Oak Hotel Ltd. 1948 N.Z.L.R. 136.

at 148
and at 151.

C.V. The Law Journal Page 354.

Rutherford v Hawkes Bay Hospital Board 1949

N.Z.L.R. 400 at 414

at 418 at line 33

423 line 28

424 line 30

40

Deatons Property Ltd. v Flew 79 C.L.R. 1949

Daniel v Whettstone 1962 2 Ll. L.R. P.1

Warren v Henlys 1948 2 A.E.R. 935.

Adjourned to 10.30 a.m. tomorrow

Initialed T.K.

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence

(continued)

In the High
Court of the
Republic of
Singapore

No. 5

Notes of Evidence
(continued)

Friday, 26th February, 1971

Mr. Hilborne:

(1) Refers: Warren v Henlys Ltd.
1948 2 A.E.R. 935.

(2) Deatons Property Ltd. v Flew
1949 (79) C.L.R. 370.

C.J. Letham's judgment.

Dixon, J. (retribution 382).

(3) Daniels v Whetstone Entertainment
1962 (2) Ll.L.R. P.1
page 5 - 7
at 10

10

(4) Lane v Holloway 1967 (1) Q.B.D. 379

- (1) volenti non fit injuria
- (2) ex turpi causa non oritur actio

12.15 p.m. Cashin: Replies.

Only conductor says two fights.

It was D.W.1 who said there were 2 scuffles.

Adjourned to 2.15 p.m.

Submissions for
the Plaintiff

2.15 p.m. Hearing resumed.

20

Mr. Cashin:

The conductor in addressing the Malay lady was doing so in the course of his duties, while he was about his duty and incidental to his duties.

The Plaintiff's coming up and saying to the effect that you cannot be rude to her was done while the conductor was about his duties.

So the altercation between the conductor and the plaintiff was clearly in the course of the conductor's duty.

30

When the second defendant asked the

He is here doing authorised duty of keeping order - seeing the passenger kept orderly.

In the High Court of the Republic of Singapore

The conductor goes on abusing the passenger. While he was so abusing her the plaintiff was so incensed to stand up and say to him you must not use words like that or words to that effect.

No. 5

Notes of Evidence

Submissions for the Plaintiff

(continued)

10

(1) If the plaintiff strikes the conductor first and conductor retaliates thereby blinding the plaintiff I submit that the exchange of blows was induced by the language used by the conductor in keeping order.

(2) If the plaintiff having protested sits down and is struck then once again the blow has been induced by the conductor's excessive language in keeping order.

I say the remarks were all aimed at keeping order. This is nothing to do with you.

20

The conductor continues to abuse him to see that the plaintiff henceforth conducts himself properly and does not interfere with his work. The point that the conductor was acting rudely does not mean that he was acting outside the scope of his duties.

Again on quantum of G. Damages for loss of an eye.

30

Court: Order. Judgment for plaintiff against both defendants in the sum of \$20,000.00 as General Damages and \$290.00 as Special Damages. Total \$20,290.00, plus costs.

Initialled T.K.

Certified true copy.

Signed:-

Private Secretary to Judge
Court No. 7,
Supreme Court, Singapore.

18.11.71.

In the High
Court of the
Republic of
Singapore

No. 6

JUDGMENT OF KULASEKARAM J.

Suit No. 2492 of 1968

No. 6

Judgment of
Kulasekaram J.
5th April 1971

Between

Sa'ad bin Ahmad Plaintiff

- and -

1. Keppel Bus Co. Ltd.

2. Chiu Eng Kiam Defendants

Coram: Kulasekaram, J.

Mr. H.E. Cashin for Plaintiff.

10

Mr. K.E. Hilborne for First Defendant.

Second Defendant in person.

GROUNDS OF JUDGMENT

In this action the plaintiff alleged that on the 8th May 1967 while he was travelling as a fare paying passenger on a bus operated by the first defendant company he was struck on the left eye with a ticket punch by the second defendant, the bus conductor, the servant or agent of the first defendant company.

20

As a result of this assault on him the plaintiff alleged that he had suffered personal injuries and he claimed damages for these injuries.

The first defendant company by their defence pleaded that the assault on the plaintiff by their employee, the second defendant was not within the scope of the second defendant's authority and was an independent act unconnected with his employment by their company.

30

The plaintiff's evidence regarding this incident is briefly this. He was on 8.5.67, the day of the incident, a clerk with Bridgestone (Malaysia) Ltd. at Jurong. At about 7.10 a.m. on that day he was on board a "Keppel" bus which

10 was going along Jalan Ahmad Ibrahim proceeding
 to Jurong. He was seated about the middle
 portion of the bus, though slightly to the
 rear. He was seated near the centre aisle
 of the bus on the offside. The other seat
 next to him on the offside near the window of
 the bus was occupied by someone else. The bus
 was then fairly full, Just then an elderly
 lady who was seated in the row just in front
 of him indicated that she wanted to get off
 the bus. The conductor on noticing this
 20 shouted out to her that if she wanted to
 alight from the bus she should go and wait
 near the entrance of the bus. The entrance
 of this bus which also served as its exit
 was situated about the middle of the bus on
 the nearside. He then told the conductor,
 who was then near him, that it was dangerous
 to ask the Malay lady to stand near the
 entrance. He did this because the conductor
 had spoken to the Malay lady in a loud tone.
 At this the conductor asked the plaintiff who
 he was and started to abuse him in Chinese.
 He got up from his seat and told the conductor
 he should not use such words. An altercation
 ensued between them. During this altercation
 the bus stopped as it had reached the next
 bus stop and the elderly Malay lady alighted
 30 from the bus and three or four passengers
 boarded the bus there. The altercation contin-
 ued and as the bus moved off the conductor
 again abused him in Chinese and there was
 then a sudden exchange of blows. He would not
 say who hit whom first in this. They had
 exchanged two or three blows each when the
 passengers in their vicinity intervened and
 separated them. It is common ground that
 none of these blows hit the other person.
 He went back to his seat. The conductor was
 40 then standing in front of him. A moment or
 two after he sat down he felt something hard
 hit his glasses and he also felt his eye being
 poked. He had been wearing his sun glasses all
 along that morning and they were still intact
 when he sat down after the exchange of blows.
 As a result of that something hard hitting his
 glasses one of them, the glass over his left
 eye, broke. He was subsequently taken to the
 hospital. The plaintiff maintained that there
 50 was only one exchange of blows between him and

In the High
 Court of the
 Republic of
 Singapore

 No. 6

Judgment of
 Kulasekaram J.

5th April 1971

(continued)

In the High
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No. 6

Judgment of
Kulasekaram J.

5th April 1971

(continued)

the conductor though there was abusing of him by the conductor on two occasions with a gap between the two occurrences.

The other witness who was called by the plaintiff to speak about this incident was Mohamed Daud bin Aman (P.W.2). This witness said he was a passenger in the bus and was seated just behind the plaintiff. He had boarded the bus before the plaintiff. In his evidence he corroborated in the main what the plaintiff had said. He however said the exchange of blows began before the bus pulled up at the bus stop where the elderly Malay lady got off the bus. He also said it was the conductor who delivered the first blow during the exchange of blows and that this first blow was delivered while the plaintiff was still seated. It was then the plaintiff sprang to his feet and the two of them exchanged a few blows. According to him after the bus started moving the conductor began collecting fares from the passengers. He was then standing in the centre aisle near where the plaintiff was seated and uttering abusive words in Chinese whereupon the plaintiff stood up. He however saw nothing happening and then the plaintiff sat down. It was then that the conductor hit the plaintiff with the ticket punch on the plaintiff's left eye and caused his glasses to break. The plaintiff then covered his left eye with both his hands. This witness maintained that there was only one scuffle between the two though there was a distinct gap between the scuffle where the passengers intervened and separated them, and the conductor hitting the plaintiff with his ticket punch. He also maintained that this blow with the ticket punch on the plaintiff's eye was delivered when he was seated. He demonstrated how this blow was delivered on the plaintiff by the conductor with the ticket punch.

As against this evidence we have the evidence of the conductor, the second defendant, who was called by the first defendant as his witness. According to him on the day and time in question the elderly Malay lady was seated immediately behind the driver of the bus in the front portion of the bus and not as indicated by the other two witnesses. As this Malay lady was indicating something he went up to her, spoke to her in a loud tone and told her that if she wanted to get off the bus she was to go and wait near the entrance. Then as he moved up towards

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the entrance the plaintiff came from the back portion of the bus and questioned him about this which of course he resented and an altercation ensued. The Plaintiff then attempted to punch him but he avoided the blow and in turn punched at the plaintiff but missed him. The passengers in the bus intervened and stopped the fight. At that time the bus stopped. The Malay lady got off the bus and three or four passengers boarded the bus. As the bus moved off he began collecting the fares from the passengers near the middle portion of the bus. The plaintiff who was then standing near him and facing him suddenly punched him on his cheek without any warning. When he received this blow he got excited and hit him back. He had this ticket punch in his hand as he was punching tickets and when he punched the plaintiff the ticket punch in his hand accidentally touched the plaintiff's spectacles and the glass broke. Then they caught hold of each other and there was a struggle. They were again separated by the passengers. As a result of this punch on his cheek he had a haemotoma and he produced the medical certificate D2 from a doctor whom he had seen a few hours after the incident to support his story.

Having carefully considered the whole of the evidence in this case I find the facts to be shortly as follows.

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.

The plaintiff stood up at this and asked

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(continued)

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.

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I consider the plaintiff and P.W.2 by and large to be truthful witnesses. Of course there are discrepancies between their two versions. There is this difference in their versions as to when the exchange of blows commenced in relation to when the bus stopped for the Malay lady to get off the bus. In such an incident it is not always easy to recollect the exact sequence of all the events that took place then. Again the plaintiff said he was hit as he sat down soon after being separated by the passengers whereas P.W.2 said the conductor was collecting fares in front of the plaintiff and abusing in Chinese before he struck him suddenly and broke his glasses. As I indicated earlier as regards the circumstances under which this blow was delivered and how it was delivered. I accept P.W.2's version on this point. In any event I find the plaintiff was hit by the conductor while the plaintiff was seated there. I find there was a distinct gap in the events between the two being separated by the

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passengers after the exchange of blows and the second incident where the conductor hit the plaintiff. The lapse of time between the two incidents was so very short that in my opinion for all intents and purposes the whole incident should be taken as one continuous event.

In the High Court of the Republic of Singapore

No. 6

Judgment of
Kulasekaram J.

5th April 1971

(continued)

10 On these findings there can be no question as to the conductor being liable in damages for the injuries he caused the plaintiff. I reject any suggestion by the defence that the defendant when he hit the plaintiff on his glasses with the ticket punch was acting in self-defence.

The only real question is whether the conductor when he hit the plaintiff was acting in the course of his employment so as to make the first defendant company his employers also liable or not.

20 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.

30 A bus conductor's lot is 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.

40 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.

As a result of the injuries that the plaintiff sustained in this incident he lost completely his

In the High Court of the Republic of Singapore

No. 6

Judgment of Kulasekaram J.

5th April 1971

(continued)

sight in the left eye. In all the circumstances of this case having regard to the awards in similar cases and the dates when those awards were made I fix the amount of general damages here in respect of this injury at \$20,000.00. The costs of this action shall be to the plaintiff. The plaintiff shall also have special damages of \$290/- as agreed.

Sgd. T. Kulasekaram

(T. KULASEKARAM)

Judge

15 Dec. 1971.

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No. 7

Formal Judgment

5th April 1971

No. 7

FORMAL JUDGMENT

The 5th day of April, 1971

This action having been tried before the Honourable Mr. Justice Kulasekaram on the 21st and 22nd days of January 1971 and the 25th and 26th days of February 1971 and this day.

It is adjudged that the defendants do pay the Plaintiff \$20,000.00 by way of general damages and \$290.00 by way of special damages and his costs of action to be taxed.

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Entered the 29th day of April, 1971 in Volume CXIII Page 256 at 11.10 a.m.,

Sgd. Tan Kok Quan

Asst. REGISTRAR

43.

No. 8

NOTICE OF APPEAL BY FIRST DEFENDANT

CIVIL APPEAL NO. 14 of 1971

BETWEEN

Keppel Bus Company Limited
Appellants

and

Sa'ad bin Ahmad Respondent

In the matter of Suit No. 2492
of 1968

Between

Sa'ad bin Ahmad Plaintiff

and

1. Keppel Bus Company Limited
2. Chiu Eng Kiam
Defendants

NOTICE OF APPEAL

20 TAKE NOTICE that Keppel Bus Company Limited,
the abovenamed Appellants being dissatisfied with
the decision of the Honourable Mr. Justice T.
Kulasekaram given at Singapore on the 5th day of
April, 1971 appeal to the Court of Appeal against
the whole of the said decision.

Dated the 8th day of April, 1971.

Sd: Hilborne & Co.

SOLICITORS FOR THE APPELLANTS

30 To the Registrar,
Supreme Court,
Singapore

And to the abovenamed Respondent and
his Solicitors, Messrs. Murphy & Dunbar,
Singapore.

The address for service of the Appellants is at
the office of Messrs. Hilborne & Company, Nos. 22/23
Nunes Building, Malacca Street, Singapore.

In the Court
of Appeal
in Singapore

No. 8

Notice of Appeal
by First
Defendant

8th April 1971

In the Court
of Appeal
in Singapore

No. 9

PETITION OF APPEAL OF FIRST DEFENDANTS

No. 9

CIVIL APPEAL NO.14 of 1971

Petition of
Appeal of First
Defendants

12th January
1972

BETWEEN

Keppel Bus Company Limited
Appellants

and

Sa'ad bin Ahmad
Respondent

In the Matter of Suit No. 2492
of 1968

10

Between

Sa'ad bin Ahmad
Plaintiff

and

1. Keppel Bus Company Limited
2. Chiu Eng Kiam
Defendants

PETITION OF APPEAL

To the Honourable the Judges of the Court of Appeal. 20

The Petition of the abovenamed Appellants showeth
as follows :-

1. The appeal arises from a claim by the
Respondent for damages for personal injuries and
consequent loss and expense allegedly caused by
the assault and battery of the Respondent by the
Second Defendant, Chiu Eng Kiam, the servant or
agent of the Appellants.

2. By judgment dated the 5th day of April,
1971, judgment was given for the Respondent for
the sum of \$20,000.00 by way of general damages
and \$290.00 by way of special damages and costs
which was taxed and allowed at \$8,799.20.

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3. Your Petitioners are dissatisfied with the
said judgment on the following grounds :-

(i) That the learned trial Judge was wrong in accepting, as he apparently did, the witness Mohamed Daud bin Aman (P.W.2) as a reliable witness and his evidence as corroborative in the main of the Respondent's version of the material events. In particular, this witness's description of the blow which broke the Respondent's spectacles was unworthy of credit and ought to have been rejected.

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(ii) That of the three versions of the events immediately leading to the breaking of the Respondent's spectacles, the Second Defendant's was the only one which was consistent with all the proved or admitted facts. The learned trial Judge ought to have accepted that evidence and rejected that of the Respondent and P.W.2 which was inconsistent and irreconcilable one with the other.

20

(iii) That the learned trial Judge did not make a finding on an important aspect of the evidence, namely, whether it was the Respondent or the Second Defendant who struck the first blow. He ought to have made such a finding which would have led him to consider the questions of law and fact to which it would have given rise.

30

(iv) That the effect of the learned trial Judge's findings was that the Second Defendant deliberately and maliciously used his ticket punch to aim a blow at Respondent's eye; such a conclusion was inconsistent with the proved facts and out of character with the general tenor of the Second Defendant's evidence.

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(v) That the learned trial Judge failed to consider, or give adequate consideration to, the questions of law which arose in the case, namely, whether on the facts admitted or found or which ought to have been found, the relationship of master and servant existed between the Appellants and Second Defendant in relation to the act which caused the injury, or whether the Second Defendant had a right of self-defence and, if so, whether

In the Court
of Appeal
in Singapore

No. 9

Petition of
Appeal of First
Defendants

12th January
1972

(continued)

In the Court
of Appeal
in Singapore

No. 9

Petition of
Appeal of First
Defendants

12th January
1972

(continued)

or not he exceeded that right.

(vi) That the judgment was wrong, and was against the weight of the evidence and should have been in favour of the Appellants and the Second Defendant in that the Respondent's claim ought to have been dismissed.

4. Your Petitioners pray that such judgment may be reversed.

Dated the 12th day of January, 1972.

Sd: HILBORNE & CO.

10

Solicitors for the Appellants

To the abovenamed Respondent and his solicitors, Messrs. Murphy & Dunbar, Singapore.

Filed this 12th day of January, 1972.

No.10

Judgment of the
Court of Appeal

31st July 1972

No. 10

JUDGMENT OF THE COURT OF APPEAL

Coram: Wee Chong Jin,
Chua, J.
Tan, J.

20

J U D G M E N T

The respondent, Sa'ad bin Ahmad, while travelling as a fare paying passenger on a bus operated by the appellants, Keppel Bus Co. Ltd., was struck on the left eye with a ticket punch by the bus conductor. He sued the appellants and the bus conductor for damages for personal injuries and consequent loss and expense caused by this assault and battery.

The bus conductor conducted his own defence and in his Statement of Defence claimed that the injury caused to the respondent was accidental and was caused while defending himself from a blow by the respondent. The appellants, while admitting they employed the bus conductor, denied liability on the ground that the

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assault was not within the scope of the bus conductors authority and was an independent act unconnected with his employment. Alternatively the appellants pleaded *volenti non fit injuria*, alleging that the injury was caused by the bus conductor in the course of defending himself from a blow by the respondent.

In the Court
of Appeal
in Singapore

No.10

Judgment of the
Court of Appeal

31st July 1972

(continued)

10 At the conclusion of the trial, the trial Judge gave judgment for the respondent against the appellants and the bus conductor and awarded the respondent \$20,290 damages and costs. The appellants now appeal and as one of the grounds of appeal is that the judgment was against the weight of the evidence it is necessary to set out the facts in some detail.

20 The respondent said that as the bus was travelling along Jalan Ahmad Ibrahim towards Jurong he was seated nearer the rear portion on a seat next to the central aisle. A Malay woman who was seated two seats in front of him also next to the aisle wanted to alight and was told by the conductor in a harsh tone to wait near the door of the bus. On hearing this he told the conductor the woman might fall but the conductor resented this intrusion and abused him. By then the bus had stopped and the Malay woman had alighted. On being abused he got up from his seat, touched the conductor who was standing in front of him on the shoulder, and told the conductor not to abuse him.

30 The conductor continued to abuse him with the same words of abuse and blows were exchanged. He was unable to remember who struck the first blow. Some of the passengers intervened and he sat down with the conductor still standing in front of him. When he was so seated something hard hit the sun glasses he was then wearing, breaking the glass over the left eye and a broken piece of the glass entered his left eye eventually causing him to lose the sight of that eye.

40 A passenger, Mohamed Daud, gave evidence for the respondent. Mohamed Daud said he was seated behind the respondent and heard a Malay woman telling the conductor she wanted to alight and the conductor telling her to go and wait by the door of the bus. He then heard the respondent, who was seated, telling the conductor, who was standing in front of the respondent, that it was dangerous

In the Court
of Appeal
in Singapore

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Judgment of the
Court of Appeal
31st July 1972
(continued)

to tell the woman passenger to wait by the door of the bus. The conductor asked the respondent what he wanted and the respondent replied he would report the conductor to his employers. Then, while the Malay woman was still seated the conductor threw a punch at the respondent which missed. Soon after the bus stopped at a bus stop and the Malay woman alighted from the bus. After she had alighted Mohamed Daud heard the conductor abusing the respondent and saw them standing facing each other. Nothing happened between them and the respondent sat down. Then Mohamed Daud saw the conductor holding the ticket punch in his left hand and with the left hand hit the respondent on the left eye. In cross examination Mohamed Daud said that when the conductor threw the first punch, using the right hand, the respondent retaliated and some blows were then exchanged which ended when some passengers intervened.

The bus conductor elected not to give evidence on his own behalf but was called as a witness for the appellants. He said that at the material time the bus was full and there were about ten standing passengers. The Malay woman was seated in the first row immediately behind the driver. He saw her raised hand, went up to her and told her if she wanted to alight to walk to the side of the entrance cum exit door as the bus was crowded. As she did not get up, he pressed the bell for the driver to stop the bus for her to get down and then he moved to the middle of the bus. Then the respondent walked up to him, stood in front of him and asked why he was chasing the female passenger out of the bus. He told the respondent he was teaching her how to get down from the bus and the respondent said he would lodge a complaint to which he replied he could do so and to mind his own business. Then the respondent aimed a punch at his face which he avoided and he in turn threw a punch which also missed. At that stage the passengers intervened and the bus stopped and the Malay woman alighted. He then gave the signal for the bus to proceed and went about his job of collecting fares and punching tickets. While he was at the middle portion of the bus collecting fares the respondent who was standing in front of him suddenly punched him on the left cheek and he hit back. He had the ticket punch in his right hand and it accidentally touched the respondent's spectacles. They struggled until the passengers again separated them. In cross examination he admitted he shouted

loudly at the female passenger because he was angry and because she had no ticket. He also admitted he was angry and rude to her and used bad language on the respondent who was seated near the female passenger.

In the Court
of Appeal
in Singapore

No.10

In his Grounds of Decision the trial judge found the facts to be as follows :-

Judgment of the
Court of Appeal

31st July 1972

(continued)

10 " 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
20 plaintiff went back to his seat and the conductor
began collecting fares from his passengers stand-
ing 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.

30 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 inter-
vention 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
40 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

In the Court
of Appeal
in Singapore

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Judgment of the
Court of Appeal
31st July 1972

(continued)

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 was 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".

It is contended on behalf of the appellants that the trial judge ought to have found the following facts, namely : 10

- (i) That it was the plaintiff who aimed the first blow in the incident which led to his injury;
- (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; 20
- (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. 30

"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. None the less, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as 40

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".

In the Court
of Appeal
in Singapore

No.10

Judgment of the
Court of Appeal

31st July 1972

(continued)

10 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)
20 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.

30 Another ground of appeal argued before us is
that on any view of the facts the trial judge ought
to have held that the appellants were not vicariously
liable because this was not a case of a servant doing
something he was authorised to do albeit in a
wrongful unauthorised manner but was a case of an
assault outside the province of his duties
perpetrated in the course of a private quarrel.
The trial judge said the real question was whether
the conductor when he hit the respondent was
acting in the course of his employment and answered
40 it in these words :

" 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 inter-
fere with him in his due performance of his
duties. He may have acted in a very high handed

In the Court
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in Singapore

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Judgment of the
Court of Appeal
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(continued)

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 is 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.

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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

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.

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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 authorized 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 authorized, provided

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they are so connected with acts which he has authorized 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 authorizes his servant to do, but also for the way in which he does it. On the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized 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."

In the Court
of Appeal
in Singapore

No.10

Judgment of the
Court of Appeal
31st July 1972
(continued)

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Numerous authorities, English, Australian, New Zealand and Canadian were cited during the hearing of the appeal but it is plain from these that the law to be applied is as above stated. The difficult question in each of those cases is whether or not, on the facts, the act done by the servant, albeit an unauthorised and wrongful act, is an act done in the course of the servant's employment. If it is done in the course of the employment the master is vicariously liable and, if it is not, the master is not liable.

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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 the trial judge, disposes of the contention that the eye injury was caused by the conductor in the course of a private quarrel.

40

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.

Sd. Wee Chong Jin
CHIEF JUSTICE
SINGAPORE.

Sd. F.A. Chua
JUDGE.

54.

In the Court
of Appeal
in Singapore

Sd. Tan Ah Tah
JUDGE.

No.10

Judgment of the
Court of Appeal
31st July 1972
(continued)

Certified true copy

Signed:-

Private Secretary to
the Hon. the Chief Justice,
Supreme Court,
Singapore, 6.

31 JUL 1972.

No.11

Formal Order
31st July 1972

No. 11

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FORMAL ORDER

CORAM: The Honourable the Chief Justice
Mr. Justice Wee Chong Jin.
The Honourable Mr. Justice Chua.
The Honourable Mr. Justice Tan Ah Tah.

IN OPEN COURT

THIS 31ST DAY OF JULY 1972

O R D E R

THIS APPEAL COMING on for hearing on the 2nd
and 3rd days of March 1972 in the presence of Mr.K.
E. Hilborne of Counsel for the Appellants and Mr.H.
E. Cashin of Counsel for the Respondent AND UPON
READING the Record of Appeal AND UPON HEARING what
was alleged by Counsel aforesaid IT WAS ORDERED
that the said appeal should stand adjourned for
Judgment AND THIS APPEAL standing for Judgment
this day in the presence of Counsel for the
Appellants and for the Respondent IT IS ORDERED
that the appeal by the Appellants be and is hereby
dismissed AND IT IS FURTHER ORDERED that the
Judgment of the Honourable Mr. Justice Kulasekaram
made herein on the 5th day of April 1971 do stand
AND IT IS FURTHER ORDERED that the Respondent's
costs of this appeal as between party and party be

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taxed and paid by the Appellants to the Respondent's solicitors AND IT IS FURTHER ORDERED that the sum of \$500.00 paid into Court by the Appellants as security for costs of this appeal be paid out by the Accountant-General to the solicitors for the Respondent to account of their costs AND IT IS LASTLY ORDERED that execution be stayed for one month on condition that Judgment debt, costs in the lower Court and costs of the present appeal be paid into Court by the Appellants within the one month.

In the Court of Appeal in Singapore

No.11

Formal Order

31st July 1972

(continued)

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Given under my hand and Seal the 22nd day of August, 1972.

Sgd: R.E. Martin

Asst. REGISTRAR

No. 12

ORDER GRANTING LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

BEFORE: THE HONOURABLE MR. JUSTICE WEE CHONG JIN.
CHIEF JUSTICE, SINGAPORE

THE HONOURABLE MR. JUSTICE TAN AH TAH

THE HONOURABLE MR. JUSTICE D'COTTA.

No.12

Order granting leave to appeal to the Judicial Committee of the Privy Council

20th November 1972.

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IN OPEN COURT

O R D E R

UPON Motion preferred unto the Court by the abovenamed Appellants, Keppel Bus Company Limited, coming on for hearing this day in the presence of Counsel for the Appellants and the abovenamed Respondent AND UPON reading the Notice of Motion dated the 26th day of October, 1972 and the Affidavit of Hong Koh Ah Lak affirmed and filed herein on the 26th day of October, 1972 for leave to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council under Section 3(1) (a) (i), (ii) and (iii) of the Judicial Committee Act (Cap. 8) AND UPON hearing

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In the Court
of Appeal
in Singapore

No.12

Order granting
leave to appeal
to the Judicial
Committee of the
Privy Council

20th November
1972

(continued)

what was elleged by Counsel aforesaid THIS COURT DOTH
GRANT LEAVE to the said Keppel Bus Company Limited to
appeal to Her Britannic Majesty's Privy Council
against the whole of the Judgment of the Court of
Appeal delivered herein at Singapore on the 31st
day of July, 1972.

Dated this 20th day of November, 1972.

SD: R.E. Martin

Asst. REGISTRAR

No. 1 of 1973

BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N

KEPPEL BUS COMPANY LIMITED

(Defendants)
Appellants

- and -

SA'AD BIN AHMAD

(Plaintiff)
Respondent

E X H I B I T S

EXHIBITS

"D.2"

MEDICAL REPORT ON THE SECOND DEFENDANT

C O N F I D E N T I A L

OPS/MR 361 (Gt)

Dr. M.H.V. Lodhia to Medical Officer i/c.
Outpatient Services,
Maxwell Road OPD.
Kadayanallur Street,
Singapore, 2.

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Re: Chiu Eng Kiam,
Pasir Panjang OPD.
Cas. No. 222/67 of 8.5.1967.

I beg to enclose herewith the original letter
from M/S. Rodrigo & Tock re: Medical report for O.P.
Cas. No.222/67 dated 8.5.1967.

Med. Report is as under :-

1. A v. superficial $\frac{1}{4}$ " abrasion 1" above the left wrist.
2. A $\frac{1}{8}$ " abrasion Right 2nd finger.
3. A circular (1" diameter) haematoma left cheek

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Patient was given a toxoid injection and the abrasions cleaned and dressed.

Sd: M.H. Lodhia

(Dr. M.H. Lodhia)
Medical Officer i/c,
Pasir Panjang O.P.D.,
Singapore.

30

M/s. Rodrigo & Tock,
Advocates & Solicitors,
63-D Telok Ayer Street,
4th Floor,
Singapore, 1.

Exhibits

Defendant's
exhibits

"D.2"

Medical Report
on the Second
Defendant

undated

ExhibitsDefendant's
exhibits

"D.2"

Medical Report
on the Second
Defendant

undated

(continued)

Your Ref: RT/LCF/Misc. '67.

Forwarded, please.

Receipt No. A.407166 (\$10/-)

Sgd:-

Ag. Medical Officer i/c,
Outpatient Services,
Maxwell Road, Singapore.

"D.3"

Police Report
by the Second
Defendant

8th May 1967

"D.3"

POLICE REPORT BY THE SECOND DEFENDANT

Report No. 836 (JF) Printed Serial No. 462469

10

Station of Origin: Balai Polis Taman Jurong
"RW" Division, Singapore.

Station Diary No. 432.

Time and date when this report was made. 0810 a.m.
8.5.67.PARTICULARS OF INFORMANT

Full Name: Chiu Eng Kiam

Address: Block 55, 409 E Lengkok Bahru.

Occupation: Conductor - Sex: M - Age: 25 -
Race: Chinese - Language: English - N.R.I.C. No.
1075775(B).

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BRIEF DETAILS

At about 0715 hrs. 8.5.67 I was performing duty as Bus Conductor in Bus No. SH.127 (Keppel Bus Co. Ltd.) at Jalan Ahmad Ibrahim on the way to Jurong Shipyard. Before arriving at Sungei Jurong, a female Malay about 40 years was going to get down from my bus, and since the bus was crowded, I told her to get up from her seat first as it was very inconvenient for her to get down. As a result of this, a Malay M/28 yrs. interrupted me, saying that he was going to complain against him. I told him that it was not his business and he

30

59.

furiously gave me a blow on my face by hand. I returned the blow on his face broke his sun-glasses which he was wearing thus causing hurt to his face.

Exhibits
Defendant's Exhibits

Signed:-

"D.3"

Signature of officer recording the report: Sd.
In English

Police Report
by the Second
Defendant

Rank: P.C. No. 7089

8th May 1967

10 Typed and checked by me: Signed:- (Illegible) 'Crime Clerk'
Bukit Panjang Police Station,
Singapore, 23.

(continued)

Certified true copy of a Report entered in a book kept under Section 114(3) of the Criminal Procedure Code.

Signed:- Officer i/c.,
"R.W." Division,
Bukit Panjang Police Station,
Singapore. 27.11.68

"D.4"

"D.4"

Police Report by the Plaintiff

Police Report
by the Plaintiff

Report No. 880 (JR) Printed Serial No. 418336

9th May 1967

20 Station of Origin: 'RW'

Time and date when this report was made. 1815 hrs.
9.5.67.

PARTICULARS OF INFORMANT

Full name: SAAD BIN AHMAD

Address: 159 West Coast Road, 8 m.s.

Occupation: Labourer - Sex: M - Age: 29 -
Race: Malay - Language: English - N.R.I.C. No.

BRIEF DETAILS

30 On 8.5.67 at about 0710 hrs., I was a passenger on a Keppel Bus No. 3A. An old lady wants to get down, and was told by the conductor to stand by the door. The bus was still moving, so I told the conductor it is very

Exhibits

"D.4"

Police Report
by the Plaintiff
9th May 1967
(continued)

dangerous to let her stand by the door because she might fall off the bus. The conductor stared at me and asked who am I and used vulgar language to scold me. I stood up and asked him why he scolded me. He did not answer and hit me within the left eye with his ticket clipper. My spectacles broke and the broken glass enter my left eye. My friend rang up for an ambulance. I was brought to G.H. and warded in Ward 49 Ad. No. 235588. That's all.

Sgd:- R.T.P.

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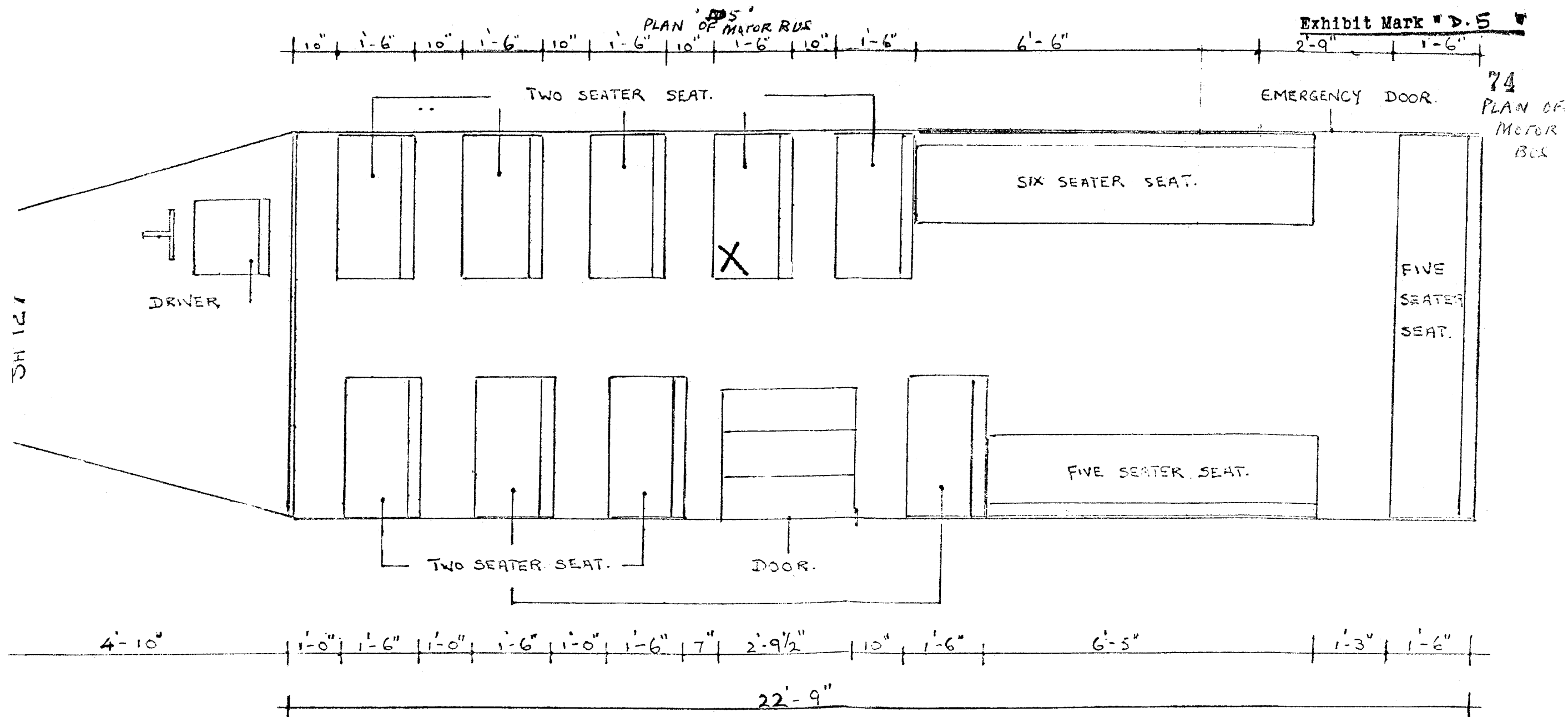
Signature of officer recording the report: Sd.
In English

Rank: P.C. No. 7496.

Typed and checked by me: Signed: (Illegible) 'Crime Clerk'
Bukit Panjang Police Station,
Singapore, 23.

Certified true copy of a Report entered in a book kept under Section 114(3) of the Criminal Procedure Code.

Signed:- Illegible 7/7.



PLAN OF MOTOR BUS

Exhibit Mark "D.5"

74
PLAN OF
MOTOR
BUS

PLAN

SCALE: $\frac{1}{2}$ " = 1'-0"

VULCAN
KEPPEL BUS
34 SITTING.
11 STANDING.

BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.1 of 1973

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

KEPPEL BUS COMPANY LIMITED (Defendants)
Appellants

- and -

SA'AD BIN AHMAD (Plaintiff)
Respondent

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD

Solicitors for the Appellants

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

Solicitors for the Respondent